

**THE LAW OFFICE OF JACK FITZGERALD, PC**

JACK FITZGERALD (SBN 257370)

*jack@jackfitzgeraldlaw.com*

TREVOR M. FLYNN (SBN 253362)

*trevor@jackfitzgeraldlaw.com*

MELANIE PERSINGER (SBN 275423)

*melanie@jackfitzgeraldlaw.com*

Hillcrest Professional Building

3636 Fourth Avenue, Suite 202

San Diego, California 92103

Phone: (619) 692-3840

Fax: (619) 353-0404

**JACKSON & FOSTER, LLC**

SIDNEY W. JACKSON, III (*pro hac vice*)

75 St. Michael Street

Mobile, Alabama 36602

Phone: (251) 433-6699

Fax: (251) 433-6127

***Class Counsel***

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

DEBBIE KROMMENHOCK and  
STEPHEN HADLEY, on behalf of  
themselves, all others similarly situated, and  
the general public,

Plaintiffs,

v.

POST FOODS LLC,

Defendant.

Case No.: 3:16-cv-04958-WHO (JSC)

CLASS ACTION

**THIRD AMENDED COMPLAINT FOR  
VIOLATIONS OF CALIFORNIA'S  
FALSE ADVERTISING LAW,  
CONSUMERS LEGAL REMEDIES ACT,  
& UNFAIR COMPETITION LAW; AND  
BREACH OF EXPRESS & IMPLIED  
WARRANTIES**

DEMAND FOR JURY TRIAL

**TABLE OF CONTENTS**

1

2 INTRODUCTION.....1

3 THE PARTIES .....1

4 JURISDICTION AND VENUE .....2

5

6 FACTS .....2

7     A.    There Has Been a Recent Rise in Human Sugar Consumption .....2

8     B.    The Body’s Physiological Response to Excess Sugar Consumption.....6

9         1.    The Body’s Response to Glucose .....6

10        2.    The Body’s Response to Fructose.....9

11        3.    The Addiction Response .....11

12

13     C.    There Has Been a Dramatic Rise in Obesity & Chronic Disease That

14         Parallels the Rise in Human Sugar Consumption .....11

15     D.    There is Substantial Scientific Evidence That Excess Sugar

16         Consumption Causes Metabolic Syndrome, Cardiovascular Disease,

17         Type 2 Diabetes, and Other Morbidity.....12

18         1.    Excess Sugar Consumption Causes Metabolic Syndrome .....13

19         2.    Excess Sugar Consumption Causes Type 2 Diabetes .....16

20         3.    Excess Sugar Consumption Causes Cardiovascular Disease .....20

21         4.    Excess Sugar Consumption Causes Liver Disease .....22

22         5.    Excess Sugar Consumption Causes Obesity .....23

23         6.    Excess Sugar Consumption Causes Inflammation .....27

24         7.    Excess Sugar Consumption Causes High Blood Triglycerides

25             and Abnormal Cholesterol Levels.....29

26         8.    Excess Sugar Consumption is Associated with Hypertension.....32

27         9.    Excess Sugar Consumption is Associated with Alzheimer’s

28             Disease, Dementia, and Cognitive Decline.....35

1           10. Excess Sugar Consumption is Linked to Some Cancers .....36

2           E. There is Substantial Evidence That Consuming Artificial Trans Fat—

3           Found in Some Post Cereals—is Detrimental to Health .....36

4 POST’S MARKETING & SALE OF HIGH-SUGAR CEREALS .....39

5           A. Post Great Grains Cereals.....43

6               11. *Cranberry Almond Crunch* .....43

7               12. *Banana Nut Crunch*.....45

8               13. *Raisins, Dates & Pecans* .....47

9               14. *Crunchy Pecans* .....49

10              15. *Blueberry Pomegranate* .....51

11              16. *Protein Blend: Honey, Oats & Seeds*.....52

12              17. *Protein Blend: Cinnamon Hazelnut*.....54

13           B. Post Honey Bunches of Oats Cereal.....57

14               1. *Honey Roasted* .....57

15               2. *With Almonds* .....60

16               3. *Raisin Medley*.....63

17               4. *With Pecan Bunches*.....65

18               5. *With Cinnamon Bunches* .....66

19               6. *With Vanilla Bunches* .....68

20               7. *With Apples & Cinnamon Bunches* .....70

21               8. *With Real Strawberries* .....71

22               9. *Fruit Blends – Banana Blueberry* .....73

23               10. *Fruit Blends – Peach Raspberry*.....74

24               11. *Tropical Blends – Mango Coconut* .....75

25

26

27

28

1           12. *Greek Honey Crunch*.....76

2           13. *Greek Mixed Berry*.....77

3           C. Post Single Cereals .....77

4               1. *Raisin Bran*.....77

5               2. *Honeycomb*.....80

6               3. *Waffle Crisp*.....81

7

8 POST’S UNLAWFUL ACTS AND PRACTICES .....82

9           A. Post Marketed and Continues to Market its Cereals with Health and

10           Wellness Claims that are Deceptive in Light of the Cereals’ High

11           Sugar Content .....82

12               1. Post Affirmatively Misrepresents that Some High-Sugar

13               Cereals are “Healthy,” “Nutritious,” or “Wholesome” .....82

14               2. Post Affirmatively Misrepresents that Consuming Some of its

15               High-Sugar Cereals Will Promote Bodily Health, Prevention of

16               Disease, or Weight Loss.....84

17               3. Even When Not Stating So Expressly, Post Strongly Suggests

18               Its High-Sugar Cereals are Healthy .....85

19                   a. Post Touts Its High-Sugar Cereals’ Whole Grain, Fiber,

20                   and “Real” Ingredient Content to Distract From Their

21                   High Added Sugar Content.....85

22                   b. Post Leverages a Deceptive Industry “Certification”

23                   Program—the Whole Grains Council Stamp—to Make

24                   its High-Sugar Cereals Seem Healthy .....86

25                   c. In Representing that Many of Its High-Sugar Cereals

26                   Contain “No High Fructose Corn Syrup,” Post Leverages

27                   Consumer Confusion to Obscure the Dangers of the

28                   Added Sugar in it Cereals .....87

                 d. Post Falsely Markets Some of Its High-Sugar Cereals as

                 “Simple,” “Whole Foods” that Are “Less Processed” .....88

1 e. Post Deceptively Omits, Intentionally Distracts From,  
 2 and Otherwise Downplays the Cereals’ High Added  
 3 Sugar Content ..... 88  
 4 4. Post Immorally Markets Some High-Sugar Cereals to Children,  
 5 Who Are the Most Vulnerable to the Dangers of Excess Added  
 6 Sugar Consumption ..... 89  
 7 5. Post Egregiously Markets Some High-Sugar Cereals to  
 8 Children Even Though They Contain Artificial Trans Fat ..... 90  
 9 6. Post Knows or Reasonably Should Know of the Strong  
 10 Scientific Evidence Demonstrating Its High-Sugar Cereals are  
 11 Unhealthy to Consume But Fails to Warn Consumers of the  
 12 Known Dangers of Consuming Its High-Sugar Cereals ..... 91  
 13 7. Post Violates FDA and State Food Labeling Regulations ..... 91  
 14 a. In Violation of State and Federal Regulations, Post’s  
 15 Health and Wellness Statements are False, Misleading,  
 16 and Incomplete ..... 92  
 17 B. Post Used its Website, as Referenced on Some Labels, and Other  
 18 Online Fora, to Spread Misinformation about the Dangers of  
 19 Consuming the Added Sugar in its Cereals ..... 92  
 20 C. Post Made Misleading Public Statements Concerning High-Sugar  
 21 Cereals ..... 99  
 22 D. The Foregoing Behaviors are Part of Post’s Longstanding Policy,  
 23 Practice, and Strategy of Marketing its High-Sugar Cereals as Healthy  
 24 in Order to Increase Sales and Profit ..... 99  
 25 E. Post’s Policy and Practice of Marketing High-Sugar Cereals as  
 26 Healthy is Especially Harmful Because Consumers Generally Eat  
 27 More than One Serving of Cereal at a Time, Which Post Knows or  
 28 Reasonably Should Know ..... 100  
 PLAINTIFFS’ PURCHASES, RELIANCE, AND INJURY ..... 101  
 A. Plaintiff Debbie Krommenhock ..... 101  
 B. Plaintiff Stephen Hadley ..... 103

1 CLASS ACTION ALLEGATIONS .....107  
2 CAUSES OF ACTION ..... 110  
3 PRAYER FOR RELIEF .....117  
4 JURY DEMAND .....117  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1 Pursuant to the Court’s September 29, 2020 Order, Dkt. No. 264, Plaintiffs and Class  
2 Representatives Debbie Krommenhock and Stephen Hadley, on behalf of themselves, all  
3 others similarly situated, and the general public, by and through their undersigned counsel,  
4 hereby bring this action against Post Foods, LLC (“Post”), and for their Third Amended  
5 Complaint, allege the following upon their own knowledge, or where they lack personal  
6 knowledge, upon information and belief including the investigation of their counsel.

7 **INTRODUCTION**

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

13 2. Despite the compelling evidence that the fructose in sugar acts as a chronic liver  
14 toxin, detrimentally affecting health, to increase their price and sales, Post leverages a policy  
15 and practice of marketing high-sugar cereals with health and wellness claims. These claims,  
16 however, are deceptive because they are incompatible with the significant dangers of the  
17 excessive added sugar consumption to which these foods contribute.

18 3. Plaintiffs bring this action against Post on behalf of themselves, other Post cereal  
19 consumers, and the general public, primarily to enjoin Post from continuing to engage in its  
20 practice of using deceptive health and wellness claims to market high-sugar cereals.

21 **THE PARTIES**

22 4. Plaintiff Debbie Krommenhock is a resident of Dublin, California.

23 5. Plaintiff Stephen Hadley was a resident of Monterey, California when this case  
24 was filed in August of 2016. Currently, Mr. Hadley resides in San Antonio, Texas.

25 6. Defendant Post Foods, LLC is a Delaware limited liability corporation with its  
26 principal place of business at 2503 S. Hanley Road, St. Louis, Missouri 63144.

1 **JURISDICTION AND VENUE**

2 7. This Court has jurisdiction over this action pursuant to 28 U.S.C. §  
3 1332(d)(2)(A), the Class Action Fairness Act, because the matter in controversy exceeds the  
4 sum or value of \$5,000,000 exclusive of interest and costs, and at least one member of the  
5 class of plaintiffs is a citizen of a state different from Post. In addition, more than two-thirds  
6 of the members of the class reside in states other than the state in which Post is a citizen and  
7 in which this case is filed, and therefore any exceptions to jurisdiction under 28 U.S.C. §  
8 1332(d) do not apply.

9 8. The Court has personal jurisdiction over Post pursuant to Cal. Code Civ. P. §  
10 410.10, as a result of Post’s substantial, continuous and systematic contacts with the state,  
11 and because Post has purposely availed itself of the benefits and privileges of conducting  
12 business activities within the state.

13 9. Venue is proper in the Northern District of California pursuant to 28 U.S.C. §  
14 1391(b) and (c), because Post resides (*i.e.*, is subject to personal jurisdiction) in this district,  
15 and a substantial part of the events or omissions giving rise to the claims occurred in this  
16 district.

17 **FACTS**

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

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



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

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

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

18 13. In the 1960s, the food industry developed technologies to extract starch from  
19 corn, then convert it to glucose, some of which could then be converted to fructose, leading  
20 to the development of corn-derived sweeteners, most notably high-fructose corn syrup  
21 (HFCS).<sup>3</sup> Although HFCS is comprised of both fructose and glucose, unlike with sucrose, the  
22 fructose is not chemically bound to the glucose in a new molecule. Thus the fructose in HFCS  
23

---

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

27 <sup>2</sup> *Id.*

28 <sup>3</sup> *Id.* (citation omitted).

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

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

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

16 16. Today, the majority of sugars in typical American diets are added to foods during  
17 processing, preparation, or at the table.<sup>6</sup> The two primary sources of added sugar in processed  
18 food are HFCS and sucrose (*i.e.*, granulated sugar used, for example, in baked goods). Added  
19  
20  
21

---

22 <sup>4</sup> Bray, G., “How bad is fructose?,” *American Journal of Clinical Nutrition*, Vol. 86, 895-96  
23 (2007) [hereinafter, “Bray, How Bad is Fructose?”].

24 <sup>5</sup> Bray, G.A., et al., “Consumption of high-fructose corn syrup in beverages may play a role  
25 in the epidemic of obesity,” *American Journal of Clinical Nutrition*, Vol. 79, 537-43, at 537,  
26 540 (2004) [hereinafter “Bray, HFCS Role in Obesity Epidemic”].

27 <sup>6</sup> U.S. Dep’t of Agric. & U.S. Dep’t of Health & Human Servs., “Dietary Guidelines for  
28 Americans, 2010,” at 27 (2010) available at  
<http://www.health.gov/dietaryguidelines/dga2010/DietaryGuidelines2010.pdf>.

1 sugar is in more than 74% of processed foods,<sup>7</sup> under more than 60 different names.<sup>8</sup>  
 2 Although the tendency is to associate sugar with sweets, added sugar is found in many savory  
 3 processed foods, like bread, soup, and pasta sauce.

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

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

12 <sup>8</sup> Some examples: Agave nectar, Barbados sugar, Barley malt, Barley malt syrup, Beet sugar,  
 13 Brown sugar, Buttered syrup, Cane juice, Cane juice crystals, Cane sugar, Caramel, Carob  
 14 syrup, Castor sugar, coconut palm sugar, Coconut sugar, Confectioner's sugar, Corn  
 15 sweetener, Corn syrup, Corn syrup solids, Date sugar, Dehydrated case juice, Demerara  
 16 sugar, Dextrin, Dextrose, Evaporated cane juice, Free-flowing brown sugars, Fructose, Fruit  
 17 juice, Fruit juice concentrate, Glucose, Glucose solids, Golden sugar, Golden syrup, Grape  
 18 Syrup, Sucrose, Sugar (granulated), Sweet Sorghum, Syrup, Treacle, Turbinado sugar, and  
 19 Yellow sugar.

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

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

1 Individuals from 1994 to 1996 showed that the average person had a daily added sugars intake  
 2 of 79 grams, equal to 316 calories and about 15% of energy intake. Those in the top one-third  
 3 of fructose consumption ingested 137 grams of added sugars per day (548 calories, about  
 4 26% of energy per day), and those in the top 10% of fructose consumption ingested 178 grams  
 5 of fructose per day (712 calories, about 34% of energy).<sup>11</sup>

6 18. In 2014, researchers analyzing data obtained from National Health and Nutrition  
 7 Examination Survey (NHANES) showed that during the most recent period of 2005-2010,  
 8 the mean percent of calories from added sugar in the American diet was 14.9%. Most adults,  
 9 71.4%, consumed 10% or more of their calories from added sugar, while about 10% of adults  
 10 consumed 25% or more of their calories from added sugar.<sup>12</sup>

11 19. Today, “the vast majority of the U.S. population exceeds recommended intakes  
 12 of . . . added sugars.”<sup>13</sup> Despite some reduction in added sugar intake recently, “intakes of  
 13 added sugars are still very high . . . and are well above recommended limits . . . .”<sup>14</sup>  
 14 Approximately 90% of the population exceeds recommended daily limits.<sup>15</sup>

## 15 **B. The Body’s Physiological Response to Excess Sugar Consumption**

### 16 **1. The Body’s Response to Glucose**

17 20. The body needs some glucose, largely to meet the brain’s metabolic demands,  
 18

19 \_\_\_\_\_  
 20 <sup>11</sup> Bray, How Bad is Fructose?, *supra* n.4, at 895.

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

23 <sup>13</sup> U.S. Dep’t of Agric. & U.S. Dep’t of Health & Human Servs., “Scientific Report of the  
 24 2015 Dietary Guidelines Advisory Committee: Advisory Report to the Secretary of Health  
 25 and Human Services and the Secretary of Agriculture,” at 26 (February 2015), *available at*  
 26 <http://www.health.gov/dietaryguidelines/2015-scientific-report/PDFs/Scientific-Report-of-the-2015-Dietary-Guidelines-Advisory-Committee.pdf>.

27 <sup>14</sup> *Id.* at 38.

28 <sup>15</sup> *Id.* at 35.

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

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

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

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

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

23 25. The liver is capable of processing relatively small amounts of sugar, meted out  
24 slowly. This is one of the reasons that eating the fructose in fruit is not problematic: the sugar  
25 in fruit is encased in the fruit’s fiber, which slows the sugar’s uptake, and some sugar encased

---

26  
27 <sup>16</sup> 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 in fruit fiber may not even be released. Thus fruit consumption does not overwhelm the liver.  
2 Notably, adding fiber to foods that are high in sugar does not replicate this effect, because the  
3 sugar and fiber remain separate, and the sugar is not encased in the fiber like it is in fruit.  
4 Fruit also comes packaged with nutrients, like vitamins, that are beneficial for health, and  
5 sends satiation signals to the brain, telling it that the body is full.

6 26. Because the liver has some capacity to process sugar, there does appear to be a  
7 “safe” threshold of daily added sugar consumption, small enough not to overload the liver:  
8 approximately 5% of calories, or about 38 grams (9 teaspoons, 150 calories) per day for men,  
9 25 grams (6 teaspoons, 100 calories) per day for women,<sup>17</sup> and 12-15 grams (3-6 teaspoons,  
10 50-60 calories) for children depending on age and caloric needs.<sup>18</sup>

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

16 28. When excess sugar consumption overloads the liver, the glucose increases  
17 insulin secretion, while the fructose gets turned into liver fat, causing insulin resistance. The  
18 combination over time results in rapid and dramatic increases in blood glucose and insulin  
19 concentrations.<sup>19</sup> Over time, individuals with frequent insulin secretion may develop insulin  
20

---

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

24 <sup>18</sup> See “How Much Is Too Much?,” at <http://www.sugarscience.org/the-growing-concern-of-overconsumption>.

25 <sup>19</sup> 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 resistance, where the body produces insulin but does not use it effectively, so that glucose  
2 builds up in the blood instead of being absorbed by the cells. Because the muscle, fat, and  
3 liver cells do not respond properly to insulin and thus cannot easily absorb glucose from the  
4 bloodstream, the body needs higher levels of insulin. Eventually the pancreas' beta cells  
5 cannot keep up with this increasing demand, and over time can no longer produce enough  
6 insulin to overcome insulin resistance, so blood glucose levels remain high.

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

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

## 19 2. The Body's Response to Fructose

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

24 32. Fructose is the most lipophilic carbohydrate, meaning it easily converts to a  
25

---

26 <sup>20</sup> 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).

1 form, glycerol, that supports conversion to fats, including free fatty acids, a damaging form  
2 of cholesterol called very low-density lipoprotein (VLDL), and triglycerides, which get stored  
3 as fat. Studies in humans and animals have shown that fructose is preferentially metabolized  
4 to lipid (fat) in the liver, leading to increased triglyceride levels, which are associated with  
5 insulin resistance and cardiovascular disease.<sup>21</sup> Fatty acids created during fructose  
6 metabolism accumulate as fat droplets in the liver, also causing insulin resistance, as well as  
7 non-alcoholic fatty liver disease. In addition, when the liver turns excess sugar into liver fat  
8 and becomes insulin resistant, that generates hyperinsulinemia, which drives energy storage  
9 into body fat.

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

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

18 35. Moreover, fructose interferes with the brain's communication with leptin, which  
19 may result in overeating. And while glucose suppresses ghrelin, thus reducing hunger,  
20

---

21  
22 <sup>21</sup> Elliot, S.S., et al., "Fructose, weight gain, and the insulin resistance syndrome," *American*  
23 *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.

24 <sup>22</sup> Nguyen, S., et al., "Sugar Sweetened Beverages, Serum Uric Acid, and Blood Pressure in  
25 Adolescents," *Journal of Pediatrics*, Vol. 154, No. 6, 807-13 (June 2009) (citations omitted)  
26 [hereinafter, "Nguyen, Serum Uric Acid"]; Johnson, R.J., "Potential role of sugar (fructose)  
27 in the epidemic of hypertension, obesity and the metabolic syndrome, diabetes, kidney  
28 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 fructose has no effect on ghrelin.

### 2 **3. The Addiction Response**

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

### 8 **C. There Has Been a Dramatic Rise in Obesity & Chronic Disease That Parallels the** 9 **Rise in Human Sugar Consumption**

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

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

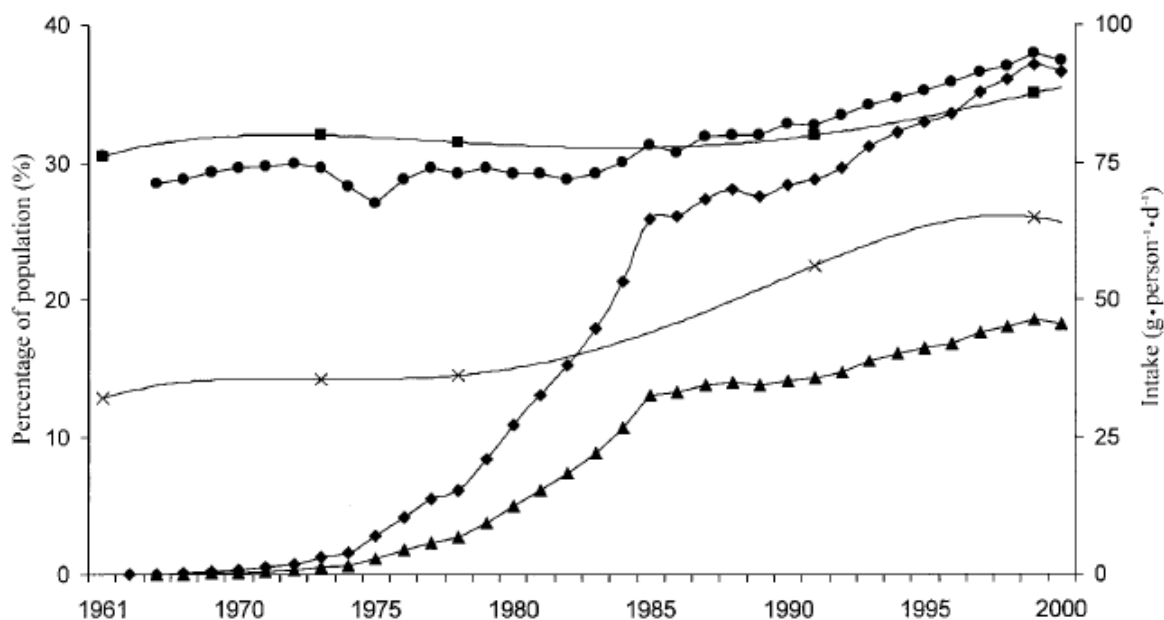
18 39. In 2004, researchers reported their analysis of food consumption patterns from  
19 1967 to 2000. Noting that HFCS consumption increased more than 1,000% from 1970 to  
20 1990, "far exceeding the changes in intake of any other food or food group," researchers  
21 found this "mirrors the rapid increase in obesity" seen during the same period, as  
22  
23

---

24 <sup>23</sup> 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  
26 addiction: A comprehensive handbook," *Oxford University Press* (2012).

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

1 demonstrated in the below graphic.<sup>25</sup>



2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
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.

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

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

20 41. Research shows that overloading the mitochondria—the energy-burning  
21 factories within the cells—in any given organ will manifest various forms of chronic  
22 metabolic disease. Whatever organ becomes insulin resistant manifests its own chronic  
23 metabolic disease. For example, insulin resistance of the liver leads to type 2 diabetes. Insulin  
24

25  
26  
27  
28  
<sup>25</sup> 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 resistance of the brain causes Alzheimer’s disease. Insulin resistance of the kidney leads to  
2 chronic renal disease.

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

4 **1. Excess Sugar Consumption Causes Metabolic Syndrome**

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

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

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

23  
24 45. More generally, “metabolic abnormalities that are typical of the so-called  
25 metabolic syndrome . . . includ[e] insulin resistance, impaired glucose tolerance, high  
26

---

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

1 concentrations of circulating triacylglycerols, low concentrations of HDLs, and high  
2 concentrations of small, dense LDLs.”<sup>27</sup>

3 46. 56 million Americans have metabolic syndrome, or about 22.9% over the age of  
4 20, placing them at higher risk for chronic disease.

5 47. In 2010, Harvard researchers published a meta-analysis of three studies,  
6 involving 19,431 participants, concerning the effect of consuming sugar-sweetened  
7 beverages on risk for metabolic syndrome. They found participants in the highest quantile of  
8 1-2 servings per day<sup>28</sup> had an average 20% greater risk of developing metabolic syndrome  
9 than did those in the lowest quantile of less than 1 serving per day, showing “a clear link  
10 between SSB consumption and risk of metabolic syndrome . . . .”<sup>29</sup>

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

---

19 <sup>27</sup> Fried, S.K., “Sugars, hypertriglyceridemia, and cardiovascular disease,” *American Journal*  
20 *of Clinical Nutrition*, Vol. 78 (suppl.), 873S-80S, at 873S (2003) [hereinafter, “Fried,  
21 Hypertriglyceridemia”].

22 <sup>28</sup> Because 1 sugar-sweetened beverage typically has 140-150 calories and 35-37.5 grams of  
23 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.

24 <sup>29</sup> Malik, Vasanti S., et al., “Sugar-Sweetened Beverages and Risk of Metabolic Syndrome  
25 and Type 2 Diabetes,” *Diabetes Care*, Vol. 33, No. 11, 2477-83, at 2477, 2480-81 (November  
26 2010) [hereinafter “Malik, 2010 Meta-Analysis”].

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

1 49. Recently, researchers concluded a study to determine whether the detrimental  
2 effects of dietary sugar were due to extremely high dosing, excess calories, or because of its  
3 effects on weight gain, rather than caused by sugar consumption directly.<sup>31</sup> In other words,  
4 the researchers dissociated the metabolic effects of dietary sugar from its calories and effects  
5 on weight gain.

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

14 51. To perform the study, researchers assessed subjects' home diets by two  
15 questionnaires to determine how many calories, and how much fat, protein, and carbohydrate  
16 they were eating. Subjects were then tested at a hospital based on their home diets. Then, for  
17 the next 9 days, researchers catered the subjects' meals. The macronutrient percentages of  
18 fat, protein, and carbohydrate were not changed. Subjects were fed them the same calories  
19 and percent of each macronutrient as their home diet; but within the carbohydrate fraction,  
20 researchers took the added sugar out, and substituted starch. For example, researchers took  
21 pastries out, and put bagels in; took yogurt out, and put baked potato chips in; took chicken  
22 teriyaki out, and put turkey hot dogs in (although subjects were still given whole fruit).  
23 Researchers reduced subjects' dietary sugar consumption from 28% to 10% of calories.  
24

---

25  
26 <sup>31</sup> 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 <sup>32</sup> *See id.* at 453-54.

1 Researchers also gave subjects a scale to take home, and each day they would weigh  
2 themselves. If they were losing weight, they were instructed to eat more. The goal was for  
3 subjects to remain weight-stable over the 10 days of study. On the final day, subjects came  
4 back to the hospital for testing on their experimental low-added sugar diet. The study team  
5 analyzed the pre- and post-data in a blinded fashion so as not to introduce bias.<sup>33</sup>

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

12 53. In sum, the study indicated that subjects improved their metabolic status in just  
13 10 days, even while eating processed food, by just removing added sugar and substituting  
14 starch. The metabolic improvement, moreover, was unrelated to changes in weight or body  
15 fat.

## 16 2. Excess Sugar Consumption Causes Type 2 Diabetes

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

20 55. In 2010, Harvard researchers also performed a meta-analysis of 8 studies  
21

---

22 <sup>33</sup> See *id.* at 454-55.

23 <sup>34</sup> See *id.* at 455-56.

24  
25 <sup>35</sup> Aranceta Bartrina, J. et al., "Association between sucrose intake and cancer: a review of  
26 the evidence," *Nutrición Hospitalaria*, Vol. 28 (Suppl. 4), 95-105 (2013); Garcia-Jimenez,  
27 C., "A new link between diabetes and cancer: enhanced WNT/beta-catenin signaling by high  
28 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).

1 concerning sugar-sweetened beverage consumption and risk of type 2 diabetes, involving a  
 2 total of 310,819 participants. They concluded that individuals in the highest quantile of SSB  
 3 intake had an average 26% greater risk of developing type 2 diabetes than those in the lowest  
 4 quantile.<sup>36</sup> Moreover, “larger studies with longer durations of follow-up tended to show  
 5 stronger associations.”<sup>37</sup> Thus, the meta-analysis showed “a clear link between SSB  
 6 consumption and risk of . . . type 2 diabetes.”<sup>38</sup>

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

14  
 15  
 16  
 17 <sup>36</sup> Malik, 2010 Meta-Analysis, *supra* n.29 at 2477, 2480.

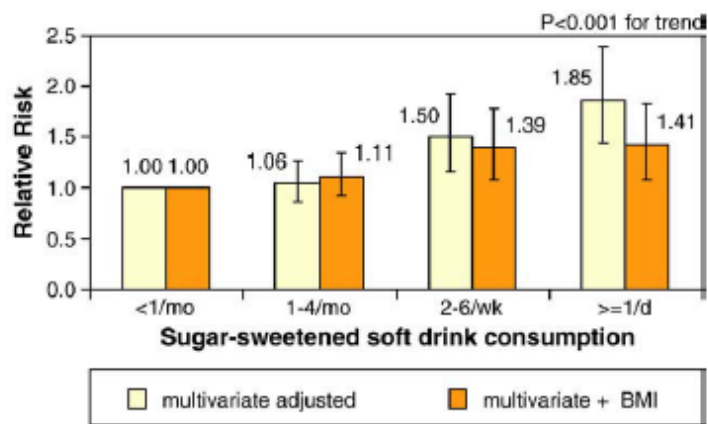
18 <sup>37</sup> *Id.* at 2481.

19  
 20 <sup>38</sup> *Id.*

21 <sup>39</sup> The Nurses’ Health Study was established at Harvard in 1976, and the Nurses’ Health Study  
 22 II, in 1989. Both are long-term epidemiological studies conducted on women’s health. The  
 23 study followed 121,700 women registered nurses since 1976, and 116,000 female nurses  
 24 since 1989, to assess risk factors for cancer, diabetes, and cardiovascular disease. The Nurses’  
 25 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>.

26 <sup>40</sup> Schulze, M.B., et al., “Sugar-Sweetened Beverages, Weight Gain, and Incidence of Type  
 27 2 Diabetes in Young and Middle-Aged Women,” *Journal of the American Medical*  
 28 *Association*, Vol. 292, No. 8, 927-34 (Aug. 25, 2004) [hereinafter “Schulze, Diabetes in  
Young & Middle-Aged Women”].

1 57. The result of this analysis shows a statistically significant linear trend with  
2 increasing sugar consumption.<sup>41</sup>



3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**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]).

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

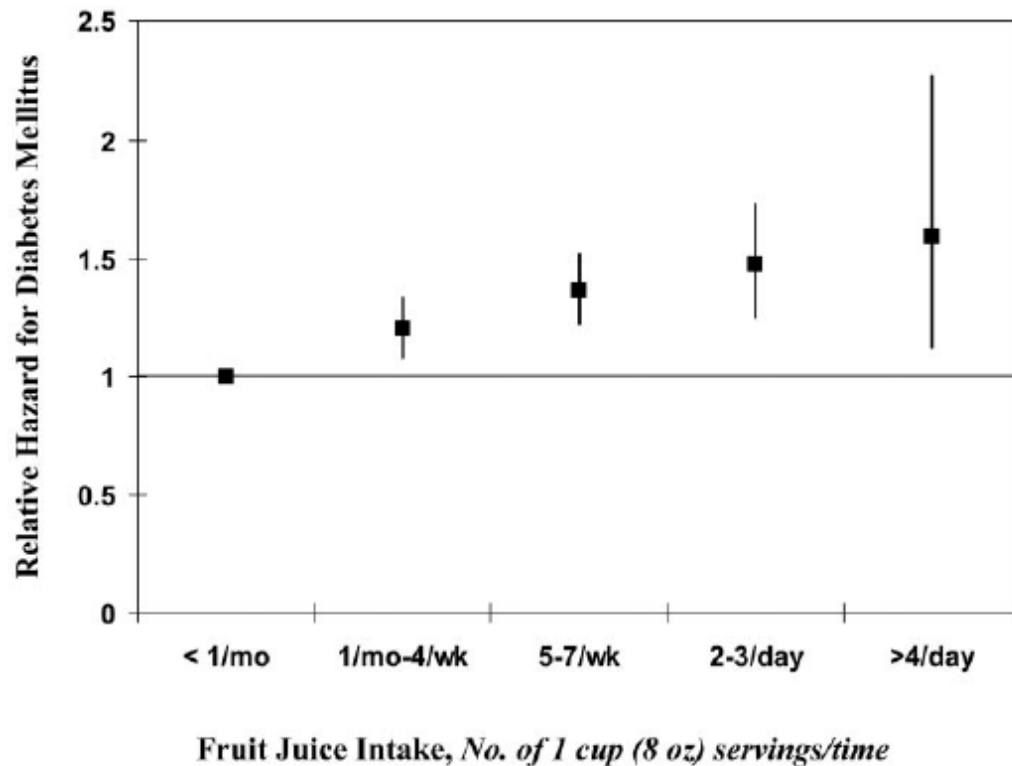
21 59. A large cohort study of more than 70,000 women from the Nurses' Health Study  
22 followed for 18 years showed that those who consumed 2 to 3 apple, grapefruit, and orange  
23 juices per day (280-450 calories and 75-112.5 grams of sugar) had an 18% greater risk of  
24

25 <sup>41</sup> Hu, F.B., et al., "Sugar-sweetened beverages and risk of obesity and type 2 diabetes:  
26 Epidemiologic evidence," *Physiology & Behavior*, Vol. 100, 47-54 (2010).

27 <sup>42</sup> Palmer, J.R., et al., "Sugar-Sweetened Beverages and Incidence of Type 2 Diabetes  
28 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"].



1 type 2 diabetes than women who consumed less than 1 sugar-sweetened beverage per month.  
 2 The data also showed a linear trend with increased consumption, as demonstrated below.<sup>43</sup>



3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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

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

<sup>43</sup> 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).

<sup>44</sup> 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).

1           61. Most convincingly, an econometric analysis of repeated cross-sectional data  
2 published in 2013 established a causal relationship between sugar availability and type 2  
3 diabetes. After adjusting for a wide range of confounding factors, researchers found that an  
4 increase of 150 calories per day related to an insignificant 0.1% rise in diabetes prevalence  
5 by country, while an increase of 150 calories per day in sugar related to a 1.1% rise in diabetes  
6 prevalence by country, a statically-significant 11-fold difference.<sup>45</sup>

### 7           **3. Excess Sugar Consumption Causes Cardiovascular Disease**

8           62. Sixteen million Americans have heart disease, which is the number one killer in  
9 the United States.<sup>46</sup>

10          63. Data obtained from NHANES surveys during the periods of 1988-1994, 1999-  
11 2004, and 2005-2010, after adjusting for a wide variety of other factors, demonstrate that  
12 those who consumed between 10% - 24.9% of their calories from added sugars had a 30%  
13 greater risk of cardiovascular disease (CVD) mortality than those who consumed 5% or less  
14 of their calories from added sugar. In addition, those who consumed 25% or more of their  
15 calories from added sugars had an average 275% greater risk of CVD mortality than those  
16 who consumed less than 5% of calories from added sugar.<sup>47</sup>

17          64. Similarly, when compared to those who consumed approximately 8% of calories  
18 from added sugar, participants who consumed approximately 17% - 21% (the 4th quintile) of  
19 calories from added sugar had a 38% higher risk of CVD mortality, while the relative risk  
20 was more than double for those who consumed 21% or more of calories from added sugar  
21 (the 5th quintile). Thus, “[t]he risk of CVD mortality increased exponentially with increasing  
22

---

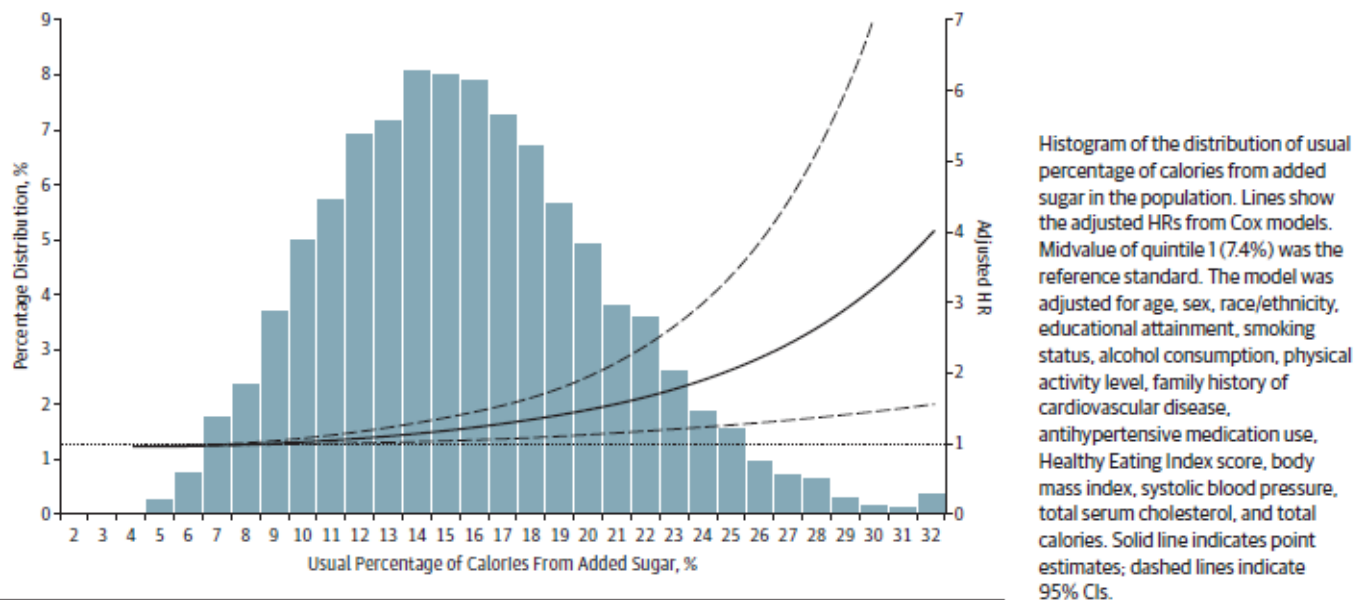
23  
24 <sup>45</sup> Basu, S., et al., “The Relationship of Sugar to Population-Level Diabetes Prevalence: An  
25 Econometric Analysis of Repeated Cross-Sectional Data,” *PLOS Online*, Vol. 8, Issue 2  
(February 27, 2013).

26 <sup>46</sup> Gaddam, K.K., et al., “Metabolic syndrome and heart failure—the risk, paradox, and  
27 treatment,” *Current Hypertension Reports*, Vol. 13, No. 2, 142-48 (2011).

28 <sup>47</sup> Yang, NHANES Analysis, *supra* n.12 at E4-5.

usual percentage of calories from added sugar,”<sup>48</sup> 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



65. The NHANES analysis also found “a significant association between sugar-sweetened beverage consumption and risk of CVD mortality,” with an average 29% greater risk of CVD mortality “when comparing participants who consumed 7 or more servings/wk (360 mL per serving) with those who consumed 1 serving/wk or less . . . .”<sup>49</sup> 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.”<sup>50</sup>

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

<sup>48</sup> *Id.*

<sup>49</sup> *Id.* at E6.

<sup>50</sup> *Id.* at E8.

1 with infrequent consumers.<sup>51</sup>

#### 2 **4. Excess Sugar Consumption Causes Liver Disease**

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

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

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

---

17  
18 <sup>51</sup> Fung T.T., et al., “Sweetened beverage consumption and risk of coronary heart disease in  
19 women,” *American Journal of Clinical Nutrition*, Vol. 89 at 1037-42 (February 2009).

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

23 <sup>53</sup> Charlton, M.R., et al., “Frequency and outcomes of liver transplantation for nonalcoholic  
24 steatohepatitis in the United States,” *Gastroenterology*, Vol. 141, No. 4, 1249-53 (October  
25 2011).

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

## 5. Excess Sugar Consumption Causes Obesity

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

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

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

---

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).

<sup>55</sup> 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).

<sup>56</sup> 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).

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

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

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

13 76. A study of more than 6,000 participants in the Framingham Heart Study found  
14 those who consumed more than 1 soft drink per day had a 31% greater risk of obesity than  
15 those who consumed less than 1 soft drink per day.<sup>60</sup>

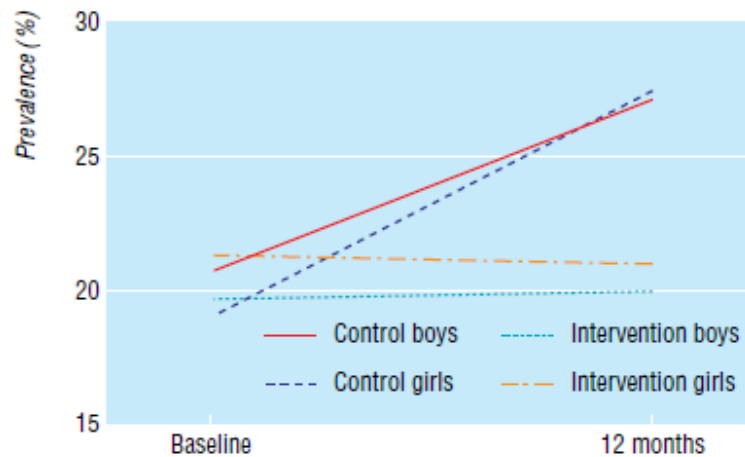
16 77. The link between sugar intake and weight gain was also demonstrated in a  
17 randomized, controlled intervention study, where "[a] simple 12 month school based  
18 intervention focused on reducing consumption of carbonated drinks resulted in significant  
19 differences in the proportion of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

21  
22  
23 <sup>57</sup> Dubois, L., et al., "Regular sugar-sweetened beverage consumption between meals  
24 increases risk of overweight among preschool-aged children," *Journal of the American*  
25 *Dietetic Association*, Vol. 107, Issue 6, 924-34 (2007).

26 <sup>58</sup> Schulze, Diabetes in Young & Middle-Aged Women, *supra* n.40.

27 <sup>59</sup> Palmer, Diabetes in African American Women, *supra* n.42.

28 <sup>60</sup> Dhingra, Cardiometabolic Risk, *supra* n.30.



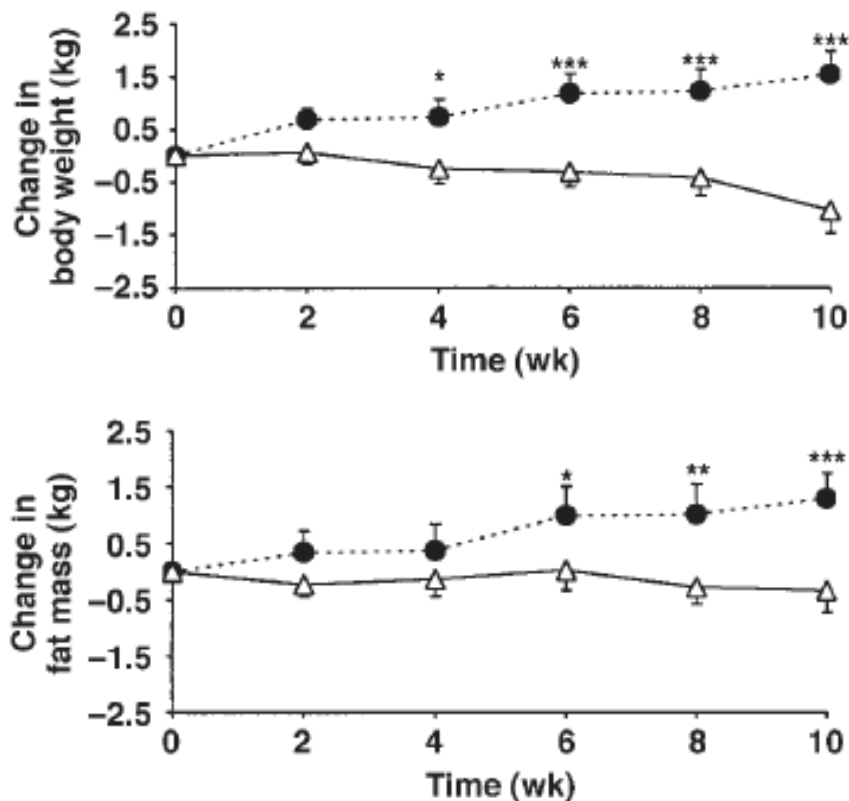
**Fig 2** Mean change in prevalence of overweight and obese children from baseline to follow up at 12 months according to clusters

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

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

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

<sup>62</sup> 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 ( $\Delta$ ;  $n = 20$ ) 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).

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

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



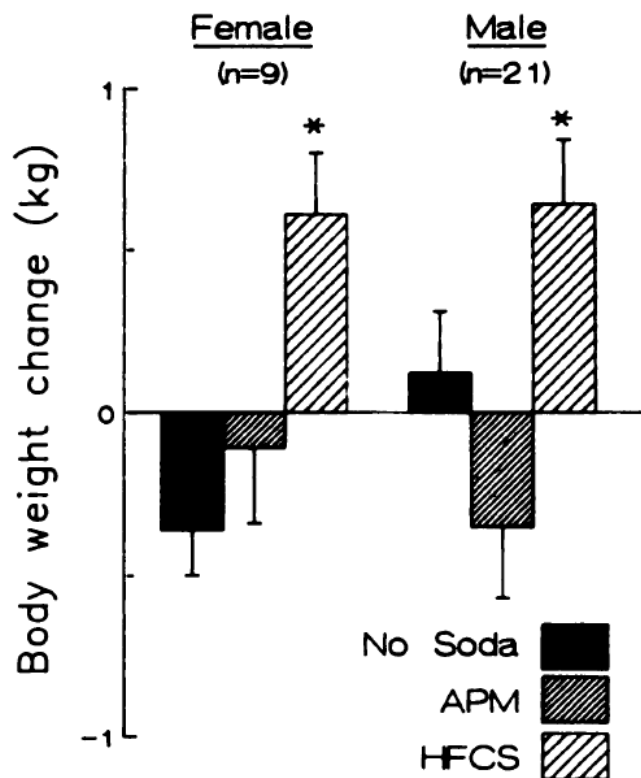


FIG 1. Changes in body weight during 3-wk periods when subjects drank 1150 g/d of soda sweetened with aspartame (APM), an equal weight of soda sweetened with high-fructose corn syrup (HFCS), or had no experimental manipulation (no soda). \* $p < 0.05$  relative to weight gain in no-soda period.

## 6. Excess Sugar Consumption Causes Inflammation

80. Inflammation has been associated with type 2 diabetes, myocardial infarction, and stroke, as well as weight gain and obesity.<sup>64</sup>

81. A 10-week study comparing a group whose sucrose intake was increased by 151% to a group whose intake was decreased by 42% showed the former's blood concentration of the biological markers for inflammation, haptoglobin, transferrin, and C-reactive protein, increased by 13%, 5%, and 6%, respectively, while the later group's

<sup>64</sup> 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).

1 concentrations decreased by 16%, 2%, and 26% respectively.<sup>65</sup>

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

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

16 ///

17 ///

18 ///

19 ///

20 ///

21 ///

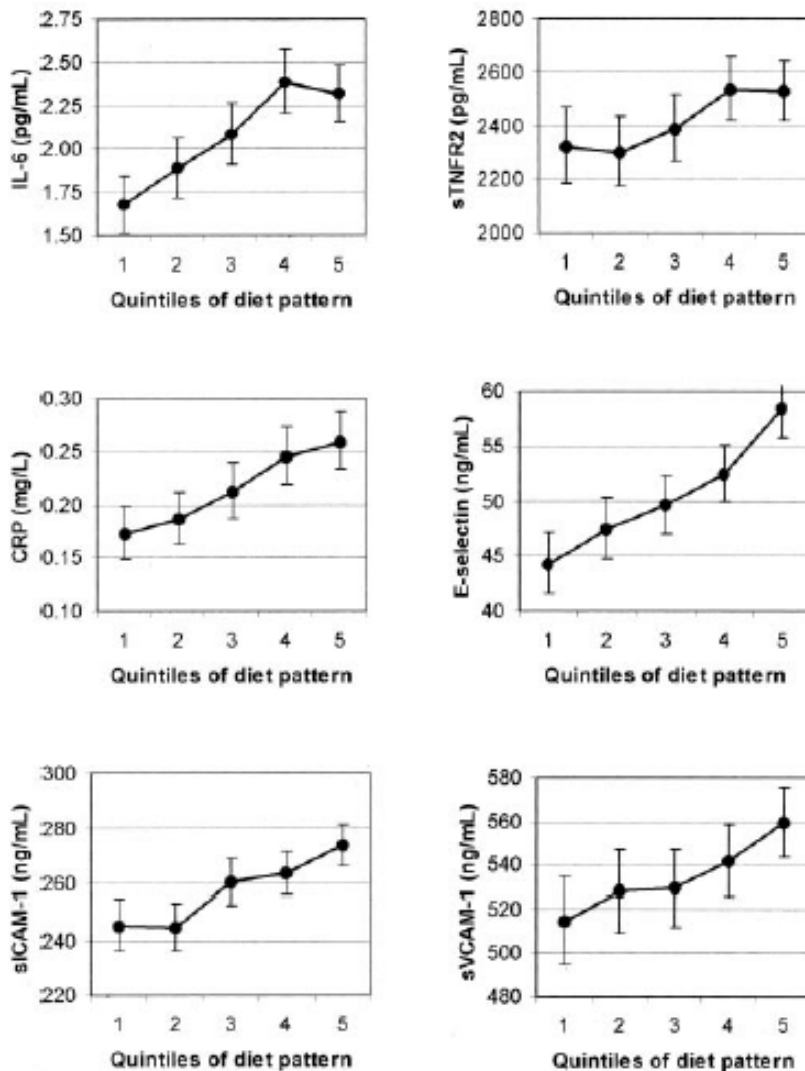
22 ///

23 ///

---

24  
25 \_\_\_\_\_  
26 <sup>65</sup> Sorensen, Inflammatory Markers, supra n.64.

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



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

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

84. Fructose facilitates the biochemical formation of triacylglycerols more efficiently than does glucose.<sup>67</sup> This is because fructose metabolism in the liver converts the

<sup>67</sup> Elliot, Fructose & Insulin Resistance, *supra* n.21.

1 fructose to fructose-1-phosphate, which readily becomes a substrate for the backbone of the  
2 triglyceride molecule.<sup>68</sup> As compared to starches, sugars—particularly sucrose and  
3 fructose—tend to increase serum triacylglycerol concentrations by about 60%.<sup>69</sup>

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

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

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

20 88. When the liver is overwhelmed by large doses of fructose, it will convert excess  
21 to fat, which is stored in the liver and then released into the bloodstream, contributing to key  
22 elements of metabolic syndrome, like high blood fat and triglycerides, high total cholesterol,  
23 and low HDL “good” cholesterol.<sup>70</sup>

---

25 <sup>68</sup> Bray, G.A., “Soft Drinks and Obesity: The Evidence,” *CMR e-Journal*, Vol. 2, Issue, 2,  
26 10-14, at 13 (Oct. 2009).

27 <sup>69</sup> Fried, Hypertriglyceridemia, *supra* n.27, at 873S.

28 <sup>70</sup> Te Morenga, Dietary Sugars & Body Weight, *supra* n.26.

1 89. A study of more than 6,000 participants in the Framingham Heart Study found  
 2 those who consumed more than 1 soft drink per day had a 25% greater risk of  
 3 hypertriglyceridemia, and 32% greater risk of low HDL cholesterol than those who consumed  
 4 less than 1 soft drink per day.<sup>71</sup>

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

9 91. A cross-sectional study among more than 6,100 U.S. adults from the NHANES  
 10 1999-2006 data were grouped into quintiles for sugar intake as follows: (1) less than 5% of  
 11 calories consumed from sugar, (2) 5% to less than 10%, (3) 10% to less than 17.5%, (4) 17.5%  
 12 to less than 25%, and (5) 25% or more. These groups had the following adjusted mean HDL  
 13 levels (because HDL is the “good” cholesterol, higher levels are better): 58.7 mg/dL, 57.5,  
 14 53.7, 51.0, and 47.7. Mean triglyceride levels were 105 mg/dL, 102, 111, 113, and 114. Mean  
 15 LDL levels were 116 mg/dL, 115, 118, 121, and 123 among women, with no significant trend  
 16 among men. Consumers whose sugar intake accounted for more than 10% of calories had a  
 17 50% - 300% higher risk of low HDL levels compared to those who consumed less than 5%  
 18 of calories from sugar. Likewise, high-sugar consumers had greater risk of high triglycerides.  
 19 All relationships were linear as demonstrated in the charts below.<sup>73</sup>

20 ///

21 ///

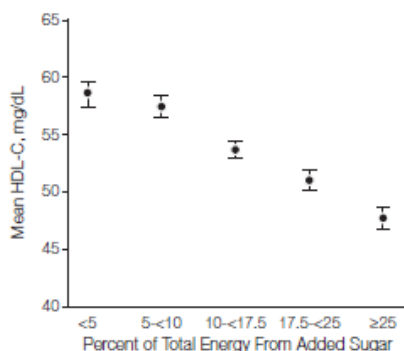
22 ///

23 \_\_\_\_\_  
 24 <sup>71</sup> Dhingra, *Cardiometabolic Risk*, supra n.30.

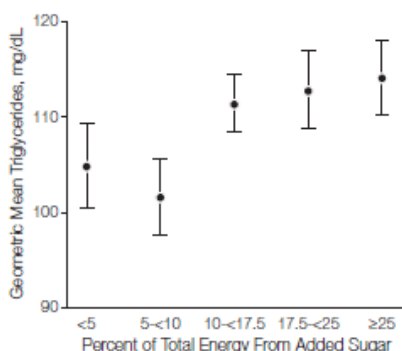
25 <sup>72</sup> Te Morenga, L., et al., “Dietary sugars and cardiometabolic risk: systematic review and  
 26 meta-analyses of randomized controlled trials on the effects on blood pressure and lipids,”  
*American Journal of Clinical Nutrition*, Vol. 100, No. 1, 65-79 (May 7, 2014).

27 <sup>73</sup> Welsh, J.A., et al., “Caloric Sweetener Consumption and Dyslipidemia Among US Adults,”  
 28 *Journal of the American Medical Association*, Vol. 303, No. 15, 1490-97 (April 21, 2010).

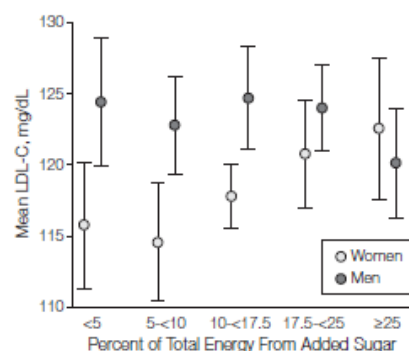
**Figure 1.** Multivariable-Adjusted Mean HDL-C Levels by Level of Added Sugar Intake Among US Adults, NHANES 1999-2006



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



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



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

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

94. In a cross-sectional study of normal weight and overweight children aged 6-14, researchers found that “the only dietary factor that was a significant predictor of LDL particle size was total fructose intake.”<sup>76</sup>

## 8. Excess Sugar Consumption is Associated with Hypertension

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

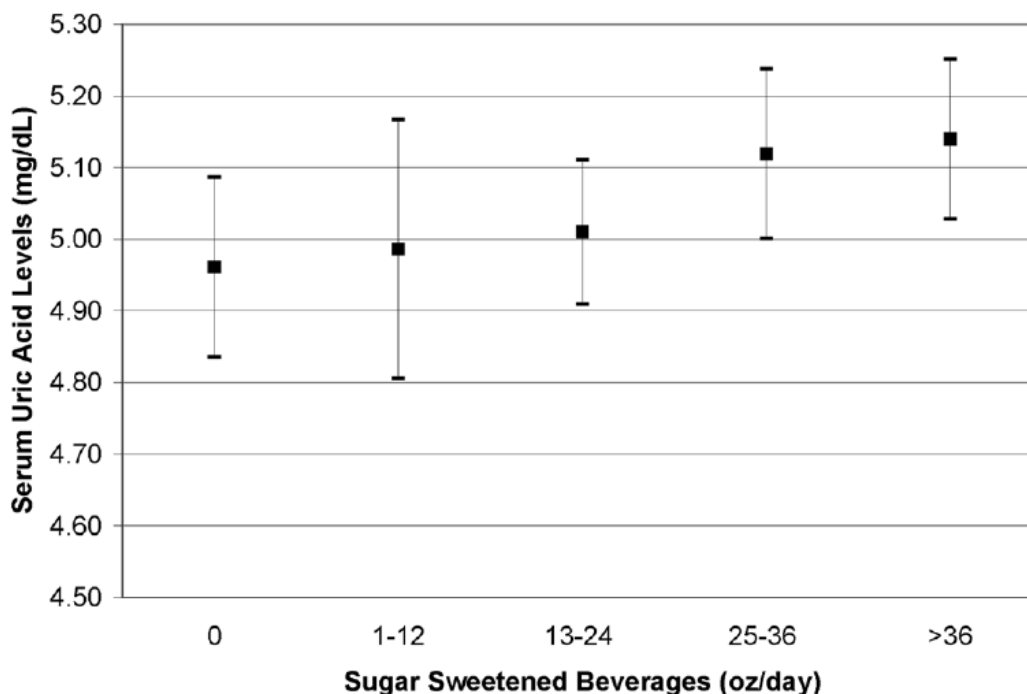
<sup>74</sup> Bantle, J.P., et al., “Effects of dietary fructose on plasma lipids in healthy subjects,” *American Journal of Clinical Nutrition*, Vol. 72, 1128-34 (2000).

<sup>75</sup> 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).

<sup>76</sup> 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).

1 greater risk of high blood pressure than those who consumed less than 1 soft drink per day.<sup>77</sup>

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



5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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

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

<sup>77</sup> Dhingra, *Cardiometabolic Risk*, supra n.30.

<sup>78</sup> Nguyen, *Serum Uric Acid*, supra n.22.

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

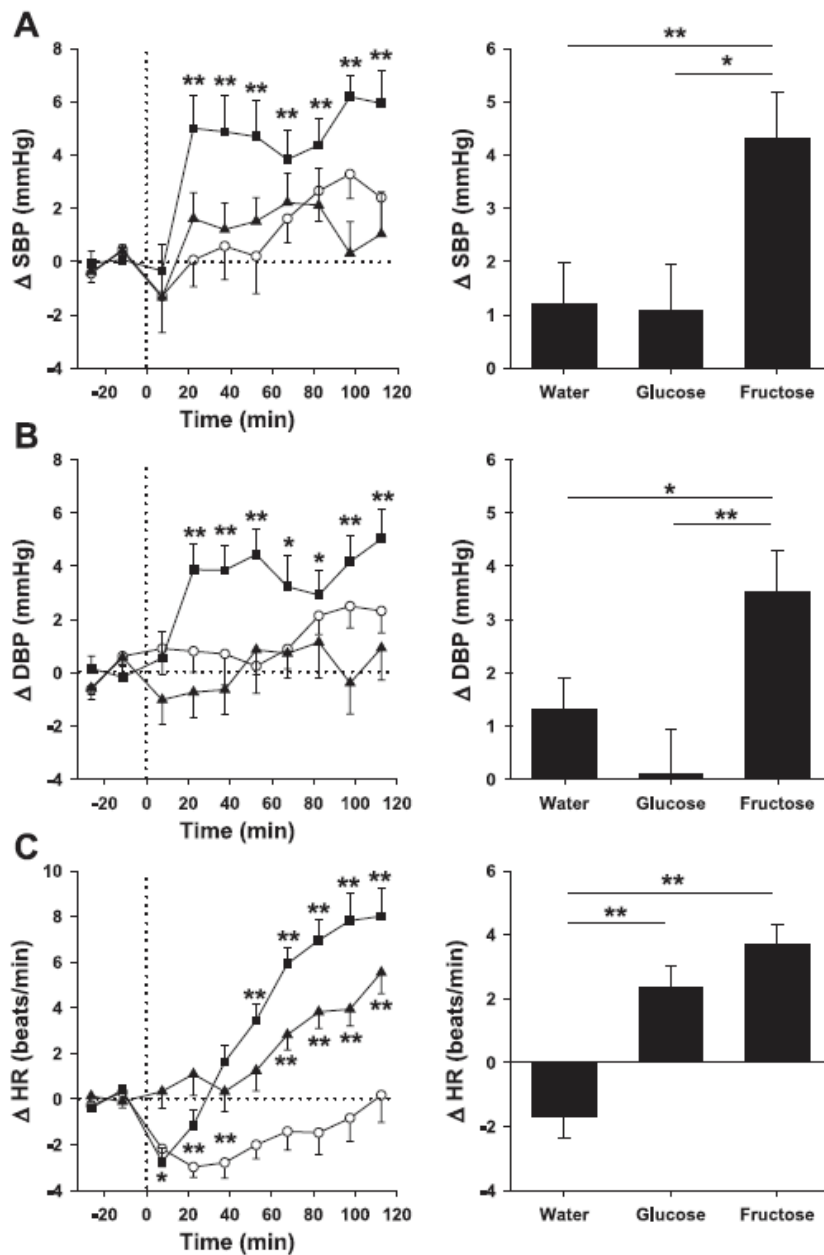


Fig. 1. Time course of the systolic blood pressure (SBP; A), diastolic blood pressure (DBP; B), and heart rate (HR; C) changes (left) and mean responses (right) to drinking water (○), glucose (▲), and fructose (■). \* $P < 0.05$  and \*\* $P < 0.01$ , statistically significant differences over time from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

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

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

<sup>80</sup> Raben, *Sucrose vs. Artificial Sweeteners*, *supra* n.62.



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

7 **9. Excess Sugar Consumption is Associated with Alzheimer’s Disease,**  
 8 **Dementia, and Cognitive Decline**

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

14 101. “To evaluate a possible association between fructose mediated metabolic  
 15 changes and cognitive behaviour,” researchers “assessed the correlation of serum triglyceride  
 16 and insulin resistance levels with memory,” and “found a positive correlation between serum  
 17 triglyceride levels and insulin resistance index . . . , which indicates that increased serum  
 18 triglyceride levels may contribute to increase[d] insulin resistance . . . .” And researchers  
 19 “found that the latency time varied in proportion to the insulin resistance . . . , which suggests  
 20 that memory performance may rely on levels of insulin resistance . . . .”<sup>83</sup>

21  
 22  
 23 <sup>81</sup> Brown, I.J., et al., “Sugar-Sweetened Beverage, Sugar Intake of Individuals, and Their  
 24 Blood Pressure: International Study of Macro/Micronutrients and Blood Pressure,”  
*Hypertension*, Vol. 57, 695-701 (2011).

25 <sup>82</sup> Crane, P.K, et al., “Glucose Levels and Risk of Dementia,” *New England Journal of*  
 26 *Medicine*, Vol. 369, No. 6, 540-48 (2013).

27 <sup>83</sup> Agrawal, R., et al., “‘Metabolic syndrome’ in the brain: deficiency in omega-3 fatty acid  
 28 exacerbates dysfunctions in insulin receptor signaling and cognition,” *Journal of Physiology*,  
 Vol. 590, No. 10, 2485-99, at 2489 (2012).

1           **10. Excess Sugar Consumption is Linked to Some Cancers**

2           102. In a population-based case-control study involving 424 cases and 398 controls,  
3 women in the highest quartile of added sugar intake had an 84% greater risk of endometrial  
4 cancer.<sup>84</sup> Similarly, in a study of patients with stage 3 colon cancer, those in the highest  
5 quintile of glycemic load experienced worsening in disease-free survival of approximately  
6 80% compared to those in the lowest quintile.<sup>85</sup>

7           103. A population based case-control study on Malaysian women found a significant,  
8 two-fold increased risk of breast cancer among premenopausal and postmenopausal women  
9 in the highest quartile of sugar intake.<sup>86</sup>

10           104. A prospective epidemiological study of nearly 45,000 cancer cases among  
11 436,000 participants aged 50-71, found added sugars were positively associated with risk of  
12 esophageal adenocarcinoma; added fructose was associated with risk of small intestine  
13 cancer; and all investigated sugars were associated with increased risk of pleural cancer.<sup>87</sup>

14           **E. There is Substantial Evidence That Consuming Artificial Trans Fat—Found in**  
15           **Some Post Cereals—is Detrimental to Health**

16           105. Artificial trans fat is created through the industrial process of hydrogenation, in  
17 which hydrogen atoms are added to normal vegetable oil by heating it in the presence of an  
18 ion donor catalyst metal, like nickel. The process was invented in 1901 by German scientist  
19

20 \_\_\_\_\_  
21 <sup>84</sup> King, M.G., et al., “Consumption of Sugary Foods and Drinks and Risk of Endometrial  
22 Cancer,” *Cancer Causes Control*, Vol. 24, No. 7, 1427-36 (July 2013).

23 <sup>85</sup> Meyerhardt, J.A., et al. “Association of dietary patterns with cancer recurrence and survival  
24 in patients with stage III colon cancer,” *Journal of the American Medical Association*, Vol.  
25 298, 754-64 (2007).

26 <sup>86</sup> Sulaiman, S., et al., “Dietary carbohydrate, fiber and sugar and risk of breast cancer  
27 according to menopausal status in Malaysia,” *Asian Pacific Journal of Cancer Prevention*,  
28 Vol. 15, 5959 (2014)

<sup>87</sup> Tasevska, N., et al., “Sugars in diet and risk of cancer in the NIH-AARP Diet and Health  
Study,” *International Journal of Cancer*, Vol. 130, No. 1, 159-69 (Jan. 1, 2012)

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

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

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

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

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

1 108. Epidemiologists estimate that artificial trans fat consumption contributes to as  
2 many as 100,000 otherwise preventable American deaths each year.<sup>90</sup>

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

5 Based on new scientific evidence and the findings of expert scientific panels,  
6 the Food and Drug Administration (FDA) has tentatively determined that  
7 partially hydrogenated oils (PHOs), which are the primary dietary source of  
8 industrially-produced *trans* fatty acids, or *trans* fat, are not generally  
9 recognized as safe (GRAS) for any use in food based on current scientific  
evidence establishing the health risks associated with the consumption of  
*trans* fat . . . .

10 [ . . . ]

11 The current scientific evidence . . . identifies significant health risks caused  
12 by the consumption of *trans* fat. This evidence includes the opinions of expert

---

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

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

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

11 75 Fed. Reg. 67169, 67169 (Nov. 8, 2013).

### 12 POST'S MARKETING & SALE OF HIGH-SUGAR CEREALS

13 110. Post was founded in 1895, in Battle Creek, Michigan. Post is a multi-billion  
14 dollar food company that manufactures, markets and sells a wide variety of breakfast cereals.  
15 It is the United States' third-largest cereal manufacturer behind Kellogg and General Mills.

16 111. Post's largest brand, *Honey Bunches of Oats*, was the third-best selling cereal in  
17 2015, behind just General Mills' *Honey Nut Cheerios* and Kellogg's *Frosted Flakes*, enjoying  
18 sales of \$411 million, a 4% share of the country's \$8.9 billion market.

19 112. In 2014, the cereal industry used 816 million pounds of sugar, or about 2.5 lbs.  
20 for each of the 318.9 million people in the U.S. in 2014. That is 1,134 grams per person, or 3  
21 grams per person, per day, for every man, woman, and child in the U.S. That totals more than  
22 **361 billion** grams of sugar in one year.

23 113. During the last decade, as consumer interest in healthy eating has grown, and  
24 based on sophisticated consumer research, Post has intentionally positioned itself in the  
25 market as a purportedly "healthy" brand of processed food, by using various labeling  
26 statements to suggest its cereals are healthy food choices.

27 114. Many of Post's cereals, however, contain high amounts of sugar, such that their  
28 regular consumption is likely to contribute to excess added sugar consumption and, thereby,  
increased risk for and contraction of chronic disease.

115. As with any company the size of Post, and with as many products, Post makes  
occasional changes in product offerings (for example, discontinuing or introducing new

1 products or varieties), product formulations, and product labeling and packaging.

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

8 117. Post bolsters this practice with websites dedicated to the products that repeat and  
9 in some instances state even more aggressive health and wellness claims.

10 118. This policy and practice is apparent in Post’s consistent use of certain words and  
11 phrases across many cereals, flavors, varieties, and packaging. For example, this Complaint  
12 details misleading statements made in the labeling of 23 different Post cereals, including  
13 words and phrases such as “nutrition,” “nutritious,” “good for you,” “balance,” “less  
14 processed,” and “no high fructose corn syrup,” among others.

15 119. Although plaintiffs were victims of Post’s longtime and general policy and  
16 practice with respect to the cereals they purchased and labels they saw, this Complaint and  
17 their claims are not so limited; rather, plaintiffs seek through this lawsuit to enjoin Post’s  
18 *policy and practice generally*, including but not necessarily limited to the products, labels,  
19 and label claims challenged herein.

20 120. In fact, plaintiffs have enjoyed Post’s products in the past. If they could be  
21 assured through prospective injunctive relief that Post’s cereals are properly labeled (i.e., that  
22 they do not contain excess added sugar if they bear health and wellness labeling), they would  
23 consider purchasing Post cereals bearing such claims in the future.

24 121. The cereals that are the subject of this Complaint and examples of Post’s policy  
25 and practice of marketing high-sugar cereals with misleading health and wellness claims, are  
26 the following:

- 1 a. Post Great Grains Cereals
- 2 (i.) Cranberry Almond Crunch
- 3 (ii.) Banana Nut Crunch
- 4 (iii.) Raisins, Dates & Pecans
- 5 (iv.) Crunchy Pecans
- 6 (v.) Blueberry Pomegranate
- 7 (vi.) Protein Blend: Honey, Oats & Seeds
- 8 (vii.) Protein Blend: Cinnamon Hazelnut
- 9 b. Post Honey Bunches of Oats Cereals
- 10 (i.) Honey Roasted
- 11 (ii.) With Almonds
- 12 (iii.) Raisin Medley
- 13 (iv.) With Pecan Bunches
- 14 (v.) With Cinnamon Bunches
- 15 (vi.) With Vanilla Bunches
- 16 (vii.) With Apples & Cinnamon Bunches
- 17 (viii.) With Real Strawberries
- 18 (ix.) Fruit Blends – Banana Blueberry
- 19 (x.) Fruit Blends – Peach Raspberry
- 20 (xi.) Tropical Blends – Mango Coconut
- 21 (xii.) Greek Honey Crunch
- 22 (xiii.) Greek Mixed Berry
- 23 c. Single-Variety Post Cereals
- 24 (i.) Raisin Bran
- 25 (ii.) Honeycomb
- 26 (iii.) Waffle Crisp

27 122. The approximate amount of total sugar and added sugar in each challenged  
28 product is set forth in the table below (noted in italics where the amounts differ).

<b>Product</b>	<b>Total Sugar</b>	<b>Added Sugar</b>
<i>Great Grains Cranberry Almond Crunch</i>	<i>12g</i>	<i>10g</i>
<i>Great Grains Banana Nut Crunch</i>	<i>10g</i>	<i>9g</i>
<i>Great Grains Raisins, Dates &amp; Pecans</i>	<i>13g</i>	<i>4g</i>
<i>Great Grains Crunchy Pecans</i>	<i>8g</i>	<i>5g</i>
<i>Great Grains Blueberry Pomegranate</i>	<i>13g</i>	<i>12g</i>

Product	Total Sugar	Added Sugar
Great Grains Protein Blend: Honey, Oats & Seeds	9g	9g
Great Grains Protein Blend: Cinnamon Hazelnut	9g	9g
Honey Bunches of Oats Cereal – Honey Roasted	8g	8g
Honey Bunches of Oats Cereal – With Almonds	8g	8g
<i>Honey Bunches of Oats Cereal – Raisin Medley</i>	14g	10g
Honey Bunches of Oats Cereal – With Pecan Bunches	6g	6g
Honey Bunches of Oats Cereal – With Cinnamon Bunches	8g	8g
Honey Bunches of Oats Cereal – With Vanilla Bunches	12g	11g
<i>Honey Bunches of Oats Cereal – With Apples &amp; Cinnamon Bunches</i>	8g	6g
<i>Honey Bunches of Oats Cereal – With Real Strawberries</i>	8g	7g
Honey Bunches of Oats Cereal – Fruit Blends – Banana Blueberry	6g	6g
Honey Bunches of Oats Cereal – Fruit Blends – Peach Raspberry	6g	6g
Honey Bunches of Oats Cereal – Tropical Blends – Mango Coconut	6g	6g
Honey Bunches of Oats Cereal – Greek Honey Crunch	13g	13g
Honey Bunches of Oats Cereal – Greek Mixed Berry	13g	13g
<i>Raisin Bran</i>	19g	9g
Honeycomb	10g	10g
Waffle Crisp	12g	12g

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

- a. the health and wellness labeling statements plaintiffs challenge as misleading;
- b. the forms of added sugars used;
- c. the approximate amount of added sugar in each serving;
- d. the proportion of added sugar by weight in each serving;
- e. the proportion of the product's calories from added sugar; and
- f. the contribution of the product's added sugar to the AHA's maximum



1 recommended daily added sugar intake of 38 grams for men (M), 25 grams for women  
 2 (W), and 12-15 grams for children (C).

3 124. Plaintiffs’ legal remedies for the conduct challenged herein are inadequate  
 4 because Plaintiffs’ equitable claims under the UCL are subject to a four-year statute of  
 5 limitations, whereas Plaintiffs’ legal claims under CLRA and Commercial Code are subject  
 6 to a three-year statute of limitations. In addition, Plaintiffs’ legal claims for breach of  
 7 warranty concern only a subset of the statements they challenge under the UCL and FAL.

8 **A. Post Great Grains Cereals**

9 125. Post sells a line of cereals under a “Great Grains” brand.

10 **11. Cranberry Almond Crunch**

11 126. The initial version of the packaging of *Post Great Grains Cranberry Almond*  
 12 *Crunch* is pictured below.



127. In around June 2014, Post introduced the packaging pictured below.



128. In around March 2017, Post introduced the packaging pictured below.



1 129. The packaging of *Post Great Grains Cranberry Almond Crunch* has made the  
 2 following labeling claims suggesting, both individually and especially in the context of the  
 3 label as a whole, that the product is healthy:

- 4 a. “Less processed nutrition you can see”
- 5 b. “wholesome Almonds”
- 6 c. “nutritious Cranberries”
- 7 d. “Why less processed? Quite simply because it’s good for you!”
- 8 e. “We gently crack the whole wheat berry and add a mix of grains to our  
 9 flakes, while some of the competition add artificial sweeteners and flavors along with  
 10 isolated fiber to their flakes. We then add in nutritious fruits and nuts and balance them  
 11 with our grains for a great taste that’s irresistible.”
- 12 f. “It’s whole foods from the field to your bowl, with whole grains, fiber and  
 13 nutritious ingredients in every bite!”
- 14 g. Whole Grains Council Stamp

15 **12. *Banana Nut Crunch***

16 130. The initial packaging of *Post Great Grains Banana Nut Crunch* is pictured  
 17 below.



131. In around March 2015, Post introduced the packaging pictured below.



132. In around March 2017, Post introduced the packaging pictured below.



1 133. The packaging of *Post Great Grains Banana Nut Crunch* has made the following  
 2 labeling claims suggesting, both individually and especially in the context of the label as a  
 3 whole, that the product is healthy:

- 4 a. “Less processed nutrition you can see”
- 5 b. “wholesome Walnuts”
- 6 c. “wholesome Almonds”
- 7 d. “Why less processed? Quite simply, because it’s good for you!”
- 8 e. “We gently crack the whole wheat berry and add a mix of grains to our  
 9 flakes, while some of the competition add artificial sweeteners and flavors along with  
 10 isolated fiber to their flakes. We then add in nutritious fruits and nuts and balance them  
 11 with our grains for a great taste that’s irresistible.”
- 12 f. “wholesome walnuts and almonds”
- 13 g. “It’s whole foods from the field to your bowl, with whole grains, fiber and  
 14 nutritious ingredients in every bite!”
- 15 h. Whole Grains Council Stamp

16 **13. Raisins, Dates & Pecans**

17 134. The initial packaging of *Post Great Grains Raisins, Dates & Pecans* is pictured  
 18 below.



135. In around February 2015, Post introduced the packaging pictured below.



136. The packaging of *Post Great Grains Raisins, Dates & Pecans* has made the following labeling claims suggesting, both individually and especially in the context of the label as a whole, that the product is healthy:

- a. “Less processed nutrition you can see”
- b. “wholesome Pecans”
- c. “naturally nutritious Raisins & Dates”
- d. “Why less processed? Quite simply, because it’s good for you!”
- e. “We gently steam, roll and bake our whole grains to help maintain the full flavor and nutrition of our flakes, while some of the competition add artificial sweeteners and flavors along with isolated fiber to their flakes. We then add in nutritious fruits and nuts and balance them with our grains for a great taste that’s irresistible.”
- f. “It’s whole foods from the field to your bowl, with whole grains, fiber and nutritious ingredients in every bite!”

g. Whole Grains Council Stamp

14. **Crunchy Pecans**

137. The initial packaging of *Post Great Grains Crunchy Pecans* is pictured below.



138. In around October 2013, Post introduced the packaging pictured below.



139. In around December 2014, Post introduced the packaging pictured below.



140. The packaging of *Post Great Grains Crunchy Pecans* has made the following labeling claims suggesting, both individually and especially in the context of the label as a whole, that the product is healthy:

- a. “Less processed nutrition you can see”
- b. “wholesome Pecans”
- c. “Why less processed? Quite simply, because it’s good for you!”
- d. “We gently steam, roll and bake our whole grains to help maintain the full flavor and nutrition of our flakes, while some of the competition add artificial sweeteners and flavors along with isolated fiber to their flakes. We then add in nutritious fruits and nuts and balance them with our grains for a great taste that’s irresistible.”
- e. “It’s whole foods from the field to your bowl, with whole grains, fiber and nutritious ingredients in every bite!”
- f. Whole Grains Council Stamp



15. *Blueberry Pomegranate*

141. Post introduced *Post Great Grains Blueberry Pomegranate* cereal in around April 2012. The product's initial packaging is pictured below.



142. In around February 2014, Post introduced the packaging pictured below.



1 143. The packaging of *Post Great Grains Blueberry Pomegranate* has made the  
 2 following labeling claims suggesting, both individually and especially in the context of the  
 3 label as a whole, that the product is healthy:

- 4 a. “Less processed nutrition you can see”
- 5 b. “nutritious Blueberries”
- 6 c. “Why less processed? Quite simply, because it’s good for you!”
- 7 d. “We gently steam, roll and bake our whole grains to help maintain the full  
 8 flavor and nutrition of our flakes, while some of the competition add artificial  
 9 sweeteners and flavors along with isolated fiber to their flakes. We then add in  
 10 nutritious fruits and nuts and balance them with our grains for a great taste that’s  
 11 irresistible.”
- 12 e. “It’s whole foods from the field to your bowl, with whole grains, fiber and  
 13 nutritious ingredients in every bite!”
- 14 f. Whole Grains Council Stamp

15 **16. Protein Blend: Honey, Oats & Seeds**

16 144. The initial packaging of *Post Great Grains Protein Blend: Honey, Oats & Seeds*  
 17 is depicted below.



145. In around August 2013, Post introduced the packaging pictured below.



146. In around September 2014 Post introduced the packaging pictured below.



1 147. The packaging of *Post Great Grains Protein Blend: Honey, Oats & Seeds* has  
 2 made the following labeling claims suggesting, both individually and especially in the context  
 3 of the label as a whole, that the product is healthy:

- 4 a. “HELPS SUPPORT A HEALTHY METABOLISM”  
 5 b. “wholesome Almonds”  
 6 c. “nutritious Pumpkin Seeds”  
 7 d. “Why less processed? Quite simply, because it’s good for you!”  
 8 e. “We gently crack the whole wheat berry and add a mix of grains to our  
 9 flakes, while some of the competition add artificial sweeteners, flavors, or isolated  
 10 fibers to their flakes. We then add in nutritious nuts and seeds and balance them with  
 11 our grains for a great taste that’s irresistible.”  
 12 f. “It’s whole foods from the field to your bowl, with nutritious ingredients  
 13 in every bite!”  
 14 g. “Support a Healthy Metabolism”  
 15 h. “The process of metabolism establishes the rate at which we burn our  
 16 calories and, ultimately, how quickly we gain weight or how easily we lose it. Although  
 17 some factors affecting metabolic rate, like age and genetics can’t be changed, there are  
 18 ways to maximize your metabolism.” **Breakfast:** Eat breakfast. One important part of  
 19 metabolism is how many calories you burn while at rest; did you know that eating  
 20 breakfast to ‘break the fast’ can increase your metabolism by as much as 10%? Start  
 21 your day with the less processed whole grain nutrition of Great Grains Protein Blend  
 22 to help jumpstart your metabolism.” **Protein:** Eat protein. Did you know that protein  
 23 generally requires about 25% more energy to digest? Because protein takes longer to  
 24 breakdown than fat and carbohydrate, the body uses more energy to digest protein and  
 25 this helps you burn more calories.”  
 26 i. Whole Grains Council Stamp

27 **17. Protein Blend: Cinnamon Hazelnut**

28 148. The initial packaging of *Post Great Grains Protein Blend: Cinnamon Hazelnut*,

introduced in around September 2012, is pictured below.



149. In around August 2013, Post introduced the packaging pictured below.



150. In around September 2014, Post introduced the packaging pictured below.



151. The packaging of *Post Great Grains Protein Blend: Cinnamon Hazelnut* has made the following labeling claims suggesting, both individually and especially in the context of the label as a whole, that the product is healthy:

- a. “HELPS SUPPORT A HEALTHY METABOLISM”
- b. “wholesome Almonds”
- c. “nutritious Hazelnuts”
- d. “less processed whole grain cereal”
- e. “Why Less Processed? Quite simply because it’s good for you!”
- f. “We gently crack the whole wheat berry and add a mix of grains to our flakes, while some of the competition add artificial sweeteners, flavors or isolated fibers to their flakes. We then add in nutritious nuts and balance them with our grains for a great taste that’s irresistible.”
- g. “wholesome hazelnuts, almonds, and multi grain clusters with real

1 cinnamon”

2 h. “It’s whole foods from the field to your bowl, with nutritious ingredients  
3 in every bite!”

4 i. “Support a Healthy Metabolism”

5 j. “The process of metabolism establishes the rate at which we burn our  
6 calories and, ultimately, how quickly we gain weight or how easily we lose it. Although  
7 some factors affecting metabolic rate, like age and genetics can’t be changed, there are  
8 ways to maximize your metabolism.” **Breakfast:** Eat breakfast. One important part of  
9 metabolism is how many calories you burn while at rest; did you know that eating  
10 breakfast to ‘break the fast’ can increase your metabolism by as much as 10%? Start  
11 your day with the less processed whole grain nutrition of Great Grains Protein Blend  
12 to help jumpstart your metabolism.” **Protein:** Eat protein. Did you know that protein  
13 generally requires about 25% more energy to digest? Because protein takes longer to  
14 breakdown than fat and carbohydrate, the body uses more energy to digest protein and  
15 this helps you burn more calories.”

16 k. Whole Grains Council Stamp

17 152. These health and wellness claims, individually and especially in the context of  
18 the packaging as a whole, affirmatively suggest the *Great Grains Protein Blend: Cinnamon*  
19 *Hazelnut* is healthy, and particularly that it is formulated to increase metabolism and promote  
20 weight loss.

21 **B. Post Honey Bunches of Oats Cereal**

22 **1. Honey Roasted**

23 153. The packaging of *Post Honey Bunches of Oats Cereal – Honey Roasted* that was  
24 in use when the class period began is pictured below.

25 ///

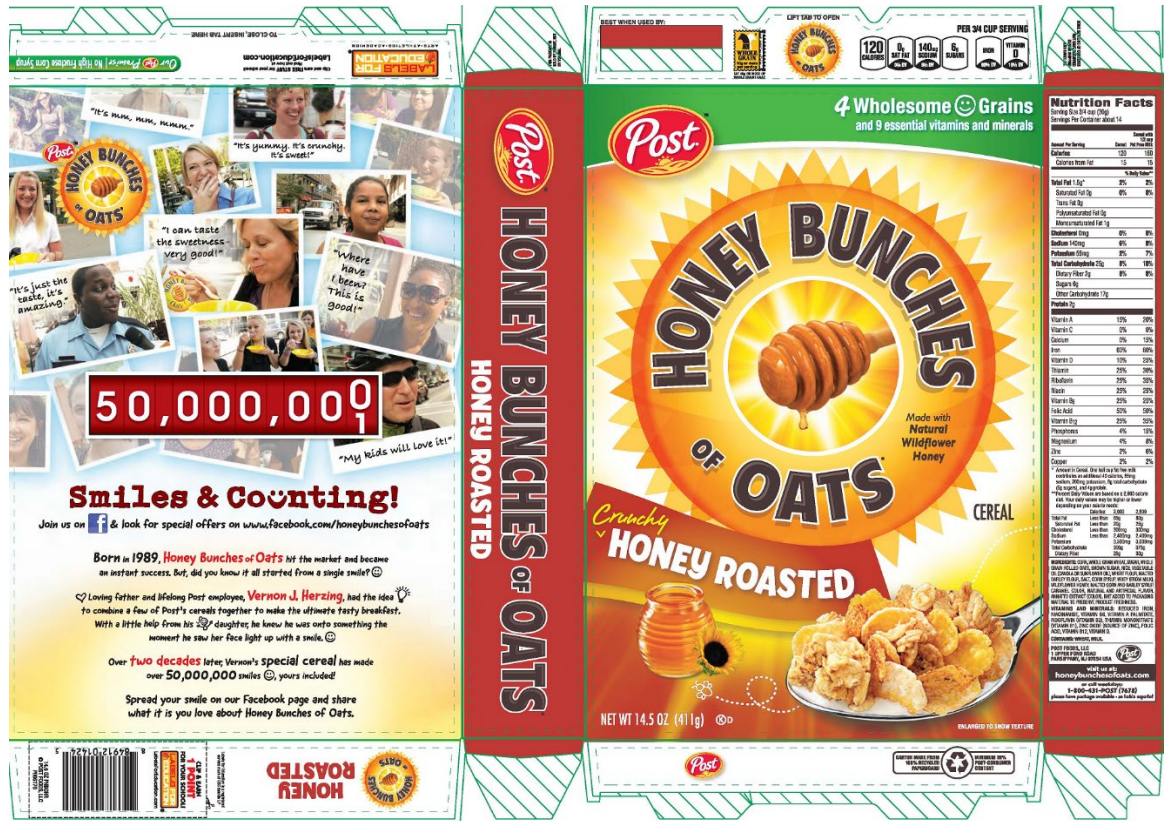
26 ///

27 ///

28 ///



154. In around November 2012, Post introduced the packaging pictured below.

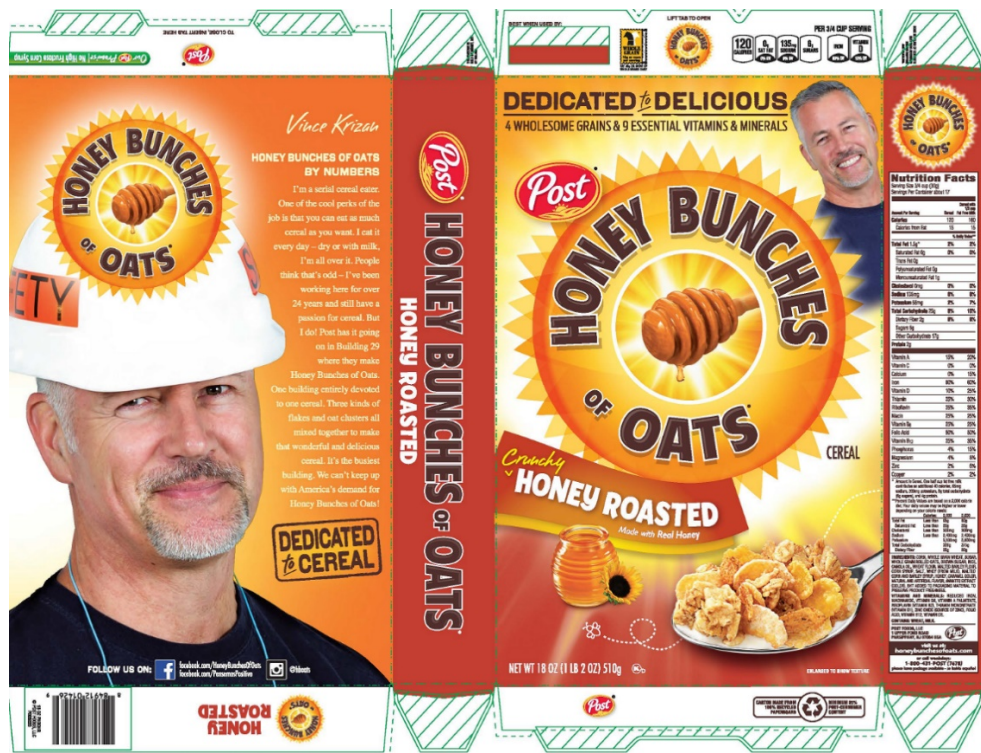




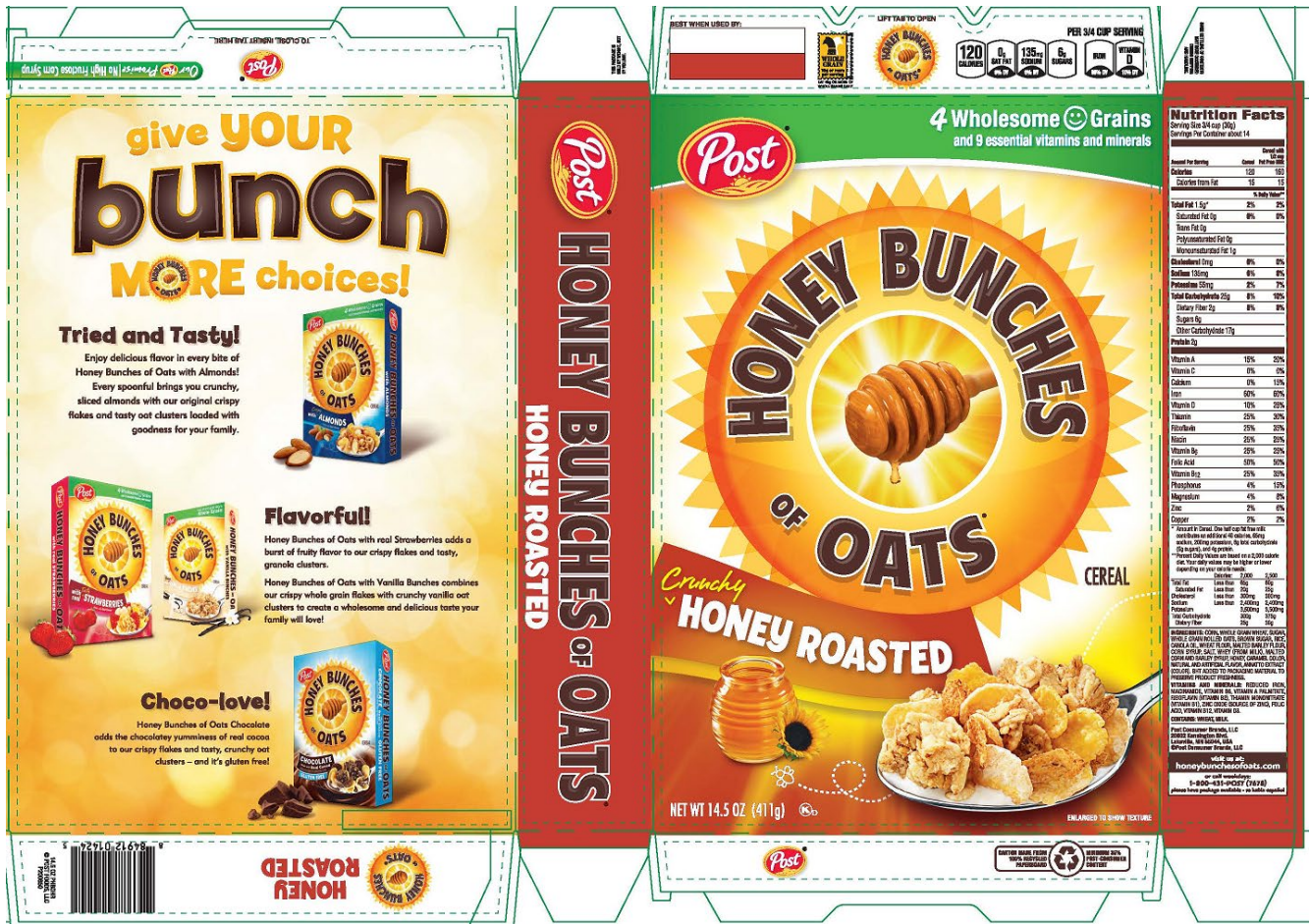
155. In around October 2014, Post introduced the packaging pictured below.



156. In around August 2015, Post introduced the “Dedicated to Delicious” packaging pictured below (using images of various employees; only one is pictured here).



157. In around October 2015, Post introduced the packaging pictured below.



158. The packaging of *Post Honey Bunches of Oats Cereal – Honey Roasted* has made the following labeling claims suggesting, both individually and especially in the context of the label as a whole, that the product is healthy:

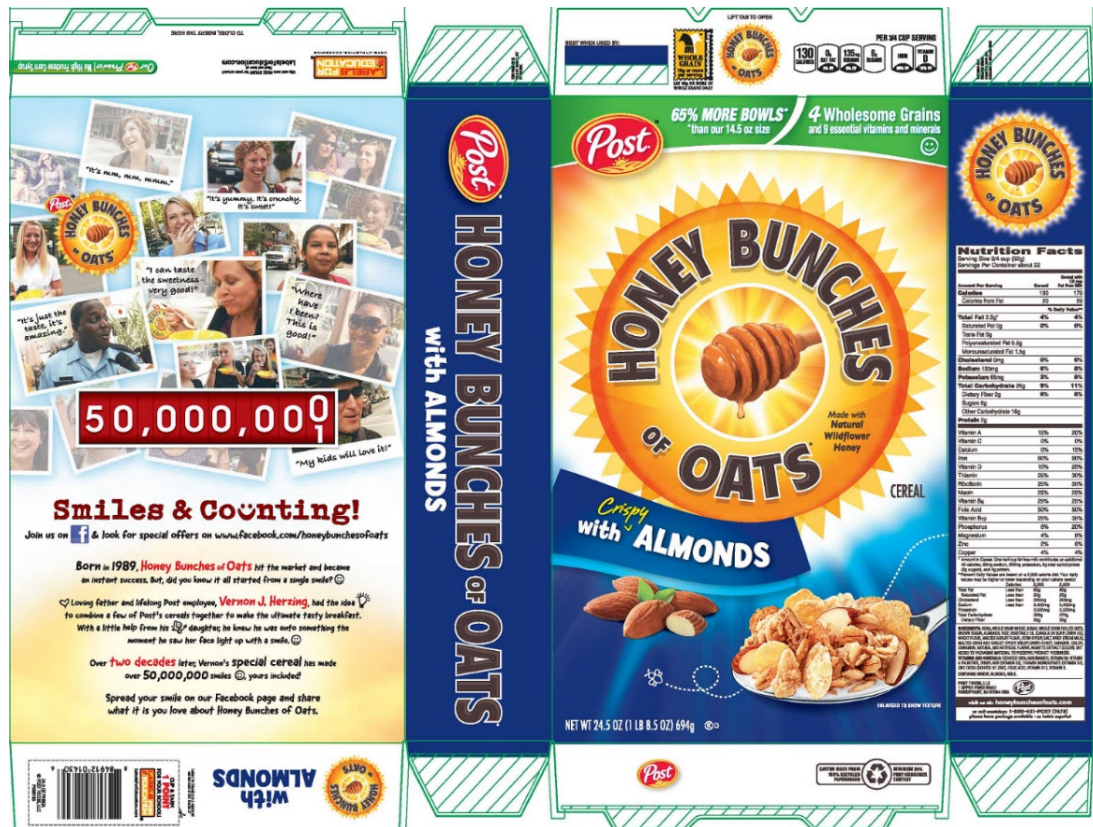
- a. “Our Post Promise | No High Fructose Corn Syrup”
- b. “A delicious, wholesome start to your day!”
- c. “4 Wholesome Grains”
- d. Whole Grains Council Stamp

2. *With Almonds*

159. The packaging of *Post Honey Bunches of Oats Cereal – With Almonds* that was in use when the class period began is pictured below.



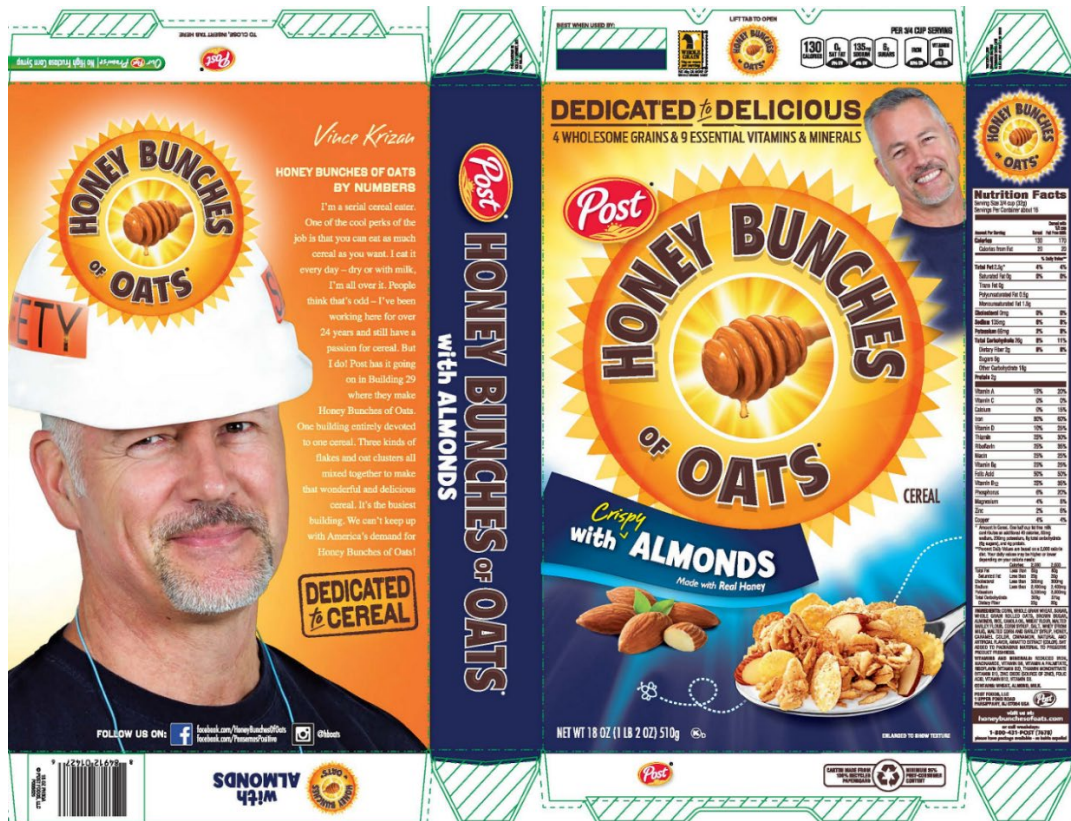
160. In around November 2012, Post introduced the packaging pictured below.



161. In around October 2014, Post introduced the packaging pictured below.



162. In around August 2015, Post introduced the “Dedicated to Delicious” packaging pictured below.



163. In around October 2015, Post introduced the packaging pictured below.



164. The packaging of *Post Honey Bunches of Oats Cereal – With Almonds* has made the following labeling claims suggesting, both individually and especially in the context of the label as a whole, that the product is healthy:

- a. “Our Post Promise | No High Fructose Corn Syrup”
- b. “A delicious, wholesome start to your day!”
- c. “4 Wholesome Grains”
- d. Whole Grains Council Stamp

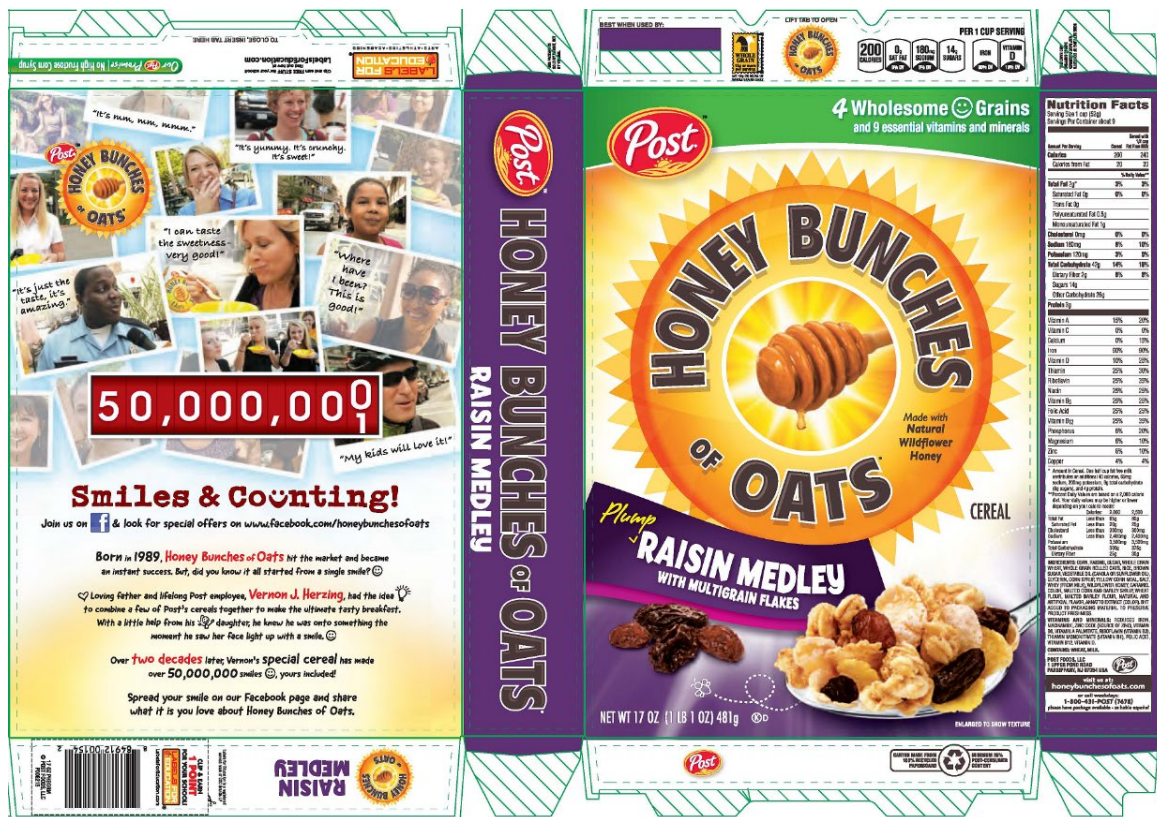
3. ***Raisin Medley***

165. The packaging of *Post Honey Bunches of Oats Cereal – Raisin Medley* that was in use when the class period began is pictured below.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28



166. In around December 2012, Post introduced the packaging pictured below.



1 167. The packaging of *Post Honey Bunches of Oats Cereal – Raisin Medley* has made  
 2 at least the following labeling claims suggesting, both individually and especially in the  
 3 context of the label as a whole, that the product is healthy:

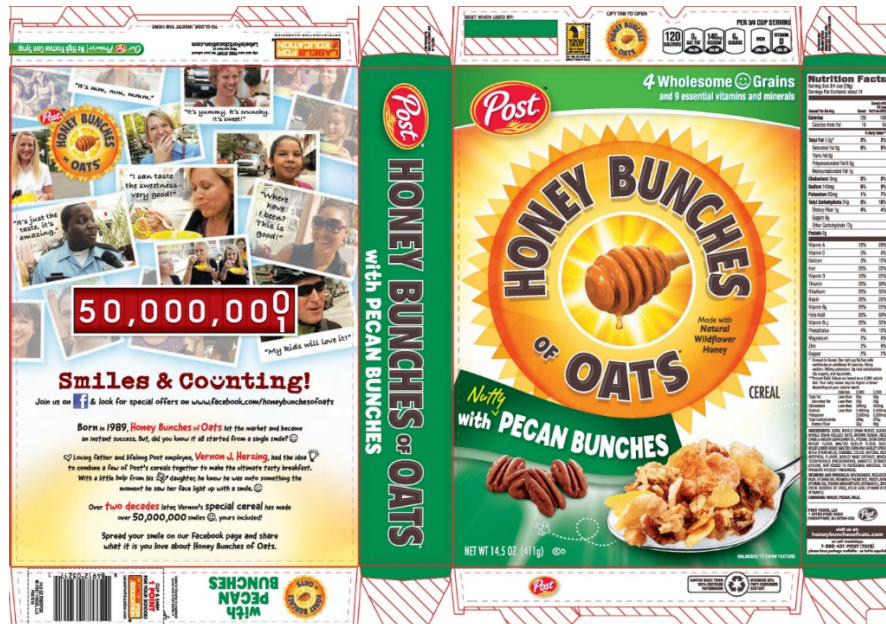
- 4 a. “Our Post Promise | No High Fructose Corn Syrup”
- 5 b. “A delicious, wholesome start to your day!”
- 6 c. “4 Wholesome Grains”
- 7 d. Whole Grains Council Stamp

8 **4. With Pecan Bunches**

9 168. The packaging of *Post Honey Bunches of Oats Cereal – With Pecan Bunches*  
 10 that was in use when the class period began is pictured below.



11  
 12  
 13  
 14  
 15  
 16  
 17  
 18 169. In around August 2013, Post introduced the packaging pictured below.



1 170. The packaging of *Post Honey Bunches of Oats Cereal – With Pecan Bunches*  
 2 has made the following labeling claims suggesting, both individually and especially in the  
 3 context of the label as a whole, that the product is healthy:

- 4 a. “Our Post Promise | No High Fructose Corn Syrup”
- 5 b. “A delicious, wholesome start to your day!”
- 6 c. “4 Wholesome Grains”
- 7 d. Whole Grains Council Stamp

8 **5. With Cinnamon Bunches**

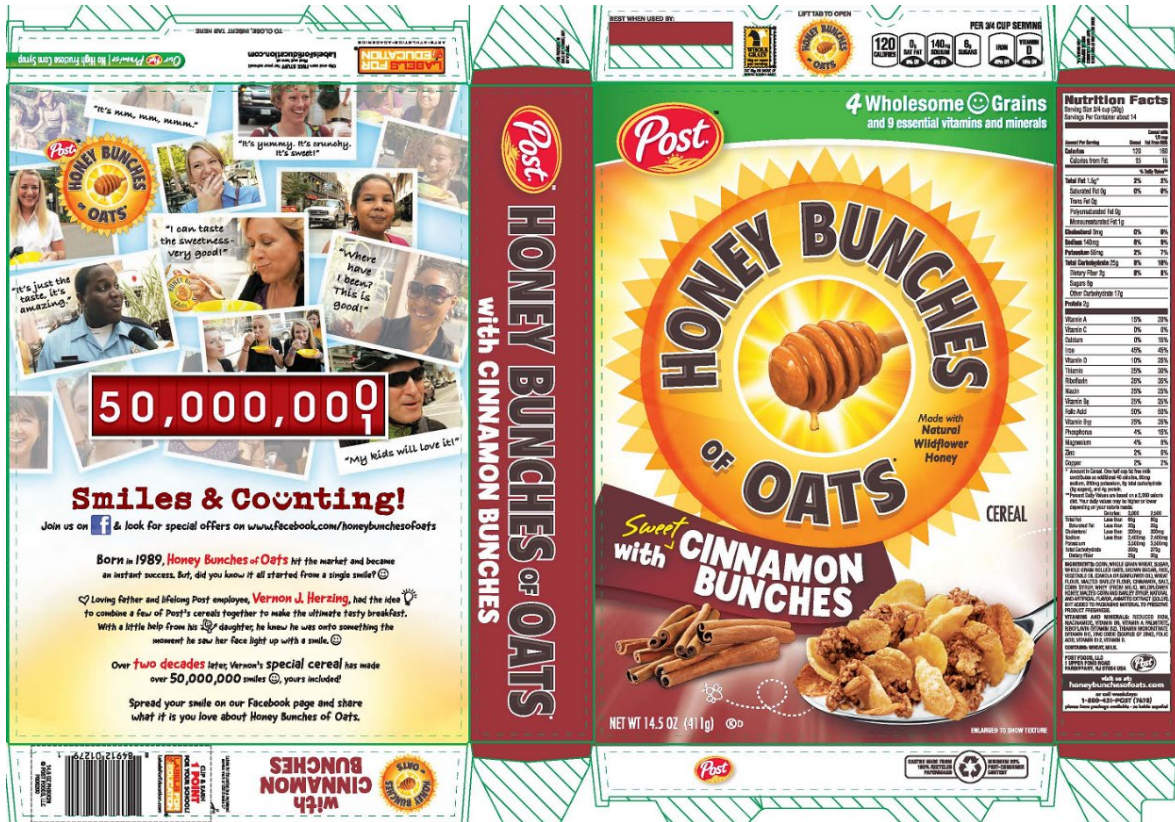
9 171. The packaging of *Post Honey Bunches of Oats Cereal – With Cinnamon*  
 10 *Bunches* that was in use when the class period began is pictured below.



25 172. In around November 2012, Post introduced the packaging pictured below.

26 ///  
 27 ///  
 28 ///





173. In around January 2015, Post introduced the packaging pictured below.



174. In around October 2015, Post introduced the packaging pictured below.



175. The packaging of *Post Honey Bunches of Oats Cereal – With Cinnamon Bunches* has made the following labeling claims suggesting, both individually and especially in the context of the label as a whole, that the product is healthy:

- a. “Our Post Promise | No High Fructose Corn Syrup”
- b. “A delicious, wholesome start to your day!”
- c. “4 Wholesome Grains”
- d. Whole Grains Council Stamp

**6. With Vanilla Bunches**

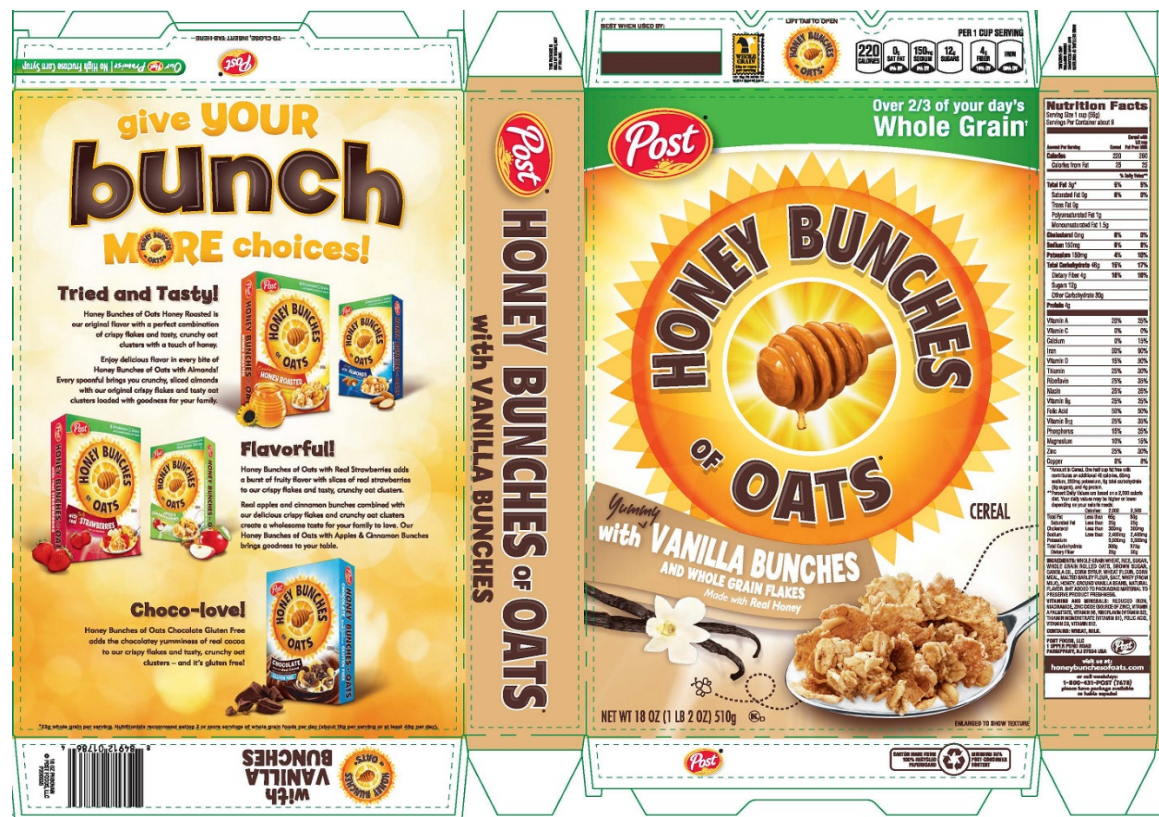
176. The packaging of *Post Honey Bunches of Oats Cereal – With Vanilla Bunches* that was in use when the class period began is pictured below.



177. In around December 2012, Post introduced the packaging pictured below.



178. In around October 2015, Post introduced the packaging pictured below.



1 179. The packaging of *Post Honey Bunches of Oats Cereal – With Vanilla Bunches*  
 2 has made the following labeling claims suggesting, both individually and especially in the  
 3 context of the label as a whole, that the product is healthy:

- 4 a. “Our Post Promise | No High Fructose Corn Syrup”
- 5 b. “A delicious wholesome start to your day!”
- 6 c. “4 Wholesome Grains”
- 7 d. Whole Grains Council Stamp

8 **7. With Apples & Cinnamon Bunches**

9 180. Post introduced *Post Honey Bunches of Oats Cereal – With Apples & Cinnamon*  
 10 *Bunches* in around September 2014. Its initial packaging is pictured below.



11 181. In around October 2015, Post introduced the packaging pictured below.



1 182. The packaging of *Post Honey Bunches of Oats Cereal – With Apples &*  
 2 *Cinnamon Bunches* has made the following labeling claims suggesting, both individually and  
 3 especially in the context of the label as a whole, that the product is healthy:

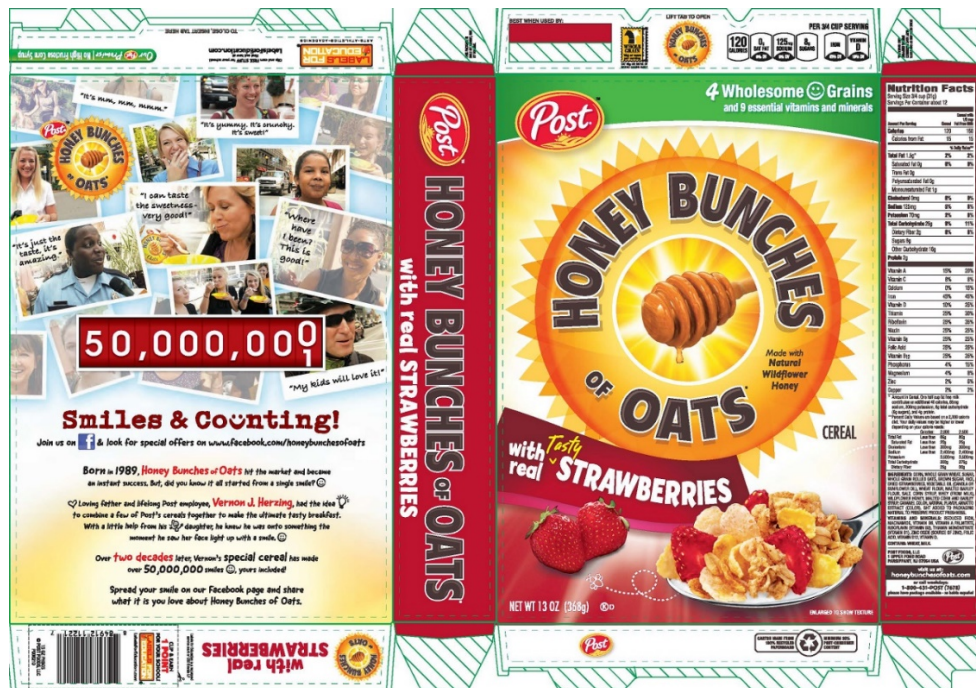
- 4 a. “Our Post Promise | No High Fructose Corn Syrup”
- 5 b. Whole Grains Council Stamp

6 **8. With Real Strawberries**

7 183. The packaging of *Post Honey Bunches of Oats Cereal – With Real Strawberries*  
 8 that was in use when the class period began is pictured below.



16 184. In around November 2012, Post introduced the packaging pictured below.



28 185. In around December 2014, Post introduced the packaging pictured below.



186. In around October 2015, Post introduced the packaging pictured below.



187. The packaging of *Post Honey Bunches of Oats Cereal – With Real Strawberries* has made the following labeling claims suggesting, both individually and especially in the context of the label as a whole, that the product is healthy:

- a. “Our Post Promise | No High Fructose Corn Syrup”

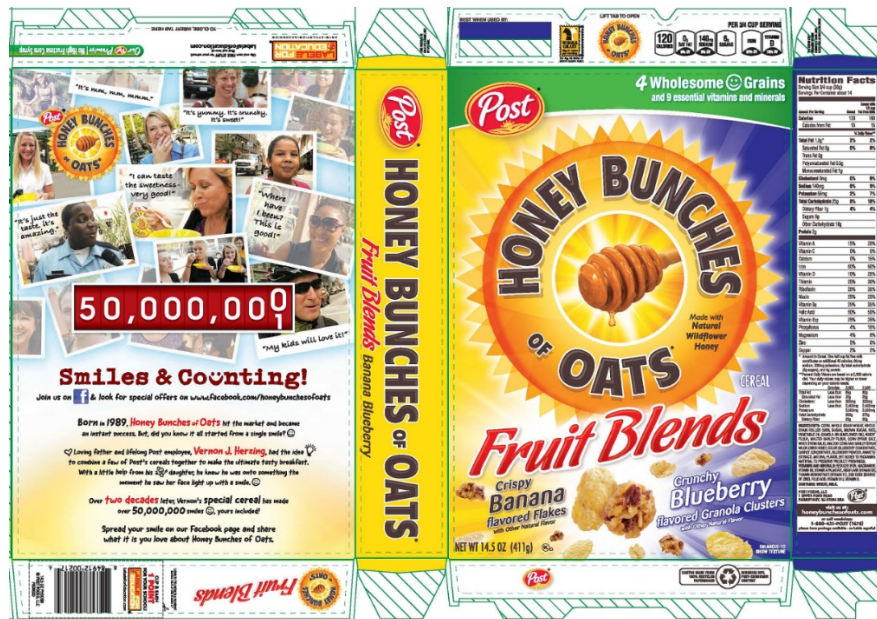
- b. "A delicious wholesome start to your day!"
- c. "4 Wholesome Grains"
- d. Whole Grains Council Stamp

9. **Fruit Blends – Banana Blueberry**

188. The packaging of *Post Honey Bunches of Oats Cereal – Fruit Blends – Banana Blueberry* that was in use when the class period began is pictured below.



189. In around March 2013, Post introduced the packaging pictured below.



190. The packaging of *Post Honey Bunches of Oats Cereal – Fruit Blends – Banana Blueberry* has made the following labeling claims suggesting, both individually and especially in the context of the label as a whole, that the product is healthy:

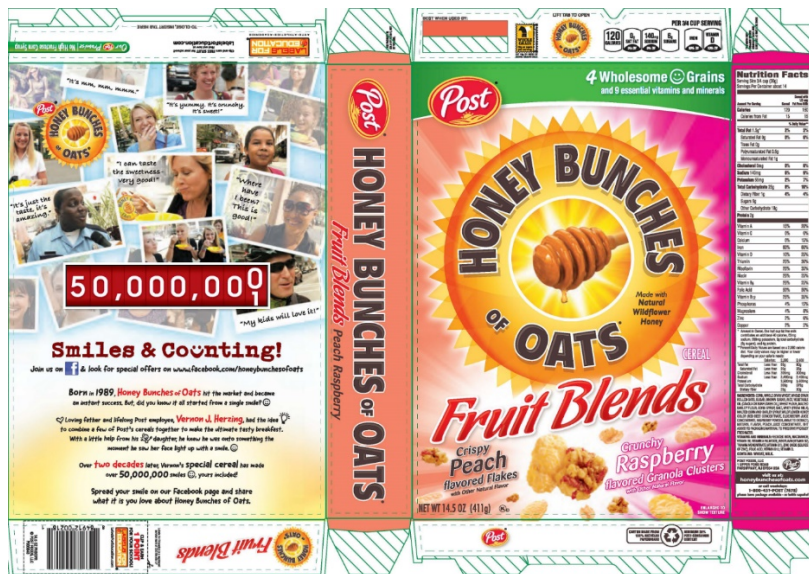
- a. “Our Post Promise | No High Fructose Corn Syrup”
- b. “A delicious wholesome start to your day!”
- c. “4 Wholesome Grains”
- d. Whole Grains Council Stamp

**10. Fruit Blends – Peach Raspberry**

191. The packaging of *Post Honey Bunches of Oats Cereal – Fruit Blends – Peach Raspberry* that was in use when the class period began is pictured below.



192. In around March 2013, Post introduced the packaging pictured below.





1 193. The packaging of *Post Honey Bunches of Oats Cereal – Fruit Blends – Peach*  
 2 *Raspberry* has made the following labeling claims suggesting, both individually and  
 3 especially in the context of the label as a whole, that the product is healthy:

- 4 a. “Our Post Promise | No High Fructose Corn Syrup”
- 5 b. “A delicious wholesome start to your day!”
- 6 c. “4 Wholesome Grains”
- 7 d. Whole Grains Council Stamp

8 **11. Tropical Blends – Mango Coconut**

9 194. Post introduced *Post Honey Bunches of Oats Cereal – Tropical Blends – Mango*  
 10 *Coconut* in around September 2012. The product’s initial packaging is pictured below.



11  
 12  
 13  
 14  
 15  
 16  
 17  
 18  
 19 195. In around March 2013, Post introduced the packaging pictured below.



1 196. The packaging of *Post Honey Bunches of Oats Cereal – Tropical Blends –*  
 2 *Mango Coconut* has made the following labeling claims suggesting, both individually and  
 3 especially in the context of the label as a whole, that the product is healthy:

- 4 a. “Our Post Promise | No High Fructose Corn Syrup”
- 5 b. “4 Wholesome Grains”
- 6 c. Whole Grains Council Stamp

7 **12. Greek Honey Crunch**

8 197. Post introduced *Post Honey Bunches of Oats Cereal – Greek Honey Crunch* in  
 9 around March 2013. The product’s packaging is pictured below.



25 198. The packaging of *Post Honey Bunches of Oats Cereal – Greek Honey Crunch*  
 26 has made the following labeling claims suggesting, both individually and especially in the  
 27 context of the label as a whole, that the product is healthy:

- 28 a. “Our Post Promise | No High Fructose Corn Syrup”

b. Whole Grains Council Stamp

**13. Greek Mixed Berry**

199. Post introduced *Post Honey Bunches of Oats Cereal – Whole Grain Honey Crunch* in around March 2013. The product’s packaging is pictured below.



200. The packaging of *Post Honey Bunches of Oats Cereal – Greek Mixed Berry* has made the following labeling claims suggesting, both individually and especially in the context of the label as a whole, that the product is healthy:

- a. “Our Post Promise | No High Fructose Corn Syrup”
- b. Whole Grains Council Stamp

**C. Post Single Cereals**

**1. Raisin Bran**

201. The packaging of *Post Raisin Bran* that was in use when the class period began is pictured below.



202. In around January 2013, Post introduced the packaging pictured below.



203. In around March 2015, Post introduced the packaging pictured below.



204. In around January 2017, Post introduced the packaging pictured below.



1 205. The packaging of *Post Raisin Bran* has made at least the following labeling  
 2 claims suggesting, both individually and especially in the context of the label as a whole, that  
 3 the product is healthy:

- 4 a. “contains NO HIGH FRUCTOSE Corn Syrup”
- 5 b. “No High Fructose Corn Syrup”
- 6 c. “Healthy”
- 7 d. “Nutritious”
- 8 e. “Where nutritious and delicious live in harmony”
- 9 f. Whole Grains Council Stamp

10 **2. Honeycomb**

11 206. The packaging of *Post Honeycomb* was in use when the class period began  
 12 is pictured below.



207. In around December 2012, Post introduced the packaging pictured below.



208. The packaging of *Post Honey-Comb* has made the following labeling claims, through at least around January of 2017, suggesting, both individually and especially in the context of the label as a whole, that the product is healthy:

- a. “Nutritious” (in “Nutritious Sweetened Corn & Oat Cereal”)
- b. “Why Vitamin D? – Many kids are not getting enough Vitamin D; - Important for a growing child’s health needs; - Promotes healthy bones and teeth by helping the body absorb calcium”
- c. Whole Grains Council Stamp

### 3. *Waffle Crisp*

209. The packaging of *Post Waffle Crisp* is pictured below.



210. The packaging of *Post Waffle Crisp* has made the following labeling claims suggesting, both individually and especially in the context of the label as a whole, that the product is healthy:

- a. “NO HIGH FRUCTOSE CORN SYRUP!”
- b. “Iron & Zinc for Growth”

**POST’S UNLAWFUL ACTS AND PRACTICES**

**A. Post Marketed and Continues to Market its Cereals with Health and Wellness Claims that are Deceptive in Light of the Cereals’ High Sugar Content**

**1. Post Affirmatively Misrepresents that Some High-Sugar Cereals are “Healthy,” “Nutritious,” or “Wholesome”**

211. Consumers interpret the words “nutritious” and “wholesome” to mean the same thing as, or to be euphemisms for, “healthy.”

212. In using these words in the manner described herein, Post also intends consumers to interpret “nutritious” and “wholesome” to mean healthy.



1           213. Although in some cases, Post’s labeling claims for its cereals are suggestive that  
2 they are healthy, in other cases, Post directly represents this is true by calling at least the  
3 following cereals “healthy,” “nutritious,” or “wholesome”:

4           a. *Post Great Grains Cranberry Almond Crunch* (“Less processed nutrition  
5 you can see,” “nutritious Cranberries,” “wholesome Almonds,” “nutritious fruits and  
6 nuts,” and “nutritious ingredients in every bite!”)

7           b. *Post Great Grains Banana Nut Crunch* (“Less processed nutrition you can  
8 see,” “wholesome Walnuts,” “wholesome Almonds,” “nutritious fruits and nuts,”  
9 “wholesome walnuts and almonds,” and “nutritious ingredients in every bite!”)

10           c. *Post Great Grains Raisins, Dates & Pecans* (“Less processed nutrition  
11 you can see,” “wholesome Pecans,” “naturally nutritious Raisins & Dates,” “We gently  
12 steam, roll and bake our whole grains to help maintain the full flavor and nutrition of  
13 our flakes,” “nutritious fruits and nuts,” and “nutritious ingredients in every bite!”)

14           d. *Post Great Grains Crunchy Pecans* (“Less processed nutrition you can  
15 see,” “wholesome Pecans,” “We gently steam, roll and bake our whole grains to help  
16 maintain the full flavor and nutrition of our flakes,” “nutritious fruits and nuts,” and  
17 “nutritious ingredients in every bite!”)

18           e. *Post Great Grains Blueberry Pomegranate* (“Less processed nutrition  
19 you can see,” “nutritious Blueberries,” “We gently steam, roll and bake our whole  
20 grains to help maintain the full flavor and nutrition of our flakes,” “nutritious fruits and  
21 nuts,” and “nutritious ingredients in every bite!”)

22           f. *Post Great Grains Protein Blend: Honey, Oats & Seeds* (“HELPS  
23 SUPPORT A HEALTHY METABOLISM,” “wholesome Almonds,” “nutritious  
24 Pumpkin Seeds,” “nutritious nuts and seeds,” “nutritious ingredients in every bite!,”  
25 and “the less processed whole grain nutrition of Great Grains Protein Blend”)

26           g. *Post Great Grains Protein Blend: Cinnamon Hazelnut* (“HELPS  
27 SUPPORT A HEALTHY METABOLISM,” “wholesome Almonds,” “nutritious  
28 Hazelnuts,” “nutritious nuts,” “wholesome hazelnuts, almonds, and multi grain

1 clusters,” “nutritious ingredients in every bite!,” and “the less processed whole grain  
2 nutrition of Great Grains Protein Blend”)

3 h. *Post Honey Bunches of Oats – Honey Roasted, With Almonds, Raisin*  
4 *Medley, With Pecan Bunches, With Cinnamon Bunches, With Vanilla Bunches, With*  
5 *Real Strawberries, Fruit Blends – Banana Blueberry, Fruit Blends – Peach Raspberry*  
6 (“4 Wholesome Grains,” and “A delicious, wholesome start to your day!”)

7 i. *Post Honey Bunches of Oats – Tropical Blends – Mango Coconut* (“4  
8 Wholesome Grains”)

9 j. *Post Raisin Bran* (“Healthy,” “Nutritious,” and “Where nutritious and  
10 delicious live in harmony”)

11 k. *Honey-Comb* (“Promotes healthy bones and teeth”)

12 214. Statements that these cereals are “healthy,” “nutritious,” and “wholesome” are  
13 false, or at least highly misleading, because, due to their high added sugar content,  
14 consumption of these cereals is decidedly *unhealthy*, and the consequences of consuming the  
15 products—increased risk for, and in some cases contraction of chronic disease—are  
16 incompatible with Post’s representations that the cereals are “healthy,” “nutritious,” and  
17 “wholesome.”

18 **2. Post Affirmatively Misrepresents that Consuming Some of its High-Sugar**  
19 **Cereals Will Promote Bodily Health, Prevention of Disease, or Weight Loss**

20 215. In some cases, Post falsely represents that its high-sugar cereals are effective in  
21 promoting bodily health and preventing disease.

22 216. Post employs such a misleading tactic with respect to its *Post Great Grains*  
23 *Protein Blend: Honey, Oats & Seeds* and *Cinnamon Hazelnut* cereals, expressly and  
24 affirmatively representing that consumption of the cereals will promote weight loss.  
25 Specifically, Post states:

26 “The process of metabolism establishes the rate at which we burn our calories  
27 and, ultimately, how quickly we gain weight or how easily we lose it.  
28 Although some factors affecting metabolic rate, like age and genetics can’t be

1 changed, there are ways to maximize your metabolism.” **Breakfast:** Eat  
 2 breakfast. . . . Start your day with the less processed whole grain nutrition of  
 3 Great Grains Protein Blend to help jumpstart your metabolism. **Protein:** Eat  
 4 protein. Did you know that protein generally requires about 25% more energy  
 5 to digest? Because protein takes longer to breakdown than fat and  
 carbohydrate, the body uses more energy to digest protein and this helps you  
 burn more calories.”

6 217. Post’s representation that consumption of *Post Great Grains Protein Blend:*  
 7 *Honey, Oats & Seeds* and *Cinnamon Hazelnut* cereals will promote weight loss is false, or at  
 8 least highly misleading because the cereals contain 9g of added sugar per serving, accounting  
 9 for approximately 16% of the products’ calories—which is more than 300% the AHA’s  
 10 recommended maximum of 5% of calories from added sugar. Moreover, a single serving of  
 11 *Post Great Grains Protein Blend: Honey, Oats & Seeds* or *Cinnamon Hazelnut* cereal  
 12 accounts for more than 23% of men’s, and 36% of women’s maximum AHA-recommended  
 13 daily added sugar intake.

14 218. For these reasons, regular consumption of *Post Great Grains Protein Blend:*  
 15 *Honey, Oats & Seeds* or *Cinnamon Hazelnut* cereals is highly likely to contribute to excess  
 16 added sugar consumption, and thereby increased risk for, and actual contraction of, chronic  
 17 disease, substantially harming both the human digestive system and overall human health.

18 219. Moreover, because of the products’ high added sugar content, their consumption  
 19 is likely to promote weight *gain*, not weight loss.

20 **3. Even When Not Stating So Expressly, Post Strongly Suggests Its High-**  
 21 **Sugar Cereals are Healthy**

22 220. Besides direct, express claims that some of its cereals are “healthy,” “nutritious,”  
 23 and “wholesome,” Post also conveys this same idea through suggestion.

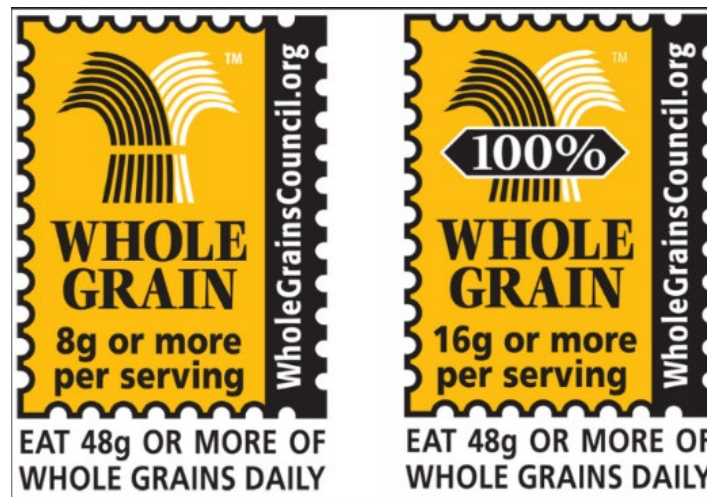
24 **a. Post Touts Its High-Sugar Cereals’ Whole Grain, Fiber, and “Real”**  
 25 **Ingredient Content to Distract From Their High Added Sugar**  
 26 **Content**

27 221. A major strategy Post employs is “calling out” the supposedly beneficial aspects  
 28 of its cereals, and particularly their whole (or multi) grain, fiber, or “real” ingredient content.

1 222. In emphasizing the supposedly beneficial nutrients or other aspects of its cereals,  
 2 Post necessarily and intentionally also de-emphasizes, hides, obscures, and otherwise omits  
 3 material information regarding the products' detrimental nutrient content, and specifically  
 4 their high added sugar content.

5 **b. Post Leverages a Deceptive Industry “Certification” Program—the**  
 6 **Whole Grains Council Stamp—to Make its High-Sugar Cereals Seem**  
 7 **Healthy**

8 223. Many of Post's cereals bear a stamp of the Whole Grains Council like that  
 9 pictured below.



10  
 11  
 12  
 13  
 14  
 15  
 16  
 17  
 18 224. The Whole Grains Council was formed in 2003 and holds itself out as a  
 19 purported “nonprofit *consumer advocacy* group.”<sup>91</sup>

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

24 226. The Whole Grain's Council stamp is frequently misused by food manufacturer-  
 25 members—including by Post in this case—to bolster claims that foods are supposedly  
 26 healthy, by suggesting that an independent, perhaps governmental authority has determined  
 27

28 <sup>91</sup> See <http://wholegrainscouncil.org/about-us>

1 a food is healthy or otherwise sanctioned its health and wellness claims.

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

5 228. This is true of many of Post’s cereals, and the use of the stamp is deceptive  
6 because it implies independent verification that the cereals are healthy, despite that the Whole  
7 Grains Council is an industry group, and that Post’s cereals contain such high amounts of  
8 added sugar that they remain unhealthy choices notwithstanding their whole grain content.

9 **c. In Representing that Many of Its High-Sugar Cereals Contain “No**  
10 **High Fructose Corn Syrup,” Post Leverages Consumer Confusion to**  
11 **Obscure the Dangers of the Added Sugar in it Cereals**

12 229. Post has capitalized on consumer aversion toward high fructose corn syrup by  
13 touting the absence of that ingredient, deceptively suggesting that its cereals are healthier  
14 because HFCS is absent.

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

18 231. Some consumers also incorrectly believe there are “healthy” forms of added  
19 sugar, for example honey, “cane sugar,” or “natural” sugars. Conversely, many consumers  
20 are not even aware that some more obscure ingredients *are* added sugars, such as Evaporated  
21 Cane Juice (the use of which the FDA has said is deceptive), Glycerin, and fruit and fruit  
22 juice “concentrates.” Many consumers also have no idea what invert sugar is, or that it is  
23 sucrose that has been broken into free glucose and free fructose, and thus is extremely similar  
24 to HFCS, despite that it is used in several Post cereals.

25 232. In reality, added sugar in virtually any form contains toxic fructose, and thus has  
26 essentially the same detrimental health effects, with typically only minor differences in the  
27 ratio of fructose to glucose in a given form of added sugar. Thus, even if literally true, Post’s  
28 “no high fructose corn syrup” representations are highly misleading.

1           **d. Post Falsely Markets Some of Its High-Sugar Cereals as “Simple,”**  
2           **“Whole Foods” that Are “Less Processed”**

3           233. To capitalize on increasing consumer preference for fresh, unprocessed, “whole”  
4 foods, Post affirmatively misrepresents that several of its cereals have this characteristic.

5           234. Specifically, Post represents that its *Great Grains Cranberry Almond Crunch*,  
6 *Banana Nut Crunch*, *Raisins, Dates & Pecans*, *Crunchy Pecans*, and *Blueberry Pomegranate*  
7 cereals are “Less processed nutrition you can see,” explaining, “Why less processed? Quite  
8 simply, because it’s good for you!”

9           235. Post similarly represents its *Great Grains Protein Blend: Honey, Oats & Seeds*  
10 cereal is “less processed whole grain nutrition,” while its *Great Grains Protein Blend:*  
11 *Cinnamon Hazelnut* is both “less processed whole grain nutrition,” and “less processed whole  
12 grain cereal,” with Post stating, “Why less processed? Quite simply because it’s good for  
13 you!”

14           236. Most of these *Great Grains* cereals’ packaging also states, “It’s whole foods  
15 from the field to your bowl.”

16           237. These statements are false or at least highly misleading. First, *Post Great Grains*  
17 cereals containing blueberries are sweetened with invert sugar and glycerin, two highly-  
18 processed forms of added sugar, while all *Great Grains* cereals are sweetened with sugar and  
19 brown sugar, and sometimes glycerin or juice concentrates, which are also highly-processed  
20 sweeteners.

21           238. Second, because these statements suggest *Great Grains* cereals are healthy food  
22 options, the statements are false, or at least highly misleading, due to the cereals’ high added  
23 sugar content.

24           **e. Post Deceptively Omits, Intentionally Distracts From, and Otherwise**  
25           **Downplays the Cereals’ High Added Sugar Content**

26           239. In marketing its cereals with health and wellness claims, Post regularly and  
27 intentionally omits material information regarding the amount and dangers of the added  
28 sugars in its products. Post is under a duty to disclose this information to consumers because

1 (a) Post is revealing *some* information about its products—enough to suggest they are  
2 healthy—without revealing additional material information, (b) Post’s deceptive omissions  
3 concern human health, and specifically the detrimental health consequences of consuming its  
4 products, (c) Post was, and is, in a superior position to know of the dangers presented by the  
5 sugars in its cereals, as it is a global food company whose business depends upon food science  
6 and policy, and (d) Post actively concealed material facts not known to plaintiff and the class.

7 **4. Post Immorally Markets Some High-Sugar Cereals to Children, Who Are**  
8 **the Most Vulnerable to the Dangers of Excess Added Sugar Consumption**

9 240. Post markets some of its cereals either directly to children, or to parents, as *for*  
10 their children. In some cases, these cereals are among the highest in sugar that Post offers.

11 241. For example, Post markets *Honey-Comb* cereal by stating that “Many kids are  
12 not getting enough Vitamin D,” and representing that the cereal’s Vitamin D content is  
13 “Important for a grown child’s health needs,” and “Promotes healthy bones and teeth by  
14 helping the body absorb calcium.”

15 242. Similarly, Post markets *Waffle Crisp* using a cartoon waffle mascot, and by  
16 representing that it contains “Iron & Zinc for Growth.”

17 243. At 10g per serving, the added sugar in *Honey-Comb* cereal accounts for more  
18 than 31% of the product by weight, more than 30% of its calories, and up to 83% of children’s  
19 AHA-recommended maximum daily added sugar intake.

20 244. At 12g per serving, the added sugar in *Waffle Crisp* accounts for 40% of the  
21 product’s eight and calories, and up to 100% of children’s AHA-recommended maximum  
22 daily added sugar intake.

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

27 246. Marketing high-sugar cereals to children, or for children’s consumption, is itself  
28 an unfair and immoral business practice, but it is especially harmful when the marketing

1 suggests the high-sugar cereals are healthy options for children.

2 247. Thus, marketing *Honey-Comb* cereal as a healthy option for children to promote  
3 bone and teeth health—even if true, which is dubious—while obscuring the detrimental effect  
4 of the cereal’s consumption in promoting obesity, metabolic disease, cardiovascular disease,  
5 and other morbidity, is immoral, malicious, and oppressive.

6 248. Likewise, marketing other high-sugar children’s cereals, like *Waffle Crisp*, with  
7 false and misleading health and wellness claims, is immoral, malicious, and oppressive.

8 **5. Post Egregiously Markets Some High-Sugar Cereals to Children Even**  
9 **Though They Contain Artificial Trans Fat**

10 249. In one case, Post even markets a high-sugar cereal to children despite that it also  
11 contains artificial trans fat, a substance so deadly that the FDA has banned it with a phase-  
12 out deadline of 2018. These claims are false and misleading because, in addition to the health  
13 dangers of consuming the products’ high sugar content, artificial trans fat is the single worst  
14 nutrient (the only nutrient worse than sugar) in terms of its effect on bodily health, and  
15 particularly heart health.

16 250. Specifically, Post markets its *Waffle Crisp* cereal with a cartoon waffle mascot,  
17 representing that it contains “Iron & Zinc for Growth.” But *Waffle Crisp* also contains 12g of  
18 sugar, accounting for 40% of the cereal by weight, and 40% of its calories, and contributing  
19 between 80% and 100% of children’s AHA-recommended daily maximum added sugar  
20 intake. In addition, *Waffle Crisp* is made with partially hydrogenated vegetable oil containing  
21 toxic artificial trans fat.

22 251. As noted above, there are obesity and type 2 diabetes epidemics among  
23 American children currently, rendering them most vulnerable to false advertising that has the  
24 effect of promoting sugar and artificial trans fat consumption.

25 252. Marketing such an unhealthy food to children or for their consumption, and  
26 especially through the use of claims that suggest the cereal is a healthy choice, is immoral,  
27 malicious, oppressive, and egregious.

28



1           **6. Post Knows or Reasonably Should Know of the Strong Scientific Evidence**  
2           **Demonstrating Its High-Sugar Cereals are Unhealthy to Consume But Fails**  
3           **to Warn Consumers of the Known Dangers of Consuming Its High-Sugar**  
4           **Cereals**

5           253. As a longtime and major national food manufacturer, Post is well-positioned to  
6 know the most current food science. Moreover, the issue of added sugar has gained increasing  
7 prominence over the past decade.

8           254. During the class period, Post maintained on its website a page titled “Post  
9 Nutrition Pledge,” in which it demonstrated it is aware of concerns regarding sugar, for  
10 example stating that it had “been steadily decreasing the sugar in all our varieties of sweetened  
11 cereals for years now.”<sup>92</sup> Even if literally true, however, any such reduction has been  
12 minuscule.

13           255. For example, scientific evidence of the dangers of sugar was available to Post as  
14 a result of its membership in the Whole Grains Council. For example, the Whole Grains  
15 Counsel website notes Harvard research finding that replacing sugar with whole grains lowers  
16 heart disease risk.<sup>93</sup>

17           256. Despite knowing of the dangers of the added sugar in its cereals, Post failed to  
18 adequately warn consumers, but instead induced them to consume the Post cereals through  
19 affirmative health and wellness misrepresentations that also distracted consumers from the  
20 dangers presented by the Post cereals.

21           **7. Post Violates FDA and State Food Labeling Regulations**

22           257. Several of Post’s cereals contain statements that violate FDA food labeling  
23 regulations, which have been adopted as California’s labeling regulations pursuant to the  
24 California Sherman Food, Drug, and Cosmetic Law, Cal. Health & Safety Code §§ 109875  
25

26 \_\_\_\_\_  
27 <sup>92</sup> See <http://postfoods.com/about-us/post-nutrition-pledge>

28 <sup>93</sup> See <http://wholegrainscouncil.org/replacing-butter-sugar-or-refined-grains-with-whole-grains-cuts-heart-disease-risk>

1 *et seq.* (the “Sherman Law”). *See id.* § 110665 (“Any food is misbranded if its labeling does  
2 not conform with the requirements for nutrition labeling as set forth in Section 403(q) (21  
3 U.S.C. Sec. 343(q)) of the federal act and the regulations adopted pursuant thereto.”).

4 **a. In Violation of State and Federal Regulations, Post’s Health and**  
5 **Wellness Statements are False, Misleading, and Incomplete**

6 258. Post’s health and wellness statements challenged herein were false and  
7 misleading for the reasons described herein, in violation of 21 U.S.C. § 343(a), which deems  
8 misbranded any food whose “label is false or misleading in any particular.” Post accordingly  
9 also violated California’s parallel provision of the Sherman Law. *See* Cal. Health & Safety  
10 Code § 110660.

11 259. Post’s health and wellness statements challenged herein also “fail[ed] to reveal  
12 facts that are material in light of other representations made or suggested by the statement[s],  
13 word[s], design[s], device[s], or any combination thereof,” in violation of 21 C.F.R. §  
14 1.21(a)(1). Such facts include the detrimental health consequences of consuming added  
15 sugars in amounts present in the challenged products.

16 260. Post similarly failed to reveal facts that were “[m]aterial with respect to the  
17 consequences which may result from use of the article under” both “[t]he conditions  
18 prescribed in such labeling,” and “such conditions of use as are customary or usual,” in  
19 violation of § 1.21(a)(2). Namely, Post failed to disclose the increased risk of serious chronic  
20 disease likely to result from the usual consumption of its cereals in the customary manner.

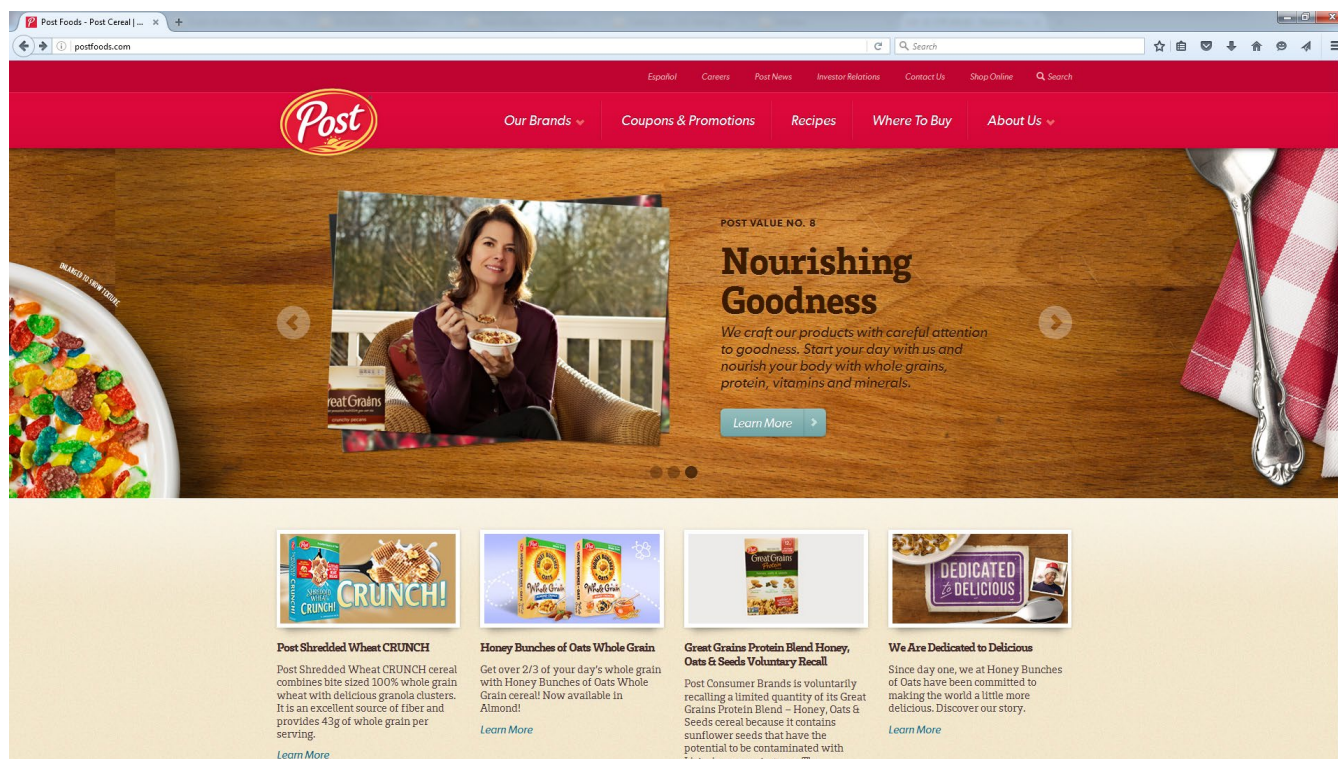
21 **B. Post Used its Website, as Referenced on Some Labels, and Other Online Fora, to**  
22 **Spread Misinformation about the Dangers of Consuming the Added Sugar in its**  
23 **Cereals**

24 261. During the class period, the side panel of Post’s cereals invited consumers to  
25 “visit [Post] at: postfoods.com” (the “Post Website”).

26 262. During the class period, Post used the Post Website to further its deceptive  
27 marketing of high-sugar cereals as healthy.

28 263. For example, the Post Website stated that one of Post’s “VALUE[S]” IS

1 “Nourishing Goodness,” which according to Post meant, “[w]e craft our products with careful  
 2 attention to goodness. Start your day with us and nourish your body with whole, grains,  
 3 protein, vitamins and minerals.” This statement appeared adjacent to a photograph of a  
 4 woman eating a bowl of *Post Great Grains Crunchy Pecans*.



17 264. Other “VALUE[S]” Post represented it has included:

18 a. VALUE # 2 - “Goodness on Purpose” with Post stating, “We take great  
 19 care to use wholesome ingredients to help you take great care of your whole family.”

20 b. VALUE # 4 – “No HFCS, Ever”

21 c. VALUE # 6 – “Something for Everyone,” with Post stating, “there’s a  
 22 Post cereal for every taste and nutritional need to keep everyone in your family happy  
 23 and healthy.”

24 d. VALUE #7 – “The Best Nature has to Offer,” with Post stating, “We are  
 25 committed to understanding and utilizing the highest quality of ingredients in order to  
 26 nourish you and your family.”

27 265. The Post Webpage included a purported “Nutrition Pledge,” wherein Post stated,  
 28 “We Pledge to Help you Start Each Day Right,” because “Post Foods was established on the

1 principle that good nutrition can change the way we feel, look, and perform.”

2 266. Post further claimed that:

3 Helping you be healthy each day is rewarding for us and it’s in our roots. Post  
4 Foods was literally created to enhance health. . . . Over the years, we’ve learned  
5 even more about the health benefits of a diet rich in grains. Eating grains –  
6 particularly whole grains – can help you meet your daily nutrient needs and  
7 provides broad-reaching health benefits. **Whole grains are an important source  
8 of many nutrients, including dietary fiber, several B vitamins, minerals, and  
9 natural antioxidants.** Peer-reviewed scientific studies show major health  
10 problems, from heart disease and obesity to diabetes and cancer, occur less  
11 frequently with a diet rich in whole grains. So, today, we know the benefits of  
12 what C.W. Post created reach far beyond digestive health.

13 267. Post further claimed it “believe[s] whole grains are an essential component of a  
14 healthy lifestyle,” but also “believe[s] that sugar in moderation brings fun to breakfast.”

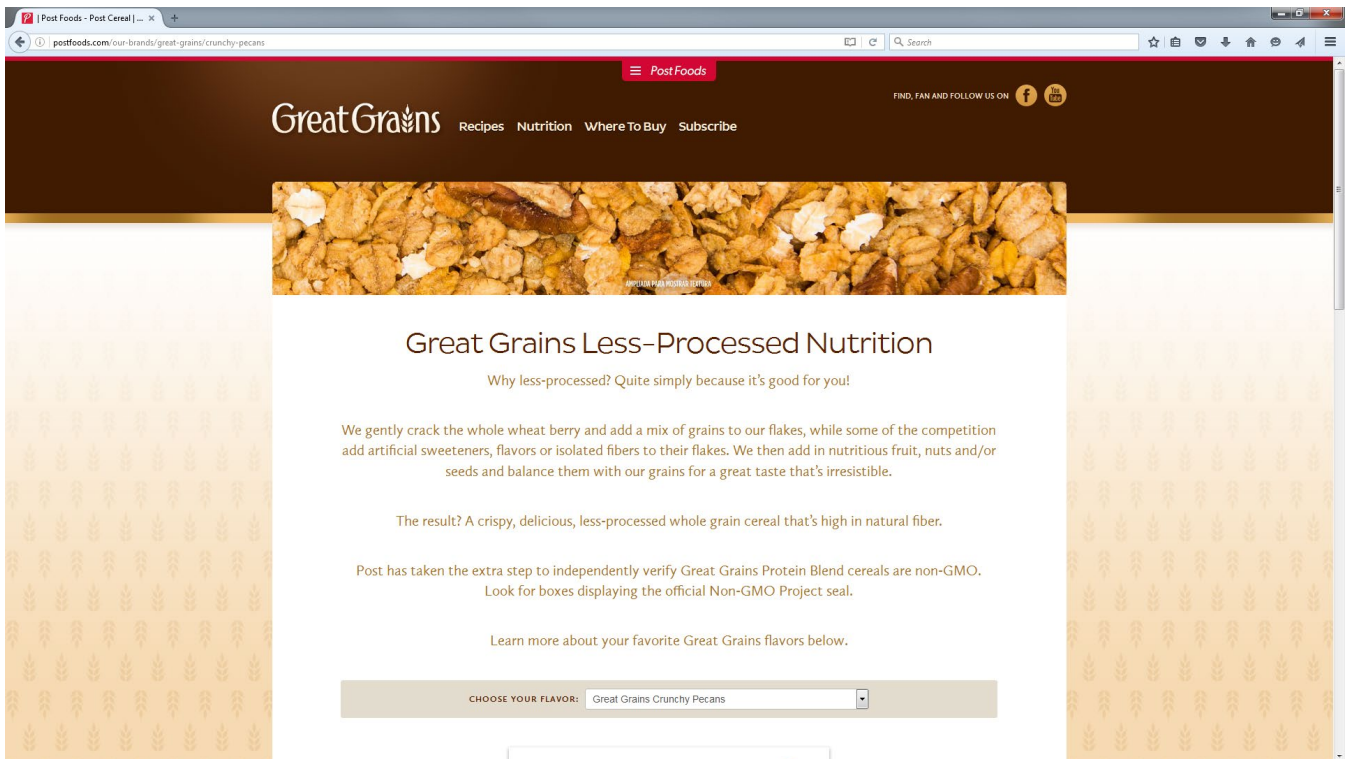
15 268. These statements, both alone, and in combination with Post’s other advertising,  
16 mislead consumers into believing that Post’s cereals are healthy and the supposed “moderate”  
17 amount of sugar in them is not concerning.

18 269. The Post Website also included a link to a page titled “**Our Brands**,” which  
19 included pictures of “Post’s Family of cereals,” and allowed a browser to click on each cereal  
20 for more information about it.

21 270. During the class period, Post used each cereal’s dedicated webpage to further its  
22 false and misleading health and wellness messaging, as follows:

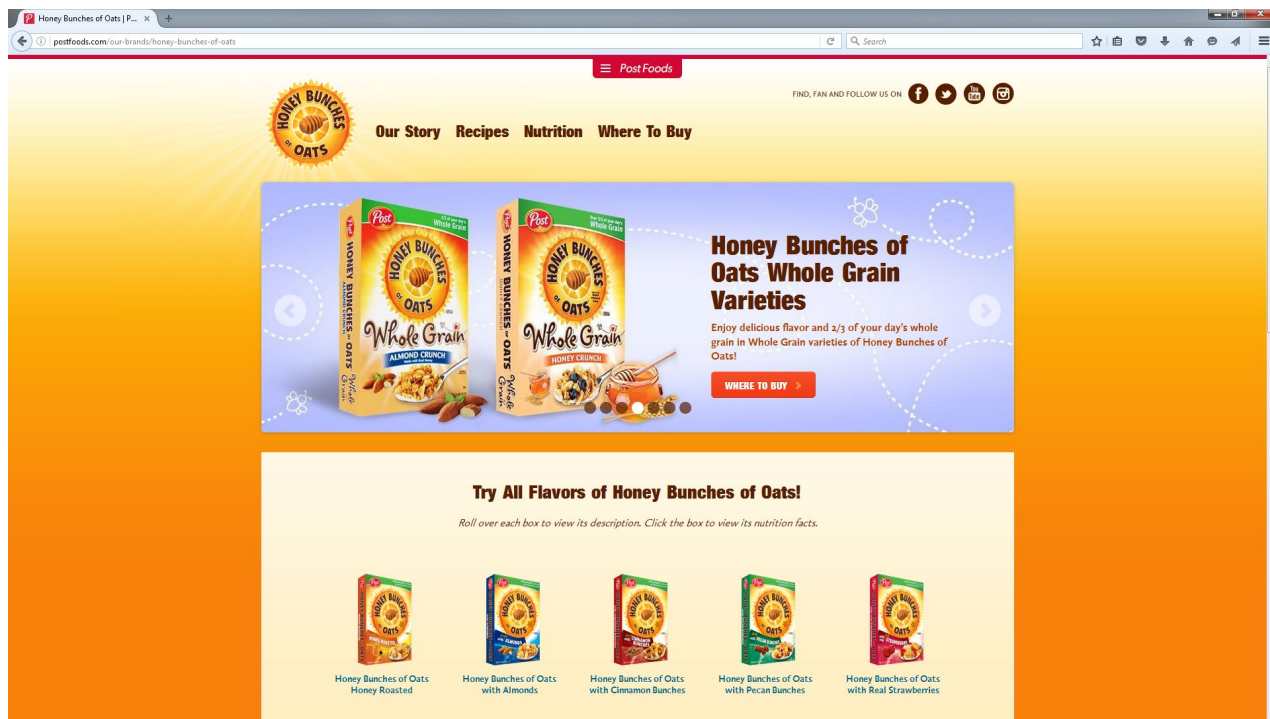
23 a. **Post Great Grains:** Prominently featured on the *Post Great Grains*  
24 webpage was a large banner depicting a bowl of the cereal, next to the claim, “Nutrition  
25 You Can See,” underneath which Post claimed, “You can’t argue with nutrition you  
26 can see. Great Grains starts whole and stays whole, so you know you’re eating better  
27 nutrition,” with a clickable button that invited consumers to “See the Difference.”  
28 Clicking “See the Difference” sent the browser to a page which furthered Post’s health  
and wellness messaging by touting *Post Great Grains* as “Less-Processed Nutrition,”  
“Quite simply because it’s good for you!,” and containing “nutritious fruit, nuts and/or  
seeds” “balance[d] . . . with . . . grains,” for a “less processed whole grain cereal that’s

1 high in natural fiber.” At the bottom of this page was a variety of *Post Great Grains*  
2 nutrition information. These “Nutrition” pages for each variety included further claims;  
3 for example, on the “Nutrition” page for Post Great Grains Cranberry Almond Crunch,  
4 Post asked “Did You Know? Great Grains Cranberry Almond Crunch has: • 35g of  
5 whole grain per serving\*\* •24% of your Daily Value for fiber (6g of fiber per serving)  
6 • 0g saturated fat, 0g trans fat and 0mg cholesterol per serving • 14 vitamins and  
7 minerals • Excellent source of antioxidant vitamins C and E . . . •9g Protein with milk”

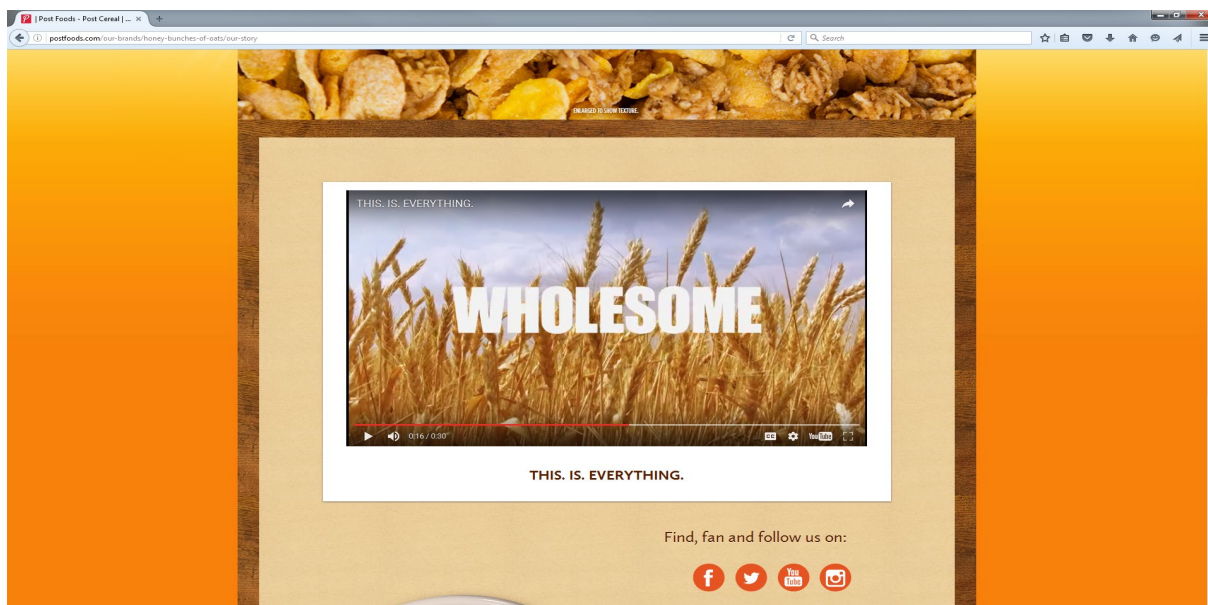


20 b. ***Post Honey Bunches of Oats:*** The *Post Honey Bunches of Oats* webpage  
21 similarly continued Post’s deceptive health and wellness messaging. Prominently  
22 displayed on the page was a large banner stating that “Honey Bunches of Oats Whole  
23 Grain Varieties” contain “2/3 of your day’s whole grain.”

24 ///  
25 ///  
26 ///  
27 ///  
28 ///



(i.) Clicking on the “Our Story” link brought a browser to a video that touted Post Honey Bunches of Oats as “WHOLE SOME,” overlaid on a field of grain.



(ii.) The “Nutrition” links for each variety continued this messaging with claims such as “ Heart Healthy (0g trans fat, 0g saturated fat, 0mg cholesterol per serving) • 2/3 of your day’s whole grain (32g per serving); whole grains are an important part of a balanced diet, but on average, Americans eat

1 less than 1 serving of whole grains per day. • Good source of fiber (5g per  
 2 serving); fiber fills you up, helps keep you satisfied and is important to help  
 3 maintain digestive health. • 12 essential vitamins and minerals; including iron  
 4 and folic acid which are important for moms-to-be and growing children.”

**Honey Bunches of Oats Nutrition Information**  
 Want even more nutrition information about your favorite Honey Bunches of Oats flavors? Learn bunches more than just what's on the box.

CHOOSE YOUR FLAVOR: Honey Bunches of Oats Whole Grain Almond

**Did You Know?**  
**Honey Bunches of Oats Whole Grain Almond has:**

- Heart healthy (0g trans fat, 0g saturated fat, 0mg cholesterol per serving)
- 23 of your day's whole grain (32g per serving); whole grains are an important part of a balanced diet, but on average, Americans eat less than 1 serving of whole grains per day.\*
- Good source of fiber (5g per serving); fiber fills you up, helps keep you satisfied and is important to help maintain digestive health.
- 12 essential vitamins and minerals, including iron and folic acid which are important for moms-to-be and growing children.

\*\*Dietary fiber in whole grain foods and other plant foods, and low or saturated fat and cholesterol, may help reduce the risk of heart disease.  
 \*Nutritionist recommended eating 3 or more servings of whole grain foods per day. (Source: FDA website, revised from National Lipid Association)

**Nutrition Facts**  
 Serving Size 1 cup (57 g)

Amount Per Serving	Percent Daily Values*	Amount Per Serving	Percent Daily Values**
<b>Calories</b>	230	<b>Calories</b>	270
<b>Calories from Fat</b>	40	<b>Calories from Fat</b>	40
<b>% Daily Values**</b>			
<b>Total Fat</b> 4.5 g *	7%	<b>Total Fat</b> 4.5 g *	7%
Saturated Fat 0 g	0%	Saturated Fat 0 g	0%
Trans Fat 0 g		Trans Fat 0 g	
Polysaturated Fat 1.5 g		Polysaturated Fat 1.5 g	
Monounsaturated Fat 2.5 g		Monounsaturated Fat 2.5 g	
<b>Cholesterol</b> 0 mg	0%	<b>Cholesterol</b> 0 mg	0%
<b>Sodium</b> 140 mg	6%	<b>Sodium</b> 140 mg	6%
<b>Potassium</b> 160 mg	5%	<b>Potassium</b> 160 mg	5%
<b>Total Carbohydrate</b> 45 g	15%	<b>Total Carbohydrate</b> 45 g	15%
Dietary Fiber 5 g	20%	Dietary Fiber 5 g	20%
Sugars 11 g		Sugars 11 g	
Other Carbohydrate 29 g		Other Carbohydrate 29 g	
<b>Protein</b> 5 g		<b>Protein</b> 5 g	

**Ingredients**  
 Whole Grain Wheat, Rice, Whole Grain Rolled Oats, Sugar, Brown Sugar, Almonds, Canola Oil, Corn Syrup, Wheat Flour, Malted Barley Flour, Corn Meal, Salt, Whey (From Milk), Wildflower Honey, Caramel Color, Cinnamon, Natural And Artificial Flavor, BHT Added To Packaging Material To Preserve Product Freshness.

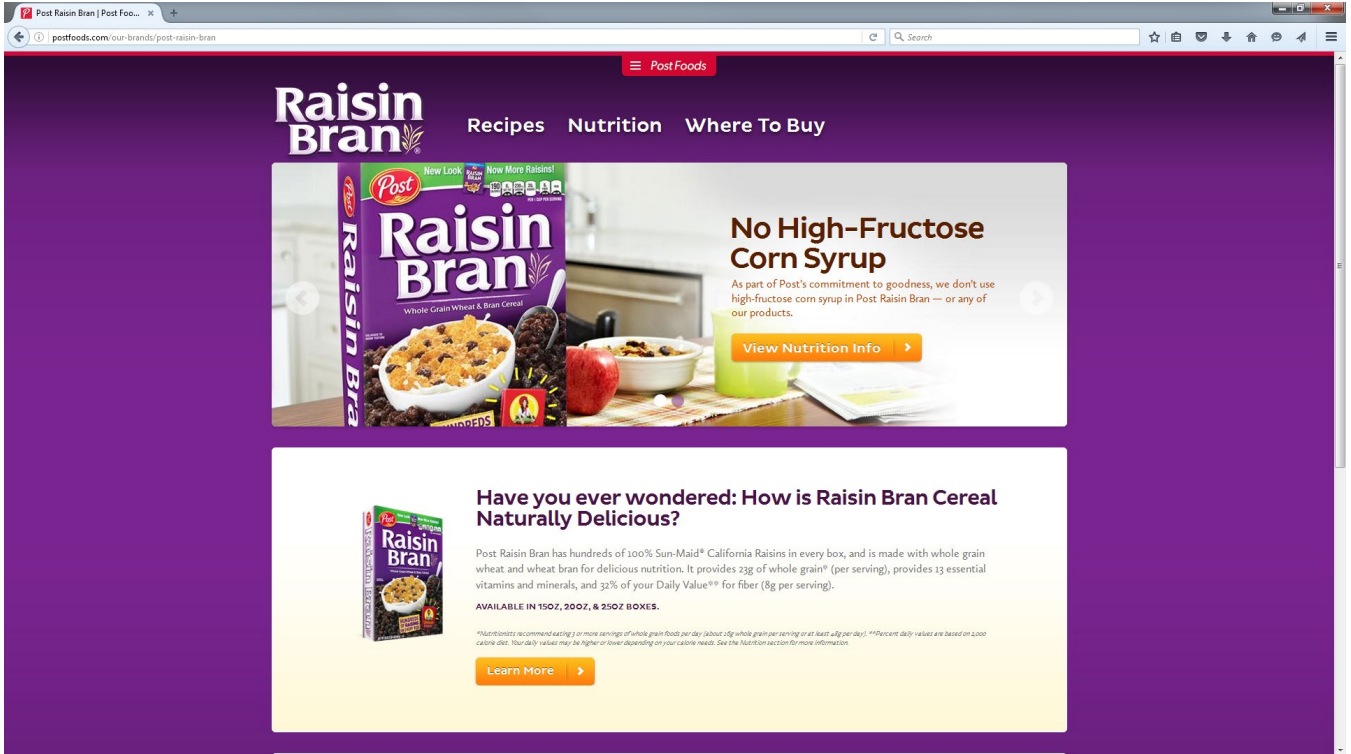
**Vitamins and Minerals**  
 Reduced Iron, Niacinamide, Zinc Oxide (Source Of Zinc), Vitamin A Palmitate, Vitamin B6, Riboflavin (Vitamin B2), Thiamin Mononitrate (Vitamin B1), Folic Acid, Vitamin D, Vitamin B12.

**Contains: wheat, almond, milk.**

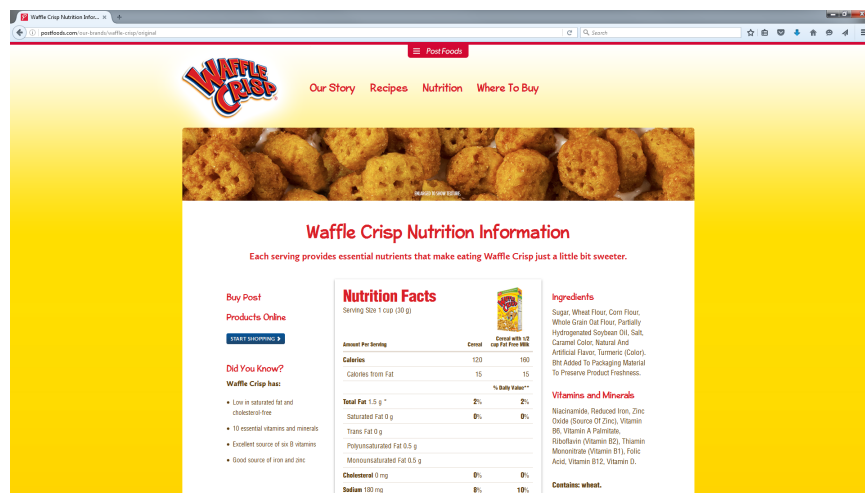
©D  
 Product formulations may change. For current nutrition facts and ingredient information check product packaging.

15 c. **Post Honeycomb:** The “Nutrition” link on the *Post Honeycomb* webpage  
 16 asked, “Did You Know? Honeycomb cereal has: 8g of whole grain per serving •  
 17 Excellent source of vitamin D • Low in fat and cholesterol-free • 10 essential vitamins  
 18 and minerals.”

19 d. **Post Raisin Bran:** Prominently displayed on the *Post Raisin Bran*  
 20 webpage was a banner with the large claim, “No High-Fructose Corn Syrup”  
 21 underneath which was the further claim, that “As part of Post’s commitment to  
 22 goodness, we don’t use high-fructose corn syrup in Post Raisin Bran – or any of our  
 23 products.” Below that Post asked “Have you ever wondered: How is Raisin Bran  
 24 Naturally Delicious?,” answering, “Post Raisin Bran has hundreds of 100% Sun-  
 25 Maid® California Raisins in every box, and is made with whole grain wheat and wheat  
 26 bran for delicious nutrition. It provides 23g of whole grain (per serving), provides 13  
 27 essential vitamins and minerals, and 32% of your Daily Value for fiber (8g per  
 28 serving).”



e. **Post Waffle Crisp:** Post furthered its health and wellness messaging about *Post Waffle Crisp* online, as well. For example, the webpage for *Post Waffle Crisp* stated that “Waffle Crisp also provides 10 essential vitamins and minerals in every serving.” The “Nutrition” link led to a claim that “Each serving provides essential nutrients that make eating waffle crisp just a little bit sweeter,” and asked “Did You Know? Waffle Crisp has: Low in saturated fat and cholesterol-free • 10 essential vitamins and minerals • Excellent source of six B vitamins • Good source of iron and zinc.”





1 **C. Post Made Misleading Public Statements Concerning High-Sugar Cereals**

2 271. Post has also periodically issued press releases furthering its misleading health  
3 and wellness messaging of its cereals.

4 272. For example, Post issued a press release on January 17, 2013 titled “New Post  
5 Great Grains Protein Blend Cereal Aims to Boost Americans’ Metabolisms in 2013,”  
6 claiming that the “*Combination Of Protein, Whole Grain And Fiber Helps Increase*  
7 *Metabolic Rate.*” Post further claims that “Americans’ top resolution for 2013 is to lose  
8 weight. Post Foods, LLC, is doing their part to help these goals come to fruition with the  
9 introduction of the new Great Grains Protein Blend cereal, which helps support a healthy  
10 metabolism.” The press release continues to mislead consumers into thinking this high-sugar  
11 cereal is “nutritious” and “wholesome” and “heart healthy.”

12 273. On February 5, 2014, Post issued another press release in which it claimed that,  
13 “All Great Grains cereals are made with less processed grains for more wholesome nutrition  
14 in every bowl. Every recipe has at least 30g of whole grains per serving and is a heart healthy  
15 way to start the day.”

16 **D. The Foregoing Behaviors are Part of Post’s Longstanding Policy, Practice, and**  
17 **Strategy of Marketing its High-Sugar Cereals as Healthy in Order to Increase**  
18 **Sales and Profit**

19 274. The practices complained of herein, while specific to certain cereal lines, cereal  
20 flavors or varieties, and certain packaging claims, are exemplary of, and consistent with,  
21 Post’s longtime practice of intentionally and strategically marketing high-sugar cereals with  
22 health and wellness claims that both deceptively suggest the products are healthy, and  
23 deceptively omit the dangers of consuming the products.

24 275. These practices have been consistent notwithstanding Post’s occasional  
25 discontinuation or introduction of new products or lines of cereal, reformulation of products,  
26 or labeling or packaging changes.

27 276. This strategy is based on sophisticated consumer marketing research, and has  
28 been undertaken by Post with the purpose of increasing the prices, sales, and market share of

1 its cereals.

2 277. Unless enjoined from using in the marketing of high-sugar cereals the health and  
3 wellness marketing statements, representations, strategies, and tactics complained of herein,  
4 Post will continue to employ this strategy, as the consumer preference for healthier-seeming  
5 foods is strong.

6 278. In fact, Nielsen's 2015 Global Health & Wellness Survey found "88% of those  
7 polled are willing to pay more for healthier foods."<sup>94</sup>

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

11 279. The serving size for Post's cereals is generally either 1 cup or, less frequently,  
12 3/4 cup. Depending on the type of cereal, this generally means either around 30g or 50g per  
13 serving.

14 280. In 2014, the FDA analyzed food consumption data between 2003 and 2008, from  
15 the National Health and Nutrition Examination Survey (NHANES, discussed previously  
16 above), finding that at least 10% of Americans eat at one sitting, 2 to 2.6 times the amount of  
17 cereal as the labeled serving size. Federal regulations thus provide that the reference amount  
18 customarily consumed (RACC) for cereal is 110 grams. 21 C.F.R. § 101.12(b).

19 281. A study conducted by cereal giant General Mills found that children and  
20 adolescents 6 to 18 years old typically eat about twice as much cereal in a single meal  
21 compared to the suggested serving size.

22 282. Another study, by Yale University's Rudd Center for Food Policy and Obesity,  
23 found that children 5 to 12 years old ate an average of 35 grams of low-sugar cereals, but an  
24  
25

---

26  
27 <sup>94</sup> Nancy Gagliardi, Forbes, *Consumers Want Healthy Foods--And Will Pay More For Them*,  
28 (Feb. 18, 2015) (citing Neilson, *We are what we eat, Healthy eating trends around the world*,  
at 11 (Jan. 2015)).

1 average of 61 grams of high-sugar cereals.<sup>95</sup>

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

5 284. For example, doubling a serving of most Post cereals would cause men, women,  
6 and children all to exceed their AHA-recommended maximum daily sugar intake in just the  
7 single breakfast serving—in some cases providing *more than three times* the daily maximum.

8 285. For this reason, the Post high-sugar cereals are especially dangerous to the health  
9 of those who regularly consume them.

10 **PLAINTIFFS' PURCHASES, RELIANCE, AND INJURY**

11 **A. Plaintiff Debbie Krommenhock**

12 286. Over the past approximately two years, plaintiff Debbie Krommenhock  
13 purchased the following Post cereals.

14 a. *Post Honey Bunches of Oats Cereal – With Almonds*

15 b. *Post Raisin Bran*

16 287. Ms. Krommenhock purchased the foregoing Post cereals at either the Lucky's  
17 located at 21001 San Ramon Valley Boulevard, in San Ramon, California 94583, or the Wal-  
18 Mart located at 9100 Alcosta Boulevard, in San Ramon, California 94583.

19 288. As best she can recall, Ms. Krommenhock purchased *Post Honey Bunches of*  
20 *Oats – With Almonds* multiple times, beginning approximately two years ago, with her most  
21 recent purchase in approximately July 2016, purchasing the product approximately a few  
22 times per year.

23 289. As best she can recall, Ms. Krommenhock purchased *Post Raisin Bran* on a few  
24 occasions, with the last time in or about summer 2015.

25 290. For each Post cereal purchased, Ms. Krommenhock read and decided to  
26

27 \_\_\_\_\_  
28 <sup>95</sup> Jennifer L. Harris, et al., "Effects of Serving High-Sugar Cereals on Children's Breakfast-  
Eating Behavior," *Pediatrics*, Vol. 127, Issue 1 (Jan. 2011).

1 purchase the product in substantial part based upon Post’s health and wellness labeling  
2 statements discussed herein and set forth above with respect to each cereal variety, which  
3 statements—individually, and especially in the context of the packaging as a whole—made  
4 the products seem like healthy food choices to Ms. Krommenhock.

5 \* \* \*

6 291. When purchasing the Post cereals, Ms. Krommenhock was seeking products that  
7 were healthy to consume, that is, of which consumption would not increase her risk of CHD,  
8 stroke, and other morbidity.

9 292. The health and wellness representations on the Post cereals’ labeling, however,  
10 was misleading, and had the capacity, tendency, and likelihood to confuse or confound Ms.  
11 Krommenhock and other consumers acting reasonably (including the putative Class) because,  
12 as described in detail herein, the products are not healthy but instead their consumption  
13 increases the risk of CHD, stroke, and other morbidity.

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

20 294. Ms. Krommenhock acted reasonably in relying on Post’s health and wellness  
21 marketing, which Post intentionally placed on the products’ labels with the intent to induce  
22 average consumers into purchasing the products.

23 295. Ms. Krommenhock would not have purchased Post cereals if she knew that their  
24 labeling claims were false and misleading in that the products were not as healthy as  
25 represented.

26 296. The Post cereals cost more than similar products without misleading labeling,  
27 and would have cost less absent the misleading health and wellness claims. If Post were  
28 enjoined from making the misleading claims, the market demand and price for its cereals

1 would drop, as it has been artificially and fraudulently inflated due to Post's use of deceptive  
2 health and wellness labeling.

3 297. Ms. Krommenhock paid more for the Post cereals, and would only have been  
4 willing to pay less, or unwilling to purchase them at all, absent the misleading labeling  
5 statements complained of herein.

6 298. For these reasons, the Post cereals were worth less than what Ms. Krommenhock  
7 paid for them, and may have been worth nothing at all.

8 299. Instead of receiving products that had actual healthful qualities, the products Ms.  
9 Krommenhock received were not healthy, but rather their consumption causes increased risk  
10 of CHD, stroke, and other morbidity.

11 300. Ms. Krommenhock lost money as a result of Post's deceptive claims and  
12 practices in that she did not receive what she paid for when purchasing the Post cereals.

13 301. Ms. Krommenhock detrimentally altered her position and suffered damages in  
14 an amount equal to the amount she paid for the products.

15 302. As a result of Post's practices, Ms. Krommenhock has suffered bodily injury in  
16 the form of increased risk of CHD, stroke, and other morbidity.

17 **B. Plaintiff Stephen Hadley**

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

22 304. Over the past several years, Mr. Hadley has purchased Post cereals on multiple  
23 occasions, including Post Great Grains cereals, Post Honey Bunches of Oats cereals, and  
24 various Post single cereals.

25 305. ***Post Great Grains Cereals.*** Over the past several years, Mr. Hadley has  
26 purchased the following varieties of *Post Select/Great Grains* cereals:

- 27 a. *Post Great Grains Cranberry Almond Crunch*
- 28 b. *Post Great Grains Banana Nut Crunch*

1 c. *Post Great Grains Raisins, Dates & Pecans*

2 d. *Post Great Grains Crunchy Pecans*

3 306. Mr. Hadley believes he may also have purchased *Post Great Grains Blueberry*  
4 *Pomegranate*, and *Post Great Grains Protein Blend: Cinnamon Hazelnut* cereals.

5 307. To the best of his recollection, Mr. Hadley has been purchasing *Post Great*  
6 *Grains* cereals since early 2012 (including in their earlier incarnation as *Post Selects* or *Post*  
7 *Selects/Great Grains*). Given plaintiff's habits, he believes he purchased one variety or  
8 another with a frequency of approximately once every couple of months. Plaintiff believes he  
9 purchased *Post Great Grains* cereals from locations including: (a) the Nob Hill Foods located  
10 at 900 Lighthouse Avenue, in Monterey, California 93940, (b) the Trader Joe's located at 570  
11 Munras Avenue, in Monterey, California (c) the Safeway located at 815 Canyon Del Rey  
12 Boulevard, in Del Rey Oaks, California 93940, (d) the Grocery Outlet located at 1523  
13 Fremont Boulevard, in Seaside, California 93955, (e) the Wal-Mart located at 150 Beach  
14 Road, in Marina, California 93933, and (f) the Target located at 2040 California Avenue, in  
15 Sand City, California 93955. Mr. Hadley believes he last purchased a *Post Great Grains*  
16 cereal in approximately April or May 2016.

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

22 309. ***Post Honey Bunches of Oats Cereals.*** Over the past several years, Mr. Hadley  
23 has purchased the following varieties of *Post Honey Bunches of Oats* cereals:

24 a. *Post Honey Bunches of Oats Cereal – Honey Roasted*

25 b. *Post Honey Bunches of Oats Cereal – With Almonds*

26 c. *Post Honey Bunches of Oats Cereal – Raisin Medley*

27 d. *Post Honey Bunches of Oats Cereal – With Pecan Bunches*

28 e. *Post Honey Bunches of Oats Cereal – With Vanilla Bunches*

1 f. *Post Honey Bunches of Oats Cereal – With Real Strawberries*

2 g. *Post Honey Bunches of Oats Cereal – Greek Honey Crunch*

3 310. Mr. Hadley believes he may also have purchased the *Apples & Cinnamon*  
4 *Bunches* variety of Honey Bunches of Oats cereal.

5 311. To the best of his recollection, Mr. Hadley has been purchasing *Post Honey*  
6 *Bunches of Oats* cereals since early 2012. Given plaintiff’s habits, he believes he purchased  
7 one variety or another with a frequency of approximately once every two weeks. Plaintiff  
8 believes he purchased *Post Honey Bunches of Oats* cereals from locations including: (a) the  
9 Safeway located at 815 Canyon Del Rey Boulevard, in Del Rey Oaks, California 93940, (b)  
10 the Wal-Mart located at 150 Beach Road, in Marina, California 93933, and (c) the Target  
11 located at 2040 California Avenue, in Sand City, California 93955. Plaintiff believes he last  
12 purchased a *Post Honey Bunches of Oats* cereal in July 2016.

13 312. For each *Post Honey Bunches of Oats* cereal purchased, Mr. Hadley read and  
14 decided to purchase the product in substantial part based upon Post’s health and wellness  
15 labeling statements discussed herein and set forth above with respect to each variety, which  
16 statements—individually, and especially in the context of the packaging as a whole—made  
17 the products seem like healthy food choices to Mr. Hadley.

18 313. ***Post Singles Cereals.*** Over the past several years, Mr. Hadley has purchased the  
19 following “single” varieties of Post cereals:

20 a. *Raisin Bran*

21 b. *Honey-Comb*

22 c. *Waffle Crisp*

23 314. To the best of his recollection, Mr. Hadley purchased *Post Raisin Bran* in or  
24 around the summer of 2014, from the Nob Hill Foods located at 900 Lighthouse Avenue, in  
25 Monterey, California 93940.

26 315. For each of the foregoing Post cereals purchased, Mr. Hadley read and decided  
27 to purchase the product in substantial part based upon Post’s health and wellness labeling  
28 statements discussed herein and set forth above with respect to each variety, which

1 statements—individually, and especially in the context of the packaging as a whole—made  
2 the products seem like healthy food choices to Mr. Hadley.

3 \* \* \*

4 316. When purchasing the Post cereals, Mr. Hadley was seeking products that were  
5 healthy to consume, that is, whose consumption would not increase his risk of CHD, stroke,  
6 and other morbidity.

7 317. The health and wellness representations on the Post cereals’ labeling, however,  
8 was misleading, and had the capacity, tendency, and likelihood to confuse or confound Mr.  
9 Hadley and other consumers acting reasonably (including the putative Class) because, as  
10 described in detail herein, the products are not healthy but instead their consumption increases  
11 the risk of CHD, stroke, and other morbidity.

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

18 319. Mr. Hadley acted reasonably in relying on Post’s health and wellness marketing,  
19 which Post intentionally placed on the products’ labels with the intent to induce average  
20 consumers into purchasing the products.

21 320. Mr. Hadley would not have purchased Post cereals if he knew that their labeling  
22 claims were false and misleading in that the products were not as healthy as represented.

23 321. The Post cereals cost more than similar products without misleading labeling,  
24 and would have cost less absent the misleading health and wellness claims. If Post were  
25 enjoined from making the misleading claims, the market demand and price for its cereals  
26 would drop, as it has been artificially and fraudulently inflated due to Post’s use of deceptive  
27 health and wellness labeling.

28 322. Mr. Hadley paid more for the Post cereals, and would only have been willing to



1 pay less, or unwilling to purchase them at all, absent the misleading labeling statements  
2 complained of herein.

3 323. For these reasons, the Post cereals were worth less than what Mr. Hadley paid  
4 for them, and may have been worth nothing at all.

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

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

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

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

14 **CLASS ACTION ALLEGATIONS**

15 328. Pursuant to Fed. R. Civ. P. 23, Plaintiffs represent the Class certified by the  
16 Court on March 9, 2020. *See* Dkt. Nos. 228, 253 (decertifying certain subclasses).

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

21 330. Questions of law and fact common to plaintiffs and the class (Fed. R. Civ. P.  
22 23(a)(2) include, without limitation:

- 23 a. Whether certain Post cereals contain sufficient added sugar to contribute  
24 substantially to the excessive consumption of added sugar;
- 25 b. Whether the excessive consumption of added sugar presents significant  
26 health risks;
- 27 c. Whether, if the former questions of fact are answered in the affirmative,  
28 this renders misleading to the reasonable consumer Post's use of health  
and wellness claims on the packaging of high-sugar Post cereals;

- d. Whether the challenged Post health and wellness claims were material;
- e. Whether Post made any statement it knew or should have known was false or misleading;
- f. Whether Post maintained a longstanding marketing policy, practice, and strategy of selling high-sugar cereals with health and wellness claims;
- g. Whether Post's practices were immoral, unethical, unscrupulous, or substantially injurious to consumers;
- h. Whether the utility of any of Post's practices, if any, outweighed the gravity of the harm to its victims;
- i. Whether Post's conduct violated public policy, including as declared by specific constitutional, statutory or regulatory provisions;
- j. Whether the consumer injury caused by Post's conduct was substantial, not outweighed by benefits to consumers or competition, and not one consumers themselves could reasonably have avoided;
- k. Whether Post's conduct or any of its acts or practices violated the California False Advertising Law, Cal. Bus. & Prof. Code §§ 17500 *et seq.*, the California Consumers Legal Remedies Act, Cal. Civ. Code §§ 1750 *et seq.*, the Federal Food, Drug, and Cosmetic Act, 28 U.S.C. §§ 301 *et seq.*, and its implementing regulations, 21 C.F.R. §§ 101 *et seq.*, the California Sherman Food, Drug, and Cosmetic Law, Cal. Health & Safety Code §§ 109875, *et seq.*, or any other regulation, statute, or law;
- l. Whether Post's policies, acts, and practices with respect to the Post high-sugar cereals were designed to, and did result in the purchase and use of the products by the class members primarily for personal, family, or household purposes;
- m. Whether Post represented that Post high-sugar cereals have characteristics, uses, or benefits which they do not have, within the meaning of Cal. Civ. Code § 1770(a)(5);
- n. Whether Post represented Post high-sugar cereals are of a particular standard, quality, or grade, when they were really of another, within the meaning of Cal. Civ. Code § 1770(a)(7);
- o. Whether Post advertised Post high-sugar cereals with the intent not to sell them as advertised, within the meaning of Cal. Civ. Code § 1770(a)(9);
- p. Whether Post represented that Post high-sugar cereals have been supplied

1 in accordance with previous representations when they have not, within  
2 the meaning of Cal. Civ. Code § 1770(a)(16);

- 3 q. Whether through the challenged labels and advertising, Post made  
4 affirmations of fact or promises, or descriptions of the goods;
- 5 r. Whether Post’s affirmations of fact or promises, or descriptions of the  
6 goods became part of the basis of the bargain for the Class’s purchases;
- 7 s. Whether Post failed to provide the goods in conformation with its  
8 affirmations of fact, promises, and descriptions of the goods;
- 9 t. The proper equitable and injunctive relief;
- 10 u. The proper amount of restitution or disgorgement; and
- 11 v. The proper amount of reasonable litigation expenses and attorneys’ fees.

12 331. Plaintiffs’ claims are typical of class members’ claims in that they are based on  
13 the same underlying facts, events, and circumstances relating to Post’s conduct. Fed. R. Civ.  
14 P. 23(a)(3).

15 332. Plaintiffs will fairly and adequately represent and protect the interests of the  
16 class, have no interests incompatible with the interests of the class, and have retained counsel  
17 competent and experienced in class action, consumer protection, and false advertising  
18 litigation, including within the food industry.

19 333. Class treatment is superior to other options for resolution of the controversy  
20 because the relief sought for each class member is small such that, absent representative  
21 litigation, it would be infeasible for class members to redress the wrongs done to them.

22 334. Questions of law and fact common to the class predominate over any questions  
23 affecting only individual class members.

24 335. As a result of the foregoing, class treatment is appropriate under Fed. R. Civ. P.  
25 23(a), (b)(2), and (b)(3), and may be appropriate for certification “with respect to particular  
26 issues” under Rule 23(b)(4).

27 ///

28 ///

///

**CAUSES OF ACTION**

**FIRST CAUSE OF ACTION**

**VIOLATIONS OF THE CALIFORNIA FALSE ADVERTISING LAW,  
CAL. BUS. & PROF. CODE §§ 17500 *ET SEQ.***

336. Plaintiffs reallege and incorporate the allegations elsewhere in the Complaint as if fully set forth herein.

337. The FAL prohibits any statement in connection with the sale of goods “which is untrue or misleading,” Cal. Bus. & Prof. Code § 17500.

338. Post’s use of health and wellness advertising for Post Cereal products that contain substantial amounts of added sugar is deceptive in light of the strong evidence that excessive sugar consumption greatly increases risk of chronic disease.

339. Post knew, or reasonably should have known, that the challenged health and wellness claims were untrue or misleading.

340. Because the Court has broad discretion to award restitution under the FAL and could, when assessing restitution under the FAL, apply a standard different than that applied to assessing damages under the CLRA or commercial code (for Plaintiffs’ breach of warranty claims), and restitution is not limited to returning to Plaintiffs and class members monies in which they have an interest, but more broadly serves to deter the offender and others from future violations, the legal remedies available under the CLRA and commercial code are more limited than the equitable remedies available under the FAL, and are therefore inadequate. Moreover, Plaintiffs challenge more labeling statements as violating the FAL than they do as breaching Post’s warranties, such that their legal remedies under the commercial code are inadequate.

**SECOND CAUSE OF ACTION**

**VIOLATIONS OF THE CALIFORNIA CONSUMERS LEGAL REMEDIES ACT,  
CAL. CIV. CODE §§ 1750 *ET SEQ.***

341. Plaintiffs reallege and incorporate the allegations elsewhere in the Complaint as if fully set forth herein.

1 342. The CLRA prohibits deceptive practices in connection with the conduct of a  
2 business that provides goods, property, or services primarily for personal, family, or  
3 household purposes.

4 343. Post’s policies, acts, and practices were designed to, and did, result in the  
5 purchase and use of the products primarily for personal, family, or household purposes, and  
6 violated and continue to violate the following sections of the CLRA:

- 7 a. § 1770(a)(5): representing that goods have characteristics, uses,  
8 or benefits which they do not have;
- 9 b. § 1770(a)(7): representing that goods are of a particular standard,  
10 quality, or grade if they are of another;
- 11 c. § 1770(a)(9): advertising goods with intent not to sell them as  
12 advertised; and
- 13 d. § 1770(a)(16): representing the subject of a transaction has been  
14 supplied in accordance with a previous representation when it  
has not.

15 344. In compliance with Cal. Civ. Code § 1782, plaintiffs sent written notice to Post  
16 of their claims, but Post has failed, after 30 days, to satisfy plaintiffs’ demand or to rectify  
17 the behavior. Accordingly, plaintiffs, on behalf of themselves and the class, seek injunctive  
18 relief, restitution, statutory damages, compensatory damages, punitive damages, and  
19 reasonable attorneys’ fees and costs.

20 345. In compliance with Cal. Civ. Code § 1782(d), an affidavit of venue was filed  
21 concurrently with the original Complaint.

22 346. Because these claims are subject to a three-year statute of limitations, while  
23 Plaintiffs’ claims for restitution under the UCL are subject to a four-year statute of limitations,  
24 and because Plaintiffs’ claims under the UCL’s “unfair” and “unlawful” prongs are subject  
25 to different elements and standards, Plaintiffs’ legal remedies under the CLRA are inadequate  
26 to fully compensate Plaintiffs’ for all of Post’s challenged behavior.  
27  
28



**Unlawful**

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

- a. The False Advertising Law, Cal. Bus. & Prof. Code §§ 17500 *et seq.*;
- b. The Consumers Legal Remedies Act, Cal. Civ. Code §§ 1750 *et seq.*; and
- c. The Federal Food, Drug, and Cosmetic Act, 28 U.S.C. §§ 301 *et seq.*, and its implementing regulations, 21 C.F.R. §§ 101 *et seq.*; and
- d. The California Sherman Food, Drug, and Cosmetic Law, Cal. Health & Safety Code §§ 109875, *et seq.*

355. Because Plaintiffs’ claims under the “unlawful” prong of the UCL sweep more broadly than their claims under the FAL, CLRA, or UCL’s “fraudulent” prong, plaintiffs’ legal remedies are inadequate to fully compensate plaintiffs for all of Post’s challenged behavior.

**FOURTH CAUSE OF ACTION**

**BREACH OF EXPRESS WARRANTY, CAL. COM. CODE § 2313(1)**

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

357. Through the labels of high-sugar Post products bearing health and wellness claims, Post made affirmations of fact or promises, and made descriptions of goods, that formed part of the basis of the bargain, in that plaintiffs and the class purchased the products in reasonable reliance on those statements. Cal. Com. Code § 2313(1).

358. These affirmations and descriptions include, for example:

- a. *Great Grains Cranberry Almond Crunch*
  - “Less processed nutrition you can see”
  - “it’s good for you!”
  - “nutritious ingredients in every bite!”
  - “less processed whole grain cereal”

1           b.     Great Grains Banana Nut Crunch

- 2                     • “Less processed nutrition you can see”  
3                     • “it’s good for you!”  
4                     • “nutritious ingredients in every bite!”  
5                     • “less processed whole grain cereal”

6           c.     Great Grains Raisins, Dates & Pecans

- 7                     • “Less processed nutrition you can see”  
8                     • “it’s good for you!”  
9                     • “nutritious ingredients in every bite!”

10          d.     Great Grains Crunchy Pecans

- 11                    • “Less processed nutrition you can see”  
12                    • “it’s good for you!”  
13                    • “nutritious ingredients in every bite!”

14          e.     Great Grains Blueberry Pomegranate

- 15                    • “Less processed nutrition you can see”  
16                    • “it’s good for you!”  
17                    • “nutritious ingredients in every bite!”

18          f.     Great Grains Protein Blend: Honey, Oats & Seeds

- 19                    • “HELPS SUPPORT A HEALTHY METABOLISM”  
20                    • “it’s good for you!”  
21                    • “nutritious ingredients in every bite!”  
22                    • “Support a Healthy Metabolism”  
23                    • “less processed whole grain cereal”

24          g.     Great Grains Protein Blend: Cinnamon Hazelnut

- 25                    • “HELPS SUPPORT A HEALTHY METABOLISM”  
26                    • “nutritious ingredients in every bite!”  
27                    • “it’s good for you!”  
28                    • “less processed whole grain cereal”



- “Support a Healthy Metabolism”

h. Honey Bunches of Oats Cereal – Honey Roasted, With Almonds, Raisin Medley, With Pecan Bunches, With Cinnamon Bunches, With Vanilla Bunches, With Real Strawberries, Fruit Blends – Banana Blueberry, and Fruit Blends – Peach Raspberry

- “wholesome”

i. Honey Bunches of Oats Cereal – Tropical Blends – Mango Coconut

- “wholesome”

j. Raisin Bran

- “Healthy”
- “Nutritious”
- “Where nutritious and delicious live in harmony”

k. Honey-Comb

- “Nutritious”

359. Post breached its express warranties by selling products that do not meet the above affirmations and product descriptions because they are not healthy, but in fact detrimentally affect health, increasing risk of CHD, stroke, and other morbidity.

360. That breach actually and proximately caused injury in the form of the lost purchase price that plaintiffs and Class members paid for the high-sugar Post products bearing health and wellness claims.

361. Plaintiffs gave Post notice of the breach before filing or asserting the claims, but Post failed to remedy the breach.

362. As a result, plaintiffs seek, on behalf of themselves and other class members, actual damages arising as a result of Post’s breaches of express warranty.

363. Because Plaintiffs’ breach of express warranty claims concern only a subset of the statements plaintiffs challenge under the UCL and FAL, their legal remedies under the Commercial Code are inadequate to fully compensate Plaintiffs’ for all of Post’s challenged behavior.

**FIFTH CAUSE OF ACTION**  
**BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY,**  
**CAL. COM. CODE § 2314**

1  
2  
3  
4       364. Plaintiffs reallege and incorporate the allegations elsewhere in the Complaint as  
5 if set forth in full herein.

6       365. Post, through its acts and omissions set forth herein, in the sale, marketing and  
7 promotion of high-sugar Post products bearing health and wellness claims, made  
8 representations to plaintiffs and the Class that, among other things, the products are healthy.  
9 This specifically includes those statements set forth in paragraph 399(a)-(t) above. Plaintiffs  
10 and the Class bought high-sugar products bearing health and wellness claims manufactured,  
11 advertised, and sold by Post as described herein.

12       366. Post is a merchant with respect to the goods of this kind which were sold to  
13 plaintiffs and the class, and there was, in the sale to plaintiffs and other consumers, an implied  
14 warranty that those goods were merchantable.

15       367. However, Post breached that implied warranty in that Post high-sugar products  
16 bearing health and wellness claims are not healthy, as set forth in detail herein.

17       368. As an actual and proximate result of Post's conduct, plaintiffs and the class did  
18 not receive goods as impliedly warranted by Post to be merchantable in that they did not  
19 conform to promises and affirmations made on the container or label of the goods.

20       369. Plaintiffs gave Post notice of the breach before filing or asserting the claims, but  
21 Post failed to remedy the breach.

22       370. As a result, plaintiffs seek, on behalf of themselves and other class members,  
23 actual damages arising as a result of Post's breaches of implied warranty.

24       371. Because Plaintiffs' breach of implied warranty claims concern only a subset of  
25 the statements plaintiffs challenge under the UCL and FAL, their legal remedies under the  
26 Commercial Code are inadequate to fully compensate Plaintiffs' for all of Post's challenged  
27 behavior.  
28

**PRAYER FOR RELIEF**

1  
2 372. Wherefore, plaintiffs, on behalf of themselves, all others similarly situated, and  
3 the general public, pray for judgment against Post as to each and every cause of action, and  
4 the following remedies:

- 5
- 6 a. An Order enjoining Post from labeling, advertising, or packaging the Post  
7 high-sugar cereals identified herein with the challenged health and  
8 wellness statements identified herein;
  - 9 b. An Order compelling Post to conduct a corrective advertising campaign  
10 to inform the public that Post high-sugar cereals were deceptively  
11 marketed;
  - 12 c. An Order enjoining Post’s longstanding policy, practice, and strategy of  
13 marketing high-sugar cereals with misleading health and wellness claims;
  - 14 d. An Order requiring Post to pay restitution to restore funds that may have  
15 been acquired by means of any act or practice declared by this Court to be  
16 an unlawful, unfair, or fraudulent business act or practice, untrue or  
17 misleading advertising, or a violation of the UCL, FAL, or CLRA;
  - 18 e. An Order requiring Post to pay all statutory, compensatory, and punitive  
19 damages permitted under the causes of action alleged herein;
  - 20 f. An Order requiring Post to disgorge or return all monies, revenues, and  
21 profits obtained by means of any wrongful or unlawful act or practice;
  - 22 g. Pre- and post-judgment interest;
  - 23 h. Costs, expenses, and reasonable attorneys’ fees; and
  - 24 i. Any other and further relief the Court deems necessary, just, or proper.

**JURY DEMAND**

25 373. Plaintiffs hereby demand a trial by jury on all issues so triable.  
26  
27  
28

1 Dated: October 12, 2020

/s/ Jack Fitzgerald

2 **THE LAW OFFICE OF JACK FITZGERALD, PC**

JACK FITZGERALD

3 *jack@jackfitzgeraldlaw.com*

4 TREVOR M. FLYNN

*trevor@jackfitzgeraldlaw.com*

5 MELANIE PERSINGER

6 *melanie@jackfitzgeraldlaw.com*

7 Hillcrest Professional Building

3636 4th Ave., Ste. 202

8 San Diego, CA 92103

9 Phone: (619) 692-3840

Fax: (619) 353-0404

10 **JACKSON & FOSTER, LLC**

11 SIDNEY W. JACKSON, III

12 75 St. Michael Street

Mobile, Alabama 36602

13 Phone: (251) 433-6699

14 Fax: (251) 433-6127

15 ***Class Counsel***