

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

VINCENT PALMERI and LAURA LASPISA,
individually on behalf of themselves and on
behalf of all others similarly situated,

Plaintiffs,

v.

THE KRAFT HEINZ COMPANY and KRAFT
HEINZ FOODS COMPANY,

Defendants.

Case No. 1:24-cv-02880-MKB-VMS

The Honorable Margo K. Brodie

Served: September 30, 2024

**KRAFT HEINZ’S NOTICE OF MOTION AND MOTION TO DISMISS
PLAINTIFFS’ SECOND AMENDED CLASS ACTION COMPLAINT**

(ORAL ARGUMENT REQUESTED)

TO THE COURT, PLAINTIFFS, AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that Defendants The Kraft Heinz Company and Kraft Heinz Foods Company (collectively “Kraft Heinz”) hereby move for an order dismissing Plaintiffs’ Second Amended Class Action Complaint, and each cause of action therein, pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6) because: (1) Plaintiffs have not plausibly alleged a cognizable injury-in-fact sufficient to establish Article III standing or satisfy New York’s “actual injury” requirement; (2) Plaintiffs have not stated a plausible claim on which relief can be granted because they have not plausibly alleged that Kraft Heinz’s labeling is likely to mislead reasonable consumers; (3) Plaintiffs’ claims are preempted to the extent they challenge labeling that the USDA has approved; and (4) Plaintiffs’ claims under the New York Agriculture & Markets Law and Plaintiffs’ claim for negligence per se fail for independent reasons. Kraft Heinz seeks dismissal with prejudice and without further leave to amend.

Kraft Heinz’s motion is based on this Notice of Motion, the accompanying Memorandum of Law (including the Appendix thereto), the accompanying Request for Judicial Notice and Exhibits 1–10 thereto, and any further evidence or argument that Kraft Heinz may present to the Court in connection with this motion in its reply brief, at oral argument, or otherwise.

Dated: September 30, 2024

Respectfully submitted,

JENNER & BLOCK LLP

By: /s/ Dean N. Panos

Dean N. Panos (*pro hac vice*)
Kate T. Spelman (*pro hac vice*)
Alexander M. Smith (*pro hac vice*)

Attorneys for Defendants
The Kraft Heinz Company and
Kraft Heinz Foods Company