UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

U.S. SECURITIES AND EXCHANGE COMMISSION, Plaintiff, v. KLAUS HOFMANN, Defendant.	21-CV-7407 (____) **COMPLAINT** **ECF CASE** **JURY TRIAL DEMANDED**

Plaintiff United States Securities and Exchange Commission (the "SEC") files this Complaint against Defendant Klaus Hofmann ("Hofmann"), and alleges as follows:

SUMMARY

1. This action concerns a multi-year expense management scheme by Kraft Heinz Company ("KHC")'s procurement division to improperly reduce KHC's cost of goods sold[1] and achieve costs savings targets that were externally touted to the market and internally tied to performance-based targets. The misconduct resulted in KHC reporting inflated earnings before interest, taxes, depreciation and amortization ("EBITDA"), a key performance metric for investors.

2. Specifically, from the fourth quarter of 2015 through the end of 2018 (the "Relevant Period"), procurement employees negotiated agreements with numerous suppliers to obtain upfront cash payments and discounts, in exchange for future commitments to be undertaken by KHC, while improperly documenting the agreements in ways that caused the company to prematurely and improperly recognize the expense savings.

[1] Cost of goods sold refers to KHC's direct costs of producing its food and beverage goods. This amount includes the supplier costs that KHC expends to produce its goods.

3. In accordance with accounting principles generally accepted in the United States ("Generally Accepted Accounting Principles" or "U.S. GAAP"), if upfront cash and discounts are tied to future commitments, then the expense savings must be recognized over the period KHC performed the future obligations. Procurement division employees, however, negotiated and maintained false and misleading supplier contracts that made it appear as if expense savings were provided in exchange for past or same-year actions performed by KHC when, in reality, they were upfront payments in exchange for a future benefit from KHC, in order to improperly recognize costs savings prematurely.

4. Over the Relevant Period, KHC entered into approximately 59 transactions which were improperly recognized as a result of the false and misleading documentation negotiated and generated by procurement division employees. Had these transactions been properly documented and accounted for, KHC's cost of goods sold during that period would have been approximately $50 million higher than reported in its public financial statements.

5. These misleading transactions, along with numerous other misstated accounting entries, led KHC, in June 2019, to restate its financial statements in its annual report on Form 10-K filed with the SEC. The restatement included financial data reported for fiscal year ("FY") 2015, as well as the financial statements contained in reports filed with the SEC on quarterly Forms 10-Q and annual Form 10-K for FYs 2016 and 2017 and the first three quarters of FY 2018 that were filed with the SEC. KHC corrected a total of $208 million in cost savings arising from 295 transactions and also corrected its Adjusted EBITDA, as reflected in the restatement.

6. Hofmann, KHC's Chief Procurement Officer during the Relevant Period, managed the procurement division and was responsible for, among other things, approving certain of KHC's contracts with suppliers. In that role, Hofmann and others signed contract

approval forms for many of the improperly recognized transactions. Hofmann also certified the accuracy and completeness of the financial statements generated by the procurement division over the first three quarters of 2018. KHC then relied upon this sub-certification in making representations to its auditors regarding the completeness and accuracy of its financial statements.

7. Despite numerous warning signs that should have alerted Hofmann that KHC procurement division employees were circumventing KHC's internal controls in order to achieve artificial cost savings targets in supplier contracts, Hofmann negligently approved and failed to prevent supplier contracts that masked the true nature of the transactions. Hofmann also should have known that the false and misleading contract documentation that he negligently approved and failed to prevent was provided to KHC's finance and controller groups responsible for preparing KHC's financial statements ("controllers"), thus causing KHC to prematurely recognize cost savings in its financial statements.

8. By engaging in the misconduct described in this complaint, Hofmann violated Sections 17(a)(2) and 17(a)(3) of the Securities Act of 1933 ("Securities Act") and Section 13(b)(5) of the Securities Exchange Act of 1934 ("Exchange Act") and Exchange Act Rules 13b2-1 and 13b2-2. A violation of Sections 17(a)(2) and 17(a)(3) of the Securities Act does not require scienter and may rest on a finding of negligence. *See Aaron v. SEC*, 446 U.S. 680, 685, 701-02 (1980).

9. The SEC seeks injunctive relief, civil penalties, and other appropriate and necessary equitable relief.

JURISDICTION AND VENUE

10. This Court has jurisdiction over this action pursuant to Sections 20 and 22 of the

Securities Act [15 U.S.C. §§ 77t and 77v] and Sections 21 and 27 of the Exchange Act [15 U.S.C. §§ 78u and 78aa], and 28 U.S.C. § 1331.

11. Venue is proper in this Court pursuant to Section 22(a) and (c) of the Securities Act [15 U.S.C. § 77v(a), (c)] and Section 27(a) and (b) of the Exchange Act [15 U.S.C. § 78aa(a), (b)], because certain of the acts, practices, and courses of conduct constituting the violations alleged herein occurred within the Southern District of New York. Specifically, among other things, KHC's 2015 through 2018 financial statements, which were materially false and misleading, were available to investors in this district.

12. Hofmann, directly and indirectly, made use of means or instruments of transportation or communication in interstate commerce, or of the mails, or of any facility of a national securities exchange in connection with the acts, practices, and courses of conduct alleged herein.

DEFENDANT

13. **Klaus Hofmann ("Hofmann")**, age 63, resides in Zug, Switzerland. Between July 2015 and September 2019, Hofmann served as KHC's Global Head of Procurement and Chief Procurement Officer. Hofmann left KHC in May 2020. Prior to his employment with KHC, Hofmann was the Global Head of Procurement for H.J. Heinz Co. ("Heinz"), before Heinz merged with and into Kraft Foods Group Inc. ("Kraft") to form KHC in 2015.

RELEVANT INDIVIDUALS

14. The following entity, relevant to this action, has been charged by the SEC in separate actions and proceedings:

a. **Kraft Heinz Company (KHC)** is a publicly traded food and beverage manufacturing company co-headquartered in Chicago, Illinois, and

Pittsburgh, Pennsylvania. KHC has a class of shares registered with the SEC pursuant to Exchange Act Section 12(b), which trades on the NASDAQ Global Select Market located in New York, NY, under the symbol "KHC." KHC was created in July 2015 through the merger of public company Kraft with and into private company Heinz.

FACTUAL ALLEGATIONS

I. BACKGROUND

15. Following the Kraft-Heinz merger in July 2015, newly formed KHC made concerted efforts to eliminate redundancies and reduce operational costs. As part of its merger strategy, KHC disclosed to investors that the company would deliver on certain cost saving results throughout the company, including in the procurement division, a large cost center for KHC. The cost savings strategy, including its impact on costs of goods sold, was widely covered by research analysts at the time. Although the company achieved the promised cost savings, individual procurement employees had key performance targets tied to additional cost savings from the procurement division.

16. To implement this cost savings strategy, KHC set performance targets for procurement division employees tied to savings realized through negotiations with KHC's suppliers. In the period immediately following the merger between Kraft and Heinz, these targets were generally achieved, due to, among other things, synergies from renegotiating supplier contracts in light of the newly-combined company's increased purchasing power.

17. By 2017, however, KHC's procurement division had largely exhausted its ability to extract synergies from the merger. In addition, the cost of many ingredient and packaging supplies increased significantly due to adverse inflation and unfavorable foreign

DOCKET ALARM

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts

Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research

With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips

Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.

WHAT WILL YOU BUILD? | **sales@docketalarm.com** | **1-866-77-FASTCASE**

fastcase®
Smarter legal research.