

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
FORT LAUDERDALE DIVISION**

KIMBERLY E. FERRON,

Plaintiff,

v.

KRAFT HEINZ FOODS COMPANY,

Defendant.

CASE NO. _____

NOTICE OF REMOVAL

Defendant Kraft Heinz Foods Company (“Kraft Heinz”) hereby effects the removal of this action from the Circuit Court, Seventeenth Judicial Circuit, in and for Broward County to the U.S. District Court for the Southern District of Florida, Fort Lauderdale Division. 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. § 1441(a) because this District encompasses the county in which this lawsuit is pending, and under 28 U.S.C. § 1391 because Plaintiff allegedly purchased the products at issue in Broward County, Florida, which is located in this District and Division.

FACTUAL BACKGROUND AND STATE COURT PROCEEDINGS

1. Plaintiff filed this lawsuit in the Circuit Court, Seventeenth Judicial Circuit, in and for Broward County on July 24, 2020. Kraft Heinz executed a waiver of service on September 21, 2020, thereby effecting service of the Complaint.

2. Pursuant to 28 U.S.C. § 1446(a), a true and correct copy of the state court case file is attached hereto and incorporated by reference. Exhibit A consists of the complaint filed in the Circuit Court; Exhibit B consists of all other process, pleadings, motions, and orders filed in this case.

3. Plaintiff's complaint challenges the labeling of two varieties of coffee manufactured by Kraft Heinz: 26.8-ounce containers of Maxwell House Master Blend coffee, and 31.0-ounce containers of Yuban Traditional Roast Ground coffee (collectively, the "Products"). Plaintiff alleges that the Products claim to produce between 180 and 210 servings of coffee, but do not contain a sufficient amount of coffee to do so. As a result, Plaintiffs claim that the "Products' representation, that 180 to 210 cups of coffee can be brewed using 1 Tbsp of coffee per 6 oz cup . . . are untrue, misleading and deceive the public." Ex. A ("Compl.") ¶ 21.

4. Plaintiff alleges that she purchased both Products from a Walmart store in Broward County, Florida. *Id.* ¶ 12.

5. Plaintiff asserts a single cause of action against Kraft Heinz for violations of the Florida Deceptive and Unfair Trade Practices Act ("FDUTPA"), Fla. Stat. §§ 501.201 *et seq.* See Compl. ¶¶ 53-68. Plaintiff purports to assert this claim on behalf of a nationwide class of consumers who purchased the Products in the four years preceding the filing of the complaint (*i.e.*, since July 24, 2016). *Id.* ¶ 39.

6. Plaintiff seeks a variety of remedies on behalf of the class, including damages, disgorgement of "all monies that may have been acquired by Defendant" as a result of its allegedly "unfair and/or deceptive act or practices," and attorney's fees. *Id.* at 14-15 (Prayer for Relief).

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

7. CAFA provides that federal courts have original jurisdiction over class actions in which (i) any plaintiff is diverse from any defendant, (ii) there are at least 100 members in the putative class, and (iii) 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.

The Parties Are Sufficiently Numerous To Satisfy CAFA

8. Plaintiff alleges that the “members of the Class are so numerous that individual joinder of all class members is impracticable.” Compl. ¶ 42. Moreover, sales data obtained from Nielsen confirms that Kraft Heinz sold millions of units of the Products during the putative class period. That readily satisfies CAFA’s numerosity requirement.

The Parties Are Minimally Diverse

9. Plaintiff resides in, and is a citizen of, Florida. Compl. ¶ 3.

10. Kraft Heinz is a Pennsylvania limited liability company that is co-headquartered in Chicago, Illinois and Pittsburgh, Pennsylvania.

11. Accordingly, CAFA’s minimal diversity requirement is satisfied in this action because Plaintiff is a citizen of Florida, whereas Kraft Heinz is a citizen of Delaware, Illinois, and Pennsylvania. *See* 28 U.S.C. § 1332(c)(1) (providing that a corporation is a “citizen of any State by which it has been incorporated and of the State where it has its principal place of business”).

There Is at Least \$5,000,000 in Controversy

12. To satisfy CAFA, a defendant need only show “that the amount in controversy more likely than not exceeds the . . . jurisdictional requirement [of \$5 million].” *Pretka v. Kolter City Plaza II, Inc.*, 608 F.3d 744, 752 (11th Cir. 2010) (citation and internal quotation marks omitted).

In assessing the amount in controversy, “the pertinent question is what is *in controversy* in the case, not how much the plaintiffs are ultimately likely to recover.” *Id.* at 751; *see also S. Fla. Wellness, Inc. v. Allstate Ins. Co.*, 745 F.3d 1312, 1315 (11th Cir. 2014) (noting that the amount in controversy is an “estimate of how much will be put at issue in the litigation” and that this “amount is not discounted by the chance that the plaintiffs will lose on the merits”). Even “the amount of damages flowing from facially deficient claims should . . . be considered when determining the amount in controversy.” *McDaniel v. Fifth Third Bank*, 568 F. App’x 729, 730 (11th Cir. 2014) (holding that district court’s refusal to consider such damages was “error”).

13. “CAFA eliminates the general rule of nonaggregation for purposes of determining the amount in controversy. While the general rule of nonaggregation holds that the over \$75,000 amount in controversy must be established for each individual plaintiff, the amount in controversy under CAFA can be satisfied by aggregating the individual class members' claims.” *Waldman v. Cingular Wireless LLC*, No. 07-80081, 2007 WL 1970858, at *2 (S.D. Fla. July 3, 2007); *see also Std. Fire Ins. Co. v. Knowles*, 133 S. Ct. 1345, 1348 (2013) (noting that CAFA requires “adding up the value of the claim of each person who falls within the definition of the proposed class.”). So long as the removing party can make a “plausible allegation that the amount in controversy exceeds the jurisdictional threshold,” removal is proper. *Dart Cherokee Basin Operating Co. v. Owens*, 574 U.S. 81, 89 (2014); *see also McDaniel*, 568 F. App’x at 732 (“[U]nless recovery of an amount exceeding the jurisdictional minimum is legally impossible, the case belongs in federal court.”) (citation and internal quotation marks omitted).

14. Plaintiff seeks damages and/or restitution on behalf of the putative class, and she requests that the Court “restor[e] all monies that may have been acquired by Defendant” as a result of its allegedly “unfair and/or deceptive” conduct. Compl. at 15 (Prayer for Relief). As a result,

Plaintiff's complaint places in controversy all nationwide sales of the Products. *See, e.g., Cordova v. Sensa Prods., LLC*, No. 11-80835, 2011 WL 13160763, at *1 (S.D. Fla. Dec. 27, 2011) (calculating amount in controversy based on "proceeds from sales of Sensa to members of the proposed class"); *Jovine v. Abbott Labs, Inc.*, No. 11-80111, 2011 WL 1337204, at *4 (S.D. Fla. Apr. 7, 2011) (calculating amount in controversy by "multipl[y]ing the \$3.00 sales price by the five million containers of product subject to the recall"); *cf. Reilly v. Amy's Kitchen, Inc.*, 2 F. Supp. 3d 1300, 1304 (S.D. Fla. 2014) (concluding that the plaintiff did not satisfy amount in controversy where the defendant "sold only \$1,045,993 of the three products Plaintiff purchased in the State of Florida for the four year [class] period").

15. Kraft Heinz has access to retail scan sales data through Nielsen, which collects nationwide retail sales data. Nielsen's sales data shows that, since January 1, 2017 to the present (which is entirely within the putative class period), nationwide retail sales of the Products significantly exceeded \$100 million.

16. Accordingly, Plaintiff's request for damages and/or restitution alone establishes an amount in controversy well in excess of \$5 million.

VENUE IS PROPER

17. Venue is proper because this action was initially filed in the Circuit Court, Seventeenth Judicial Circuit, in and for Broward County, which is located in the Southern District of Florida. *See* 28 U.S.C. § 1441(a) (noting that an action may be removed "to the district court of the United States for the district and division embracing the place where such action is pending"); 28 U.S.C. § 89(c) (noting that the Southern District of Florida encompasses Broward County). Further, venue is proper under 28 U.S.C. § 1391 because Plaintiff allegedly purchased the Products at a Walmart store in Broward County. *See* Compl. ¶ 12.

REMOVAL IS TIMELY

18. Under 28 U.S.C. § 1446(b), notice of removal of a civil action must be filed within thirty days of the defendant's receipt of service of the summons and complaint. Kraft Heinz executed a waiver of service on September 21, 2020, less than thirty days before filing this Notice of Removal. Kraft Heinz's Notice of Removal is accordingly timely.

OTHER REQUIREMENTS FOR REMOVAL ARE MET

19. Kraft Heinz has not filed any responsive pleadings or any other papers responding to the complaint in the state court.

20. Kraft Heinz will promptly give written notice of the filing of this Notice of Removal to all parties, and a copy of this Notice will be filed with the Clerk of the Circuit Court as required by 28 U.S.C. § 1446(d).

Dated: October 20, 2020

Respectfully submitted,

By: /s/ Elizabeth B. Honkonen
Jeffrey T. Foreman (FL Bar No. 612200)
jforeman@knpa.com
Elizabeth B. Honkonen (FL Bar No. 0149403)
ehonkonen@knpa.com
KENNY NACHWALTER, P.A.
1441 Brickell Avenue – Suite 1100
Miami, Florida 33131
Telephone: (305) 373-1000
Facsimile: (305) 372-1861
Attorneys for Defendant

and

Dean N. Panos (Pro Hac Vice Motion to be Filed)
DPanos@jenner.com
JENNER & BLOCK LLP
353 N. Clark Street
Chicago, IL 60654-3456
Telephone: (312) 923-2765
Facsimile: (312) 840-7765

Kate T. Spelman, Esq. (Pro Hac Vice Motion to be Filed)
kspelman@jenner.com
Alexander M. Smith, Esq. (Pro Hac Vice Motion to be Filed)
asmith@jenner.com
JENNER & BLOCK LLP
633 West 5th Street, Suite 3600
Los Angeles, CA 90071-2054
Telephone: (213) 239-5100
Facsimile: [\(213\) 239-5199](tel:2132395199)

Co-Counsel for Defendant

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

KIMBERLY E. FERRON

(b) County of Residence of First Listed Plaintiff Broward (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) Lydia S. Zbrzeznj and Nicholas T. Zbrzeznj 99 6th Street SW, Winter Haven, FL 33880

DEFENDANTS

KRAFT HEINZ FOODS COMPANY

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known) Jeffrey T. Foreman and Elizabeth B. Honkonen 1441 Brickell Ave, Suite 1100, Miami, FL 33131

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

Large table with columns: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories like Personal Injury, Property Damage, Labor, etc.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District, 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 28 USC § 1332(d) Brief description of cause: This case is a class action in which the putative class exceeds 100 members.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ 5,000,000.00 CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 10/20/2020 SIGNATURE OF ATTORNEY OF RECORD Elizabeth B. Honkonen

FOR OFFICE USE ONLY RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I. (a) **Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
 - (b) **County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
 - (c) **Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. **Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here. United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 - Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 - Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. **Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. **Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. **Origin.** Place an "X" in one of the seven boxes.
- Original Proceedings. (1) Cases which originate in the United States district courts.
 - Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.
 - Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 - Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 - Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 - Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
 - Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
- PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. **Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service.
- VII. **Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
- Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 - Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. **Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.