

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF PENNSYLVANIA

_____, Individually and On
Behalf of All Others Similarly Situated,

Plaintiff,

v.

THE KRAFT HEINZ COMPANY,
BERNARDO HEES, DAVID KNOPF, and
PAULO BASILIO,

Defendants.

Case No.: DRAFT

**CLASS ACTION COMPLAINT FOR
VIOLATIONS OF THE FEDERAL
SECURITIES LAWS**

JURY TRIAL DEMANDED

Law Offices of Howard G. Smith

Plaintiff _____ (“Plaintiff”), individually and on behalf of all others similarly situated, by and through his attorneys, alleges the following upon information and belief, except as to those allegations concerning Plaintiff, which are alleged upon personal knowledge. Plaintiff’s information and belief is based upon, among other things, his counsel’s investigation, which includes without limitation: (a) review and analysis of regulatory filings made by The Kraft Heinz Company (“Kraft Heinz” or the “Company”) with the United States (“U.S.”) Securities and Exchange Commission (“SEC”); (b) review and analysis of press releases and media reports issued by and disseminated by Kraft Heinz; and (c) review of other publicly available information concerning Kraft Heinz.

NATURE OF THE ACTION AND OVERVIEW

1. This is a class action on behalf of persons and entities that purchased or otherwise acquired Kraft Heinz securities between February 23, 2017 and February 21, 2019, inclusive (the “Class Period”), seeking to pursue remedies under the Securities Exchange Act of 1934 (the “Exchange Act”).

2. Kraft Heinz is a food and beverage company that provides products under many brands, including Oscar Mayer, Velveeta, Lunchables, and Planters.

3. On November 1, 2018, the Company stated that cost inflation and lower pricing, among other factors, had materially impacted the third quarter 2018 financial results.

4. On this news, the Company’s share price fell \$5.40, or nearly 10%, to close at \$50.13 per share on November 2, 2018, on unusually heavy trading volume.

5. On February 21, 2019, in connection with its fourth quarter 2018 financial results, the Company disclosed that it had received a subpoena from the SEC in October 2018 regarding the Company’s accounting policies in the procurement area, that it recorded a \$25 million increase to costs of products sold based on findings from an internal investigation, and that the it recorded a \$15.4 billion non-cash impairment charge to goodwill.

6. On this news, the Company’s share price fell as much as \$13.53, or more than 28%, during intraday trading, on unusually heavy trading volume.

7. Throughout the Class Period, Defendants made materially false and/or misleading

statements, as well as failed to disclose material adverse facts about the Company's business, operations, and prospects. Specifically, Defendants failed to disclose to investors: (1) that the Company lacked effective internal controls and policies to monitor costs, including in the procurement area; (2) that, as a result, the Company had overstated its financial statements for certain periods, including net income and earnings per share; (3) that certain factors impacting the Company's business would materially affect its goodwill; (4) that the required corrections would materially impact financial statements; (5) that there was a material weakness in the Company's internal controls over financial reporting; (6) that the Company's practices would likely lead to increased regulatory scrutiny; (7) that, as a result, the Company would incur additional expenses, including litigation expenses; and (8) that, as a result of the foregoing, Defendants' positive statements about the Company's business, operations, and prospects were materially misleading and/or lacked a reasonable basis.

8. As a result of Defendants' wrongful acts and omissions, and the precipitous decline in the market value of the Company's securities, Plaintiff and other Class members have suffered significant losses and damages.

JURISDICTION AND VENUE

9. The claims asserted herein arise under Sections 10(b) and 20(a) of the Exchange Act (15 U.S.C. §§ 78j(b) and 78t(a)) and Rule 10b-5 promulgated thereunder by the SEC (17 C.F.R. § 240.10b-5).

10. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1331 and Section 27 of the Exchange Act (15 U.S.C. § 78aa).

11. Venue is proper in this Judicial District pursuant to 28 U.S.C. § 1391(b) and Section 27 of the Exchange Act (15 U.S.C. § 78aa(c)). Substantial acts in furtherance of the alleged fraud or the effects of the fraud have occurred in this Judicial District. Many of the acts charged herein, including the dissemination of materially false and/or misleading information, occurred in substantial part in this Judicial District. In addition, the Company's principal executive offices are located in this district.

12. In connection with the acts, transactions, and conduct alleged herein, Defendants

directly and indirectly used the means and instrumentalities of interstate commerce, including the United States mail, interstate telephone communications, and the facilities of a national securities exchange.

PARTIES

13. Plaintiff _____, as set forth in the accompanying certification, incorporated by reference herein, purchased Kraft Heinz securities during the Class Period, and suffered damages as a result of the federal securities law violations and false and/or misleading statements and/or material omissions alleged herein.

14. Defendant Kraft Heinz is incorporated under the laws of Delaware with its principal executive offices located in Pittsburgh, Pennsylvania. Kraft Heinz's common stock trades on the NASDAQ exchange under the symbol "KHC."

15. Defendant Bernardo Hees ("Hees") was the Chief Executive Officer of the Company at all relevant times.

16. Defendant David Knopf ("Knopf") has been the Chief Financial Officer ("CFO") of the Company since October 2017.

17. Defendant Paulo Basilio ("Basilio") was the CFO of the Company until October 2017.

18. Defendants Hees, Knopf, and Basilio, (collectively the "Individual Defendants"), because of their positions with the Company, possessed the power and authority to control the contents of the Company's reports to the SEC, press releases and presentations to securities analysts, money and portfolio managers and institutional investors, *i.e.*, the market. The Individual Defendants were provided with copies of the Company's reports and press releases alleged herein to be misleading prior to, or shortly after, their issuance and had the ability and opportunity to prevent their issuance or cause them to be corrected. Because of their positions and access to material non-public information available to them, the Individual Defendants knew that the adverse facts specified herein had not been disclosed to, and were being concealed from, the public, and that the positive representations which were being made were then materially false and/or misleading. The Individual Defendants are liable for the false statements pleaded

herein.

SUBSTANTIVE ALLEGATIONS

Background

19. Kraft Heinz is a food and beverage company that provides products under many brands, including Oscar Mayer, Velveeta, Lunchables, and Planters.

Materially False and Misleading Statements Issued During the Class Period

20. The Class Period begins on February 23, 2017. On that day, the Company filed its annual report on Form 10-K with the SEC for the period ended December 31, 2016 (the “2016 10-K”), in which it reported \$26.48 billion net sales and \$3.63 billion net income.

21. The 2016 10-K also reported the carrying value of goodwill as \$97.4 billion at December 31, 2016. Moreover, the 2016 10-K stated, in relevant part:

We performed our annual impairment testing in the second quarter of 2016. No impairment of goodwill was reported as a result of our 2016 annual goodwill impairment test; however, we noted that one reporting unit within the Europe segment had an estimated fair value in excess of its carrying value of less than 10%. The goodwill carrying value of this reporting unit was \$48 million as of April 4, 2016 (our goodwill impairment testing date). In addition, there was no impairment of indefinite-lived intangibles as a result of our testing; however, we noted that seven brands each had excess fair value over its carrying value of less than 10%. These brands had an aggregate carrying value of \$6.1 billion at April 4, 2016 (our indefinite-lived intangible asset impairment testing date). Of the \$6.1 billion aggregate carrying value, \$5.6 billion was attributable to *Velveeta*, *Lunchables*, *Maxwell House*, and *Cracker Barrel*.

22. The 2016 10-K also disclosed certain risk factors impacting the business.

Regarding risks associated with goodwill, the Company stated:

An impairment of the carrying value of goodwill or other indefinite-lived intangible assets could negatively affect our consolidated operating results.

We test goodwill and indefinite-lived intangible assets for impairment at least annually in the second quarter or when a triggering event occurs. We performed our annual impairment testing in the second quarter of 2016. . . .

Fair value determinations require considerable judgment and are sensitive to changes in underlying assumptions, estimates and market factors. Estimating the fair value of individual reporting units and indefinite-lived intangible assets requires us to make assumptions and estimates regarding our future plans, as well

as industry and economic conditions. These assumptions and estimates include projected revenues and income growth rates, terminal growth rates, competitive and consumer trends, market-based discount rates, and other market factors. If current expectations of future growth rates are not met or market factors outside of our control, such as discount rates, change significantly, then one or more reporting units or intangible assets might become impaired in the future. Additionally, as goodwill and intangible assets associated with recently acquired businesses are recorded on the balance sheet at their estimated acquisition date fair values, those amounts are more susceptible to an impairment risk if business operating results or macroeconomic conditions deteriorate.

An impairment of the carrying value of goodwill or other indefinite-lived intangible assets could negatively affect our operating results or net worth

23. Regarding internal controls, the 2016 10-K reported that, following an assessment, management determined that the Company “maintained effective internal control over financial reporting.”

24. On November 7, 2017, the Company filed its quarterly report on Form 10-Q with the SEC for the period ended September 30, 2017, in which it reported \$6.31 billion net sales and \$944 million net income. The report also disclosed a material weakness in the Company’s internal controls, stating in relevant part:

Based on this evaluation, we concluded that our disclosure controls and procedures were not effective as of September 30, 2017 due to the material weakness in internal control over financial reporting related to the misapplication of ASU 2016-15, as described below. . . .

We did not maintain effective controls over the adoption of new accounting standards. Specifically, we did not maintain effective controls to evaluate and document the impact of new accounting standards, including communication with the appropriate individuals in coming to our conclusions on the application of new standards.

This control deficiency resulted in the misstatement of our operating and investing cash flows and related financial disclosures, and in the restatement of our consolidated financial statements for the quarters ended April 1, 2017 and July 1, 2017, including the comparable prior periods. Additionally, this control deficiency could result in a misstatement of the aforementioned account balances or disclosures that would result in a material misstatement to the annual or interim consolidated financial statements that would not be prevented or detected. Accordingly, our management has determined that this control deficiency constitutes a material weakness.

25. On February 16, 2018, the Company filed its annual report on Form 10-K with the

SEC for the period ended December 30, 2017 (the “2017 10-K”), in which it reported \$26.23 billion net sales and approximately \$11.0 billion net income.

26. Moreover, the 2017 10-K reported the carrying value of goodwill and indefinite-lived intangible assets was \$98.5 billion at December 30, 2017. It stated, in relevant part:

We performed our annual impairment testing in the second quarter of 2017. No impairment of goodwill was reported as a result of our 2017 annual goodwill impairment test. Each of our goodwill reporting units had excess fair value over its carrying value of at least 10% as of April 2, 2017 (our goodwill impairment testing date). Additionally, as a result of our annual indefinite-lived intangible asset impairment tests, we recognized a non-cash impairment loss of \$49 million in SG&A in 2017. This loss was due to continued declines in nutritional beverages in India. The loss was recorded in our Europe segment as the related trademark is owned by our Italian subsidiary. Each of our other brands had excess fair value over its carrying value of at least 10% as of April 2, 2017.

27. Regarding internal controls, the 2017 10-K stated that management had implemented steps to remedy the previously-identified material weakness and that, following an assessment, management had determined the Company maintained effective internal control over financial reporting. As to the remedial measures, the 2017 10-K stated that steps were taken “to improve the evaluation and documentation of new accounting standards’ impacts and communication with the appropriate individuals.”

28. On May 3, 2018, the Company filed its quarterly report on Form 10-Q with the SEC for the period ended March 31, 2018, in which it reported \$6.3 billion net sales and \$933 million net income.

29. On August 3, 2018, the Company filed its quarterly report on Form 10-Q with the SEC for the period ended June 30, 2018 (the “2Q18 10-Q”), in which it reported \$6.86 billion net sales and \$755 net income.

30. The 2Q18 10-Q also reported the results of the Company’s annual impairment test of goodwill:

Our goodwill balance consists of 20 reporting units and had an aggregate carrying value of \$44.3 billion as of June 30, 2018. We test goodwill for impairment at least annually in the second quarter or when a triggering event occurs. We performed our 2018 annual impairment test as of April 1, 2018. As a result of our 2018 annual impairment test, we recognized a non-cash impairment loss of \$164 million in SG&A related to our Australia and New Zealand reporting unit. This

impairment loss was primarily due to margin declines in the region. The goodwill carrying value of this reporting unit was \$509 million prior to its impairment. Additionally, we noted that four of our 20 reporting units each had excess fair value over its carrying value of less than 10%. As of the impairment test date, the goodwill carrying values associated with these reporting units were \$4.7 billion for Canada Retail, \$424 million for Latin America Exports, \$407 million for Northeast Asia, and \$326 million for Southeast Asia.

31. The truth began to emerge on November 1, 2018 when the Company disclosed that increased costs had impacted profitability. In a press release issued that day announcing its third quarter 2018 financial results, the Company reported \$6.38 billion net sales and \$628 million net income. The press release also stated, in relevant part:

United States Segment Adjusted EBITDA decreased 16.2 percent versus the year-ago period to \$1.2 billion, as gains from volume/mix growth and favorable key commodity costs versus the prior year period were more than offset by a combination of lower pricing, non-key commodity cost inflation including logistics, investments in capability building, as well as higher overhead costs versus the year-ago period.

32. On this news, the Company's share price fell \$5.40, or nearly 10%, to close at \$50.13 per share on November 2, 2018, on unusually heavy trading volume.

33. The above statements identified in ¶¶20-31 were materially false and/or misleading, and failed to disclose material adverse facts about the Company's business, operations, and prospects. Specifically, Defendants failed to disclose to investors: (1) that the Company lacked effective internal controls and policies to monitor costs, including in the procurement area; (2) that, as a result, the Company had overstated its financial statements for certain periods, including net income and earnings per share; (3) that certain factors impacting the Company's business would materially affect its goodwill; (4) that the required corrections would materially impact financial statements; (5) that there was a material weakness in the Company's internal controls over financial reporting; (6) that the Company's practices would likely lead to increased regulatory scrutiny; (7) that, as a result, the Company would incur additional expenses, including litigation expenses; and (8) that, as a result of the foregoing, Defendants' positive statements about the Company's business, operations, and prospects were materially misleading and/or lacked a reasonable basis.

Disclosures at the End of the Class Period

34. On February 21, 2019, in connection with its fourth quarter 2018 financial results, the Company disclosed that it had received a subpoena from the SEC in October 2018 regarding the Company's accounting policies in the procurement area, that it recorded a \$25 million increase to costs of products sold based on findings from an internal investigation, and that it recorded a \$15.4 billion non-cash impairment charge to goodwill. In a press release, the Company stated, in relevant part:

During the fourth quarter, as part of the Company's normal quarterly reporting procedures and planning processes, the Company concluded that, based on several factors that developed during the fourth quarter, the fair values of certain goodwill and intangible assets were below their carrying amounts. As a result, the Company recorded non-cash impairment charges of \$15.4 billion to lower the carrying amount of goodwill in certain reporting units, primarily U.S. Refrigerated and Canada Retail, and certain intangible assets, primarily the *Kraft* and *Oscar Mayer* trademarks. These charges resulted in a net loss attributable to common shareholders of \$12.6 billion and diluted loss per share of \$10.34.

* * *

The Company received a subpoena in October 2018 from the U.S. Securities and Exchange Commission (the "SEC") associated with an investigation into the Company's procurement area, more specifically the Company's accounting policies, procedures, and internal controls related to its procurement function, including, but not limited to, agreements, side agreements, and changes or modifications to its agreements with its vendors.

Following this initial SEC document request, the Company together with external counsel launched an investigation into the procurement area. In the fourth quarter of 2018, as a result of findings from the investigation, the Company recorded a \$25 million increase to costs of products sold as an out of period correction as the Company determined the amounts were immaterial to the fourth quarter of 2018 and its previously reported 2018 and 2017 interim and year to date periods. Additionally, the Company is in the process of implementing certain improvements to its internal controls to mitigate the likelihood of this occurring in the future and has taken other remedial measures. The Company continues to cooperate fully with the U.S. Securities and Exchange Commission.

At this time, the Company does not expect the matters subject to the investigation to be material to its current period or any prior period financial statements.

35. On this news, the Company's share price fell as much as \$13.53, or more than 28%, during intraday trading, on unusually heavy trading volume.

CLASS ACTION ALLEGATIONS

36. Plaintiff brings this action as a class action pursuant to Federal Rule of Civil Procedure 23(a) and (b)(3) on behalf of a class, consisting of all persons and entities that purchased or otherwise acquired Kraft Heinz securities between February 23, 2017 and February 21, 2019, inclusive, and who were damaged thereby (the “Class”). Excluded from the Class are Defendants, the officers and directors of the Company, at all relevant times, members of their immediate families and their legal representatives, heirs, successors, or assigns, and any entity in which Defendants have or had a controlling interest.

37. The members of the Class are so numerous that joinder of all members is impracticable. Throughout the Class Period, Kraft Heinz’s common shares actively traded on the NASDAQ. While the exact number of Class members is unknown to Plaintiff at this time and can only be ascertained through appropriate discovery, Plaintiff believes that there are at least hundreds or thousands of members in the proposed Class. Millions of Kraft Heinz common stock were traded publicly during the Class Period on the NASDAQ. Record owners and other members of the Class may be identified from records maintained by Kraft Heinz or its transfer agent and may be notified of the pendency of this action by mail, using the form of notice similar to that customarily used in securities class actions.

38. Plaintiff’s claims are typical of the claims of the members of the Class as all members of the Class are similarly affected by Defendants’ wrongful conduct in violation of federal law that is complained of herein.

39. Plaintiff will fairly and adequately protect the interests of the members of the Class and has retained counsel competent and experienced in class and securities litigation.

40. Common questions of law and fact exist as to all members of the Class and predominate over any questions solely affecting individual members of the Class. Among the questions of law and fact common to the Class are:

(a) whether the federal securities laws were violated by Defendants’ acts as alleged herein;

(b) whether statements made by Defendants to the investing public during the Class Period omitted and/or misrepresented material facts about the business, operations, and prospects of Kraft Heinz; and

(c) to what extent the members of the Class have sustained damages and the proper measure of damages.

41. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy since joinder of all members is impracticable. Furthermore, as the damages suffered by individual Class members may be relatively small, the expense and burden of individual litigation makes it impossible for members of the Class to individually redress the wrongs done to them. There will be no difficulty in the management of this action as a class action.

UNDISCLOSED ADVERSE FACTS

42. The market for Kraft Heinz's securities was open, well-developed and efficient at all relevant times. As a result of these materially false and/or misleading statements, and/or failures to disclose, Kraft Heinz's securities traded at artificially inflated prices during the Class Period. Plaintiff and other members of the Class purchased or otherwise acquired Kraft Heinz's securities relying upon the integrity of the market price of the Company's securities and market information relating to Kraft Heinz, and have been damaged thereby.

43. During the Class Period, Defendants materially misled the investing public, thereby inflating the price of Kraft Heinz's securities, by publicly issuing false and/or misleading statements and/or omitting to disclose material facts necessary to make Defendants' statements, as set forth herein, not false and/or misleading. The statements and omissions were materially false and/or misleading because they failed to disclose material adverse information and/or misrepresented the truth about Kraft Heinz's business, operations, and prospects as alleged herein.

44. At all relevant times, the material misrepresentations and omissions particularized in this Complaint directly or proximately caused or were a substantial contributing cause of the

damages sustained by Plaintiff and other members of the Class. As described herein, during the Class Period, Defendants made or caused to be made a series of materially false and/or misleading statements about Kraft Heinz's financial well-being and prospects. These material misstatements and/or omissions had the cause and effect of creating in the market an unrealistically positive assessment of the Company and its financial well-being and prospects, thus causing the Company's securities to be overvalued and artificially inflated at all relevant times. Defendants' materially false and/or misleading statements during the Class Period resulted in Plaintiff and other members of the Class purchasing the Company's securities at artificially inflated prices, thus causing the damages complained of herein when the truth was revealed.

LOSS CAUSATION

45. Defendants' wrongful conduct, as alleged herein, directly and proximately caused the economic loss suffered by Plaintiff and the Class.

46. During the Class Period, Plaintiff and the Class purchased Kraft Heinz's securities at artificially inflated prices and were damaged thereby. The price of the Company's securities significantly declined when the misrepresentations made to the market, and/or the information alleged herein to have been concealed from the market, and/or the effects thereof, were revealed, causing investors' losses.

SCIENTER ALLEGATIONS

47. As alleged herein, Defendants acted with scienter since Defendants knew that the public documents and statements issued or disseminated in the name of the Company were materially false and/or misleading; knew that such statements or documents would be issued or disseminated to the investing public; and knowingly and substantially participated or acquiesced in the issuance or dissemination of such statements or documents as primary violations of the federal securities laws. As set forth elsewhere herein in detail, the Individual Defendants, by virtue of their receipt of information reflecting the true facts regarding Kraft Heinz, their control over, and/or receipt and/or modification of Kraft Heinz's allegedly materially misleading misstatements and/or their associations with the Company which made them privy to

confidential proprietary information concerning Kraft Heinz, participated in the fraudulent scheme alleged herein.

**APPLICABILITY OF PRESUMPTION OF RELIANCE
(FRAUD-ON-THE-MARKET DOCTRINE)**

48. The market for Kraft Heinz's securities was open, well-developed and efficient at all relevant times. As a result of the materially false and/or misleading statements and/or failures to disclose, Kraft Heinz's securities traded at artificially inflated prices during the Class Period. On June 7, 2017, the Company's share price closed at a Class Period high of \$93.77 per share. Plaintiff and other members of the Class purchased or otherwise acquired the Company's securities relying upon the integrity of the market price of Kraft Heinz's securities and market information relating to Kraft Heinz, and have been damaged thereby.

49. During the Class Period, the artificial inflation of Kraft Heinz's shares was caused by the material misrepresentations and/or omissions particularized in this Complaint causing the damages sustained by Plaintiff and other members of the Class. As described herein, during the Class Period, Defendants made or caused to be made a series of materially false and/or misleading statements about Kraft Heinz's business, prospects, and operations. These material misstatements and/or omissions created an unrealistically positive assessment of Kraft Heinz and its business, operations, and prospects, thus causing the price of the Company's securities to be artificially inflated at all relevant times, and when disclosed, negatively affected the value of the Company shares. Defendants' materially false and/or misleading statements during the Class Period resulted in Plaintiff and other members of the Class purchasing the Company's securities at such artificially inflated prices, and each of them has been damaged as a result.

50. At all relevant times, the market for Kraft Heinz's securities was an efficient market for the following reasons, among others:

(a) Kraft Heinz shares met the requirements for listing, and was listed and actively traded on the NASDAQ, a highly efficient and automated market;

(b) As a regulated issuer, Kraft Heinz filed periodic public reports with the SEC and/or the NASDAQ;

(c) Kraft Heinz regularly communicated with public investors via established market communication mechanisms, including through regular dissemination of press releases on the national circuits of major newswire services and through other wide-ranging public disclosures, such as communications with the financial press and other similar reporting services; and/or

(d) Kraft Heinz was followed by securities analysts employed by brokerage firms who wrote reports about the Company, and these reports were distributed to the sales force and certain customers of their respective brokerage firms. Each of these reports was publicly available and entered the public marketplace.

51. As a result of the foregoing, the market for Kraft Heinz's securities promptly digested current information regarding Kraft Heinz from all publicly available sources and reflected such information in Kraft Heinz's share price. Under these circumstances, all purchasers of Kraft Heinz's securities during the Class Period suffered similar injury through their purchase of Kraft Heinz's securities at artificially inflated prices and a presumption of reliance applies.

52. A Class-wide presumption of reliance is also appropriate in this action under the Supreme Court's holding in *Affiliated Ute Citizens of Utah v. United States*, 406 U.S. 128 (1972), because the Class's claims are, in large part, grounded on Defendants' material misstatements and/or omissions. Because this action involves Defendants' failure to disclose material adverse information regarding the Company's business operations and financial prospects—information that Defendants were obligated to disclose—positive proof of reliance is not a prerequisite to recovery. All that is necessary is that the facts withheld be material in the sense that a reasonable investor might have considered them important in making investment decisions. Given the importance of the Class Period material misstatements and omissions set forth above, that requirement is satisfied here.

NO SAFE HARBOR

53. The statutory safe harbor provided for forward-looking statements under certain circumstances does not apply to any of the allegedly false statements pleaded in this Complaint. The statements alleged to be false and misleading herein all relate to then-existing facts and

conditions. In addition, to the extent certain of the statements alleged to be false may be characterized as forward looking, they were not identified as “forward-looking statements” when made and there were no meaningful cautionary statements identifying important factors that could cause actual results to differ materially from those in the purportedly forward-looking statements. In the alternative, to the extent that the statutory safe harbor is determined to apply to any forward-looking statements pleaded herein, Defendants are liable for those false forward-looking statements because at the time each of those forward-looking statements was made, the speaker had actual knowledge that the forward-looking statement was materially false or misleading, and/or the forward-looking statement was authorized or approved by an executive officer of Kraft Heinz who knew that the statement was false when made.

FIRST CLAIM
Violation of Section 10(b) of The Exchange Act and
Rule 10b-5 Promulgated Thereunder
Against All Defendants

54. Plaintiff repeats and re-alleges each and every allegation contained above as if fully set forth herein.

55. During the Class Period, Defendants carried out a plan, scheme and course of conduct which was intended to and, throughout the Class Period, did: (i) deceive the investing public, including Plaintiff and other Class members, as alleged herein; and (ii) cause Plaintiff and other members of the Class to purchase Kraft Heinz’s securities at artificially inflated prices. In furtherance of this unlawful scheme, plan and course of conduct, Defendants, and each defendant, took the actions set forth herein.

56. Defendants (i) employed devices, schemes, and artifices to defraud; (ii) made untrue statements of material fact and/or omitted to state material facts necessary to make the statements not misleading; and (iii) engaged in acts, practices, and a course of business which operated as a fraud and deceit upon the purchasers of the Company’s securities in an effort to maintain artificially high market prices for Kraft Heinz’s securities in violation of Section 10(b) of the Exchange Act and Rule 10b-5. All Defendants are sued either as primary participants in the wrongful and illegal conduct charged herein or as controlling persons as alleged below.

57. Defendants, individually and in concert, directly and indirectly, by the use, means or instrumentalities of interstate commerce and/or of the mails, engaged and participated in a continuous course of conduct to conceal adverse material information about Kraft Heinz's financial well-being and prospects, as specified herein.

58. Defendants employed devices, schemes and artifices to defraud, while in possession of material adverse non-public information and engaged in acts, practices, and a course of conduct as alleged herein in an effort to assure investors of Kraft Heinz's value and performance and continued substantial growth, which included the making of, or the participation in the making of, untrue statements of material facts and/or omitting to state material facts necessary in order to make the statements made about Kraft Heinz and its business operations and future prospects in light of the circumstances under which they were made, not misleading, as set forth more particularly herein, and engaged in transactions, practices and a course of business which operated as a fraud and deceit upon the purchasers of the Company's securities during the Class Period.

59. Each of the Individual Defendants' primary liability and controlling person liability arises from the following facts: (i) the Individual Defendants were high-level executives and/or directors at the Company during the Class Period and members of the Company's management team or had control thereof; (ii) each of these defendants, by virtue of their responsibilities and activities as a senior officer and/or director of the Company, was privy to and participated in the creation, development and reporting of the Company's internal budgets, plans, projections and/or reports; (iii) each of these defendants enjoyed significant personal contact and familiarity with the other defendants and was advised of, and had access to, other members of the Company's management team, internal reports and other data and information about the Company's finances, operations, and sales at all relevant times; and (iv) each of these defendants was aware of the Company's dissemination of information to the investing public which they knew and/or recklessly disregarded was materially false and misleading.

60. Defendants had actual knowledge of the misrepresentations and/or omissions of material facts set forth herein, or acted with reckless disregard for the truth in that they failed to

ascertain and to disclose such facts, even though such facts were available to them. Such defendants' material misrepresentations and/or omissions were done knowingly or recklessly and for the purpose and effect of concealing Kraft Heinz's financial well-being and prospects from the investing public and supporting the artificially inflated price of its securities. As demonstrated by Defendants' overstatements and/or misstatements of the Company's business, operations, financial well-being, and prospects throughout the Class Period, Defendants, if they did not have actual knowledge of the misrepresentations and/or omissions alleged, were reckless in failing to obtain such knowledge by deliberately refraining from taking those steps necessary to discover whether those statements were false or misleading.

61. As a result of the dissemination of the materially false and/or misleading information and/or failure to disclose material facts, as set forth above, the market price of Kraft Heinz's securities was artificially inflated during the Class Period. In ignorance of the fact that market prices of the Company's securities were artificially inflated, and relying directly or indirectly on the false and misleading statements made by Defendants, or upon the integrity of the market in which the securities trades, and/or in the absence of material adverse information that was known to or recklessly disregarded by Defendants, but not disclosed in public statements by Defendants during the Class Period, Plaintiff and the other members of the Class acquired Kraft Heinz's securities during the Class Period at artificially high prices and were damaged thereby.

62. At the time of said misrepresentations and/or omissions, Plaintiff and other members of the Class were ignorant of their falsity, and believed them to be true. Had Plaintiff and the other members of the Class and the marketplace known the truth regarding the problems that Kraft Heinz was experiencing, which were not disclosed by Defendants, Plaintiff and other members of the Class would not have purchased or otherwise acquired their Kraft Heinz securities, or, if they had acquired such securities during the Class Period, they would not have done so at the artificially inflated prices which they paid.

63. By virtue of the foregoing, Defendants violated Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder.

64. As a direct and proximate result of Defendants' wrongful conduct, Plaintiff and the other members of the Class suffered damages in connection with their respective purchases and sales of the Company's securities during the Class Period.

SECOND CLAIM
Violation of Section 20(a) of The Exchange Act
Against the Individual Defendants

65. Plaintiff repeats and re-alleges each and every allegation contained above as if fully set forth herein.

66. Individual Defendants acted as controlling persons of Kraft Heinz within the meaning of Section 20(a) of the Exchange Act as alleged herein. By virtue of their high-level positions and their ownership and contractual rights, participation in, and/or awareness of the Company's operations and intimate knowledge of the false financial statements filed by the Company with the SEC and disseminated to the investing public, Individual Defendants had the power to influence and control and did influence and control, directly or indirectly, the decision-making of the Company, including the content and dissemination of the various statements which Plaintiff contends are false and misleading. Individual Defendants were provided with or had unlimited access to copies of the Company's reports, press releases, public filings, and other statements alleged by Plaintiff to be misleading prior to and/or shortly after these statements were issued and had the ability to prevent the issuance of the statements or cause the statements to be corrected.

67. In particular, Individual Defendants had direct and supervisory involvement in the day-to-day operations of the Company and, therefore, had the power to control or influence the particular transactions giving rise to the securities violations as alleged herein, and exercised the same.

68. As set forth above, Kraft Heinz and Individual Defendants each violated Section 10(b) and Rule 10b-5 by their acts and omissions as alleged in this Complaint. By virtue of their position as controlling persons, Individual Defendants are liable pursuant to Section 20(a) of the Exchange Act. As a direct and proximate result of Defendants' wrongful conduct, Plaintiff and other members of the Class suffered damages in connection with their purchases of the

Company's securities during the Class Period.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for relief and judgment, as follows:

- (a) Determining that this action is a proper class action under Rule 23 of the Federal Rules of Civil Procedure;
- (b) Awarding compensatory damages in favor of Plaintiff and the other Class members against all defendants, jointly and severally, for all damages sustained as a result of Defendants' wrongdoing, in an amount to be proven at trial, including interest thereon;
- (c) Awarding Plaintiff and the Class their reasonable costs and expenses incurred in this action, including counsel fees and expert fees; and
- (d) Such other and further relief as the Court may deem just and proper.

JURY TRIAL DEMANDED

Plaintiff hereby demands a trial by jury.

Dated: _____, 2019

By: _____ *Draft*

GLANCY PRONGAY & MURRAY LLP

Lionel Z. Glancy
Robert V. Prongay
Lesley F. Portnoy
Charles H. Linehan
Pavithra Rajesh
1925 Century Park East, Suite 2100
Los Angeles, CA 90067
Telephone: (310) 201-9150
Facsimile: (310) 201-9160

LAW OFFICES OF HOWARD G. SMITH

Howard G. Smith
3070 Bristol Pike, Suite 112
Bensalem, PA 19020
Telephone: (215) 638-4847
Facsimile: (215) 638-4867

Attorneys for Plaintiff _____