

1 **THE LAW OFFICE OF**
2 **PAUL K. JOSEPH, PC**
3 PAUL K. JOSEPH (SBN 287057)
4 *paul@pauljosephlaw.com*
5 4125 W. Pt. Loma Blvd. No. 206
6 San Diego, CA 92110
7 Phone: (619) 767-0356
8 Fax: (619) 331-2943

7 **THE LAW OFFICE OF**
8 **JACK FITZGERALD, PC**
9 JACK FITZGERALD (SBN 257370)
10 *jack@jackfitzgeraldlaw.com*
11 TREVOR M. FLYNN (SBN 253362)
12 *trevor@jackfitzgeraldlaw.com*
13 MELANIE PERSINGER (SBN 275423)
14 *melanie@jackfitzgeraldlaw.com*
15 Hillcrest Professional Building
16 3636 Fourth Avenue, Suite 202
17 San Diego, California 92103
18 Phone: (619) 692-3840
19 Fax: (619) 362-9555
20 *Counsel for Plaintiffs and the Proposed*
21 *Class*

18 **UNITED STATES DISTRICT COURT**
19 **SOUTHERN DISTRICT OF CALIFORNIA**

20 Patrick McMorrow and Marco Ohlin and
21 behalf of themselves, all others similarly
22 situated and the general public,

23 Plaintiffs,

24 v.

25
26
27 MONDELEZ INTERNATIONAL, INC.,
28 Defendant.

Case No: '17CV2327 BEN JLB

CLASS ACTION

COMPLAINT FOR:

**VIOLATIONS OF CAL. BUS. &
BUS. & PROF. CODE §§17200 *et seq.*; CAL.
BUS. & PROF. CODE §§17500 *et seq.*;
CAL. CIV. CODE §§ 1750 *et seq.*;
BREACH OF EXPRESS & IMPLIED
WARRANTIES**

DEMAND FOR JURY TRIAL

1 Plaintiffs Patrick McMorrow and Marco Ohlin, on behalf of themselves, all others
2 similarly situated, and the general public, by and through their undersigned counsel, hereby
3 sue defendant Mondelez International, Inc., and allege the following upon their own
4 knowledge, or where they lack personal knowledge, upon information and belief, including
5 the investigation of their counsel.

6 **INTRODUCTION**

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

12 2. Despite the compelling evidence that sugar acts as a chronic liver toxin,
13 detrimentally affecting health, Mondelez sells a line of high-sugar belVita Breakfast
14 Products (the “Products”) that it specifically markets towards consumers “who have health
15 and wellness in mind” with the goal of increasing the price and sales of its belVita Breakfast
16 Products. The claims designed to appeal to health conscious consumers (described in detail
17 below), however, are deceptive because they are incompatible with the dangers of the
18 excessive sugar consumption to which the Products contribute.

19 3. Plaintiffs, who were deceived into purchasing the Products, bring this action
20 challenging Defendant’s deceptive claims on behalf of themselves and all others similarly
21 situated consumers in California, alleging violations of the Consumer Legal Remedies Act
22 (Cal. Civ. Code § 1750, *et seq.*, “CLRA”), Unfair Competition Law (Cal. Bus. & Prof. Code
23 § 17200, *et seq.*, “UCL”), and False Advertising Law (*id.* § 17500, *et seq.*, “FAL”), as well
24 as breaches of express and implied warranties.

25 4. Plaintiffs primarily seek an order compelling Defendant to cease marketing the
26 high-sugar belVita Breakfast Products using deceptive claims.

JURISDICTION & VENUE

5. 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 Defendant. In addition, more than two-thirds of the members of the class reside in states other than the state in which Defendant 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.

6. The Court has personal jurisdiction over Defendant because it has purposely availed itself of the benefits and privileges of conducting business activities within California through the intentional promotion, marketing, distribution, and sale of the high-sugar belVita Products in California.

7. Venue is proper in the Southern District of California pursuant to 28 U.S.C. § 1391 because Plaintiffs reside in this district, many of the acts and transactions giving rise to this action occurred in this district, and because Defendant has intentionally availed itself of the laws and markets within this district through the promotion, marketing, distribution and sale of the Products in this district and is subject to personal jurisdiction.

PARTIES

8. Plaintiff Patrick McMorrow is a resident of San Diego County and citizen of California.

9. Plaintiff Marco Ohlin is a resident of San Diego County and citizen of California.

10. Defendant Mondelez International, Inc. is a Virginia corporation with its headquarters in Deerfield, Illinois. Mondelez is the parent company of Nabisco, the brand under which the belVita Products are sold. The belVita Products are distributed by Mondelez Global LLC, also a wholly-owned subsidiary of Mondelez International, Inc.

FACTS

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

11. 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.

12. 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 the next approximately 3,000 years, sugar remained 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,

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"].

1 including in America. Thus, humans have been consuming sugar in substantial amounts for
2 less than 300 years.

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

6 14. In the 1960s, the food industry developed technologies to extract starch from
7 corn, then convert it to glucose, some of which could then be converted to fructose, leading
8 to the development of corn-derived sweeteners, most notably high-fructose corn syrup
9 (HFCS).³ Although HFCS is comprised of both fructose and glucose, unlike with sucrose,
10 the fructose is not chemically bound to the glucose in a new molecule. Thus the fructose in
11 HFCS is referred to as "free" fructose. HFCS can be produced with different fructose-to-
12 glucose ratios. The most common are HFCS-42 and HFCS-55, containing 42% and 55%
13 fructose. Some HFCS, however, can be as much as 90% fructose, i.e., HFCS-90. Food
14 manufacturers have recently begun referring to HFCS-90 on food label ingredients
15 statements as simply "fructose."

16 15. Fructose is sweeter than either glucose or sucrose. In fruit, it serves as a marker
17 for foods that are nutritionally rich. Before the development of the worldwide sugar industry,
18 fructose in the human diet was limited to items like honey, dates, raisins, molasses, figs,
19 grapes, raw apples, apple juice, persimmons, and blueberries (which contain approximately
20 10-15% fructose). Food staples like milk, vegetables, and meat have essentially no fructose.
21 Thus, until relatively recently, human beings have had little dietary exposure to fructose.⁴

22 16. But the low cost and long shelf-life of HFCS has contributed to a rapid increase
23 in its consumption over the last 45 years, and thus the consumption of fructose. Between
24

25 ² *Id.*

26 ³ *Id.* (citation omitted).

27 ⁴ Bray, G., "How bad is fructose?," *American Journal of Clinical Nutrition*, Vol. 86, 895-96
28 (2007) [hereinafter, "Bray, How Bad is Fructose?"].

1 1970 and 2000, the United States' yearly per capita HFCS consumption went from 0.292 kg
2 per person, to 33.4 kg per person, a greater than 100-fold increase.⁵

3 17. Today, the majority of sugars in typical American diets are added to foods
4 during processing, preparation, or at the table.⁶ The two primary sources of added sugar in
5 processed food are HFCS and sucrose (i.e., granulated sugar used, for example, in baked
6 goods). Added sugar is in more than 74% of processed foods,⁷ under more than 60 different
7 names.⁸ Although the tendency is to associate sugar with sweets, added sugar is found in
8 many savory processed foods, like bread, soup, and pasta sauce.

9 18. There has been a rise over the past 45 years in Americans' consumption of
10 added sugars. From 1970 to 2000, there was a 25% increase in available added sugars in the
11
12
13

14 ⁵ Bray, G.A., et al., "Consumption of high-fructose corn syrup in beverages may play a role
15 in the epidemic of obesity," *American Journal of Clinical Nutrition*, Vol. 79, 537-43, at 537,
16 540 (2004) [hereinafter "Bray, HFCS Role in Obesity Epidemic"].

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

19 ⁷ Ng, S.W., et al., "Use of caloric and non-caloric sweeteners in US consumer packaged foods,
20 2005-9, *Journal of the Academy of Nutrition and Dietetics*, Vol. 112, No. 11, 1828-34 (2012).

21 ⁸ Some examples: Agave nectar, Barbados sugar, Barley malt, Barley malt syrup, Beet sugar,
22 Brown sugar, Buttered syrup, Cane juice, Cane juice crystals, Cane sugar, Caramel, Carob
23 syrup, Castor sugar, coconut palm sugar, Coconut sugar, concentrated fruit juices,
24 Confectioner's sugar, Corn sweetener, Corn syrup, Corn syrup solids, Date sugar, Dehydrated
25 case juice, Demerara sugar, Dextrin, Dextrose, Evaporated cane juice, Free-flowing brown
26 sugars, Fructose, Fruit juice, Fruit juice concentrate, Glucose, Glucose solids, Golden sugar,
27 Golden syrup, Grape sugar, High-Fructose Corn Syrup (HFCS), Honey, Icing sugar, Invert
28 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.

U.S.⁹ The American Heart Association found that between 1970 and 2005, added 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 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

19. 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

20. While the availability and consumption of added sugars was increasing over the past several decades, documents published in September 2016 demonstrated that “[t]he sugar industry paid scientists in the 1960s to play down the link between sugar and heart disease

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”].

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”].

1 and promote saturated fat as the culprit instead”¹³ The documents show, for example,
 2 that “the Sugar Research Foundation, known today as the Sugar Association, paid three
 3 Harvard scientists the equivalent of about \$50,000 in today’s dollars to publish a 1967 review
 4 of research on sugar, fat and heart disease.”¹⁴ Due to the effort of the sugar industry and its
 5 supporters, U.S. food policy, including FDA rulemaking, for many decades inappropriately
 6 focused on fats, largely ignoring the detrimental health consequences of consuming
 7 excessive added sugar, leading to the obesity and type 2 diabetes epidemics present in the
 8 U.S. today.

9 21. Today, “the vast majority of the U.S. population exceeds recommended intakes
 10 of . . . added sugars.”¹⁵ Despite some reduction in added sugar intake recently, “intakes of
 11 added sugars are still very high . . . and are well above recommended limits”¹⁶
 12 Approximately 90% of the population exceeds recommended daily limits.¹⁷

13 **II. The Body’s Physiological Response to Excess Sugar Consumption**

14 **A. The Body’s Response to Glucose**

15 22. The body needs some glucose, largely to meet the brain’s metabolic demands,
 16 but also because all living cells use glucose for energy. Blood glucose levels below 25mg/dL
 17
 18

19 ¹³ Anahad O’Connor, “How the Sugar Industry Shifted Blame to Fat,” *New York Times* (Sept.
 20 12, 2016).

21 ¹⁴ *Id.*

22 ¹⁵ U.S. Dep’t of Agric. & U.S. Dep’t of Health & Human Servs., “Scientific Report of the
 23 2015 Dietary Guidelines Advisory Committee: Advisory Report to the Secretary of Health
 24 and Human Services and the Secretary of Agriculture,” at 26 (February 2015), *available at*
 25 [http://www.health.gov/dietaryguidelines/2015-scientific-report/PDFs/Scientific-Report-of-](http://www.health.gov/dietaryguidelines/2015-scientific-report/PDFs/Scientific-Report-of-the-2015-Dietary-Guidelines-Advisory-Committee.pdf)
[the-2015-Dietary-Guidelines-Advisory-Committee.pdf](http://www.health.gov/dietaryguidelines/2015-scientific-report/PDFs/Scientific-Report-of-the-2015-Dietary-Guidelines-Advisory-Committee.pdf).

26 ¹⁶ *Id.* at 38.

27 ¹⁷ *Id.* at 35.
 28

1 may result in coma, seizure, or death, while levels consistently exceeding 180 mg/dL can
2 cause long-term damage, including renal failure and atherosclerosis.

3 23. For these reasons, blood glucose concentration is tightly-regulated by
4 homeostatic regulatory systems. When blood glucose rises after a meal, beta cells in the
5 pancreas secrete insulin into the blood, which helps muscle, fat, and liver cells absorb the
6 glucose for energy, lowering the blood sugar. Too little blood sugar stimulates the secretion
7 of hormones that counteract the insulin and thus restore normal blood sugar.¹⁸

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

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

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

22 27. The liver is capable of processing relatively small amounts of sugar, meted out
23 slowly. This is one of the reasons that eating the fructose in fruit is not problematic: the sugar
24 in fruit is encased in the fruit’s fiber, which slows the sugar’s uptake, and some sugar encased
25 in fruit fiber may not even be released. Thus fruit consumption does not overwhelm the liver.

26
27 ¹⁸ Ludwig, David S., “The Glycemic Index: Physiological Mechanisms Relating to Obesity,
28 Diabetes, and Cardiovascular Disease,” *Journal of the American Medical Association*, Vol.
287, No. 18, 2414-23, at 2415 (May 8, 2002) (citation omitted).

1 Notably, adding fiber to foods that are high in sugar does not replicate this effect, because
2 the sugar and fiber remain separate, and the sugar is not encased in the fiber like it is in fruit.
3 Fruit also comes packaged with nutrients, like vitamins, that are beneficial for health, and
4 sends satiation signals to the brain, telling it that the body is full.

5 28. Because the liver has some capacity to process sugar, there does appear to be a
6 “safe” threshold of daily added sugar consumption, small enough not to overload the liver:
7 approximately 5% of calories, or about 38 grams (9 teaspoons, 150 calories) per day for men,
8 25 grams (6 teaspoons, 100 calories) per day for women, and 12-15 grams (3-6 teaspoons,
9 50-60 calories) for children depending on age and caloric needs, which is the basis of the
10 American Heart Association’s foregoing recommendations for maximum daily added sugar
11 intake.¹⁹

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

17 30. When excess sugar consumption overloads the liver, the glucose increases
18 insulin secretion, while the fructose gets turned into liver fat, causing insulin resistance. The
19 combination over time results in rapid and dramatic increases in blood glucose and insulin
20 concentrations.²⁰ Over time, individuals with frequent insulin secretion may develop insulin
21 resistance, where the body produces insulin but does not use it effectively, so that glucose
22

23
24 ¹⁹ AHA Scientific Statement, *supra* n.10; *see also* “How Much Is Too Much?,” at
<http://www.sugarscience.org/the-growing-concern-of-overconsumption>.

25 ²⁰ Janssens, J.P., et al., “Effects of soft drink and table beer consumption on insulin response
26 in normal teenagers and carbohydrate drink in youngsters,” *European Journal of Cancer*
27 *Prevention*, Vol. 8, 289-95 (1999) (“In contrast to table beer, consumption of regular soft
28 drinks induced a fast and dramatic increase in both glucose and insulin concentration within
a maximum 1 hour after consumption.”).

1 builds up in the blood instead of being absorbed by the cells. Because the muscle, fat, and
2 liver cells do not respond properly to insulin and thus cannot easily absorb glucose from the
3 bloodstream, the body needs higher levels of insulin. Eventually the pancreas' beta cells
4 cannot keep up with this increasing demand, and over time can no longer produce enough
5 insulin to overcome insulin resistance, so blood glucose levels remain high.

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

10 32. Energy deposition into fat cells by insulin stimulate them to secrete a hormone
11 called leptin, which is a natural appetite suppressant that tells the brain the body is full and
12 can stop eating. Generally, glucose suppresses the hunger hormone, ghrelin, and stimulates
13 leptin. But high insulin levels brought on by excess sugar consumption have been linked to
14 leptin resistance, where the brain is desensitized to the hormone and so no longer "hears" the
15 message to stop eating.²¹ Because increased insulin makes the body feel hungry, excess sugar
16 consumption can create a vicious cycle in which the more sugar one eats, the hungrier one
17 feels.

18 **B. The Body's Response to Fructose**

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

23 34. Fructose is the most lipophilic carbohydrate, meaning it easily converts to a
24 form, glycerol, that supports conversion to fats, including free fatty acids, a damaging form
25

26 ²¹ Shapiro, A., et al., "Fructose-induced leptin resistance exacerbates weight gain in response
27 to subsequent high-fat feeding," *American Journal of Physiology, Regulatory, Integrative
28 and Comparative Physiology*, Vol. 295, No. 5, R1370-75 (2008).

of cholesterol called very low-density lipoprotein (VLDL), and triglycerides, which get stored 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.²² 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.

35. 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.

36. 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.²³

37. 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.

²² 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.

²³ 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).

1 **C. The Addiction Response**

2 38. Research shows that, for some people, eating sugar produces characteristics of
3 craving and withdrawal, along with chemical changes in the brain's reward center, the limbic
4 region, which can be similar to those of people addicted to drugs like cocaine and alcohol.²⁴
5 These changes are linked to a heightened craving for more sugar.²⁵ This can create a vicious
6 cycle leading to chronic illness.

7 **III. There Has Been a Dramatic Rise in Obesity & Chronic Disease That Parallels** 8 **the Rise in Human Sugar Consumption**

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

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

17 41. In 2004, researchers reported their analysis of food consumption patterns from
18 1967 to 2000. Noting that HFCS consumption increased more than 1,000% from 1970 to
19 1990, "far exceeding the changes in intake of any other food or food group," researchers
20
21
22

23
24 ²⁴ Volkow, N.D., et al., "Drug addiction: the neurobiology of behavior gone awry," *Nature*
25 *Reviews Neuroscience*, Vol. 5, No. 12, 963-70 (2004); Brownell, K.D., et al., "Food and
addiction: A comprehensive handbook," *Oxford University Press* (2012).

26 ²⁵ Avena, N., "Evidence for sugar addiction: behavioral and neurochemical effects of
27 intermittent, excessive sugar intake," *Neuroscience Behavior Review*, Vol. 52, No. 1, 20-39
28 (2008).

found this “mirrors the rapid increase in obesity” seen during the same period, as demonstrated in the below graphic.²⁶

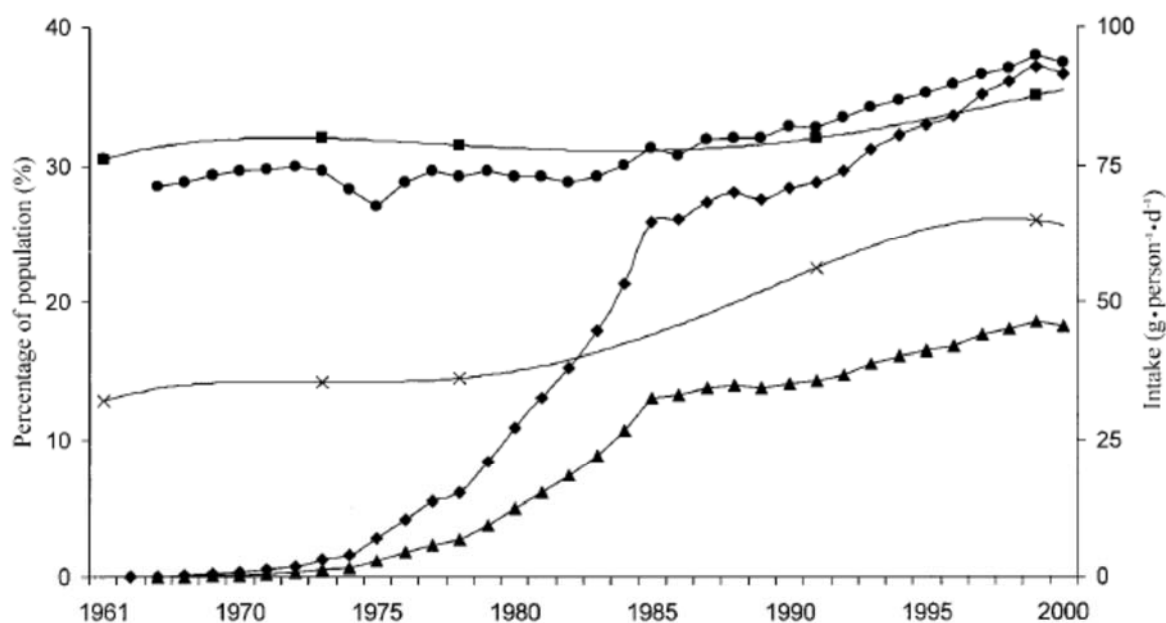


FIGURE 1. Estimated intakes of total fructose (●), free fructose (▲), and high-fructose corn syrup (HFCS, ◆) in relation to trends in the prevalence of overweight (■) and obesity (x) in the United States. Data from references 7 and 35.

42. 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.

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

43. 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

²⁶ 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 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 metabolic disease. For example, insulin resistance of the liver leads to type 2 diabetes. Insulin
 2 resistance of the brain causes Alzheimer's disease. Insulin resistance of the kidney leads to
 3 chronic renal disease.

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

5 **A. Excess Sugar Consumption Causes Metabolic Syndrome**

6 45. Excess consumption of added sugar leads to metabolic syndrome by stressing
 7 and damaging crucial organs, including the pancreas and liver. When the pancreas, which
 8 produces insulin, becomes overworked, it can fail to regulate blood sugar properly. Large
 9 doses of fructose can overwhelm the liver, which metabolizes fructose. In the process, the
 10 liver will convert excess fructose to fat, which is stored in the liver and released into the
 11 bloodstream. This process contributes to key elements of metabolic syndrome, including
 12 high blood fats and triglycerides, high cholesterol, high blood pressure, and extra body fat,
 13 especially in the belly.²⁷

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

- 17 a. Large Waist Size (35" or more for women, 40" or more for men);
- 18 b. High triglycerides (150mg/dL or higher, or use of cholesterol
- 19 medication);
- 20 c. High total cholesterol, or HDL levels under 50mg/dL for women, and 40
- 21 mg for men;
- 22 d. High blood pressure (135/85 mm or higher); or
- 23 e. High blood sugar (100mg/dL or higher).

24
 25
 26 ²⁷ Te Morenga, L., et al., "Dietary sugars and body weight: systematic review and meta-
 27 analyses of randomized controlled trials and cohort studies," *BJM* (January 2013)
 28 [hereinafter, "Te Morenga, Dietary Sugars & Body Weight"].

1 47. More generally, “metabolic abnormalities that are typical of the so-called
2 metabolic syndrome . . . includ[e] insulin resistance, impaired glucose tolerance, high
3 concentrations of circulating triacylglycerols, low concentrations of HDLs, and high
4 concentrations of small, dense LDLs.”²⁸

5 48. 56 million Americans have metabolic syndrome, or about 22.9% over the age
6 of 20, placing them at higher risk for chronic disease.

7 49. In 2010, Harvard researchers published a meta-analysis of three studies,
8 involving 19,431 participants, concerning the effect of consuming sugar-sweetened
9 beverages on risk for metabolic syndrome. They found participants in the highest quantile
10 of 1-2 servings per day²⁹ had an average 20% greater risk of developing metabolic syndrome
11 than did those in the lowest quantile of less than 1 serving per day, showing “a clear link
12 between SSB consumption and risk of metabolic syndrome”³⁰

13 50. Researchers who studied the incidence of metabolic syndrome and its
14 components in relation to soft drink consumption in more than 6,000 participants in the
15 Framingham Heart Study found that individuals who consumed 1 or more soft drinks per
16 day (i.e., 140-150 calories and 35-37.5 grams of sugar or more) had a 48% higher prevalence
17 of metabolic syndrome than infrequent consumers, those who drank less than 1 soft drink
18
19
20

21 ²⁸ Fried, S.K., “Sugars, hypertriglyceridemia, and cardiovascular disease,” *American Journal*
22 *of Clinical Nutrition*, Vol. 78 (suppl.), 873S-80S, at 873S (2003) [hereinafter, “Fried,
23 Hypertriglyceridemia”].

24 ²⁹ Because 1 sugar-sweetened beverage typically has 140-150 calories and 35-37.5 grams of
25 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.

26 ³⁰ Malik, Vasanti S., et al., “Sugar-Sweetened Beverages and Risk of Metabolic Syndrome
27 and Type 2 Diabetes,” *Diabetes Care*, Vol. 33, No. 11, 2477-83, at 2477, 2480-81 (November
28 2010) [hereinafter “Malik, 2010 Meta-Analysis”].

1 per day. In addition, the frequent-consumer group had a 44% higher risk of developing
2 metabolic syndrome.³¹

3 51. Recently, researchers concluded a study to determine whether the detrimental
4 effects of dietary sugar were due to extremely high dosing, excess calories, or because of its
5 effects on weight gain, rather than caused by sugar consumption directly.³² In other words,
6 the researchers dissociated the metabolic effects of dietary sugar from its calories and effects
7 on weight gain.

8 52. Because the researchers did not want to give subjects sugar to see if they got
9 sick, they instead took sugar away from people who were already sick to see if they got well.
10 But if subjects lost weight, critics would argue that the drop in calories or weight loss was
11 the reason for the clinical improvement. Therefore, the researchers designed the study to by
12 isocaloric, by giving back to subjects the same number of calories in starch that were taken
13 away in sugar. The study involved 43 children, ages 8 to 19, each obese with at least one
14 other co-morbidity demonstrating metabolic problems. All were high consumers of added
15 sugar in their diets.³³

16 53. To perform the study, researchers assessed subjects' home diets by two
17 questionnaires to determine how many calories, and how much fat, protein, and carbohydrate
18 they were eating. Subjects were then tested at a hospital based on their home diets. Then, for
19 the next 9 days, researchers catered the subjects' meals. The macronutrient percentages of
20 fat, protein, and carbohydrate were not changed. Subjects were fed them the same calories
21 and percent of each macronutrient as their home diet; but within the carbohydrate fraction,
22

23 ³¹ Dhingra, R., et al., "Soft Drink Consumption and Risk of Developing Cardiometabolic Risk
24 Factors and the Metabolic Syndrome in Middle-Aged Adults in the Community,"
25 *Circulation*, Vol. 116, 480-88 (2007) [hereinafter "Dhingra, Cardiometabolic Risk"].

26 ³² Robert H. Lustig, et al., "Isocaloric Fructose Restriction and Metabolic Improvement in
27 Children with Obesity and Metabolic Syndrome," *Pediatric Obesity*, Vol. 24, No. 2, 453-60
(Feb. 2016).

28 ³³ *See id.* at 453-54.

1 researchers took the added sugar out, and substituted starch. For example, researchers took
2 pastries out, and put bagels in; took yogurt out, and put baked potato chips in; took chicken
3 teriyaki out, and put turkey hot dogs in (although subjects were still given whole fruit).
4 Researchers reduced subjects' dietary sugar consumption from 28% to 10% of calories.
5 Researchers also gave subjects a scale to take home, and each day they would weigh
6 themselves. If they were losing weight, they were instructed to eat more. The goal was for
7 subjects to remain weight-stable over the 10 days of study. On the final day, subjects came
8 back to the hospital for testing on their experimental low-added sugar diet. The study team
9 analyzed the pre- and post-data in a blinded fashion so as not to introduce bias.³⁴

10 54. Researchers analyzed three types of data. First, diastolic blood pressure
11 decreased by 5 points. Second, baseline blood levels of analytes associated with metabolic
12 disease, such as lipids, liver function tests, and lactate (a measure of metabolic performance)
13 all improved significantly. Third, fasting glucose decreased by 5 points. Glucose tolerance
14 improved markedly, and fasting insulin levels fell by 50%. Each of these results was highly-
15 statistically-significant.³⁵

16 55. In sum, the study indicated that subjects improved their metabolic status in just
17 10 days, even while eating processed food, by just removing added sugar and substituting
18 starch. The metabolic improvement, moreover, was unrelated to changes in weight or body
19 fat.

20 **B. Excess Sugar Consumption Causes Type 2 Diabetes**

21 56. Diabetes affects 25.8 million Americans, and can cause kidney failure, lower-
22 limb amputation, and blindness. In addition, diabetes doubles the risk of colon and pancreatic
23 cancers and is strongly associated with coronary artery disease and Alzheimer's disease.³⁶

24
25 ³⁴ See *id.* at 454-55.

26 ³⁵ See *id.* at 455-56.

27 ³⁶ Aranceta Bartrina, J. et al., "Association between sucrose intake and cancer: a review of
28 the evidence," *Nutrición Hospitalaria*, Vol. 28 (Suppl. 4), 95-105 (2013); Garcia-Jimenez,

57. 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 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.³⁷ Moreover, “larger studies with longer durations of follow-up tended to show stronger associations.”³⁸ Thus, the meta-analysis showed “a clear link between SSB consumption and risk of . . . type 2 diabetes.”³⁹

58. An analysis of data for more than 50,000 women from the Nurses’ Health Study,⁴⁰ 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,

C., “A new link between diabetes and cancer: enhanced WNT/beta-catenin signaling by high glucose,” *Journal of Molecular Endocrinology*, 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).

³⁷ Malik, 2010 Meta-Analysis, *supra* n.30 at 2477, 2480.

³⁸ *Id.* at 2481.

³⁹ *Id.*

⁴⁰ 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>.

and women who consumed 1 or more fruit punch drinks per day had a 100% greater relative risk of type 2 diabetes.⁴¹

59. The result of this analysis shows a statistically significant linear trend with increasing sugar consumption.⁴²

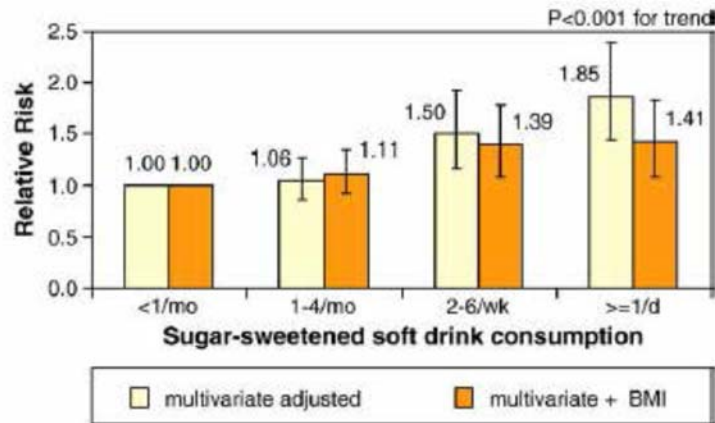


Fig. 4. Multivariate relative risks (RRs) of type 2 diabetes according to sugar-sweetened soft drink consumption in the Nurses' Health Study II 1991-1999 (Multivariate RRs were adjusted for age, alcohol (0, 0.1-4.9, 5.0-9.9, 10+ g/d), physical activity (quintiles), family history of diabetes, smoking (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]).

60. 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

⁴¹ 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"].

⁴² Hu, F.B., et al., "Sugar-sweetened beverages and risk of obesity and type 2 diabetes: Epidemiologic evidence," *Physiology & Behavior*, Vol. 100, 47-54 (2010).

fruit drinks per day showed a 31% greater risk of type 2 diabetes, than those who drank 1 or less such drinks per month.⁴³

61. 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.⁴⁴

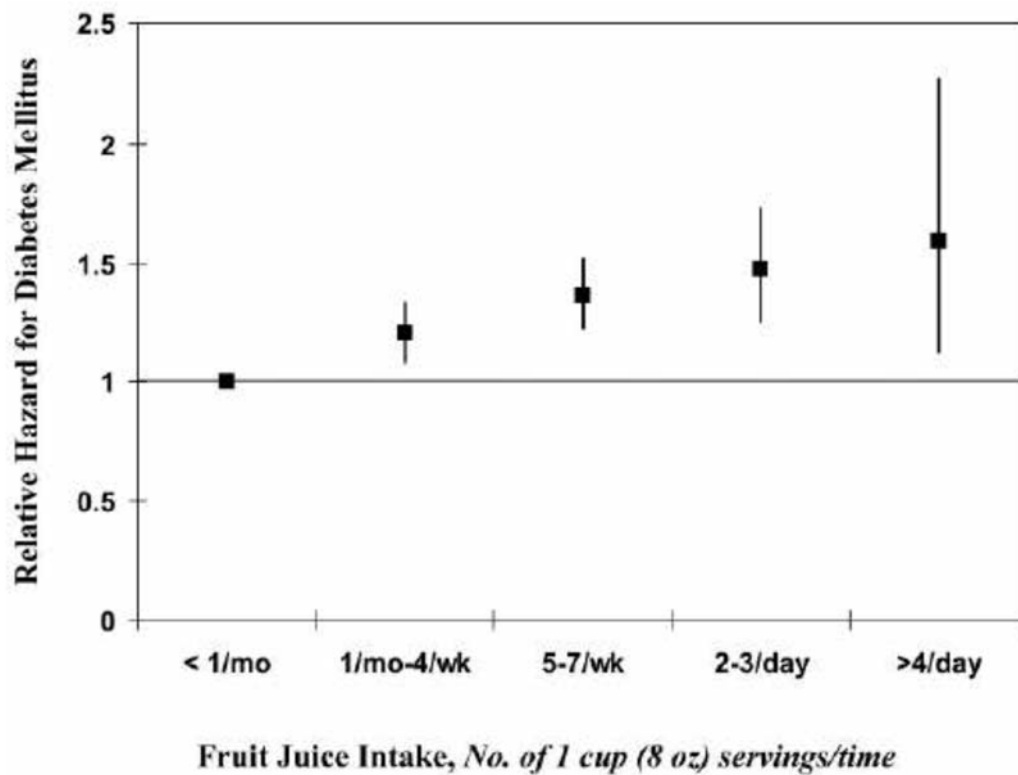


Figure 1—Multivariate-adjusted relative hazard of diabetes by category of cumulatively updated fruit juice intake. Values were adjusted for cumulatively updated BMI, physical activity, family history of diabetes, postmenopausal hormone use, alcohol use, smoking, and total energy intake. For an increase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

⁴³ 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”].

⁴⁴ 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).

62. 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.⁴⁵

63. 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 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.⁴⁶

C. Excess Sugar Consumption Causes Cardiovascular Disease

64. Sixteen million Americans have heart disease, which is the number one killer in the United States.⁴⁷

65. 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

⁴⁵ 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).

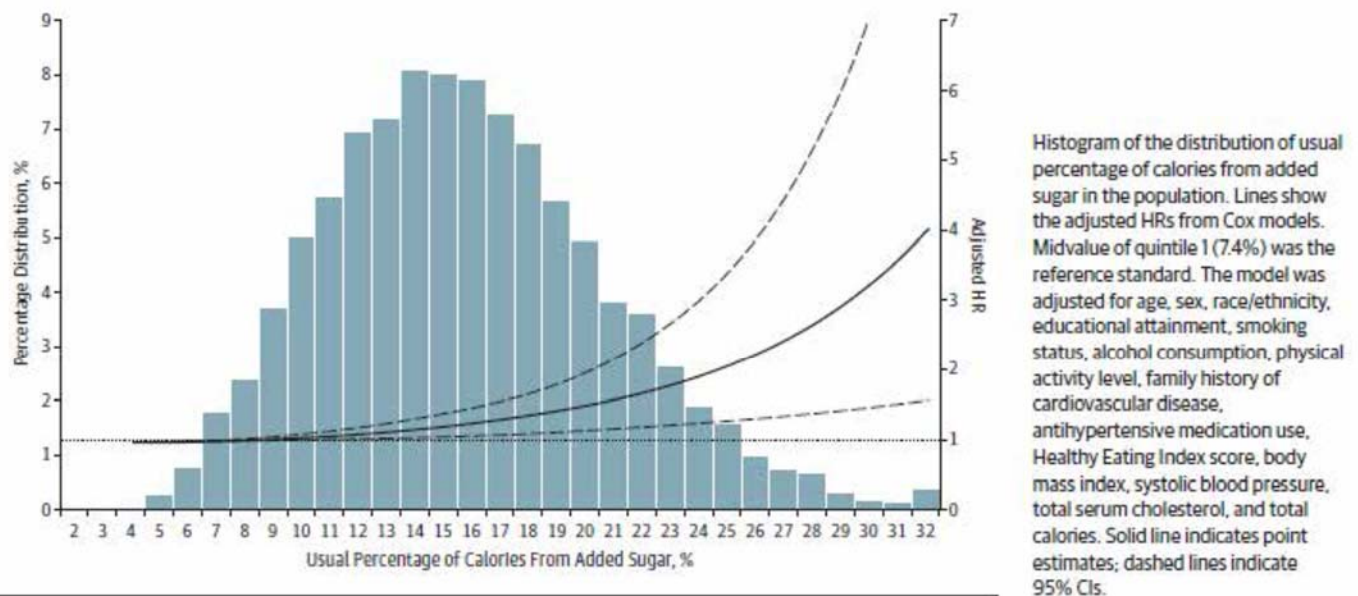
⁴⁶ Basu, S., et al., "The Relationship of Sugar to Population-Level Diabetes Prevalence: An Econometric Analysis of Repeated Cross-Sectional Data," *PLOS Online*, Vol. 8, Issue 2 (February 27, 2013).

⁴⁷ 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).

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.⁴⁸

66. 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,”⁴⁹ as demonstrated in the chart below.

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



67. 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

⁴⁸ Yang, NHANES Analysis, *supra* n.12 at E4-5.

⁴⁹ *Id.*

(360 mL per serving) with those who consumed 1 serving/wk or less”⁵⁰ 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.”⁵¹

68. 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 with infrequent consumers.⁵²

D. Excess Sugar Consumption Causes Liver Disease

69. 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.⁵³

70. 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

⁵⁰ *Id.* at E6.

⁵¹ *Id.* at E8.

⁵² 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).

⁵³ 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).

1 progressed to NASH and 600,000 to Nash-related cirrhosis. Most people with NASH also
 2 have type 2 diabetes. NASH is now the third-leading reason for liver transplant in America.⁵⁴

3 71. Moreover, because the liver metabolizes sugar virtually identically to alcohol,
 4 the U.S. is now seeing for the first time alcohol-related diseases in children. Conservative
 5 estimates are that 31% of American adults, and 13% of American children suffer from
 6 NAFLD.⁵⁵

7 **E. Excess Sugar Consumption Causes Obesity**

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

19
 20
 21 ⁵⁴ Charlton, M.R., et al., “Frequency and outcomes of liver transplantation for nonalcoholic
 22 steatohepatitis in the United States,” *Gastroenterology*, Vol. 141, No. 4, 1249-53 (October
 23 2011).

24 ⁵⁵ Lindback, S.M., et al., “Pediatric Nonalcoholic Fatty Liver Disease: A Comprehensive
 25 Review,” *Advances in Pediatrics*, Vol. 57, No. 1, 85-140 (2010); Lazo, M. et al., “The
 26 Epidemiology of Nonalcoholic Fatty Liver Disease: A Global Perspective,” *Seminars in Liver
 27 Disease*, Vol. 28, No. 4, 339-50 (2008); Schwimmer, J.B., et al., “Prevalence of Fatty Liver
 28 in Children and Adolescents,” *Pediatrics*, Vol. 118, No. 4, 1388-93 (2006); Browning, J.D.,
 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).

73. 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.”⁵⁶

74. 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.⁵⁷

75. 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.⁵⁸

76. 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).⁵⁹

77. 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-

⁵⁶ 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).

⁵⁷ 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).

⁵⁸ 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).

⁵⁹ Schulze, Diabetes in Young & Middle-Aged Women, *supra* n.41.

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).⁶⁰

78. 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.⁶¹

79. 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.

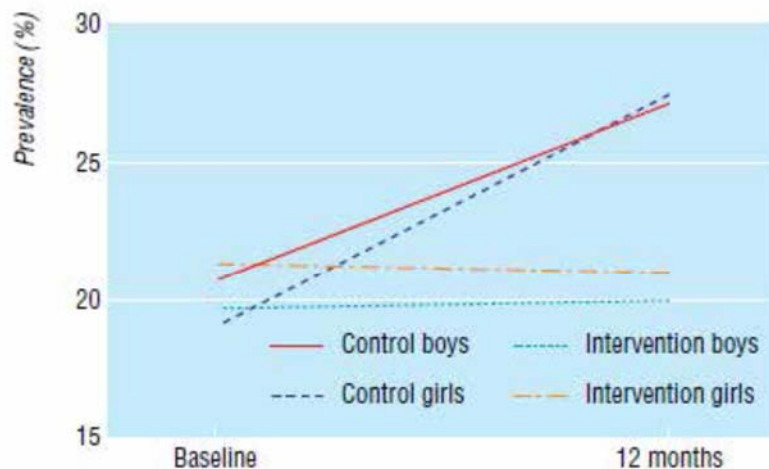


Fig 2 Mean change in prevalence of overweight and obese children from baseline to follow up at 12 months according to clusters

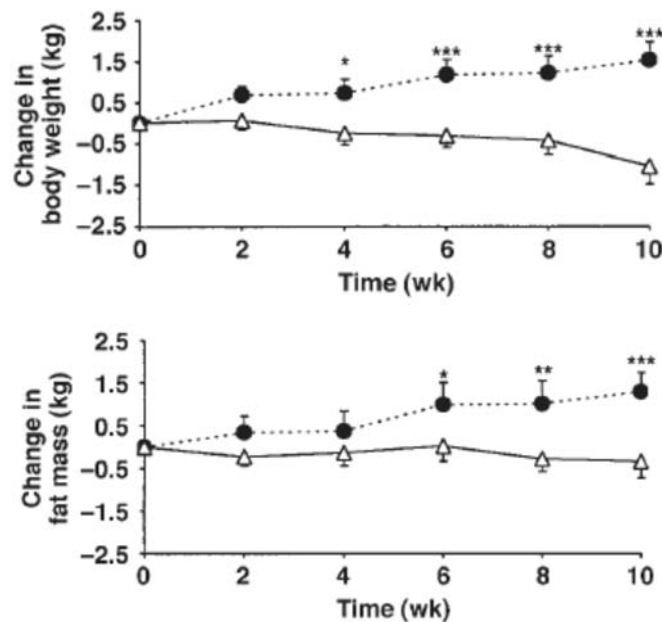
At a three-year follow-up, however, the significant difference seen between the groups after a year of focused education was no longer evident, with overweight more prevalent in both groups, providing further support for the link between sugar and weight gain.⁶²

⁶⁰ Palmer, Diabetes in African American Women, *supra* n.43.

⁶¹ Dhingra, Cardiometabolic Risk, *supra* n.31.

⁶² 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

80. 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.⁶³



(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)).

⁶³ 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 (\pm SEM) changes in body weight, fat mass, and fat-free mass during an intervention in which overweight subjects consumed supplements containing either sucrose (\bullet ; $n = 21$) or artificial sweeteners (Δ ; $n = 20$) daily for 10 wk. The diet \times 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).

81. 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.⁶⁴

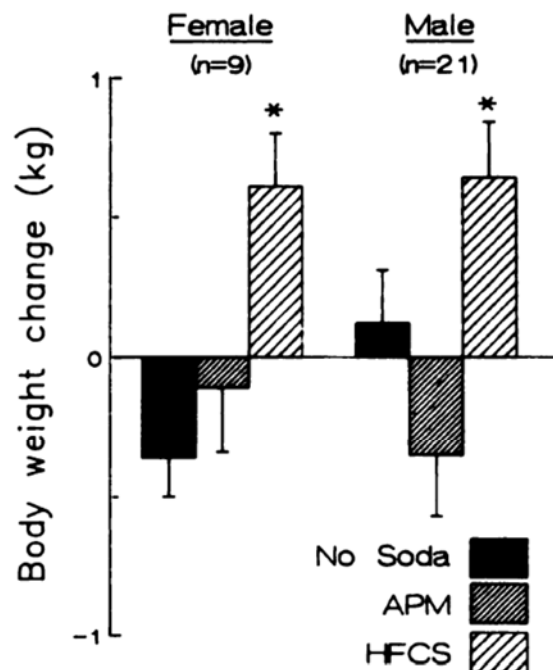


FIG 1. Changes in body weight during 3-wk periods when subjects drank 1150 g/d of soda sweetened with aspartame (APM), an equal weight of soda sweetened with high-fructose corn syrup (HFCS), or had no experimental manipulation (no soda). $*p < 0.05$ relative to weight gain in no-soda period.

⁶⁴ 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).

F. Excess Sugar Consumption Causes Inflammation

82. Inflammation has been associated with type 2 diabetes, myocardial infarction, and stroke, as well as weight gain and obesity.⁶⁵

83. 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-reactive protein, increased by 13%, 5%, and 6%, respectively, while the later group's concentrations decreased by 16%, 2%, and 26% respectively.⁶⁶

84. 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."⁶⁷

⁶⁵ 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).

⁶⁶ Sorensen, Inflammatory Markers, *supra* n.65.

⁶⁷ 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).

85. 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.

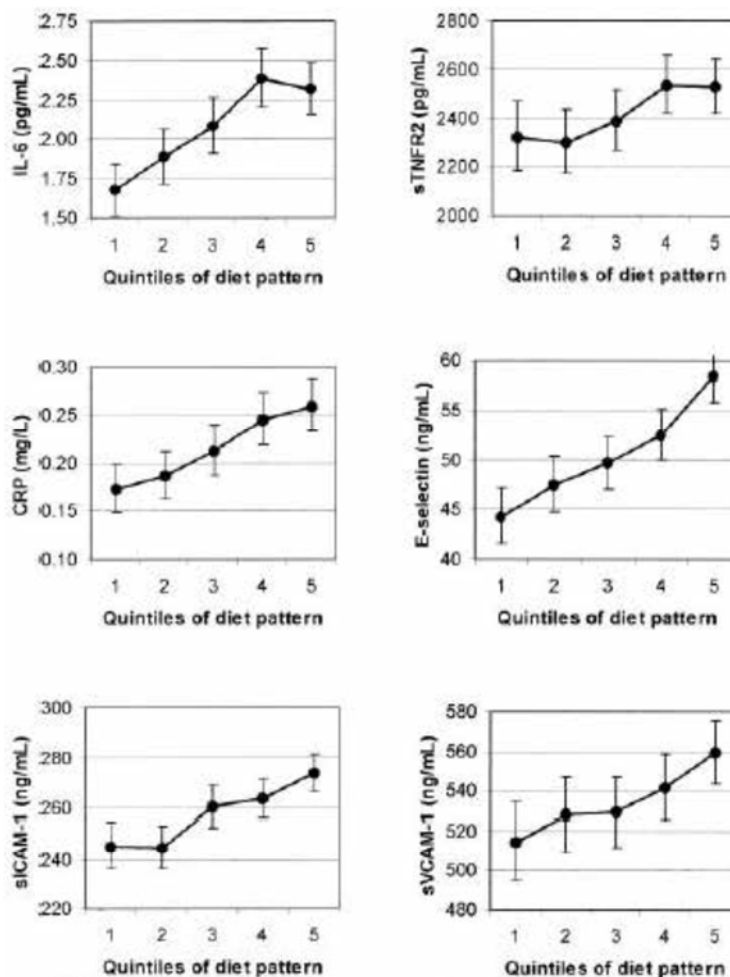


FIGURE 1. Geometric mean concentrations and 95% CIs of interleukin 6 (IL-6), soluble tumor necrosis factor α receptor 2 (sTNFR2), C-reactive protein (CRP), E-selectin, soluble intracellular cell adhesion molecule 1 (sICAM-1), and soluble vascular cell adhesion molecule 1 (sVCAM-1) by quintiles of diet 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.

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

86. Fructose facilitates the biochemical formation of triacylglycerols more efficiently than does glucose.⁶⁸ 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 triglyceride molecule.⁶⁹ As compared to starches, sugars—particularly sucrose and fructose—tend to increase serum triacylglycerol concentrations by about 60%.⁷⁰

87. 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.

88. 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.

⁶⁸ Elliot, Fructose & Insulin Resistance, *supra* n.22.

⁶⁹ Bray, G.A., “Soft Drinks and Obesity: The Evidence,” *CMR e-Journal*, Vol. 2, Issue, 2, 10-14, at 13 (Oct. 2009).

⁷⁰ Fried, Hypertriglyceridemia, *supra* n.28, at 873S.

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

3 90. When the liver is overwhelmed by large doses of fructose, it will convert excess
4 to fat, which is stored in the liver and then released into the bloodstream, contributing to key
5 elements of metabolic syndrome, like high blood fat and triglycerides, high total cholesterol,
6 and low HDL “good” cholesterol.⁷¹

7 91. A study of more than 6,000 participants in the Framingham Heart Study found
8 those who consumed more than 1 soft drink per day had a 25% greater risk of
9 hypertriglyceridemia, and 32% greater risk of low HDL cholesterol than those who
10 consumed less than 1 soft drink per day.⁷²

11 92. A systematic review and meta-analysis of 37 randomized controlled trials
12 concerning the link between sugar intake and blood pressure and lipids found that higher
13 sugar intakes, compared to lower sugar intakes, significantly raised triglyceride
14 concentrations, total cholesterol, and low density lipoprotein cholesterol.⁷³

15 93. A cross-sectional study among more than 6,100 U.S. adults from the NHANES
16 1999-2006 data were grouped into quintiles for sugar intake as follows: (1) less than 5% of
17 calories consumed from sugar, (2) 5% to less than 10%, (3) 10% to less than 17.5%, (4)
18 17.5% to less than 25%, and (5) 25% or more. These groups had the following adjusted mean
19 HDL levels (because HDL is the “good” cholesterol, higher levels are better): 58.7 mg/dL,
20 57.5, 53.7, 51.0, and 47.7. Mean triglyceride levels were 105 mg/dL, 102, 111, 113, and 114.
21 Mean LDL levels were 116 mg/dL, 115, 118, 121, and 123 among women, with no
22 significant trend among men. Consumers whose sugar intake accounted for more than 10%

23 _____
24 ⁷¹ Te Morenga, Dietary Sugars & Body Weight, *supra* n.27.

25 ⁷² Dhingra, Cardiometabolic Risk, *supra* n.31.

26 ⁷³ Te Morenga, L., et al., “Dietary sugars and cardiometabolic risk: systematic review and
27 meta-analyses of randomized controlled trials on the effects on blood pressure and lipids,”
28 *American Journal of Clinical Nutrition*, Vol. 100, No. 1, 65-79 (May 7, 2014).

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.⁷⁴

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

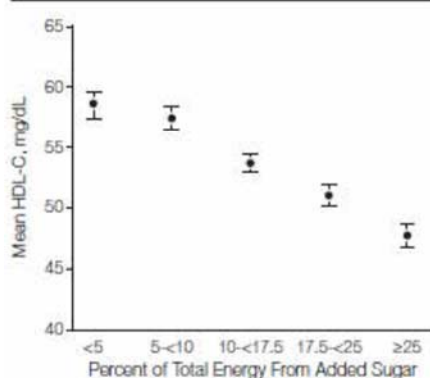


Figure 2. Multivariable-Adjusted Geometric Mean Triglyceride Levels by Level of Added Sugar Intake Among US Adults, NHANES 1999-2006

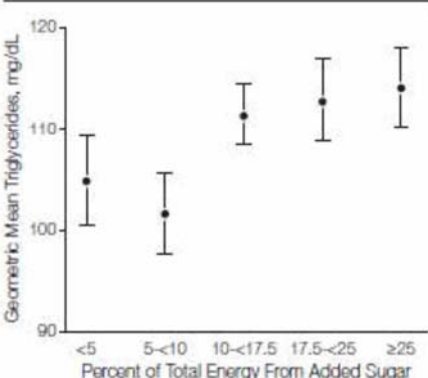
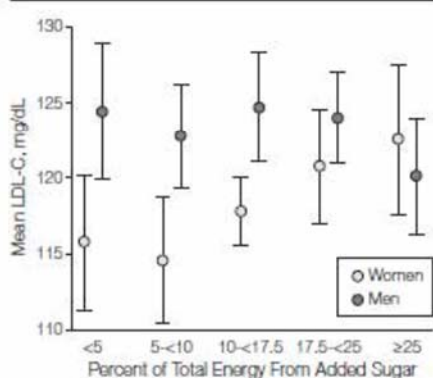


Figure 3. Multivariable-Adjusted Mean LDL-C Levels by Level of Added Sugar Intake Among US Men and Women, NHANES 1999-2006



94. 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%.⁷⁵

95. 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.⁷⁶

⁷⁴ 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).

⁷⁵ 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).

⁷⁶ 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).

96. 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.”⁷⁷

H. Excess Sugar Consumption is Associated with Hypertension

97. 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% greater risk of high blood pressure than those who consumed less than 1 soft drink per day.⁷⁸

98. 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.⁷⁹

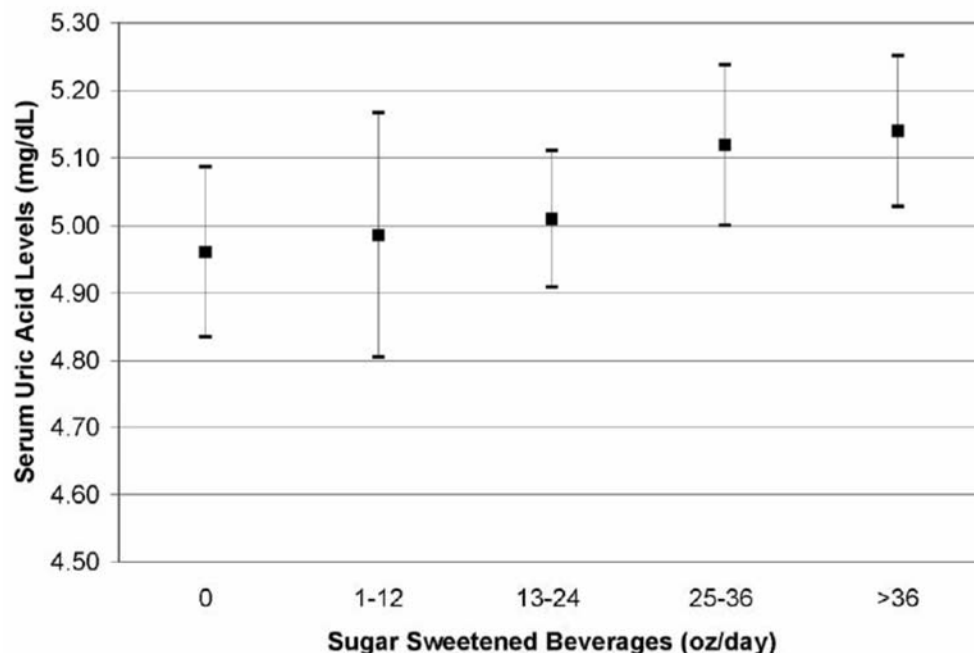


Figure 1.
Sample mean of serum uric acid with 95% confidence intervals by categories of sugar sweetened beverage consumption adjusted for age, race/ethnicity, sex, total calories, BMI z-score, alcohol, smoking, dietary fiber intake, diet beverage consumption, and milk consumption. *P* for trend = 0.01

⁷⁷ 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).

⁷⁸ Dhingra, *Cardiometabolic Risk*, *supra* n.31.

⁷⁹ Nguyen, *Serum Uric Acid*, *supra* n.23.

99. 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.⁸⁰

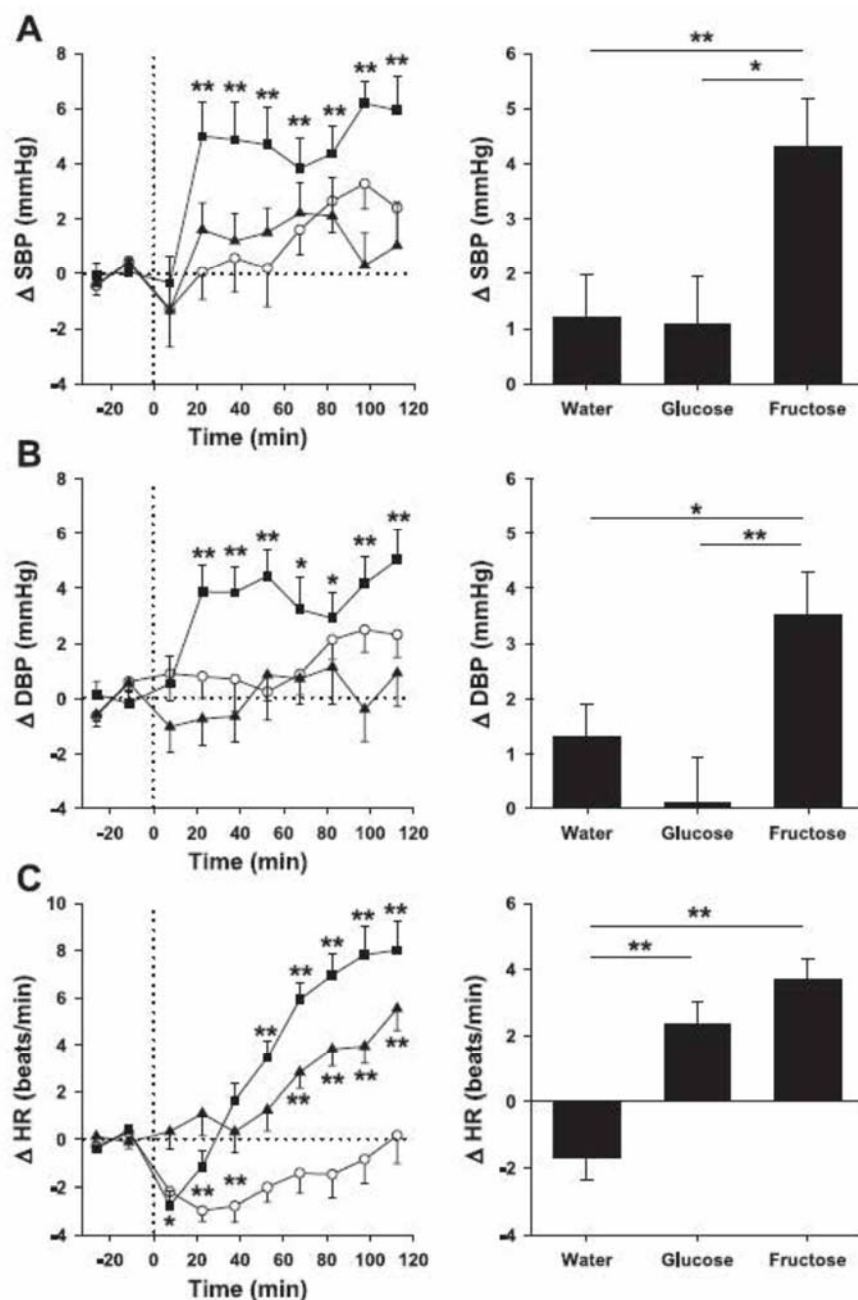


Fig. 1. Time course of the systolic blood pressure (SBP; A), diastolic blood pressure (DBP; B), and heart rate (HR; C) changes (left) and mean responses (right) to drinking water (○), glucose (▲), and fructose (■). * $P < 0.05$ and ** $P < 0.01$, statistically significant differences over time from baseline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

⁸⁰ 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).

100. 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.⁸¹

101. Another study took a variety of approaches to measuring the association between 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.⁸²

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

102. 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.⁸³

103. "To evaluate a possible association between fructose mediated metabolic changes and cognitive behavior," researchers "assessed the correlation of serum triglyceride

⁸¹ Raben, Sucrose vs. Artificial Sweeteners, *supra* n.63.

⁸² 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).

⁸³ Crane, P.K., et al., "Glucose Levels and Risk of Dementia," *New England Journal of Medicine*, Vol. 369, No. 6, 540-48 (2013).

1 and insulin resistance levels with memory,” and “found a positive correlation between serum
2 triglyceride levels and insulin resistance index . . . , which indicates that increased serum
3 triglyceride levels may contribute to increase[d] insulin resistance” And researchers
4 “found that the latency time varied in proportion to the insulin resistance . . . , which suggests
5 that memory performance may rely on levels of insulin resistance”⁸⁴

6 **J. Excess Sugar Consumption is Linked to Some Cancers**

7 104. In a population-based case-control study involving 424 cases and 398 controls,
8 women in the highest quartile of added sugar intake had an 84% greater risk of endometrial
9 cancer.⁸⁵ Similarly, in a study of patients with stage 3 colon cancer, those in the highest
10 quintile of glycemic load experienced worsening in disease-free survival of approximately
11 80% compared to those in the lowest quintile.⁸⁶

12 105. A population based case-control study on Malaysian women found a
13 significant, two-fold increased risk of breast cancer among premenopausal and
14 postmenopausal women in the highest quartile of sugar intake.⁸⁷

15 106. A prospective epidemiological study of nearly 45,000 cancer cases among
16 436,000 participants aged 50-71, found added sugars were positively associated with risk of
17
18

19 ⁸⁴ Agrawal, R., et al., “‘Metabolic syndrome’ in the brain: deficiency in omega-3 fatty acid
20 exacerbates dysfunctions in insulin receptor signaling and cognition,” *Journal of Physiology*,
21 Vol. 590, No. 10, 2485-99, at 2489 (2012).

22 ⁸⁵ King, M.G., et al., “Consumption of Sugary Foods and Drinks and Risk of Endometrial
23 Cancer,” *Cancer Causes Control*, Vol. 24, No. 7, 1427-36 (July 2013).

24 ⁸⁶ Meyerhardt, J.A., et al. “Association of dietary patterns with cancer recurrence and survival
25 in patients with stage III colon cancer,” *Journal of the American Medical Association*, Vol.
26 298, 754-64 (2007).

27 ⁸⁷ Sulaiman, S., et al., “Dietary carbohydrate, fiber and sugar and risk of breast cancer
28 according to menopausal status in Malaysia,” *Asian Pacific Journal of Cancer Prevention*,
Vol. 15, 5959 (2014).

1 esophageal adenocarcinoma; added fructose was associated with risk of small intestine
2 cancer; and all investigated sugars were associated with increased risk of pleural cancer.⁸⁸

3 **K. Based on the Scientific Evidence, Authoritative Scientific and Health**
4 **Organizations Recommend Restricting Added Sugar Consumption to Below 5% or**
5 **10% of Daily Calories**

6 107. Based on the scientific research, the AHA recommends restricting added sugar
7 to 5% of calories, or about 38 grams (9 teaspoons, 150 calories) per day for men, 25 grams
8 (6 teaspoons, 100 calories) per day for women, and 12-25 grams (3-6 teaspoons, 50-100
9 calories) for children.⁸⁹

10 108. Similarly, the World Health Organization recommends that no more than 10%
11 of an adult's calories—and ideally less than 5%—should come from added sugar or from
12 natural sugars in honey, syrups, and fruit juice.⁹⁰

13 109. In addition, the Food and Drug Administration recently set a daily reference
14 value of 50 grams of added sugar, or 10% of calories based on a 2,000-calorie diet. 81 Fed.
15 Reg. 33742, 33820 (May 27, 2016). While the FDA acknowledged the AHA and WHO
16 recommendations to keep added sugars below 5% of calories, it set the DRV at 50 grams
17 because this was “more realistic considering current consumption of added sugars in the
18 United States as well as added sugars in the food supply.” *Id.* at 33,849. Nevertheless, the
19 FDA's rulemaking was based, in part, on the 2015 Dietary Guidelines Advisory Committee's
20 “food pattern analysis,” which—consistent with the AHA and WHO recommendations—
21

22 ⁸⁸ Tasevska, N., et al., “Sugars in diet and risk of cancer in the NIH-AARP Diet and Health
23 Study,” *International Journal of Cancer*, Vol. 130, No. 1, 159-69 (Jan. 1, 2012)

24 ⁸⁹ See AHA Scientific Statement, *supra* n.10.

25 ⁹⁰ See World Health Organization, Sugars intake for adult and children: Guideline” (March
26 4, 2014), available at http://www.who.int/nutrition/publications/guidelines/sugars_intake/en
27 (Based on scientific evidence, recommending adults and children reduce daily intake of free
28 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.”).

1 “demonstrate[d] that when added sugars in foods and beverages exceeds 3% to 9% of total
2 calories . . . a healthful food pattern may be difficult to achieve”⁹¹

3 **V. Mondelez’s Marketing and Sale of the High-Sugar belVita Products**

4 110. Mondelez claims to be one of the world’s largest snack companies, with global
5 revenue of approximately \$26 billion in 2016.⁹²

6 111. In 2012 Mondelez began introducing the belVita line of breakfast products in
7 the United States.

8 112. The product line currently includes four product varieties, belVita “Crunchy”
9 Biscuits, belVita “Soft Baked” Biscuits, belVita “Bites,” and belVita “Sandwiches.” Each
10 comes in a number of flavors.

11 113. According to Mondelez, one of the primary objectives of the belVita Products
12 was “to make the biscuit category relevant to people who have health and wellness in mind”
13 and “[l]everag[e] consumer snacking trends around health and nutrition.”⁹³

14 114. As Executive Vice President and Chief Growth Officer, Mark Clouse, stated
15 “[c]onsumers in both developed and emerging markets are increasingly interested in health
16 and nutrition for themselves and for their families.” Mondelez is “tapping into this trend and
17 [is] determined to become the global leader in well-being snacks.”⁹⁴

18
19
20
21 ⁹¹ U.S. Department of Agriculture, “Scientific Report of the 2015 Dietary Guidelines
Advisory Committee” (February 2015), Ch. 6 p.26.

22 ⁹² Mondelez International Inc., 10-k SEC filing for fiscal year ending Dec. 31, 2016, *available*
23 *at* [http://ir.mondelezinternational.com/secfiling.cfm?filingID=1193125-17-](http://ir.mondelezinternational.com/secfiling.cfm?filingID=1193125-17-55858&CIK=1103982)
24 [55858&CIK=1103982](http://ir.mondelezinternational.com/secfiling.cfm?filingID=1193125-17-55858&CIK=1103982) (last visited October 6, 2017).

25 ⁹³ Mondelez International Inc., Mondelez International Introduces belVita Breakfast Biscuits
26 in China (Oct. 14, 2015), *available at*
27 <http://ir.mondelezinternational.com/releasedetail.cfm?releaseid=936563> (last
visited October 13, 2017).

28 ⁹⁴ <http://ir.mondelezinternational.com/releasedetail.cfm?releaseid=936563>

1 115. Mondelez carefully crafted and coordinated a multiplatform marketing
2 campaign for the high-sugar belVita Products with key messages targeting consumers
3 interested in health and nutrition.

4 116. As described in more detail below, Mondelez employed claims on the labeling
5 and packaging of the belVita Products (identified specifically in paragraphs 126, 131, 136,
6 141) meant to appeal to consumers interested in health and nutrition that are deceptive
7 because they are incompatible with the dangers of the excessive sugar consumption to which
8 the Products contribute.

9 117. The same key messages are reinforced on its website, which each package of
10 the belVita Breakfast Products encourages consumers to visit.

11 118. For example, on its belVita website, Mondelez claims that “[s]tudies now show
12 that breakfast eaters may enjoy a number of advantages like improved nutrition in their
13 overall diet, improved concentration during the morning, and a positive impact on managing
14 body weight.”⁹⁵

15 119. Mondelez also paid a “nutritionist,” Connie Guttersen, to try to bolster the
16 credibility of its deceptive marketing campaign and featured her scripted endorsements on
17 its website, on social media platforms such as Facebook, and in videos on YouTube.

18 120. Mondelez also used companies such as FitFluential, LLC to run a coordinated
19 blogging campaign that compensated bloggers to promote the belVita Breakfast Products
20 through rave “product reviews.” These bloggers were provided with promotional scripts or
21 materials to incorporate into their “reviews,” which highlighted the key messages Mondelez
22 used to target consumers interested in health and wellness.

23
24
25
26
27 ⁹⁵ Breakfast Matters, Mondelez, *available at* [http://www.belvitabreakfast.com/breakfast-](http://www.belvitabreakfast.com/breakfast-matters)
28 *matters* (last visited October 17, 2017).

121. Mondelez has been highly successful in its marketing strategy with sales of over \$275 million in the United States from August 2015 to August 2016.⁹⁶

122. But as described in more detail below, all of the belVita Breakfast Products contain high levels of added sugar, between 16 and 24 percent of calories,⁹⁷ such that their regular consumption is likely to contribute to excess added sugar consumption and, thereby, increased risk for and contraction of chronic diseases.

A. belVita “Crunchy” Biscuits

123. Mondelez first began selling the belVita “Crunchy” Biscuits in the United States in 2012 and they have been sold in at least eight flavors: Blueberry, Golden Oat, Cinnamon Brown Sugar, Chocolate, Toasted Coconut, Cranberry Orange, Apple Cinnamon, and Pumpkin Spice.

124. The amount of total calories, total sugar, added sugar, and percent of calories from added sugar for a serving of each flavor of the belVita “Crunchy” Products is set forth in the table below.

	Total Calories	Total Sugar	Added Sugar	% Calories Added Sugar	Contribution of 1 Serving to AHA’s Maximum Recommended Daily Intake of Added Sugars
Blueberry	230	13g	12g	21%	M: 32% W: 48% C: 48-100%
Golden Oat	230	11g	11g	19%	M: 29% W: 44%

⁹⁶ Eric Schroeder, “Cookie champions”, Food Business News (Sept. 13, 2016), *available at* http://www.foodbusinessnews.net/articles/news_home/Business_News/2016/09/Cookie_champions.aspx?ID=%7B0F7A5326-1DE9-4491-B89D-D45757325931%7D&cck=1.

⁹⁷ Although the Products’ formulations, and thus the precise amount of their added sugar is in Mondelez’s exclusive possession, custody, and control, Plaintiffs, through investigation, identify the approximate amount of added sugar upon information and belief. 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. Plaintiffs reserve the right to amend their specific challenges, following discovery.

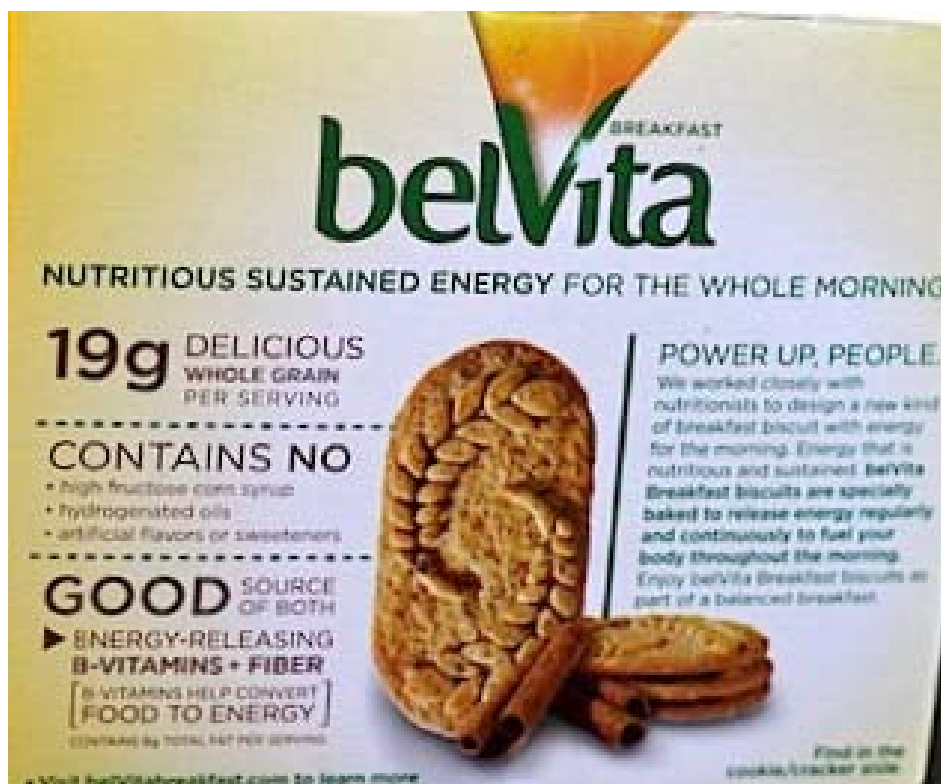
					C: 44-92%
Cinnamon Brown Sugar	230	10g	10g	17%	M: 26% W: 40% C: 40-83%
Chocolate	230	10g	10g	17%	M: 26% W: 40% C: 40-83%
Toasted Coconut	230	11g	11g	19%	M: 29% W: 44% C: 44-92%
Cranberry Orange	230	12g	11g	19%	M: 29% W: 44% C: 44-92%
Apple Cinnamon	230	13g	12g	21%	M: 32% W: 48% C: 48-100%
Pumpkin Spice	230	11g	11g	19%	M: 29% W: 44% C: 44-92%

125. The labels of the “Crunchy” belVita Products are substantially similar for each flavor and representative exemplars are pictured below.





1
2
3
4
5
6
7
8
9
10
11
12
13



BREAKFAST
belVita

NUTRITIOUS SUSTAINED ENERGY FOR THE WHOLE MORNING

19g DELICIOUS WHOLE GRAIN PER SERVING

CONTAINS NO

- high fructose corn syrup
- hydrogenated oils
- artificial flavors or sweeteners

GOOD SOURCE OF BOTH

► **ENERGY-RELEASING B-VITAMINS + FIBER**
[B-VITAMINS HELP CONVERT FOOD TO ENERGY]

CONTAINS 1g TOTAL FAT PER SERVING

POWER UP, PEOPLE.
We worked closely with nutritionists to design a new kind of breakfast biscuit with energy for the morning. Energy that is nutritious and sustained. belVita Breakfast biscuits are specially baked to release energy regularly and continuously to fuel your body throughout the morning. Enjoy belVita Breakfast biscuits as part of a balanced breakfast.

Find us in the cookie/cracker aisle.

* Visit belvitabreakfast.com to learn more.

14
15
16
17
18
19
20
21
22
23
24
25
26
27
28



BREAKFAST
belVita

GRAB MORNING BY THE BISCUITS

Nutritious Sustained Energy for the whole morning

We worked closely with nutrition experts to design a new kind of breakfast biscuit with energy for the morning.

belVita Breakfast Biscuits are specially baked to release energy regularly and continuously to fuel your body throughout the morning.

Enjoy belVita Breakfast Biscuits as part of a balanced breakfast.

19g DELICIOUS WHOLE GRAIN with a delicious flavor

CONTAINS NO

- high fructose corn syrup
- partially hydrogenated oils
- artificial flavors or sweeteners

GOOD SOURCE OF FIBER + B-VITAMINS

CONTAINS 1g TOTAL FAT PER SERVING

[B-VITAMINS HELP CONVERT FOOD TO ENERGY]

Visit belvitabreakfast.com to learn more.

**A delicious start
to a busy morning
delivering**

**4 HOURS OF
NUTRITIOUS
STEADY ENERGY**

**belVita, a nutritious, convenient
breakfast choice** that contains
slow-release carbs from
wholesome grains **to help fuel
your body for 4 hours**

Check out the rest of the belVita Family!
to learn more, visit belVitaBreakfast.com

belVita BREAKFAST

belVita Breakfast biscuits are lightly sweet, crunchy biscuits made with high quality and wholesome ingredients like rolled oats.

Nutritionists recommend eating a balanced breakfast to start the day off right. Eating foods rich in whole grains along with a piece of fruit and a serving of fat-free or low fat dairy provide you with a delicious and nutritious breakfast.

WHOLE GRAIN
19g or more per serving

*Nutritionists recommend eating 3 or more servings of whole grain foods per day (about 16g whole grain per serving or at least 48g per day).

Try these other delicious varieties!

BLUEBERRY **APPLE CINNAMON**

Visit belvitabreakfast.com to learn more

INGREDIENTS: WHOLE GRAIN BLEND (ROLLED OATS, RYE FLAKES), ENRICHED FLOUR (WHEAT FLOUR, NIACIN, REDUCED IRON, THIAMIN MONONITRATE (VITAMIN B1), RIBOFLAVIN (VITAMIN B2), FOLIC ACID), CANOLA OIL, SUGAR, WHOLE GRAIN WHEAT FLOUR, EVAPORATED CANE SUGAR, DRIED BLUEBERRIES, MALT SYRUP (FROM CORN AND BARLEY), INVERT SUGAR, BAKING SODA, SALT, SOY LECITHIN, DISODIUM PYROPHOSPHATE, NATURAL FLAVOR, DATEM, BLUEBERRY JUICE CONCENTRATE, FERRIC ORTHOPHOSPHATE (IRON), NIACINAMIDE, PYRIDOXINE HYDROCHLORIDE (VITAMIN B6), RIBOFLAVIN (VITAMIN B2), THIAMIN MONONITRATE (VITAMIN B1).

CONTAINS: WHEAT, SOY.

MONDELEZ GLOBAL LLC
EAST HANOVER, NJ 07936 USA
MADE IN MEXICO

belVita Breakfast

**4 HOURS OF
NUTRITIOUS
STEADY ENERGY**

**18g delicious
WHOLE GRAIN**
per 50g serving (4 biscuits)

**A good source of
FIBER**
8g total fat per serving

NO high fructose corn syrup
NO partially hydrogenated oils
NO artificial flavors or sweeteners

126. The packaging of the “Crunchy” belVita Products has borne at least the following claims that are misleading, individually and especially in the context of the label as a whole:

- a. “NUTRITIOUS SUSTAINED ENERGY”
- b. “NUTRITIOUS STEADY ENERGY ALL MORNING”
- c. “4 HOURS OF NUTRITIOUS STEADY ENERGY”
- d. “POWER UP, PEOPLE. We worked closely with nutritionists to design a new kind of breakfast biscuit with energy for the morning. Energy that is nutritious and sustained. BelVita Breakfast biscuits are specifically baked to release energy regularly and continuously to fuel your body throughout the morning. Enjoy belVita Breakfast biscuits as part of a balanced breakfast.”
- e. “We worked closely with nutritionists to design belVita Breakfast Biscuits, which are specifically baked to release energy regularly and continuously to fuel your body throughout the morning”
- f. “Enjoy belVita Breakfast Biscuits as part of a balanced breakfast with a serving of low-fat dairy and fruit”
- g. “a nutritious, convenient breakfast choice that contains slow-release carbs from wholesome grains to help fuel your body for 4 hours”

127. These claims are deceptive because they are incompatible with the dangers of the excessive sugar consumption to which the Products contribute.

B. belVita Soft Baked Biscuits

128. belVita Soft Baked Biscuits were introduced in the United States in 2013⁹⁸ and have been sold in at least five flavors: Mixed Berry, Honey & Chocolate, Oats & Chocolate, Banana Bread, Oats & Peanut Butter, and Cinnamon.

⁹⁸ Mondelez International, 2017 Fact Sheet: belVita Breakfast, *available at* http://www.mondelezinternational.com/~media/MondelezCorporate/Uploads/downloads/belVita_Fact_Sheet.pdf (last visited October 17, 2017).

129. The amount of total calories, total sugar, added sugar, and percent of calories from added sugar for a serving of each flavor of the belVita Soft Baked Products is set forth in the table below.

	Total Calories	Total Sugar	Added Sugar	% Calories Added Sugar	Contribution of 1 Serving to AHA's Maximum Recommended Daily Intake of Added Sugars
Mixed Berry	200	10g	9g	18%	M: 24% W: 36% C: 36-75%
Oats & Chocolate	200	10g	9g	18%	M: 24% W: 36% C: 36-75%
Banana Bread	200	9g	8g	16%	M: 24% W: 36% C: 36-75%
Oats & Peanut Butter	190	9g	8g	17%	M: 21% W: 32% C: 32-67%
Cinnamon	200	9g	9g	18%	M: 24% W: 36% C: 36-75%

130. The labels of the belVita Soft Baked Products are substantially similar for each flavor and representative exemplars are pictured below.







131. The packaging of the belVita Soft Baked Products has borne at least the following claims that are misleading, individually and especially in the context of the label as a whole:

- a. “NUTRITIOUS MORNING ENERGY”
- b. “4 HOURS OF NUTRITIOUS STEADY ENERGY”
- c. “We all need energy to start the morning. We also need a delicious, wholesome breakfast. Baked with hearty whole grains, belVita Soft Baked Breakfast biscuits are delicious, nutritious, and give you satisfying morning energy to start you day off right.”
- d. “Enjoy belVita Soft Baked Breakfast Biscuits as part of a balanced breakfast with a serving of low-fat dairy and fruit.”
- e. “a nutritious, convenient breakfast choice that contains slow-release carbs from wholesome grains to help fuel your body for 4 hours”

132. These claims are deceptive because they are incompatible with the dangers of the excessive sugar consumption to which the Products contribute.

C. belVita Bites

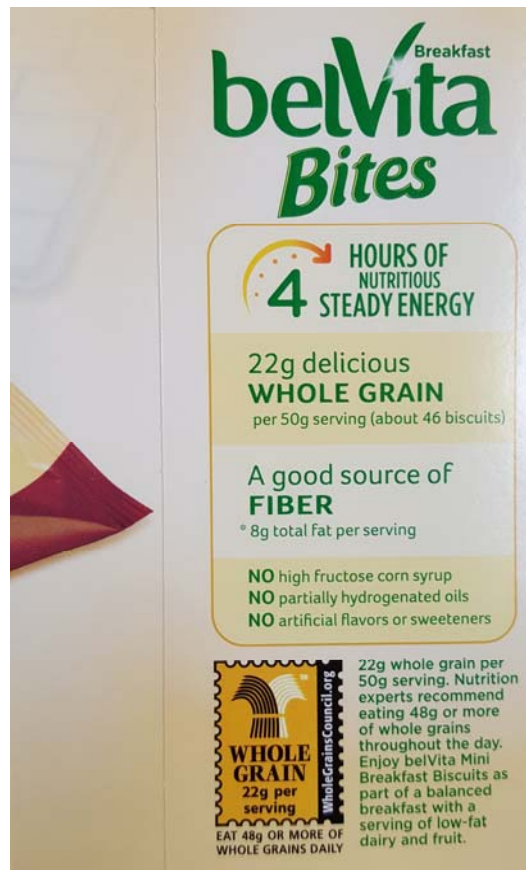
133. belVita Bites were introduced in or around January 2015 and are available in three flavors: Mixed Berry, Cinnamon Brown Sugar, and Chocolate.

134. The amount of total calories, sugar, added sugar, and percent of calories from added sugar for a serving of each flavor of the belVita Bites is set forth in the table below.

	Total Calories	Total Sugar	Added Sugar	% Calories Added Sugar	Contribution of 1 Serving to AHA's Maximum Recommended Daily Intake of Added Sugars
Mixed Berry	230	12g	11g	19%	M: 29% W: 44% C: 44-92%
Cinnamon Brown Sugar	230	10g	10g	17%	M: 26% W: 40% C: 40-83%
Chocolate	230	12g	12g	21%	M: 32% W: 48% C: 48-100%

135. The labels of the belVita Bites are substantially similar for each flavor and representative exemplars are pictured below.





136. The packaging of the belVita Bites has borne at least the following claims that are misleading, individually and especially in the context of the label as a whole:

a. “4 HOURS OF NUTRITIOUS STEADY ENERGY”

b. “belVita, a nutritious, convenient breakfast choice that contains slow-release carbs from wholesome grains to help fuel your body for 4 hours”

137. These claims are deceptive because they are incompatible with the dangers of the excessive sugar consumption to which the Products contribute.

D. belVita Sandwiches

138. belVita Sandwiches were introduced in 2017 and are available in four flavors: Vanilla Yogurt Crème; Strawberry Yogurt Crème; Peanut Butter; and Dark Chocolate Crème.

139. The amount of total calories, total sugar, added sugar, and percent of calories from added sugar for a serving of each flavor of the belVita Sandwich Products is set forth in the table below.

	Total Calories	Total Sugar	Added Sugar	% Calories Added Sugar	Contribution of 1 Serving to AHA’s Maximum Recommended Daily Intake of Added Sugars
Vanilla Yogurt Crème	230	14g	14g	24%	M: 37% W: 56% C: 56-117%
Strawberry Yogurt Crème	230	14g	14g	24%	M: 37% W: 56% C: 56-117%
Peanut Butter	230	10g	10g	17%	M: 26% W: 40% C: 40-83%
Dark Chocolate Crème	230	12g	12g	21%	M: 32% W: 48% C: 48-100%

140. The labels of the belVita Sandwich Products are substantially similar for each flavor and representative exemplars are pictured below.



A delicious start
to a busy morning
delivering

4 HOURS OF
NUTRITIOUS
STEADY ENERGY

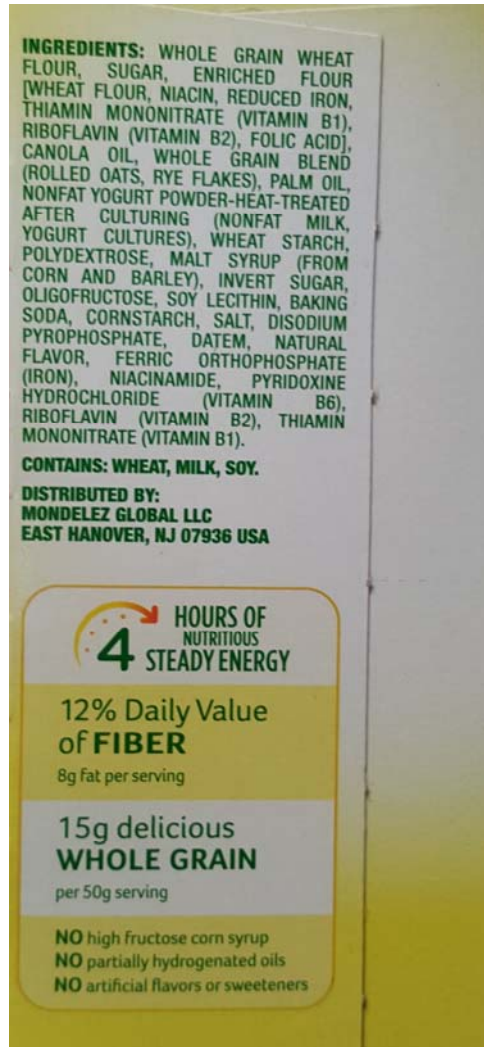
*belVita Sandwich, a delicious,
nutritious, convenient breakfast
choice that contains slow-release
carbs from wholesome grains
to help fuel your body for 4 hours.*



Check out the rest of the belVita Family!
to learn more, visit belVitaBreakfast.com



belVita Sandwich Vanilla Yogurt
Creme contains 15g whole grain per 50g
serving. Nutrition experts recommend
eating 48g or more of whole grains
throughout the day. Enjoy belVita
Breakfast Biscuits as part of a balanced
breakfast with a serving of low fat
dairy and fruit.



141. The packaging of the belVita Sandwich Products has made at least the following claims that are misleading, individually and especially in the context of the label as a whole:

- a. “4 HOURS OF NUTRITIOUS STEADY ENERGY”
- b. “a nutritious, convenient breakfast choice that contains slow-release carbs from wholesome grains to help fuel your body for 4 hours”

142. These claims are deceptive because they are incompatible with the dangers of the excessive sugar consumption to which the Products contribute.

VI. The Labeling of the belVita Products Violates California and Federal Law

A. Any violation of federal food labeling statutes or regulations is a violation of California law

143. The Products and their labeling violate California Health and Safety Code §§ 109875, *et. seq.* (the “Sherman Law”), which has expressly adopted the federal food labeling requirements as its own. *See* Cal. Health & Safety Code § 110665.

144. Under the Sherman Law, any violation the Federal Food Federal Food, Drug, and Cosmetic Act and/or federal regulations is also a violation of the Sherman Law. *See* Cal. Health & Safety Code § 110665 (“Any food is misbranded if its labeling does not conform with the requirements for nutrition labeling as set forth in Section 403(q) (21 U.S.C. Sec. 343(q)) of the federal act and the regulation adopted pursuant thereto.”).

145. The Federal Food Federal Food, Drug, and Cosmetic Act expressly authorizes state regulations, such as the Sherman Law, that are “identical to the requirement[s]” of the FDCA and federal regulations. *See* 21 U.S.C. § 343-1.

146. Because the Sherman Law’s requirements are identical to the requirements of the Federal Food, Drug, and Cosmetic Act and FDA regulations the Sherman law is explicitly authorized by the FDCA.

B. The Products’ false and misleading labeling claims render them misbranded

147. Mondelez’s deceptive statements violate Health & Safety Code § 109875 and 21 U.S.C. § 343(a), which deem a food product misbranded when its label contains any statement that is “false or misleading in any particular.”

148. As described above, the Products’ labeling contains numerous statements that are false or misleading because they state, suggest, or imply that the Products are healthy, which render them misbranded. Cal. Health & Safety Code §§ 110660.

149. In addition, the labeling is misleading, and thus misbranded, because “it fails to reveal facts that are material in light of other representations.” 21 C.F.R § 1.21.

VII. Plaintiffs' Purchase, Reliance and Injury

150. Plaintiffs were exposed to, read, and relied upon Defendant's claims on the Products' labeling that were intended to appeal to consumers, such as themselves, that are "interested in health and nutrition."

151. Mr. McMorrow believes he first began purchasing belVita Products shortly after they were introduced in 2012, purchasing approximately two boxes approximately every two weeks until late 2016 or early 2017. Mr. McMorrow purchased the Crunchy Blueberry and Cinnamon Brown Sugar Products most often. Mr. McMorrow also occasionally purchased the Cinnamon Brown Sugar Bites after they were introduced. Mr. McMorrow also purchased the Oats & Chocolate Soft Chew Biscuits on at least one occasion. Mr. McMorrow made his purchases from the Vons store located at 4145 30th St., San Diego, California 92104, and the Ralphs stores located at 1020 University Ave., San Diego, California 92103 and at 6670 Montezuma Rd., San Diego, California 92115. Mr. McMorrow paid approximately \$3 to \$5 for each box.

152. To the best of his recollection, when deciding to purchase the belVita Products Mr. McMorrow read and relied on the following deceptive claims contained on the packaging of the Products:

- a. "NUTRITIOUS SUSTAINED ENERGY"
- b. "NUTRITIOUS STEADY ENERGY ALL MORNING"
- c. "4 HOURS OF NUTRITIOUS STEADY ENERGY"
- d. "NUTRITIOUS MORNING ENERGY"
- e. "POWER UP, PEOPLE. We worked closely with nutritionists to design a new kind of breakfast biscuit with energy for the morning. Energy that is nutritious and sustained. BelVita Breakfast biscuits are specifically baked to release energy regularly and continuously to fuel your body throughout the morning."
- f. "We worked closely with nutritionists to design belVita Breakfast Biscuits, which are specifically baked to release energy regularly and continuously to fuel your body throughout the morning"

1 g. “Enjoy belVita Breakfast Biscuits as part of a balanced breakfast”

2 h. “a nutritious, convenient breakfast choice that contains slow-release
3 carbs from wholesome grains to help fuel your body for 4 hours”

4 i. “a nutritious, convenient on-the-go breakfast choice that contains slow-
5 release carbs from wholesome grains to help fuel your body for 4 hours”

6 j. “We all need energy to start the morning. We also need a delicious,
7 wholesome breakfast. Baked with hearty whole grains, belVita Soft Baked Breakfast
8 biscuits are delicious, nutritious, and give you satisfying morning energy to start you
9 day off right”

10 k. “Enjoy belVita Soft Baked Breakfast Biscuits as part of a balanced
11 breakfast with a serving of low-fat dairy and fruit.”

12 153. Mr. McMorrow believed these claims regarding the “health and nutrition”
13 qualities of the Products, which are deceptive because they are incompatible with the dangers
14 of the excessive sugar consumption to which the Products contribute.

15 154. Mr. Ohlin believes he began purchasing blueberry belVita “Crunchy” biscuits
16 in approximately the summer 2015 and typically purchased approximately two boxes per
17 week. Mr. Ohlin also recalls purchasing several boxes of the belVita Soft Baked Products in
18 the summer of 2016, specifically the Mixed Berry and Oats & Peanut Butter flavors. He most
19 frequently made his purchases from the Fresh & Easy store that was located at 955 Catalina
20 Blvd., San Diego, California 92106. He also made occasional purchases at the Vons located
21 at 3645 Midway Dr., San Diego, California 92110 and the Ralph’s located at 3345 Sports
22 Arena Blvd., San Diego, California 92110. Mr. Ohlin’s most recent purchase, to the best of
23 his recollection, was in early 2017. Mr. Ohlin paid approximately \$3 to \$5 per box.

24 155. To the best of his recollection, when deciding to purchase the belVita Products
25 Mr. Ohlin read and relied on the following deceptive claims contained on the packaging of
26 the Products:

27 a. “4 HOURS OF NUTRITIOUS STEADY ENERGY”
28

1 b. “a nutritious, convenient breakfast choice that contains slow-release
2 carbs from wholesome grains to help fuel your body for 4 hours”

3 156. Mr. Ohlin believed these claims regarding the “health and nutrition” qualities
4 of the Products, which are deceptive because they are incompatible with the dangers of the
5 excessive sugar consumption to which the Products contribute.

6 157. These representations, however, were false and misleading, and had the
7 capacity, tendency, and likelihood to confuse or confound Plaintiffs and other consumers
8 (including the putative Class) acting reasonably because, as described in detail herein,
9 consuming the Products increases the risk of serious diseases.

10 158. The belVita Products cost more than similar products without misleading
11 labeling, and would have cost less absent the false and misleading statements.

12 159. Plaintiffs paid more the belVita Products, and would only have been willing to
13 pay less, or unwilling to purchase the Products at all, absent the false and misleading labeling
14 complained of herein.

15 160. For these reasons, the belVita Products were worth less than what Plaintiffs and
16 the Class paid for them.

17 161. Plaintiffs and members of the Class would not have purchased the belVita
18 Products if it were known to them that the Products are misbranded pursuant to California
19 and FDA regulations or that their labeling claims were false.

20 162. Plaintiffs and the Class lost money as a result of Defendant’s deceptive claims
21 and practices in that they did not receive what they paid for when purchasing the belVita
22 Products.

23 163. Plaintiffs and the Class detrimentally altered their position and suffered
24 damages in an amount equal to the amount they paid for the belVita Products.

25 164. Plaintiffs continue to shop at stores where the belVita Products are sold and
26 where they are exposed to the belVita Products and challenged claims.

27 165. Plaintiffs also continue to be interested in and wish to purchase healthy snack
28 and breakfast products.

1 166. Plaintiffs would likely purchase the belVita Products in the future if they were
 2 reformulated so that they are in fact healthy, but Plaintiffs may not be able to reasonably
 3 determine whether they have been reformulated or whether the reformulation was such that
 4 it makes the Products healthy.

5 167. Plaintiffs would likely purchase the belVita Products if they could trust that any
 6 health and wellness claims were not false or misleading, but Plaintiffs are currently unable
 7 to trust the representations on the belVita Products when they encounter them.

8 168. Plaintiffs' substantive rights continue to be violated every time Plaintiffs are
 9 exposed to a misleading belVita labeling.

10 169. If Plaintiffs could be assured that any health and wellness claims on the belVita
 11 Products was lawful and not misleading, they would consider purchasing the Products in the
 12 future.

13 170. The senior officers and directors of Mondelez allowed the belVita Products to
 14 be sold with full knowledge or reckless disregard that the challenged claims are fraudulent,
 15 unlawful, and misleading.

16 **CLASS ACTION ALLEGATIONS**

17 171. Pursuant to Rule 23, Plaintiffs bring this action on behalf of themselves and a
 18 class of all persons in California who purchased the belVita Products, for personal or
 19 household use, and not for resale or distribution purposes.

20 172. The members in the proposed Class are so numerous that individual joinder of
 21 all members is impracticable, and the disposition of the claims of all Class Members in a
 22 single action will provide substantial benefits to the parties and Court.

23 173. Questions of law and fact common to Plaintiffs and the Class include:

- 24 a. whether Defendant communicated a message regarding healthfulness of
- 25 the Products through their packaging and advertising;
- 26 b. whether that message was material, or likely to be material to a
- 27 reasonable consumer;
- 28

- c. whether the challenged claims discussed above are false, misleading, or reasonably likely to deceive a reasonable consumer;
- d. whether Defendant's conduct violates public policy;
- e. whether Defendant's conduct constitutes violations of the laws asserted herein;
- f. whether Defendant engaged in false or misleading advertising;
- g. whether Plaintiffs and Class members are entitled to declaratory and injunctive relief; and
- h. whether Plaintiffs and Class members are entitled to actual damages, restitution, punitive damages, attorneys' fees and costs, injunctive, and the amount of that or any other relief.

174. These common questions of law and fact predominate over questions that affect only individual Class Members.

175. Plaintiffs' claims are typical of Class Members' claims because they are based on the same underlying conduct by Defendant. Specifically, all Class Members, including Plaintiffs, were subjected to the same misleading and deceptive conduct when they purchased the challenged Products and suffered economic injury because the Products are misrepresented. Absent Defendant's business practice of deceptively and unlawfully labeling its Products, Plaintiffs and Class members would not have purchased the Products.

176. Plaintiffs will fairly and adequately represent and protect the interests of the Class, have no interests incompatible with the interests of the Class, and have retained counsel competent and experienced in class action litigation.

177. 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.

178. Questions of law and fact common to the Class predominate over any questions affecting only individual Class Members.

1 179. Defendant has acted on grounds applicable to the Class, thereby making
2 appropriate final injunctive and declaratory relief concerning the Class as a whole.

3 180. As a result of the foregoing, class treatment is appropriate under Fed. R. Civ. P.
4 23(a), (b)(2), and (b)(3).

5 **CAUSES OF ACTION**

6 **FIRST CAUSE OF ACTION**

7 **Violations of the Unfair Competition Law,**

8 **Cal. Bus. & Prof. Code § 17200 *et seq.***

9 181. Plaintiffs reallege and incorporate the allegations elsewhere in the Complaint
10 as if set forth in full herein.

11 182. The UCL prohibits any “unlawful, unfair or fraudulent business act or
12 practice.” Cal. Bus. & Prof. Code §17200.

13 183. The acts, omissions, misrepresentations, practices, and non-disclosures of
14 Mondelez as alleged herein constitute business acts and practices.

15 **Fraudulent**

16 184. A statement or practice is fraudulent under the UCL if it is likely to deceive the
17 public, applying a reasonable consumer test.

18 185. As set forth herein, the Mondelez’s claims relating to the belVita Products are
19 likely to deceive reasonable consumers and the public.

20 **Unlawful**

21 186. The acts alleged herein are “unlawful” under the UCL in that they violate at
22 least the following laws:

- 23 • The Federal Food, Drug, and Cosmetic Act, 21 U.S.C. §§ 301 *et seq.*
- 24 • The False Advertising Law, Cal. Bus. & Prof. Code §§ 17500 *et seq.*;
- 25 • The Consumers Legal Remedies Act, Cal. Civ. Code §§ 1750 *et seq.*; and
- 26 • The California Sherman Food, Drug, and Cosmetic Law, Cal. Health & Safety
- 27 Code §§ 110100 *et seq.*
- 28

Unfair

187. Mondelez's conduct with respect to the labeling, advertising, and sale of the belVita Products was also unfair because it violated public policy as declared by specific constitutional, statutory or regulatory provisions, including but not limited to the False Advertising Law, portions of the Federal Food, Drug, and Cosmetic Act, and portions of the California Sherman Food, Drug, and Cosmetic Law.

188. Mondelez's conduct with respect to the labeling, advertising, and sale of the belVita Products 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.

189. Mondelez's conduct with respect to the labeling, advertising, and sale of the belVita Products was unfair because Mondelez'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.

190. The economic and health harm to consumers from purchasing and consuming the belVita Products due to the deceptive claims is not outweighed by the benefit of increased profits gained from the health and wellness labeling claims.

191. Mondelez profited from its sale of the falsely, deceptively, and unlawfully advertised belVita Products to unwary consumers.

192. Plaintiffs and Class Members are likely to be damaged by Mondelez's deceptive trade practices, as Mondelez continues to disseminate misleading information. Thus, injunctive relief enjoining this deceptive practice is proper.

193. Mondelez's conduct caused and continues to cause substantial injury to Plaintiffs and the other Class Members, who have suffered injury in fact as a result of Mondelez's fraudulent, unlawful, and unfair conduct.

194. In accordance with Bus. & Prof. Code § 17203, Plaintiffs, on behalf of themselves, the Class, and the general public, seek an order enjoining Mondelez from

1 continuing to conduct business through unlawful, unfair, or fraudulent acts and practices,
2 and to commence a corrective advertising campaign.

3 195. Plaintiffs, on behalf of themselves and the Class also seek an order for
4 disgorgement and restitution of all monies from the sale of t the belVita Products, which
5 were unjustly acquired through acts of unlawful, unfair, and fraudulent competition.

6 **SECOND CAUSE OF ACTION**

7 **Violations of the False Advertising Law,** 8 **Cal. Bus. & Prof. Code §§ 17500 *et seq.***

9 196. Plaintiffs reallege and incorporate the allegations elsewhere in the Complaint
10 as if set forth in full herein.

11 197. Under the FAL, “[i]t is unlawful for any person, firm, corporation or
12 association, or any employee thereof with intent directly or indirectly to dispose of real or
13 personal property or to perform services” to disseminate any statement “which is untrue or
14 misleading, and which is known, or which by the exercise of reasonable care should be
15 known, to be untrue or misleading.” Cal. Bus. & Prof. Code § 17500.

16 198. It is also unlawful under the FAL to disseminate statements concerning property
17 or services that are “untrue or misleading, and which is known, or which by the exercise of
18 reasonable care should be known, to be untrue or misleading.” *Id.*

19 199. As alleged herein, the advertisements, labeling, policies, acts, and practices of
20 Mondelez relating to the belVita Products misled consumers acting reasonably as to the
21 healthfulness of the belVita Products.

22 200. Plaintiffs suffered injury in fact as a result of Mondelez’s actions as set forth
23 herein because Plaintiffs purchased belVita Products in reliance on Mondelez’s false and
24 misleading marketing claims and lost money as a result.

25 201. Mondelez’s business practices as alleged herein constitute unfair, deceptive,
26 untrue, and misleading advertising pursuant to the FAL because Mondelez has advertised
27 the belVita Products in a manner that is untrue and misleading, which Mondelez knew or
28 reasonably should have known.

202. Mondelez profited from its sales of the falsely and deceptively advertised belVita Products to unwary consumers.

203. As a result, pursuant to Cal. Bus. & Prof. Code § 17535, Plaintiffs and the Class are entitled to injunctive and equitable relief, restitution, and an order for the disgorgement of the funds by which Mondelez was unjustly enriched.

THIRD CAUSE OF ACTION

Violations of the Consumer Legal Remedies Act,

Cal. Civ. Code §§ 1750 *et seq.*

204. Plaintiffs reallege and incorporate the allegations elsewhere in the Complaint as if set forth in full herein.

205. 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.

206. Mondelez's false and misleading labeling and other policies, acts, and practices described herein were designed to, and did, induce the purchase and use of Mondelez's belVita Products for personal, family, or household purposes by Plaintiffs and other Class Members, and violated and continue to violate at least 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.

207. Mondelez profited from its sales of the falsely, deceptively, and unlawfully advertised belVita Products to unwary consumers.

1 208. Mondelez's wrongful business practices regarding the Products constituted, and
2 constitute, a continuing course of conduct in violation of the CLRA.

3 209. Plaintiffs, on behalf of themselves and the Class, seek injunctive relief under
4 the CLRA at this time.

5 210. Filed concurrently with the Complaint is a venue of affidavit.

6 **FOURTH CAUSE OF ACTION**

7 **Breaches of Express Warranties,**

8 **Cal. Com. Code § 2313(1)**

9 211. Plaintiffs reallege and incorporate the allegations elsewhere in the Complaint
10 as if set forth in full herein.

11 212. Through labeling of the belVita Products, Mondelez made affirmations of fact
12 or promises, or description of goods, listed in paragraphs 126, 131, 136, and 141. These
13 representations were "part of the basis of the bargain." in that Plaintiffs and the Class
14 purchased the belVita Products in reasonable reliance on those statements. Cal. Com. Code
15 § 2313(1).

16 213. Mondelez breached its express warranties by selling Products that are harmful
17 to health.

18 214. That breach actually and proximately caused injury in the form of the lost
19 purchase price that Plaintiff and Class members paid for the belVita Products.

20 215. As a result, Plaintiffs seek, on behalf of themselves and other Class Members,
21 their actual damages arising as a result of Mondelez's breaches of express warranty.

22 **FIFTH CAUSE OF ACTION**

23 **Breach of Implied Warranty of Merchantability,**

24 **Cal. Com. Code § 2314**

25 216. Plaintiffs reallege and incorporate the allegations elsewhere in the Complaint
26 as if set forth in full herein.

E. An Order compelling Mondelez to destroy all misleading and deceptive advertising materials and the belVita Products' labels;

F. An Order requiring Mondelez to pay restitution to restore all funds acquired by means of any act or practice declared by this Court to be an unlawful, unfair, or fraudulent business act or practice, or untrue or misleading advertising;

G. An Order requiring Mondelez to pay compensatory damages and punitive where permitted by law;

H. Pre- and post-judgment interest where available;

I. An award of attorneys' fees and costs;

J. Any other and further relief that Court deems necessary, just, or proper.

JURY DEMAND

Plaintiffs hereby demand a trial by jury on all issues so triable.

Dated: November 16, 2017

/s/ Paul K. Joseph

LAW OFFICE OF PAUL K. JOSEPH, PC

PAUL K. JOSEPH

paul@pauljosephlaw.com

4125 W. Point Loma Blvd. #206

San Diego, CA 92110

Phone: (619) 767-0356

Fax: (619) 331-2943

THE LAW OFFICE OF JACK FITZGERALD, PC

JACK FITZGERALD

jack@jackfitzgeraldlaw.com

TREVOR M. FLYNN

trevor@jackfitzgeraldlaw.com

MELANIE PERSINGER

melanie@jackfitzgeraldlaw.com

TRAN NGUYEN

tran@jackfitzgeraldlaw.com

Hillcrest Professional Building

3636 Fourth Avenue, Suite 202

San Diego, California 92103

Phone: (619) 692-3840

Fax: (619) 362-9555

Attorneys for Plaintiff and the Proposed Class

CIVIL COVER SHEET

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

I. (a) PLAINTIFFS

PATRICK MCMORROW and MARCO OHLIN, on behalf of themselves, all others similarly situated and the general public

(b) County of Residence of First Listed Plaintiff San Diego, CA

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

The Law Office of Paul K. Joseph, PC, 4125 W. Pt. Loma Blvd., No. 206,
San Diego, CA 92110, (619) 767-0356;

DEFENDANTS

Mondelez International, Inc.

County of Residence of First Listed Defendant _____

(IN U.S. PLAINTIFF CASES ONLY)

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

Attorneys (If Known)

'17CV2327 BEN JLB

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

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

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

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

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

Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input checked="" type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

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

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

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. s. 1332(d)(2) (the Class Action Fairness Act)

Brief description of cause:

False Advertising (Violation of UCL, FAL, CLRA); Breach of Warranties

VII. REQUESTED IN COMPLAINT:

☒ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ _____

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE _____

DOCKET NUMBER _____

DATE

11/16/2017

SIGNATURE OF ATTORNEY OF RECORD

/s/ Paul K. Joseph

FOR OFFICE USE ONLY

RECEIPT # _____

AMOUNT _____

APPLYING IFP _____

JUDGE _____

MAG. JUDGE _____

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

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

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


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



Appendix 1



belVita “Crunchy” Products

Challenged Claims:

- “NUTRITIOUS SUSTAINED ENERGY”
- “NUTRITIOUS STEADY ENERGY ALL MORNING”
- “4 HOURS OF NUTRITIOUS STEADY ENERGY”
- “POWER UP PEOPLE. We worked closely with nutritionists to design a new kind of breakfast biscuit with energy for the morning. Energy that is nutritious and sustained. BelVita Breakfast biscuits are specifically baked to release energy regularly and continuously to fuel your body throughout the morning. Enjoy belVita Breakfast biscuits as part of a balanced breakfast.”
- “We worked closely with nutritionists to design belVita Breakfast Biscuits, which are specifically baked to release energy regularly and continuously to fuel your body throughout the morning”
- “Enjoy belVita Breakfast Biscuits as part of a balanced breakfast with a serving of low-fat dairy and fruit.”
- “a nutritious, convenient breakfast choice that contains slow-release carbs from wholesome grains to help fuel your body for 4 hours.”

Flavor	Added Sugars (in Order of Amount)	Serving Size	Calories Per Serving	Total Sugar	Added Sugar	% Added Sugar by Weight	% Cal. From Added Sugar	Contribution of 1 Serving to AHA’s Maximum Recommended Daily Intake of Added Sugars
Toasted Coconut 	Sugar, Malt Syrup, Invert Sugar	50g	230	11g	11g	22%	19%	M: 29% W: 44% C: 44-92%

<p>Cranberry Orange</p> 	Sugar, Invert Sugar, Malt Syrup	50g	230	12g	11g	22%	19%	M: 29% W: 44% C: 44-92%
<p>Golden Oat</p> 	Sugar, Evaporated Cane Sugar, Malt Syrup, Invert Sugar	50g	230	11g	11g	22%	19%	M: 29% W: 44% C: 44-92%


<p>Blueberry</p> 	<p>Sugar, Evaporated Cane Sugar, Malt Syrup, Invert Sugar, Blueberry Juice Concentrate</p>	<p>50g</p>	<p>230</p>	<p>13g</p>	<p>12g</p>	<p>24%</p>	<p>21%</p>	<p>M: 32% W: 48% C: 48-100%</p>
<p>Cinnamon Brown Sugar</p> 	<p>Sugar, Brown Sugar, Malt Syrup, Invert Sugar</p>	<p>50g</p>	<p>230</p>	<p>10g</p>	<p>10g</p>	<p>20%</p>	<p>17%</p>	<p>M: 26% W: 40% C: 40-83%</p>



<p>Chocolate</p> 	Sugar, Brown Sugar, Malt Syrup, Invert Sugar	50g	230	10g	10g	20%	17%	M: 26% W: 40% C: 40-83%
<p>Apple Cinnamon</p> 	Sugar,	50g	230	13g	12g	24%	21%	M: 32% W: 48% C: 48-100%
<p>Pumpkin Spice</p> 	Sugar, Brown Sugar, Malt Syrup, Invert Sugar	50g	230	11g	11g	22%	19%	M: 29% W: 44% C: 44-92%



belVita Soft Baked Products

Challenged Claims

- “NUTRITIOUS MORNING ENERGY”
- “4 HOURS OF NUTRITIOUS STEADY ENERGY:
- “We all need energy to start the morning. We also need a delicious, wholesome breakfast. Baked with hearty whole grains, belVita Soft Baked Breakfast biscuits are delicious, nutritious, and give you satisfying morning energy to start your day off right”
- “Enjoy belVita Soft Baked Breakfast Biscuits as part of a balanced breakfast with a serving of low-fat dairy and fruit”
- “a nutritious, convenient breakfast choice that contains slow-release carbs from wholesome grains to help fuel your body for 4 hours”

Flavor	Added Sugars (in Order of Amount)	Serving Size	Calories Per Serving	Total Sugar	Added Sugar	% Added Sugar by Weight	% Cal. From Added Sugar	Contribution of 1 Serving to AHA’s Maximum Recommended Daily Intake of Added Sugars
Mixed Berry 	Sugar, Raisin Paste, Invert Sugar, Molasses, Grape Juice Concentrate, Blueberry Juice Concentrate	50g	200	10g	9g	18%	18%	M: 24% W: 36% C: 36-75%



<p>Oats & Chocolate</p> 	<p>Sugar, Semi-sweet Chocolate Chunks (Sugar, Chocolate), Raisin Paste, Invert Sugar, Molasses</p>	<p>50g</p>	<p>200</p>	<p>10g</p>	<p>9g</p>	<p>18%</p>	<p>18%</p>	<p>M: 24% W: 36% C: 36-75%</p>
<p>Banana Bread</p> 	<p>Sugar, Raisin Paste, Invert Sugar, Molasses</p>	<p>50g</p>	<p>200</p>	<p>9g</p>	<p>8g</p>	<p>16%</p>	<p>16%</p>	<p>M: 24% W: 36% C: 36-75%</p>

<p>Oats & Peanut Butter</p> 	<p>Sugar, Corn Syrup Solids (in the Peanut Butter), Raisin Paste, Invert Sugar, Molasses</p>	<p>50g</p>	<p>190</p>	<p>9g</p>	<p>8g</p>	<p>16%</p>	<p>17%</p>	<p>M: 21% W: 32% C: 32-67%</p>
<p>Cinnamon</p> 		<p>50g</p>	<p>200</p>	<p>9g</p>	<p>9g</p>	<p>18%</p>	<p>18%</p>	<p>M: 24% W: 36% C: 36-75%</p>



belVita Bites


Challenged Claims

- “4 HOURS OF NUTRITIOUS STEADY ENERGY”
- “a nutritious, convenient breakfast choice that contains slow-release carbs from wholesome grains to help fuel your body for 4 hours”

Flavor	Added Sugars (in Order of Amount)	Serving Size	Calories Per Serving	Total Sugar	Added Sugar	% Added Sugar by Weight	% Cal. From Added Sugar	Contribution of 1 Serving to AHA’s Maximum Recommended Daily Intake of Added Sugars
Cinnamon Brown Sugar 	Sugar, Brown Sugar, Invert Sugar, Malt Syrup	50g	230	10g	10g	20%	17%	M: 26% W: 40% C: 40-83%
Chocolate 	Sugar, Semi- sweet Chocolate (Sugar, Chocolate), Chocolate	50g	230	12g	12g	24%	21%	M: 32% W: 48% C: 48-100%

Mixed Berry 	Sugar, Invert Sugar, Malt Syrup, Grape Juice Concentrate, Blueberry Juice Concentrate	50g	230	12g	11g	22%	19%	M: 29% W: 44% C: 44-92%
<p style="text-align: center;"><u>belVita Sandwiches</u></p> <p>Challenged Claims</p> <ul style="list-style-type: none"> • “4 HOURS OF NUTRITIOUS STEADY ENERGY” • “a nutritious, convenient breakfast choice that contains slow-release carbs from wholesome grains to help fuel your body for 4 hours” 								
Flavor	Added Sugars (in Order of Amount)	Serving Size	Calories Per Serving	Total Sugar	Added Sugar	% Added Sugar by Weight	% Cal. From Added Sugar	Contribution of 1 Serving to AHA’s Maximum Recommended Daily Intake of Added Sugars
Vanilla Yogurt Crème 	Sugar, Corn Syrup Solids (in Peanut Butter), Malt Syrup, Invert Sugar	50g	230	14g	14g	28%	24%	M: 37% W: 56% C: 56-117%

Strawberry Yogurt Crème 	Sugar, Corn Syrup Solids (in Peanut Butter), Malt Syrup, Invert Sugar	50g	230	14g	14g	28%	24%	M: 37% W: 56% C: 56-117%
Peanut Butter 	Sugar, Corn Syrup Solids (in Peanut Butter), Malt Syrup, Invert Sugar	50g	230	10g	10g	20%	17%	M: 26% W: 40% C: 40-83%

<div><div>Dark Chocolate Crème</div><div></div></div>	Sugar, Malt Syrup, Invert Sugar, Chocolate	50g	230	12g	12g	28%	21%	M: 32% W: 48% C: 48-100%
--	--	-----	-----	-----	-----	-----	-----	--------------------------------

1 **THE LAW OFFICE OF**
2 **PAUL K. JOSEPH, PC**
3 PAUL K. JOSEPH (287057)
4 *paul@pauljosephlaw.com*
5 4125 W. Pt. Loma Blvd. No. 206
6 San Diego, CA 92110
7 Phone: (619) 767-0356
8 Fax: (619) 331-2943

9 **THE LAW OFFICE OF**
10 **JACK FITZGERALD, PC**
11 JACK FITZGERALD (SBN 257370)
12 *jack@jackfitzgeraldlaw.com*
13 TREVOR M. FLYNN (SBN 253362)
14 *trevor@jackfitzgeraldlaw.com*
15 MELANIE PERSINGER (SBN 275423)
16 *melanie@jackfitzgeraldlaw.com*
17 Hillcrest Professional Building
18 3636 Fourth Avenue, Suite 202
19 San Diego, California 92103
20 Phone: (619) 692-3840
21 Fax: (619) 362-9555

22 *Counsel for Plaintiffs and the Proposed Class*

23 **UNITED STATES DISTRICT COURT**
24 **SOUTHERN DISTRICT OF CALIFORNIA**

25 PATRICK MCMORROW and MARCO
26 OHLIN, on behalf of themselves, all others
27 similarly situated and the general public,

28 Plaintiffs,

v.

MONDELEZ INTERNATIONAL, INC.,
Defendant.

'17CV2327 BEN JLB

**CONSUMERS LEGAL REMEDIES
ACT VENUE AFFIDAVIT**

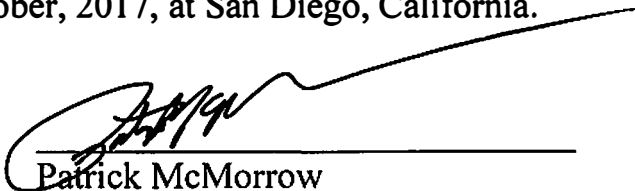
1 I, Patrick McMorrow, declare as follows:

2 1. I am Plaintiff in this action. I make this affidavit as required by California Civil
3 Code § 1780(d).

4 2. The Complaint in this action is filed in a proper place for the trial of this action
5 because the transactions that are the subject of the action occurred in this county.

6
7 I declare under penalty of perjury under the laws of the United States that the foregoing
8 is true and correct.

9 Executed this 18th day of October, 2017, at San Diego, California.

10
11 
12 Patrick McMorrow

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Lawsuit Claims belVita Breakfast Products Deceptively Labeled](#)
