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15  
16 **UNITED STATES DISTRICT COURT**  
17  
18 **NORTHERN DISTRICT OF CALIFORNIA**  
19  
20 **OAKLAND DIVISION**

<p>21 Sylvia Koh and David Green, on Behalf 22 of Themselves and all Others Similarly 23 Situated,</p> <p>24 <b>Plaintiffs,</b></p> <p>25 v.</p> <p>26 The Kraft Heinz Company,</p> <p>27 <b>Defendant.</b></p>	<p>28 Case No. 4:20-Cv-04425-JSW</p> <p>Plaintiffs' Memorandum of Law in Opposition to Defendant's Motion to Dismiss</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><b><u>Demand For Jury Trial</u></b></p>
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## INTRODUCTION

1  
2 The substance of Kraft's motion more closely resembles a motion for summary judgment  
3 than it does a motion to dismiss. Kraft asks this Court to step into the mind of a consumer and  
4 rule *as a matter of law* that *no* reasonable consumer could plausibly expect "natural" cheese to  
5 be made without the use of artificial growth hormones. Notably, Kraft asks this of the Court  
6 despite its *own admissions* that (1) rbST is an "artificial" hormone, (2) a majority of Kraft's  
7 consumers want cheese made without the use of artificial hormones, and (3) the bulk of Kraft's  
8 "natural" cheese products (as opposed to other Kraft cheese products) are *now* produced without  
9 artificial hormones because that is what its consumers desire.  
10

11  
12 Kraft's position is indefensible. It is fundamentally a factual question whether consumers  
13 expect "natural" dairy products to be made with the use of "artificial" hormones. Courts have  
14 made it clear that cases based on the reasonable consumer standard should only be dismissed in  
15 "rare" situations in which the plaintiff's allegations about consumer expectations are wholly  
16 implausible. This is not that "rare" case. Here, there is a wealth of consumer research that supports  
17 Plaintiffs' factual allegations, including consumer surveys that have been endorsed by Kraft itself.  
18 But more importantly, this court has *already held*—based on this *same survey evidence*—that it  
19 is plausible that reasonable consumers believe animal food products marketed as "natural" are  
20 produced without the use of "drugs at any point."  
21

22  
23 Kraft's procedural arguments have also already been rejected in numerous other cases in  
24 the Ninth Circuit, including some in which Kraft itself was the defendant. Kraft's previously  
25 unsuccessful arguments must be rejected once again and its Motion should be denied.  
26  
27  
28

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