

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

GEORGE A. HEDICK, JR., et al.,	)	
	)	
Plaintiffs,	)	
	)	Case No. 19-cv-1339
v.	)	Judge Robert M. Dow, Jr.
	)	
THE KRAFT HEINZ COMPANY, et. al.,	)	
	)	
Defendants.	)	

**MEMORANDUM OPINION AND ORDER**

In this consolidated class actions securities case, arising out of the 2015 merger that created the Kraft Heinz Company, two motions to dismiss are before the Court. One is from the Kraft Heinz Company and a set of individual defendants who were executives and directors at the company [279], and the other is from a set of corporate entities (“3G,” for short) that effected the merger [281]. For the reasons set forth below, the Court denies both motions to dismiss [279, 281].

**I. Background**

This securities class action stems from the 2015 merger of Kraft Foods Group, Inc. (“Kraft”) with The H.J. Heinz Company (“Heinz”) into the Kraft Heinz Company (“Kraft Heinz” or the “Company”). According to the amended complaint [274], the merger was orchestrated by 3G Capital Partners (“3G”), a private equity partnership with a history of implementing a zero-based-budgeting strategy at companies it owned to extract cost savings. Plaintiffs say, in short, that 3G and Kraft (which 3G controlled before the merger) touted synergies, efficiencies, and eliminating redundancies as the benefits of Kraft’s merger with Heinz, but after the companies combined, executives at Kraft Heinz realized there were fewer savings to be had from synergies

than they had expected, and certainly not on the level of the \$1.5 billion they had suggested to investors. After that, according to the amended complaint, Kraft Heinz pursued indiscriminate cost-cutting measures that led to inferior products, deteriorating relationships with distributors, and inability to meet retailers' demand, but simultaneously assured investors that the cost savings came from synergies, not short-term budget cuts. Ultimately, Kraft Heinz's cost-cutting measures came back to bite it, and the company took a \$15.4 billion dollar impairment to its goodwill and intangibles in February 2019, among other negative impacts, and its stock price took several hits during the fallout. Defendants, for their part, maintain that the company's executives pursued a business strategy that did not work out, not any course of fraudulent conduct.

*Parties*

Plaintiffs in this matter are persons and entities who purchased or otherwise acquired securities of Kraft Heinz during the period from November 5, 2015 to August 7, 2019, inclusive (the "Class Period").

Defendant Kraft Heinz is a Delaware corporation, co-headquartered in Chicago, Illinois and Pittsburgh, Pennsylvania. The Company's common stock was actively traded on the Nasdaq exchange throughout the Class Period under the symbol "KHC." Kraft Heinz was created through a merger between Heinz and Kraft on July 2, 2015, and began trading publicly on July 6, 2015. [274 at ¶ 43.] Defendant 3G Capital Partners is a private equity firm with principal offices in New York, New York. 3G Capital, along with other partners, acquired Heinz in June 2013. Subsequently, 3G Capital and its affiliated funds orchestrated the July 2015 Merger between Kraft and Heinz that resulted in Kraft Heinz. Upon completion of the Merger, 3G Capital acquired approximately 25% of Kraft Heinz. 3G Capital Partners and its affiliated funds and business entities – including Defendant 3G Capital, Inc. (a Delaware corporation), and the following

Cayman Islands business entities: Defendants 3G Global Food Holdings, L.P.; 3G Global Food Holdings GP LP; 3G Capital Partners LP; 3G Capital Partners II LP; and 3G Capital Partners Ltd. (collectively and together with 3G Capital Partners, Defendant “3G Capital” or “3G”) – had the power to control, and did control Kraft Heinz, throughout the Class Period. [*Id.* at ¶ 44.]

Defendant Bernardo Hees served as Kraft Heinz’s CEO from the Company’s inception in July 2015 until June 2019. Prior to that, Hees served as the CEO of Heinz while it was under 3G Capital’s control from 2013 to 2015. Hees has been a Partner of 3G Capital since July of 2010. [*Id.* at ¶ 45.] Defendant Paul Basilio served as Kraft Heinz’s CFO from the Company’s inception in July 2015 until his appointment as Zone President of Kraft Heinz U.S. Business on October 1, 2017. In July 2019, Basilio became Kraft Heinz’s Chief Business Planning and Development Officer. Before serving as Kraft Heinz’s CFO, Basilio served as the CFO of Heinz while it was under 3G Capital’s control from 2013 to 2015. Basilio has been a Partner of 3G Capital since July of 2012. [*Id.* at ¶ 46.] Defendant David Knopf served as Kraft Heinz’s CFO from October 2017 until his departure in August 2019, after the end of the Class Period. Prior to serving as CFO, Knopf worked as the Vice President and Category Head of the Planters business at Kraft Heinz. After leaving Kraft Heinz, Knopf returned to 3G Capital, where he has been a Partner since July of 2015. [*Id.* at ¶ 47.] Defendant Alexandre Behring was the Chairman of Kraft Heinz’s Board of Directors during the Class Period. He is a co-founder and Managing Partner of 3G Capital. [*Id.* at ¶ 48.] Defendant George Zoghbi served as the Chief Operating Officer of Kraft Heinz’s U.S. Business from the time of the Merger until becoming a Special Advisor at Kraft Heinz in October of 2017. Zoghbi also joined the Kraft Heinz Board in April 2018. [*Id.* at ¶ 49.] Defendant Rafael Oliveira was President of Kraft Heinz Europe from October of 2016 to July of 2019, when he became the International Zone President of Kraft Heinz. [*Id.* at ¶ 50.] Defendants Hees, Basilio,

Knopf, Behring, Zoghbi, and Oliveira are collectively referred to as the “Executive Defendants.”

[*Id.* at ¶ 51.]

*Legal Background*

On February 24, 2019, Plaintiff George Hedick filed a purported class action complaint [1] in this case. Over the following eighteen months, the Court consolidated a variety of similar cases, appointed as lead plaintiffs Union Asset Management Holding AG and Sjunde APFonden [see 149], and received the consolidated amended class action complaint (“amended complaint”) [274], which is now the operative complaint. The amended complaint alleges: violations of Section 10(b) of the Exchange Act and SEC Rule 10b-5 against Kraft Heinz and the Executive Defendants (Count I); violations of Section 20(a) of the Exchange Act against 3G Capital and the Executive Defendants (Count II); and violations of Section 10(b) and 20(a) of the Exchange Act and Rule 10b-5 against 3G Capital (Count III).

Section 10(b) of the Act makes it unlawful for any person to “use or employ, in connection with the purchase or sale of any security \* \* \* any manipulative or deceptive device or contrivance in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.” 15 U.S.C. § 78j(b). “Rule 10b-5 forbids a company or an individual ‘to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading.’” *Makor Issues & Rights, Ltd. v. Tellabs Inc.*, 513 F.3d 702, 704 (7th Cir. 2008) (quoting 17 C.F.R. § 240.10b-5(b)). “The elements of a private securities fraud claim based on violations of § 10(b) and Rule 10b-5 are: ‘(1) a material misrepresentation or omission by the defendant; (2) scienter; (3) a connection between the misrepresentation or omission and the purchase or sale of a security; (4) reliance upon the

misrepresentation or omission; (5) economic loss; and (6) loss causation.”” *Erica P. John Fund, Inc. v. Halliburton Co.*, 563 U.S. 804, 809-10 (2011) (quoting *Matrixx Initiatives, Inc. v. Siracusano*, 563 U.S. 27, 37 (2011)).

Section 20(a) of the Act “provides a basis for holding individuals liable for acts of securities fraud if they control other individuals or businesses that violate the securities laws.” *Plumbers & Pipefitters Local Union No. 630 Pension-Annuity Trust Fund v. Allscripts-Misys Healthcare Sols., Inc.*, 778 F. Supp. 2d 858, 886 (N.D. Ill. 2011) (quoting 15 U.S.C. § 78t). Thus, “to state a claim under § 20(a), a plaintiff must first adequately plead a primary violation of securities laws.” *Pugh v. Tribune Co.*, 521 F.3d 686, 693 (7th Cir. 2008).

Kraft Heinz and the Executive Defendants move to dismiss [279] Plaintiffs’ complaint pursuant to Rules 12(b)(6) and 9(b) of the Federal Rules of Civil Procedure and 15 U.S.C. § 78u-4. They argue that Plaintiffs fail to allege sufficient facts to establish materially false statements, scienter, and loss causation for their Section 10(b) and Rule 10b-5 claim. They also argue that the 20(a) claim fails because the amended complaint does not plead an underlying securities violation or culpable participation by the individual defendants. 3G also moves to dismiss [281] Plaintiffs’ Section 20(a) claim on the ground that Plaintiffs have failed to state a primary violation of the securities laws, as well as the insider trading claim.

The Court has reviewed all 233 pages of the amended complaint, 265 pages of briefing on two motions to dismiss, in addition to various exhibits filed with the briefs, plus a few pages regarding a notice of supplemental authority. For purposes of this order, the Court presumes familiarity with the facts alleged in the amended complaint. The Court denies Defendants’ motions to dismiss.

## II. Legal Standards

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