

## The Kraft Heinz Company (KHC) Vote Yes: Shareholder Proposal Regarding Truth in Labeling on Plastic Packaging

Annual Meeting: May 2, 2024

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### THE RESOLUTION

**Resolved:** Shareholders request that the Board issue a report, at reasonable expense and excluding proprietary information, providing the factual basis for legitimacy of all recyclable claims made on plastic packaging as required by the United States (U.S.) Federal Trade Commission (FTC) Green Guides and California’s new “Truth in Labeling” law.

**Supporting Statement:** The report should assess at Board discretion, the reputational, legal, and financial risks associated with failing to comply with Federal and State environmental marketing requirements for continuing to use recyclable labels on plastic packaging that is not actually recycled in the U.S.

Full shareholder proposal provided in Appendix 1.

### ABOUT THE FILING SHAREHOLDER

Jan Dell is an individual shareholder who has held Kraft Heinz stock for more than 20 years. After a 35-year corporate chemical engineering career, Jan Dell left industry to work to stop plastic pollution and waste. As profiled in the New York Times in 2023, Jan Dell has been working for six years to bring truth to recyclability labels and claims because truth is essential to making progress on reducing plastic pollution and waste.<sup>1</sup> She founded The Last Beach Cleanup, a non-profit 501(c)(3) organization, in 2019 and collaborates with stakeholders around the world.<sup>2</sup>

As a long-term shareholder concerned about the Company’s brand reputation and legal risks from false labels and claims, Jan Dell invites other shareholders to **vote yes** on this resolution.

### SUMMARY

The growing plastic pollution and packaging waste crises are driving a global backlash against greenwashing claims on plastic recyclability.<sup>3</sup> Companies are being scrutinized over exaggerating environmental accomplishments.<sup>4</sup> This is increasing risks to Kraft Heinz as the Company is exposed to significant brand reputational, regulatory, and legal risks from any deceptive recyclable labels on the Company’s plastic packaging in the U.S.

Numerous investigations published by mainstream media prove that plastic producers (“Big Plastics”) have falsely promoted plastic as recyclable for more than 30 years while knowing that recycling is not an economically or technically feasible plastic waste management solution.<sup>5,6</sup> The California State Attorney General is investigating ExxonMobil, the biggest plastic producer in the world, on their alleged decades-long fraud on plastic recycling claims.<sup>7</sup>

Product companies also face growing public and private litigation on their plastic recycling claims. False recyclable labels on plastic products have spurred deceptive advertising lawsuits won against major brands including Keurig and eight major product companies.<sup>8,9</sup> In 2023, the State of New York filed a lawsuit against Pepsico and Frito-Lay and a class action lawsuit is progressing against Colgate Palmolive over deceptive labeling of plastic toothpaste tubes as recyclable.<sup>10</sup>

There is widespread public confusion about what type of plastic packaging can be recycled. A Consumer Brands Association survey found that “92% of respondents are unsure or believe anything with a plastic resin label could be recycled curbside, although only two of the seven codes are consistently recyclable.”<sup>11</sup>

The best way for Kraft Heinz to build consumer trust, disassociate the Company from the Big Plastics recycling fraud, and mitigate reputational, regulatory, and legal risks is to proactively assess, substantiate, and communicate the recyclability of its plastic packaging and publish a “Truth in Labeling” report.

## RATIONALE FOR A YES VOTE

- 1. False recyclable labels on plastic packaging are a significant brand reputation and legal risk to companies.**
- 2. Kraft Heinz is currently employing arguably false recyclable labels on plastic packaging.**
- 3. Kraft Heinz fails to provide shareholders and consumers with sufficient information as to whether and how it determines the legality of recyclable labels on plastic packaging, exposing the Company to reputational, financial, and operational risk.**
- 4. Kraft Heinz lags peers in committing to truth and transparency on plastic packaging.**

## DISCUSSION

### **1. False recyclable labels on plastic packaging are a significant brand reputation and legal risk to companies.**

There is increasing public awareness and litigation on false plastic recycling claims that parallels the rapid expansion in scientific research on the environmental and human health risks of plastics. This has led to growing public concern and media attention on deceptive claims by companies on recyclability of their plastic packaging. There are numerous harms caused by false recyclable labels, including worker safety and contamination of valuable materials such as cardboard.<sup>12,13</sup>

As investment and business risk, “litigation in relation to plastics may take different forms - at one end of the spectrum you have tort law claims seeking damages for environmental or public health related harms. And at the other end of the spectrum, companies may face litigation arising from what they have said about their use of plastics - to consumers or investors.”<sup>14</sup>

In their submission to the U.S. FTC on the pending Green Guides update, environmental groups show that “companies, retailers, and the plastic industry are currently making false and unsubstantiated claims about the recyclability of their products to avoid product bans and negative consumer perception on wasteful products and packaging.”<sup>15</sup> The groups also point out “there is ample evidence indicating that false recycling labels are causing consumer confusion about what is and is not recyclable, which is creating increased contamination” in America’s curbside recycling system.

There are numerous litigation cases related to false recyclable labels and claims on plastic packaging in the U.S., examples include:

- The **State of New York is suing Pepsico**, including snack company Frito-Lay, on single use plastic products and packaging that have become a dominant form of pollution. The State of New York also argues that Pepsico and Frito-Lay made misleading statements about the efficacy of recycling of its plastic packaging.<sup>16</sup>
- **California Bag Lawsuits:** Three lawsuits contesting the sale of plastic bags due to lack of recyclability and false labeling were filed in California in 2022, including a consumer class action lawsuit against Walgreens.<sup>17</sup> The lawsuits alleged that no evidence has been found of post-consumer household plastic film waste being recycled into new products via store drop-off programs.<sup>18,19,20</sup> To date, one retailer has settled and agreed to stop selling plastic bags.<sup>21</sup>
- The **State of Minnesota is suing Walmart Inc. and Reynolds Consumer Products Inc.** saying they falsely marketed plastic trash bags as recyclable.<sup>22</sup>

It should be noted that product companies are liable for false labeling and cannot hide behind labels created by external groups, such as the industry sponsored How2Recycle® label.<sup>23</sup>

**2. Kraft Heinz is employing arguably false recyclable labels on plastic packaging.**

Kraft is currently employing multiple types of recyclable labels on plastic packaging that are being legally challenged, including “Store Dropoff,” “Check Locally,” and “Remove Label” recyclable labels on a range of plastic packaging and an unqualified “Recyclable” on polypropylene cups and packaging. Other major brands have been sued for similar products and/or announced they will stop using such labels on their products. Two examples are provided below.

**Store Dropoff Recyclable Label:** As exposed by ABC News in May 2023 and Bloomberg in September 2023, consumers across the U.S. are deceived by instructions to recycle plastic bags and films via "Store Dropoff" as they are sent on a wild goose chase that harms the environment.<sup>24</sup> The media investigations, employing trackers, proved that much of the plastic film waste deposited at stores was actually incinerated, landfilled, or exported to poor countries. The media coverage had negative brand impact on highlighted companies employing the deceptive labels, including General Mills Nature Valley Granola Bars plastic wrappers.<sup>25</sup> In 2022, the California State AG announced an investigation into the use of recyclable labels on plastic bags in California, warning bag manufacturers with multimillion dollar fines.



This media coverage and legal action are directly related to Kraft Heinz since the Company uses the same type of “Store Dropoff” recycle symbol label on Jet Puffed marshmallows plastic bags. As discussed below, Target labels the same type of marshmallow plastic bag as “not recyclable.”

**Recyclable Labels on Polypropylene Cups:** Key factors in the \$10 million Keurig consumer class action settlement were that polypropylene cups are not sufficiently accepted for recycling, sorted, or actually reprocessed.<sup>26</sup> In fact, the most recent USEPA recycling report states that a “negligible” amount of plastic cups are recycled in the U.S.<sup>27</sup> This legal action is directly related to Kraft Heinz since the Company uses an unqualified “Recyclable” label on small polypropylene Kool-Aid Gels cups. As discussed below, ConAgra labels the same type of polypropylene cups as “not recyclable.”



**3. Kraft Heinz fails to provide shareholders and consumers with sufficient information as to whether and how it determines the legality of recyclable labels on plastic packaging, exposing the Company to reputational, financial, and operational risk.**

Kraft Heinz does not currently publicly disclose information or substantiation of recyclable claims made on the Company’s plastic packaging. Part of this shareholder request for a report providing the factual basis for legitimacy of all current recyclable claims is required by law. Under both California law and the U.S. FTC Green Guides, product companies are required to maintain records supporting validity of environmental marketing claims on all products.<sup>28,29</sup> California law also requires any person who represents in advertising or labeling that a consumer good it manufactures or distributes is recyclable to maintain written substantiation supporting the validity of the representation.<sup>30</sup> This information must be provided to any member of the public upon request.

In addition, this shareholder request asks for a report on how Kraft Heinz will employ recyclable labels on plastic packaging to comply with California’s new Truth in Labeling law which is being implemented now.<sup>31</sup> California’s Truth In Labeling Law requires product companies to decide whether to label packaging as recyclable, including whether the products are “consistent with the requirements of the Basel Convention.” California’s State Agency (CalRecycle) has clearly stated that enforcement will be through public and private litigation. To minimize the risks of lawsuits, the Company must perform a comprehensive assessment of its packaging and the many requirements of California’s new law.<sup>32</sup> To promote trust with consumers, the report should be proactively published.

**4. Kraft Heinz lags peers in truth and transparency on recyclable labels on plastic packaging.**

Some companies have never employed deceptive recyclable labels on plastic packaging. Many companies who have employed recyclable labels are correcting the false recyclable labels on their plastic products. They are most likely changing and correcting the labels because of the arguments made in this shareholder resolution to promote trust with consumers and avoid regulatory fines and lawsuits.

Three examples relevant to Kraft Heinz products are shown:

- 1. Target Store Brand Marshmallows labels correctly tell consumers that the plastic bag packaging is not recyclable.



- 2. ConAgra Snack Pack gelatin cup labels correctly tell consumers that polypropylene cups are not recyclable.



- 3. Target has removed recyclable labels from store brand polypropylene tubs.



2020 Tub with Recyclable Label



2023 Tub with Recyclable Label Removed

**RESPONSE TO BOARD OF DIRECTORS’ STATEMENT IN OPPOSITION**

Kraft Heinz’s Opposition Statement does not address how the Company will review and correct arguably false recyclable labels employed on the Company’s packaging now or comply with California’s new Truth in Labeling law as it is implemented. The Opposition Statement merely describes existing staff functions involved in reviews which, based on selected examples shown above, are demonstrated to be insufficient. The Company’s existing action falls short of ensuring truth in labeling on the recyclability of plastic packaging now and in the future.

Reference by the Company to industry protocols such as the Association of Plastic Recycler’s APR Design® Guide is a noncredible and unwise reference to an organization sponsored by ExxonMobil and Dow (e.g. Big Plastics) who are promoting the plastic recycling myth.<sup>33</sup> For example, the APR Design® Guide has long promoted the deceptive “store dropoff” recyclable label on worthless plastic film waste that was exposed by ABC News and Bloomberg to egregiously deceive consumers.<sup>34</sup>

Finally, the Company’s claimed membership in the Circular Action Alliance is not relevant to ensuring truth in labeling on its products in California. The relevant extended producer responsibility law (SB54) does not determine which products may be labeled as recyclable in California. Citing the group’s standing as a non-profit organization is also irrelevant and does not provide credibility since industry-funded 501(c)(3) organizations such as the National Rifle Association and GreenBlue (How2Recycle®) are known to promote their sponsoring industry’s business interests.<sup>35,36</sup>

**CONCLUSION**

**Vote “Yes” on this Shareholder Proposal Regarding Truth in Labeling on Plastic Packaging.** Kraft Heinz is exposing the company to brand reputation, legal, and financial risks by employing recyclable labels on arguably worthless plastic packaging. Kraft Heinz has fallen behind peer companies by failing to remove arguably deceptive labeling from its plastic packaging. The Company must evaluate the Federal and State requirements for truthful labeling and be transparent with customers and investors to build trust. We urge a “Yes” vote on this resolution.

**APPENDIX 1: FULL PROPOSAL****Kraft Heinz “Truth in Recyclable Labels” Shareholder Resolution**

**Submitted by Individual Investor on May 16, 2023. Jan Dell is Founder of The Last Beach Cleanup.**

**WHEREAS:** The California State Attorney General and public lawsuits are challenging the legitimacy of product companies’ recycling labels and claims on plastic packaging. Comprehensive reports established that only some types of plastic bottles and jugs are recyclable in the U.S. Kraft is currently employing three types of recyclable labels on other types of plastic packaging that are being legally challenged: “Store Dropoff,” “Check Locally,” and “Remove Label.” Other major brands have announced they will stop using such labels on their products.

**Store Dropoff:** In 2022, the CA State AG announced an investigation into the use of recyclable labels on plastic bags in California, warning bag manufacturers with multimillion dollar fines. This has direct impact on Kraft since the company uses the same type of “Store Dropoff” recycle symbol label on plastic film packaging. Three lawsuits were also filed in California alleging the use of the recycle symbol with the words “Store Dropoff” on plastic bags and films is not legal. CA State AG and lawsuits cited the CA Recycling Commission’s 2021 letter stating California’s existing laws should be enforced and the “recyclable” word and symbol should be removed from plastic bags and films. The Commission’s motivation was to stop consumer confusion that causes high disposal of plastic bags and films in curbside recycling bins, causing hazards to workers and contamination of valuable paper bales.

**Check Locally:** 2022 detailed assessments of plastic recycling by Greenpeace established that, other than some types of plastic bottles/jugs, most plastic packaging has very low acceptance rates for recycling (0 to 6% of U.S. population). It is deceptive to consumers and harmful to recycling systems to label such unwanted, worthless plastics as recyclable.

Kraft should be truthful with consumers and not mislabel products that could contribute to plastic contamination in curbside recycling systems and incur potential legal liability due to deceptive advertising. Ultimately, instead of using unrecyclable plastic packaging, Kraft should redesign product packaging to be truly recyclable or compostable through existing curbside programs and local processing that are easily accessed by all consumers.

**BE IT RESOLVED:** Shareholders request the board of directors issue a report by December 2024 providing the factual basis for legitimacy of all recyclable claims made on plastic packaging. Report should include substantiation required by California law (Cal. Bus. & Prof. Code § 17580) that must be made available to the public on request, including that plastic packaging labeled as recyclable meets all of the criteria for statewide recyclability pursuant to subdivision (d) of Section 42355.51 of the Public Resources Code. The report should be prepared by independent legal and technical experts who have no financial conflicts caused by working for the plastics or plastics recycling industry.

**SUPPORTING STATEMENT:** Proponents note the report should be prepared at reasonable cost, omitting confidential information, and include an assessment of the reputational, financial, and operational risks associated with continuing to use recyclable labels on plastic products that are not actually recycled.

For questions, please contact Jan Dell, The Last Beach Cleanup, [lastbeachcleanup@gmail.com](mailto:lastbeachcleanup@gmail.com).

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- <sup>1</sup> The New York Times, "[Can Plastic Recycling Ever Really Work?](#)," September 1, 2023.
- <sup>2</sup> The [Last Beach Cleanup website](#) describes the organization's mission, approach, and results.
- <sup>3</sup> Bloomberg Law Analysis, "[ANALYSIS: Green Product Claims Face Growing Consumer Scrutiny](#)," March 13, 2023.
- <sup>4</sup> Reuters, "[Companies walk ESG tightrope, under fire from all sides over disclosures](#)," February 28, 2024.
- <sup>5</sup> NPR, "[How Big Oil Misled The Public Into Believing Plastic Would Be Recycled](#)," September 11, 2020.
- <sup>6</sup> The Guardian, "['They lied': plastics producers deceived public about recycling, report reveals](#)," February 15, 2024.
- <sup>7</sup> CNBC, "[California subpoenas Exxon for details on role in global plastic pollution](#)," April 22, 2024.
- <sup>8</sup> Top Class Actions, "[Keurig Class Action Settled For \\$10M, Ending Recyclability Claims](#)," March 3, 2022.
- <sup>9</sup> Wall Street Journal, "[TerraCycle Partners Including Coca-Cola, P&G to Change Recycling Labels After Settling Lawsuit](#)," November 15, 2021.
- <sup>10</sup> Reuters, "[Colgate-Palmolive must face lawsuit over toothpaste tube recycling claims](#)," February 26, 2024.
- <sup>11</sup> Consumer Brands Association, "[Americans Baffled by Broken Recycling System](#)," April 2019.
- <sup>12</sup> Waste Dive, "[Report argues most plastics, especially #3-7s, falsely labeled as recyclable](#)," February 18, 2020.
- <sup>13</sup> Rubicon, "[What is Recycling Contamination, and Why Does it Matter?](#)," February 6, 2023.
- <sup>14</sup> ESG Clarity, "[Investors not factoring in plastic risk](#)," 09 June 2023.
- <sup>15</sup> The Last Beach Cleanup, et. al, "[Guides for the Use of Environmental Marketing Claims – Green Guides Review, Matter No. P954501 \(Docket FTC-2022-0077\)](#)," April 24, 2023.
- <sup>16</sup> Reuters, "[New York sues PepsiCo over plastics it says pollute, hurt health](#)," November 15, 2023.
- <sup>17</sup> Volcovici, "[Lawsuits target illegal plastic bag sales in California](#)," Reuters, June 6, 2022.
- <sup>18</sup> [Bargetto vs. Walgreens](#), United States District Court, Northern District of California, 2022.
- <sup>19</sup> [Last Beach Cleanup vs. Gelson's Markets](#), Superior Court of the State of California, County of Los Angeles, 2022.
- <sup>20</sup> [Last Beach Cleanup vs. Stater Bros. Markets](#), Superior Court of the State of California, County of Los Angeles, 2022.
- <sup>21</sup> Last Beach Cleanup vs. Gelson's Market, [Settlement Agreement](#), 2023.
- <sup>22</sup> Bloomberg Law, "[Walmart, Reynolds Sued by Minnesota Over Plastic Bag Marketing](#)," June 6, 2023.
- <sup>23</sup> Mother Jones, "[Big Plastic Wants You to Think You Can Recycle Your Yogurt Container](#)," October 22, 2022.
- <sup>24</sup> ABC News, "[We put dozens of trackers in plastic bags for recycling. Many were trashed](#)," May 23, 2023.
- <sup>25</sup> Bloomberg, "[Don't Trust Plastic Snack Wrappers With Recycling Instructions](#)," September 29, 2023.
- <sup>26</sup> Resource Recycling, "[Keurig agrees to settle coffee pod recyclability suit](#)," December 7, 2021.
- <sup>27</sup> USEPA, [Advancing Sustainable Materials Management: 2018 Fact Sheet](#), 2020.
- <sup>28</sup> U.S. FTC, [Green Guides](#).
- <sup>29</sup> [2022 California Code, Business and Professions Code – BPC, DIVISION 7 - GENERAL BUSINESS REGULATIONS PART 3 - REPRESENTATIONS TO THE PUBLIC, CHAPTER 1 – Advertising ARTICLE 7 - Environmental Representations, Section 17580.](#)
- <sup>30</sup> [2022 California Code, Business and Professions Code – BPC, DIVISION 7 - GENERAL BUSINESS REGULATIONS PART 3 - REPRESENTATIONS TO THE PUBLIC, CHAPTER 1 – Advertising ARTICLE 7 - Environmental Representations, Section 17580.](#)
- <sup>31</sup> CalRecycle, [Accurate Recyclable Labels](#).
- <sup>32</sup> [Cal. Pub. Resources Code § 42355.51](#), Deceptive or misleading claims about recyclability of product or packaging.
- <sup>33</sup> APR, [2024 Plastic Recycling Conference](#), Dow and ExxonMobil are shown as Platinum Sponsors.
- <sup>34</sup> APR, "[The APR Design® Guide & The How2Recycle® Label: A Partnership to Expand and Improve Plastics Recycling](#)," September 19, 2017.
- <sup>35</sup> A-Mark Foundation, "[Who Funds the NRA?](#)," January 25, 2024.
- <sup>36</sup> [The Intercept](#), "[WASTE ONLY: How the Plastics Industry Is Fighting to Keep Polluting the World](#)," July 20, 2019.