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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

STEPHEN HADLEY, on behalf of himself, all others similarly situated, and the general public, Plaintiff, v. KELLOGG SALES COMPANY, Defendant.	Case No.: CLASS ACTION **COMPLAINT FOR VIOLATIONS OF CALIFORNIA'S FALSE ADVERITSING LAW, CONSUMERS LEGAL REMEDIES ACT, AND UNFAIR COMPETITION LAW** DEMAND FOR JURY TRIAL

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Plaintiff Stephen Hadley, on behalf of himself, all others similarly situated, and the general public, by and through his undersigned counsel, hereby brings this action against Kellogg Sale Company ("Kellogg"), and alleges the following upon his own knowledge, or where he lacks personal knowledge, upon information and belief including the investigation of his counsel.

INTRODUCTION

1. The scientific evidence is compelling: Excessive consumption of added sugar is **toxic** to the human body. Experimentally sound, peer-reviewed studies and meta-analyses convincingly show that consuming excessive added sugar—any amount above approximately 5% of daily caloric intake—greatly increases the risk of heart disease, diabetes, liver disease, and a wide variety of other chronic morbidity.

2. Despite the compelling evidence that sugar acts as a chronic liver toxin, detrimentally affecting health, to increase the price and sales of its products, Kellogg leverages a policy and practice of marketing high-sugar cereals and bars with health and wellness claims. These claims, however, are deceptive because they are incompatible with the dangers of the excessive sugar consumption to which these foods contribute.

3. Plaintiff brings this action against Kellogg on behalf of himself, other consumers, and the general public, primarily to enjoin Kellogg from using deceptive health and wellness claims to market high-sugar foods.

THE PARTIES

4. Plaintiff Stephen Hadley is a resident of Monterey, California.

5. Defendant Kellogg Sales Company is a Delaware corporation with its principal place of business at One Kellogg Square, Battle Creek, Michigan 49016.

JURISDICTION AND VENUE

6. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332(d)(2)(A), the Class Action Fairness Act, because the matter in controversy exceeds the sum or value of $5,000,000 exclusive of interest and costs, at least one member of the class of plaintiffs is a citizen of a State different from Kellogg. In addition, more than two-thirds

of the members of the class reside in states other than the state in which Kellogg is a citizen and in which this case is filed, and therefore any exceptions to jurisdiction under 28 U.S.C. § 1332(d) do not apply.

7. The Court has personal jurisdiction over Kellogg pursuant to Cal. Code Civ. P. § 410.10, as a result of Kellogg's substantial, continuous and systematic contacts with the State, and because Kellogg has purposely availed itself of the benefits and privileges of conducting business activities within the State.

8. Venue is proper in this Northern District of California pursuant to 28 U.S.C. § 1391(b) and (c), because Kellogg resides (*i.e.*, is subject to personal jurisdiction) in this district, and a substantial part of the events or omissions giving rise to the claims occurred in this district.

INTRADISTRICT ASSIGNMENT

9. Pursuant to N.D. Cal. Civ. L.R. 3-2(c), (d) & 3-5(b), this action is properly assigned to the San Jose Division because the action arises in Monterey County in that a substantial part of the events or omissions that give rise to plaintiffs' claims occurred in Monterey County.

FACTS

A. There Has Been a Recent Rise in Human Sugar Consumption

10. Sugars are sweet, short-chain, soluble carbohydrates. Simple sugars are called monosaccharides, while disaccharides are formed when two monosaccharides undergo a condensation reaction. The three most common sugars in our diets are fructose, glucose, and sucrose. Other sugars, like lactose, found in milk, and maltose, formed during the germination of grains like barley, are not generally consumed in large amounts. Glucose is a monosaccharide that occurs naturally in fruits and plant juices and is the primary product of photosynthesis. Most ingested carbohydrates (like bread and pasta) are converted into glucose during digestion, and glucose is the form of sugar transported around the body in the bloodstream, and used by the cells for energy. Fructose is a monosaccharide that occurs naturally in fruits and honey. It is the sweetest of the sugars. Sucrose is a disaccharide

comprised of one molecule of glucose chemically linked to one molecule of fructose. It is found in sugar cane and beets. Common table sugar is sucrose. During digestion and prior to blood absorption, enzymes called sucrases cleave a sucrose molecule into its constituent parts, glucose and fructose.

11. Humans' consumption of sugar has shifted dramatically over time. Cro-Magnon men during the Paleolithic age were hunters and gatherers, with a diet mainly comprised of meat, high in protein, moderate in fat, and low in carbohydrates. Fruits and berries were the major source of carbohydrates, and starch consumption was low.[1] In 1200 B.C., a process was developed in India for extracting sugar in the form of cane juice called khanda, which is where the word "candy" comes from. For nearly 3,000 years, sugar was rare, reserved for nobility. The invention of the pot still in 1700 A.D., however, allowed mass production of refined sugar. But it was still extraordinarily expensive until the middle of the 18th century, when there was a worldwide growth in sugar production, including in America. Thus, humans have been consuming sugar in substantial amounts for less than 300 years.

12. For most of that time, Americans' sugar consumption was almost exclusively table sugar, with only small amounts of glucose and fructose ingested from fruit.[2] And sugar was a condiment, added to coffee or tea, with control over the amount eaten.

13. In the 1960s, the food industry developed technologies to extract starch from corn, then convert it to glucose, some of which could then be converted to fructose, leading to the development of corn-derived sweeteners, most notably high-fructose corn syrup (HFCS).[3] Although HFCS is comprised of both fructose and glucose, unlike with sucrose, the fructose is not chemically bound to the glucose in a new molecule. Thus the fructose in HFCS

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[1] Tappy, L., et al., "Metabolic Effects of Fructose in the Worldwide Increase in Obesity," *Physiology Review*, Vol. 90, 23-46, at 24 (2010) [hereinafter "Tappy, Metabolic Effects of Fructose"].

[2] *Id.*

[3] *Id.* (citation omitted).

is referred to as "free" fructose. HFCS can be produced with different fructose-to-glucose ratios. The most common are HFCS-42 and HFCS-55, containing 42% and 55% fructose. Some HFCS, however, can be as much as 90% fructose, *i.e.*, HFCS-90. Food manufacturers have recently begun referring to HFCS-90 on food label ingredients statements as simply "fructose."

14. Fructose is sweeter than either glucose or sucrose. In fruit, it serves as a marker for foods that are nutritionally rich. Before the development of the worldwide sugar industry, fructose in the human diet was limited to items like honey, dates, raisins, molasses, figs, grapes, raw apples, apple juice, persimmons, and blueberries (which contain approximately 10-15% fructose). Food staples like milk, vegetables, and meat have essentially no fructose. Thus, until relatively recently, human beings have had little dietary exposure to fructose.[4]

15. But the low cost and long shelf-life of HFCS has contributed to a rapid increase in its consumption over the last 45 years, and thus the consumption of fructose. Between 1970 and 2000, the United States' yearly per capita HFCS consumption went from 0.292 kg per person, to 33.4 kg per person, a greater than 100-fold increase.[5]

16. Today, the majority of sugars in typical American diets are added to foods during processing, preparation, or at the table.[6] The two primary sources of added sugar in processed food are HFCS and sucrose (*i.e.*, granulated sugar used, for example, in baked goods). Added

[4] Bray, G., "How bad is fructose?," *American Journal of Clinical Nutrition*, Vol. 86, 895-96 (2007) [hereinafter, "Bray, How Bad is Fructose?"].

[5] Bray, G.A., et al., "Consumption of high-fructose corn syrup in beverages may play a role in the epidemic of obesity," *American Journal of Clinical Nutrition*, Vol. 79, 537-43, at 537, 540 (2004) [hereinafter "Bray, HFCS Role in Obesity Epidemic"].

[6] U.S. Dep't of Agric. & U.S. Dep't of Health & Human Servs., "Dietary Guidelines for Americans, 2010," at 27 (2010) *available at* http://www.health.gov/dietaryguidelines/dga2010/DietaryGuidelines2010.pdf.

sugar is in more than 74% of processed foods,[7] under more than 60 different names.[8] Although the tendency is to associate sugar with sweets, added sugar is found in many savory processed foods, like bread, soup, and pasta sauce.

17. There has been a rise over the past 45 years in Americans' consumption of added sugars. From 1970 to 2000, there was a 25% increase in available added sugars in the U.S.[9] The American Heart Association found that between 1970 and 2005, sugars available for consumption increased by an average of 76 calories per day, from 25 teaspoons (400 calories) to 29.8 teaspoons (476 calories), a 19% increase.[10] The Continuing Survey of Food Intake by

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[7] Ng, S.W., et al., "Use of caloric and non-caloric sweeteners in US consumer packaged foods, 2005-9, *Journal of the Academy of Nutrition and Dietetics*, Vol. 112, No. 11, 1828-34 (2012).

[8] Some examples: Agave nectar, Barbados sugar, Barley malt, Barley malt syrup, Beet sugar, Brown sugar, Buttered syrup, Cane juice, Cane juice crystals, Cane sugar, Caramel, Carob syrup, Castor sugar, coconut palm sugar, Coconut sugar, Confectioner's sugar, Corn sweetener, Corn syrup, Corn syrup solids, Date sugar, Dehydrated case juice, Demerara sugar, Dextrin, Dextrose, Evaporated cane juice, Free-flowing brown sugars, Fructose, Fruit juice, Fruit juice concentrate, Glucose, Glucose solids, Golden sugar, Golden syrup, Grape sugar, High-Fructose Corn Syrup (HFCS), Honey, Icing sugar, Invert sugar, Malt syrup, Maltodextrin, Maltol, Maltose, Mannose, Maple syrup, Molasses, Muscovado, Palm sugar, Panocha, Powdered sugar, Raw sugar, Refiner's syrup, Rice syrup, Saccharose, Sorghum Syrup, Sucrose, Sugar (granulated), Sweet Sorghum, Syrup, Treacle, Turbinado sugar, and Yellow sugar.

[9] Bray, How Bad is Fructose?, *supra* n.4, at 895 (citing Havel, P.J., "Dietary fructose: implications for dysregulation of energy homeostasis and lipid/carbohydrate metabolism, *Nutrition Reviews*, Vol. 63, 133-57 (2005) [hereinafter, "Havel, Dietary Fructose"]).

[10] Johnson, R.K., et al., on behalf of the American Heart Association Nutrition Committee of the Council on Nutrition, Physical Activity, and Metabolism and Council on Epidemiology and Prevention, "Dietary Sugars Intake and Cardiovascular Health: A Scientific Statement From the American Heart Association," *Circulation*, Vol. 120, 1011-20, at 1016-17 (2009) [hereinafter "AHA Scientific Statement"]. *See also* World Health Organization, Sugars intake for adult and children: Guideline" (March 4, 2014) *available at* http://www.who.int/nutrition/publications/guidelines/sugars_intake/en (Based on scientific evidence, recommending adults and children reduce daily intake of free sugars to less than 10% of total energy intake and noting that "[a] further reduction to below 5% or roughly 25 grams (6 teaspoons) per say would provide additional health benefits.").

Individuals from 1994 to 1996 showed that the average person had a daily added sugars intake of 79 grams, equal to 316 calories and about 15% of energy intake. Those in the top one-third of fructose consumption ingested 137 grams of added sugars per day (548 calories, about 26% of energy per day), and those in the top 10% of fructose consumption ingested 178 grams of fructose per day (712 calories, about 34% of energy).[11]

18. In 2014, researchers analyzing data obtained from National Health and Nutrition Examination Survey (NHANES) showed that during the most recent period of 2005-2010, the mean percent of calories from added sugar in the American diet was 14.9%. Most adults, 71.4%, consumed 10% or more of their calories from added sugar, while about 10% of adults consumed 25% or more of their calories from added sugar.[12]

19. Today, "the vast majority of the U.S. population exceeds recommended intakes of . . . added sugars."[13] Despite some reduction in added sugar intake recently, "intakes of added sugars are still very high . . . and are well above recommended limits . . . ."[14] Approximately 90% of the population exceeds recommended daily limits.[15]

B. The Body's Physiological Response to Excess Sugar Consumption

1. The Body's Response to Glucose

20. The body needs some glucose, largely to meet the brain's metabolic demands,

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[11] Bray, How Bad is Fructose?, *supra* n.4, at 895.

[12] Yang, Quanhe, et al., "Added Sugar Intake and Cardiovascular Diseases Mortality Among US Adults," *Journal of the American Medical Association*, at E4-5 (published online Feb. 3, 2014) [hereinafter, "Yang, NHANES Analysis"].

[13] U.S. Dep't of Agric. & U.S. Dep't of Health & Human Servs., "Scientific Report of the 2015 Dietary Guidelines Advisory Committee: Advisory Report to the Secretary of Health and Human Services and the Secretary of Agriculture," at 26 (February 2015), *available at* http://www.health.gov/dietaryguidelines/2015-scientific-report/PDFs/Scientific-Report-of-the-2015-Dietary-Guidelines-Advisory-Committee.pdf.

[14] *Id.* at 38.

[15] *Id.* at 35.

but also because all living cells use glucose for energy. Blood glucose levels below 25mg/dL may result in coma, seizure, or death, while levels consistently exceeding 180 mg/dL can cause long-term damage, including renal failure and atherosclerosis.

21. For these reasons, blood glucose concentration is tightly-regulated by homeostatic regulatory systems. When blood glucose rises after a meal, beta cells in the pancreas secrete insulin into the blood, which helps muscle, fat, and liver cells absorb the glucose for energy, lowering the blood sugar. Too little blood sugar stimulates the secretion of hormones that counteract the insulin and thus restore normal blood sugar.[16]

22. During certain steps in processing glucose, the body forms fructose. However, unlike with glucose, there is no biological need for dietary fructose, *i.e.*, fructose consumed from food, whether fruit, honey, HFCS, or some other form. Moreover, unlike glucose, fructose does not directly stimulate insulin secretion.

23. The body processes glucose and fructose differently. With little processing, fructose passes through the small intestine, into blood bound for the liver, so that it is taken up nearly 100% for processing in the liver (a characteristic shared by substances commonly referred to as poisons). By contrast, glucose is both "burned up" by cells directly, and processed elsewhere outside the liver, so that the liver must process only 20% of glucose consumed.

24. So much glucose is burned up prior to liver processing, because all the body's cells contain a transporter that, when stimulated by insulin, takes in glucose from the blood. By contrast, fructose can only be absorbed by cells that contain a different transporter, which most cells lack.

25. The liver is capable of processing relatively small amounts of sugar, meted out slowly. This is one of the reasons that eating the fructose in fruit is not problematic: the fiber slows the sugar's uptake, and some sugars incased in fiber may not even be released, and thus

[16] Ludwig, David S., "The Glycemic Index: Physiological Mechanisms Relating to Obesity, Diabetes, and Cardiovascular Disease," *Journal of the American Medical Association*, Vol. 287, No. 18, 2414-23, at 2415 (May 8, 2002) (citation omitted).

fruit consumption does not overwhelm the liver. Fruit also comes packaged with nutrients, like vitamins, that are beneficial for health, and sends satiation signals to the brain, telling it that the body is full.

26. Because the liver has some capacity to process sugar, there does appear to be a "safe" threshold of daily added sugar consumption, small enough not to overload the liver: approximately 5% of calories, or about 38 grams (9 teaspoons, 150 calories) per day for men, 25 grams (6 teaspoons, 100 calories) per day for women,[17] and 12-15 grams (3-6 teaspoons, 50-60 calories) for children depending on age and caloric needs.[18]

27. But the long-term consumption of excess sugar can have dire physiological consequences, acting as a chronic, dose-dependent liver toxin, overloading the liver and causing chronic metabolic disease, also sometimes called metabolic syndrome, a cluster of symptoms that, when present together, increase a person's risk of chronic disease like cardiovascular disease and type 2 diabetes.

28. When excess sugar consumption overloads the liver, the glucose increases insulin secretion, while the fructose gets turned into liver fat, causing insulin resistance. The combination over time results in rapid and dramatic increases in blood glucose and insulin concentrations.[19] Over time, individuals with frequent insulin secretion may develop insulin resistance, where the body produces insulin but does not use it effectively, so that glucose builds up in the blood instead of being absorbed by the cells. Because the muscle, fat, and

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[17] AHA Scientific Statement, *supra* n.10. Similarly, the World Health Organization recommends that no more than 10% of an adult's calories—and ideally less than 5%—should come from added sugar or from natural sugars in honey, syrups, and fruit juice.

[18] *See* "How Much Is Too Much?," *at* http://www.sugarscience.org/the-growing-concern-of-overconsumption.

[19] Janssens, J.P., et al., "Effects of soft drink and table beer consumption on insulin response in normal teenagers and carbohydrate drink in youngsters," *European Journal of Cancer Prevention*, Vol. 8, 289-95 (1999) ("In contrast to table beer, consumption of regular soft drinks induced a fast and dramatic increase in both glucose and insulin concentration within a maximum 1 hour after consumption.").

liver cells do not respond properly to insulin and thus cannot easily absorb glucose from the bloodstream, the body needs higher levels of insulin. Eventually the pancreas' beta cells cannot keep up with this increasing demand, and over time can no longer produce enough insulin to overcome insulin resistance, so blood glucose levels remain high.

29. Currently, about two-thirds of the American population is overweight, about one-quarter to one-third is diabetic or pre-diabetic, and another one-quarter is hypertensive. Many Americans also have high serum triglycerides. Insulin resistance is a component of all of these health issues.

30. Energy deposition into fat cells by insulin stimulate them to secrete a hormone called leptin, which is a natural appetite suppressant that tells the brain the body is full and can stop eating. Generally, glucose suppresses the hunger hormone, ghrelin, and stimulates leptin. But high insulin levels brought on by excess sugar consumption have been linked to leptin resistance, where the brain is desensitized to the hormone and so no longer "hears" the message to stop eating.[20] Because increased insulin makes the body feel hungry, excess sugar consumption can create a vicious cycle in which the more sugar one eats, the hungrier one feels.

2. The Body's Response to Fructose

31. But it is the fructose, found in most processed foods, that appears to cause the greatest harm in the shortest amount of time. Nearly all added sugars contain significant amounts of fructose. For example, HFCS typically contains nearly 42% or 55% fructose, while table sugar and other sweeteners, like cane sugar, contain 50% fructose.

32. Fructose is the most lipophilic carbohydrate, meaning it easily converts to a form, glycerol, that supports conversion to fats, including free fatty acids, a damaging form of cholesterol called very low-density lipoprotein (VLDL), and triglycerides, which get stored

[20] Shapiro, A., et al., "Fructose-induced leptin resistance exacerbates weight gain in response to subsequent high-fat feeding," *American Journal of Physiology, Regulatory, Integrative and Comparative Physiology*, Vol. 295, No. 5, R1370-75 (2008).

as fat. Studies in humans and animals have shown that fructose is preferentially metabolized to lipid (fat) in the liver, leading to increased triglyceride levels, which are associated with insulin resistance and cardiovascular disease.[21] Fatty acids created during fructose metabolism accumulate as fat droplets in the liver, also causing insulin resistance, as well as non-alcoholic fatty liver disease. In addition, when the liver turns excess sugar into liver fat and becomes insulin resistant, that generates hyperinsulinemia, which drives energy storage into body fat.

33. Glucose does not do this. Following consumption of 120 calories of glucose, less than 1 calorie should be stored as fat, while 120 calories of fructose should result in 40 calories being stored as fat.

34. The metabolism of fructose also creates several waste products and toxins, including uric acid, which drives up blood pressure, causes gout, and is a risk factor for cardiovascular disease because the production of uric acid utilizes nitric oxide, a key modulator of vascular function, and causes inflammation. Experimental human studies confirm that fructose feeding raises serum uric acid levels.[22]

35. Moreover, fructose interferes with the brain's communication with leptin, which may result in overeating. And while glucose suppresses ghrelin, thus reducing hunger, fructose has no effect on ghrelin.

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[21] Elliot, S.S., et al., "Fructose, weight gain, and the insulin resistance syndrome," *American Journal of Clinical Nutrition*, Vol. 76, 911-22 (2002) [hereinafter, "Elliot, Fructose & Insulin Resistance"]; Bray, How Bad is Fructose?, *supra* n.4; Havel, Dietary Fructose, *supra* n.9.

[22] Nguyen, S., et al., "Sugar Sweetened Beverages, Serum Uric Acid, and Blood Pressure in Adolescents," *Journal of Pediatrics*, Vol. 154, No. 6, 807-13 (June 2009) (citations omitted) [hereinafter, "Nguyen, Serum Uric Acid"]; Johnson, R.J., "Potential role of sugar (fructose) in the epidemic of hypertension, obesity and the metabolic syndrome, diabetes, kidney disease, and cardiovascular disease," *American Journal of Clinical Nutrition*, Vol. 86, 899-906 (2007); Nakagawa, T., et al., "A causal role for uric acid in fructose-induced metabolic syndrome," *American Journal of Physiology*, Vol. 290, F625-31 (2006).

3. The Addiction Response

36. Research shows that, for some people, eating sugar produces characteristics of craving and withdrawal, along with chemical changes in the brain's reward center, the limbic region, which can be similar to those of people addicted to drugs like cocaine and alcohol.[23] These changes are linked to a heightened craving for more sugar.[24] This can create a vicious cycle leading to chronic illness.

C. There Has Been a Dramatic Rise in Obesity & Chronic Disease That Parallels the Rise in Human Sugar Consumption

37. As noted above, there was a dramatic rise in Americans' use of sugar, first in the mid-18th century, then again starting in the United States in about 1970, with the introduction into the market of HFCS. Concurrently with these changes in the diet have been alarming rises in obesity and chronic disease.

38. In 1924, New York City health commissioner Haven Emerson noted a seven-fold increase in diabetes rate in the city. In 1931, Dr. Paul Dudley White, a cardiologist at Massachusetts General Hospital, warned of an epidemic of heart disease. And in 1988, scientists learned about the advent of adolescent type 2 diabetes.

39. In 2004, researchers reported their analysis of food consumption patterns from 1967 to 2000. Noting that HFCS consumption increased more than 1,000% from 1970 to 1990, "far exceeding the changes in intake of any other food or food group," researchers found this "mirrors the rapid increase in obesity" seen during the same period, as demonstrated in the below graphic.[25]

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[23] Volkow, N.D., et al., "Drug addiction: the neurobiology of behavior gone awry," *Nature Reviews Neuroscience*, Vol. 5, No. 12, 963-70 (2004); Brownell, K.D., et al., "Food and addiction: A comprehensive handbook," *Oxford University Press* (2012).

[24] Avena, N., "Evidence for sugar addiction: behavioral and neurochemical effects of intermittent, excessive sugar intake," *Neuroscience Behavior Review*, Vol. 52, No. 1, 20-39 (2008).

[25] Bray, HFCS Role in Obesity Epidemic, *supra* n.5, at 537, 540-41 & Table 2; *see also* Flegal, K.M., et al., "Prevalence and trends in obesity among US adults, 1999-2000," *Journal*

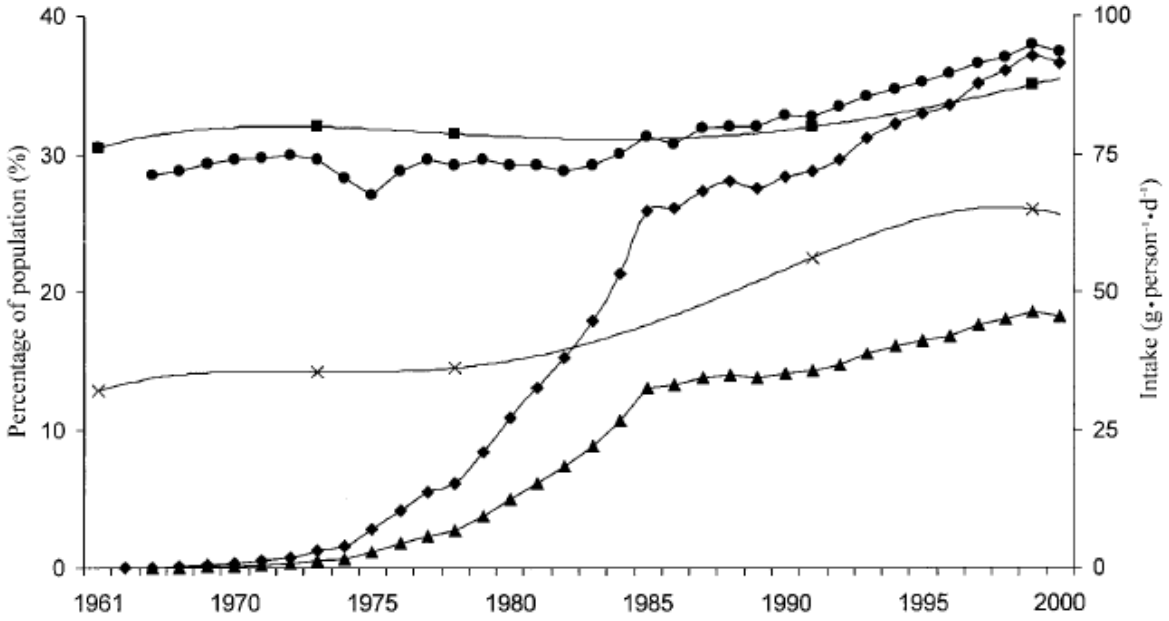

FIGURE 1. Estimated intakes of total fructose (●), free fructose (▲), and high-fructose corn syrup (HFCS, ♦) in relation to trends in the prevalence of overweight (■) and obesity (x) in the United States. Data from references 7 and 35.

40. Besides the compelling circumstantial evidence that increased sugar consumption has led to chronic disease, there is substantial research showing the causal mechanisms of disease and demonstrating substantial increased risk of chronic disease with excess sugar consumption.

D. There is Substantial Scientific Evidence That Excess Sugar Consumption Causes Metabolic Syndrome, Cardiovascular Disease, Type 2 Diabetes, and Other Morbidity

41. Research shows that overloading the mitochondria—the energy-burning factories within the cells—in any given organ will manifest various forms of chronic metabolic disease. Whatever organ becomes insulin resistant manifests its own chronic metabolic disease. For example, insulin resistance of the liver leads to type 2 diabetes. Insulin resistance of the brain causes Alzheimer's disease. Insulin resistance of the kidney leads to chronic renal disease.

42. After artificial trans fat, the chemical that best overloads mitochondria is sugar.

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of the American Medical Association, Vol. 288, 1723-27 (2002); Putnam, J.J., et al., "Food consumption, prices and expenditures, 1970-97," *U.S. Department of Agriculture Economic Research Service statistical bulletin no. 695* (April 1999).

1. Excess Sugar Consumption Causes Metabolic Syndrome

43. Excess consumption of added sugar leads to metabolic syndrome by stressing and damaging crucial organs, including the pancreas and liver. When the pancreas, which produces insulin, becomes overworked, it can fail to regulate blood sugar properly. Large doses of fructose can overwhelm the liver, which metabolizes fructose. In the process, the liver will convert excess fructose to fat, which is stored in the liver and released into the bloodstream. This process contributes to key elements of metabolic syndrome, including high blood fats and triglycerides, high cholesterol, high blood pressure, and extra body fat, especially in the belly.[26]

44. Metabolic disease has been linked to type 2 diabetes, cardiovascular disease, obesity, polycystic ovary syndrome, nonalcoholic fatty liver disease, and chronic kidney disease, and is defined as the presence of any three of the following:

a. Large Waist Size (35" or more for women, 40" or more for men);

b. High triglycerides (150mg/dL or higher, or use of cholesterol medication);

c. High total cholesterol, or HDL levels under 50mg/dL for women, and 40 mg for men;

d. High blood pressure (135/85 mm or higher); or

e. High blood sugar (100mg/dL or higher).

45. More generally, "metabolic abnormalities that are typical of the so-called metabolic syndrome . . . includ[e] insulin resistance, impaired glucose tolerance, high concentrations of circulating triacylglycerols, low concentrations of HDLs, and high

[26] Te Morenga, L., et al., "Dietary sugars and body weight: systematic review and meta-analyses of randomized controlled trials and cohort studies," *BJM* (January 2013) [hereinafter, "Te Morenga, Dietary Sugars & Body Weight"].

concentrations of small, dense LDLs."[27]

46. 56 million Americans have metabolic syndrome, or about 22.9% over the age of 20, placing them at higher risk for chronic disease.

47. In 2010, Harvard researchers published a meta-analysis of three studies, involving 19,431 participants, concerning the effect of consuming sugar-sweetened beverages on risk for metabolic syndrome. They found participants in the highest quantile of 1-2 servings per day[28] had an average 20% greater risk of developing metabolic syndrome than did those in the lowest quantile of less than 1 serving per day, showing "a clear link between SSB consumption and risk of metabolic syndrome . . . ."[29]

48. Researchers who studied the incidence of metabolic syndrome and its components in relation to soft drink consumption in more than 6,000 participants in the Framingham Heart Study found that individuals who consumed 1 or more soft drinks per day (*i.e.*, 140-150 calories and 35-37.5 grams of sugar or more) had a 48% higher prevalence of metabolic syndrome than infrequent consumers, those who drank less than 1 soft drink per day. In addition, the frequent-consumer group had a 44% higher risk of developing metabolic syndrome.[30]

49. Recently, researchers concluded a study to determine whether the detrimental

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[27] Fried, S.K., "Sugars, hypertriglyceridemia, and cardiovascular disease," *American Journal of Clinical Nutrition*, Vol. 78 (suppl.), 873S-80S, at 873S (2003) [hereinafter, "Fried, Hypertriglyceridemia"].

[28] Because 1 sugar-sweetened beverage typically has 140-150 calories and 35-37.5 grams of sugar per 12-ounce serving, this is equivalent to between 140 and 300 calories per day, and 35 to 75 grams of sugar per day.

[29] Malik, Vasanti S., et al., "Sugar-Sweetened Beverages and Risk of Metabolic Syndrome and Type 2 Diabetes," *Diabetes Care*, Vol. 33, No. 11, 2477-83, at 2477, 2480-81 (November 2010) [hereinafter "Malik, 2010 Meta-Analysis"].

[30] Dhingra, R., et al., "Soft Drink Consumption and Risk of Developing Cardiometabolic Risk Factors and the Metabolic Syndrome in Middle-Aged Adults in the Community," *Circulation*, Vol. 116, 480-88 (2007) [hereinafter "Dhingra, Cardiometabolic Risk"].

effects of dietary sugar were due to extremely high dosing, excess calories, or because of its effects on weight gain, rather than caused by sugar consumption directly.[31] In other words, the researchers dissociated the metabolic effects of dietary sugar from its calories and effects on weight gain.

50. Because the researchers did not want to *give* subjects sugar to see if they got sick, they instead took sugar away from people who were already sick to see if they got well. But if subjects lost weight, critics would argue that the drop in calories or weight loss was the reason for the clinical improvement. Therefore, the researchers designed the study to by isocaloric, by giving back to subjects the same number of calories in starch that were taken away in sugar. The study involved 43 children, ages 8 to 19, each obese with at least one other co-morbidity demonstrating metabolic problems. All were high consumers of added sugar in their diets.[32]

51. To perform the study, researchers assessed subjects' home diets by two questionnaires to determine how many calories, and how much fat, protein, and carbohydrate they were eating. Subjects were then tested at a hospital based on their home diets. Then, for the next 9 days, researchers catered the subjects' meals. The macronutrient percentages of fat, protein, and carbohydrate were not changed. Subjects were fed them the same calories and percent of each macronutrient as their home diet; but within the carbohydrate fraction, researchers took the added sugar out, and substituted starch. For example, researchers took pastries out, and put bagels in; took yogurt out, and put baked potato chips in; took chicken teriyaki out, and put turkey hot dogs in (although subjects were still given whole fruit). Researchers reduced subjects' dietary sugar consumption from 28% to 10% of calories. Researchers also gave subjects a scale to take home, and each day they would weigh

[31] Robert H. Lustig, et al., "Isocaloric Fructose Restriction and Metabolic Improvement in Children with Obesity and Metabolic Syndrome," *Pediatric Obesity*, Vol. 24, No. 2, 453-60 (Feb. 2016).

[32] *See id.* at 453-54.

themselves. If they were losing weight, they were instructed to eat more. The goal was for subjects to remain weight-stable over the 10 days of study. On the final day, subjects came back to the hospital for testing on their experimental low-added sugar diet. The study team analyzed the pre- and post-data in a blinded fashion so as not to introduce bias.[33]

52. Researchers analyzed three types of data. First, diastolic blood pressure decreased by 5 points. Second, baseline blood levels of analytes associated with metabolic disease, such as lipids, liver function tests, and lactate (a measure of metabolic performance) all improved significantly. Third, fasting glucose decreased by 5 points. Glucose tolerance improved markedly, and fasting insulin levels fell by 50%. Each of these results was highly-statistically-significant.[34]

53. In sum, the study indicated that subjects improved their metabolic status in just 10 days, even while eating processed food, by just removing added sugar and substituting starch. The metabolic improvement, moreover, was unrelated to changes in weight or body fat.

2. Excess Sugar Consumption Causes Type 2 Diabetes

54. Diabetes affects 25.8 million Americans, and can cause kidney failure, lower-limb amputation, and blindness. In addition, diabetes doubles the risk of colon and pancreatic cancers and is strongly associated with coronary artery disease and Alzheimer's disease.[35]

55. In 2010, Harvard researchers also performed a meta-analysis of 8 studies concerning sugar-sweetened beverage consumption and risk of type 2 diabetes, involving a

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[33] *See id.* at 454-55.

[34] *See id.* at 455-56.

[35] Aranceta Bartrina, J. et al., "Association between sucrose intake and cancer: a review of the evidence," *Nutrición Hospitalaria*, Vol. 28 (Suppl. 4), 95-105 (2013); Garcia-Jimenez, C., "A new link between diabetes and cancer: enhanced WNT/beta-catenin signaling by high glucose," *Journal of Molecular Endrocrinology*, Vol. 52, No. 1 (2014); Linden, G.J., "All-cause mortality and periodontitis in 60-70-year-old men: a prospective cohort study," *Journal of Clinical Periodontal*, Vol. 39, No. 1, 940-46 (October 2012).

total of 310,819 participants. They concluded that individuals in the highest quantile of SSB intake had an average 26% greater risk of developing type 2 diabetes than those in the lowest quantile.[36] Moreover, "larger studies with longer durations of follow-up tended to show stronger associations."[37] Thus, the meta-analysis showed "a clear link between SSB consumption and risk of . . . type 2 diabetes."[38]

56. An analysis of data for more than 50,000 women from the Nurses' Health Study,[39] during two 4-year periods (1991-1995, and 1995-1999), showed, after adjusting for confounding factors, that women who consumed 1 or more sugar-sweetened soft drink per day (*i.e.*, 140-150 calories and 35-37.5 grams of sugar), had an 83% greater relative risk of type 2 diabetes compared with those who consumed less than 1 such beverage per month, and women who consumed 1 or more fruit punch drinks per day had a 100% greater relative risk of type 2 diabetes.[40]

57. The result of this analysis shows a statistically significant linear trend with increasing sugar consumption.[41]

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[36] Malik, 2010 Meta-Analysis, *supra* n.29 at 2477, 2480.

[37] *Id.* at 2481.

[38] *Id.*

[39] The Nurses' Health Study was established at Harvard in 1976, and the Nurses' Health Study II, in 1989. Both are long-term epidemiological studies conducted on women's health. The study followed 121,700 women registered nurses since 1976, and 116,000 female nurses since 1989, to assess risk factors for cancer, diabetes, and cardiovascular disease. The Nurses' Health Studies are among the largest investigations into risk factors for major chronic disease in women ever conducted. *See generally* "The Nurses' Health Study," *at* http://www.channing.harvard.edu/nhs.

[40] Schulze, M.B., et al., "Sugar-Sweetened Beverages, Weight Gain, and Incidence of Type 2 Diabetes in Young and Middle-Aged Women," *Journal of the American Medical Association*, Vol. 292, No. 8, 927-34 (Aug. 25, 2004) [hereinafter "Schulze, Diabetes in Young & Middle-Aged Women"].

[41] Hu, F.B., et al., "Sugar-sweetened beverages and risk of obesity and type 2 diabetes: Epidemioligic evidence," *Physiology & Behavior*, Vol. 100, 47-54 (2010).

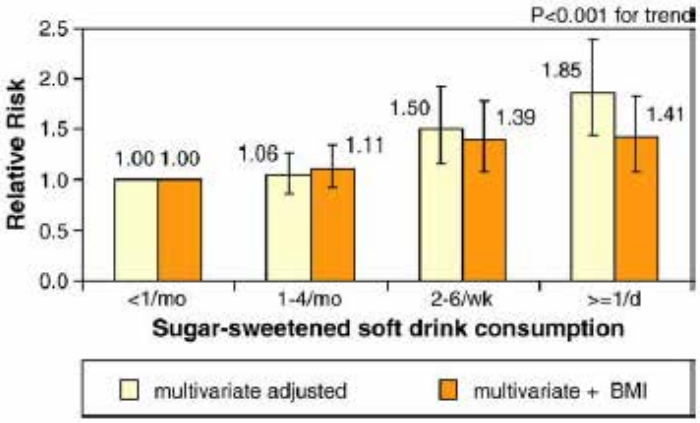

Fig. 4. Multivariate relative risks (RRs) of type 2 diabetes according to sugar-sweetened soft drink consumption in the Nurses' Health Study II 1991–1999 (Multivariate RRs were adjusted for age, alcohol (0, 0.1–4.9, 5.0–9.9, 10+ g/d), physical activity (quintiles), family history of diabetes, smoking (never, past, current), postmenopausal hormone use (never, ever), oral contraceptive use (never, past, current), intake (quintiles) of cereal fiber, magnesium, trans fat, polyunsaturated:saturated fat, and consumption of sugar-sweetened soft drinks, diet soft drinks, fruit juice, and fruit punch (other than the main exposure, depending on model). The data were based on Ref. [50]).

58. A prospective cohort study of more than 43,000 African American women between 1995 and 2001 showed that the incidence of type 2 diabetes was higher with higher intake of both sugar-sweetened soft drinks and fruit drinks. After adjusting for confounding variables, those who drank 2 or more soft drinks per day (*i.e.*, 140-300 calories and 35-75 grams of sugar) showed a 24% greater risk of type 2 diabetes, and those who drank 2 or more fruit drinks per day showed a 31% greater risk of type 2 diabetes, than those who drank 1 or less such drinks per month.[42]

59. A large cohort study of more than 70,000 women from the Nurses' Health Study followed for 18 years showed that those who consumed 2 to 3 apple, grapefruit, and orange juices per day (280-450 calories and 75-112.5 grams of sugar) had an 18% greater risk of type 2 diabetes than women who consumed less than 1 sugar-sweetened beverage per month. The data also showed a linear trend with increased consumption, as demonstrated below.[43]

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[42] Palmer, J.R., et al., "Sugar-Sweetened Beverages and Incidence of Type 2 Diabetes Mellitus in African American Women," *Archive of internal Medicine*, Vol. 168, No. 14, 1487-82 (July 28, 2008) [hereinafter "Palmer, Diabetes in African American Women"].

[43] Bazzano, L.A., et al., "Intake of fruit, vegetables, and fruit juices and risk of diabetes in women," *Diabetes Care*, Vol. 31, 1311-17 (2008).

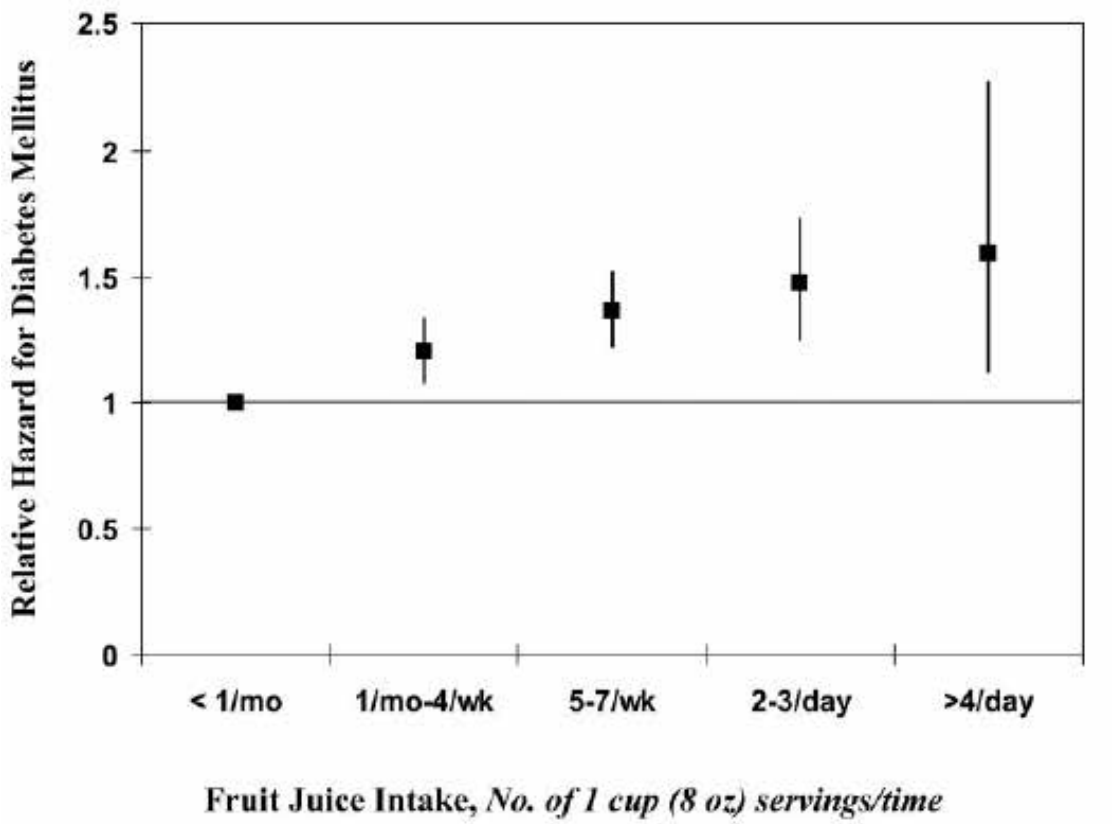

Figure 1—*Multivariate-adjusted relative hazard of diabetes by category of cumulatively updated fruit juice intake. Values were adjusted for cumulatively updated BMI, physical activity, family history of diabetes, postmenopausal hormone use, alcohol use, smoking, and total energy intake. For an increase of 1 serving/day of fruit juice, the multivariate-adjusted relative risk was 1.18 (95% CI 1.10–1.26; P < 0.0001).*

60. An analysis of more than 40,000 men from the Health Professionals Follow-Up Study, a prospective cohort study conducted over a 20-year period, found that, after adjusting for age and a wide variety of other confounders, those in the top quartile of sugar-sweetened beverage intake had a 24% greater risk of type 2 diabetes than those in the bottom quartile, while consumption of artificially-sweetened beverages, after adjustment, showed no association.[44]

61. Most convincingly, an econometric analysis of repeated cross-sectional data published in 2013 established a causal relationship between sugar availability and type 2 diabetes. After adjusting for a wide range of confounding factors, researchers found that an

[44] de Konig, L., et al., "Sugar-sweetened and artificially sweetened beverage consumption and risk of type 2 diabetes in men," *American Journal of Clinical Nutrition*, Vol. 93, 1321-27 (2011).

increase of 150 calories per day related to an insignificant 0.1% rise in diabetes prevalence by country, while an increase of 150 calories per day in sugar related to a 1.1% rise in diabetes prevalence by country, a statically-significant 11-fold difference.[45]

3. Excess Sugar Consumption Causes Cardiovascular Disease

62. Sixteen million Americans have heart disease, which is the number one killer in the United States.[46]

63. Data obtained from NHANES surveys during the periods of 1988-1994, 1999-2004, and 2005-2010, after adjusting for a wide variety of other factors, demonstrate that those who consumed between 10% - 24.9% of their calories from added sugars had a 30% greater risk of cardiovascular disease (CVD) mortality than those who consumed 5% or less of their calories from added sugar. In addition, those who consumed 25% or more of their calories from added sugars had an average 275% greater risk of CVD mortality than those who consumed less than 5% of calories from added sugar.[47]

64. Similarly, when compared to those who consumed approximately 8% of calories from added sugar, participants who consumed approximately 17% - 21% (the 4th quintile) of calories from added sugar had a 38% higher risk of CVD mortality, while the relative risk was more than double for those who consumed 21% or more of calories from added sugar (the 5th quintile). Thus, "[t]he risk of CVD mortality increased exponentially with increasing usual percentage of calories from added sugar,"[48] as demonstrated in the chart below.

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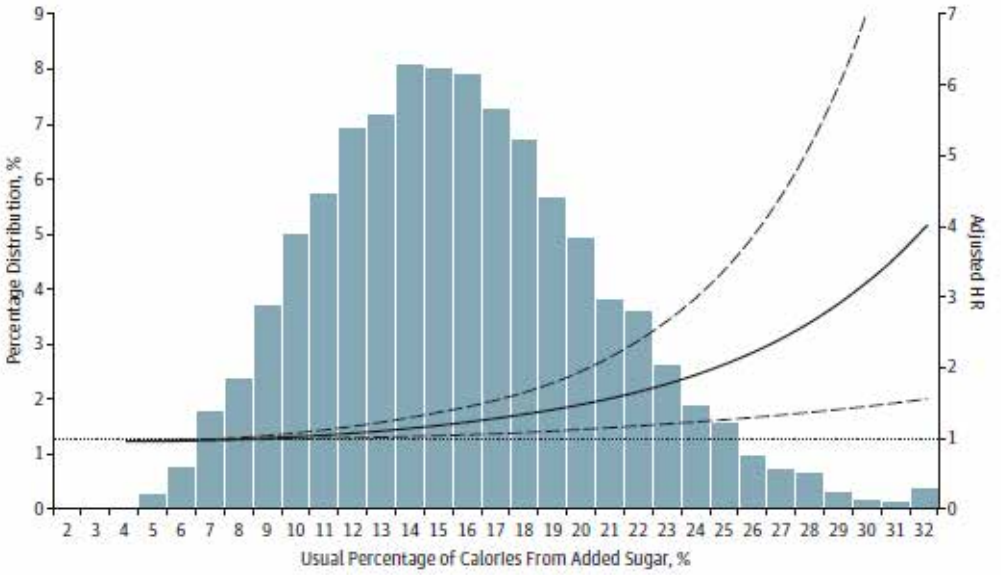
[45] Basu, S., et al., "The Relationship of Sugar to Population-Level Diabetes Prevelance: An Econometric Analysis of Repeated Cross-Sectional Data," *PLOS Online*, Vol. 8, Issue 2 (February 27, 2013).

[46] Gaddam, K.K., et al., "Metabolic syndrome and heart failure—the risk, paradox, and treatment," *Current Hypertension Reports*, Vol. 13, No. 2, 142-48 (2011).

[47] Yang, NHANES Analysis, *supra* n.12 at E4-5.

[48] *Id.*

Figure 1. Adjusted Hazard Ratio (HR) of the Usual Percentage of Calories From Added Sugar for Cardiovascular Disease Mortality Among US Adults 20 Years or Older: National Health and Nutrition Examination Survey Linked Mortality Files, 1988-2006



Histogram of the distribution of usual percentage of calories from added sugar in the population. Lines show the adjusted HRs from Cox models. Midvalue of quintile 1 (7.4%) was the reference standard. The model was adjusted for age, sex, race/ethnicity, educational attainment, smoking status, alcohol consumption, physical activity level, family history of cardiovascular disease, antihypertensive medication use, Healthy Eating Index score, body mass index, systolic blood pressure, total serum cholesterol, and total calories. Solid line indicates point estimates; dashed lines indicate 95% CIs.

65. The NHANES analysis also found "a significant association between sugar-sweetened beverage consumption and risk of CVD mortality," with an average 29% greater risk of CVD mortality "when comparing participants who consumed 7 or more servings/wk (360 mL per serving) with those who consumed 1 serving/wk or less . . . ."[49] The study concluded that "most US adults consume more added sugar than is recommended for a healthy diet. A higher percentage of calories from added sugar is associated with significantly increased risk of CVD mortality. In addition, regular consumption of sugar-sweetened beverages is associated with elevated CVD mortality."[50]

66. The Nurses' Health Study found that, after adjusting for other unhealthy lifestyle factors, those who consumed two or more sugar-sweetened beverages per day (280 calories and 70 grams of sugar or more) had a 35% greater risk of coronary heart disease compared

[49] *Id.* at E6.

[50] *Id.* at E8.

with infrequent consumers.[51]

4. Excess Sugar Consumption Causes Liver Disease

67. Fructose consumption causes serious liver disease, including non-alcoholic fatty liver disease (NAFLD), characterized by excess fat build-up in the liver. Five percent of these cases develop into non-alcoholic steatohepatitis (NASH), scarring as the liver tries to heal its injuries, which gradually cuts off vital blood flow to the liver. About 25% of NASH patients progress to non-alcoholic liver cirrhosis, which requires a liver transplant or can lead to death.[52]

68. Since 1980, the incidence of NAFLD and NASH has doubled, along with the rise of fructose consumption, with approximately 6 million Americans estimated to have progressed to NASH and 600,000 to Nash-related cirrhosis. Most people with NASH also have type 2 diabetes. NASH is now the third-leading reason for liver transplant in America.[53]

69. Moreover, because the liver metabolizes sugar virtually identically to alcohol, the U.S. is now seeing for the first time alcohol-related diseases in children. Conservative estimates are that 31% of American adults, and 13% of American children suffer from NAFLD.[54]

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[51] Fung T.T., et al., "Sweetened beverage consumption and risk of coronary heart disease in women," *American Journal of Clinical Nutrition*, Vol. 89 at 1037-42 (February 2009).

[52] Farrell, G.C., et al., "Nonalcoholic fatty liver disease: from steatosis to cirrhosis," *Hepatology*, Vol. 433, No. 2 (Suppl. 1), S99-S112 (February 2006); Powell, E.E., et al., "The Natural History of Nonalcoholic Steatohepatitis: A Follow-up Study of Forty-two Patients for Up to 21 Years," *Hepatology*, Vol. 11, No. 1 (1990).

[53] Charlton, M.R., et al., "Frequency and outcomes of liver transplantation for nonalcoholic steatohepatitis in the United States," *Gastroenterology*, Vol. 141, No. 4, 1249-53 (October 2011).

[54] Lindback, S.M., et al., "Pediatric Nonalcoholic Fatty Liver Disease: A Comprehensive Review," *Advances in Pediatrics*, Vol. 57, No. 1, 85-140 (2010); Lazo, M. et al., "The Epidemiology of Nonalcoholic Fatty Liver Disease: A Global Perspective," *Seminars in Liver Disease*, Vol. 28, No. 4, 339-50 (2008); Schwimmer, J.B., et al., "Prevalence of Fatty Liver in Children and Adolescents," *Pediatrics*, Vol. 118, No. 4, 1388-93 (2006); Browning, J.D.,

5. Excess Sugar Consumption Causes Obesity

70. Excess sugar consumption also leads to weight gain and obesity because insulin secreted in response to sugar intake instructs the cells to store excess energy as fat. This excess weight can then exacerbate the problems of excess sugar consumption, because excess fat, particularly around the waist, is in itself a primary cause of insulin resistance, another vicious cycle. Studies have shown that belly fat produces hormones and other substances that can cause insulin resistance, high blood pressure, abnormal cholesterol levels, and cardiovascular disease. And belly fat plays a part in the development of chronic inflammation in the body, which can cause damage over time without any signs or symptoms. Complex interactions in fat tissue draw immune cells to the area, which triggers low-level chronic inflammation. This in turn contributes even more to insulin resistance, type 2 diabetes, and cardiovascular disease.

71. Based on a meta-analysis of 30 studies between 1966 and 2005, Harvard researchers found "strong evidence for the independent role of the intake of sugar-sweetened beverages, particularly soda, in the promotion of weight gain and obesity in children and adolescents. Findings from prospective cohort studies conducted in adults, taken in conjunction with results from short-term feeding trials, also support a positive association between soda consumption and weight gain, obesity, or both."[55]

72. A recent meta-analysis by Harvard researchers evaluating change in Body Mass Index per increase in 1 serving of sugar-sweetened beverages per day found a significant positive association between beverage intake and weight gain.[56]

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et al., "Prevalence of hepatic steatosis in an urban population in the United States: Impact of ethnicity," *Hepatology*, Vol. 40, No. 6, 1387-95 (2004).

[55] Malik, V.S., et al., "Intake of sugar-sweetened beverages and weight gain: a systematic review," *American Journal of Clinical Nutrition*, Vol. 84, 274-88 (2006).

[56] Malik, V.S., et al., "Sugar-sweetened beverages and BMI in children and adolescents: reanalyses of a meta-analysis," *American Journal of Clinical Nutrition*, Vol. 29, 438-39 (2009).

73. One study of more than 2,000 2.5-year-old children followed for 3 years found that those who regularly consumed sugar-sweetened beverages between meals had a 240% better chance of being overweight than non-consumers.[57]

74. An analysis of data for more than 50,000 women from the Nurses' Health Study during two 4-year periods showed that weight gain over a 4-year period was highest among women who increased their sugar-sweetened beverage consumption from 1 or fewer drinks per week, to 1 or more drinks per day (8.0 kg gain during the 2 periods), and smallest among women who decreased their consumption or maintained a low intake level (2.8 kg gain).[58]

75. A study of more than 40,000 African American women over 10 years had similar results. After adjusting for confounding factors, those who increased sugar-sweetened beverage intake from less than 1 serving per week, to more than 1 serving per day, gained the most weight (6.8 kg), while women who decreased their intake gained the least (4.1 kg).[59]

76. A study of more than 6,000 participants in the Framingham Heart Study found those who consumed more than 1 soft drink per day had a 31% greater risk of obesity than those who consumed less than 1 soft drink per day.[60]

77. The link between sugar intake and weight gain was also demonstrated in a randomized, controlled intervention study, where "[a] simple 12 month school based intervention focused on reducing consumption of carbonated drinks resulted in significant differences in the proportion of overweight children in the control and intervention groups," as demonstrated in the chart below.

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[57] Dubois, L., et al., "Regular sugar-sweetened beverage consumption between meals increases risk of overweight among preschool-aged children," *Journal of the American Dietetic Association*, Vol. 107, Issue 6, 924-34 (2007).

[58] Schulze, Diabetes in Young & Middle-Aged Women, *supra* n.40.

[59] Palmer, Diabetes in African American Women, *supra* n.42.

[60] Dhingra, Cardiometabolic Risk, *supra* n.30.

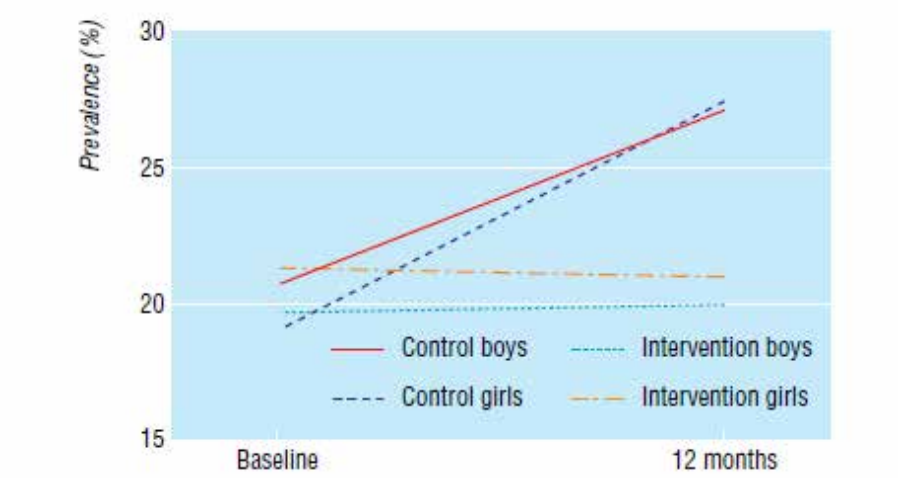

Fig 2 Mean change in prevalence of overweight and obese children from baseline to follow up at 12 months according to clusters

At a three-year follow-up, however, the significant difference seen between the groups after a year of focused education was no longer evident, with overweight more prevalent in both groups, providing further support for the link between sugar and weight gain.[61]

78. Similarly, experimental short-term feeding studies comparing sugar-sweetened beverages to artificially-sweetened beverages have illustrated that consumption of the former leads to greater weight gain. As demonstrated in the chart below, one 10-week trial involving more than 40 men and women demonstrated that the group that consumed daily supplements of sucrose (for 28% of total energy) increased body weight and fat mass, by 1.6 kg for men and 1.3 kg for women, while the group that was supplemented with artificial sweeteners lost weight—1.0 kg for men and 0.3 kg for women.[62]

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[61] James, J. et al., "Preventing childhood obesity: two year follow-up results from the Christchurch obesity prevention programme in schools (CHOPPS)," *BJM*, Vol. 335, 762 (2007) (discussing James, J., et al., "Preventing childhood obesity by reducing consumption of carbonated drinks: cluster randomized controlled trial," *BJM*, Vol. 328, 1237 (April 27, 2004)).

[62] Raben, A., et al., "Sucrose compared with artificial sweeteners: different effects on ad libitum food intake and body weight after 10 wk of supplementation in overweight subjects," *American Journal of Clinical Nutrition*, Vol. 76, 721-29 (2002) [hereinafter, "Raben, Sucrose vs. Artificial Sweeteners"].

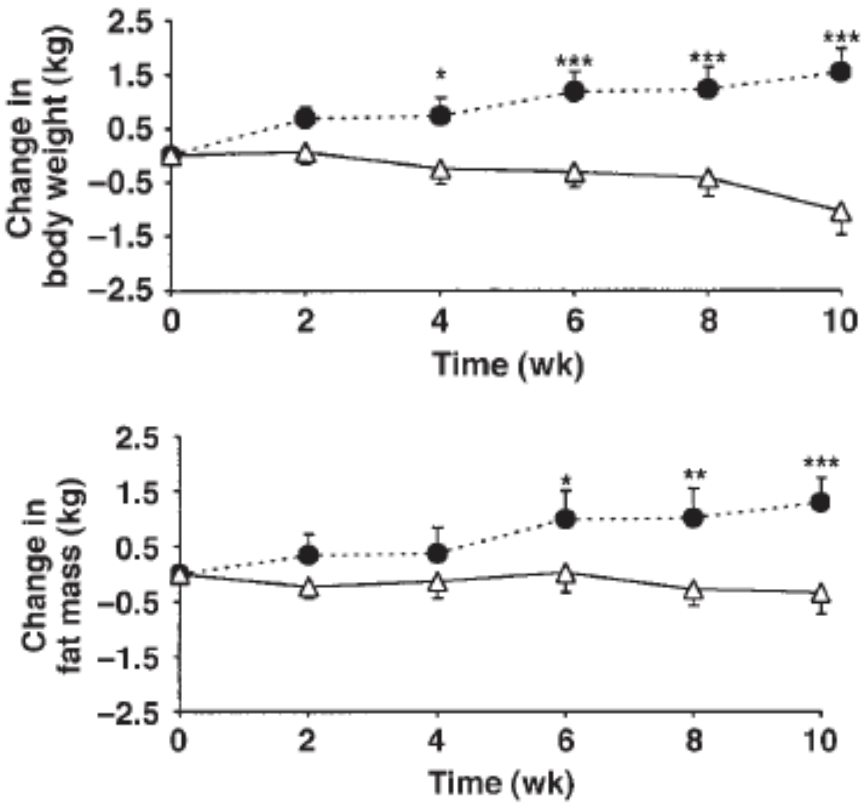

FIGURE 2. Mean (± SEM) changes in body weight, fat mass, and fat-free mass during an intervention in which overweight subjects consumed supplements containing either sucrose (●; $n = 21$) or artificial sweeteners (△; $n = 20$) daily for 10 wk. The diet × time interactions were significant for changes in body weight ($P < 0.0001$) and fat mass ($P < 0.05$) by analysis of variance with Tukey's post hoc tests. At specific time points for changes in body weight and fat mass, there were significant differences between the sucrose and sweetener groups: $^{*}P < 0.05$, $^{**}P < 0.001$, and $^{***}P < 0.0001$ (general linear model with least squares means and adjustment for multiple comparisons).

79. In another, 3-week study, researchers gave normal-weight subjects 1150 grams of soda per day, sweetened with either aspartame or HFCS. The experiment found that drinking artificially-sweetened soda reduced calorie intake and body weight of men, while drinking HFCS-sweetened soda significantly increased calorie intake and body weight of both sexes, as demonstrated in the chart below.[63]

[63] Tordoff, M.G., et al., "Effect of drinking soda sweetened with aspartame or high-fructose corn syrup on food intake and body weight," *American Journal of Clinical Nutrition*, Vol. 51, 963-69 (1990).

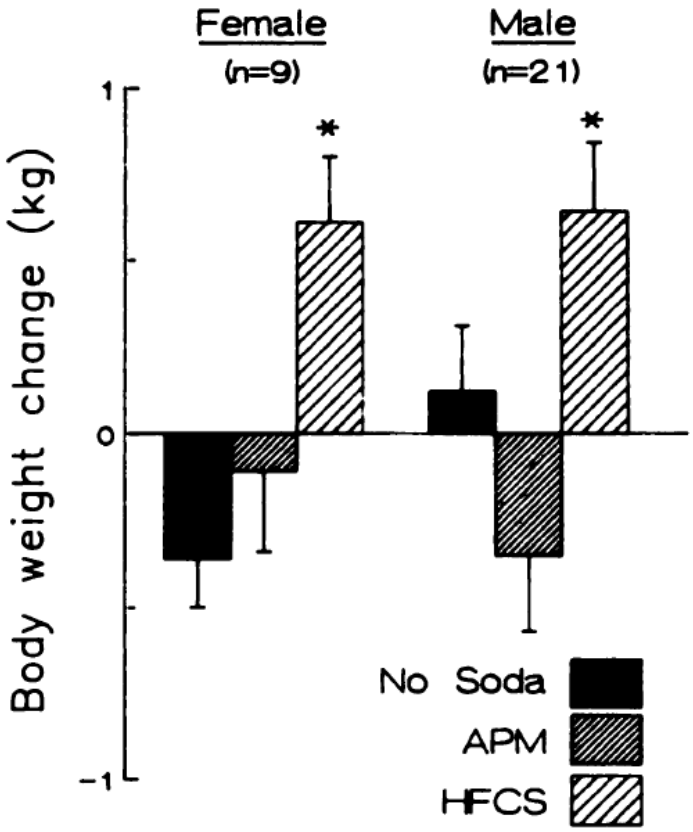

FIG 1. Changes in body weight during 3-wk periods when subjects drank 1150 g/d of soda sweetened with aspartame (APM), an equal weight of soda sweetened with high-fructose corn syrup (HFCS), or had no experimental manipulation (no soda). *$p < 0.05$ relative to weight gain in no-soda period.

6. Excess Sugar Consumption Causes Inflammation

80. Inflammation has been associated with type 2 diabetes, myocardial infarction, and stroke, as well as weight gain and obesity.[64]

81. A 10-week study comparing a group whose sucrose intake was increased by 151% to a group whose intake was decreased by 42% showed the former's blood concentration of the biological markers for inflammation, haptoglobin, transferrin, and C-

[64] Sorensen, L.B., et al., "Effect of sucrose on inflammatory markers in overweight humans," *American Journal of Clinical Nutrition*, Vol. 82, 421-27 (2005) (citations omitted) [hereinafter, "Sorensen, Inflammatory Markers"]; *see also* Pearson, T.A., et al., "Markers of Inflammation and Cardiovascular Disease: Application to Clinical and Public Health Practice, A Statement for Healthcare Professionals From the Centers for Disease Control and Prevention and the American Heart Association," *Circulation*, Vol. 107, 499-511 (2003).

reactive protein, increased by 13%, 5%, and 6%, respectively, while the later group's concentrations decreased by 16%, 2%, and 26% respectively.[65]

82. In a prospective, randomized, controlled crossover trial, 29 subjects were studied over six 3-week interventions in which they either consumed various amounts of fructose, glucose, or sucrose, or received dietary advice to consume low amounts of fructose. The study showed LDL particle size reducing (associated with atherosclerosis) by 0.51 nm after high-fructose intake (80 grams per day), and by 0.43 nm after high-sucrose intake (also 80 grams per day). It also found significant increases in fasting glucose and C-reactive protein, leading the authors to conclude that the "data show potentially harmful effects of low to moderate consumption of SSBs on markers of cardiovascular risk such as LDL particles, fasting glucose, and [C-reactive protein] within just 3 wk in healthy young men, which is of particular significance for young consumers."[66]

83. In a nested case-control study of 656 cases of type 2 diabetes and 694 controls from the Nurses Study, researchers identified a dietary pattern strongly related to inflammatory markers, which was high in sugar-sweetened soft drinks, showing linear trends across quintiles of dietary pattern for six inflammation markers.

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[65] Sorensen, Inflammatory Markers, *supra* n.64.

[66] Aeberli, I., et al., "Low to moderate sugar-sweetened beverage consumption impairs glucose and lipid metabolism and promotes inflammation in healthy young men: a randomized controlled trial," *American Journal of Clinical Nutrition*, Vol. 94, 479-85 (2011).

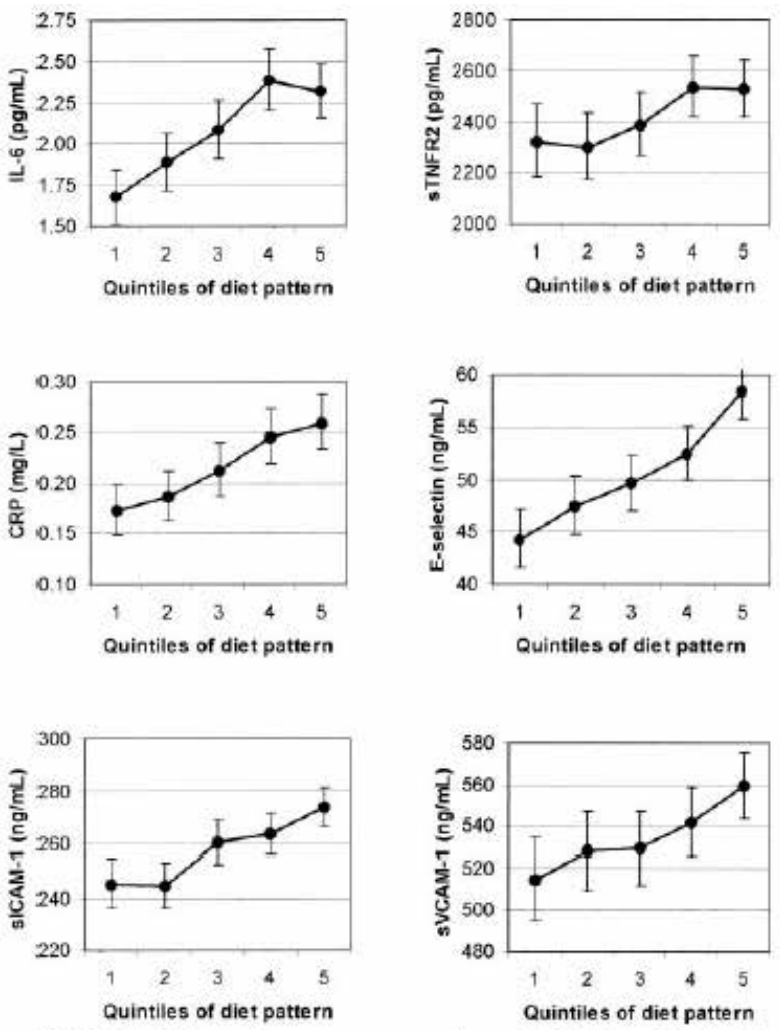

FIGURE 1. Geometric mean concentrations and 95% CIs of interleukin 6 (IL-6), soluble tumor necrosis factor α receptor 2 (sTNFR2), C-reactive protein (CRP), E-selectin, soluble intracellular cell adhesion molecule 1 (sICAM-1), and soluble vascular cell adhesion molecule 1 (sVCAM-1) by quintiles of diet pattern score adjusted for age, BMI (9 categories), physical activity (quintiles), family history of diabetes, smoking (never, past, current, or missing), postmenopausal hormone use (never, ever, or missing), energy intake (quintiles), and fasting status. The comparison between quintile 5 and quintile 1 was significant for all biomarkers, $P < 0.05$. Quintile cutoffs were based on distributions in controls.

7. Excess Sugar Consumption Causes High Blood Triglycerides and Abnormal Cholesterol Levels

84. Fructose facilitates the biochemical formation of triacylglycerols more efficiently than does glucose.[67] This is because fructose metabolism in the liver converts the fructose to fructose-1-phosphate, which readily becomes a substrate for the backbone of the

[67] Elliot, Fructose & Insulin Resistance, *supra* n.21.

triglyceride molecule.[68] As compared to starches, sugars—particularly sucrose and fructose—tend to increase serum triacylglycerol concentrations by about 60%.[69]

85. Cholesterol is a waxy, fat-like substance found in the body's cells, used to make hormones, bile acids, vitamin D, and other substances. The human body manufactures all the cholesterol it requires, which circulates in the bloodstream in packages called lipoproteins. Excess cholesterol in the bloodstream can become trapped in artery walls, building into plaque and narrowing blood vessels, making them less flexible, a condition called atherosclerosis. When this happens in the coronary arteries, it restricts oxygen and nutrients to the heart, causing chest pain or angina. When cholesterol-rich plaques in these arteries burst, a clot can form, blocking blood flow and causing a heart attack.

86. Most blood cholesterol is low-density lipoprotein, or LDL cholesterol, which is sometimes called "bad" cholesterol because it carries cholesterol *to* the body's tissues and arteries, increasing the risk of heart disease. High-density lipoprotein, or HDL cholesterol, is sometimes called "good" cholesterol because it removes excess cholesterol from the cardiovascular system, bringing it to the liver for removal. Thus, a *low* level of HDL cholesterol increases the risk of heart disease.

87. Diet affects blood cholesterol. For example, the body reacts to saturated fat by producing LDL cholesterol.

88. When the liver is overwhelmed by large doses of fructose, it will convert excess to fat, which is stored in the liver and then released into the bloodstream, contributing to key elements of metabolic syndrome, like high blood fat and triglycerides, high total cholesterol, and low HDL "good" cholesterol.[70]

89. A study of more than 6,000 participants in the Framingham Heart Study found

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[68] Bray, G.A., "Soft Drinks and Obesity: The Evidence," *CMR e-Journal*, Vol. 2, Issue, 2, 10-14, at 13 (Oct. 2009).

[69] Fried, Hypertriglyceridemia, *supra* n.27, at 873S.

[70] Te Morenga, Dietary Sugars & Body Weight, *supra* n.26.

those who consumed more than 1 soft drink per day had a 25% greater risk of hypertriglyceridemia, and 32% greater risk of low HDL cholesterol than those who consumed less than 1 soft drink per day.[71]

90. A systematic review and meta-analysis of 37 randomized controlled trials concerning the link between sugar intake and blood pressure and lipids found that higher sugar intakes, compared to lower sugar intakes, significantly raised triglyceride concentrations, total cholesterol, and low density lipoprotein cholesterol.[72]

91. A cross-sectional study among more than 6,100 U.S. adults from the NHANES 1999-2006 data were grouped into quintiles for sugar intake as follows: (1) less than 5% of calories consumed from sugar, (2) 5% to less than 10%, (3) 10% to less than 17.5%, (4) 17.5% to less than 25%, and (5) 25% or more. These groups had the following adjusted mean HDL levels (because HDL is the "good" cholesterol, higher levels are better): 58.7 mg/dL, 57.5, 53.7, 51.0, and 47.7. Mean triglyceride levels were 105 mg/dL, 102, 111, 113, and 114. Mean LDL levels were 116 mg/dL, 115, 118, 121, and 123 among women, with no significant trend among men. Consumers whose sugar intake accounted for more than 10% of calories had a 50% - 300% higher risk of low HDL levels compared to those who consumed less than 5% of calories from sugar. Likewise, high-sugar consumers had greater risk of high triglycerides. All relationships were linear as demonstrated in the charts below.[73]

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[71] Dhingra, Cardiometabolic Risk, *supra* n.30.

[72] Te Morenga, L., et al., "Dietary sugars and cardiometabolic risk: systematic review and meta-analyses of randomized controlled trials on the effects on blood pressure and lipids," *American Journal of Clinical Nutrition*, Vol. 100, No. 1, 65-79 (May 7, 2014).

[73] Welsh, J.A., et al., "Caloric Sweetener Consumption and Dyslipidemia Among US Adults," *Journal of the American Medical Association*, Vol. 303, No. 15, 1490-97 (April 21, 2010).

Figure 1. Multivariable-Adjusted Mean HDL-C Levels by Level of Added Sugar Intake Among US Adults, NHANES 1999-2006

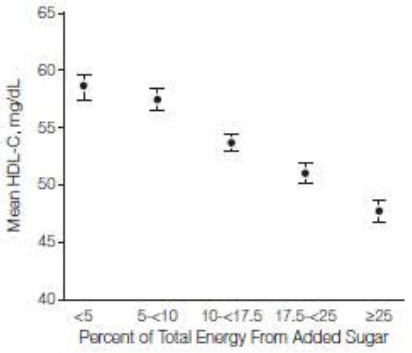


Figure 2. Multivariable-Adjusted Geometric Mean Triglyceride Levels by Level of Added Sugar Intake Among US Adults, NHANES 1999-2006

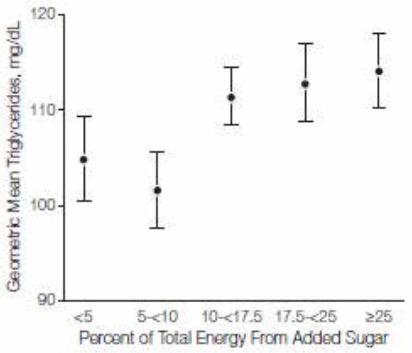
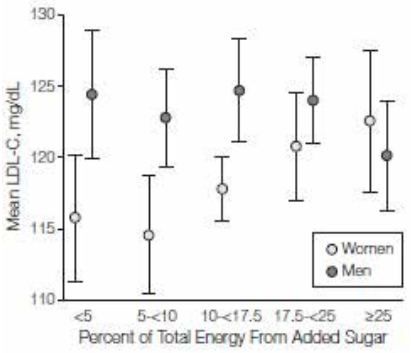


Figure 3. Multivariable-Adjusted Mean LDL-C Levels by Level of Added Sugar Intake Among US Men and Women, NHANES 1999-2006



92. One experimental study showed that, when a 17% fructose diet was provided to healthy men, they showed an increase in plasma triacylglycerol concentrations of 32%.[74]

93. Another 10-week experimental feeding study showed that those who were fed 25% of their energy requirements as fructose experienced increases in LDL cholesterol, small dense LDL cholesterol, and oxidized LDL cholesterol, as well as increased concentrations of triglycerides and total cholesterol, while those fed a 25% diet of glucose did not experience the same adverse effects.[75]

94. In a cross-sectional study of normal weight and overweight children aged 6-14, researchers found that "the only dietary factor that was a significant predictor of LDL particle size was total fructose intake."[76]

8. Excess Sugar Consumption is Associated with Hypertension

95. A study of more than 6,000 participants in the Framingham Heart Study found those who consumed more than 1 soft drink per day had a 22% greater incidence, and an 18%

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[74] Bantle, J.P., et al., "Effects of dietary fructose on plasma lipids in healthy subjects," *American Journal of Clinical Nutrition*, Vol. 72, 1128-34 (2000).

[75] Stanhope, K.L., et al., "Consuming fructose-sweetened, not glucose-sweetened, beverages increases visceral adiposity and lipids and decreases insulin sensitivity in overweight/obese humans," *The Journal of Clinical Investigation*, Vol. 119, No. 5, 1322-34 (May 2009).

[76] Aeberli, I., et al., "Fructose intake is a predictor of LDL particle size in overweight schoolchildren," *American Journal of Clinical Nutrition*, Vol. 86, 1174-78 (2007).

greater risk of high blood pressure than those who consumed less than 1 soft drink per day.[77]

96. An analysis of the NHANES data for more than 4,800 adolescents also showed a positive, linear association between sugar-sweetened beverages and higher systolic blood pressure, as well as corresponding increases in serum uric acid levels.[78]

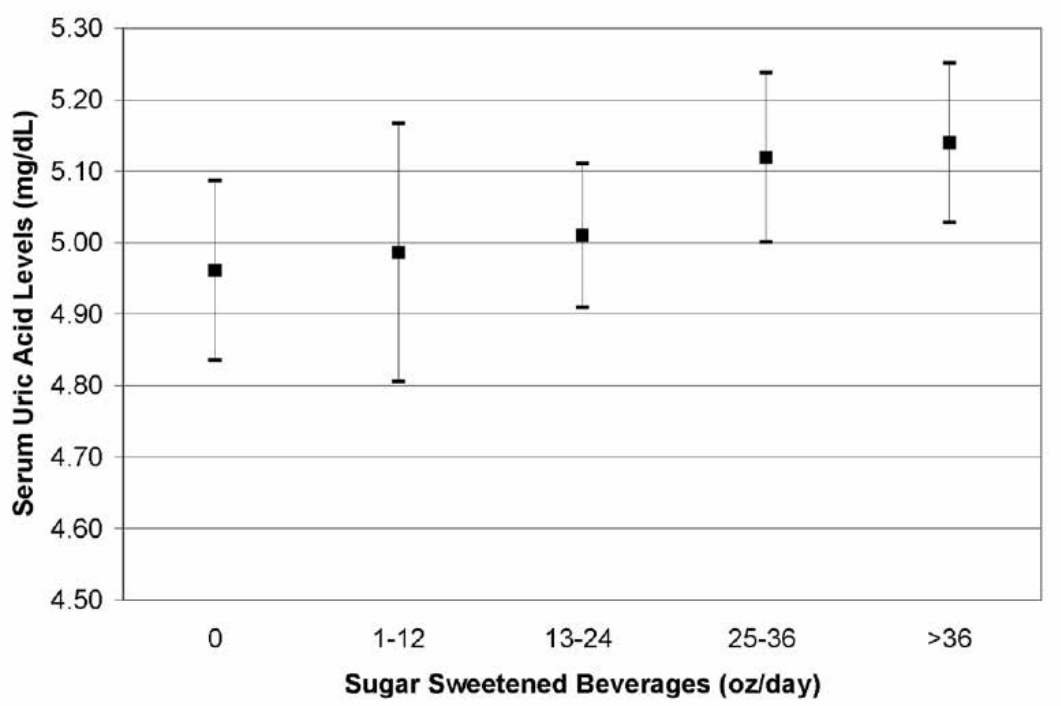

Figure 1.
Sample mean of serum uric acid with 95% confidence intervals by categories of sugar sweetened beverage consumption adjusted for age, race/ethnicity, sex, total calories, BMI z-score, alcohol, smoking, dietary fiber intake, diet beverage consumption, and milk consumption. *P* for trend = 0.01

97. In one study, 15 healthy men drank 500 ml water containing either no sugar, 60 grams of fructose, or 60 grams of glucose. Blood pressure, metabolic rate, and autonomic nervous system activity were measured for 2 hours. While the administration of fructose was associated with an increase in both systolic and diastolic blood pressure, blood pressure did not rise in response to either water or glucose ingestion, as demonstrated in the chart below.[79]

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[77] Dhingra, Cardiometabolic Risk, *supra* n.30.

[78] Nguyen, Serum Uric Acid, *supra* n.22.

[79] Brown, C.M., et al., "Fructose ingestion acutely elevates blood pressure in healthy young humans," *Am. J. Physiol. Regul. Integr. Compl. Physiol.*, Vol. 294, R730-37 (2008).

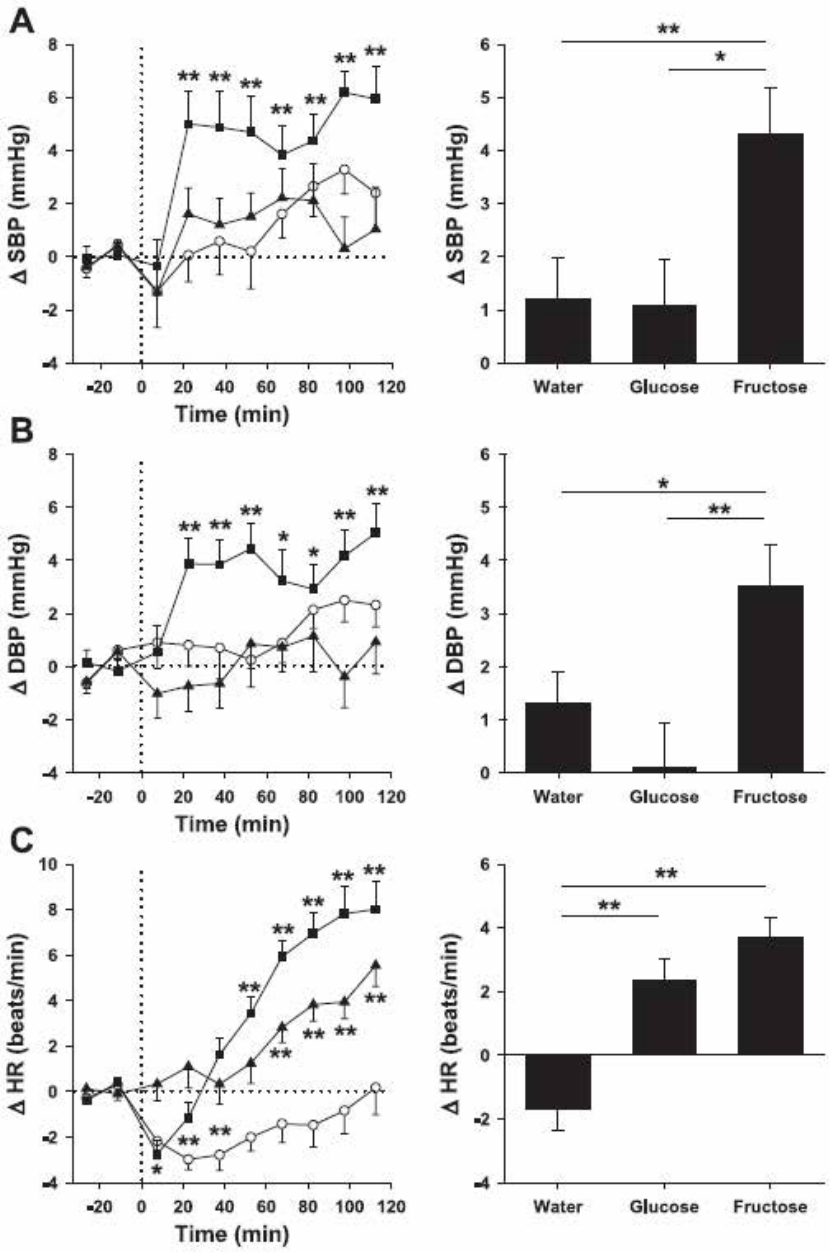

Fig. 1. Time course of the systolic blood pressure (SBP; *A*), diastolic blood pressure (DBP; *B*), and heart rate (HR; *C*) changes (*left*) and mean responses (*right*) to drinking water (○), glucose (▲), and fructose (■). $*P < 0.05$ and $**P < 0.01$, statistically significant differences over time from baseline values (*left*) and differences between responses to the drinks (*right*).

98. In another study, more than 40 overweight men and women were supplemented for 10 weeks with either sucrose or artificial sweeteners. The sucrose group saw an increase in systolic and diastolic blood pressure, of 3.8 and 4.1 mm Hg, respectively, while the artificial sweetener group saw a decrease in systolic and diastolic blood pressure, of 3.1 and 1.2 mm Hg, respectively.[80]

99. Another study took a variety of approaches to measuring the association between

[80] Raben, Sucrose vs. Artificial Sweeteners, *supra* n.62.

sugar intake and blood pressure, concluding that an increase of 1 serving of sugar-sweetened beverages per day (*i.e.*, 140-150 calories, and 35-37.5 grams of sugar) was associated with systolic/diastolic blood pressure differences of +1.6 and +0.8 mm Hg (and +1.1/+0.4 mm Hg with adjustment for height and weight), while an increase of 2 servings results in systolic/diastolic blood pressure differences of +3.4/+2.2, demonstrating that the relationship is direct and linear.[81]

9. Excess Sugar Consumption is Associated with Alzheimer's Disease, Dementia, and Cognitive Decline

100. In a study of over 2,000 participants over 6.8 years, researchers found that higher average glucose levels within the preceding 5 years (115 mg/dL compared to 100 mg/dL) were related to an 18% increased risk of dementia among those without diabetes. For those with diabetes, higher average glucose levels (190 mg/dL compared to 160 mg/dL) were related to a 40% increased risk of dementia.[82]

101. "To evaluate a possible association between fructose mediated metabolic changes and cognitive behaviour," researchers "assessed the correlation of serum triglyceride and insulin resistance levels with memory," and "found a positive correlation between serum triglyceride levels and insulin resistance index . . . , which indicates that increased serum triglyceride levels may contribute to increase[d] insulin resistance . . . ." And researchers "found that the latency time varied in proportion to the insulin resistance . . . , which suggests that memory performance may rely on levels of insulin resistance . . . ."[83]

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[81] Brown, I.J., et al., "Sugar-Sweetened Beverage, Sugar Intake of Individuals, and Their Blood Pressure: International Study of Macro/Micronutrients and Blood Pressure," *Hypertension*, Vol. 57, 695-701 (2011).

[82] Crane, P.K, et al., "Glucose Levels and Risk of Dementia," *New England Journal of Medicine*, Vol. 369, No. 6, 540-48 (2013).

[83] Agrawal, R., et al., "'Metabolic syndrome' in the brain: deficiency in omega-3 fatty acid exacerbates dysfunctions in insulin receptor signaling and cognition," *Journal of Physiology*, Vol. 590, No. 10, 2485-99, at 2489 (2012).

10. Excess Sugar Consumption is Linked to Some Cancers

102. In a population-based case-control study involving 424 cases and 398 controls, women in the highest quartile of added sugar intake had an 84% greater risk of endometrial cancer.[84] Similarly, in a study of patients with stage 3 colon cancer, those in the highest quintile of glycemic load experienced worsening in disease-free survival of approximately 80% compared to those in the lowest quintile.[85]

103. A population based case-control study on Malaysian women found a significant, two-fold increased risk of breast cancer among premenopausal and postmenopausal women in the highest quartile of sugar intake.[86]

104. A prospective epidemiological study of nearly 45,000 cancer cases among 436,000 participants aged 50-71, found added sugars were positively associated with risk of esophageal adenocarcinoma; added fructose was associated with risk of small intestine cancer; and all investigated sugars were associated with increased risk of pleural cancer.[87]

E. There is Substantial Evidence That Consuming Artificial Trans Fat—Found in Some Kellogg's Nutri-Grain Bars—is Detrimental to Health

105. Artificial trans fat is created through the industrial process of hydrogenation, in which hydrogen atoms are added to normal vegetable oil by heating it in the presence of an ion donor catalyst metal, like nickel. The process was invented in 1901 by German scientist

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[84] King, M.G., et al., "Consumption of Sugary Foods and Drinks and Risk of Endometrial Cancer," *Cancer Causes Control*, Vol. 24, No. 7, 1427-36 (July 2013).

[85] Meyerhardt, J.A., et al. "Association of dietary patterns with cancer recurrence and survival in patients with stage III colon cancer," *Journal of the American Medical Association*, Vol. 298, 754-64 (2007).

[86] Sulaiman, S., et al., "Dietary carbohydrate, fiber and sugar and risk of breast cancer according to menopausal status in Malaysia," *Asian Pacific Journal of Cancer Prevention*, Vol. 15, 5959 (2014)

[87] Tasevska, N., et al., "Sugars in diet and risk of cancer in the NIH-AARP Diet and Health Study," *International Journal of Cancer*, Vol. 130, No. 1, 159-69 (Jan. 1, 2012)

Wilhelm Normann. The resulting partially hydrogenated vegetable oil (or PHVO) is useful in manufacturing packaged foods because, unlike natural fat which needs refrigeration for rigidity or else liquefies, trans fat remains solid at room temperature.

106. Human beings, however, have not evolved to digest this artificial fat. Instead, it is readily incorporated into organ and blood cells in place of natural fats with devastating consequences, causing and exacerbating cardiovascular disease, type-2 diabetes and cancer. When trans fat invades blood cell walls, for example, their ability to recognize and use insulin is retarded, leading to excessive blood sugar and insulin swings, and eventually to diabetes. And for existing diabetics, trans fat exacerbates symptoms and causes cognitive decline. By disfiguring the body's cells, trans fat also interferes with the immune system's ability to distinguish the body's cells from foreign infections, causing it to become persistently overactive, a condition known as chronic systemic inflammation, damaging nearly every human organ.

107. But it is the deleterious effects of trans fat on the cardiovascular system that presents the gravest public health danger. Analysis of the Nurses' Health Study data shows risk of coronary heart disease doubles for each 2% increase in trans fat calories consumed.[88] And a wide variety of experimentally sound, peer-reviewed studies convincingly demonstrate that consuming even small quantities of artificial trans fat greatly increases incidences of death from cancer, diabetes, and heart disease.[89]

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[88] Hu, F.B., et al., "Dietary Fat Intake and the Risk of Coronary Heart Disease in Women," *New England Journal of Medicine*, Vol. 337, No. 2, at 1491-99 (Nov. 20, 1997).

[89] Koppe, S. et al., "Trans fat feeding results in higher serum alanine aminotransferase and increased insulin resistance compared with a standard murine high-fat diet," *American Journal of Physiology, Gastriointestinal and Liver Physiology*, Vol. 297 at G378 (2009); Wang, Y. et al., "Trans-11 Vaccenic Acid Dietary Supplementation Induces Hypolipidemic Effects on JCR:LA-cp Rats," *Journal of Nutrition*, Vol. 138, at 2117 (Nov. 2008); Chajès, V., et al., "Association between Serum Trans-Monounsaturated Fatty Acids and Breast Cancer Risk in the E3N-EPIC Study," *American Journal of Epidemiology*, Vol. 167 at 1312 (2008); Vinikoor, L.C. , et al., "Consumption of Trans-Fatty Acid and its Association with Colorectal Adenomas," *American Journal of Epidiemiology*, Vol. 168, at 181 (2007); Liu,

108. Epidemiologists estimate that artificial trans fat consumption contributes to as many as 100,000 otherwise preventable American deaths each year.[90]

109. In November 2013, the FDA issued a Tentative Determination Regarding Partially Hydrogenated Oils, in which it stated:

> Based on new scientific evidence and the findings of expert scientific panels, the Food and Drug Administration (FDA) has tentatively determined that partially hydrogenated oils (PHOs), which are the primary dietary source of industrially-produced *trans* fatty acids, or *trans* fat, are not generally recognized as safe (GRAS) for any use in food based on current scientific evidence establishing the health risks associated with the consumption of *trans* fat . . . .
>
> [. . .]
>
> The current scientific evidence . . . identifies significant health risks caused by the consumption of *trans* fat. This evidence includes the opinions of expert

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X., et al., "Trans-Fatty Acid Intake and Increased Risk of Advanced Prostate Cancer: Modification by RNASEL R462Q Variant," *Carcinogenesis*, Vol. 28, at 1232 (2007); Mozaffairan, D., et al., "Trans Fatty Acids and Cardiovascular Disease," *New England Journal of Medicine*, Vol. 354, at 1601 (2006); Chavarro, J., et al., "A Prospective Study of Blood Trans Fatty Acid Levels and Risk of Prostate Cancer," *Proceedings of the American Association of Cancer Research*, Vol. 47, at 95 (2006); Clifton, P.M., et al., "Trans Fatty Acids In Adipose Tissue And The Food Supply Are Associated With Myocardial Infarction," *Journal of Nutrition*, Vol. 134, at 874 (2004); Lemaitre, R.N., et al., "Cell Membrane Trans-Fatty Acids and the Risk of Primary Cardiac Arrest," *Circulation*, Vol. 105, at 697 (2002); Salmeron, J., et al., "Dietary Fat Intake and Risk of Type 2 Diabetes in Women," *American Journal of Clinical Nutrition*, Vol. 73, at 1019 (2001); De Roos, N.M., et al., "Replacement of Dietary Saturated Fatty Acids by Trans Fatty Acids Lowers Serum HDL Cholesterol and Impairs Endothelial Function in Healthy Men and Women," *Arteriosclerosis, Thrombosis, and Vascular Biology*, Vol. 21, at 1233 (2001); Ascherio, A., et al., "Trans Fatty Acids & Coronary Heart Disease," *New England Journal of Medicine*, Vol. 340, at 94 (1999) [hereinafter "Ascherio, Replacement of Dietary Saturated Fat with Trans Fat"]; Willet, W.C., et al., "Trans Fatty Acids: Are the Effects only Marginal?," *American Journal of Public Health*, Vol. 84, at 722 (1994).

[90] Ascherio, Replacement of Dietary Saturated Fat with Trans Fat, *supra* n.89 (Removing 2% of daily calories from trans fat from the American diet "would prevent approximately 30,000 premature coronary deaths per year, and epidemiologic evidence suggests this number is closer to 100,000 premature deaths annually.").

> panels and the 2005 recommendation of the Institute of Medicine (IOM) to limit *trans* fat consumption as much as possible while consuming a nutritionally adequate diet . . . . In addition, according to the Centers for Disease Control and Prevention (CDC), elimination of PHOs from the food supply could prevent 10,000 to 20,000 coronary events and 3,000 to 7,000 coronary deaths annually . . . . Given this evidence, we have tentatively determined that there is no longer a consensus among qualified scientific experts that PHOs, the primary dietary source of industrially-produced *trans* fatty acids, are safe for human consumption, either directly or as ingredients in other food products.

75 Fed. Reg. 67169, 67169 (Nov. 8, 2013).

KELLOGG'S MARKETING & SALE OF HIGH-SUGAR CEREALS & BARS

110. Kellogg was founded in 1906 and is headquartered in Battle Creek, Michigan. Kellogg is a multi-billion dollar food company that manufactures, markets, and sells a wide variety of cereals and bars, among other foods. Kellogg is the world's leading producer of cereal.

111. Among Kellogg's largest brands are its cereals. In fact, five of the top-10 U.S. cereal brands in 2015 belonged to Kellogg. That includes *Frosted Mini-Wheats*, which had sales of $266.4 million in 2015, representing a 3% share of the $8.9 billion market. And with $190.4 million in sales, *Kellogg's Raisin Bran* has a 2.1% share of the U.S. cereal market.

112. In 2014, the cereal industry used 816 million pounds of sugar, or about 2.5 lbs. for each of the 318.9 million people in the U.S. in 2014. That is 1,134 grams per person, or 3 grams per person, per day, for every man, woman, and child in the U.S. That totals more than ***361 billion*** grams of sugar in one year.

113. In addition to cereals, Kellogg manufactures, markets, and sells other foods including, relevant here, bars under it's popular brand, Nutri-Grain.

114. During the last decade, as consumer interest in healthy eating has grown, and based on sophisticated consumer research, Kellogg has intentionally positioned itself in the market as a purportedly "healthy" brand of processed food, by using various labeling statements to suggest its foods, especially its cereals and bars, are healthy choices.

115. Many of Kellogg's cereals and bars, however, contain high amounts of sugar,

such that their regular consumption is likely to contribute to excess added sugar consumption and, thereby, increased risk for and contraction of chronic disease.

116. As with any company the size of Kellogg, and with as many products, Kellogg makes occasional changes in product offerings (for example, discontinuing or introducing new products or varieties), product formulations, and product labeling and packaging.

117. Regardless of such changes, however, during the previous four years and dating back even further into at least the mid-2000s, Kellogg has maintained, and to this day actively maintains a policy and practice of labeling high-sugar cereals and bars—those that contribute significantly more than 5% of calories from sugar, and thus whose regular consumption is likely to contribute to increased risk of illness—with various health and wellness claims that suggest the cereals and bars are healthy, when they are not.

118. Kellogg bolsters this practice with websites dedicated to the products that repeat and in some instances state even more aggressive health and wellness claims.

119. This policy and practice is apparent in Kellogg's consistent use of certain words and phrases across many cereals and bars, including different flavors, varieties, and packaging. For example, this Complaint details a *non-exclusive* set of misleading statements made in the labeling of more approximately 50 different Kellogg cereals and bars. Among those statements:

a. The phrase "whole grain" appears more than 130 times.

b. The word "fiber" appears more than 45 times.

c. The word "health" or "healthy" appears more than 40 times.

d. The word "wholesome" appears more than 20 times.

e. The phrases "lightly sweetened," "lightly frosted," or "touch of sweetness" appear at least 20 times.

f. Phrases incorporating the use of the word "start" appear more than 15 times (such as "start with a healthy spoonful," "a great way to start the day," "start right," etc.)

g. The word "nutrition" or "nutritious" appears at least 15 times.

h. The word "nutrients" appears another 15 times.

i. The phrase "no high fructose corn syrup" appears more than 10 times.

120. Although plaintiff was the victim of Kellogg's longtime and general policy and practice with respect to the cereals and bars he purchased and labels he saw, this Complaint and his claims are not so limited; rather, plaintiff seeks through this lawsuit to enjoin Kellogg's *policy and practice generally*, including but not necessarily limited to the products, labels, and label claims challenged herein.

121. In fact, plaintiff has enjoyed Kellogg products in the past. If he could be assured through prospective injunctive relief that, if a Kellogg product's label sets forth health and wellness claims, the product does *not* contain excess sugar, he would consider purchasing Kellogg products bearing such claims in the future.

122. Further, if plaintiff could be assured that *un*healthy Kellogg products—those high in added sugar—are appropriately priced, rather than artificially inflated in price due to Kellogg's use of misleading health and wellness claims, plaintiff might, under certain circumstances, consider purchasing such Kellogg products in the future, "eyes wide open," for example to consume in careful moderation as a reward or treat, to accommodate food allergies or preferences for guests, or due to cost, convenience, or circumstances beyond control, such as when only certain food is available.

123. The cereals and bars that are the subject of this Complaint and examples of Kellogg's policy and practice of marketing high-sugar foods with misleading health and wellness claims, are the following:

a. <u>Kellogg's Raisin Bran</u>
   (i.) *Original*
   (ii.) *Crunch*
   (iii.) *Cinnamon Almond*
   (iv.) *Omega-3 250mg ALA From Flaxseed*
   (v.) *With Cranberries*

b. <u>Kellogg's Krave</u>
   (i.) *Chocolate*
   (ii.) *Double Chocolate*

(iii.) *S'mores*

c. Kellogg's Frosted Mini-Wheats
   (i.) *Original*
   (ii.) *Maple Brown Sugar*
   (iii.) *Strawberry*
   (iv.) *Blueberry*
   (v.) *Big Bite – Original*
   (vi.) *Bite Size – Original*
   (vii.) *Bite Size – Blueberry Muffin*
   (viii.) *Bite Size – Blueberry Muffin*
   (ix.) *Bite Size – Strawberry Delight*
   (x.) *Cinnamon Streusel*
   (xi.) *Little Bites Original*
   (xii.) *Little Bites Cinnamon Roll*
   (xiii.) *Little Bites Chocolate*
   (xiv.) *Touch of Fruit in the Middle: Raspberry*
   (xv.) *Touch of Fruit in the Middle: Raisin*
   (xvi.) *Touch of Fruit in the Middle: Mixed Berry*
   (xvii.) *Harvest Delights – Blueberry with Vanilla Drizzle*
   (xviii.) *Harvest Delights – Cranberry with Yogurt Drizzle*

d. Kellogg's Smart Start – Original Antioxidants

e. Kellogg's Crunchy Nut

124. Other products that are the subject of this Complaint and examples of Kellogg's policy and practice of marketing high-sugar foods with misleading health and wellness claims as detailed below, are the following bars:

a. Nutri-Grain Cereal Bars
   (i.) *Apple Cinnamon*
   (ii.) *Blueberry*
   (iii.) *Mixed Berry*
   (iv.) *Cherry*
   (v.) *Strawberry*
   (vi.) *Strawberry Greek Yogurt*

b. Nutri-Grain Soft-Baked Breakfast Bars
   (i.) *Blueberry*
   (ii.) *Strawberry*
   (iii.) *Cherry*
   (iv.) *Raspberry*

(v.) *Mixed Berry*
(vi.) *Apple Cinnamon*
(vii.) *Strawberry Greek Yogurt*
(viii.) *Variety Pack*

c. Nutri-Grain Oat & Harvest Bars
(i.) *Blueberry Bliss*
(ii.) *Country Strawberry*

d. Nutri-Grain Harvest Hearty Breakfast Bars
(i.) *Blueberry Bliss*
(ii.) *Country Strawberry*
(iii.) *Apple Cinnamon*

e. Nutri-Grain Fruit Crunch Granola Bars
(i.) *Apple Cobbler*
(ii.) *Strawberry Parfait*

f. Nutri-Grain Crunch Crunchy Breakfast Bars
(i.) *Apple Cobbler*
(ii.) *Strawberry Parfait*

g. Nutri-Grain Fruit & Nut Chewy Breakfast Bars
(i.) *Blueberry Almond*
(ii.) *Cherry Almond*

125. Although discussed more specifically below, annexed to this Complaint as **Appendix 1** is a table setting forth for each challenged cereal or bar:

a. the health and wellness labeling claims plaintiffs challenge as misleading;

b. the forms of sweeteners (added sugars) used;

c. the amount of sugar in each serving;

d. the proportion of sugar by weight in each serving;

e. the proportion of the product's calories that from sugar; and

f. the contribution of the product's sugar to the AHA's maximum recommended daily added sugar intake for men (M), women (W), and children (C).

126. The information set forth in Appendix 1 is made on the best information available at the time of filing. However, in certain cases some aspects of the table in Appendix 1 may be incomplete or inaccurate. Plaintiff expressly reserves the right to amend his specific

challenges, following discovery, based on information currently exclusively in Kellogg's possession, custody, and control.

A. Kellogg's Raisin Bran Cereals

127. Kellogg first introduced *Raisin Bran* in 1942 and has sold the cereal continually ever since, at times expanding the line by adding new varieties. Regardless of the variety, during at least the past four years and continuing today, Kellogg maintained and maintains a policy and practice of labeling *Raisin Bran* cereals with health and wellness claims.

1. *Raisin Bran*

128. Several recent versions of the packaging of the original *Kellogg's Raisin Bran* cereal are pictured below.

129. The packaging of *Kellogg's Raisin Bran* cereal has made at least the following health and wellness claims suggesting, both individually and especially in the context of the label as a whole, that the product is healthy:

a. "HEART HEALTHY"

b. "Kellogg's Heart Healthy Selection"

c. "GREAT TASTE THAT DOES YOUR HEART GOOD"

d. "HEART HEALTHY / Whole grains can help support a healthy lifestyle."

e. "+ HEART HEALTH + / Kellogg's Raisin Bran / With crispy bran flakes made from whole grain wheat, all three varieties of Kellogg's Raisin Bran are good sources of fiber."

f. "Start with a healthy Spoonful"

g. "Invest in your health invest in yourself"

h. "Get health & nutrition tips at **Kelloggs.com/HealthyInvestments**"

i. "Kellogg's offers a full breakfast portfolio that features essential nutrients to help you start right and make the most of every day." [picturing Raisin Bran]

j. "**NUTRIENTS** FOR EVERY DAY / **Kellogg's** breakfasts offer the nutrients our bodies want to work and feel their best."

k. "A serving of Kellogg's cereals with one cup of low-fat milk offers a tasty combination of carbs and protein that helps recharge your body. Protein helps you rebuild and carbs help you refuel."

l. "A great way to **START THE DAY** / A breakfast of Kellogg's cereal and milk is nutritious at its most delicious. Every spoonful has grains to help recharge your body. So go ahead, pour your favorite bowl of crunchy goodness. It just fuels right!"

m. "Made with WHOLE GRAIN"

n. "Goodness of Simple Grain"

o. Whole Grains Council Stamp

p. "FIBER / Fiber, like bran fiber, plays a very important party in your digestive health and overall well-being."

q. "MADE WITH REAL FRUIT"

r. "REAL FRUIT / Delicious raisins add a sweetness you'll love to every morning"

s. "BREAKFAST **BRAINPOWER**"

2. *Raisin Bran Crunch*

130. Kellogg introduced *Raisin Branch Crunch* in around 1999 and has sold the product continually ever since.

131. The packaging of several recent versions of *Kellogg's Raisin Bran Crunch* cereal are pictured below, while the back panel has been the same as original Raisin Bran.

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132. The packaging of *Kellogg's Raisin Bran Crunch* cereal has made at least the following health and wellness claims suggesting, both individually and especially in the context of the label as a whole, that the product is healthy:

a. "HEART HEALTHY"

b. "Kellogg's Heart Healthy Selection"

c. "Start with a healthy Spoonful"

d. "Invest in your health invest in yourself"

e. "+ HEART HEALTH + / Kellogg's Raisin Bran / With crispy bran flakes made from whole grain wheat, all three varieties of Kellogg's Raisin Bran are good sources of fiber."

f. "Kellogg's offers a full breakfast portfolio that features essential nutrients to help you start right and make the most of every day." [picturing Raisin Bran]

g. "**NUTRIENTS** FOR EVERY DAY / **Kellogg's** breakfasts offer the nutrients our bodies want to work and feel their best."

h. "A serving of Kellogg's cereals with one cup of low-fat milk offers a tasty combination of carbs and protein that helps recharge your body. Protein helps you rebuild and carbs help you refuel."

i. "Made with WHOLE GRAIN"

j. Whole Grains Council Stamp

k. "MADE WITH REAL FRUIT"

l. "with a Touch of Golden Honey"

3. *Raisin Bran Cinnamon Almond*

133. Kellogg introduced *Kellogg's Raisin Bran Cinnamon Almond* cereal in around 2012. Two recent versions of the packaging of *Kellogg's Raisin Bran Cinnamon Almond* cereal are pictured below.

134. The packaging of *Kellogg's Raisin Bran Cinnamon Almond* cereal has made at least the following health and wellness claims suggesting, both individually and especially in the context of the label as a whole, that the product is healthy:

a. "Made with WHOLE GRAIN"

b. Whole Grains Council Stamp

c. "Made with healthy whole-grain wheat and bran flakes"

d. "delivers the fuel your family needs to stay energized and focused throughout the day"

e. "enjoy great-tasting nutrition from simple ingredients"

f. "The Benefits of Breakfast: a Healthy Way to Begin the Day / Starting the day with a balanced, great-tasting breakfast can put you on the fast track to good nutrition and better overall healthy. While many kids and adults forget this important first meal, research has shown that sitting down for a nutritious breakfast can decrease the risk of obesity, heart disease, and other nutritionally related conditions in kids and adults. Kids who eat breakfast: - Are more alert in school, with better concentration, memory and grades; - Get more fiber, calcium, vitamins A and C, riboflavin, zinc, and

iron to help build stronger bodies; - Have more energy to pursue healthy and active lifestyles"

g. "Fill Up on Fiber / The studies are clear—fiber can help promote weight loss and healthier eating patterns, while increasing overall health: - Fiber takes longer to chew and slows down the rate at which we eat—giving our bodies a chance to let us know when we are full; - With fewer calories and greater bulk, high-fiber foods help us feel fuller for longer; - Fiber helps keep the digestive tract clean and healthy decreasing the risk of intestinal disease; - Fiber-rich diets can help lower 'bad' cholesterol, lower blood pressure, and help control blood sugar levels."

4. *Raisin Bran Omega-3 250mg ALA From Flaxseed*

135. Kellogg introduced *Raisin Bran Omega-3 250mg ALA From Flaxseed* cereal in around 2013. Several recent versions of the packaging of *Raisin Bran Omega-3 250mg ALA From Flaxseed* cereal are pictured below.

136. The packaging of *Raisin Bran Omega-3 250mg ALA From Flaxseed* cereal has made at least the following health and wellness claims suggesting, both individually and especially in the context of the label as a whole, that the product is healthy:

a. "HEART HEALTHY / Whole grains can help support a healthy lifestyle."

b. "Kellogg's Heart Healthy Selection"

c. "GREAT TASTE THAT DOES YOUR HEART GOOD"

d. "Enjoy the **healthy benefits** of flaxseed in **Kellogg's Raisin Bran**."

e. "FIBER / Fiber, like bran fiber, plays a very important part in your digestive health and overall well-being."

f. "Made with REAL FRUIT"

g. "Made with WHOLE GRAIN"

h. Whole Grains Council Stamp

i. "Touch of Sweetness"

j. "REAL FRUIT / Delicious raisins add a sweetness you'll love to every morning"

k. "Love your cereal / A balanced breakfast with Kellogg's cereal an 8 oz. serving of milk provides nutrients like iron, B Vitamins, and Vitamins A & D."

5. *Raisin Bran with Cranberries*

137. Kellogg introduced *Kellogg's Raisin Bran with Cranberries* cereal in around 2015. Two versions of the packaging of *Kellogg's Raisin Bran with Cranberries* cereal are pictured below.

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138. The packaging of *Kellogg's Raisin Bran with Cranberries* cereal has made at least the following health and wellness claims suggesting, both individually and especially in the context of the label as a whole, that the product is healthy:

a. "HEART HEALTHY"

b. "Kellogg's Heart Healthy Selection"

c. "Start with a healthy Spoonful"

d. "Invest in your health invest in yourself"

e. "+ HEART HEALTH + / Kellogg's Raisin Bran / With crispy bran flakes made from whole grain wheat, all three varieties of Kellogg's Raisin Bran are good sources of fiber."

f. "Kellogg's offers a full breakfast portfolio that features essential nutrients to help you start right and make the most of every day." [picturing Raisin Bran]

g. "**NUTRIENTS** FOR EVERY DAY / **Kellogg's** breakfasts offer the nutrients our bodies want to work and feel their best."

h. "A serving of Kellogg's cereals with one cup of low-fat milk offers a tasty combination of carbs and protein that helps recharge your body. Protein helps you rebuild and carbs help you refuel."

i. "Made with WHOLE GRAIN"

j. Whole Grains Council Stamp

k. "MADE WITH REAL FRUIT"

B. Kellogg's Krave Cereals

139. Kellogg introduced *Krave* cereal in the U.S. in 2012, originally in Chocolate and Double Chocolate flavors, later adding the S'mores variety in 2014. Regardless of the variety, during at least the past four years and continuing today, Kellogg maintained and maintains a policy and practice of labeling *Krave* cereals with health and wellness claims.

140. Different versions of the packaging of the *Kellogg's Krave* cereals are pictured below.

141. The packaging of *Kellogg's Krave* cereal has made at least the following health and wellness claims suggesting, both individually and especially in the context of the label as a whole, that the product is healthy:

a. "Made with WHOLE GRAIN"

b. "MULTI-GRAIN"

c. "Cereal + Milk / It just *FUELS* RIGHT / A serving of Kellogg's cereals with one cup of low-fat milk offers a tasty combination of carbs and protein that helps recharge your body. Protein helps you rebuild and carbs help you refuel." [picturing Krave cereal]

d. Whole Grains Council Stamp

C. Kellogg's Frosted Mini-Wheats Cereals

142. Kellogg's first introduced *Frosted Mini-Wheats* cereal in 1978, and has developed several varieties since. Regardless of the variety, during at least the past four years and continuing today, Kellogg maintained and maintains a policy and practice of labeling *Frosted Mini-Wheats* cereals with health and wellness claims.

1. *Original*

143. Two recent versions of the packaging of *Kellogg's Frosted Mini-Wheats – Original* cereal are pictured below.

144. The packaging of *Kellogg's Frosted Mini-Wheats – Original* cereal has made at least the following health and wellness claims suggesting, both individually and especially in the context of the label as a whole, that the product is healthy:

a. "***nutritious & delicious*** / You *can* have it both ways! / [. . .] you get a delightfully sweet, satisfying crunch that'll make you feel like a kid again. One serving of **Frosted Mini-Wheats** cereal plus 1/2 cup of skim milk is full of important grown-up stuff like protein and whole grain fiber. So grab a spoon and dig in to your day!"

b. "8 LAYERS Nutritious Wheat & 1 LAYER Delicious Sweet"

c. "HI, I'M MINI! I GREW UP IN THE COUNTRY, WHERE I GOT PLENTY OF FRESH AIR AND SUNSHINE. NOW I'M A HARDWORKING FELLOW WITH A FUN-LVOING SWEET SIDE THAT WINS PEOPLE OVER FAR AND WIDE. NOT TO BRAG, BUT WHEN IT COMES TO HELPING FOLKS GET A GREAT MORNING START, YOU COULD SAY I'M OUTSTANDING IN MY FIELD." [Picturing cartoon wheat piece standing in farm field waiving]

d. "Made from 100% WHOLE GRAIN"

e. Whole Grains Council Stamp

f. "LIGHTLY SWEETENED"

2. *Maple Brown Sugar*

145. Kellogg introduced *Kellogg's Frosted Mini-Wheats – Maple Brown Sugar* cereal in approximately 2003. Recent packaging of *Kellogg's Frosted Mini-Wheats – Maple Brown Sugar* cereal is pictured below.

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146. The packaging of *Kellogg's Frosted Mini-Wheats – Maple Brown Sugar* cereal has made at least the following health and wellness claims suggesting, both individually and especially in the context of the label as a whole, that the product is healthy:

a. "Made from 100% WHOLE GRAIN"

b. "8 LAYERS of WHOLE GRAINS"

c. Whole Grains Council Stamp

d. "LIGHTLY SWEETENED"

e. "Each layer is made from 100% whole grain wheat which is rich in fiber. Just one magnificent bowl of **Frosted Mini-Wheats** Maple Brown Sugar fills you up with at least 44 grams of whole grains."

f. "**Frosted Mini-Wheats cereal** fills you up without dragging you down. Each serving . . . contains whole grain fiber to help keep you full and focused all morning."

3. *Strawberry*

147. The packaging of *Kellogg's Frosted Mini-Wheats – Strawberry* cereal is pictured below.

148. The packaging of *Kellogg's Frosted Mini-Wheats – Strawberry* cereal has made at least the following health and wellness claims suggesting, both individually and especially in the context of the label as a whole, that the product is healthy:

a. "Made from 100% WHOLE GRAIN"

b. "8 LAYERS of WHOLE GRAINS"

c. Whole Grains Council Stamp

d. "LIGHTLY SWEETENED"

e. "Each layer is made from 100% whole grain wheat which is rich in fiber. Just one magnificent bowl of **Frosted Mini-Wheats** Maple Brown Sugar fills you up with at least 44 grams of whole grains."

f. "**Frosted Mini-Wheats cereal** fills you up without dragging you down. Each serving . . . contains whole grain fiber to help keep you full and focused all morning."

4. *Blueberry*

149. Two recent versions of the packaging of *Kellogg's Frosted Mini-Wheats – Blueberry* cereal is pictured below.

150. The packaging of *Kellogg's Frosted Mini-Wheats – Blueberry* cereal has made at least the following health and wellness claims suggesting, both individually and especially in the context of the label as a whole, that the product is healthy:

a. "UNBELIEVABLY NUTRITIOUS"

b. "LIGHTLY SWEETENED"

c. "Made from 100% WHOLE GRAIN"

d. Whole Grains Council Stamp

e. "100% WHOLE WHEAT / 8 Amazing Layers"

f. "8 LAYERS of WHOLE GRAINS"

g. "Each layer is made from 100% whole grain wheat which is rich in fiber. Just one magnificent bowl of **Frosted Mini-Wheats** Blueberry fills you up with at least 44 grams of whole grains."

h. "**Frosted Mini-Wheats cereal** fills you up without dragging you down. Each serving . . . contains whole grain fiber to help keep you full and focused all morning."

i. "Kellogg's Cereal and Milk / Protein to help rebuild. Grains to help recharge."

5. *Big Bite – Original*

151. The packaging of *Kellogg's Frosted Mini-Wheats Big Bite – Original* cereal is pictured below.

152. The packaging of *Kellogg's Frosted Mini-Wheats Big Bite – Original* cereal has made at least the following health and wellness claims suggesting, both individually and especially in the context of the label as a whole, that the product is healthy:

a. "UNBELIEVABLY NUTRITIOUS"

b. "Foods high in fiber help support good health."

c. "LIGHTLY SWEETENED"

d. "Made from 100% WHOLE GRAIN"

e. Whole Grains Council Stamp

f. "100% WHOLE WHEAT / 8 Amazing Layers / Each layer is made from 100% whole grain wheat which is rich in fiber. Just one magnificent bowl of **Frosted Mini-Wheats** Big Bite fills you up with at least 49 grams of whole grains."

g. "A MORNING / *Must Have* / **Frosted Mini-Wheats cereal** fills you up without dragging you down. Each serving . . . contains whole grain fiber to help keep you full and focused all morning."

h. "The FIELD TO BISCUIT Story / IT'S JUST A FEW SIMPLE STEPS FROM THE FIELD TO YOUR BOWL / Each Mini-Wheat begins as a seed planted in the farms of North America. After the whole grain is harvested, it's cooked, shredded and layered 8 times to form a little business. Then, while it's still warm from being baked to a perfect crunch, it's lightly frosted."

6. *Bite Size – Original, Blueberry Muffin, Strawberry Delight,* and *Cinnamon Streusel*

153. The packaging of *Kellogg's Frosted Mini-Wheats Bite Size – Original*, *Blueberry Muffin*, *Strawberry Delight*, and *Cinnamon Streusel* varieties of cereal are pictured below.

154. The packaging of *Kellogg's Frosted Mini-Wheats Bite Size – Original*, *Blueberry Muffin*, *Strawberry Delight*, and *Cinnamon Streusel* cereals have made at least the following health and wellness claims suggesting, both individually and especially in the context of the label as a whole, that the product is healthy:

a. "LIGHTLY SWEETENED"

b. "Made from 100% WHOLE GRAIN"

c. Whole Grains Council Stamp

7. *Little Bites – Original*

155. The packaging of *Kellogg's Frosted Mini-Wheats Little Bites – Original* cereal is pictured below.

156. The packaging of *Kellogg's Frosted Mini-Wheats Little Bites – Original* cereal has made at least the following health and wellness claims suggesting, both individually and especially in the context of the label as a whole, that the product is healthy:

a. "LIGHTLY SWEETENED"

b. "Made from 100% WHOLE GRAIN"

c. Whole Grains Council Stamp

8. *Little Bites – Chocolate*

157. Kellogg introduced *Kellogg's Frosted Mini-Wheats Little Bites – Chocolate* cereal in around 2009. Two recent versions of the packaging of *Kellogg's Frosted Mini-Wheats Little Bites – Chocolate* cereal are pictured below.

158. The packaging of *Kellogg's Frosted Mini-Wheats Little Bites – Chocolate* cereal has made at least the following health and wellness claims suggesting, both individually and especially in the context of the label as a whole, that the product is healthy:

a. "Delicious and Nutritious"

b. "LIGHTLY SWEETENED"

c. "Made from 100% WHOLE GRAIN"

d. Whole Grains Council Stamp

e. "The Whole Truth / Keeps 'em full, keeps 'em focused! / High-fiber foods are great for helping you feel full, not hungry. And with eight delicious layers of 100% whole wheat, Frosted Mini-Wheats cereal is packed with fiber to help you keep full and focused throughout the morning."

f. "Kellogg's Cereal and Milk / Protein to help rebuild. Grains to help recharge."

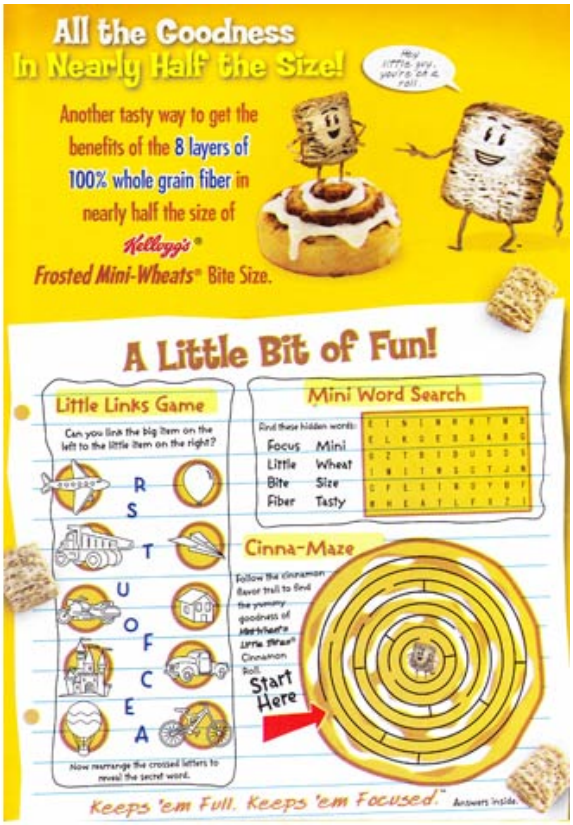
g. "Each itty-bitty biscuit is a work of art with **8 layers of crunchy whole wheat and 1 layer of frosted sweet!** And at half the size of original Frosted Mini-Wheats, Little Bites are loved by kids, big and small!"

h. "From our Family to Yours"

i. "Now that's what I call a successful breakfast!"

9. *Little Bites - Cinnamon Roll*

159. Kellogg introduced *Kellogg's Frosted Mini-Wheats Little Bites - Cinnamon Roll* in about 2012. The packaging of *Kellogg's Frosted Mini-Wheats Little Bites - Cinnamon Roll* cereal is pictured below.



160. The packaging of *Kellogg's Frosted Mini-Wheats Little Bites - Cinnamon Roll* cereal has made at least the following health and wellness claims suggesting, both individually and especially in the context of the label as a whole, that the product is healthy:

a. "LIGHTLY SWEETENED"

b. "Made from 100% WHOLE GRAIN"

c. "Another tasty way to get the benefits of the 8 layers of 100% whole grain fiber in nearly half the size of Kellogg's Frosted Mini-Wheats Bite Size."

d. Whole Grains Council Stamp

e. "Keeps 'em full. Keeps 'em focused."

10. *Touch of Fruit in the Middle – Mixed Berry*

161. Kellogg introduced *Frosted Mini-Wheats Touch of Fruit* cereal in around 2011, at first in Mixed Berry flavor only. The packaging of *Kellogg's Frosted Mini-Wheats Touch of Fruit in the Middle – Mixed Berry* cereal is pictured below.

162. The packaging of *Kellogg's Frosted Mini-Wheats Touch of Fruit in the Middle – Mixed Berry* cereal has made at least the following health and wellness claims suggesting, both individually and especially in the context of the label as a whole, that the product is healthy:

a. "LIGHTLY SWEETENED"

b. "Made from 100% WHOLE GRAIN"

c. Whole Grains Council Stamp

d. "Cereal & Milk / The Dynamic Duo / A serving of cereal with milk is a great way to get essential nutrients that are important to growing bodies including [. . .] Fiber / to help you stay full and focused"

e. "got milk? / A full serving of milk (one cup) brings a good source of Protein to the table to help maintain muscle health."

f. "**Fiber-Full!** / Frosted Mini-Wheats is an **Excellent Source of Fiber** from **100% Whole Grain Wheat** to keep you full all morning."

g. "**Tasty Fact**: Every piece has a tasty filling **made with Real Fruit**, making each bite perfectly **Sweet and Delicious**."

h. "When you start your day with a great breakfast, great things can happen."

i. "You've heard it before and it's true! **Breakfast is the most important meal of the day**. **A balanced breakfast** not only kick-starts the metabolism, it **sets us up to do our best**. Researchers revealed that people who sip breakfast don't make up for the missed nutrients later in the day. **Breakfast has the power to bring out the best in your day**, from the great taste to the essential nutrients it provides. And yet, one in five children lives in a household where breakfast is hard to come by."

11. *Touch of Fruit in the Middle – Raspberry*

163. Three recent versions of the packaging of *Kellogg's Frosted Mini-Wheats Touch of Fruit in the Middle – Raspberry* cereal is pictured below.

164. The packaging of *Kellogg's Frosted Mini-Wheats Touch of Fruit in the Middle – Raspberry* cereal has made at least the following health and wellness claims suggesting, both individually and especially in the context of the label as a whole, that the product is healthy:

a. "LIGHTLY SWEETENED"

b. "Lightly Frosted / Just a touch of sweetness for the taste you've come to know and love."

c. "Made from 100% WHOLE GRAIN"

d. "8 LAYERS of WHOLE GRAINS"

e. "Each layer is made from 100% whole grain wheat which is rich in fiber. Just one magnificent bowl fills you up with at least 45 grams of whole grains."

f. Frosted Mini-Wheats are now kissed with a delightful raspberry flavored filling that is made with real fruit. Begin your day with the filling goodness that makes every spoonful perfectly sweet and delicious."

g. "It's just a few simple steps from the field to your bowl. Each Frosted Mini Wheat begins as a seed planted in the rolling hills of North America. After the whole grain is harvested, it is cooked, shredded and layered 8 times to form a little biscuit. It's baked to a perfect crunch and while still warm each biscuit is lightly frosted."

h. "Enjoy What's Good for You! / Kellogg's Frosted Mini-Wheats Touch of Fruit in the Middle cereal is full of morning must haves! Every serving contains 10 essential vitamins and minerals, and it's packed with whole grain fiber to help keep you full and focused all morning long."

12. *Touch of Fruit in the Middle – Raisin*

165. Kellogg introduced *Kellogg's Frosted Mini-Wheats Touch of Fruit in the Middle – Raisin* in around 2014. The packaging of *Kellogg's Frosted Mini-Wheats Touch of Fruit in the Middle – Raisin* cereal is pictured below.

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166. The packaging of cereal has made at least the following health and wellness claims suggesting, both individually and especially in the context of the label as a whole, that the product is healthy:

a. "LIGHTLY SWEETENED"

b. "Made from 100% WHOLE GRAIN"

c. "8 LAYERS of WHOLE GRAINS"

d. Whole Grains Council Stamp

e. "each spoonful starts your day with tasty, wholesome goodness"

f. "Each layer is made from 100% whole grain wheat which is rich in fiber. One delicious bowl is all it takes to fill you up with at least 45g whole grains."

13. *Harvest Delights – Blueberry with Vanilla Drizzle and Cranberry with Yogurt Drizzle*

167. Kellogg introduced *Kellogg's Frosted Mini-Wheats Harvest Delights* cereal in

around January 2016. The packaging of *Kellogg's Frosted Mini-Wheats Harvest Delights – Blueberry with Vanilla Drizzle* and *Cranberry with Yogurt Drizzle* cereals are pictured below.

168. The packaging of *Kellogg's Frosted Mini-Wheats Harvest Delights – Blueberry with Vanilla Drizzle* and *Cranberry with Yogurt Drizzle* cereals have made at least the following health and wellness claims suggesting, both individually and especially in the context of the label as a whole, that the products are healthy:

a. "Positively Nutritious"

b. "Made from 100% WHOLE GRAIN RED WHEAT"

c. Whole Grains Council Stamp

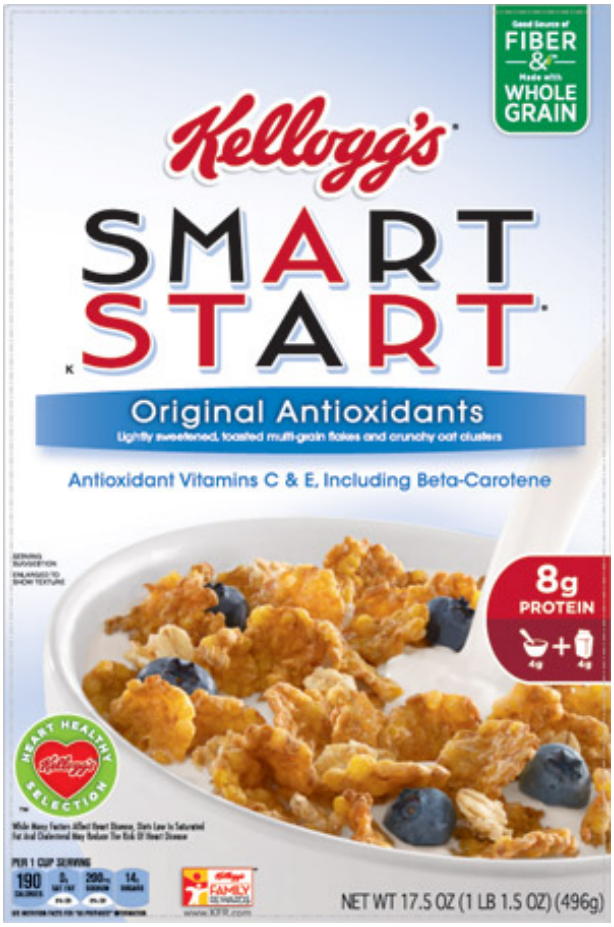
d. "BITS MADE WITH REAL FRUIT"

e. "real fruit baked in every biscuit"

f. "Just the right amount of sweetness"

D. Kellogg's Smart Start – Original Antioxidant Cereal

169. Three recent versions of the packaging of *Kellogg's Smart Start – Original Antioxidant* cereal are pictured below.



170. The packaging of *Kellogg's Smart Start – Original Antioxidant* cereal has made at least the following health and wellness claims suggesting, both individually and especially in the context of the label as a whole, that the product is healthy:

a. "Kellogg's Heart Healthy Selection"

b. "SMART START"

c. "Start with a healthy Spoonful"

d. "Invest in your health invest in yourself"

e. "Made with WHOLE GRAIN"

f. Whole Grains Council Stamp

g. "Original Antioxidants"

h. "Lightly sweetened"

i. "Kellogg's offers a full breakfast portfolio that features essential nutrients to help you start right and make the most of every day." [picturing Smart Start]

j. "**NUTRIENTS** FOR EVERY DAY / **Kellogg's** breakfasts offer the nutrients our bodies want to work and feel their best."

k. **ANTIOXIDANTS** / Vitamin A from beta carotene and vitamins C and E help support healthy cells throughout the body. **Kellogg's Smart Start** is a good source of these important antioxidants."

l. "**CARBOHYDRATES & PROTEIN** / A serving of Kellogg's cereals with one cup of low-fat milk offers a tasty combination of carbs and protein that helps recharge your body. Protein helps you rebuild and carbs help you refuel."

m. "Get health & nutrition tips at **Kelloggs.com/HealthyInvestments**"

E. Kellogg's Crunchy Nut Cereal

171. Kellogg introduced *Crunchy Nut* cereal in the U.S. in around 2011. The packaging of *Kellogg's Crunchy Nut* cereal is pictured below.

172. The packaging of *Kellogg's Crunchy Nut* cereal has made at least the following health and wellness claims suggesting, both individually and especially in the context of the label as a whole, that the product is healthy:

a. "Nuts in Every Bite!"

b. "Drizzled with Honey"

c. "A great way to **START THE DAY** / A breakfast of Kellogg's cereal and milk is nutritious at its most delicious. Every spoonful has grains to help recharge your body. So go ahead, pour your favorite bowl of crunchy goodness. It just fuels right!"

d. "BREAKFAST **BRAINPOWER**"

F. Nutri-Grain Cereal Bars

173. Kellogg's *Nutri-Grain* bars first became popular in the U.S. in the 1990s. Regardless of the variety, during at least the past four years and continuing today, Kellogg maintained and maintains a policy and practice of labeling *Nutri-Grain* bars with health and wellness claims.

1. *Apple Cinnamon*

174. The packaging of *Kellogg's Nutri-Grain Cereal Bars – Apple Cinnamon* is pictured below.

175. The packaging of *Kellogg's Nutri-Grain Cereal Bars – Apple Cinnamon* has made at least the following health and wellness claims suggesting, both individually and especially in the context of the label as a whole, that the product is healthy:

a. "MORE of the WHOLE GRAINS Your Body Needs"

b. "ONE GOOD DECISION CAN LEAD TO ANOTHER / Nutri-Grain / 100% Whole Grains"

c. "Whole Grains / Wholesome Fiber"

d. "Whole Grains | Wholesome Fiber | Real Fruit / Take care of *you*"

e. Whole Grains Council Stamp

f. "No High Fructose Corn Syrup"

g. "MADE WITH REAL FRUIT & WHOLE GRAINS"

h. "Nutri-Grain / Eat Better All Day"

2. *Blueberry*

176. The packaging of *Kellogg's Nutri-Grain Cereal Bars – Blueberry* is pictured below.

177. The packaging of *Kellogg's Nutri-Grain Cereal Bars – Blueberry* has made at least the following health and wellness claims suggesting, both individually and especially in the context of the label as a whole, that the product is healthy:

a. "No High Fructose Corn Syrup"

b. "MADE WITH REAL FRUIT & WHOLE GRAINS"

c. "Whole Grains / Wholesome Fiber"

d. "Whole Grains | Wholesome Fiber | Real Fruit / Take care of *you*"

e. Whole Grains Council Stamp

3. *Strawberry*

178. The packaging of *Kellogg's Nutri-Grain Cereal Bars – Strawberry* is pictured below.

179. The packaging of *Kellogg's Nutri-Grain Cereal Bars – Strawberry* has made at least the following health and wellness claims suggesting, both individually and especially in the context of the label as a whole, that the product is healthy:

a. "No High Fructose Corn Syrup"

b. "MADE WITH REAL FRUIT & WHOLE GRAINS"

c. "Whole Grains / Wholesome Fiber"

d. "Whole Grains | Wholesome Fiber | Real Fruit"

e. Whole Grains Council Stamp

4. *Cherry*

180. The packaging of *Kellogg's Nutri-Grain Cereal Bars – Cherry* is pictured below.

181. The packaging of Nutri-Grain Cereal Bars – Cherry has made at least the following health and wellness claims suggesting, both individually and especially in the context of the label as a whole, that the product is healthy:

a. "No High Fructose Corn Syrup"

b. "MADE WITH REAL FRUIT & WHOLE GRAINS"

c. "Whole Grains / Wholesome Fiber"

d. "Whole Grains | Wholesome Fiber | Real Fruit"

e. Whole Grains Council Stamp

5. *Mixed Berry*

182. The packaging of *Kellogg's Nutri-Grain Cereal Bars – Mixed Berry* is pictured below.

183. The packaging of *Kellogg's Nutri-Grain Cereal Bars – Mixed Berry* has made at least the following health and wellness claims suggesting, both individually and especially in the context of the label as a whole, that the product is healthy:

a. "MORE of the WHOLE GRAINS Your Body Needs"

b. "ONE GOOD DECISION CAN LEAD TO ANOTHER / Nutri-Grain / 100% Whole Grains"

c. "Whole Grains / Wholesome Fiber"

d. "Whole Grains | Wholesome Fiber | Real Fruit / Take care of *you*"

e. Whole Grains Council Stamp

f. "No High Fructose Corn Syrup"

g. "MADE WITH REAL FRUIT & WHOLE GRAINS"

h. "Nutri-Grain / Eat Better All Day"

6. *Strawberry Greek Yogurt*

184. The packaging of *Kellogg's Nutri-Grain Cereal Bars – Strawberry Greek Yogurt* is pictured below.

185. The packaging of *Kellogg's Nutri-Grain Cereal Bars – Strawberry Greek Yogurt* has made at least the following health and wellness claims suggesting, both individually and especially in the context of the label as a whole, that the product is healthy:

a. "Whole Grains / Wholesome Fiber"

b. Whole Grains Council Stamp

G. Nutri-Grain Soft-Baked Breakfast Bars

186. *Kellogg's Nutri-Grain Soft-Baked Breakfast Bars* are a continuation of Kellogg's previous "cereal bars" line described above.

1. *Apple Cinnamon*

187. The packaging of *Kellogg's Nutri-Grain Soft-Baked Breakfast Bars – Apple Cinnamon* is pictured below.

188. The packaging of *Kellogg's Nutri-Grain Soft-Baked Breakfast Bars – Apple Cinnamon* has made at least the following health and wellness claims suggesting, both individually and especially in the context of the label as a whole, that the product is healthy:

a. "MADE WITH Real Fruit & WHOLE GRAINS"

2. *Blueberry*

189. The packaging of *Kellogg's Nutri-Grain Soft-Baked Breakfast Bars – Blueberry* is pictured below.

190. The packaging of *Kellogg's Nutri-Grain Soft-Baked Breakfast Bars – Blueberry* has made at least the following health and wellness claims suggesting, both individually and especially in the context of the label as a whole, that the product is healthy:

a. "MADE WITH Real Fruit & WHOLE GRAINS"

b. "Rise & Thrive / WITH NUTRI-GRAIN SOFT-BAKED BREAKFAST

BARS, THE WHOLESOME GOODNESS YOU NEED TO SHINE YOUR BRIGHTEST!"

c. "Whole grains"

d. "Made with real fruit"

e. "No high fructose corn syrup"

3. *Strawberry*

191. The packaging of *Kellogg's Nutri-Grain Soft-Baked Breakfast Bars – Strawberry* is pictured below.

192. The packaging of *Kellogg's Nutri-Grain Soft-Baked Breakfast Bars – Strawberry* has made at least the following health and wellness claims suggesting, both individually and especially in the context of the label as a whole, that the product is healthy:

a. "MADE WITH Real Fruit & WHOLE GRAINS"

b. "Rise & Thrive / WITH NUTRI-GRAIN SOFT-BAKED BREAKFAST BARS, THE WHOLESOME GOODNESS YOU NEED TO SHINE YOUR BRIGHTEST!"

c. "Whole grains"

d. "Made with real fruit"

e. "No high fructose corn syrup"

4. *Cherry*

193. The packaging of *Kellogg's Nutri-Grain Soft-Baked Breakfast Bars – Cherry* is pictured below.

194. The packaging of *Kellogg's Nutri-Grain Soft-Baked Breakfast Bars – Cherry* has made at least the following health and wellness claims suggesting, both individually and especially in the context of the label as a whole, that the product is healthy:

a. "MADE WITH Real Fruit & WHOLE GRAINS"

b. "Rise & Thrive / WITH NUTRI-GRAIN SOFT-BAKED BREAKFAST BARS, THE WHOLESOME GOODNESS YOU NEED TO SHINE YOUR BRIGHTEST!"

5. *Raspberry*

195. The packaging of *Kellogg's Nutri-Grain Soft-Baked Breakfast Bars – Raspberry* is pictured below.

196. The packaging of *Kellogg's Nutri-Grain Soft-Baked Breakfast Bars – Raspberry* has made at least the following health and wellness claims suggesting, both individually and especially in the context of the label as a whole, that the product is healthy:

a. "MADE WITH Real Fruit & WHOLE GRAINS"

b. "Whole Grains | Wholesome Fiber | Real Fruit / Take care of *you*"

6. *Mixed Berry*

197. The packaging of *Kellogg's Nutri-Grain Soft-Baked Breakfast Bars – Mixed Berry* is pictured below.

198. The packaging of *Kellogg's Nutri-Grain Soft-Baked Breakfast Bars – Mixed Berry* has made at least the following health and wellness claims suggesting, both individually and especially in the context of the label as a whole, that the product is healthy:

a. "MADE WITH Real Fruit & WHOLE GRAINS"

7. *Strawberry Greek Yogurt*

199. The packaging of *Kellogg's Nutri-Grain Soft-Baked Breakfast Bars – Strawberry Greek Yogurt* is pictured below.

200. The packaging of *Kellogg's Nutri-Grain Soft-Baked Breakfast Bars – Strawberry Greek Yogurt* has made at least the following health and wellness claims suggesting, both individually and especially in the context of the label as a whole, that the product is healthy:

a. "MADE WITH Real Fruit & WHOLE GRAINS"

8. *Variety Pack*

201. The packaging of *Kellogg's Nutri-Grain Soft-Baked Breakfast Bars – Variety Pack* is pictured below.

202. The packaging of *Kellogg's Nutri-Grain Soft-Baked Breakfast Bars – Variety Pack* has made at least the following health and wellness claims suggesting, both individually and especially in the context of the label as a whole, that the product is healthy:

a. "MADE WITH Real Fruit & WHOLE GRAINS"

b. "Rise & Thrive / WITH NUTRI-GRAIN SOFT-BAKED BREAKFAST BARS, THE WHOLESOME GOODNESS YOU NEED TO SHINE YOUR BRIGHTEST!"

c. "No high fructose corn syrup"

H. Nutri-Grain Oat & Harvest Bars

1. *Blueberry Bliss*

203. The packaging of *Kellogg's Nutri-Grain Oat & Harvest Bars – Blueberry Bliss* is pictured below.

204. The packaging of *Kellogg's Nutri-Grain Oat & Harvest Bars – Blueberry Bliss* has made at least the following health and wellness claims suggesting, both individually and especially in the context of the label as a whole, that the product is healthy:

a. "Real Fruit & Whole Grains"

b. "Made with Real Fruit"

c. "WHOLESOME SATISFACTION / Mornings can be unpredictable. You don't have time to do everything you want, let alone eat something wholesome, so that's why we crated *Nutri-Grain Fruit & Oat Harvest*. It's the perfect combination of tasty real fruit and whole grains to give you a satisfying way to make the most of your morning."

d. "NO HIGH FRUCTOSE CORN SYRUP"

e. Whole Grains Council Stamp

2. *Country Strawberry*

205. The packaging of *Kellogg's Nutri-Grain Oat & Harvest Bars – Country Strawberry* is pictured below.

206. The packaging of *Kellogg's Nutri-Grain Oat & Harvest Bars – Country Strawberry* has made at least the following health and wellness claims suggesting, both individually and especially in the context of the label as a whole, that the product is healthy:

a. "Real Fruit & Whole Grains"

b. "Made with Real Fruit"

c. "WHOLESOME SATISFACTION / Mornings can be unpredictable. You don't have time to do everything you want, let alone eat something wholesome, so that's why we crated *Nutri-Grain Fruit & Oat Harvest*. It's the perfect combination of tasty real fruit and whole gains to give you a satisfying way to make the most of your morning."

d. "NO HIGH FRUCTOSE CORN SYRUP"

e. Whole Grains Council Stamp

I. Nutri-Grain Harvest Hearty Breakfast Bars

207. *Kellogg's Nutri-Grain Harvest Hearty Breakfast Bars* are a continuation of Kellogg's previous *Nutri-Grain Oat & Harvest* bars line described above.

1. *Blueberry Bliss*

208. The packaging of *Kellogg's Nutri-Grain Harvest Hearty Breakfast Bars – Blueberry Bliss* is pictured below.

209. The packaging of *Kellogg's Nutri-Grain Harvest Hearty Breakfast Bars – Blueberry Bliss* has made at least the following health and wellness claims suggesting, both individually and especially in the context of the label as a whole, that the product is healthy:

a. "MADE WITH Real Fruit & WHOLE GRAINS"

b. "Rise & Thrive / WITH NUTRI-GRAIN SOFT-BAKED BREAKFAST BARS, THE WHOLESOME GOODNESS YOU NEED TO SHINE YOUR BRIGHTEST!"

c. "No high fructose corn syrup"

2. *Country Strawberry*

210. The packaging of *Kellogg's Nutri-Grain Harvest Hearty Breakfast Bars – Country Strawberry* is pictured below.

211. The packaging of *Kellogg's Nutri-Grain Harvest Hearty Breakfast Bars – Country Strawberry* has made at least the following health and wellness claims suggesting, both individually and especially in the context of the label as a whole, that the product is healthy:

a. "MADE WITH Real Fruit & WHOLE GRAINS"

3. *Apple Cinnamon*

212. The packaging of *Kellogg's Nutri-Grain Harvest Hearty Breakfast Bars – Apple Cinnamon* is pictured below.

213. The packaging of *Kellogg's Nutri-Grain Harvest Hearty Breakfast Bars – Apple Cinnamon* has made at least the following health and wellness claims suggesting, both individually and especially in the context of the label as a whole, that the product is healthy:

a. "MADE WITH Real Fruit & WHOLE GRAINS"

b. "Rise & Thrive / With Nutri-Grain Harvest Breakfast Bars, the satisfying goodness you need to rise and shine!"

c. "Made with invigorating whole grains, 4 grams of protein and delicious apple filling, hearty Harvest bars provide the goodness you need to rise and shine!"

J. Nutri-Grain Fruit Crunch Granola Bars – *Apple Cobbler* & *Strawberry Parfait*

214. The packaging of *Kellogg's Nutri-Grain Fruit Crunch Granola Bars – Apple Cobbler* and *Strawberry Parfait* are pictured below.

215. The packaging of *Kellogg's Nutri-Grain Fruit Crunch Granola Bars – Apple Cobbler* and *Strawberry Parfait* have made at least the following health and wellness claims suggesting, both individually and especially in the context of the label as a whole, that the products are healthy:

a. "MADE WITH REAL FRUIT"

K. Nutri-Grain Fruit Crunch Crunchy Breakfast Bars – *Apple Cobbler* & *Strawberry Parfait*

216. *Kellogg's Nutri-Grain Crunch Crunchy Breakfast Bars* are a continuation of Kellogg's previous *Nutri-Grain Fruit Crunch* granola bars line described above.

217. The packaging of *Kellogg's Nutri-Grain Fruit Crunch Granola Bars – Apple Cobbler* and *Strawberry Parfait* are pictured below.

218. The packaging of *Kellogg's Nutri-Grain Fruit Crunch Granola Bars – Apple Cobbler* and *Strawberry Parfait* have made at least the following health and wellness claims suggesting, both individually and especially in the context of the label as a whole, that the products are healthy:

a. "MADE WITH Real Fruit & WHOLE GRAINS"

L. *Nutri-Grain Fruit & Nut Chewy Breakfast Bars – Blueberry Almond & Cherry Almond*

219. The packaging of *Kellogg's Nutri-Grain Fruit & Nut Chewy Breakfast Bars – Blueberry Almond* and *Cherry Almond* are pictured below.

220. The packaging of *Kellogg's Nutri-Grain Fruit & Nut Chewy Breakfast Bars – Blueberry Almond* and *Cherry Almond* have made at least the following health and wellness claims suggesting, both individually and especially in the context of the label as a whole, that the product is healthy:

a. "MADE WITH Sun-ripened fruit"

b. "Rise & Thrive / With the delicious satisfying taste of sun-ripened fruit, almonds & whole grain oats."

KELLOGG'S UNLAWFUL ACTS & PRACTICES

A. Kellogg Marketed and Continues to Market Its Cereals and Bars with Health and Wellness Claims that are Deceptive in Light of the Products' High Sugar Content

1. Kellogg Affirmatively Misrepresents that Some High-Sugar Cereals are "Healthy," "Nutritious," or "Wholesome"

221. Consumers interpret the words "nutritious" and "wholesome" to mean the same thing as, or to be euphemisms for, "healthy."

222. In using these words in the manner described herein, Kellogg also intends consumers to interpret "nutritious" and "wholesome" to mean healthy.

223. Although in some cases, Kellogg's labeling claims for its cereals are suggestive that they are healthy, in other cases, Kellogg directly represents this is true by calling at least the following cereals "healthy," "nutritious," or "wholesome":

a. *Kellogg's Raisin Bran*

- "HEART HEALTHY"
- "support a healthy lifestyle"
- "Start with a healthy Spoonful"
- "Invest in your health invest in yourself"
- "Fiber . . . plays a very important part in your digestive health and overall well-being"
- "essential nutrients"
- "NUTRIENTS FOR EVERY DAY / Kellogg's breakfasts offer the nutrients our bodies want to work and feel their best," "nutritious at its most delicious"

b. *Kellogg's Raisin Bran Crunch*

- "HEART HEALTHY"
- "Kellogg's Heart Healthy Selection"
- "Start with a healthy Spoonful"
- "Invest in your health invest in yourself"
- "essential nutrients"
- "NUTRIENTS FOR EVERY DAY / Kellogg's breakfasts offer the nutrients our bodies want to work and feel their best"

c. *Kellogg's Raisin Bran Cinnamon Almond*

- "Made with healthy whole-grain wheat and bran flakes"
- "a Healthy Way to Begin the Day"
- "better overall health"
- "more energy to pursue healthy and active lifestyles"
- "fiber can help promote weight loss and healthier eating patterns while increasing overall health"

- "great-tasting nutrition from simple ingredients"
- "Starting the day with a balanced, great-tasting breakfast can put you on the fast track to good nutrition and better overall health"
- "research has shown that sitting down for a nutritious breakfast can decrease the risk of obesity, heart disease, and other nutritionally related conditions in kids and adults

d. *Kellogg's Raisin Bran Omega-3 250mg ALA From Flaxseed*

- "HEART HEALTHY"
- "help support a healthy lifestyle"
- "Kellogg's Heart Healthy Selection"
- "healthy benefits of flaxseed in Kellogg's Raisin Bran"
- "Fiber . . . plays a very important part in your digestive health and overall well-being"

e. *Kellogg's Raisin Bran with Cranberries*

- "HEART HEALTHY"
- "Kellogg's Heart Healthy Selection"
- "Start with a healthy Spoonful"
- "Invest in your health invest in yourself"
- "essential nutrients"
- "NUTRIENTS FOR EVERY DAY / Kellogg's breakfasts offer the nutrients our bodies want to work and feel their best."

f. *Kellogg's Frosted Mini-Wheats – Original*

- "nutritious & delicious / You *can* have it both ways"
- "8 LAYERS OF NUTRITIOUS Wheat & 1 LAYER Delicious Sweet"

g. *Kellogg's Frosted Mini-Wheats – Blueberry*

- "UNBELIEVABLY NUTRITIOUS"

h. *Kellogg's Frosted Mini-Wheats Big Bite – Original*

- "Foods high in fiber help support good health."
- "UNBELIEVABLY NUTRITIOUS"

i. *Kellogg's Frosted Mini-Wheats Little Bites – Chocolate*

- "Delicious and Nutritious"

j. *Kellogg's Mini-Wheats Touch of Fruit in the Middle – Mixed Berry*

- "A full serving of milk (one cup) brings a good source of Protein to the table to help maintain muscle health."
- "a great way to get essential nutrients that are important to growing bodies"
- "Researchers revealed that people who skip breakfast don't make up for the missed nutrients later in the day."
- "essential nutrients"

k. *Kellogg's Frosted Mini-Wheats Touch of Fruit in the Middle – Raisin*

- "each spoonful starts your day with tasty, wholesome goodness"

l. *Kellogg's Frosted Mini-Wheats Harvest Delights – Blueberry with Vanilla Drizzle* and *Cranberry with Yogurt Drizzle*

- "Positively Nutritious"

m. *Kellogg's Smart Start – Original Antioxidants*

- "Kellogg's Heart Healthy Selection"
- "Start with a healthy Spoonful"
- "Invest in your health invest in yourself"
- "help support healthy cells throughout the body"
- "essential nutrients"
- "NUTRIENTS FOR EVERY DAY / Kellogg's breakfasts offer the nutrients our bodies want to work and feel their best."

n. *Kellogg Crunchy Nut*

- "A breakfast of Kellogg's cereal and milk is nutritious at its most delicious."

o. *Nutri-Grain Cereal Bars – Apple Cinnamon, Blueberry, Strawberry, Cherry, Mixed Berry,* and *Strawberry Greek Yogurt*

- "Wholesome Fiber"

p. *Nutri-Grain Soft-Baked Breakfast Bars – Blueberry, Strawberry, Cherry,* and *Variety Pack*

- "THE WHOLESOME GOODNESS YOU NEED TO SHINE YOUR BRIGHTEST!"

q. *Nutri-Grain Soft-Baked Breakfast Bars – Raspberry*

- "Wholesome Fiber"

r. *Nutri-Grain Fruit & Oats Harvest Bars – Blueberry Bliss* and *Country Strawberry*

- "WHOLESOME SATISFACTION"
- "You don't have time to . . . eat something wholesome, so that's why we created *Nutri-Grain Fruit & Oat Harvest*."

s. *Nutri-Grain Harvest Hearty Breakfast Bars – Blueberry Bliss*

- "THE WHOLESOME GOODNESS YOU NEED TO SHINE YOUR BRIGHTEST!"

224. Statements that these cereals and bars are "healthy," "nutritious," and "wholesome" are false, or at least highly misleading, because, due to their high sugar content, consumption of these foods is decidedly *unhealthy*, and the consequences of consuming the products—increased risk for, and in some cases contraction of chronic disease—are incompatible with Kellogg's representations that the products are "healthy," "nutritious," and "wholesome."

225. For example, *Kellogg's Raisin Bran* cereals contain 17g - 19g of sugar per serving, accounting for between 36% - 40% of the products' calories, which is 720% - 800% of the AHA's recommended maximum calories from sugar.

Product	Sugar Content	% Calories From Sugar	Contribution to AHA Maximum Recommended Daily Intake
Raisin Bran	18g	37.9%	M: 47.4% W: 72% C: 120-150%
Raisin Bran Crunch	19g	40%	M: 50% W: 76% C: 126.7-158.3%
Raisin Bran Cinnamon Almond	18g	36%	M: 47.4% W: 72% C: 120-150%
Raisin Bran Omega-3 250mg ALA From Flaxseed	17g	37.8%	M: 44.7% W: 68% C: 113.3-141.7%
Raisin Bran with Cranberries	18g	36%	M: 47.4% W: 72% C: 120-150%

226. *Kellogg's Frosted Mini-Wheats* cereals represented to be "healthy," "nutritious," and "wholesome" also contain high levels of added sugar, 10g – 12g, with the average amount of calories from their sugar content about 23%, or 460% of the AHA's recommended maximum calories from sugar.

Product	Sugar Content	% Calories From Sugar	Contribution to AHA Maximum Recommended Daily Intake
Frosted Mini-Wheats – Original	11g	23.2%	M: 28.9% W: 44% C: 73.3%
Frosted Mini-Wheats – Blueberry	12g	25.3%	M: 31.6% W: 48% C: 80-100%
Frosted Mini-Wheats Big Bite – Original	12g	24%	M: 31.6% W: 48% C: 80-100%

Product	Sugar Content	% Calories From Sugar	Contribution to AHA Maximum Recommended Daily Intake
Frosted Mini-Wheats Little Bites – Chocolate	12g	24%	M: 31.6% W: 48% C: 80-100%
Frosted Mini-Wheats Touch of Fruit in the Middle – Mixed Berry	10g	21.1%	M: 26.3% W: 40% C: 66.7-83.3%
Frosted Mini-Wheats Touch of Fruit in the Middle – Raisin	10g	21.1%	M: 26.3% W: 40% C: 66.7-83.3%
Frosted Mini-Wheats Harvest Delights – Blueberry with Vanilla Drizzle	10g	21.1%	M: 26.3% W: 40% C: 66.7-83.3%
Frosted Mini-Wheats Harvest Delights – Cranberry with Yogurt Drizzle	10g	21.1%	M: 26.3% W: 40% C: 66.7-83.3%
Averages:	***10.9g***	***22.6%***	

227. Similarly, despite that Kellogg represents that *Smart Start – Original Antioxidant* cereal is "Heart Healthy," the product contains 14g of sugar, comprising nearly a third of the product's weight, and contributing to 29.5% of its calories, or almost six times the AHA's recommendation of no more than 5% of calories from sugar.

228. Likewise, contrary to Kellogg's representation that *Crunchy Nut* cereal is "nutritious," its 10g of sugar per serving contribute 33.3% of the product's calories.

229. Similarly, Kellogg's *Nutri-Grain* bars represented to be "wholesome" also contain very high levels of added sugar, 11g - 15g per serving, with at or near 40% of the products' calories coming from their added sugar.

Product	Sugar Content	% Calories From Sugar	Contribution to AHA Maximum Recommended Daily Intake
Cereal Bars – Apple Cinnamon	12g	40%	M: 31.6% W: 48% C: 80-100%
Cereal Bars –Blueberry	12g	40%	M: 31.6% W: 48% C: 80-100%
Cereal Bars – Strawberry	11g	36.7%	M: 28.9% W: 44% C: 73.3%
Cereal Bars – Cherry	12g	40%	M: 31.6% W: 48% C: 80-100%
Cereal Bars – Mixed Berry	11g	36.7%	M: 28.9% W: 44% C: 73.3%
Cereal Bars – Strawberry Greek Yogurt	12g	36.9%	M: 31.6% W: 48% C: 80-100%
Soft-Baked Breakfast Bars – Blueberry	12g	40%	M: 31.6% W: 48% C: 80-100%
Soft-Baked Breakfast Bars –Strawberry	11g	36.7%	M: 28.9% W: 44% C: 73.3%
Soft-Baked Breakfast Bars – Cherry	12g	40%	M: 31.6% W: 48% C: 80-100%

Product	Sugar Content	% Calories From Sugar	Contribution to AHA Maximum Recommended Daily Intake
Soft-Baked Breakfast Bars – Variety Pack	11g	36.7%	M: 28.9% W: 44% C: 73.3%
Soft-Baked Breakfast Bars – Raspberry	12g	40%	M: 31.6% W: 48% C: 80-100%
Fruit & Oats Harvest Bars – Blueberry Bliss	15g	33.3%	M: 39.5% W: 60% C: 100-125%
Fruit & Oats Harvest Bars – Country Strawberry	15g	33.3%	M: 39.5% W: 60% C: 100-125%
Harvest Hearty Breakfast Bars – Blueberry Bliss	15g	33.3%	M: 39.5% W: 60% C: 100-125%
Averages (14):	***12.4g***	***37.4%***	

230. Because the foregoing products affirmatively and expressly represented by Kellogg to be "healthy," "nutritious," and "wholesome" contain high amounts of added sugar, their regular consumption is highly likely to contribute to excess sugar consumption, and thereby increased risk for, and actual contraction of, chronic disease.

2. Kellogg Affirmatively Misrepresents that Consuming Some of its High-Sugar Cereals and Bars Will Promote Bodily Health, Prevention of Disease, or Weight Loss

231. In some cases, Kellogg falsely represents that its high-sugar cereals are effective in promoting bodily health and preventing disease.

232. Specifically, Kellogg represents that *Raisin Bran*, *Raisin Bran Crunch*, and

Raisin Bran Omega-3 cereals are all "heart healthy."

233. Contrary to Kellogg's representations, the science demonstrates that because these cereals contain 17g - 19g of sugar per serving, providing 40% of their calories, their regular consumption is likely to contribute to cardiovascular and metabolic *disease*, thereby *harming* health.

234. For example, just a single serving of *Kellogg's Raisin Bran Crunch* contributes half of the AHA's recommendation for men's daily sugar intake of 38 grams, 76% of women's recommended daily intake of 25 grams, and 126.7% - 158.3% of children's recommended daily intake of 12-15 grams. Thus consumers, by eating just a single serving of this cereal, would either exceed the safe daily amount of added sugar, or virtually ensure they do so shortly later in the day. In doing so, such consumers are likely to see—rather than benefits to heart and digestive health—increased risk of both CHD and metabolic disease. This effect is compounded, however, because, as alleged further below, the data shows people tend to eat 2 or more servings of cereal in a single sitting, thus at least *doubling* their exposure.

235. Kellogg also represents that the fiber in *Raisin Bran* and *Raisin Bran Omega-3 250mg ALA From Flaxseed* cereals "plays a very important part in your digestive health and overall well-being." These claims are false and misleading due to the cereals' high sugar content, which harm metabolic health and overall well-being.

236. With respect to *Raisin Bran Cinnamon Almond*, Kellogg similarly suggests the cereal is heart-healthy—as well as beneficial to general metabolic health—by associating its consumption with scientific research showing the benefits of eating breakfast generally, stating that "research has shown that sitting down for a nutritious breakfast can decrease the risk of obesity, heart disease, and other nutritionally related conditions in kids and adults."

237. Reasonable consumers would and do understand—and it is Kellogg's intention that consumers understand—that the reference in this statement to "a nutritious breakfast," though not expressly so, is a reference to *Raisin Bran Cinnamon Almond* cereal, as this is the only reason it would make sense to make the statement on the product's packaging. Kellogg certainly does not disclaim that the cereal on whose packaging the statement is made is

supposedly "a nutritious breakfast."

238. Using a similar strategy, Kellogg also states on the packaging of *Raisin Bran Cinnamon Almond* cereal that "The studies are clear—fiber can help promote weight loss and healthier eating patterns, while increasing overall health." Kellogg even goes on to say that "Fiber-rich diets can help lower 'bad' cholesterol, lower blood pressure, and help control blood sugar levels."

239. Although it may be literally true that research exists supporting these propositions, that research has no relation to *Kellogg's Raisin Bran Cinnamon Almond* cereal. Rather, these statements are false and misleading because the 18g of sugar per serving in *Raisin Bran Cinnamon Almond* cereal provide 36% of its calories, and contribute to nearly half the AHA's recommendation for men's daily sugar intake of 38 grams, 72% of women's recommended daily intake of 25 grams, and 120% - 150% of children's recommended daily intake of 12-15 grams.

240. Thus, regular consumers of *Kellogg's Raisin Bran Cinnamon Almond* cereal were likely to see (a) increased risk of CHD, (b) increased body weight, (c) increased blood sugar levels (and decreased sensitivity), and (d) increased LDL cholesterol.

241. Accordingly, Kellogg's statements regarding the contribution of *Raisin Bran Cinnamon Almond* to human health are false.

242. Also relying on general research regarding the benefits of eating breakfast, Kellogg suggests its *Frosted Mini-Wheats Touch of Fruit: Mixed Berry* cereal is a healthy choice by stating that "A balanced breakfast . . . kick-starts the metabolism," that "Researchers revealed that people who skip breakfast don't make up for the missed nutrients later," and that "Breakfast has the power to bring out the best in your day, from the great taste to the essential nutrients it provides."

243. Reasonable consumers would and do understand—and it is Kellogg's intention that consumers understand—that the reference in these statements to a "balanced breakfast," that has "great taste" and "essential nutrients," though not expressly so, are references to *Frosted Mini-Wheats Touch of Fruit: Mixed Berry* cereal, as this is the only reason it would

make sense to make the statement on the product's packaging.

244. Kellogg's suggestion that *Frosted Mini-Wheats Touch of Fruit: Mixed Berry* cereal can help "kick-start[] the metabolism," and contribute to health in the same ways that eating breakfast generally contributes to health, are false and misleading because the product is high in sugar that is likely to detriment, not benefit, health.

245. Kellogg also represents that *Smart Start – Original Antioxidant* cereal is "heart healthy," but the cereal contains 14g of sugar per serving, contributing 29.5% of its calories, an amount of added sugar that is *unhealthy* to the heart.

246. Sometimes Kellogg is more general in its statements that its products will promote bodily health, but it nevertheless makes such affirmative representations.

247. For example, Kellogg represents that *Smart Start – Original Antioxidant* cereal will "help support healthy cells throughout the body."

248. Kellogg also represents that *Raisin Bran*, *Raisin Bran Crunch*, and *Raisin Bran with Cranberry* cereals, *Krave* cereals, some *Frosted Mini-Wheats* cereals, *Smart Start – Original Antioxidant* cereal, and *Crunch Nut* cereal will "help recharge your body," "help[] you rebuild," and "help you refuel," and that some of these cereals "offer the nutrients our bodies want to work and feel their best."

249. The theme that Kellogg cereals will help "fuel" a consumer is a common one in Kellogg's marketing, with such claims on *Raisin Bran c*ereals, *Krave* cereals, *Frosted Mini-Wheats* cereals, *Smart Start – Original Antioxidants* cereal, and *Crunchy Nut* cereal.

250. For example, on *Raisin Bran Cinnamon Almond*, Kellogg states that "Kids who eat breakfast: [. . .] Have more energy to pursue healthy and active lifestyles," and that the cereal "delivers the fuel your family needs to stay energized and focused throughout the day."

251. Similarly, Kellogg represents that *Frosted Mini-Wheats – Maple Brown Sugar*, *Strawberry*, and *Blueberry*, *Frosted Mini-Wheats Big Bite – Original*, *Frosted Mini-Wheats Little Bites – Chocolate*, and *Frosted Mini-Wheats Touch of Fruit in the Middle – Mixed Berry* and *Raspberry* will "help keep you full and focused all morning," or "help you stay full and focused."

252. The packaging of *Frosted Mini-Wheats Little Bites – Chocolate* also states along the same lines, "Keeps 'em full, keeps 'em focused," and that "[h]igh-fiber foods are great for helping you feel full, not hungry."

253. This practice is misleading because Kellogg suggests that "refueling" is good, desirable, and beneficial, while "fueling" on added sugars should in fact be zealously avoided to promote cardiovascular, metabolic, and overall bodily health.

254. In addition, Kellogg's representation that its high-sugar cereals will promote satiety and focus is contradicted by the science demonstrating that sugar consumption may *increase* hunger, and that consumption of sugary foods interferes with the brain's satiety signals and thus may result in overeating.

3. Even When Not Stating So Expressly, Kellogg Deceptively Suggests Its High-Sugar Cereals and Bars are Healthy

255. Besides direct, express claims that some of its cereals are "healthy," "nutritious," and "wholesome," Kellogg also conveys this same idea through suggestion.

a. Kellogg Touts Its Products' Whole Grain, Fiber, and "Real Fruit" Content to Distract From Their High Sugar Content

256. A major strategy Kellogg employs is "calling out" the supposedly beneficial aspects of its cereals and bars, and particularly their whole grain, fiber, or "real fruit" content.

257. In fact, the word "grain" appears over 170 times in the claims challenged in this Complaint, and on virtually every product.

258. Similarly, the word "fiber," and the phrase "real fruit" each appear about 45 times within the challenged claims, again spanning most of the challenged products.

259. Other aspects of Kellogg's marketing, such as its online marketing, also focus on fiber, whole grain, and real fruit, including their supposed contribution to general health and wellness, as well as to the prevention of, or reduction of risk for, chronic disease, including the very diseases caused by consuming the high amounts of sugar in its foods marketed as healthy.

260. In emphasizing the supposedly beneficial ingredients or other aspects of its

cereals, in derogation of its duty to consumers, Kellogg necessarily and intentionally also minimizes, de-emphasizes, hides, obscures, and otherwise omits contrary and highly-material information regarding the products' high sugar content, and the detrimental effects of regular excessive added sugar consumption.

b. Kellogg Deceptively Makes Health and Wellness Claims Based on the Use of Milk with its Cereals

261. Many of Kellogg's cereals make representations regarding the benefits the cereal provides if consumed with milk. Such statements include:

a. "A serving of Kellogg's cereals with one cup of low-fat milk offers a tasty combination of carbs and protein that helps recharge your body." (*Raisin Bran*, *Raisin Bran Crunch*, *Raisin Bran with Cranberries*, *Smart Start – Original Antioxidants*)

b. "A great way to **START THE DAY** / A breakfast of Kellogg's cereal and milk is nutritious at its most delicious." (*Raisin Bran*, *Crunchy Nut*)

c. "Cereal + Milk / It just *FUELS* RIGHT / A serving of Kellogg's cereals with one cup of low-fat milk offers a tasty combination of carbs and protein that helps recharge your body." (*Krave – Chocolate*, *S'mores*, and *Double Chocolate*)

d. "***nutritious & delicious*** / You *can* have it both ways! / [. . .] you get a delightfully sweet, satisfying crunch that'll make you feel like a kid again. One serving of **Frosted Mini-Wheats** cereal plus 1/2 cup of skim milk is full of important grown-up stuff like protein and whole grain fiber. So grab a spoon and dig in to your day!" (*Frosted Mini-Wheats – Original*)

e. "Kellogg's Cereal and Milk / Protein to help rebuild. Grains to help recharge." (*Frosted Mini-Wheats – Blueberry*, *Frosted Mini-Wheats Little Bites – Chocolate*)

f. "Cereal & Milk / The Dynamic Duo / A serving of cereal with milk is a great way to get essential nutrients that are important to growing bodies including [. . .] Fiber / to help you stay full and focused" (*Frosted Mini-Wheats Touch of Fruit in the Middle – Mixed Berry*)

g. "got milk? / A full serving of milk (one cup) brings a good source of Protein to the table to help maintain muscle health." (*Frosted Mini-Wheats Touch of Fruit in the Middle – Mixed Berry*)

262. In its more recent design change to its cereal packaging, Kellogg has even begun representing that the cereal provides the amount of protein that is actually provided only when the cereal is combined with a serving of milk, using smaller graphics below the larger protein call-out as a sort of disclaimer to explain that only some of the protein comes from the actual cereal product. This disclaimer, however, is ineffective at least some of the time—and Kellogg intends it to be so—because the eye naturally catches only the large "Xg PROTEIN" representation when viewing the packaging at a glance, as one would while traveling down the grocery aisle.

263. These claims, individually but especially as presented in the context of the cereals' packaging as a whole, misleadingly suggest that the Kellogg cereals make a more significant contribution to a nutritious meal than is the case; in reality, many of the benefits Kellogg discusses come from the milk that consumers must purchase separately.

264. This marketing strategy is especially deceptive because the cereals—far from contributing to good nutrition—contain high amounts of added sugar, the consumption of which is likely to increase risk of chronic disease.

c. Kellogg Leverages a Deceptive Industry "Certification" Program—the Whole Grains Council Stamp—to Make its High-Sugar Cereals and Bars Seem Healthy

265. Many Kellogg cereals and bars bear a Whole Grains Council stamp, as pictured below.

266. The Whole Grains Council was formed in 2003 and holds itself out as a purported "nonprofit *consumer advocacy* group."[91]

267. Its membership, however, is comprised not of consumers or their advocates, but primarily of hundreds of the largest food manufacturers, like Cargill, ConAgra, Domino's Pizza, Frito-Lay, General Mills, Heinz, Hostess, Kraft, McDonald's, Nestle, Post, Quaker, Smucker, and of course, Kellogg.

268. The Whole Grain's Council stamp is frequently misused by food manufacturer-members—including by Kellogg—to bolster claims that foods are supposedly healthy, by suggesting that an independent, perhaps governmental authority has determined a food is healthy or otherwise sanctioned its health and wellness claims due to its whole grain content.

269. In order to use a Whole Grains Council stamp, though, a food need only contain a minimum of 8g whole grain, and there are no disqualifying criteria. Accordingly, high-sugar foods can, and frequently do display the Whole Grains Council stamp.

270. This is true of many of Kellogg's cereals and bars; the use of the stamp is

[91] See http://wholegrainscouncil.org/about-us

deceptive because it implies independent verification that the cereals are healthy, despite that the Whole Grains Council is an industry group, and that Kellogg cereals and bars bearing the stamp contain such high amounts of sugar that they remain unhealthy choices notwithstanding their whole grain content.

d. In Representing that Many of Its High-Sugar Bars Contain "No High Fructose Corn Syrup," Kellogg Leverages Consumer Confusion to Obscure the Dangers of the Bars' Added Sugars

271. Kellogg has capitalized on consumer aversion toward high fructose corn syrup (HFCS) by touting the absence of that ingredient, deceptively suggesting that some varieties of its *Nutri-Grain Cereal Bars*, *Nutri-Grain Soft-Baked Breakfast Bars*, *Nutri-Grain Fruit & Oat Harvest Bars*, and *Nutri-Grain Harvest Hearty Breakfast Bars* are healthier because HFCS is absent.

272. This strategy leverages consumer confusion over the relative dangers of different forms of sugar, inasmuch as many consumers incorrectly believe that HFCS is a substantially more dangerous form of added sugar than other forms.

273. Some consumers also incorrectly believe there are "healthy" forms of added sugar, for example honey, "cane" sugar, or "natural" sugars. Conversely, many consumers are not even aware that some more obscure ingredients *are* added sugars, such as glycerin, brown rice syrup, dextrose, maltodextrin, and fruit and fruit juice "concentrates." Many consumers also have no idea what invert sugar is, or that it is sucrose that has been broken into free glucose and free fructose, and thus is extremely similar to HFCS, even referred to sometimes as "artificial honey"; or how dangerous pure fructose is. But both substances are used in many Kellogg cereals.

274. Similarly, Kellogg sweetens some foods with a combination of corn syrup, which is made from glucose, and fructose—the exact combination in HFCS, with their constituent parts merely separated in the ingredient list.

275. In reality, added sugar in virtually any form—and certainly in the forms used to sweeten the Kellogg cereals and bars—contains toxic fructose, and thus has essentially the

same detrimental health effects, with typically only minor differences in the ratio of fructose to glucose in a given form of added sugar. Thus, even if literally true, Kellogg's "no high fructose corn syrup" representations are highly misleading.

e. Kellogg Deceptively Markets Some of its High-Sugar Cereals as "Simple," Less Processed Foods

276. To capitalize on increasing consumer preference for fresh, unprocessed, "whole" foods, Kellogg states or suggests that certain products are less processed, including *Raisin Bran, Raisin Bran Cinnamon Almond, Frosted Mini-Wheats Big Bite – Original*, and *Frosted Mini-Wheats Touch of Fruit in the Middle – Raspberry*. For example, Kellogg states "it's just a few simple steps from the field to your bowl," and encourages consumers to "enjoy great-tasting nutrition from simple ingredients."

277. These statements are false or at least highly misleading because these products contain highly-processed forms of sugar and other ingredients. And because these statements suggest these Kellogg cereals are healthy food options, the statements are also false, or at least highly misleading, due to the cereals' high added sugar content.

f. Kellogg Deceptively Omits, Intentionally Distracts From, and Otherwise Downplays the Cereals' High Added Sugar Content

278. In marketing its cereals with health and wellness claims, Kellogg regularly and intentionally omits material information regarding the amount and dangers of the added sugars in its products. Kellogg is under a duty to disclose this information to consumers because (a) Kellogg is revealing *some* information about its products—enough to suggest they are healthy—without revealing additional material information, (b) Kellogg's deceptive omissions concern human health, and specifically the detrimental health consequences of consuming its products, (c) Kellogg was in a superior position to know of the dangers presented by the sugars in its cereals, as it is a global food company whose business depends upon food science and policy, and (d) Kellogg actively concealed material facts not known to plaintiff and the class.

279. Moreover, in marketing its cereals, Kellogg regularly affirmatively uses certain

words and phrases to falsely suggest their sugar content is low.

280. Most prevalent, Kellogg states that its *Frosted Mini-Wheats* and *Smart Start – Original Antioxidant* cereals are "lightly sweetened."

281. Kellogg similarly represents that its *Raisin Bran Crunch* is "with a Touch of Golden Honey," and that its *Raisin Bran Omega-3* and *Frosted Mini-Wheats Touch of Fruit in the Middle – Raspberry* cereals each provide just a "Touch of Sweetness."

282. Kellogg also downplays the sugar content of *Frosted Mini-Wheats – Original* when it claims the product is "8 LAYERS Nutritious Wheat & 1 Layer Delicious Sweet."

283. These claims are false and misleading because the products' sugar content is high, not low. Such statements are likely to confuse even consumers aware of health issues regarding sugar, because they suggest any such health issues, in any event, do not pertain to these only "lightly" sweetened cereals, which in reality contain between 10g – 19g of added sugar per serving, typically contributing 20% - 40% of the products' calories.

4. Kellogg Immorally Marketed *Raisin Bran Cinnamon Almond* to Parents for their Children's Consumption, Despite that Children are the Most Vulnerable to the Dangers of Excess Sugar Consumption

284. Kellogg marketed *Raisin Bran Cinnamon Almond* to parents, as *for* their children, particularly to help promote growth, attention, and good health, despite that this cereal is among the highest in added sugar that Kellogg offers.

285. The packaging of *Raisin Bran Cinnamon Almond* states that, "While many kids and adults forget this important first meal, . . . a nutritious breakfast can decrease the risk of obesity, heart disease, and other nutritionally related conditions in kids and adults." Kellogg goes on to state that "Kids who eat breakfast:" "Are more alert in school, with better concentration, memory and grades," get "iron to help build stronger bodies," and "Have more energy to pursue healthy and active lifestyles."

286. Yet, *Raisin Bran Cinnamon Almond* contains 18g of sugar per serving, contributing 36% of its calories. A single serving thus contributes between 120% and 150% of a child's AHA-recommended maximum daily sugar intake, thus guaranteeing its

consumption creates an unhealthy condition of excess sugar intake.

287. These statements were malicious, immoral, and oppressive because there are currently obesity and type 2 diabetes epidemics among American children, who are thus among the most vulnerable to misleading health and wellness marketing that results in substantially increased added sugar consumption.

288. Marketing high-sugar cereals to children, or to parents for children's consumption, is itself an unfair and immoral business practice, but it is especially harmful when the marketing suggests the high-sugar cereals are healthy options for children.

289. Thus, marketing *Raisin Bran Cinnamon Almond* cereal as a healthy option for children to promote bone and teeth health—even if true, which is dubious—while obscuring the detrimental effect of the cereal's consumption in promoting obesity, metabolic disease, cardiovascular disease, and other morbidity, is immoral, malicious, and oppressive.

290. In other modes of advertising, such as through its website, Kellogg frequently discusses the purported contribution of its cereals to children's health, while obscuring, ignoring, or minimizing the dangers presented by the cereals' added sugars.

5. Kellogg Egregiously Markets Some High-Sugar Bars with Health and Wellness Claims Even Though They Contain Artificial Trans Fat

291. Kellogg markets *Nutri-Grain Fruit Crunch Granola Bars* and *Nutri-Grain Crunch Crunchy Breakfast Bars* with health and wellness claims despite that they are made with partially hydrogenated vegetable oil containing toxic artificial trans fat, a substance that is so deadly the FDA has banned it with a phase-out deadline in 2018.

292. These claims are false and misleading because, in addition to the health dangers of consuming the products' high sugar content, artificial trans fat is the single worst nutrient (the only nutrient worse than sugar) in terms of its effect on bodily health, and particularly heart health.

6. Kellogg Violates FDA and State Food Labeling Regulations

293. Kellogg's health and wellness statements challenged herein were false and misleading for the reasons described herein, in violation of 21 U.S.C. § 343(a), which deems

misbranded any food whose "label is false or misleading in any particular." Kellogg accordingly also violated California's parallel provision of the Sherman Food, Drug, and Cosmetic Law. *See* Cal. Health & Safety Code § 110660.

294. Kellogg's health claims challenged herein also violate 21 C.F.R. §§ 101.14(d)(2)(i) & (e) because they are not "consistent with[] the conclusions set forth in the regulations in subpart E of this part[.]" Specifically, where Kellogg uses an implied health claim in proximity to an express health claim regarding the relationship between dietary saturated fat and cholesterol and the risk of heart disease, *see generally id.* § 101.75, the use is inconsistent with FDA's conclusion that "[o]ther risk factors for coronary heart disease include . . . high blood pressure, diabetes, . . . [and] obesity," all conditions caused by the consumption of the high-sugar cereals bearing these health claims.

295. Kellogg's implied and express health claims challenged herein also violate 21 C.F.R. §§ 101.14(d)(2)(iii) & (e) because, for the reasons discussed herein, the claims are not "complete, truthful, and not misleading."

296. Some of Kellogg's health claims challenged herein also violate 21 C.F.R. §§ 101.14(d)(2)(iv) & (e) because the claims do not appear on the principal display panel, yet there is intervening material between "[a]ll information required to be included in the claim[.]"

297. For example, the back of certain *Kellogg's Raisin Bran* and *Smart Start – Original Antioxidants* cereals violate this regulation because the claim, "Heart Healthy," is separated from the specific health claim set forth in § 101.75, as depicted below.

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298. These cereals also violate 21 C.F.R. § 101.13(f) because they make nutrient content claims that are "larger than two times the statement of identity," or are "unduly prominent in type style compared to the statement of identity."

299. Several Kellogg cereals violate 21 C.F.R. § 101.13(i)(3) because they contain express nutrient content claims, which do not in any way implicitly characterize the level of the nutrient in the food, but are false and misleading in some respect. This violation pertains to any Kellogg cereal in which the nutrient content claim "Xg PROTEIN" is made prominently on the cereal's packaging, but where the "Xg" includes a contribution from milk. Such cereals include at least the following:

a. *Raisin Bran*

b. *Raisin Bran Crunch*

c. *Raisin Bran Omega-3 250mg ALA From Flaxseed*

d. *Raisin Bran with Cranberries*

e. *Frosted Mini-Wheats – Original*

f. *Frosted Mini-Wheats – Blueberry*

g. *Frosted Mini-Wheats Little Bites – Original*

h. *Frosted Mini-Wheats Little Bites – Chocolate*

i. *Frosted Mini-Wheats Fruit in the Middle – Raspberry*

j. *Frosted Mini-Wheats Harvest Delights – Blueberry with Vanilla Drizzle*

k. *Frosted Mini-Wheats Harvest Delights – Cranberry with Yogurt Drizzle*

300. *Kellogg's Raisin Bran Cinnamon Almond* cereal violated 21 C.F.R. § 101.71(a), which provides that health claims are "not authorized" for a purported relationship between "Dietary fiber and cardiovascular disease." In violation of this regulation, *Raisin Bran Cinnamon Almond* represented that "fiber can help promote weight loss and healthier eating patterns," and "Fiber-rich diets can help lower 'bad' cholesterol, lower blood pressure, and help control blood sugar levels." Because circumstances such as body weight, cholesterol levels, and blood pressure all directly affect and otherwise speak to cardiovascular health, Kellogg violated 21 C.F.R. § 101.71(a).

301. Kellogg also violates this regulation with information on its website associating the fiber in *Raisin Bran* with heart health,[92] including by linking to an article, also maintained on Kellogg's website, titled, "Fill Up on Fiber to Support Heart Health."[93] Kellogg has made similar statements, claiming that the fiber in its cereals will "help[] to address a number of health issues, including obesity, digestive health, diabetes, heart disease, and certain cancers."[94]

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[92] At http://www.kelloggs.com/en_US/scoop-on-heart-health.html

[93] At http://www.kelloggs.com/en_US/healthy-investments/heart-health/fill-up-on-fiber-to-support-heart-health.html

[94] See, e.g., video, "Cereal: The Complete Story – A Nutritious Start to the Day," at https://www.youtube.com/watch?v=LcZwXPOnwPE.

B. Kellogg Knows or Reasonably Should Know of the Strong Scientific Evidence Demonstrating Its High-Sugar Cereals are Unhealthy to Consume, But Fails to Warn Consumers of the Known Dangers

302. As a longtime and major national food manufacturer, Kellogg is well-positioned to know the most current food science.

303. For example, scientific evidence of the dangers of sugar was available to Kellogg as a result of its membership in the Whole Grains Council, whose website notes Harvard research finding that replacing sugar with whole grains lowers heart disease risk.[95]

304. In fact, Kellogg often claims to communicate the latest food science to its consumers. In doing so, however, Kellogg cherry-picks information, sometimes from industry-funded or other dubious sources, while failing to communicate more rigorous scientific evidence of the type discussed herein.

305. For example, in a particularly egregious example of leveraging bad science to support its marketing goals, a Kellogg pamphlet available for download on its website titled, "Cereal: The Complete Story," Kellogg claims that "Numerous studies have shown that the consumption of cereal for breakfast is associated with lower levels of BMI in children, a relationship that holds regardless of the amount of sugar in the cereal." Kellogg refers to this same concept in other marketing avenues as well, such as in certain videos it maintains on its own YouTube channel.

306. In support of this proposition, Kellogg cites two publications, but when critically analyzed, neither validly supports the proposition.

307. First, Kellogg cites Albertson AM, et al., "Ready-to-eat cereal consumption: its relationship with BMI and nutrient intake of children aged 4 to 12 years," *J. Am. Diet. Assoc.*, Vol. 103, 1613-1619 (2003). This study was designed, however, by sister cereal-giant General Mills, and was based on a 14-day food diary, where foods eaten, as well as physical

[95] See http://wholegrainscouncil.org/replacing-butter-sugar-or-refined-grains-with-whole-grains-cuts-heart-disease-risk

attributes like height and body weight, were self-reported, and where portion sizes were later just estimated. Such studies are notoriously unreliable. Worse, to be counted in the data, children needed to only report on 7 of the 14 days. Then, the General Mills-sponsored researchers only considered children overweight if they were at or above the 95th percentile of BMI—rather than using an absolute value—which is absurd, as it would be equivalent to saying only 5% of children are overweight. Moreover, the data came from that collected by The NPD Group from February 1998 through January 1999, almost 20 years ago when foods, food labeling, and food policy was all much different than today. And, of the 603 children included, only about half came from households that were employed, suggesting a confounding factor (such children might eat less, accounting for their lower weight). This study has been criticized on a number of bases (other than the obvious criticism: bias), for example that its outcomes were not clearly defined nor its measurements valid and reliable, especially based on data collection techniques.

308. Second, Kellogg cites O'Neal, C.E., et al., "Presweetened and Nonpresweetened Ready-to-Eat Cereals at Breakfast Are Associated With Improved Nutrient Intake but Not With Increased Body Weight of Children and Adolescents: NHANES 1999-2002," Am. J. Lifestyle Med., Vol. 6, No. 1, pp. 63-74 (2012). First, this analysis of NHANES data is not cereal-specific, but rather looked only at whole grain consumption (from all sources). Second, the analysis has nothing to do with BMI or body weight at all, but rather only asks whether those who consumed the most whole grain also consumed the most other beneficial nutrients (as measured by "Healthy Eating Index" standard). The data actually showed that increased whole grain consumption did *not* decrease sugar consumption.

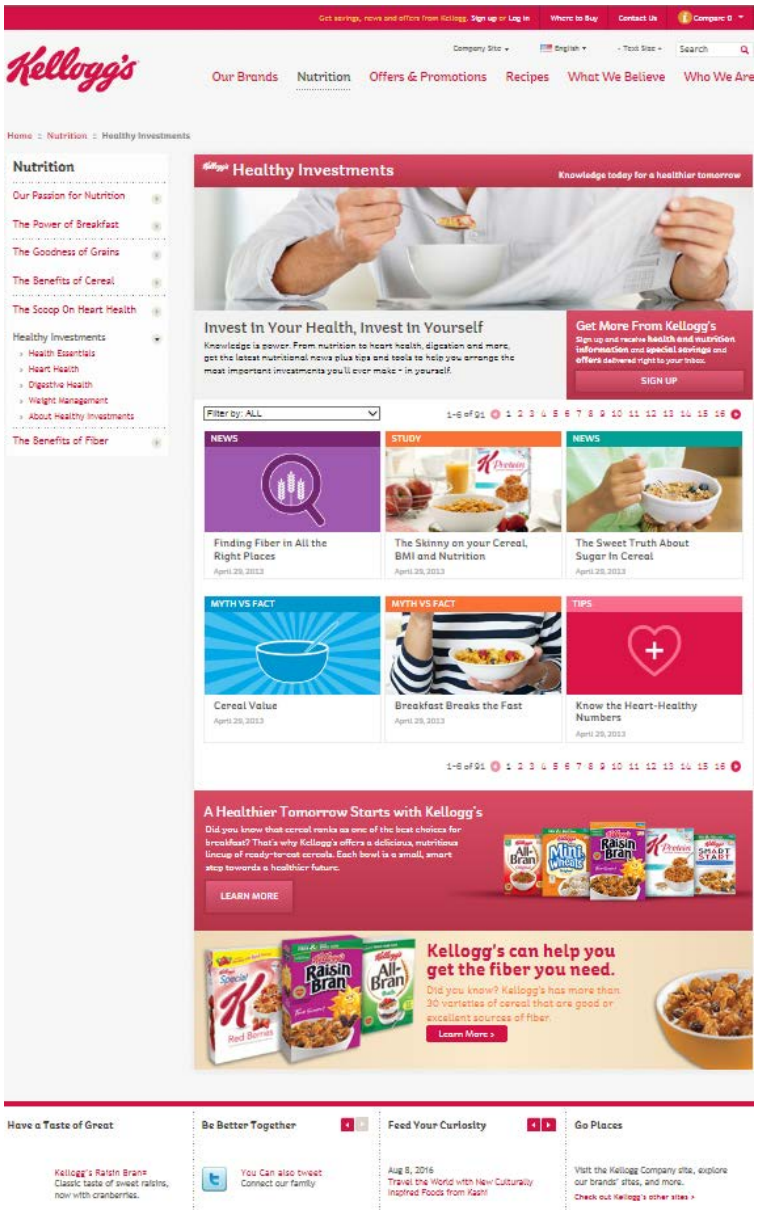
309. Kellogg also frequently relies on old information that does not reflect the most current and accurate science, and also often provides ambiguous or incomplete citations that frustrates the ability to verify its claims.

310. Despite knowing of the dangers of the added sugar in its cereals, Kellogg has failed to, and continues to refuse to adequately warn consumers, but instead induced and continues to induce them to consume the Kellogg cereals and bars through affirmative health

and wellness misrepresentations, which also distract consumers from the dangers presented by the high amounts of added sugar in the Kellogg products.

C. Kellogg Used its Website, as Referenced on Some Labels, and Other Online Fora, to Spread Misinformation About the Dangers of Consuming the Added Sugar in its Products

311. *Kellogg's Raisin Bran* and *Smart Start – Original Antioxidants* cereals both include on the packaging the statement, "Get health & nutrition tips at **Kelloggs.com/HealthyInvestments**." Kellogg maintains at this URL a webpage titled "Healthy Investments," which is depicted below.



312. As further depicted below, Kellogg's Healthy Investments page states:

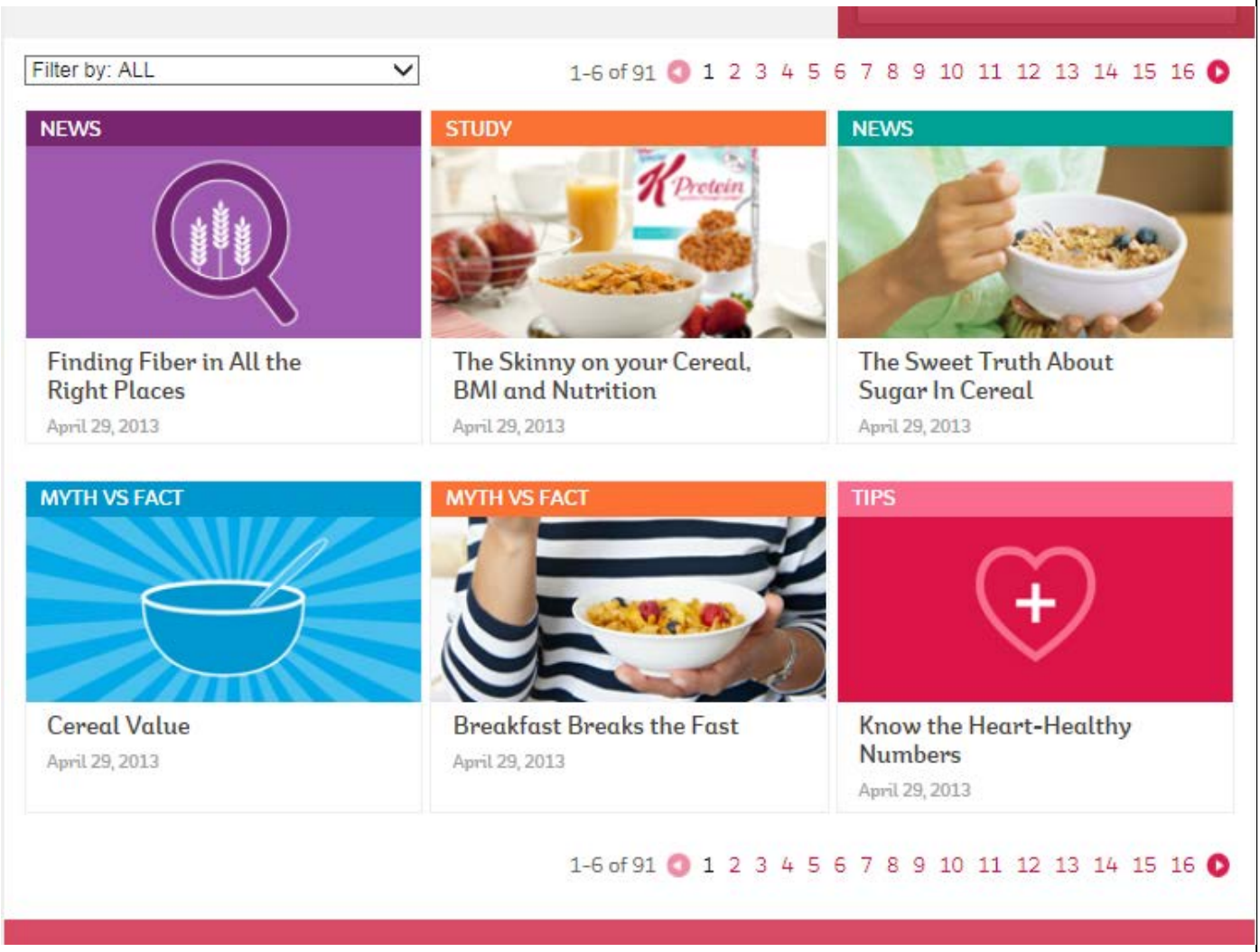
> Invest in Your Health, Invest in Yourself
>
> Knowledge is power. From nutrition to heart health, digestion and more, get the latest nutritional news plus tips and tools to help you arrange the most important investments you'll ever make – in yourself.

313. Kellogg's Healthy Investments page further states that it provides "Knowledge today for a healthier tomorrow."

314. As further depicted below, the Healthy Investments page, in close proximity to depictions of some high-sugar cereals like *Raisin Bran*, *Frosted Mini-Wheats – Original*, and *Smart Start – Antioxidants*, further states:

> A Healthier Tomorrow Starts with Kellogg's
>
> Did you know that cereal ranks as one of the best choices for breakfast? That's why Kellogg's offers a delicious, nutritious lineup of ready-to-eat cereals, each bowl is a small, smart step towards a healthier future.

315. Available on the same page are 91 pages of articles, organized under the headings "NEWS," "STUDY," "MYTH VS. FACT," AND "TIPS."



316. These article are full of misleading information concerning the high amounts of added sugar in Kellogg's cereals.

317. For example, an April 29, 2013 "NEWS" story featured on the front page (despite that it is dated before many articles not so featured) is titled, "The Sweet Truth About Sugar In Cereal." This "news" story begins, "Sugar often gets a bad rap when it comes to breakfast cereals." Kellogg then asserts, "But the sweet truth is," that "Breakfast cereal accounts for just 4% of daily, added sugar intake in the U.S.," that "Eating cereal is linked to a higher consumption of micronutrients and to lower fat, and cholesterol intake," and that "[t]aking sugar out of cereals does not typically reduce its calories."

318. The same story, after explaining that cereal supposedly must have sugar for its structure, also claims, "Remember, if there is any fruit in the cereal such as raisins, dates, or berries, the sugar count will be amplified due to the naturally occurring sugars in the fruit," but that "Those fruits do come with added benefits: they are carriers for other nutrients," which is supposedly "Yet another reason for making cereal part of your daily routine!"

319. This "NEWS" "story" is not attributed to any author and does not provide any citation for any supposed statistics cited in the article.

320. The article is false and misleading, significantly downplaying the dangers of the added sugars in the cereal, pretending that they come from "good" sources, like fruit, and pretending that it is impractical or impossible to reduce the sugar in cereal.

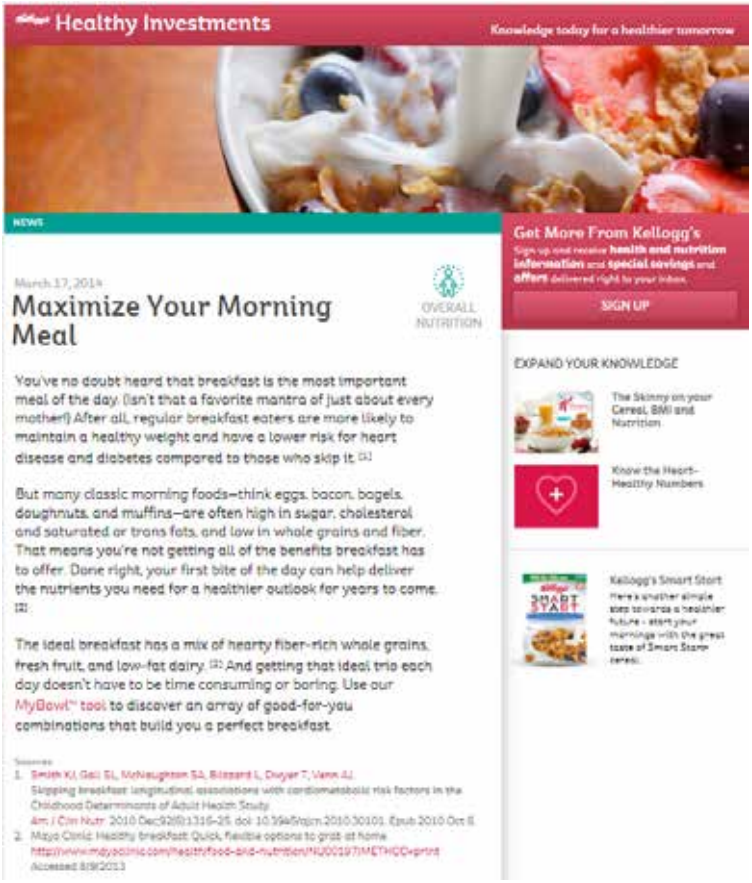
321. Another misleading article comes in the form of a November 4, 2013 "TIPS" piece titled, "The Sugar Lover's Guide to Heart Health." The article begins by citing an Institute of Medicine recommendation that "no more than 25 percent of your total daily calories" come from added sugar. That comes, however, from an IOM recommendation last made in 2006, at which time IOM noted that "Data are mixed on potential adverse effects of overconsuming carbohydrate (i.e., sugars and starches) . . . ."

322. Accordingly, Kellogg is deceptively providing consumers with information about sugar that is a decade old, which itself was based on even older information. The article then goes on to provide "tips," like swapping canned fruit with no-sugar-added frozen fruit, using less barbeque sauce and ketchup, and eating healthier desserts, but in no way addresses the very high amounts of added sugar in Kellogg's cereals and bars.

323. Other articles featured in this section leverage Kellogg's policy and practice of discussing or suggesting the supposedly beneficial aspects of its foods, while obscuring, ignoring, and otherwise minimizing the detrimental impact of consuming its foods on consumer health.

324. A good example is a March 17, 2014 "NEWS" "story" titled "Maximize Your Morning Meal." After touting the health benefits of eating breakfast generally, Kellogg purports to warn that, "many classic morning foods—think eggs, bacon, bagels, doughnuts,

and muffins—are often ***high in sugar***, cholesterol and saturated or trans fats, and low in whole grains and fiber," which supposedly "means you're not getting all the benefits breakfast has to offer."



325. Kellogg goes on to claim that "The ideal breakfast has a mix of hearty fiber-rich whole grains, fresh fruit, and low-fat dairy," citing an article authored by the Mayo Clinic. Kellogg then encourages readers to "Use our MyBowl tool to discover an array of good-for-you combinations that build you a perfect breakfast."

326. The article is highly deceptive. For example, it omits this advice from the Mayo Clinic article cited: "**Sugar.** After you find fiber-rich cereals that you like, look for the one with the lowest amount of sugar. Focus on cereals marketed to adults. They're usually lower in sugar than cereals aimed at children. . . . Avoid cereals that list sugar at or near the top of the ingredient list, or that list multiple types of added sugar, such as high-fructose corn syrup, honey, brown sugar and dextrose." That description of cereals to avoid matches every cereal complained of herein.

327. A March 17, 2014 article available on Kellogg's Healthy Investments webpage, titled simply "Myth v. Fact," states:

> **Myth or Fact: Carbohydrates make you gain weight.**
>
> Answer: Myth. They may get a bad rap in the media, but carbs aren't the cause of weight gain. Overdoing it with any type of food may raise the number on the scale, as well as your risk of developing health problems.

328. This statement downplays the significant dangers of consuming the sugars in the Kellogg high-sugar foods.

329. Other examples of misleading articles available through Kellogg's Healthy Investments webpage include:

a. NEWS
   (i.) "Finding Fiber in All the Right Places" (April 29, 2013)
   (ii.) "Grains: The Whole Story" (May 9, 2013)

b. STUDY
   (i.) "The Skinny on your Cereal, BMI and Nutrition (April 29, 2013)
   (ii.) "The Most Important Meal of the Day" (October 1, 2013)

c. MYTH VS FACT
   (i.) "Diabetes Myths – Busted" (March 17, 2014)

d. TIPS
   (i.) "Know the Heart-Healthy Numbers" (April 29, 2013)
   (ii.) "How to Spot a Wholesome Food" (August 1, 2013)
   (iii.) "Fight Cholesterol with Healthy Fats" (August 1, 2013)
   (iv.) "Fill Up on Fiber to Support Heart Health" (August 9, 2013)
   (v.) "Heart-Helping Grains We Love" (August 1, 2013)
   (vi.) "Adding Fiber to Your Diet" (August 8, 2013)
   (vii.) "Fill Up With Fiber" (August 9, 2013)
   (viii.) "The Power of Protein" (August 23, 2013)
   (ix.) "Eat for All Day Energy" (July 23, 2013)
   (x.) "The 'Whole' Story on Whole Grains" (October 1, 2013)
   (xi.) "Good Morning, Heart Health!" (November 12, 2013)
   (xii.) "Deciphering Food Labels for Diabetes" (November 12, 2013)
   (xiii.) "Make Your Whole Grains Work Harder for You" (October 1, 2013)
   (xiv.) "Fiber 101" (November 19, 2013)

(xv.) "Smarter Choices for Digestive Comfort" (November 20, 2013)
(xvi.) "Managing Your Weight After 50" (November 20, 2013)
(xvii.) "Smart Way to Snack" (November 19, 2013)
(xviii.) "The Art of a Balanced Diet" (November 25, 2013)
(xix.) "Eat Less, Feel Satisfied" (November 19, 2013)
(xx.) "5 Heart-Healthy New Year's Resolutions You Haven't Considered" (March 17, 2014)
(xxi.) "Six Surprising Ways to Be Heart Healthy" (March 17, 2014)

330. Kellogg's Healthy Investments webpage is actually a subpage under a broader "Nutrition" page.[96] Kellogg's Nutrition page includes several other subpages that are also misleading, as follows.

a. **"Our Passion for Nutrition."** On this page,[97] Kellogg claims it is "a company of dedicated people making quality products for a healthier world." Kellogg says "Nutrition is not just something you need, but something you enjoy, share and live," and so the company "make[s] it easy[.]" Kellogg claims its founder was "Motivated by a passion to help people improve their health . . . ." More specifically, Kellogg states:

> Today our cereals still begin with the wholesome simplicity of wheat, corn, oats or rice. Next we add quality ingredients to boost the flavor and potential of our grains. Then we share it all with you—in the Kellogg's cereals that you know, trust and love. And because every grain promises nutrition and taste, we're able to create cereals that best cater to you and your nutritional needs. We make a wide selection of great-tasting start-the-day right cereals specifically with you and your family in mind—so everyone can head out the door smiling. That way, from grains to greatness, dawn to done, you and your family are better prepared to be at your best every day. That's our passion, and our promise.

In addition to obscuring the dangerous amounts of added sugar in its cereals, these

[96] At http://www.kelloggs.com/en_US/nutrition.html

[97] http://www.kelloggs.com/en_US/our-commitment-to-nutrition.html

representations are false and misleading because Kellogg's marketing of high-sugar cereals in a manner designed to induce consumers to purchase and regularly consume them, to the detriment of consumers' health, demonstrates that Kellogg cares more about profit and less about being a socially-responsible food manufacturer.

b. **"The Power of Breakfast."**[98] On this page, Kellogg extols the virtue of eating breakfast in general, including things like "kick-starting your metabolism," and enjoying "mental alertness," but deceptively omits material information about the negative impacts that consumption of the high levels of added sugar in the Kellogg high-sugar cereals has on consumers' health, including their metabolic and brain health.

c. **"The Goodness of Grains."**[99] On this page, Kellogg links to two other pages that extol the virtues of consuming whole grain, but deceptively omits material information about the negative impacts that consumption of the high levels of added sugar in the Kellogg high-sugar cereals and bars has on consumers' health, including their metabolic and brain health.

d. **"The Benefits of Cereal."**[100] On this page, Kellogg claims all of its cereals provide vital nutrients, especially for children, while asserting that "cereal is also lower in sodium and sugar than many popular breakfast options," and that "sugar in cereals—including kids cereals—contributes less than 5 percent of daily sugar intake, yet it adds taste, texture and enjoyment that help the consumption of important nutrients." These statements are false and misleading because, while they may be true for *unsweetened* cereals, the statements do not accurately describe the high-sugar cereals challenged herein, and otherwise attempt to justify the presence of high amounts of sugar in cereals marketed as healthy.

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[98] At http://www.kelloggs.com/en_US/the-power-of-breakfast.html

[99] At http://www.kelloggs.com/en_US/the-goodness-of-grains.html

[100] At http://www.kelloggs.com/en_US/the-benefits-of-cereal.html

e. **"The Scoop on Heart Health."**[101] This page begins with a prominent graphic stating that "Kellogg's Raisin Bran is the deliciously heart healthy way to start your day." It continues with several more such statements, including ones unlawfully associating dietary fiber with cardiovascular disease. The statements include, "More than 1/4 of your recommended daily fiber is right here in this bowl! Your heart [LOVE]'s Raisin Bran" (where [LOVE] is a vignette of a beating heart), and "Sweet, tart, and healthy for the heart." Given that Raisin Bran is one of Kellogg's most sugary cereals, with 18g of sugar per serving contributing nearly 40% of its calories, this statement is false and highly misleading.

f. **"The Benefits of Fiber."**[102] This webpage extols the virtue of fiber to various aspects of health and wellness, including through a quiz and other demonstratives purporting to demonstrate that Raisin Bran cereal is healthier than salad, multi-grain toast, and blueberries because it contains more fiber. But the page and Kellogg's statements are false and misleading because they deceptively omit the negative impacts from the high levels of sugar in the cereals.

331. Kellogg also maintains a YouTube channel[103] that includes, among other things, a four-part video series, created in 2012, called "Cereal: The Complete Story," in which it purports to "explore the advantages of ready-to-eat cereals, address common misconceptions about them, and provide the latest scientific research about cereals and the benefits of breakfast."

332. The first video is titled "Cereal: The Complete Story – Misunderstood," and purports to "clear up" "myths" about cereal. For example, Kellogg claims its cereals are not highly-processed foods, but rather result from a simple process of merely cooking grain.

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[101] At http://www.kelloggs.com/en_US/scoop-on-heart-health.html

[102] At http://www.kelloggs.com/en_US/the-benefits-of-fiber.html

[103] At https://www.youtube.com/channel/UCbaL7tpH-Q0b_5z71cqGDPw

333. In the same video, Kellogg represents it is a "myth" perpetuated by "some critics," that "some cereals are high in sugar and contribute to obesity." Citing only, "Journal of the American Dietetic Association, 2003," Kellogg claims:

> in fact, cereal eaters, including those who eat kid's cereals, have healthier body weights. The criticism surrounding sugar includes the concern that it displaces nutrients with calorie-rich, nutrient-poor foods. It's important to keep things in perspective. Kid's cereals contribute fewer calories to the diet than you might think. Sugar in ready-to-eat cereals is actually a small percentage of daily sugar intake. Cereal's ability to deliver nutrients is so important that the 2005 U.S. Dietary Guidelines recognized that the consumption of sweetened cereal and other nutrient-dense foods is positively associated with children's and adolescent's nutrient intake. An average serving of Kellogg's kid's cereal with skim milk contains approximately 150 calories. And that's 9% of the recommended daily amount for U.S. kids ages 6-11. It's not cereal or any single food that causes obesity. Obesity results from an imbalance of calories in versus calories out. It's interesting to note that while the number of calories consumed by kids age 6-11 has increased over the years only slightly, the incidence of obesity has climbed sharply. Kids today live significantly more sedentary lifestyles than children did 10, 20, or even 30 years ago. Healthy eating combined with exercise is essential for good health. It's not simply about avoiding any one single food.

334. The video then shows a pediatrics professor, James O. Hill, PhD, stating that parents should do things to make their kids more active and, "on the food side what you want to concentrate on is not having your kid overeat and providing a nutritionally-balanced array of foods during the day."

335. Next, the video states that "A 10-year study found that adolescent girls who eat cereal regularly are less likely to become overweight," but in the next frame mentions that only 41% of the cereals in the study were "pre-sweetened."

336. From all of this, Kellogg concludes, "when it comes to health, consumers have a role to play in their own lives and the lives of their families. That's why food companies worldwide help educate people on nutrition, and the importance of breakfast, and a healthy lifestyle." Kellogg claims it "takes these responsibilities seriously, and is involved in a number of organizations across the globe that support good food habits and a balanced

lifestyle."

337. These statements are highly-deceptive, as the science demonstrates that calories from different sources are not equivalent, and obesity is not merely a question of "calories in, calories out," as Kellogg misrepresents.[104] Moreover, while noting the obesity epidemic among children, Kellogg falsely blames this on the lack of a "balanced lifestyle," claiming that "Kids today liv[ing] significantly more sedentary lifestyles than children did" years ago—a specious blame tactic that intentionally shifts focus away from the negative impacts its foods have on health—while ignoring the strong correlation seen in the data between the rise in added sugar consumption and childhood obesity.

338. The video is also misleading in that it suggests Kellogg high-sugar cereals will contribute to children not overeating, but the science demonstrates the opposite—that their high sugar is likely to *cause* overeating.

339. In fact, a recent study by Yale University's Rudd Center for Food Policy and Obesity found that children 5 to 12 years old ate an average of 35 grams of low-sugar cereals, but an average of 61 grams of high-sugar cereals.[105]

340. Another Kellogg video is titled, "Cereal: The Complete Story – a Nutritious Start to the Day."[106] It begins by touting the science demonstrating that breakfast is an important meal, especially for children. Citing only "British Nutrition Foundation Nutrition Bulletin, 2007," Kellogg claims, "Breakfast eaters—specifically breakfast cereal eaters—including children also have lower body mass indices and also tend to be overweight less than those who eat cereal less frequently."

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[104] *See supra* n.31 and related discussion.

[105] Jennifer L. Harris, et al., "Effects of Serving High-Sugar Cereals on Children's Breakfast-Eating Behavior," *Pediatrics*, Vol. 127, Issue 1 (Jan. 2011) [hereinafter "Harris, Children's High-Sugar Cereal Eating Behavior"].

[106] At https://www.youtube.com/watch?v=LcZwXPOnwPE

341. The article to which Kellogg refers, however, does not support this statement. Rather, in reviewing nine references looking at the relationship between the consumption of breakfast cereals and BMI, the authors concluded that while "[t]here is consistent evidence of an association between cereal consumption and a healthy weight," there was "limited evidence for any proposed mechanism that would point to it being a causal relationship."[107] The authors even point out that some of the associations seen in the nine references were not statistically significant, and that it is likely the associations in others come from "confounding factors."[108] Moreover, neither the authors, nor Kellogg in its video, draw a distinction between unsweetened cereals at least some subjects of the nine studies likely consumed, and the high-sugar Kellogg cereals at issue here.

342. Continuing this deceptive omission, while showing video of *Kellogg's Raisin Bran*, *Raisin Bran Crunch*, and *Frosted Mini-Wheats*, Kellogg states, "Cereal has many valuable benefits. It's a quick and easy way to get the nutrition you need at breakfast, and it's a typically nutrient-dense, low-fat, low-cholesterol food, meaning it provides lots of nutrients for relatively few calories."

343. Showing video of *Frosted Mini-Wheats*, Kellogg states that "cereal also promotes the consumption of milk, a nutrient-packed beverage that is often lacking in women's and children's diets."

344. Kellogg continues, "Many experts agree that fruits, vegetables, and grains are the foundation of a balanced diet. With wheat, rice, oats and corn as main ingredients, breakfast cereals deliver the goodness of grain."

345. And Kellogg claims that "cereal often contributes fiber, a nutrient many adults and children around the world do not get enough of. In addition to playing an important role

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[107] De La Hunty, A., et al., "Are people who regularly eat breakfast cereals slimmer than those who don't? A systematic review of the evidence," *Nutrition Bulletin*, Vol. 32, Issue 2, pp. 118-28 (June 2007).

[108] *Id.*

in overall health, there is consistent strong evidence for the role of fiber-containing foods in helping to address a number of health issues, including obesity, digestive health, diabetes, heart disease, and certain cancers."

346. The video then presents an interview with "Dr. David Jenkins, MD, PhD: World-Renowned Fiber Researcher, Canada," who states: "Cereals are excellent foods because they provide both the carbohydrate, they provide fiber, they're low in saturated fat, and their profile for risk reduction of chronic diseases, in terms of diabetes and heart disease, is excellent."

347. These statements are highly-deceptive, especially inasmuch as they are being stated while showing video of some of Kellogg's most sugary cereals because, even if literally true, any such potential benefits that might come from, for example, fiber consumption, are outweighed by the harms of consuming the high amounts of sugar in Kellogg's cereals. Moreover, the science demonstrates that regular consumption of these cereals, contrary to *reducing* risk of diabetes and heart disease, *increases* risk of this and other morbidity.

348. Other online locations where Kellogg disseminates misleading information about its cereals—typically touting their contribution to a healthy breakfast or lifestyle while ignoring the dangers presented by the sugars in the high-sugar cereals—include, without limitation, its "Love Your Cereal" page[109] and its "Choose My Bowl" tool.[110]

D. The Foregoing Behaviors are Part of Kellogg's Longstanding General Policy, Practice and Strategy of Marketing its High-Sugar Cereals and Bars as Healthy in Order to Increase Sales and Profit

349. The practices complained of herein, while specific to certain cereal and bar lines, flavors, and varieties, and to certain packaging claims, are exemplary of, and consistent with, Kellogg's longtime practice of intentionally and strategically marketing high-sugar cereals,

[109] At http://www.kelloggs.com/en_US/love-your-cereal.html

[110] At http://www.kelloggs.com/en_US/choose-my-bowl.html

bars, and other foods with health and wellness claims that both deceptively suggest the products are healthy, and deceptively omit the dangers of consuming the products.

350. These practices have been consistent notwithstanding Kellogg's occasional discontinuation or introduction of new products or product lines, reformulation of products, or labeling or packaging changes.

351. This strategy is based on sophisticated consumer marketing research, and has been undertaken by Kellogg with the purpose of increasing the prices, sales, and market share of its cereals, bars, and other food products.

352. Unless enjoined from using in the marketing of high-sugar cereals, bars and other foods the health and wellness marketing statements, representations, strategies, and tactics complained of herein, Kellogg will continue to employ this strategy, as the consumer preference for healthier-seeming foods is strong.

353. In fact, Neilsen's 2015 Global Health & Wellness Survey found "88% of those polled are willing to pay more for healthier foods."[111]

E. Kellogg's Policy and Practice of Marketing High-Sugar Cereals as Healthy is Especially Harmful Because Consumers Generally Eat More than One Serving of Cereal at a Time, Which Kellogg Knows or Reasonably Should Know

354. The serving size for Kellogg's cereals is generally either around 30g or 60g per serving.

355. In 2014, the FDA analyzed food consumption data between 2003 and 2008, from the National Health and Nutrition Examination Survey (NHANES, discussed previously above), finding that at least 10% of Americans eat at one sitting 2 to 2.6 times the amount of cereal as the labeled serving size.

356. A study conducted by General Mills found that children and adolescents 6 to 18 years old typically eat about twice as much cereal in a single meal compared to the suggested

[111] Nancy Gagliardi, Forbes, *Consumers Want Healthy Foods--And Will Pay More For Them*, (Feb. 18, 2015) (citing Neilson, *We are what we eat, Healthy eating trends around the world*, at 11 (Jan. 2015)).

serving size.

357. And as mentioned above, a study by Yale University's Rudd Center for Food Policy and Obesity, found that children 5 to 12 years old ate an average of 35 grams of low-sugar cereals, but an average of 61 grams of high-sugar cereals.[112]

358. As a result of consumers' actual eating habits, Kellogg's high-sugar cereals in reality contribute significantly more sugar to their consumers' diets than even the high amount in a single serving suggests.

359. For example, doubling a serving of most Kellogg cereals would cause men, women, and children all to exceed their AHA-recommended maximum daily sugar intake in just the single breakfast serving—in some cases providing as much as ***three times*** the daily maximum.

360. For this reason, the Kellogg high-sugar cereals are especially dangerous to the health of those who regularly consume them, and therefore its deceptive health and wellness messaging for these products is particularly insidious.

PLAINTIFF'S RELIANCE & INJURY

361. Plaintiff Stephen Hadley has been a frequent cereal eater for many years. Mr. Hadley is relatively health-conscious. During the past several years and prior, in seeking out cereals to eat, Mr. Hadley has generally tried to choose healthy options, and has been willing to pay more for cereals he believes are healthy.

362. Over the past several years, Mr. Hadley has purchased Kellogg cereals on multiple occasions, including *Raisin Bran* cereals, *Krave* cereals, *Frosted Mini-Wheats* cereals, *Smart Start – Original Antioxidants* cereal, and *Crunchy Nut* cereal.

363. Over the past several years, Mr. Hadley has purchased *Kellogg's Nutri-Grain* bars on multiple occasions, including *Nutri-Grain Cereal Bars*, *Soft-Baked Breakfast Bars*, and *Fruit & Nut Chewy Breakfast Bars*.

364. ***Kellogg's Raisin Bran*** **Cereals.** Over the past several years, Mr. Hadley has

[112] *See* Harris, Children's High-Sugar Eating Behavior, *supra* n.105.

purchased both original *Raisin Bran* and *Raisin Bran Crunch* cereals. To the best of his recollection, Mr. Hadley has been purchasing *Kellogg's Raisin Bran* cereals since early 2012. Given plaintiff's habits, he believes he purchased a *Raisin Bran* cereal with a frequency of approximately once or twice per month. Plaintiff believes he purchased *Kellogg's Raisin Bran* cereals from locations including: (a) the Safeway located at 815 Canyon Del Rey Boulevard, in Del Rey Oaks, California 93940, (b) the Wal-Mart located at 150 Beach Road, in Marina, California 93933, and (c) the Target located at 2040 California Avenue, in Sand City, California 93955. Mr. Hadley believes he last purchased a *Kellogg's Raisin Bran* cereal in approximately April or May 2016.

365. For each *Kellogg's Raisin Bran* cereal purchased, Mr. Hadley read and decided to purchase the products in substantial part based upon Kellogg's health and wellness labeling statements discussed herein and set forth above with respect to each variety, which statements—individually, and especially in the context of the packaging as a whole—made the products seem like healthy food choices to Mr. Hadley.

366. ***Kellogg's Krave* Cereals.** Mr. Hadley purchased all three varieties of *Krave* cereal (*Chocolate*, *Double Chocolate*, and *S'mores*). To the best of his recollection, Mr. Hadley purchased *Krave* cereal on a few occasions in the summer of 2014, from the Nob Hill Foods located at 900 Lighthouse Avenue, in Monterey, California 93940.

367. For each *Kellogg's Krave* cereal purchased, Mr. Hadley read and decided to purchase the product in substantial part based upon Kellogg's health and wellness labeling statements discussed herein and set forth above with respect to each variety, which statements—individually, and especially in the context of the packaging as a whole—made the products seem like healthy food choices to Mr. Hadley.

368. ***Kellogg's Frosted Mini-Wheats* Cereals.** Over the past several years, Mr. Hadley has purchased the following varieties of *Kellogg's Frosted Mini-Wheats* cereals:

a. *Original*

b. *Maple Brown Sugar*

c. *Strawberry*

d. *Bite Size – Strawberry Delight*

e. *Little Bites – Original*

f. *Little Bites – Cinnamon Roll*

g. *Touch of Fruit in the Middle – Mixed Berry*

h. *Touch of Fruit in the Middle – Raisin*

369. To the best of his recollection, Mr. Hadley has been purchasing *Kellogg's Frosted Mini-Wheats* cereals since early 2012. Given plaintiff's habits, he believes he purchased one variety or another with a frequency of approximately once per month. Plaintiff believes he purchased *Kellogg's Frosted Mini-Wheats* cereal from locations including: (a) the Safeway located at 815 Canyon Del Rey Boulevard, in Del Rey Oaks, California 93940, (b) the Wal-Mart located at 150 Beach Road, in Marina, California 93933, and (c) the Target located at 2040 California Avenue, in Sand City, California 93955. Mr. Hadley believes he last purchased a *Kellogg's Frosted Mini-Wheats* cereal in approximately February or March of 2016.

370. For each *Kellogg's Frosted Mini-Wheats* cereal purchased, Mr. Hadley read and decided to purchase the products in substantial part based upon Kellogg's health and wellness labeling statements discussed herein and set forth above with respect to each variety, which statements—individually, and especially in the context of the packaging as a whole—made the products seem like healthy food choices to Mr. Hadley.

371. ***Kellogg's Smart Start – Original Antioxidant* Cereal.** Mr. Hadley has purchased *Kellogg's Smart Start – Original* antioxidant cereal on multiple occasions, he believes from approximately fall 2014 to fall 2015, from the Safeway located at 815 Canyon Del Rey Boulevard, in Del Rey Oaks, California 93940. Given plaintiff's habits, he believes he purchased *Kellogg's Smart Start – Original Antioxidant* cereal approximately once every two months.

372. In purchasing *Kellogg's Smart Start – Original Antioxidant* cereal, Mr. Hadley read and decided to purchase the product in substantial part based upon Kellogg's health and wellness labeling statements discussed herein and set forth above with respect to each variety,

which statements—individually, and especially in the context of the packaging as a whole—made the product seem like a healthy food choice to Mr. Hadley.

373. ***Kellogg's Crunchy Nut* Cereal.** Mr. Hadley purchased *Kellogg's Crunchy Nut* cereal on a few occasions, he believes in the summer of 2014, from the Nob Hill Foods located at 900 Lighthouse Avenue, in Monterey, California 93940.

374. In purchasing *Kellogg's Crunchy Nut* cereal, Mr. Hadley read and decided to purchase the product in substantial part based upon Kellogg's health and wellness labeling statements discussed herein and set forth above with respect to each variety, which statements—individually, and especially in the context of the packaging as a whole—made the product seem like a healthy food choice to Mr. Hadley.

375. ***Kellogg's Nutri-Grain Cereal Bars*.** Over the past several years, Mr. Hadley has purchased the following varieties of *Kellogg's Nutri-Grain Cereal Bars*:

a. *Apple Cinnamon*

b. *Blueberry*

c. *Strawberry*

d. *Cherry*

e. *Mixed Berry*

376. To the best of his recollection, Mr. Hadley began purchasing *Kellogg's Nutri-Grain Cereal Bars* in early 2012. Given plaintiff's habits, he believes he purchased one variety or another with a frequency of approximately twice per month. Plaintiff believes he purchased *Nutri-Grain Cereal Bars* from locations including: (a) the Nob Hill Foods located at 900 Lighthouse Avenue, in Monterey, California 93940, (b) the Safeway located at 815 Canyon Del Rey Boulevard, in Del Rey Oaks, California 93940, (c) the Wal-Mart located at 150 Beach Road, in Marina, California 93933, and (d) the Target located at 2040 California Avenue, in Sand City, California 93955. Mr. Hadley believes he last purchased a *Nutri-Grain Cereal Bar* product in approximately spring 2015.

377. In purchasing *Kellogg's Nutri-Grain Cereal Bars*, Mr. Hadley read and decided to purchase the products in substantial part based upon Kellogg's health and wellness labeling

statements discussed herein and set forth above with respect to each variety, which statements—individually, and especially in the context of the packaging as a whole—made the products seem like a healthy food choice to Mr. Hadley.

378. ***Kellogg's Nutri-Grain Soft-Baked Breakfast Bars.*** Mr. Hadley has purchased the following varieties of *Kellogg's Nutri-Grain Soft-Baked Breakfast Bars*:

a. *Blueberry*

b. *Strawberry*

c. *Cherry*

d. *Raspberry*

e. *Mixed Berry*

f. *Apple Cinnamon*

g. *Variety Pack*

379. Mr. Hadley believes he purchased the *Kellogg's Nutri-Grain Soft-Baked Breakfast Bars* in summer 2015, from the Safeway located at 815 Canyon Del Rey Boulevard, in Del Rey Oaks, California 93940.

380. In purchasing *Kellogg's Nutri-Grain Soft-Baked Breakfast Bars*, Mr. Hadley read and decided to purchase the products in substantial part based upon Kellogg's health and wellness labeling statements discussed herein and set forth above with respect to each variety, which statements—individually, and especially in the context of the packaging as a whole—made the products seem like a healthy food choice to Mr. Hadley.

381. ***Kellogg's Nutri-Grain Fruit & Nut Chewy Breakfast Bars.*** Mr. Hadley has purchased both the *Blueberry Almond* and *Cherry Almond* varieties of *Kellogg's Nutri-Grain Fruit & Nut Chewy Breakfast Bars* on multiple occasions.

382. In purchasing *Kellogg's Nutri-Grain Fruit & Nut Chewy Breakfast Bars*, Mr. Hadley read and decided to purchase the product in substantial part based upon Kellogg's health and wellness labeling statements discussed herein and set forth above with respect to each variety, which statements—individually, and especially in the context of the packaging as a whole—made the product seem like a healthy food choice to Mr. Hadley.

* * *

383. When purchasing Kellogg cereals and bars, Mr. Hadley was seeking products that were healthy to consume, that is, whose consumption would not increase his risk of CHD, stroke, and other morbidity.

384. The health and wellness representations on the Kellogg cereals' and bars' packaging, however, was misleading, and had the capacity, tendency, and likelihood to confuse or confound Mr. Hadley and other consumers acting reasonably (including the putative class) because, as described in detail herein, the products are not healthy but instead their consumption increases the risk of CHD, stroke, and other morbidity.

385. Mr. Hadley is not a nutritionist or food scientist, but rather a lay consumer who did not have the specialized knowledge that Kellogg had regarding the nutrients present in the Kellogg cereals and bars. At the time of purchase, plaintiff was unaware of the extent to which consuming high amounts of added sugar in any form adversely affects blood cholesterol levels and increases risk of CHD, stroke, and other morbidity, or what amount of sugar might have such an effect.

386. Mr. Hadley acted reasonably in relying on Kellogg's health and wellness marketing, which Kellogg intentionally placed on the products' labels with the intent to induce average consumers into purchasing the products.

387. Mr. Hadley would not have purchased Kellogg cereals and bars if he knew that their labeling claims were false and misleading in that the products were not as healthy as represented.

388. The Kellogg cereals and bars cost more than similar products without misleading labeling, and would have cost less absent the misleading health and wellness claims. If Kellogg were enjoined from making the misleading claims, the market demand and price for its cereals and bars would drop, as it has been artificially and fraudulently inflated due to Kellogg's use of deceptive health and wellness labeling.

389. Mr. Hadley paid more for the Kellogg cereals and bars, and would only have been willing to pay less, or unwilling to purchase them at all, absent the misleading labeling

statements complained of herein.

390. For these reasons, the Kellogg cereals and bars were worth less than what Mr. Hadley paid for them, and may have been worth nothing at all.

391. Instead of receiving products that had actual healthful qualities, the products Mr. Hadley received were not healthy, but rather their consumption causes increased risk of CHD, stroke, and other morbidity.

392. Mr. Hadley lost money as a result of Kellogg's deceptive claims and practices in that he did not receive what he paid for when purchasing the Kellogg cereals and bars.

393. Mr. Hadley detrimentally altered his position and suffered damages in an amount equal to the amount he paid for the products.

394. As a result of Kellogg's practices, Mr. Hadley has suffered bodily injury in the form of increased risk of CHD, stroke, and other morbidity.

CLASS ACTION ALLEGATIONS

395. Pursuant to Fed. R. Civ. P. 23, plaintiff seeks to represent a class comprised of all persons in California who, at any time from four years preceding the date of this Complaint to the time a class is notified, purchased high-sugar Kellogg cereals or bars bearing health and wellness claims for their own personal, family, or household use and not for resale.

396. Plaintiff nevertheless reserves the right to divide into subclasses, expand, narrow, more precisely define, or otherwise modify the class definition prior to (or as part of) filing a motion for class certification.

397. The members in the proposed class and subclass are so numerous that individual joinder of all members is impracticable, and the disposition of the claims of all class members in a single action will provide substantial benefits to the parties and Court. Fed. R. Civ. P. 23(a)(1).

398. Questions of law and fact common to plaintiff and the class (Fed. R. Civ. P. 23(a)(2) include, without limitation:

a. Whether certain Kellogg cereals and bars contain sufficient added sugar to contribute substantially to the excessive consumption of sugar;

b. Whether the excessive consumption of sugar presents significant health risks;

c. Whether, if the former questions of fact are answered in the affirmative, this renders misleading to the reasonable consumer Kellogg's use of health and wellness claims on the packaging of the certain high-sugar cereals and bars;

d. Whether the challenged Kellogg health and wellness claims were material;

e. Whether Kellogg made any statement it knew or should have known was false or misleading;

f. Whether Kellogg maintained a longstanding marketing policy, practice, and strategy of selling high-sugar cereals with health and wellness claims;

g. Whether any of Kellogg's practices were immoral, unethical, unscrupulous, or substantially injurious to consumers;

h. Whether the utility of any of Kellogg's practices, if any, outweighed the gravity of the harm to its victims;

i. Whether Kellogg's conduct violated public policy, including as declared by specific constitutional, statutory or regulatory provisions;

j. Whether the consumer injury caused by Kellogg's conduct was substantial, not outweighed by benefits to consumers or competition, and not one consumers themselves could reasonably have avoided;

k. Whether Kellogg's policies, acts, and practices with respect to the Kellogg cereals and bars were designed to, and did result in the purchase and use of the products by the class members primarily for personal, family, or household purposes;

l. Whether Kellogg represented that its high-sugar cereals and bars have characteristics, uses, or benefits which they do not have, within the meaning of Cal. Civ. Code § 1770(a)(5);

m. Whether Kellogg represented that its high-sugar cereals and bars are of a particular standard, quality, or grade, when they were really of another, within the meaning of Cal. Civ. Code § 1770(a)(7);

n. Whether Kellogg advertised its high-sugar cereals and bars with the intent

not to sell it as advertised, within the meaning of Cal. Civ. Code § 1770(a)(9);

o. Whether Kellogg represented that its high-sugar cereals and bars have been supplied in accordance with a previous representation when it has not, within the meaning of Cal. Civ. Code § 1770(a)(16);

p. Whether Kellogg's conduct or any of its acts or practices violated the California False Advertising Law, Cal. Bus. & Prof. Code §§ 17500 *et seq.*, the California Consumers Legal Remedies Act, Cal. Civ. Code §§ 1750 *et seq.*, the Federal Food, Drug, and Cosmetic Act, 28 U.S.C. §§ 301 *et seq.*, and its implementing regulations, 21 C.F.R. §§ 101 *et seq.*, the California Sherman Food, Drug, and Cosmetic Law, Cal. Health & Safety Code §§ 109875, *et seq.*, or any other regulation, statute, or law;

q. The proper equitable and injunctive relief;

r. The proper amount of restitution or disgorgement;

s. The proper amount of reasonable litigation expenses and attorneys' fees.

399. Plaintiff's claims are typical of class members' claims in that they are based on the same underlying facts, events, and circumstances relating to Kellogg's conduct. Fed. R. Civ. P. 23(a)(3).

400. Plaintiff will fairly and adequately represent and protect the interests of the class, has no interests incompatible with the interests of the class, and has retained counsel competent and experienced in class action, consumer protection, and false advertising litigation, including within the food industry.

401. Class treatment is superior to other options for resolution of the controversy because the relief sought for each class member is small such that, absent representative litigation, it would be infeasible for class members to redress the wrongs done to them.

402. Questions of law and fact common to the class predominate over any questions affecting only individual class members.

403. As a result of the foregoing, class treatment is appropriate under Fed. R. Civ. P. 23(a), (b)(2), and (b)(3), and may be appropriate for certification "with respect to particular issues" under Rule 23(b)(4).

CAUSES OF ACTION

FIRST CAUSE OF ACTION

VIOLATIONS OF THE CALIFORNIA FALSE ADVERTISING LAW, CAL. BUS. & PROF. CODE §§ 17500 *ET SEQ.*

404. Plaintiff realleges and incorporates the allegations elsewhere in the Complaint as if fully set forth herein.

405. The FAL prohibits any statement in connection with the sale of goods "which is untrue or misleading," Cal. Bus. & Prof. Code § 17500.

406. Kellogg's use of health and wellness advertising for cereal and bar products that contain substantial amounts of added sugar is deceptive in light of the strong evidence that excessive sugar consumption greatly increases risk of chronic disease.

407. Kellogg knew, or reasonably should have known, that the challenged health and wellness claims were untrue or misleading.

SECOND CAUSE OF ACTION

VIOLATIONS OF THE CALIFORNIA CONSUMERS LEGAL REMEDIES ACT, CAL. CIV. CODE §§ 1750 *ET SEQ.*

408. Plaintiff realleges and incorporates the allegations elsewhere in the Complaint as if fully set forth herein.

409. The CLRA prohibits deceptive practices in connection with the conduct of a business that provides goods, property, or services primarily for personal, family, or household purposes.

410. Kellogg's policies, acts, and practices were designed to, and did, result in the purchase and use of the products primarily for personal, family, or household purposes, and violated and continue to violate the following sections of the CLRA:

a. § 1770(a)(5): representing that goods have characteristics, uses, or benefits which they do not have;

b. § 1770(a)(7): representing that goods are of a particular standard, quality, or grade if they are of another;

c. § 1770(a)(9): advertising goods with intent not to sell them as advertised; and

d. § 1770(a)(16): representing the subject of a transaction has been supplied in accordance with a previous representation when it has not.

411. In compliance with Cal. Civ. Code § 1782, plaintiff sent written notice to Kellogg of his claims. Although plaintiff does not currently seek damages for his claims under the CLRA, if Kellogg refuses to remedy the violation within 30 days of receiving the notice letter, plaintiff may thereafter amend this Complaint to seek damages.

412. In compliance with Cal. Civ. Code § 1782(d), plaintiff's affidavit of venue is filed concurrently herewith.

THIRD CAUSE OF ACTION

VIOLATIONS OF THE CALIFORNIA UNFAIR COMPETITION LAW,

CAL. BUS. & PROF. CODE §§ 17200 *ET SEQ.*

413. Plaintiff realleges and incorporates the allegations elsewhere in the Complaint as if fully set forth herein.

414. The UCL prohibits any "unlawful, unfair or fraudulent business act or practice," Cal. Bus. & Prof. Code § 17200.

Fraudulent

415. Kellogg's use of the challenged health and wellness claims on products containing high amounts of added sugar is likely to deceive reasonable consumers.

Unfair

416. Kellogg's conduct with respect to the labeling, advertising, and sale of high-sugar cereals and bars was unfair because Kellogg's conduct was immoral, unethical, unscrupulous, or substantially injurious to consumers and the utility of its conduct, if any, does not outweigh the gravity of the harm to its victims.

417. Kellogg's conduct with respect to the labeling, advertising, and sale of high-sugar cereals and bars was also unfair because it violated public policy as declared by specific constitutional, statutory or regulatory provisions, including the False Advertising Law, the

Federal Food, Drug, and Cosmetic Act, and the California Sherman Food, Drug, and Cosmetic Law.

418. Kellogg's conduct with respect to the labeling, advertising, and sale of high-sugar cereals and bars was also unfair because the consumer injury was substantial, not outweighed by benefits to consumers or competition, and not one consumers themselves could reasonably have avoided.

Unlawful

419. The acts alleged herein are "unlawful" under the UCL in that they violate the following laws:

a. The False Advertising Law, Cal. Bus. & Prof. Code §§ 17500 *et seq.*;

b. The Consumers Legal Remedies Act, Cal. Civ. Code §§ 1750 *et seq.*; and

c. The Federal Food, Drug, and Cosmetic Act, 28 U.S.C. §§ 301 *et seq.*, and its implementing regulations, 21 C.F.R. §§ 101 *et seq.*; and

d. The California Sherman Food, Drug, and Cosmetic Law, Cal. Health & Safety Code §§ 109875, *et seq.*

PRAYER FOR RELIEF

420. Wherefore, plaintiff, on behalf of himself, all others similarly situated, and the general public, prays for judgment against Kellogg as to each and every cause of action, and the following remedies:

a. An Order certifying this as a class action, appointing plaintiff and his counsel to represent the class, and requiring Kellogg to pay the costs of class notice;

b. An Order enjoining Kellogg from labeling, advertising, or packaging its high-sugar cereals and bars identified herein with the challenged health and wellness statements identified herein;

c. An Order compelling Kellogg to conduct a corrective advertising campaign to inform the public that its high-sugar cereals and bars were deceptively marketed;

d. An Order enjoining Kellogg's longstanding policy, practice, and strategy

of marketing high-sugar cereals, bars, and other foods with misleading health and wellness claims;

e. An Order requiring Kellogg to pay restitution to restore funds acquired by means of any act or practice declared by this Court to be an unlawful, unfair, or fraudulent business act or practice, untrue or misleading advertising, or a violation of the UCL, FAL, or CLRA, plus pre- and post-judgment thereon;

f. Pre- and post-judgment interest;

g. Costs, expenses, and reasonable attorneys' fees; and

h. Any other and further relief the Court deems necessary, just, or proper.

JURY DEMAND

421. Plaintiff hereby demands a trial by jury on all issues so triable.

Dated: August 29, 2016

/s/ Jack Fitzgerald

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