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13 **UNITED STATES DISTRICT COURT**
14 **NORTHERN DISTRICT OF CALIFORNIA**
15 **OAKLAND DIVISION**

<p>16 Sylvia Koh and David Green, on behalf of themselves and all others similarly situated,</p> <p>17 18 Plaintiffs,</p> <p>19 v.</p> <p>20 The Kraft Heinz Company,</p> <p>21 Defendant.</p>	<p>Case No. 4:20-cv-04425-JSW</p> <p>NOTICE OF MOTION AND MOTION TO DISMISS CLASS ACTION COMPLAINT PURSUANT TO FED. R. CIV. P. 8, 9(b), 12(b)(1), AND 12(b)(6); MEMORANDUM OF POINTS AND AUTHORITIES</p> <p>Judge: Hon. Jeffrey S. White</p> <p>Date: December 18, 2020 Time: 9:00 am Place: Courtroom 5 *Oral Argument Requested</p> <p><u>Demand for Jury Trial</u></p>
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NOTICE OF MOTION AND MOTION TO DISMISS COMPLAINT

PLEASE TAKE NOTICE that on December 18, 2020, or as soon thereafter as counsel may be heard, before the Honorable Jeffrey S. White, in Courtroom 5 of the United States District Court for the Northern District of California, located at 1301 Clay Street, Oakland, California 94612, Defendant The Kraft Heinz Company will and hereby does move to dismiss in full Plaintiffs' Class Action Complaint [Dkt. 1].

This Motion is brought pursuant to Federal Rules of Civil Procedure 8(a), 9(b), 12(b)(1), and 12(b)(6) on the following grounds: (1) Plaintiffs' claims are implausible and fail as a matter of law, because a reasonable consumer would not be deceived by the "natural cheese" representation contained on the product labeling at issue; (2) the doctrine of primary jurisdiction counsels this Court to leave the issue presented by the Complaint to the discretion of the U.S. Food and Drug Administration; (3) Plaintiffs lack standing to seek injunctive relief because they are under no imminent threat of future harm; and (4) Plaintiffs do not have standing to represent non-California putative class members or assert non-California consumer fraud claims.

This Motion is based on this Notice of Motion, the attached Memorandum of Points and Authorities, the concurrently filed Request for Judicial Notice, the pleadings and filings in this action, and such further evidence or argument properly before the Court.

Dated: September 28, 2020

Respectfully submitted,

SIDLEY AUSTIN LLP

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