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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

AARON CLARKE and MICHELLE DEVERA,
individually and on behalf of all others similarly
situated,

Plaintiffs,

v.

THE KRAFT HEINZ COMPANY,

Defendant.

Case No. 3:21-cv-02437-RS

**FIRST AMENDED CLASS ACTION
COMPLAINT**

JURY TRIAL DEMANDED

1 Plaintiffs Aaron Clarke and Michelle deVera (“Plaintiffs”) bring this action on behalf of
2 themselves and all others similarly situated against Defendant The Kraft Heinz Company (“Kraft”
3 or “Defendant”) for making, marketing, and distributing its Kraft® Macaroni & Cheese products
4 (hereinafter, the “Products”). Plaintiffs make the following allegations pursuant to the
5 investigation of their counsel and based upon information and belief, except as to the allegations
6 specifically pertaining to themselves, which are based on personal knowledge.

7 NATURE OF ACTION

8 1. This is a class action lawsuit concerning the presence of harmful chemicals known
9 as ortho-phthalates (“phthalates”) in Defendant’s popular Macaroni & Cheese products (the
10 “Products”). For years, Defendant has been aware that its Products contain phthalates but has
11 refused to take steps to remove these chemicals from the Products. Instead, Defendant has chosen
12 to prioritize profits over the safety of the consuming public.

13 2. Plaintiffs bring claims individually and on behalf of a class of all other similarly
14 situated California purchasers of the Products for breach of implied warranty, fraudulent, and
15 unjust enrichment.

16 PARTIES

17 3. Plaintiff Aaron Clarke is, and at all times relevant to this action has been, a resident
18 of San Francisco, California. Within the last four months, Mr. Clarke purchased Kraft Macaroni &
19 Cheese from a Safeway store located in San Francisco, California. Had Defendant disclosed on the
20 label that the Product contained phthalates, and the harms that phthalates can cause, Mr. Clarke
21 would have been aware of those facts and would not have purchased the products, or at the very
22 least, would have paid significantly less for them. After learning of the presence of phthalates in
23 the Product, Mr. Clarke stopped purchasing the Product. However, Mr. Clarke regularly visits
24 stores where Defendant’s products are sold and remains interested in purchasing safe macaroni and
25 cheese products. He would consider purchasing Defendant’s Product in the future if Defendant
26 removed the phthalates.

27 4. Plaintiff Michelle deVera, is, and at all times relevant to this action has been, a
28 resident of Fremont, California. Within the last six months, Ms. deVera purchased Kraft Macaroni

1 & Cheese from Walmart and Safeway stores located in Union City and Fremont, California. Had
2 Defendant disclosed on the label that the Product contained phthalates, and the harms that
3 phthalates can cause, Ms. deVera would have been aware of those facts and would not have
4 purchased the products, or at the very least, would have paid significantly less for them. After
5 learning of the presence of phthalates in the Product, Ms. deVera stopped purchasing the Product.
6 However, Ms. deVera regularly visits stores where Defendant's products are sold and remains
7 interested in purchasing safe macaroni and cheese products. She would consider purchasing
8 Defendant's Product in the future if Defendant removed the phthalates.

9 5. Defendant The Kraft Heinz Company is a Pennsylvania corporation with its
10 principal place of 1 PPG Place, Suite 3400, Pittsburgh, PA. Defendant manufactures, markets, and
11 distributes the Products throughout the United States.

12 JURISDICTION AND VENUE

13 6. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §
14 1332(d) because there are more than 100 class members and the aggregate amount in controversy
15 exceeds \$5,000,000, exclusive of interest, fees, and costs, and at least one Class member is a
16 citizen of a state different from Defendant.

17 7. This Court has personal jurisdiction over Defendant because Defendant conducts
18 substantial business within California such that Defendant has significant, continuous, and
19 pervasive contacts with the State of California.

20 8. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because Defendant
21 does substantial business in this District, a substantial part of the events giving rise to Plaintiffs'
22 claims took place within this District because Plaintiffs purchased the Products in this District and
23 were therefore injured in this District.

24 COMMON FACTUAL ALLEGATIONS

25 **A. Background on Phthalates**

26 9. Phthalates are synthetic chemicals used to make plastics flexible. Phthalates have
27 powerful defenders, including Exxon Mobil, a leading producer of the chemical.
28

1 10. Phthalates can migrate into food products during processing, packaging, and
2 preparation. Although not intentionally added to food, phthalates are “indirect” food additives
3 because they escape from food contact materials, including processing equipment, such as plastic
4 tubing, conveyor belts or gloves, as well as food packaging materials. When added to these
5 materials as plasticizers, phthalates make up 30-50% of the composite material, but they
6 continually shed onto anything that they touch, such as food products because they are not
7 chemically bound to the plastics and vinyl.

8 11. Because phthalates bind with fats, they tend to be found at higher levels in highly
9 processed or fatty foods, such as the Products.

10 12. Within the scientific community, phthalates are called “endocrine disruptors”
11 because they affect the body’s hormones by mimicking them or blocking them. Specifically, they
12 interfere with the body’s natural levels of estrogen, testosterone, and other hormones, which is why
13 they are called “disruptors.”

14 13. Unfortunately, researchers have proved that, unlike other chemicals, phthalates
15 appear to have more serious effects at lower levels than at higher levels. Although it is typically
16 assumed that the higher the dose or exposure, the greater the harm, endocrine disruptors play by
17 different rules.

18 14. Indeed, the director of the National Institute of Environmental Health Sciences,
19 Linda Birnbaum, stated that chemical manufacturers are asking “old questions” when they test for
20 safety even though “science has moved on.”

21 15. The problem posed by phthalates is that hormones can increase the risk of some
22 cancers, regardless of whether those hormones are natural or synthetic. Too much or too little of a
23 hormone can be harmful. By way of example, research shows that animals exposed to phthalates
24 are more likely to develop liver cancer, kidney cancer, and male reproductive organ damage.
25 Studies also show associations between children’s exposure to phthalates and the risk of asthma,
26 allergies and bronchial obstruction.

27 16. Researchers at Mount Sinai also found a link between obesity and phthalates. They
28 found that among overweight girls ages 6 to 8, the higher the concentration of certain phthalates in

1 their urine, the higher their body mass index (BMI). A study among Danish children ages 4 to 9
2 found that the higher the concentration of phthalates, the shorter the child.

3 17. Even short-term exposure to phthalates has now been linked to developmental
4 deficits. Researchers found that children in intensive care units who were exposed to the phthalates
5 through plastic tubing and catheters had 18 times as much of the chemicals in their blood compared
6 to children who had not spent time in the ICU. Four years later, the children who had been
7 exposed to the phthalates had more problems with attention and motor coordination. The
8 researchers found that the phthalates caused these problems regardless of medical complications or
9 treatments.

10 18. Parents must also be wary of prenatal exposure to phthalates. Several studies that
11 have tested phthalate levels in women in their third trimester of pregnancy have found health
12 effects in the infants, toddlers, and older children of the mothers with the highest levels. A 2011
13 study found that six-month-old boys whose mothers had the highest phthalate levels scored lower
14 on brain and motor development tests.

15 19. Research suggests that boys exposed to phthalates while in the womb may be more
16 likely to develop smaller genitals and incomplete descent of the testicles. Boys who are born with
17 undescended testicles are 2-8 times more likely to develop testicular cancer later on than men born
18 with both testicles descended. Studies by Harvard researchers have shown phthalates may alter
19 human sperm DNA and semen quality.

20 20. Columbia University researchers discovered that three-year-olds with high prenatal
21 exposure to two types of phthalates were more likely to have motor delays. They also reported that
22 three phthalates were linked to certain behavior problems in three-year-olds. One phthalate in the
23 study was linked to lower mental development in girls.

24 21. It therefore comes as no surprise that, as of February 2009, children's toys and child
25 care products sold in the U.S (such as teething rings and plastic books) cannot contain certain
26 phthalates. The ban on those phthalates is the result of a law passed in 2008, the Consumer
27 Product Safety Improvement Act. The law permanently banned these phthalates.
28

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