UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

CLEAN LABEL PROJECT FOUNDATION,

Plaintiff,

v.

THE KRAFT HEINZ COMPANY,

Defendant.

Case No. _____

NOTICE OF REMOVAL

The Kraft Heinz Company ("Kraft Heinz") hereby effects the removal of this action from the Superior Court of the District of Columbia to the United States District Court for the District of Columbia. Removal is proper under the Class Action Fairness Act of 2005 ("CAFA"), 28 U.S.C. § 1332(d) because this case is a class action in which the putative class exceeds 100 members, at least one plaintiff is diverse from at least one defendant, and the amount in controversy exceeds $5 million. Venue is proper under 28 U.S.C. § 1391 because this action was filed in the Superior Court of the District of Columbia, which is coextensive with the District to which this case has been removed.

FACTUAL BACKGROUND AND STATE COURT PROCEEDINGS

1. Plaintiff Clean Label Project Foundation ("Plaintiff") filed this action in the Superior Court of the District of Columbia on August 28, 2020. See Ex. A ("Compl."). Kraft Heinz executed a waiver of service on September 16, 2020, thereby effecting service of the Complaint. See Ex. B. Pursuant to 28 U.S.C § 1446(a), a true and correct copy of the remainder

of the Superior Court case file (including all documents other than the Complaint and the Waiver of Service) is attached as Exhibit C and incorporated by reference herein.

2. Kraft Heinz manufactures Maxwell House coffee in both caffeinated and decaffeinated varieties. Plaintiff alleges that the 29.3-ounce variety of Maxwell House Original Roast decaffeinated coffee (the "Product") contains methylene chloride, the presence of which allegedly renders the Product "adulterated" under section 48-103 of the D.C. Code. Compl. ¶¶ 17, 21. Plaintiff also alleges that the presence of methylene chloride renders what Plaintiff deems Kraft Heinz's supposed "claims of purity"—including an alleged claim that the Product consists of "100% Arabica and Robusta Coffee Beans"—"false, deceptive, and misleading." *Id.* ¶ 16. Plaintiff claims that "D.C. consumers are enticed to purchase this Product over the products of [Kraft Heinz's] competitors on the basis of these false and misleading purity and superiority claims." *Id.* ¶ 24. Based on these allegations, Plaintiff claims that Kraft Heinz's marketing and sale of the Product violates the District of Columbia Consumer Protection Procedures Act ("CPPA"), D.C. Code § 28-3901 *et seq.* *See* Compl. ¶¶ 29, 91-113.

3. Plaintiff purports to bring this action in a representative capacity under two separate provisions of the CPPA. First, Plaintiff purports to assert its claims under section 28-3905(k)(1)(C), which permits a "nonprofit organization . . . on behalf of itself or any of its members, or on any such behalf and on behalf of the general public, [to] bring an action seeking relief from the use of a trade practice in violation of a law of the District." D.C. Code § 28-3905(k)(1)(C); *see also* Compl. ¶¶ 45, 106-07 (referencing this provision). Second, Plaintiff purports to assert its claims under section 28-3905(k)(1)(D), which provides that a "public interest organization may, on behalf of the interest of a consumer or a class of consumers, bring an action

seeking relief from the use by any person of a trade practice in violation of a law of the District." D.C. Code § 28-3905(k)(1)(D); *see also* Compl. ¶¶ 45, 108-09 (referencing this provision).

4. Plaintiff seeks a variety of remedies under the CPPA, including a declaration that Kraft Heinz's conduct violates the CPPA, an order "enjoining [Kraft Heinz's] conduct found to be in violation of the CPPA," an order "requiring [Kraft Heinz] to provide corrective advertising to the residents of the District of Columbia," an order "requiring [Kraft Heinz] to pay statutory civil penalties" pursuant to the CPPA, and punitive damages. Compl. at 21 (Prayer for Relief).

REMOVAL IS PROPER UNDER 28 U.S.C. § 1332(d)

5. CAFA provides that federal courts have original jurisdiction over (i) a "class action" in which (ii) any plaintiff is diverse from any defendant, (iii) there are at least 100 members in the putative class, and (iv) the amount in controversy exceeds $5 million, exclusive of interest and costs. 28 U.S.C. § 1332(d). Under 28 U.S.C. § 1441(a), any such action may be removed to the district court for the district and division embracing the place where the action is pending. "No antiremoval presumption attends cases involving CAFA, which Congress enacted to facilitate adjudication of certain class actions in federal court." *Dart Cherokee Basin Operating Co. v. Owens*, 574 U.S. 81, 89 (2014); *accord Bradford v. George Washington Univ.*, 249 F. Supp. 3d 325 331 (D.D.C. 2017) (distinguishing cases directing courts to construe federal jurisdiction narrowly and holding that they were not applicable to cases removed under CAFA).

This Case Is a "Class Action" Under CAFA

6. CAFA defines a class action as "any civil action filed under rule 23 of the Federal Rules of Civil Procedure or similar State statute or rule of judicial procedure authorizing an action to be brought by 1 or more representative persons as a class action." 28 U.S.C. § 1332(d)(1)(B). Whether the CPPA constitutes a "similar State statute or rule of judicial procedure authorizing an

action to be brought by 1 or more representative persons as a class action" is a question of District of Columbia law. *See In re U-Haul Int'l, Inc.*, No. 08-7122, 2009 WL 902414, at *1 (D.C. Cir. Apr. 6, 2009) (characterizing this inquiry as "a matter of District of Columbia law" that should be answered by "the local courts"); *Williams v. Martinez*, 586 F.3d 995, 1001 (D.C. Cir. 2009) ("[O]n questions of District of Columbia law, this court defers to the D.C. Court of Appeals.").

7. The CPPA provides that "public interest organizations may, on behalf of the interests of a consumer *or class of consumers*, bring an action seeking relief from the use by any person of a trade practice in violation of a law of the District if the consumer *or class* could bring an action under subparagraph (A) of this paragraph for relief from such use by such person or such trade practice." D.C. Code § 28-3905(k)(1)(D)(i) (emphasis added). Plaintiff expressly purports to bring this action pursuant to section 28-3905(k)(1)(D) of the CPPA, which is indisputably a statute that "authorizes" Plaintiff to bring this case as a class action. *See* Compl. ¶¶ 45, 108-09.

8. Moreover, Plaintiff seeks, among other remedies, an order requiring Kraft Heinz to pay "statutory civil penalties" and punitive damages. When a plaintiff seeks monetary relief on behalf of class members under the CPPA, it must satisfy the requirements of D.C. Superior Court Rule 23—regardless of whether it styles its lawsuit as a "class action." *Rotunda v. Marriott Int'l, Inc.*, 123 A.3d 980, 988 (D.C. 2015) (describing Rule 23 as "the time-tested framework within which suits for damages by class-members 'as representative parties' . . . have been maintained"); *cf. Alston v. Whole Foods Mkt. Grp.*, No. 17-2580, 2018 WL 2461041, at *1 (D.D.C. Apr. 13, 2018) ("Federal Rule of Civil Procedure 23 applies to DCCPPA actions under D.C. law") (citing *Rotunda*, 123 A.3d at 988) (internal quotation marks omitted).

9. It is irrelevant that Plaintiff *also* purports to bring this lawsuit under section 28-3905(k)(1)(C), which authorizes a "nonprofit organization" to bring a representative action "on

behalf of the general public." D.C. Code § 28-3905(k)(1)(C). Although Kraft Heinz does not concede that a representative action under this provision is distinct from a "class action" as defined by CAFA, the Court need not resolve this issue to determine whether removal is proper. Plaintiff, as the "master of [its] complaint," has affirmatively invoked section 28-3905(k)(1)(D), which authorizes—and, indeed, requires—Plaintiff to bring this lawsuit as a class action. *Barnes v. District of Columbia*, 42 F. Supp. 3d 111, 120 (D.D.C. 2014) (emphasizing that the plaintiff "should have recognized that the defendant could exercise its statutory right of removal" based on the claims he chose to plead). That is sufficient to bring this lawsuit within the ambit of CAFA.[1]

The Parties Are Sufficiently Numerous To Satisfy CAFA

10. Although Plaintiff avoids defining the size of the putative class, it purports to bring this lawsuit on behalf of individuals in the District of Columbia who have purchased the Product within the limitations period (*i.e.*, since August 28, 2017). *See generally Samuel v. Wells Fargo Co.*, 311 F. Supp. 3d 10, 20 (D.D.C. 2018) ("Courts apply a three year statute of limitations to

[1] Furthermore, to the extent that this Court concludes this case is *not* a class action removable under CAFA, the necessary implication is that Plaintiff is asserting a single claim on behalf of the "general public." If that is the case, then this lawsuit is removable under 28 U.S.C. § 1332. There is no dispute that the parties are completely diverse. *See infra* ¶¶ 11-13. If the available statutory penalties (which greatly exceed $75,000, *see id.* ¶¶ 17-18) represent a single recovery to the "general public," then they readily satisfy the amount in controversy. *See Williams v. Purdue Pharma Co.*, No. 02-556, 2003 WL 24259557, at *5 (D.D.C. Feb. 27, 2003) (holding that plaintiffs had a "common and undivided remedy" when they sought statutory penalties and disgorgement of profits under the CPPA, as "[t]he amount of this recovery would not be affected by the number of plaintiffs, nor by the value of their individual claims"). Similarly, the value of Plaintiff's requested injunctive relief—which readily exceeds $75,000 (*see infra* ¶¶ 19-22)—would satisfy the amount in controversy because it represents a common and undivided recovery on behalf of the general public. *See Nat'l Welfare Rights Org. v. Weinberger*, 377 F. Supp. 861, 866 (D.D.C. 1974) (holding that a common and undivided claim exists "when the adversary of the class has no interest in how the claim is to be distributed among the class members"); *In re Cardizem CD Antitrust Litig.*, 90 F. Supp. 2d 819, 835-36 (E.D. Mich. 1999) (noting that "there is a common and undivided interest in the injunctive relief" if the injunctive relief "will benefit the class as a whole" and the defendant's cost of compliance does not depend on the size of the class).

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