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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

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

DEMAND FOR JURY TRIAL

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Pursuant to the Court's June 1, 2017 Order, and after meeting-and-conferring with defendant regarding specific challenges herein, plaintiffs Debbie Krommenhock and Stephen Hadley, on behalf of themselves, all others similarly situated, and the general public, by and through their undersigned counsel, hereby bring this action against Post Foods, LLC ("Post"), and for their Second Amended Complaint, allege the following upon their own knowledge, or where they lack personal knowledge, upon information and belief including the investigation of their counsel.

INTRODUCTION

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

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

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

THE PARTIES

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

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

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

JURISDICTION AND VENUE

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

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

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

FACTS

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

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

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

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

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

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

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

[2] *Id.*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1. The Body's Response to Glucose

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

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

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

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

[14] *Id.* at 38.

[15] *Id.* at 35.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2. The Body's Response to Fructose

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

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

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

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

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

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

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

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

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

fructose has no effect on ghrelin.

3. The Addiction Response

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

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

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

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

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

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

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

demonstrated in the below graphic.[25]

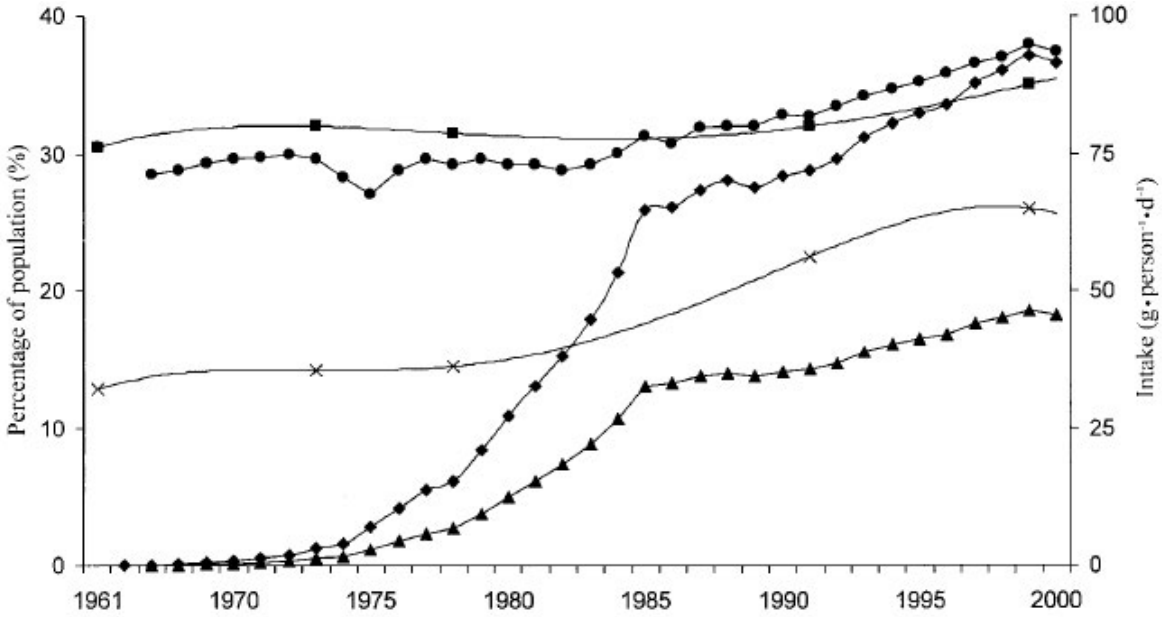

FIGURE 1. Estimated intakes of total fructose (●), free fructose (▲), and high-fructose corn syrup (HFCS, ♦) in relation to trends in the prevalence of overweight (■) and obesity (x) in the United States. Data from references 7 and 35.

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

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

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

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

resistance of the brain causes Alzheimer's disease. Insulin resistance of the kidney leads to chronic renal disease.

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

1. Excess Sugar Consumption Causes Metabolic Syndrome

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

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

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

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

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

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

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

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

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

concentrations of circulating triacylglycerols, low concentrations of HDLs, and high concentrations of small, dense LDLs."[27]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2. Excess Sugar Consumption Causes Type 2 Diabetes

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

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

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

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

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

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

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

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

[37] *Id.* at 2481.

[38] *Id.*

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

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

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

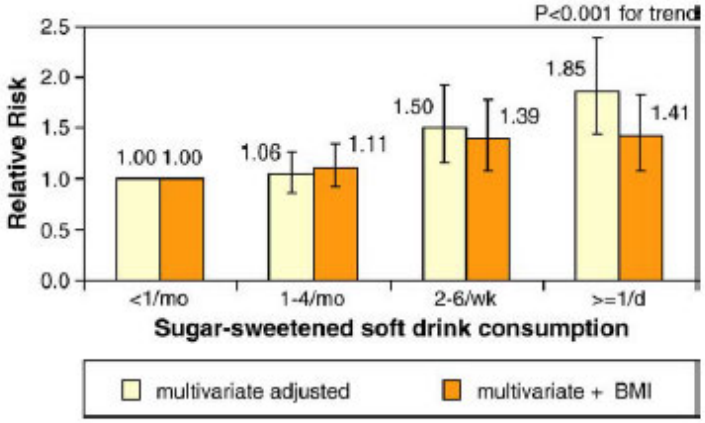

Fig. 4. Multivariate relative risks (RRs) of type 2 diabetes according to sugar-sweetened soft drink consumption in the Nurses' Health Study II 1991–1999 (Multivariate RRs were adjusted for age, alcohol (0, 0.1–4.9, 5.0–9.9, 10+ g/d), physical activity (quintiles), family history of diabetes, smoking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

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

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

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

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

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

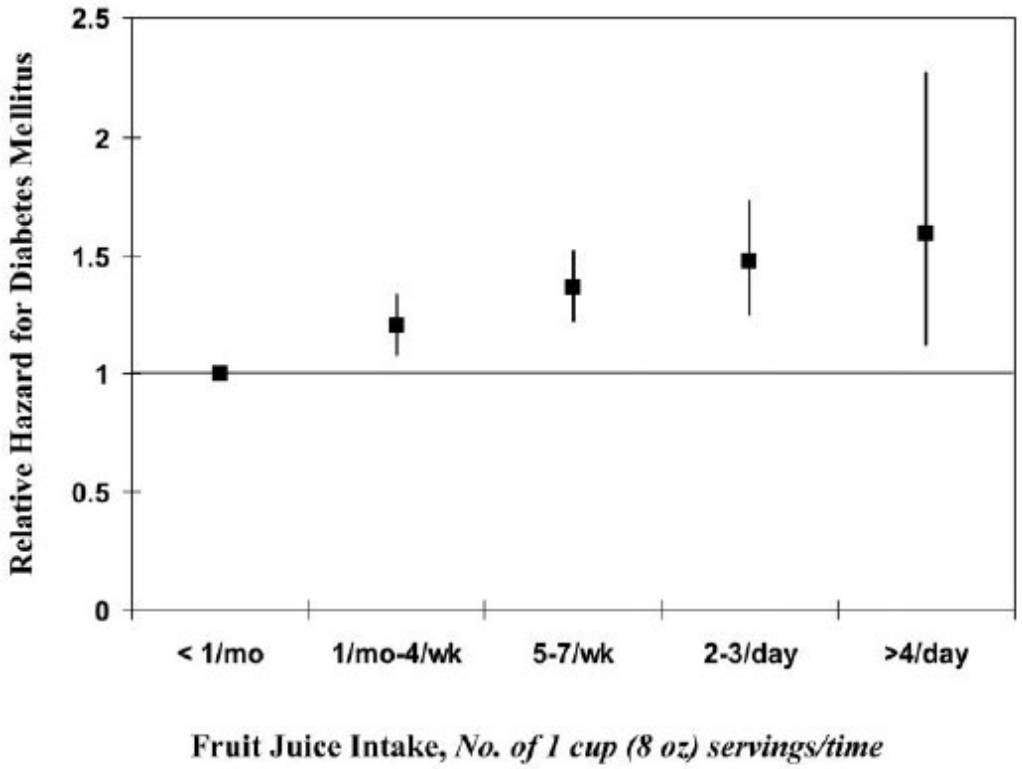

Figure 1—*Multivariate-adjusted relative hazard of diabetes by category of cumulatively updated fruit juice intake. Values were adjusted for cumulatively updated BMI, physical activity, family history of diabetes, postmenopausal hormone use, alcohol use, smoking, and total energy intake. For an increase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

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

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

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

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

3. Excess Sugar Consumption Causes Cardiovascular Disease

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

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

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

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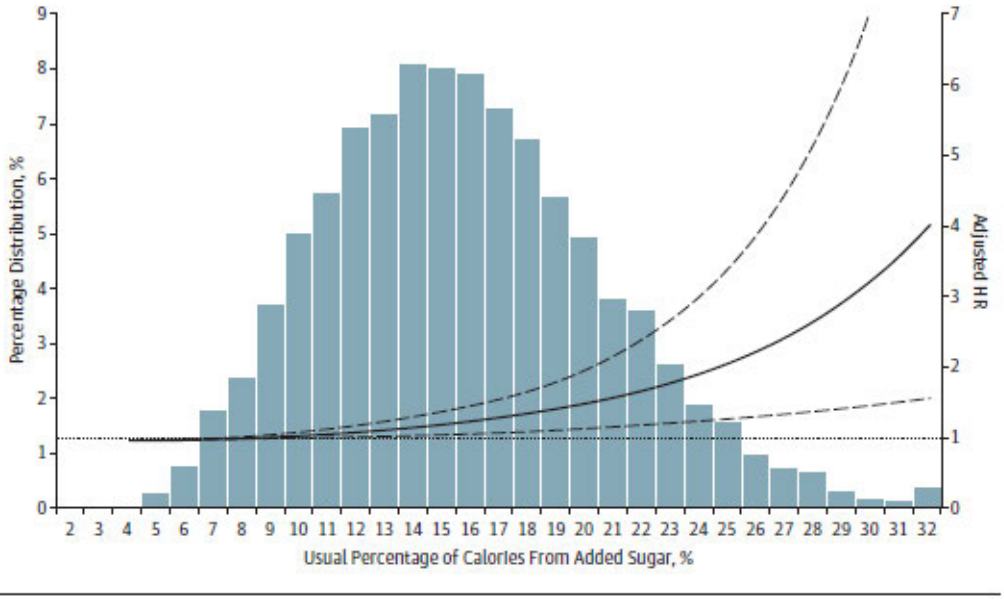
[45] Basu, S., et al., "The Relationship of Sugar to Population-Level Diabetes Prevelance: An Econometric Analysis of Repeated Cross-Sectional Data," *PLOS Online*, Vol. 8, Issue 2 (February 27, 2013).

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

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

usual percentage of calories from added sugar,"[48] 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



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

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

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

[48] *Id.*

[49] *Id.* at E6.

[50] *Id.* at E8.

with infrequent consumers.[51]

4. Excess Sugar Consumption Causes Liver Disease

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

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

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

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

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

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

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

5. Excess Sugar Consumption Causes Obesity

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

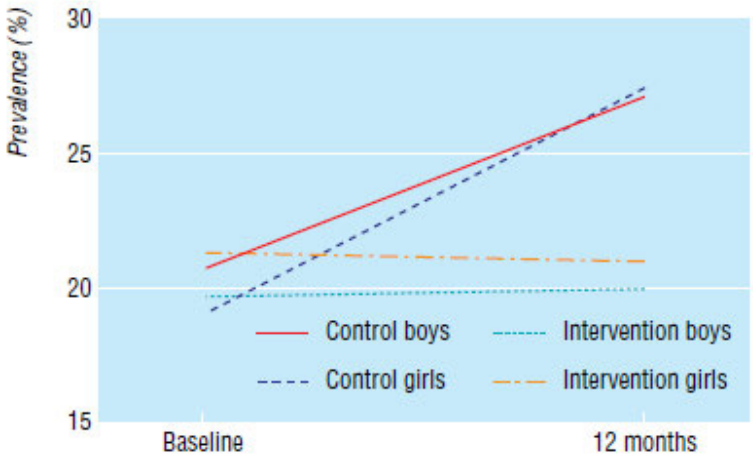

Fig 2 Mean change in prevalence of overweight and obese children from baseline to follow up at 12 months according to clusters

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

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

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

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

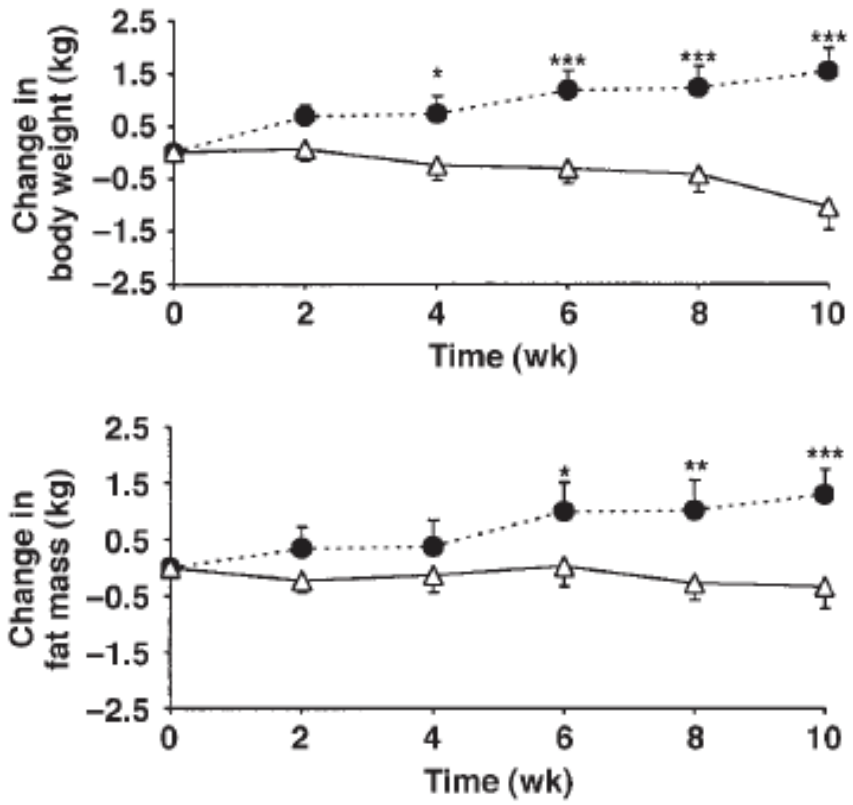

FIGURE 2. Mean (± SEM) changes in body weight, fat mass, and fat-free mass during an intervention in which overweight subjects consumed supplements containing either sucrose (●; $n = 21$) or artificial sweeteners (△; $n = 20$) daily for 10 wk. The diet × time interactions were significant for changes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

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

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

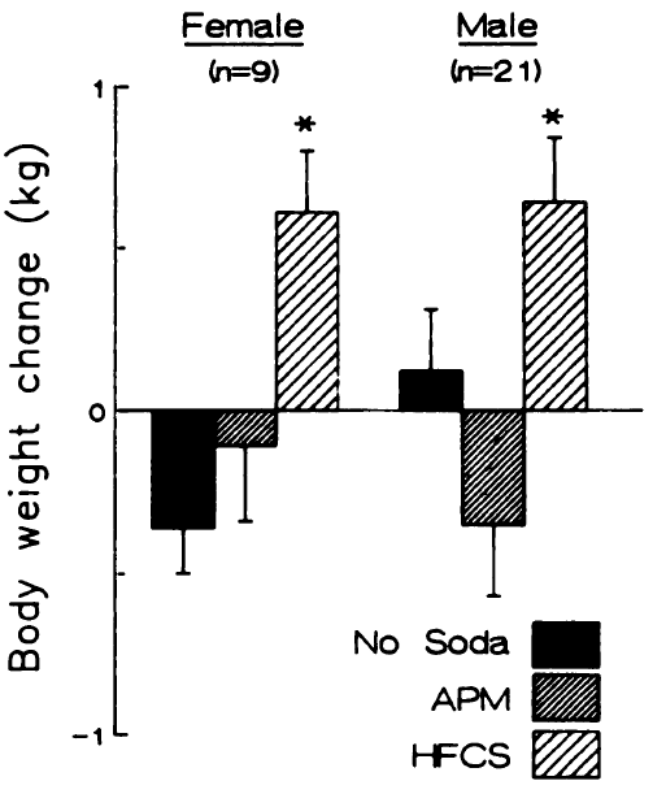

FIG 1. Changes in body weight during 3-wk periods when subjects drank 1150 g/d of soda sweetened with aspartame (APM), an equal weight of soda sweetened with high-fructose corn syrup (HFCS), or had no experimental manipulation (no soda). *$p < 0.05$ relative to weight gain in no-soda period.

6. Excess Sugar Consumption Causes Inflammation

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

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

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

concentrations decreased by 16%, 2%, and 26% respectively.[65]

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

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

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

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

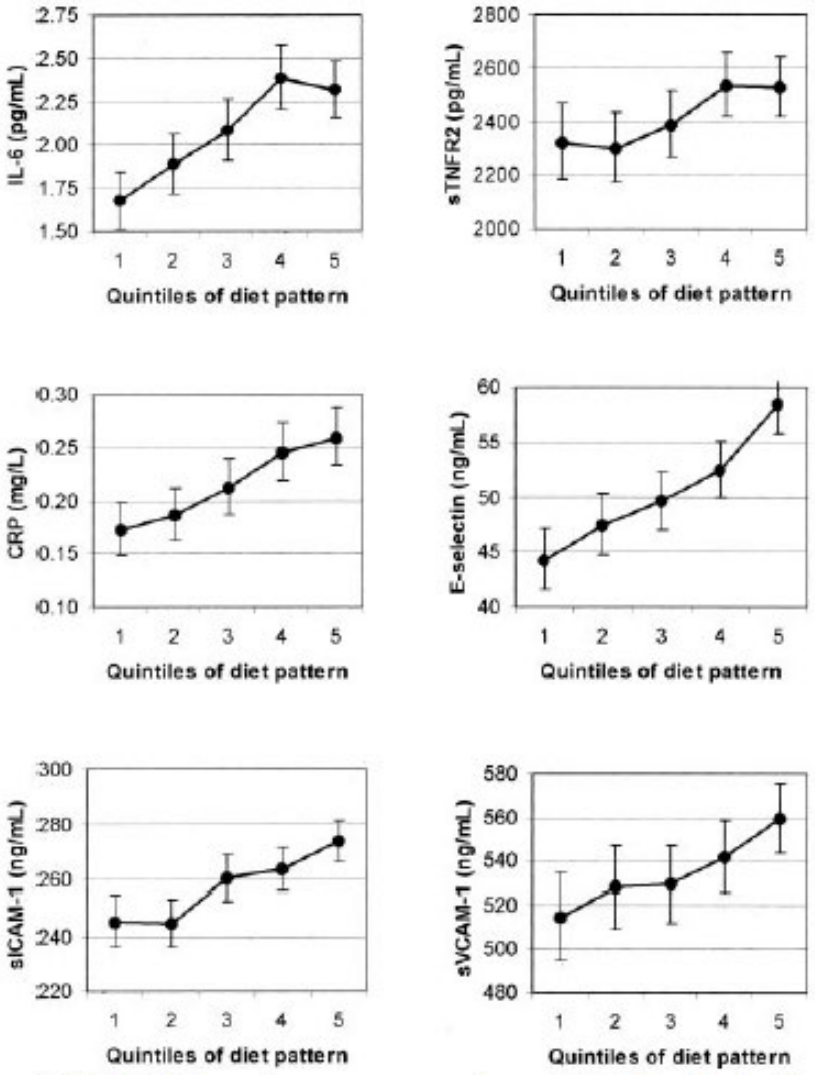

FIGURE 1. Geometric mean concentrations and 95% CIs of interleukin 6 (IL-6), soluble tumor necrosis factor α receptor 2 (sTNFR2), C-reactive protein (CRP), E-selectin, soluble intracellular cell adhesion molecule 1 (sICAM-1), and soluble vascular cell adhesion molecule 1 (sVCAM-1) by quintiles of diet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

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

84. Fructose facilitates the biochemical formation of triacylglycerols more efficiently than does glucose.[67] This is because fructose metabolism in the liver converts the

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

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

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

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

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

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

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

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

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

89. 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 25% greater risk of hypertriglyceridemia, and 32% greater risk of low HDL cholesterol than those who consumed less than 1 soft drink per day.[71]

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

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

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

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

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

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

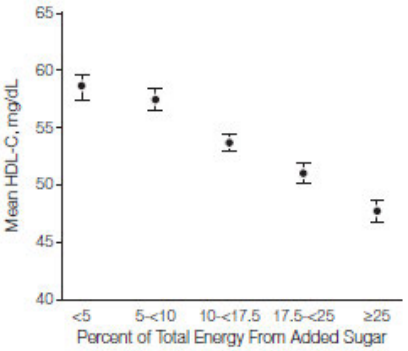


Figure 2. Multivariable-Adjusted Geometric Mean Triglyceride Levels by Level of Added Sugar Intake Among US Adults, NHANES 1999-2006

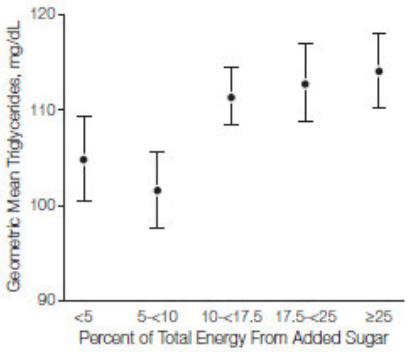
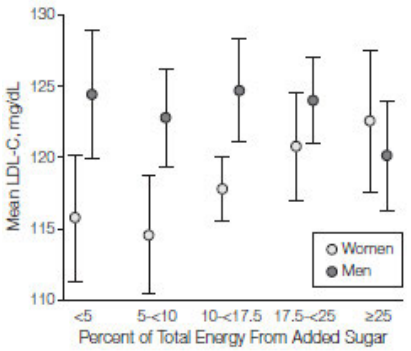


Figure 3. Multivariable-Adjusted Mean LDL-C Levels by Level of Added Sugar Intake Among US Men and Women, NHANES 1999-2006



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

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

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

8. Excess Sugar Consumption is Associated with Hypertension

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

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

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

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

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

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

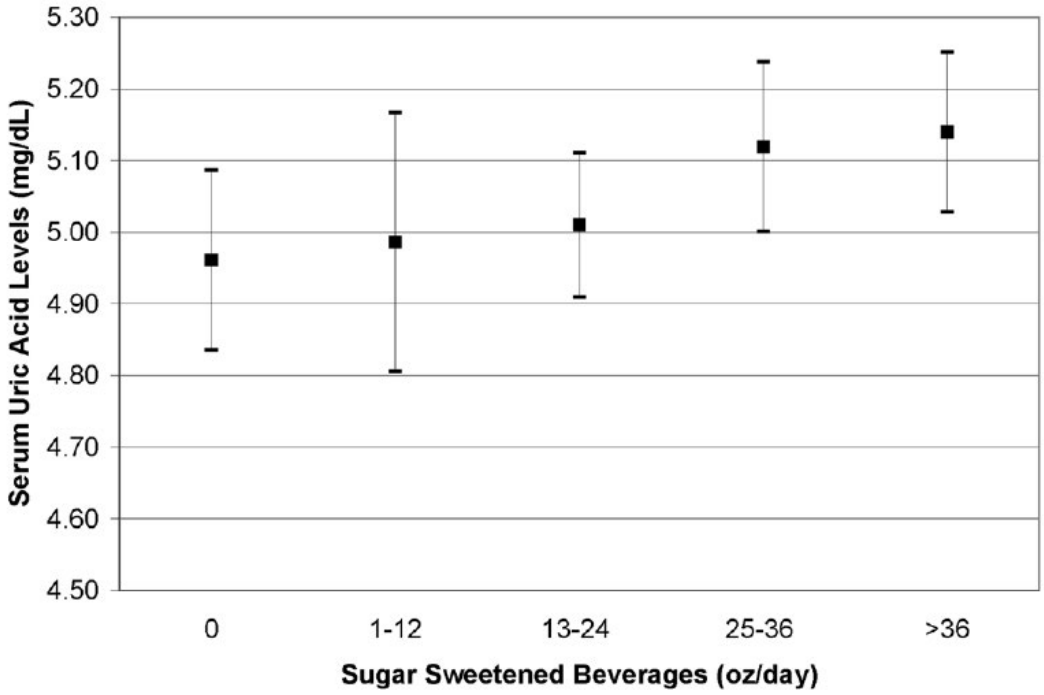

Figure 1.
Sample mean of serum uric acid with 95% confidence intervals by categories of sugar sweetened beverage consumption adjusted for age, race/ethnicity, sex, total calories, BMI z-score, alcohol, smoking, dietary fiber intake, diet beverage consumption, and milk consumption. *P* for trend = 0.01

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

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

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

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

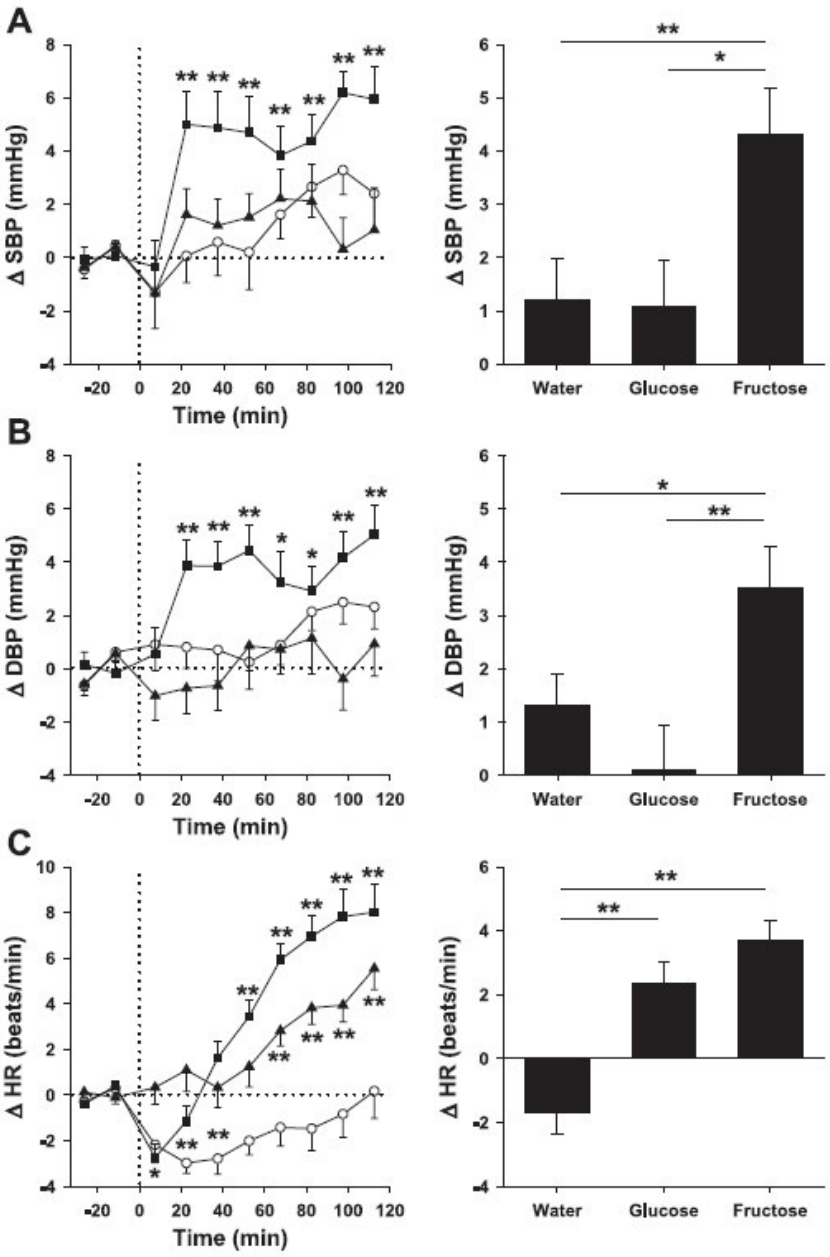

Fig. 1. Time course of the systolic blood pressure (SBP; *A*), diastolic blood pressure (DBP; *B*), and heart rate (HR; *C*) changes (*left*) and mean responses (*right*) to drinking water (○), glucose (▲), and fructose (■). $*P < 0.05$ and $**P < 0.01$, statistically significant differences over time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

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

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

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

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

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

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

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

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

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

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

10. Excess Sugar Consumption is Linked to Some Cancers

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

POST'S MARKETING & SALE OF HIGH-SUGAR CEREALS

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

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

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

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

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

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

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

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

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

118. This policy and practice is apparent in Post's consistent use of certain words and phrases across many cereals, flavors, varieties, and packaging. For example, this Complaint details misleading statements made in the labeling of 34 different Post cereals. Among those statements:

a. The word "nutrition" or "nutritious" appears more than 35 times, the word "wholesome" appears more than 30 times, and the word "healthy" appears approximately 20 times;

b. The phrase "no high fructose corn syrup" appears more than 20 times;

c. The phrase "less processed" appears more than 15 times;

d. The phrases "good for you," "good for your health," or "good for your family" appear approximately 15 times.

e. The word "balance" or "balanced" appears more than 10 times.

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

120. In fact, plaintiffs have enjoyed Post's products in the past. If they could be assured through prospective injunctive relief that Post's cereals are properly labeled (i.e., that

they do not contain excess added sugar if they bear health and wellness labeling), they would consider purchasing Post cereals bearing such claims in the future.

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

a. Post Great Grains Cereals
   (i.) Blueberry Morning
   (ii.) Cranberry Almond Crunch
   (iii.) Banana Nut Crunch
   (iv.) Raisins, Dates & Pecans
   (v.) Crunchy Pecans
   (vi.) Blueberry Pomegranate
   (vii.) Protein Blend: Honey, Oats & Seeds
   (viii.) Protein Blend: Cinnamon Hazelnut

b. Post Honey Bunches of Oats Cereals
   (i.) Honey Roasted
   (ii.) With Almonds
   (iii.) Raisin Medley
   (iv.) With Pecan Bunches
   (v.) With Cinnamon Bunches
   (vi.) With Vanilla Bunches
   (vii.) With Apples & Cinnamon Bunches
   (viii.) With Real Strawberries
   (ix.) Fruit Blends – Banana Blueberry
   (x.) Fruit Blends – Peach Raspberry
   (xi.) Tropical Blends – Mango Coconut
   (xii.) Whole Grain Honey Crunch
   (xiii.) Whole Grain with Vanilla Bunches
   (xiv.) Greek Honey Crunch
   (xv.) Greek Mixed Berry
   (xvi.) Honey Roasted Granola
   (xvii.) Raspberry Granola
   (xviii.) Cinnamon Granola
   (xix.) Protein Granola with Dark Chocolate

c. Post Shredded Wheat
   (i.) Honey Nut
   (ii.) Crunch!

d. Single-Variety Post Cereals

(i.) Raisin Bran
(ii.) Bran Flakes
(iii.) Alpha-Bits
(iv.) Honeycomb
(v.) Waffle Crisp

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

Product	Total Sugar	Added Sugar
Great Grains Blueberry Morning	*16g*	*14g*
Great Grains Cranberry Almond Crunch	*12g*	*11g*
Great Grains Banana Nut Crunch	*10g*	*9g*
Great Grains Raisins, Dates & Pecans	*13g*	*7g*
Great Grains Crunchy Pecans	8g	8g
Great Grains Blueberry Pomegranate	*13g*	*12g*
Great Grains Protein Blend: Honey, Oats & Seeds	9g	9g
Great Grains Protein Blend: Cinnamon Hazelnut	9g	9g
Honey Bunches of Oats Cereal – Honey Roasted	6g	6g
Honey Bunches of Oats Cereal – With Almonds	6g	6g
Honey Bunches of Oats Cereal – Raisin Medley	*14g*	*10g*
Honey Bunches of Oats Cereal – With Pecan Bunches	6g	6g
Honey Bunches of Oats Cereal – With Cinnamon Bunches	6g	6g
Honey Bunches of Oats Cereal – With Vanilla Bunches	12g	12g
Honey Bunches of Oats Cereal – With Apples & Cinnamon Bunches	*8g*	*6g*
Honey Bunches of Oats Cereal – With Real Strawberries	*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 – Whole Grain Honey Crunch	12g	12g

Product	Total Sugar	Added Sugar
Honey Bunches of Oats Cereal – Whole Grain with Vanilla Bunches	12g	12g
Honey Bunches of Oats Cereal – Greek Honey Crunch	13g	13g
Honey Bunches of Oats Cereal – Greek Mixed Berry	13g	13g
Honey Bunches of Oats Granola – Honey Roasted	12g	12g
Honey Bunches of Oats Granola – Raspberry	12g	12g
Honey Bunches of Oats Granola – Cinnamon	12g	12g
Honey Bunches of Oats Protein Granola with Dark Chocolate	13g	13g
Shredded Wheat Honey Nut	12g	12g
Shredded Wheat Crunch!	12g	12g
Raisin Bran	*19g*	*9g*
Bran Flakes	5g	5g
Alpha-Bits	6g	6g
Honey-Comb	10g	10g
Waffle Crisp	12g	12g
	Average =	**9.6g**

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 claims plaintiffs challenge as misleading;

b. the forms of added sugars used;

c. the 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 recommended daily added sugar intake of 38 grams for men (M), 25 grams for women (W), and12-15 grams for children (C).

A. Post Great Grains Cereals

124. Post sells a line of cereals under a "Great Grains" brand.

1. *Blueberry Morning*

125. Post introduced *Post Great Grains Blueberry Morning* cereal in around May to August 2016 (having rebranded a cereal previously referred to as *Post Selects Blueberry Morning*). The packaging of *Post Great Grains Blueberry Morning* cereal is pictured below.

126. The packaging of *Post Great Grains Blueberry Morning* 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. "nutritious Blueberries"

c. "Why less processed? Quite simply, because it's good for you!"

d. "We gently crack the whole wheat berry and add a mix of grains to 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. Whole Grains Council Stamp

2. *Cranberry Almond Crunch*

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

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

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

130. The packaging of *Post Great Grains Cranberry Almond Crunch* 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 Almonds"

c. "nutritious Cranberries"

d. "Why less processed? Quite simply because it's good for you!"

e. "We gently crack the whole wheat berry and add a mix of grains to 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

3. *Banana Nut Crunch*

131. The initial packaging of *Post Great Grains Banana Nut Crunch* is pictured below.

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

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

134. The packaging of *Post Great Grains Banana Nut Crunch* 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 Walnuts"

c. "wholesome Almonds"

d. "Why less processed? Quite simply, because it's good for you!"

e. "We gently crack the whole wheat berry and add a mix of grains to 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. "wholesome walnuts and almonds"

g. "It's whole foods from the field to your bowl, with whole grains, fiber and nutritious ingredients in every bite!"

h. Whole Grains Council Stamp

4. *Raisins, Dates & Pecans*

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

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

137. 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

5. *Crunchy Pecans*

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

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

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

141. 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

6. *Blueberry Pomegranate*

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

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

144. The packaging of *Post Great Grains Blueberry Pomegranate* 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. "nutritious Blueberries"

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

7. *Protein Blend: Honey, Oats & Seeds*

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

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

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

148. The packaging of *Post Great Grains Protein Blend: Honey, Oats & Seeds* 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 Pumpkin Seeds"

d. "sweetened with a kiss of honey"

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 seeds and balance them with our grains for a great taste that's irresistible."

g. "It's whole foods from the field to your bowl, with nutritious ingredients in every bite!"

h. "Support a Healthy Metabolism"

i. "The process of metabolism establishes the rate at which we burn our calories and, ultimately, how quickly we gain weight or how easily we lose it. Although some factors affecting metabolic rate, like age and genetics can't be changed, there are ways to maximize your metabolism." **Breakfast:** Eat breakfast. One important part of metabolism is how many calories you burn while at rest; did you know that eating breakfast to 'break the fast' can increase your metabolism by as much as 10%? Start your day with the less processed whole grain nutrition of Great Grains Protein Blend to help jumpstart your metabolism." **Protein:** Eat protein. Did you know that protein generally requires about 25% more energy 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. . . . Great Grains Blend can actually help enhance your metabolism!" [. . .] **Fiber:** Consume fiber. Diets rich in fiber help keep you fuller longer which is important for weight management. Great Grains Protein Blend can help

keep you satisfied with the staying power of . . . fiber."

j. Whole Grains Council Stamp

8. *Protein Blend: Cinnamon Hazelnut*

149. The initial packaging of *Post Great Grains Protein Blend: Cinnamon Hazelnut*, introduced in around September 2012, is pictured below.

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

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

152. 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 cinnamon"

h. "It's whole foods from the field to your bowl, with nutritious ingredients in every bite!"

i. "Support a Healthy Metabolism"

j. "The process of metabolism establishes the rate at which we burn our calories and, ultimately, how quickly we gain weight or how easily we lose it. Although some factors affecting metabolic rate, like age and genetics can't be changed, there are ways to maximize your metabolism." **Breakfast:** Eat breakfast. One important part of metabolism is how many calories you burn while at rest; did you know that eating breakfast to 'break the fast' can increase your metabolism by as much as 10%? Start your day with the less processed whole grain nutrition of Great Grains Protein Blend to help jumpstart your metabolism." **Protein:** Eat protein. Did you know that protein generally requires about 25% more energy 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. . . . Great Grains Blend can actually help enhance

your metabolism!" [. . .] **Fiber:** Consume fiber. Diets rich in fiber help keep you fuller longer which is important for weight management. Great Grains Protein Blend can help keep you satisfied with the staying power of . . . fiber."

k. Whole Grains Council Stamp

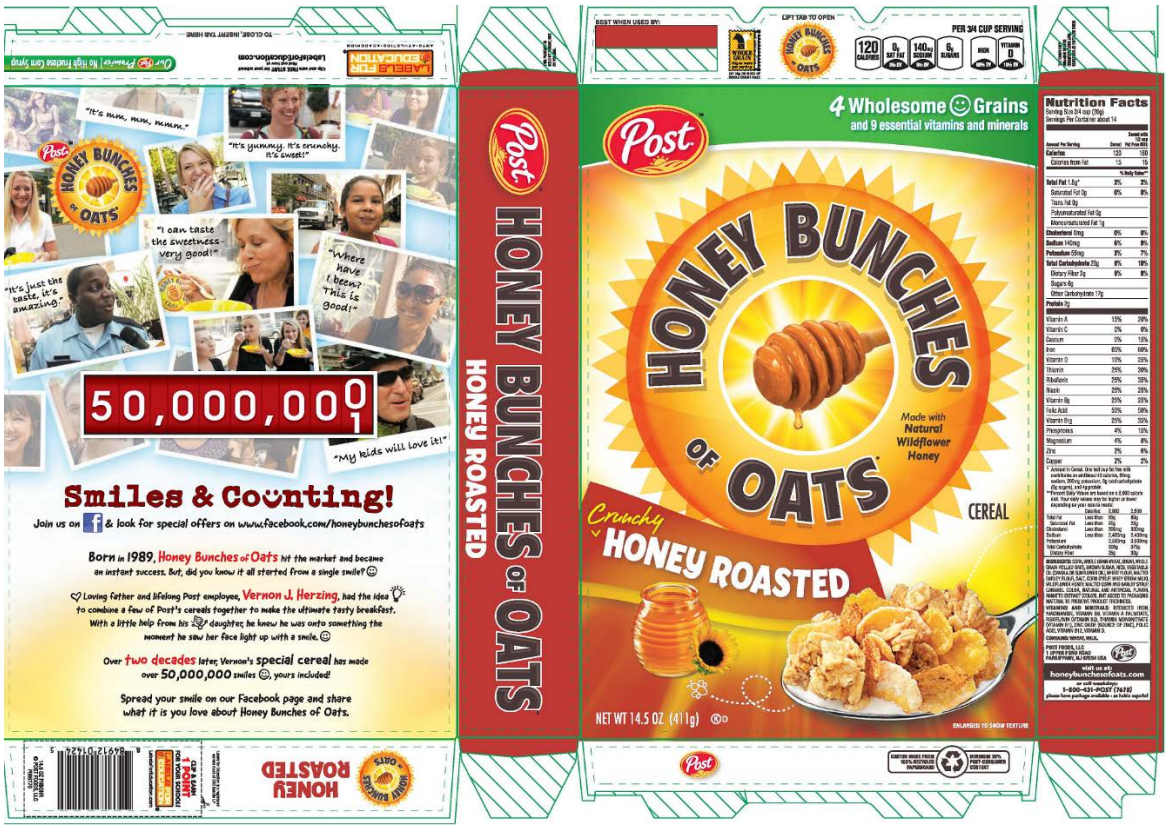
153. These health and wellness claims, individually and especially in the context of the packaging as a whole, affirmatively suggest the *Great Grains Protein Blend: Cinnamon Hazelnut* is healthy, and particularly that it is formulated to increase metabolism and promote weight loss.

B. Post Honey Bunches of Oats Cereal and Granola

1. *Honey Roasted*

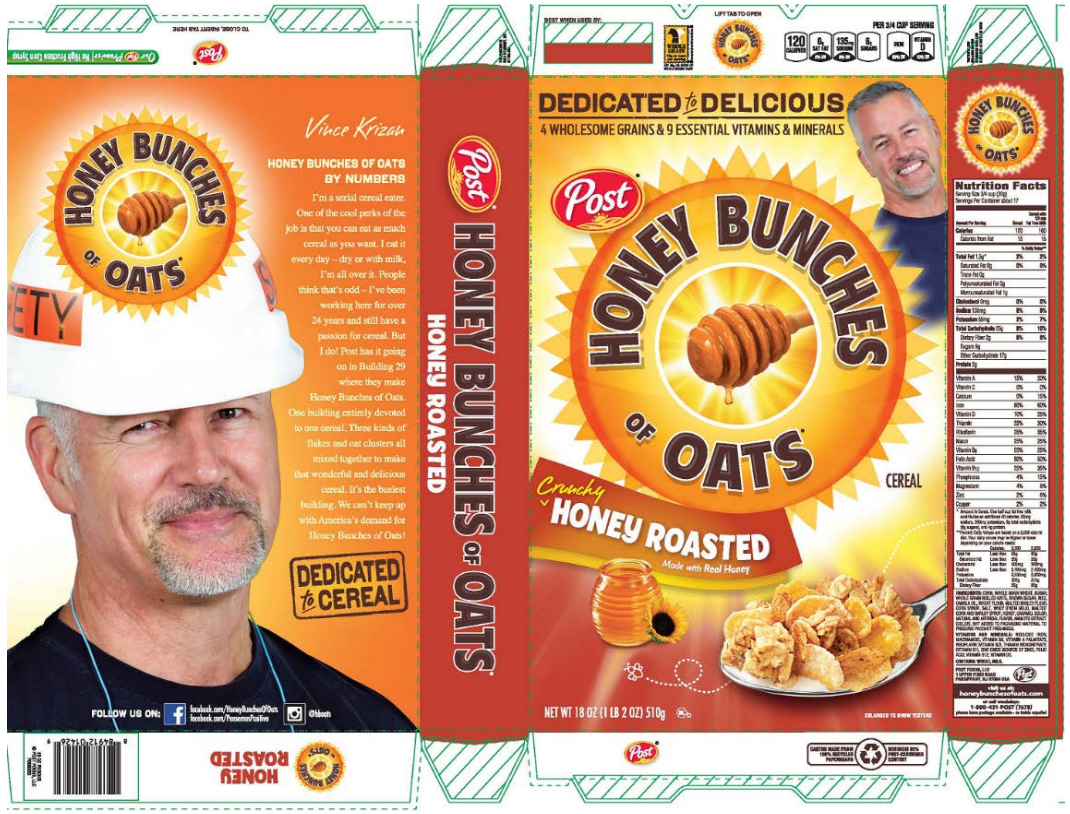
154. The packaging of *Post Honey Bunches of Oats Cereal – Honey Roasted* that was in use when the class period began is pictured below.

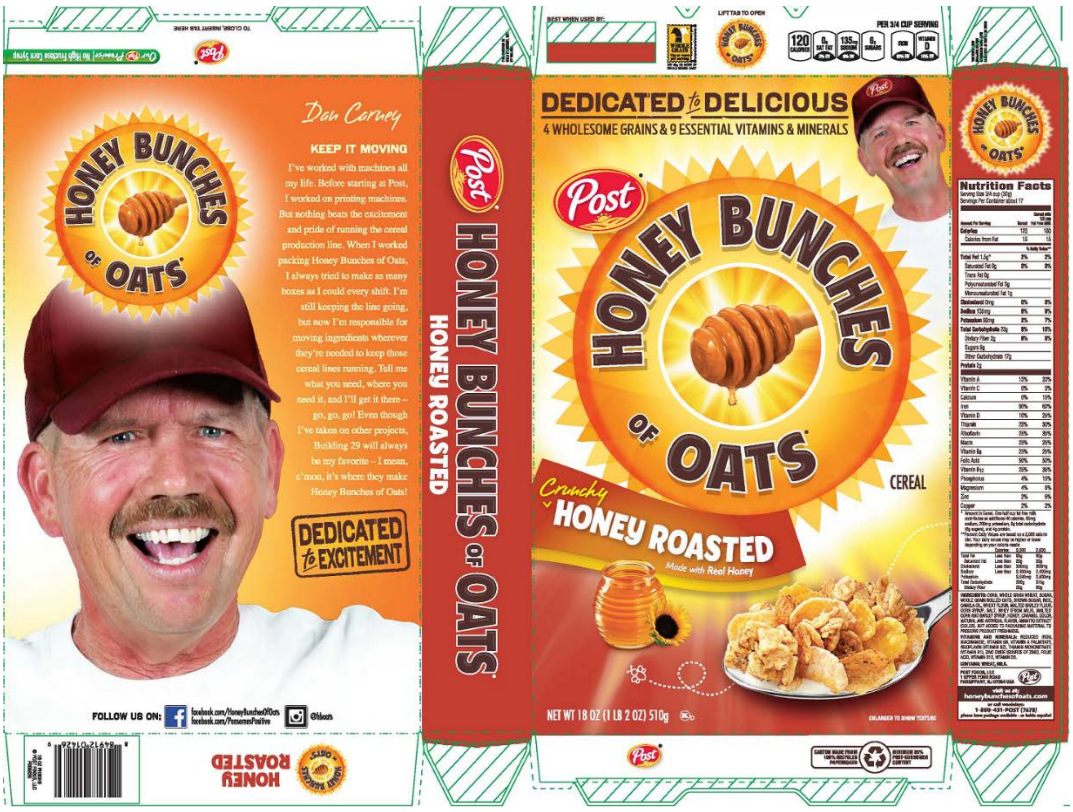
155. In around November 2012, Post introduced the packaging pictured below.

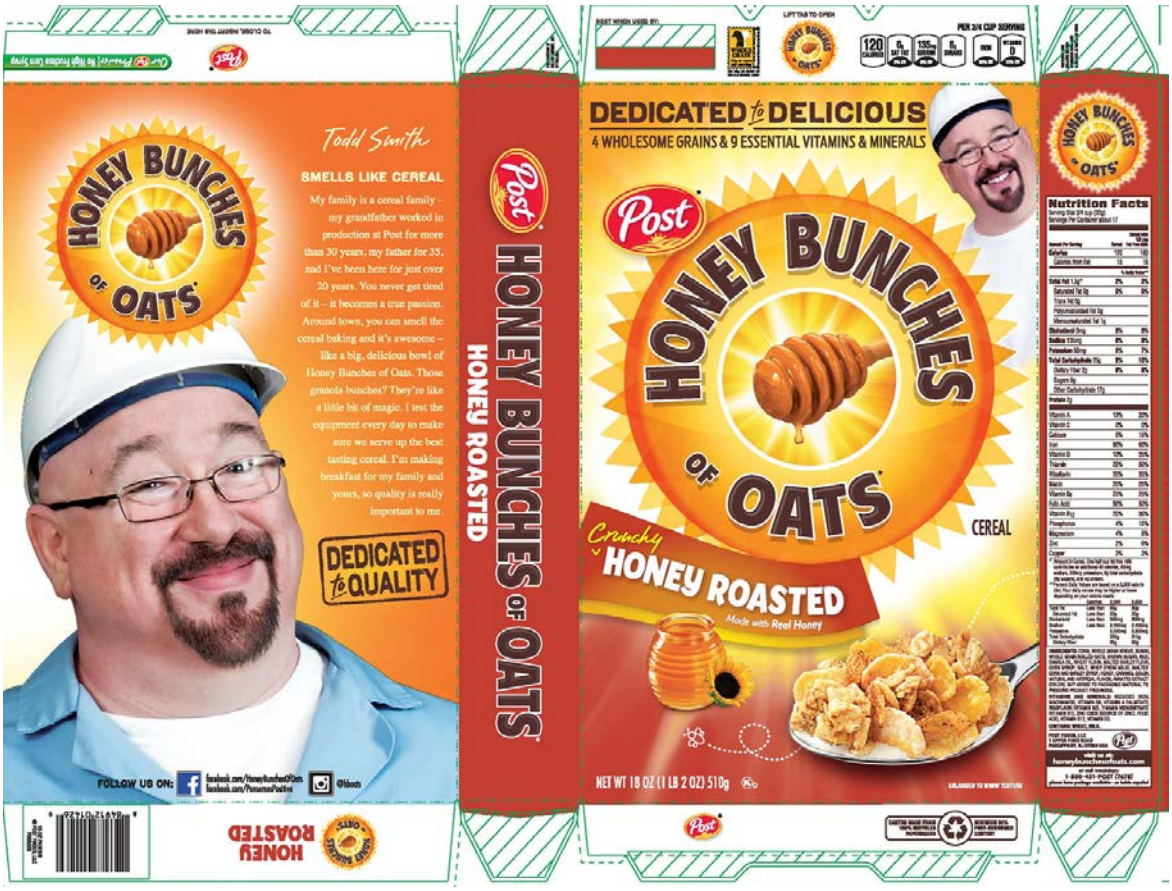


156. In around October 2014, Post introduced the packaging pictured below.

157. In around August 2015, Post introduced the "Dedicated to Delicious" packaging pictured below.






HONEY BUNCHES OF OATS
Todd Smith
SMELLS LIKE CEREAL
My family is a cereal family – my grandfather worked in production at Post for more than 30 years, my father for 35, and I've been here for just over 20 years. You never get tired of it – it becomes a true passion. Around town, you can smell the cereal baking and it's awesome – like a big, delicious bowl of Honey Bunches of Oats. Those granola bunches? They're like a little bit of magic. I test the equipment every day to make sure we serve up the best tasting cereal. I'm making breakfast for my family and yours, so quality is really important to me.
DEDICATED to QUALITY
FOLLOW US ON:
HONEY BUNCHES OF OATS
HONEY ROASTED
DEDICATED to DELICIOUS
4 WHOLESOME GRAINS & 9 ESSENTIAL VITAMINS & MINERALS
Post
HONEY BUNCHES OF OATS
Crunchy HONEY ROASTED
Made with Real Honey
CEREAL
NET WT 18 OZ (1 LB 2 OZ) 510g
Nutrition Facts


HONEY BUNCHES OF OATS
Diana Hunter
PUTS THE SWEET IN HONEY BUNCHES OF OATS
I like what I do and have fun doing it. People recognize me from my commercials and the things I say like, "Gotta feed America!" and "Don't eat me now!" But I'm just a regular worker who is passionate about what I do. I go in every day and make Honey Bunches of Oats. Honey Bunches of Oats has all types of flakes. You have the tasties – those delicious golden brown flakes. And, GNF – grape nut flakes. They're a lighter, more delicate, crispy flake. There's also the granola bunches – granola with oats, blended for a nice crunch. Then you have your sparkle flakes – the sweet flakes. That's where I come in. You could say I put the sweet in Honey Bunches of Oats!
DEDICATED to SWEET
FOLLOW US ON:
HONEY BUNCHES OF OATS
HONEY ROASTED
DEDICATED to DELICIOUS
4 WHOLESOME GRAINS & 9 ESSENTIAL VITAMINS & MINERALS
Post
HONEY BUNCHES OF OATS
Crunchy HONEY ROASTED
Made with Real Honey
CEREAL
NET WT 18 OZ (1 LB 2 OZ) 510g
Nutrition Facts

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

159. 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. "Heart Healthy"

c. Depictions of heart in circle

d. "a Touch of Honey!"

e. "A delicious, wholesome start to your day!"

f. "4 Wholesome Grains"

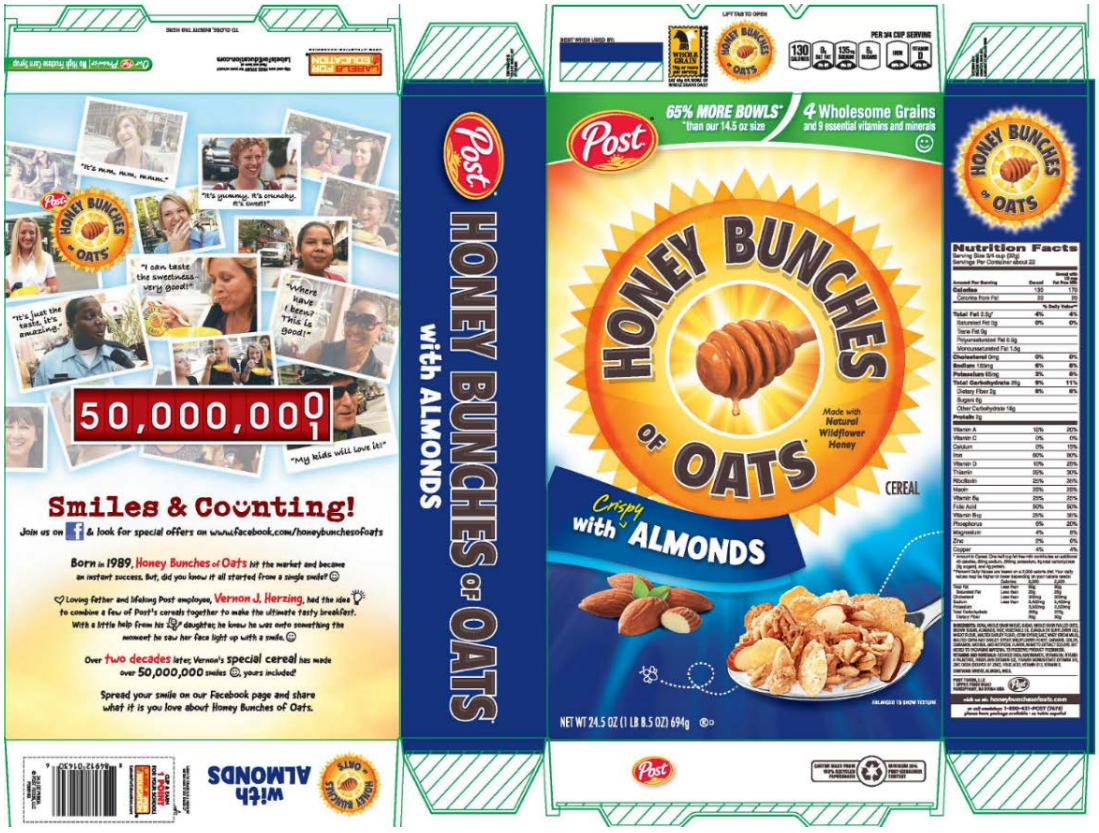
g. Whole Grains Council Stamp

2. *With Almonds*

160. The packaging of *Post Honey Bunches of Oats Cereal – With Almonds* that was

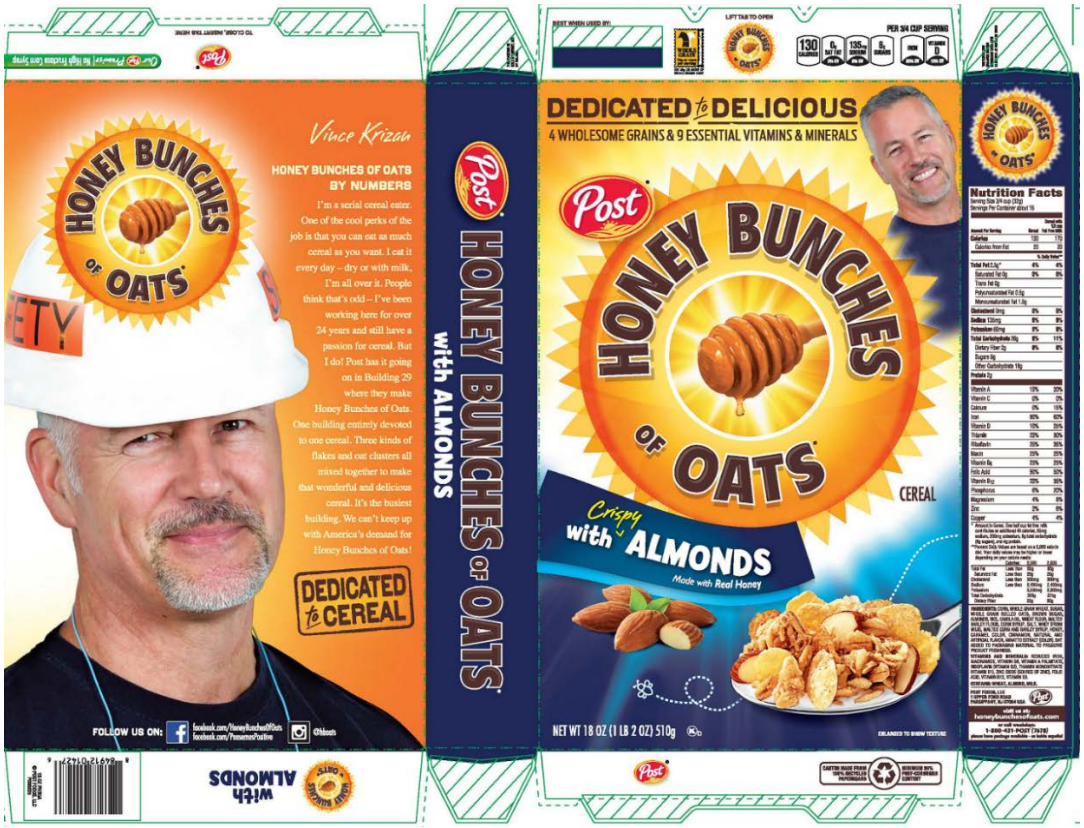
in use when the class period began is pictured below.

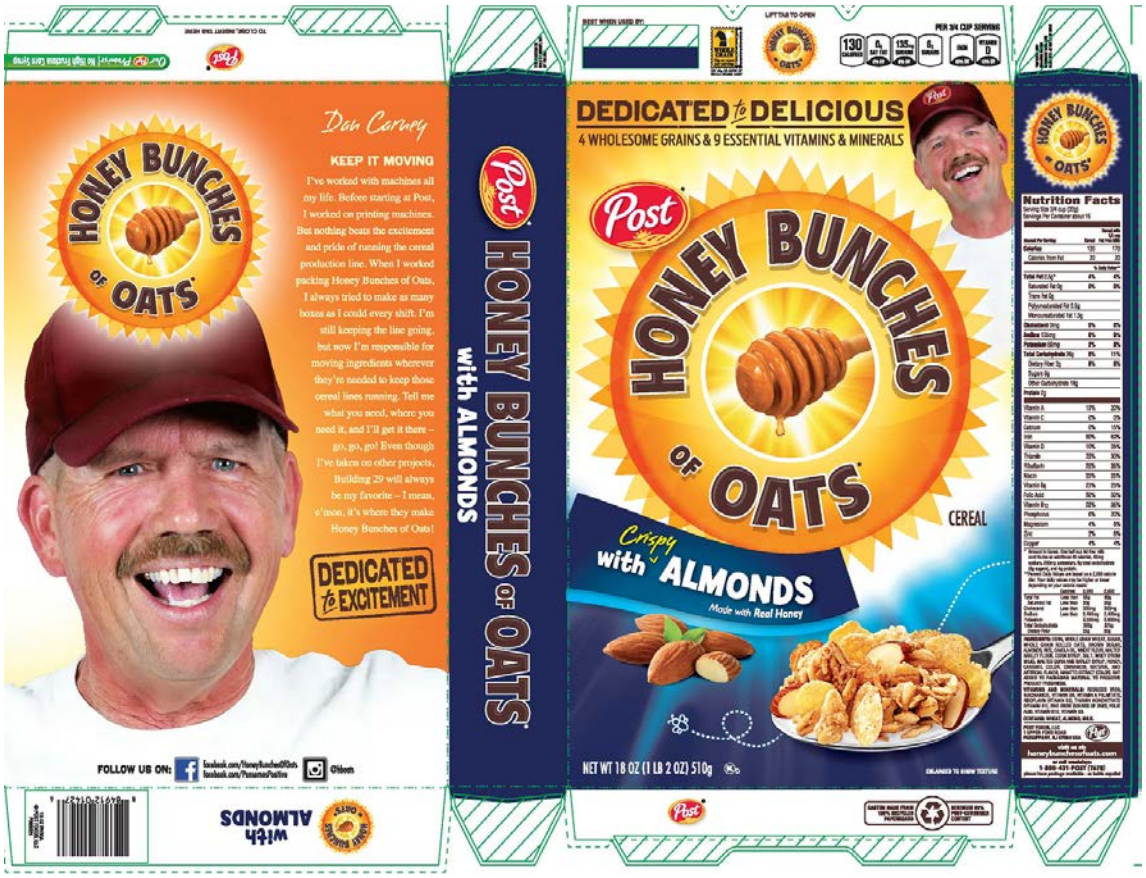
161. In around November 2012, Post introduced the packaging pictured below.

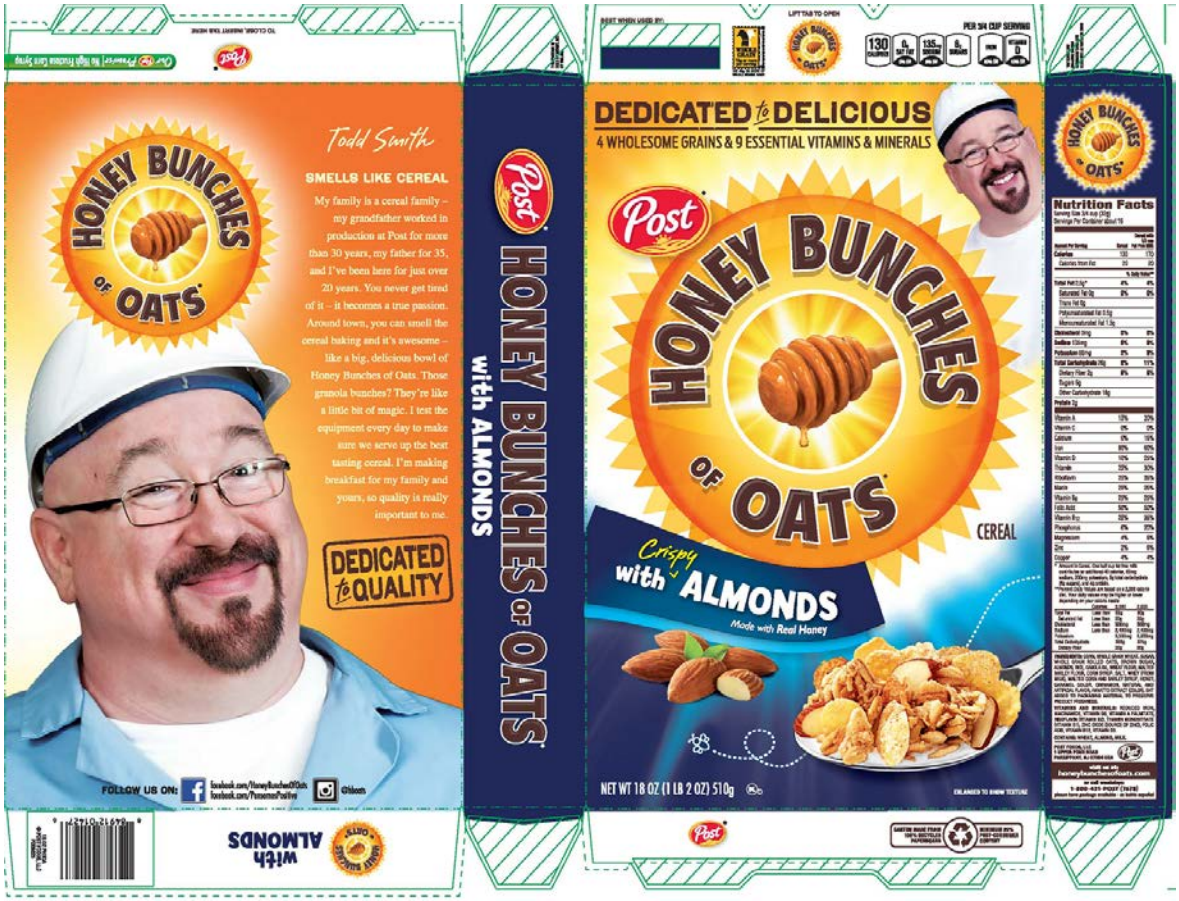


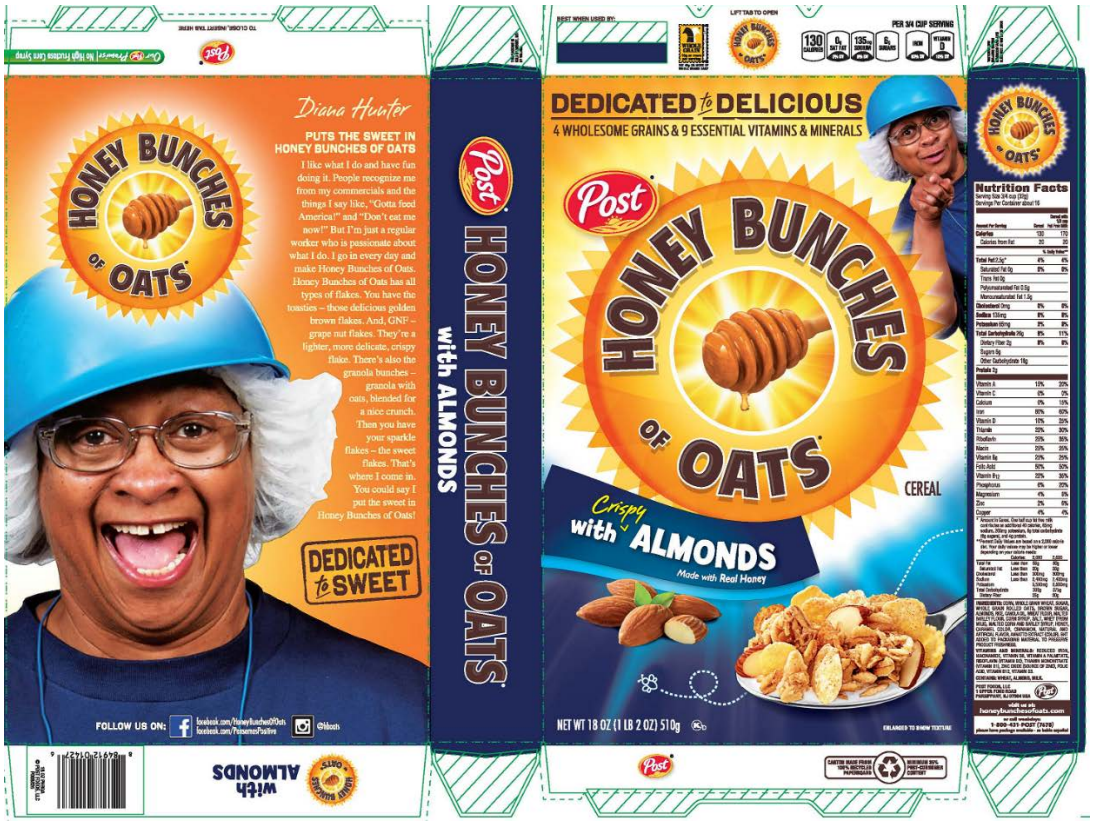
162. In around October 2014, Post introduced the packaging pictured below.

163. In around August 2015, Post introduced the "Dedicated to Delicious" packaging pictured below.




Dan Carney
KEEP IT MOVING
I've worked with machines all my life. Before starting at Post, I worked on printing machines. But nothing beats the excitement and pride of running the cereal production line. When I worked packing Honey Bunches of Oats, I always tried to make as many boxes as I could every shift. I'm still keeping the line going, but now I'm responsible for moving ingredients wherever they're needed to keep those cereal lines running. Tell me what you need, where you need it, and I'll get it there – go, go, go! Even though I've taken on other projects, Building 29 will always be my favorite – I mean, c'mon, it's where they make Honey Bunches of Oats!
DEDICATED to EXCITEMENT
HONEY BUNCHES OF OATS
with ALMONDS
DEDICATED to DELICIOUS
4 WHOLESOME GRAINS & 9 ESSENTIAL VITAMINS & MINERALS
Crispy with ALMONDS
Made with Real Honey
CEREAL
NET WT 18 OZ (1 LB 2 OZ) 510g
Nutrition Facts
FOLLOW US ON:
with ALMONDS


Todd Smith
SMELLS LIKE CEREAL
My family is a cereal family – my grandfather worked in production at Post for more than 30 years, my father for 35, and I've been here for just over 20 years. You never get tired of it – it becomes a true passion. Around town, you can smell the cereal baking and it's awesome – like a big, delicious bowl of Honey Bunches of Oats. Those granola bunches? They're like a little bit of magic. I test the equipment every day to make sure we serve up the best tasting cereal. I'm making breakfast for my family and yours, so quality is really important to me.
DEDICATED to QUALITY
HONEY BUNCHES OF OATS
with ALMONDS
DEDICATED to DELICIOUS
4 WHOLESOME GRAINS & 9 ESSENTIAL VITAMINS & MINERALS
Crispy with ALMONDS
Made with Real Honey
CEREAL
NET WT 18 OZ (1 LB 2 OZ) 510g
Nutrition Facts
FOLLOW US ON:
with ALMONDS



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

165. 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. "Heart Healthy"

c. Depictions of heart in circle

d. "a Touch of Honey!"

e. "A delicious, wholesome start to your day!"

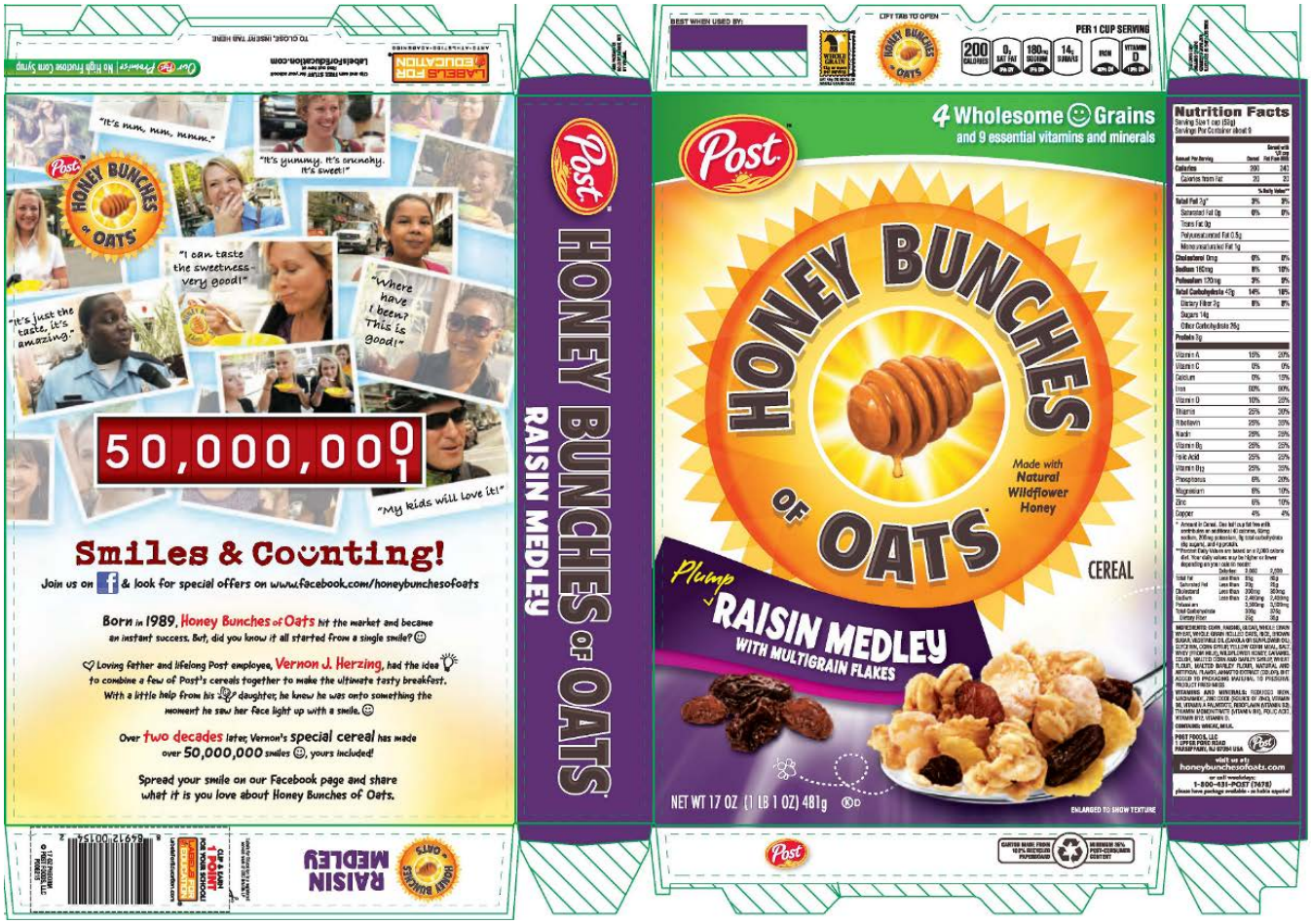
f. "4 Wholesome Grains"

g. Whole Grains Council Stamp

3. *Raisin Medley*

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

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



168. The packaging of *Post Honey Bunches of Oats Cereal – Raisin Medley* has made at least 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. "Heart Healthy"

c. Depictions of heart in circle

d. "a Touch of Honey!"

e. "A delicious, wholesome start to your day!"

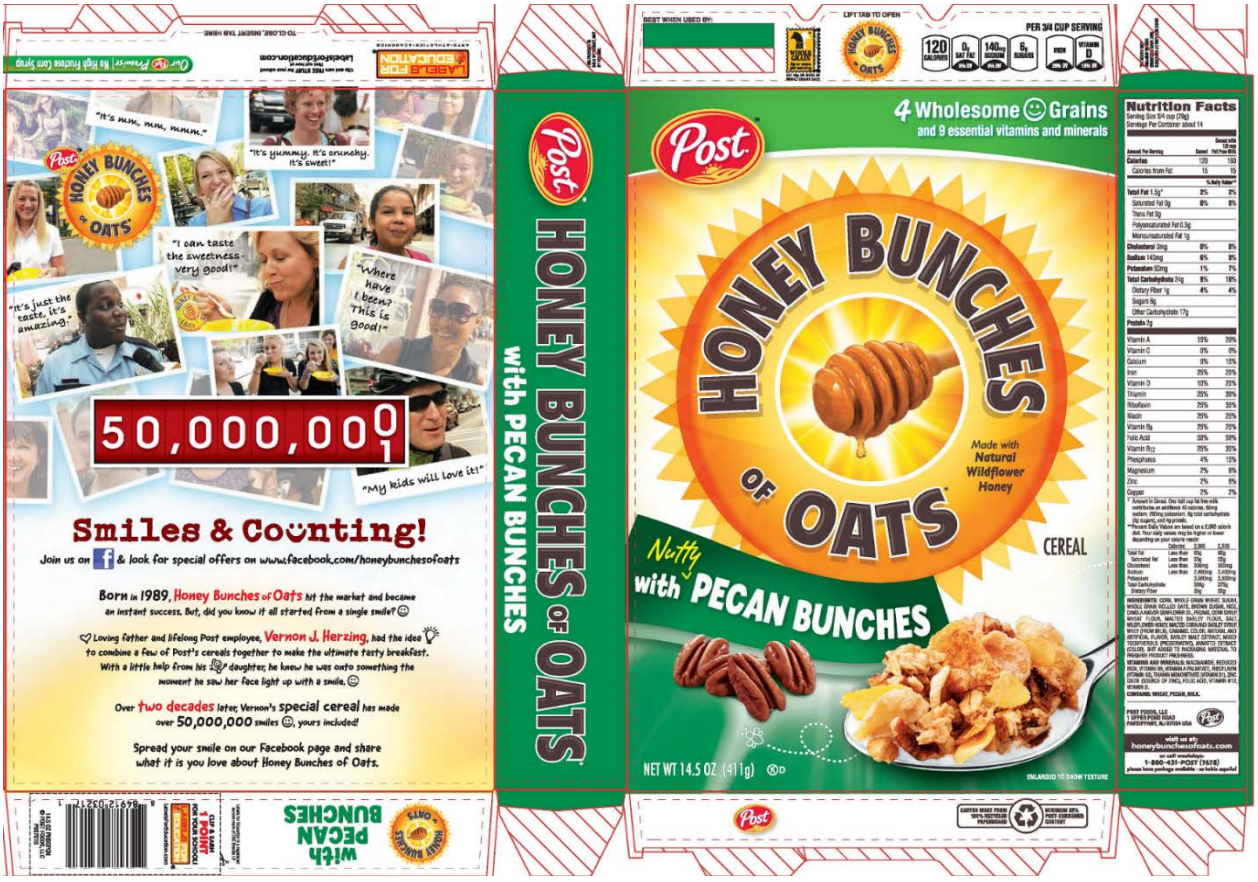
f. "4 Wholesome Grains"

g. Whole Grains Council Stamp

4. *With Pecan Bunches*

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

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



171. The packaging of *Post Honey Bunches of Oats Cereal – With Pecan 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. "Heart Healthy"

c. Depictions of heart in circle

d. "a Touch of Honey!"

e. "A delicious, wholesome start to your day!"

f. "4 Wholesome Grains"

g. Whole Grains Council Stamp

5. *With Cinnamon Bunches*

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

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

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

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

176. 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. "Heart Healthy"

c. Depictions of heart in circle

d. "a Touch of Honey!"

e. "A delicious, wholesome start to your day!"

f. "4 Wholesome Grains"

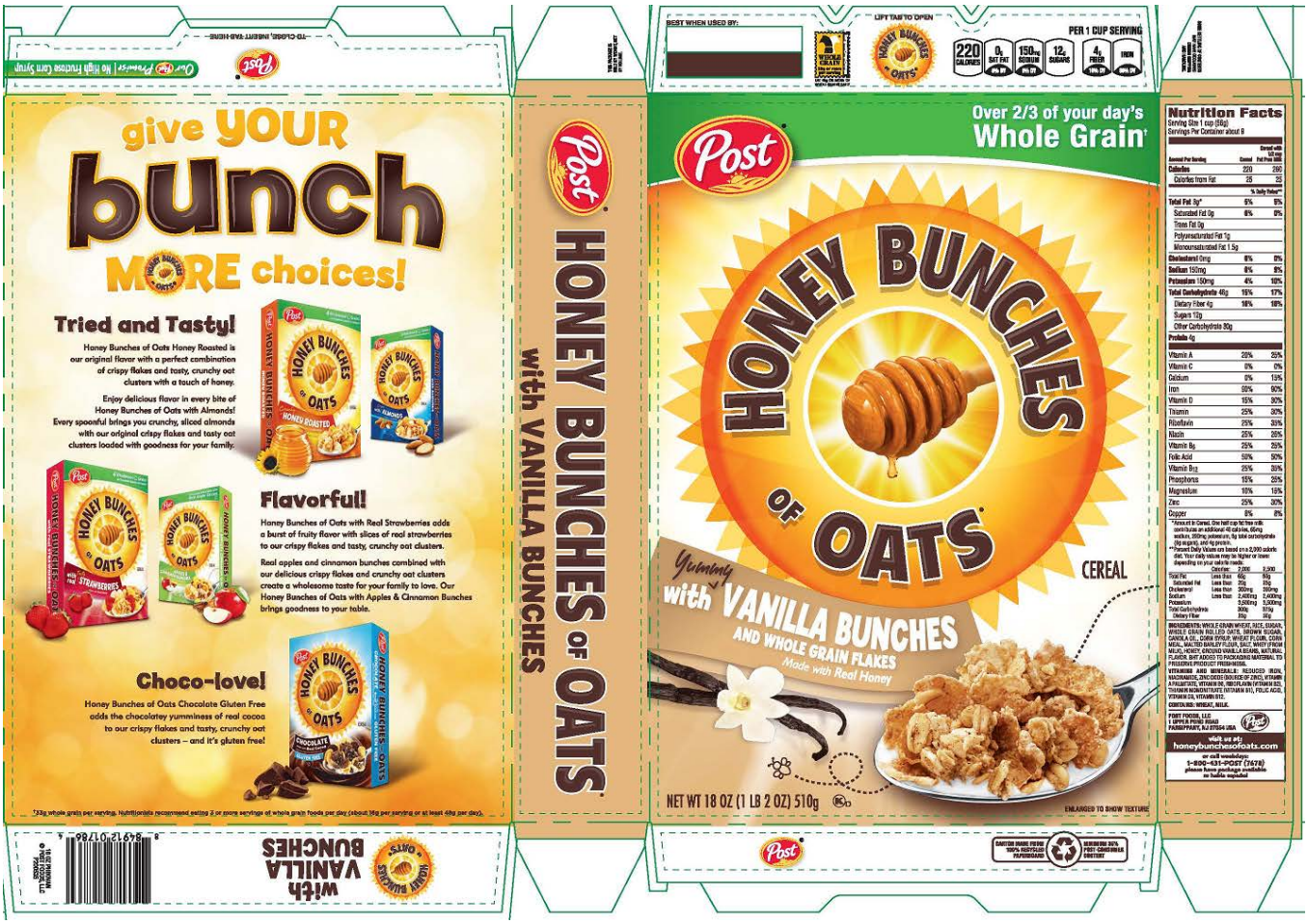
g. Whole Grains Council Stamp

6. *With Vanilla Bunches*

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

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

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



180. The packaging of *Post Honey Bunches of Oats Cereal – With Vanilla 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. "Heart Healthy"

c. Depictions of heart in circle

d. "a Touch of Honey!"

e. "A delicious wholesome start to your day!"

f. "4 Wholesome Grains"

g. Whole Grains Council Stamp

7. *With Apples & Cinnamon Bunches*

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

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

183. The packaging of *Post Honey Bunches of Oats Cereal – With Apples & 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:

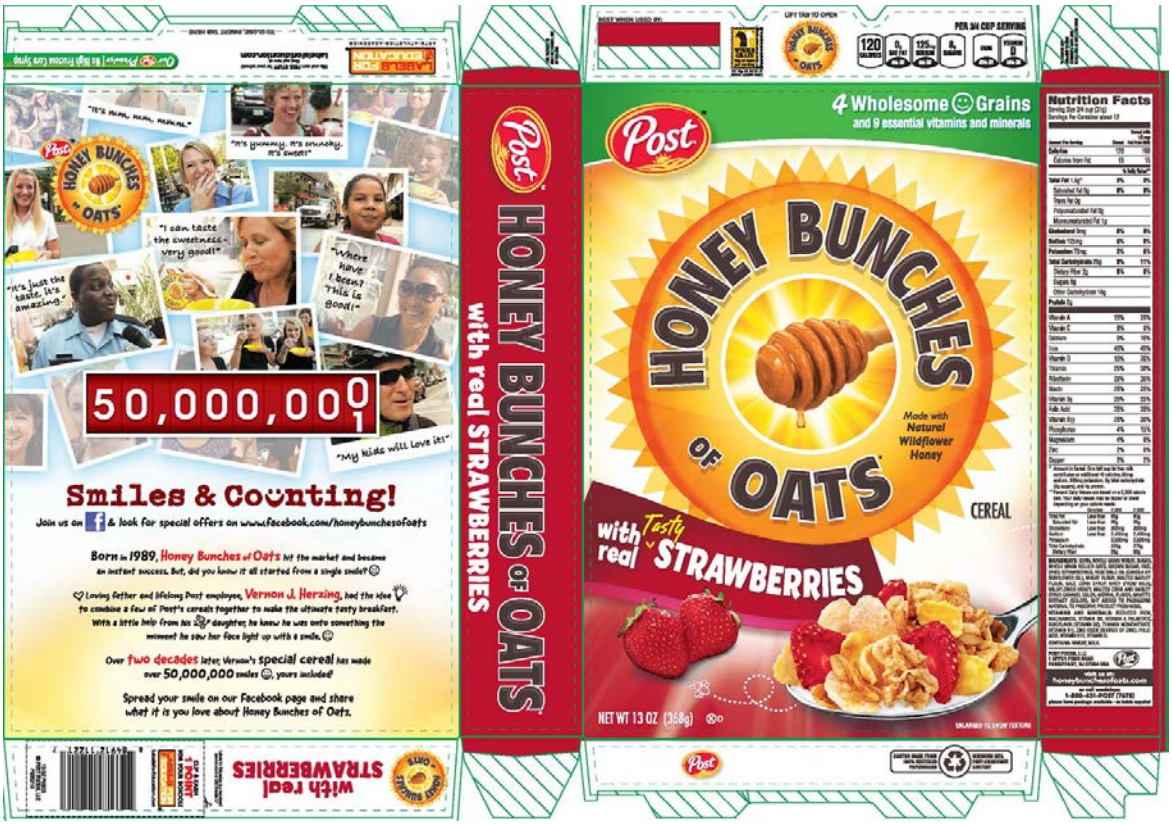
a. "Our Post Promise | No High Fructose Corn Syrup"

b. Whole Grains Council Stamp

8. *With Real Strawberries*

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

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



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

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

188. 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. "Heart Healthy"

c. Depictions of heart in circle

d. "a Touch of Honey!"

e. "A delicious wholesome start to your day!"

f. "4 Wholesome Grains"

g. Whole Grains Council Stamp

9. *Fruit Blends – Banana Blueberry*

189. 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.

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

191. 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. "Heart Healthy"

c. Depictions of heart in circle

d. "a Touch of Honey!"

e. "A delicious wholesome start to your day!"

f. "4 Wholesome Grains"

g. Whole Grains Council Stamp

10. *Fruit Blends – Peach Raspberry*

192. 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.

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

194. The packaging of *Post Honey Bunches of Oats Cereal – Fruit Blends – Peach Raspberry* 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. "Heart Healthy"

c. Depictions of heart in circle

d. "a Touch of Honey!"

e. "A delicious wholesome start to your day!"

f. "4 Wholesome Grains"

g. Whole Grains Council Stamp

11. *Tropical Blends – Mango Coconut*

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

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

197. The packaging of *Post Honey Bunches of Oats Cereal – Tropical Blends – Mango Coconut* 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 Touch of Honey!"

c. "4 Wholesome Grains"

d. Whole Grains Council Stamp

12. *Whole Grain Honey Crunch*

198. Post introduced *Post Honey Bunches of Oats Cereal – Whole Grain Honey Crunch* in around September 2014. The product's packaging is pictured below.

199. The packaging of *Post Honey Bunches of Oats Cereal – Whole Grain Honey Crunch* 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. Heart design in "I" in "Whole Grain" name.

c. "**WHOLE GRAINS** – good for your **family**, good for your **health**, good

for **you.**"

d. "Honey Bunches of Oats Whole Grain Cereal has it all. . . . . Fiber fills you up, helps keep you satisfied and is important to help maintain digestive health. **Rich in nutrients:** Honey Bunches of Oats Whole Grain Cereal is rich in nutrients . . . important for moms-to-be and growing children. . . . Whole grains are an important part of a balanced diet, but on average, Americans eat less than 1 serving of whole grains per day."

e. "Staring your day with a bowl of Honey Bunches of Oats Whole Grain Cereal is a smart step toward eating a balanced diet."

f. Whole Grains Council Stamp

13. *Whole Grain with Vanilla Bunches*

200. Post introduced *Post Honey Bunches of Oats Cereal – Whole Grain with Vanilla Bunches* in around September 2014. The product's packaging is pictured below.

201. The packaging of *Post Honey Bunches of Oats Cereal – Whole Grain With Vanilla 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. Heart design in "I" in "Whole Grain" name.

c. "**WHOLE GRAINS** – good for your **family**, good for your **health**, good for **you.**"

d. "Honey Bunches of Oats Whole Grain Cereal has it all. . . . . Fiber fills you up, helps keep you satisfied and is important to help maintain digestive health. **Rich in nutrients:** Honey Bunches of Oats Whole Grain Cereal is rich in nutrients . . . important for moms-to-be and growing children. . . . Whole grains are an important part of a balanced diet, but on average, Americans eat less than 1 serving of whole grains per day."

e. "Staring your day with a bowl of Honey Bunches of Oats Whole Grain Cereal is a smart step toward eating a balanced diet."

f. Whole Grains Council Stamp

14. ***Greek Honey Crunch***

202. Post introduced *Post Honey Bunches of Oats Cereal – Greek Honey Crunch* in around March 2013. The product's packaging is pictured below.

f

203. The packaging of *Post Honey Bunches of Oats Cereal – Greek Honey Crunch* 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 touch of wildflower honey"

c. "WHOLESOME NUTRITION"

d. "GOODNESS AND TASTE IN EVERY BOWL"

e. Whole Grains Council Stamp

15. *Greek Mixed Berry*

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

205. 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. "a touch of wildflower honey"

c. "WHOLESOME NUTRITION"

d. "GOODNESS AND TASTE IN EVERY BOWL"

e. Whole Grains Council Stamp

16. *Granola – Honey Roasted*

206. Post introduced *Post Honey Bunches of Oats Granola – Honey Roasted* in around March 2013. The product's packaging is pictured below.

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

a. "[I]t's the perfect combination of wholesome goodness and honey-sweet

crunch that everyone in your entire family will love."

b. Whole Grains Council Stamp

17. *Granola – Raspberry & Cinnamon*

208. The packaging of *Post Honey Bunches of Oats Granola – Raspberry* and *Cinnamon* are pictured below.

209. The packaging of *Post Honey Bunches of Oats Granola – Raspberry* and *Cinnamon* have made the following labeling claims suggesting, both individually and especially in the context of the label as a whole, that the products are healthy:

a. "[I]t's the perfect combination of wholesome goodness and honey-sweet crunch that everyone in your entire family will love."

b. Whole Grains Council Stamp

18. *Protein Granola with Dark Chocolate*

210. The packaging of *Post Honey Bunches of Oats Protein Granola with Dark Chocolate* is depicted below.

211. The packaging of *Post Honey Bunches of Oats Protein Granola with Dark Chocolate* and *Cinnamon* has made at least 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 FUEL YOUR BODY WITH SUSTAINED ENERGY"

b. "just a touch of wildflower honey"

c. Whole Grains Council Stamp

C. Post Shredded Wheat Cereal

1. *Honey Nut*

212. The packaging of *Post Shredded Wheat Honey Nut* that was in use when the class period began is pictured below.

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

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

215. The packaging of *Post Shredded Wheat Honey Nut* has made at least the following labeling claims suggesting, both individually and especially in the context of the label as a whole, that the product is healthy:

a. "May Help Reduce the Risk of Heart Disease" and depiction of heart.

b. "AN INGREDIENT LIST THAT IS SO GOOD, WE HAVE NOTHING TO HIDE."

c. "Wouldn't it be great if it were easy to understand what is in your food? With Post Shredded Wheat, it's easy to be confident with your breakfast choice. It is made with nothing but goodness, so go ahead and enjoy a bowl."

d. "We make it easy to understand what is in your food—we start with the goodness of whole grain wheat."

e. "We make it easy to understand what is in your food—it's just the

wholesome goodness of whole grain wheat."

f. "Our flavor comes from 100% whole grain wheat, honey, almonds, molasses and real sugar. That means vitamin and mineral fortified Post Shredded Wheat Honey Nut contains no High fructose corn syrup or artificial ingredients."

g. "No Sugar* [ ] Added: Our flavor comes from 100% whole grain wheat, nothing else. That means Post Shredded Wheat . . . has 0 grams of sugars per serving."

h. "Natural source of fiber."

i. "Bite-sized health tip."

j. "Post Shredded Wheat is one of the simple things you can do to feel good each day."

k. "THE BISCUIT OF BENEFITS / Post Shredded Wheat Honey Nut is made with 100% whole grain wheat, for a natural source of fiber. . . . So what does this mean in terms of health benefits for you? They are so plentiful, the cereal could be renamed Biscuit of Benefits!"

l. "**Heart Health**"

m. "**Digestive Health:** Diets rich in fiber have many benefits and are important for maintaining digestive health."

n. **"Reduced Cancer Risk**"

o. Whole Grains Council Stamp

2. *Crunch!*

216. Post introduced *Post Shredded Wheat Crunch!* in around September 2014. The product's packaging is pictured below.

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217. The packaging of *Post Shredded Wheat Crunch!* 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. "POST SHREDDED WHEAT CRUNCH MAY HELP REDUCE THE RISK OF HEART DISEASE"

b. "Post Shredded Wheat CRUNCH combines bite sized 100% natural whole grain wheat with granola cluster crunch for delicious heart healthy satisfaction. GOODNESS YOU CAN TASTE!"

c. Whole Grains Council Stamp

D. Post Single Cereals

1. *Raisin Bran*

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

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

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

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

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

a. "contains NO HIGH FRUCTOSE Corn Syrup"

b. "No High Fructose Corn Syrup"

c. "Healthy"

d. "Nutritious"

e. "Where nutritious and delicious live in harmony"

f. "NATURAL ADVANTAGE"

g. "Fiber is good for digestive health"

h. Whole Grains Council Stamp

2. *Bran Flakes*

223. The packaging of *Post Bran Flakes* is depicted below.

224. The packaging of *Post Bran Flakes* 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. "DIETARY FIBER TO HELP MAINTAIN DIGESTIVE HEALTH"

b. "Contains no high fructose corn syrup"

c. "THE IMPORTANCE OF WHOLE GRAIN AND FIBER"

d. "WHOLE GRAINS FOR YOUR HEALTHY LIFESTYLE"

e. "Whole grains provide fiber and other important nutrients to help keep you healthy."

f. "Getting enough fiber in your diet helps naturally regulate your digestive system. Choose a diet rich in a variety of fiber containing foods such as whole grain cereals, breads, and pastas and fruits and vegetables."

g. "FIBER TO HELP WITH WEIGHT MANAGEMENT"

h. "Experts recommend diets rich in fiber to help keep you satisfied while you exercise and cut calories to lose weight. Diets rich in fiber are usually lower in calories and larger in volume than low fiber diets, and require more chewing which helps promote a feeling of fullness and satisfaction after eating."

i. Whole Grains Council Stamp

3. *Alpha-Bits*

225. Post first introduced Alpha-Bits—cereal shaped like letters—in 1958.

226. In around July 2012, Post entered into a deal to use characters from a PBS Kids show, "*Super Why*," on the product's packaging. The packaging of *Post Alpha-Bits* that was in use when the class period started is pictured below.

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227. In around December 2016, Post introduced the packaging pictured below.

228. The packaging of *Post Alpha-Bits* has made at least 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. "ALPHA-BITS IS A GOOD SOURCE OF NUTRIENTS THAT ARE BUILDING BLOCKS FOR YOUR CHILD'S DEVELOPING BRAIN"

c. "Makes a Smart Snack!"

d. Whole Grains Council Stamp

4. *Honeycomb*

229. The packaging of *Post Honeycomb* that was in use when the class period began is pictured below.

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

231. 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. "Each Serving Helps Start the Day in a HEALTHY Way"

d. Whole Grains Council Stamp

5. *Waffle Crisp*

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

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233. 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"

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

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

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

a. *Post Great Grains Blueberry Morning* ("Less processed nutrition you can see," "nutritious Blueberries," and "nutritious fruits and nuts")

b. *Post Great Grains Cranberry Almond Crunch* ("Less processed nutrition you can see," "nutritious Cranberries," "wholesome Almonds," "nutritious fruits and nuts," and "nutritious ingredients in every bite!")

c. *Post Great Grains Banana Nut Crunch* ("Less processed nutrition you can see," "wholesome Walnuts," "wholesome Almonds," "nutritious fruits and nuts," "wholesome walnuts and almonds," and "nutritious ingredients in every bite!")

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

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

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

g. *Post Great Grains Protein Blend: Honey, Oats & Seeds* ("HELPS SUPPORT A HEALTHY METABOLISM," "wholesome Almonds," "nutritious Pumpkin Seeds," "nutritious nuts and seeds," "nutritious ingredients in every bite!,"

and "the less processed whole grain nutrition of Great Grains Protein Blend")

h. *Post Great Grains Protein Blend: Cinnamon Hazelnut* ("HELPS SUPPORT A HEALTHY METABOLISM," "wholesome Almonds," "nutritious Hazelnuts," "nutritious nuts," "wholesome hazelnuts, almonds, and multi grain clusters," "nutritious ingredients in every bite!," and "the less processed whole grain nutrition of Great Grains Protein Blend")

i. *Post Honey Bunches of Oats – Honey Roasted*, *With Almonds*, *Raisin Medley*, *With Pecan Bunches*, *With Cinnamon Bunches*, *With Vanilla Bunches*, *With Real Strawberries*, *Fruit Blends – Banana Blueberry*, *Fruit Blends – Peach Raspberry* ("Heart Healthy," heart depictions, "4 Wholesome Grains," and "A delicious, wholesome start to your day!")

j. *Post Honey Bunches of Oats – Tropical Blends – Mango Coconut* ("4 Wholesome Grains")

k. *Post Honey Bunches of Oats – Whole Grain Honey Crunch* and *Whole Grain with Vanilla Bunches* (Heart design in "I" in "Whole Grain" name, "good for your family, good for your health, good for you," "important to help maintain digestive health," and "rich in nutrients.")

l. *Post Honey Bunches of Oats – Greek Honey Crunch* and *Greek Mixed Berry* ("WHOLESOME NUTRITION")

m. *Post Honey Bunches of Oats Granola – Honey Roasted*, *Raspberry*, and *Cinnamon* ("wholesome goodness")

n. *Post Shredded Wheat Honey Nut* ("Bite-sized health tip," "Heart Health," "May Help Reduce the Risk of Heart Disease," "Digestive Health," "important for maintaining digestive health," "what does that mean in terms of health benefits for you? They are so plentiful, the cereal could be renamed Biscuit of Benefits!")

o. *Post Shredded Wheat Crunch!* ("heart healthy")

p. *Post Raisin Bran* ("Healthy," "Nutritious," "Where nutritious and delicious live in harmony," and "good for digestive health")

q. *Post Bran Flakes* ("HELP MAINTAIN DIGESTIVE HEALTH," "FOR YOUR HEALHTY LIFESTYLE," and "important nutrients to help keep you healthy")

r. *Honey-Comb* ("Promotes healthy bones and teeth" and "Helps Start the Day in a HEALTHY Way")

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

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

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

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

> "The process of metabolism establishes the rate at which we burn our calories and, ultimately, how quickly we gain weight or how easily we lose it. Although some factors affecting metabolic rate, like age and genetics can't be changed, there are ways to maximize your metabolism." **Breakfast:** Eat breakfast. . . . Start your day with the less processed whole grain nutrition of Great Grains Protein Blend to help jumpstart your metabolism. **Protein:** Eat protein. Did you know that protein generally requires about 25% more energy 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. . . . Great Grains Blend can actually help enhance your metabolism! [. . .] **Fiber:** Consume fiber. Diets rich in fiber help keep you fuller longer which is important for weight management. Great Grains Protein Blend can help keep you satisfied with the staying power of an excellent source of fiber."

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

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

242. Moreover, because of the products' high added sugar content, their consumption is likely to promote weight *gain*, not weight loss.

243. Post makes a similar misrepresentation with respect to its *Bran Flakes* cereal, stating "FIBER TO HELP WITH WEIGHT MANAGEMENT," and explaining that "Experts recommend diets rich in fiber to help keep you satisfied while you exercise and cut calories to lose weight." Similar to Post's *Great Grain Protein Blend* cereals, however, 20% of *Bran Flakes'* calories come from its added sugar, such that it is likely to contribute to weight *gain*, not weight loss.

244. In several cases, Post misrepresents that certain cereals are heart healthy, including various *Honey Bunches of Oats* and *Shredded Wheat* varities.

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

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

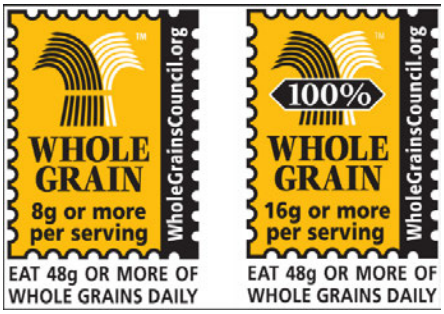
a. Post Touts Its High-Sugar Cereals' Whole Grain, Fiber, and "Real" Ingredient Content to Distract From Their High Added Sugar Content

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

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

b. Post Leverages a Deceptive Industry "Certification" Program—the Whole Grains Council Stamp—to Make its High-Sugar Cereals Seem Healthy

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



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

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

251. The Whole Grain's Council stamp is frequently misused by food manufacturer-

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

members—including by Post in this case—to bolster claims that foods are supposedly healthy, by suggesting that an independent, perhaps governmental authority has determined a food is healthy or otherwise sanctioned its health and wellness claims.

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

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

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

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

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

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

257. In reality, added sugar in virtually any form contains toxic fructose, and thus has essentially the same detrimental health effects, with typically only minor differences in the

ratio of fructose to glucose in a given form of added sugar. Thus, even if literally true, Post's "no high fructose corn syrup" representations are highly misleading.

d. Post Falsely Markets Some of Its High-Sugar Cereals as "Simple," "Whole Foods" that Are "Less Processed"

258. To capitalize on increasing consumer preference for fresh, unprocessed, "whole" foods, Post affirmatively misrepresents that several of its cereals have this characteristic.

259. Specifically, Post represents that its *Great Grains Blueberry Morning*, *Cranberry Almond Crunch*, *Banana Nut Crunch*, *Raisins, Dates & Pecans*, *Crunchy Pecans*, and *Blueberry Pomegranate* cereals are "Less processed nutrition you can see," explaining, "Why less processed? Quite simply, because it's good for you!"

260. Post similarly represents its *Great Grains Protein Blend: Honey, Oats & Seeds* cereal is "less processed whole grain nutrition," while its *Great Grains Protein Blend: Cinnamon Hazelnut* is both "less processed whole grain nutrition," and "less processed whole grain cereal," with Post stating, "Why less processed? Quite simply because it's good for you!"

261. Most of these *Great Grains* cereals' packaging also states, "It's whole foods from the field to your bowl."

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

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

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

264. In marketing its cereals with health and wellness claims, Post regularly and

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

265. Moreover, in marketing its cereals, Post regularly affirmatively uses certain words and phrases to falsely suggest their sugar content is low.

266. For example, Post's representation that many varieties of *Honey Bunches of Oats Cereal* contain just "a Touch of Honey!" are false and misleading, where the products contain as much as 12g of sugar per serving (*Post Honey Bunches of Oats Cereal – With Vanilla Bunches*), and the added sugar generally accounts for 20% or more of the products' calories, since reasonable consumers would expect a cereal supposedly sweetened with just a "touch" of honey to be relatively low in sugar.

267. These claims are false and misleading because the products' added sugar content is high, not low. Such statements are likely to confuse even consumers aware of health issues regarding sugar, because they suggest any such health issues, in any event, do not pertain to these cereals sweetened with only a "touch" or "kiss" of honey.

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

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

269. For example, Post markets *Honey-Comb* cereal by stating that "Many kids are not getting enough Vitamin D," and representing that the cereal's Vitamin D content is "Important for a grown child's health needs," and "Promotes healthy bones and teeth by helping the body absorb calcium."

270. Similarly, Post markets *Waffle Crisp* using a cartoon waffle mascot, and by representing that it contains "Iron & Zinc for Growth."

271. Post markets *Alpha-Bits* using characters from a popular PBS Kids cartoon show, and by representing that it contains "NUTRIENTS THAT ARE BUILDING BLOCKS FOR YOUR CHILD'S DEVELOPING BRAIN."

272. At 6g per serving, the added sugar in *Alpha-Bits* cereal accounts for 20% of the product's weight and calories, 400% of the AHA's recommended maximum of 5% of calories from sugar, and 40-50% of children's AHA-recommended maximum daily added sugar intake of 12-15g per day.

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

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

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

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

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

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

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

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

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

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

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

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

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

284. Post maintains on its website a page titled "Post Nutrition Pledge," in which it

demonstrates it is aware of concerns regarding sugar, for example stating that it has "been steadily decreasing the sugar in all our varieties of sweetened cereals for years now."[92] Even if literally true, however, any such reduction has been minuscule.

285. For example, scientific evidence of the dangers of sugar was available to Post as a result of its membership in the Whole Grains Council. For example, the Whole Grains Counsel website notes Harvard research finding that replacing sugar with whole grains lowers heart disease risk.[93]

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

7. Post Violates FDA and State Food Labeling Regulations

287. Several of Post's cereals contain statements that violate FDA food labeling regulations, which have been adopted as California's labeling regulations pursuant to the California Sherman Food, Drug, and Cosmetic Law, Cal. Health & Safety Code §§ 109875 *et seq.* (the "Sherman Law"). *See id.* § 110665 ("Any food is misbranded if its labeling does not conform with the requirements for nutrition labeling as set forth in Section 403(q) (21 U.S.C. Sec. 343(q)) of the federal act and the regulations adopted pursuant thereto.").

a. In Violation of State and Federal Regulations, Post's Health and Wellness Statements are False, Misleading, and Incomplete

288. Post's health and wellness statements challenged herein were false and misleading for the reasons described herein, in violation of 21 U.S.C. § 343(a), which deems misbranded any food whose "label is false or misleading in any particular." Post accordingly also violated California's parallel provision of the Sherman Law. *See* Cal. Health & Safety

[92] *See* http://postfoods.com/about-us/post-nutrition-pledge

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

Code § 110660.

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

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

291. Post's implied and express health claims challenged herein also violate 21 C.F.R. §§ 101.14(d)(2)(ii), (iii) & (e) because, for the reasons discussed herein, the claims are not "complete, truthful, and not misleading," and many of the claims—like "heart healthy"—are not "limited to describing the value that ingestion (or reduced ingestion) of the substance, as part of a total dietary pattern, may have on a particular disease or health-related condition."

292. On packaging of *Shredded Wheat Honey Nut* that was in use for some time, Post also falsely stated that the product contained "No Added [ ] Sugar," and "0 grams of sugars per serving," in violation of 21 C.F.R. § 101.13.

b. Post Violates Additional Regulations Governing Health Claims

293. A health claim "expressly or by implication . . . characterizes the relationship of any substance to a disease or health-related condition." 21 C.F.R. § 101.14(a)(1). Foods may not contain such claims "unless: (1) The claim is specifically provided for in subpart E of this part; and (2) The claim conforms to all general provisions of this section as well as to all specific provisions in the appropriate section of subpart E of this part," *id.* § 101.14(e).

294. Post's cereals contain health claims in violation of § 101.14(e), as follows:

a. *Honey Bunches of Oats – Honey Roasted, With Almonds, Raisin Medley*,

With Pecan Bunches, With Vanilla Bunches, Fruit Blends – Banana Blueberry, Fruit Blends – Peach Raspberry ("Heart Healthy" with depiction of heart in circle);

b. *Shredded Wheat – Honey Nut* ("**Heart Health**," "May Help Reduce the Risk of Heart Disease" along with depiction of heart, "**Reduced Cancer Risk**," and "**Digestive Health**: Diets rich in fiber . . . are important for maintaining digestive health.");

c. *Shredded Wheat – Crunch!* ("POST SHREDDED WHEAT CRUNCH MAY HELP REDUCE THE RISK OF HEART DISEASE," and "heart healthy");

d. *Great Grains Protein Blend: Honey, Oats & Seeds & Cinnamon Hazelnut* ("Diets rich in fiber help keep you fuller longer which is important for weight management.");

e. *Honey Bunches of Oats – Whole Grain Honey Crunch* and *Whole Grain with Vanilla Bunches* (Heart design in "I" in "Whole Grain" name, and "Fiber . . . is important to help maintain digestive health.");

f. *Raisin Bran* ("Fiber is good for digestive health.");

g. *Bran Flakes* ("DIETARY FIBER TO HELP MAINTAIN DIGESTIVE HEALTH," "FIBER TO HELP WITH WEIGHT MANAGEMENT," and "Experts recommend diets rich in fiber to help keep you satisfied while you exercise and cut calories to lose weight.").

295. Furthermore, Post's statements that *Post Great Grains Protein Blend: Honey, Oats & Seeds* and *Cinnamon Hazelnut* will "help you burn more calories" and "enhance your metabolism," because "protein generally requires about 25% more energy to digest" (as well as related statements suggesting eating the product will "increase your metabolism by 10%," or otherwise representing the product will promote weight loss) are also unlawful, in violation of FDA and corresponding California food labeling regulations. Because metabolism and weight are "disease or health-related conditions," and there is no protein-based health claim connected to weight loss or metabolism prescribed under Subpart E of title 21 of the Code of Federal Regulations, Post's labeling of *Post Great Grains Protein Blend: Honey, Oats &*

Seeds and *Cinnamon Hazelnut* violates 21 C.F.R. § 101.14, and corresponding California law, rendering the product misbranded.

296. The statements set forth above associating fiber with weight loss or digestive health on *Great Grains Protein Blend: Honey, Oats & Seeds* & *Cinnamon Hazelnut*, *Honey Bunches of Oats – Whole Grain Honey Crunch* and *Whole Grain with Vanilla Bunches*, and *Bran Flakes* are unlawful for similar reasons.

297. The use of the term "Heart Healthy," with depiction of heart in circle, on various *Honey Bunches of Oats* products violates § 101.14(e) because the statements are not permitted under Subpart E. And because the statements are made in connection with health claims permitted under the FDAMA, § 101.14(d)(2) does not allow Post to make claims, other than the health claim permitted under the FDAMA, even if such other claims are "related" and would be allowed for a health claim authorized under Subpart E instead of under the FDAMA.

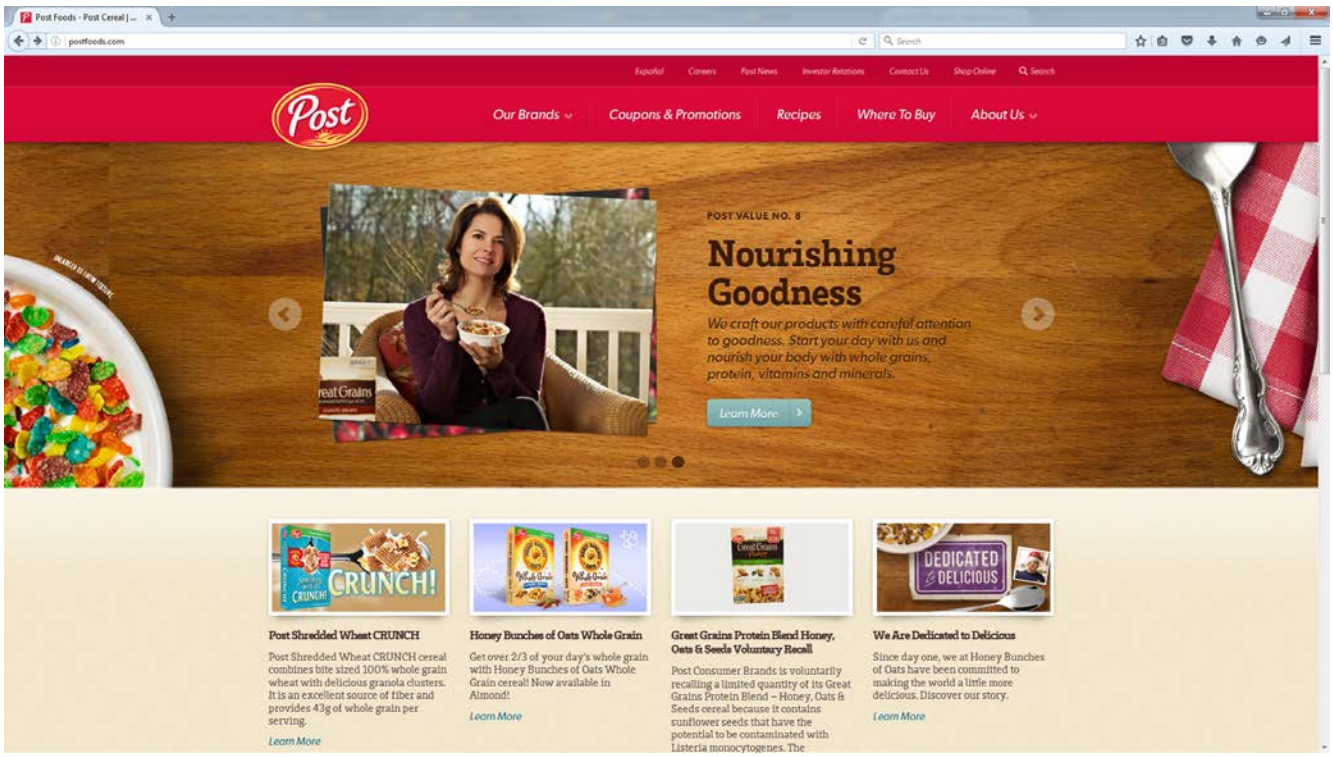
298. The same is true for "heart healthy" statements and depictions of hearts on *Honey Bunches of Oats – Whole Grain* and *Shredded Wheat* cereals.

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

299. The side panel of Post's cereals invites consumers to "visit [Post] at: postfoods.com" (the "Post Website").

300. Post uses the Post Website to further its deceptive marketing of high-sugar cereals as healthy.

301. For example, the Post Website states that one of Post's "VALUE[S]" IS "Nourishing Goodness," which according to Post means, "[w]e craft our products with careful attention to goodness. Start your day with us and nourish your body with whole, grains, protein, vitamins and minerals." This statement appears adjacent to a photograph of a woman eating a bowl of *Post Great Grains Crunchy Pecans*.



302. Other "VALUE[S]" Post represents it has include:

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

b. VALUE # 4 – "No HFCS, Ever"

c. VALUE # 6 – "Something for Everyone," with Post stating, "there's a Post cereal for every taste and nutritional need to keep everyone in your family happy and healthy."

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

303. The Post Webpage includes a purported "Nutrition Pledge," wherein Post states, "We Pledge to Help you Start Each Day Right," because "Post Foods was established on the principle that good nutrition can change the way we feel, look, and perform."

304. Post further claims that:

> Helping you be healthy each day is rewarding for us and it's in our roots. Post Foods was literally created to enhance health. . . . Over the years, we've learned

> even more about the health benefits of a diet rich in grains. Eating grains – particularly whole grains – can help you meet your daily nutrient needs and provides broad-reaching health benefits. **Whole grains are an important source of many nutrients, including dietary fiber, several B vitamins, minerals, and natural antioxidants.** Peer-reviewed scientific studies show major health problems, from heart disease and obesity to diabetes and cancer, occur less frequently with a diet rich in whole grains. So, today, we know the benefits of what C.W. Post created reach far beyond digestive health.

305. Post further claims it "believe[s] whole grains are an essential component of a healthy lifestyle," but also "believe[s] that sugar in moderation brings fun to breakfast."

306. These statements, both alone, and in combination with Post's other advertising, mislead consumers into believe that Post's cereals are healthy and the supposed "moderate" amount of sugar in them is not concerning.

307. The Post Website also includes a link to a page titled "**Our Brands**," which includes pictures of "Post's Family of cereals," and allows a browser to click on each cereal for more information about it.

308. Post uses each cereal's dedicated webpage to further its false and misleading health and wellness messaging, as follows:

a. ***Post Alpha-Bits:*** Underneath the heading "Enriching from A to Z," Post claims "Alpha-Bits is a trusted source of essential vitamins and minerals that your child needs, including vitamin A, iron and zinc!" Lower on the same page, Post claims, "It's an excellent source of vitamin, and has added nutrients like iron and zinc that help support healthy brain development. Alpha-Bits also provides 20g of whole grain (per 30g serving), and 12 essential vitamins and minerals that growing kids need!"

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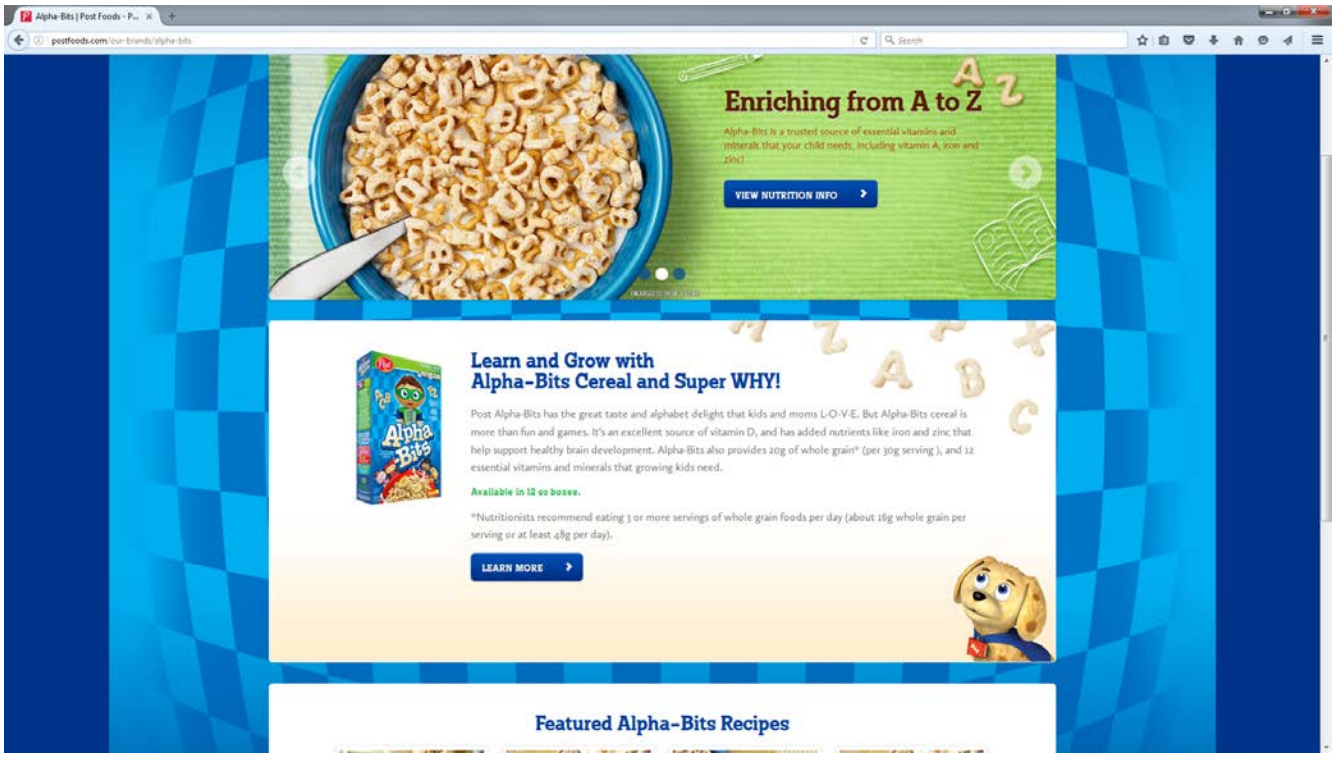
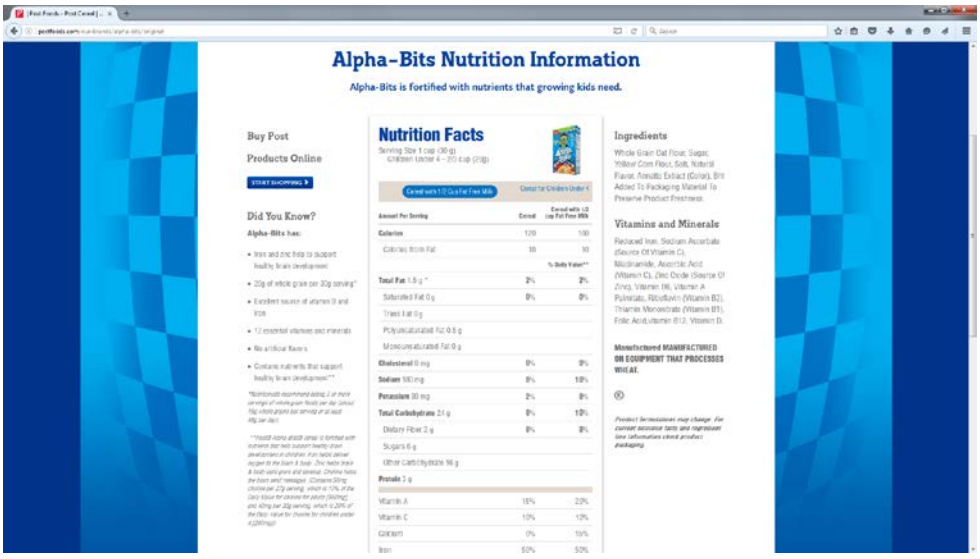


(i.) After clicking the "VIEW NUTRITION INFO" link, Post makes the following additional health and wellness claims:

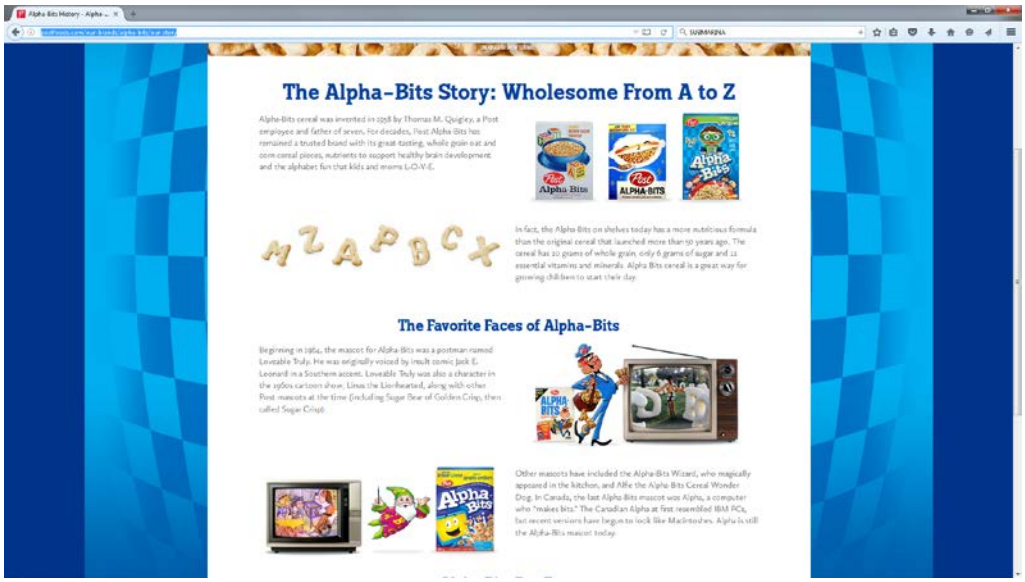
(A) "Alpha-Bits is fortified with nutrients that growing kids need"

(B) "Did You Know? Alpha-Bits has: • Iron and zinc help to support healthy brain development • 20g whole grain per 30g serving* • Excellent source of vitamin D and iron • 12 essential vitamins and minerals • No artificial flavors • Contains nutrients that support healthy brain development"

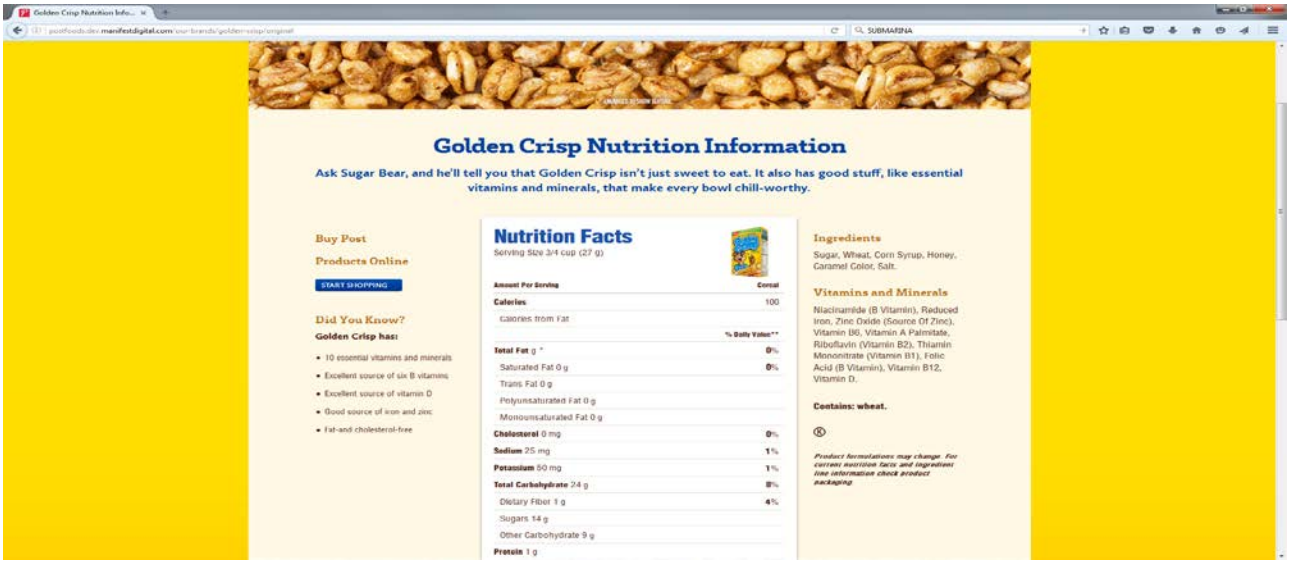
(C) "Post® Alpha-Bits® cereal is fortified with nutrients that help support healthy brain development in children. Iron helps deliver oxygen to the brain & body. Zinc helps brain & body cells grow and develop. Choline helps the brain send messages."



(ii.) After clicking the "Our Story" link for *Post Alpha-Bits*, Post continues its deceptive marketing strategy under the heading "The Alpha-Bit Story: Wholesome From A to Z," by claiming that "For decades, Post Alpha-Bits has remained a trusted brand with its great-tasting, whole grain oat and corn cereal pieces, nutrients to support healthy brain development and the alphabet fun that kids and mom L-O-V-E." "In fact, the Alpha-Bits on shelves today has a more nutritious formula that the original cereal that launched more than 50 years ago. The cereal has 20 grams of whole grain, only 6 grams of sugar and 12 essential vitamins and minerals. Alpha Bits cereal is a great way for growing children to start their day."

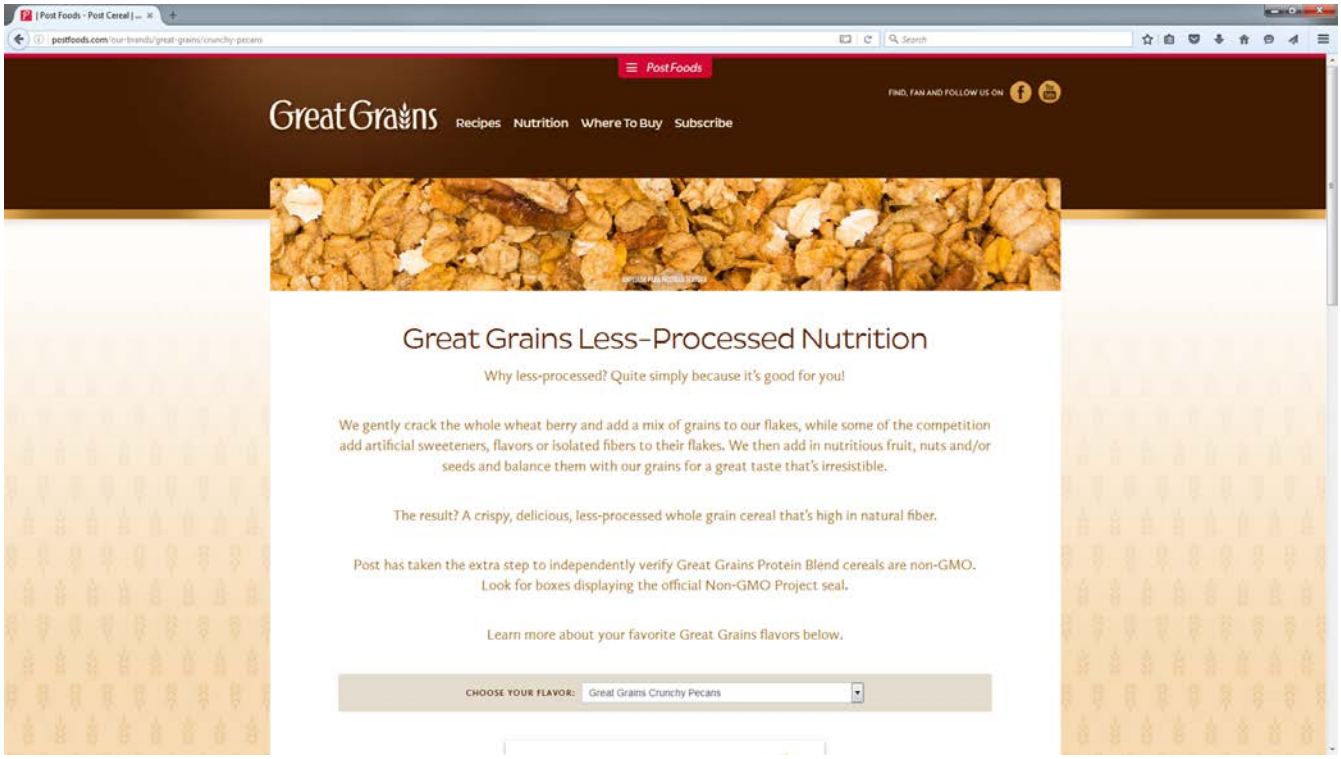


b. ***Post Golden Crisp:*** After clicking the "VIEW NUTRITION INFO" link on the *Post Golden Crisp* webpage, Post claims "Golden Crisp isn't just sweet to eat. It also has good stuff, like essential vitamins and minerals," and asks "Did You Know? Golden Crisp Has: • 10 essential vitamins and minerals • Excellent source of six B vitamins • Excellent source of vitamin D • Good source of iron and zinc • Fat- and cholesterol-free."



c. ***Post Great Grains:*** Prominently featured on the *Post Great Grains* webpage is a large banner depicting a bowl of the cereal, next to the claim, "Nutrition You Can See," underneath which Post claims, "You can't argue with nutrition you can see. Great Grains starts whole and stays whole, so you know you're eating better nutrition," with a clickable button inviting consumers to "See the Difference." Clicking "See the Difference" sends the browser a page which furthers Post's health and wellness messaging by touting *Post Great Grains* as "Less-Processed Nutrition," "Quite simply because it's good for you!," and contains "nutritious fruit, nuts and/or seeds" "balance[d] . . . with . .. grains," for a "less processed whole grain cereal that's high in natural fiber." At the bottom of this page is a variety of *Post Great Grains* nutrition information. These "Nutrition" pages for each variety including further claims; for example, on the "Nutrition" page for Post Great Grains Cranberry Almond Crunch, Post asks "Did You Know? Great Grains Cranberry Almond Crunch has: •

35g of whole grain per serving** •24% of your Daily Value for fiber (6g of fiber per serving) • 0g saturated fat, 0g trans fat and 0mg cholesterol per serving • 14 vitamins and minerals • Excellent source of antioxidant vitamins C and E . . . • 9g Protein with milk"



d. ***Post Honey Bunches of Oats:*** The *Post Honey Bunches of Oats* webpage similarly continues Post's deceptive health and wellness messaging. Prominently displayed on the page is a large banner stating that "Honey Bunches of Oats Whole Grain Varieties" contain "2/3 of your day's whole grain."

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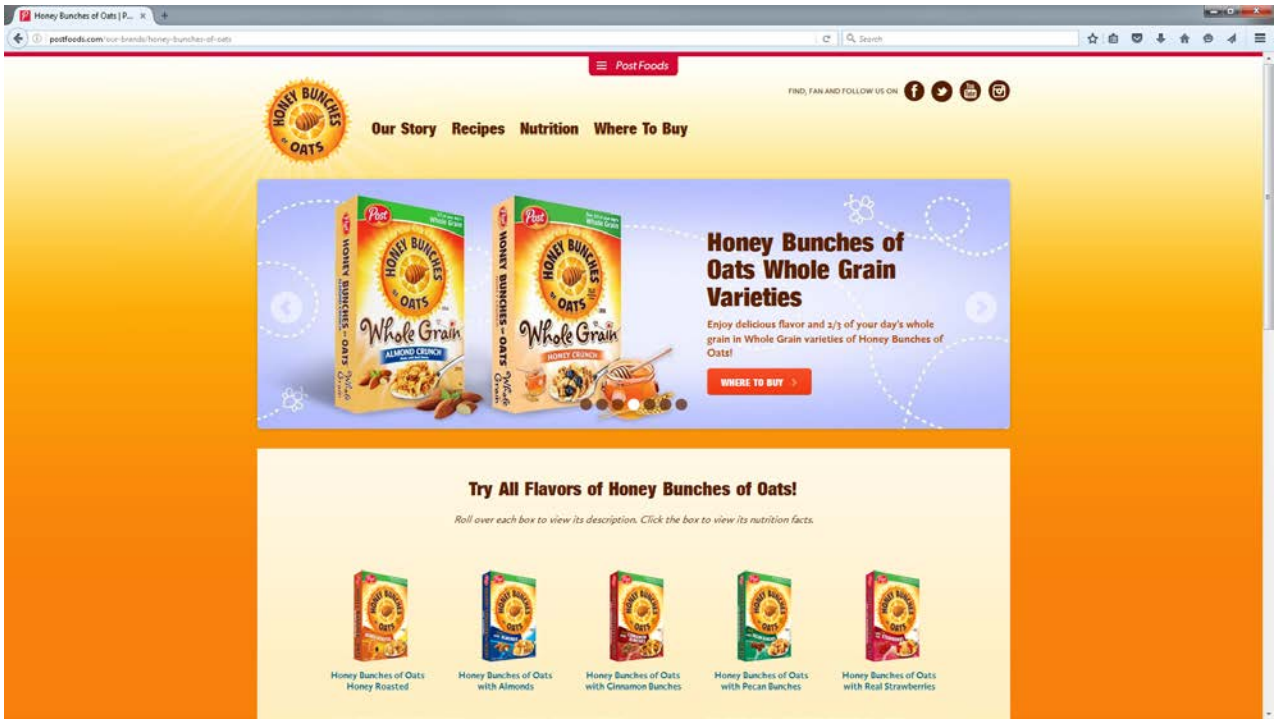
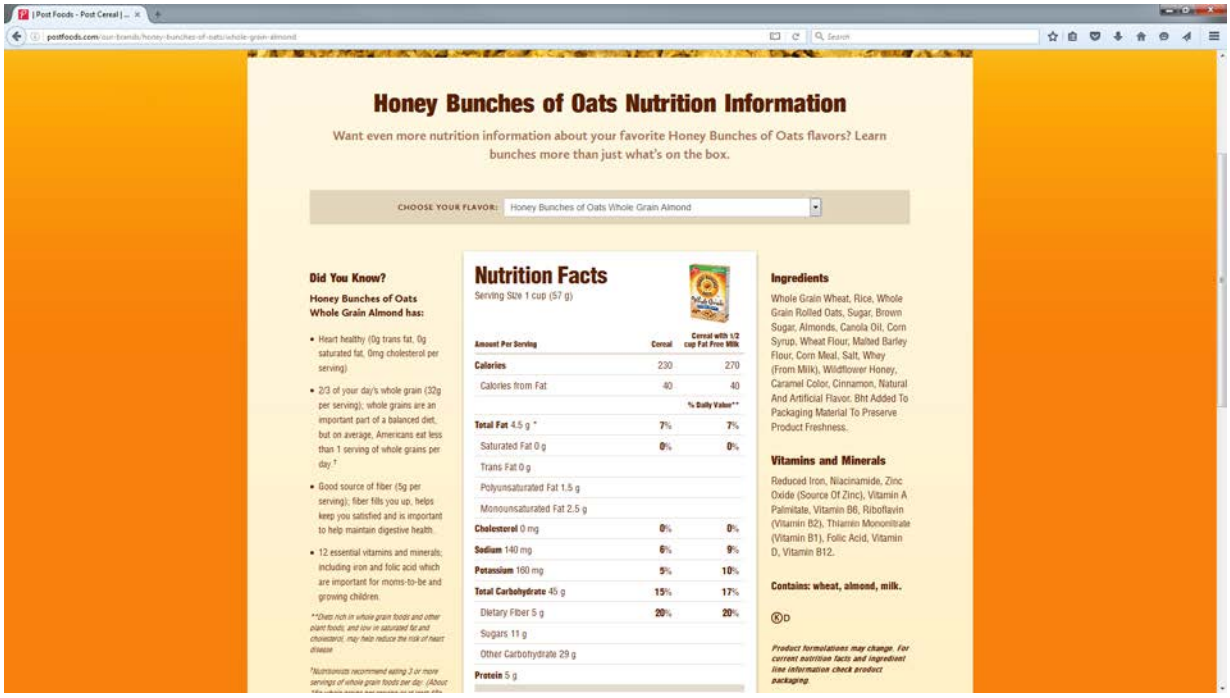


(i.) Clicking on the "Our Story" link brings a browser to a video that touts Post Honey Bunches of Oats as "WHOLESOME," overlaid on a field of grain.

(ii.) The "Nutrition" links for each variety continue 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 less than 1

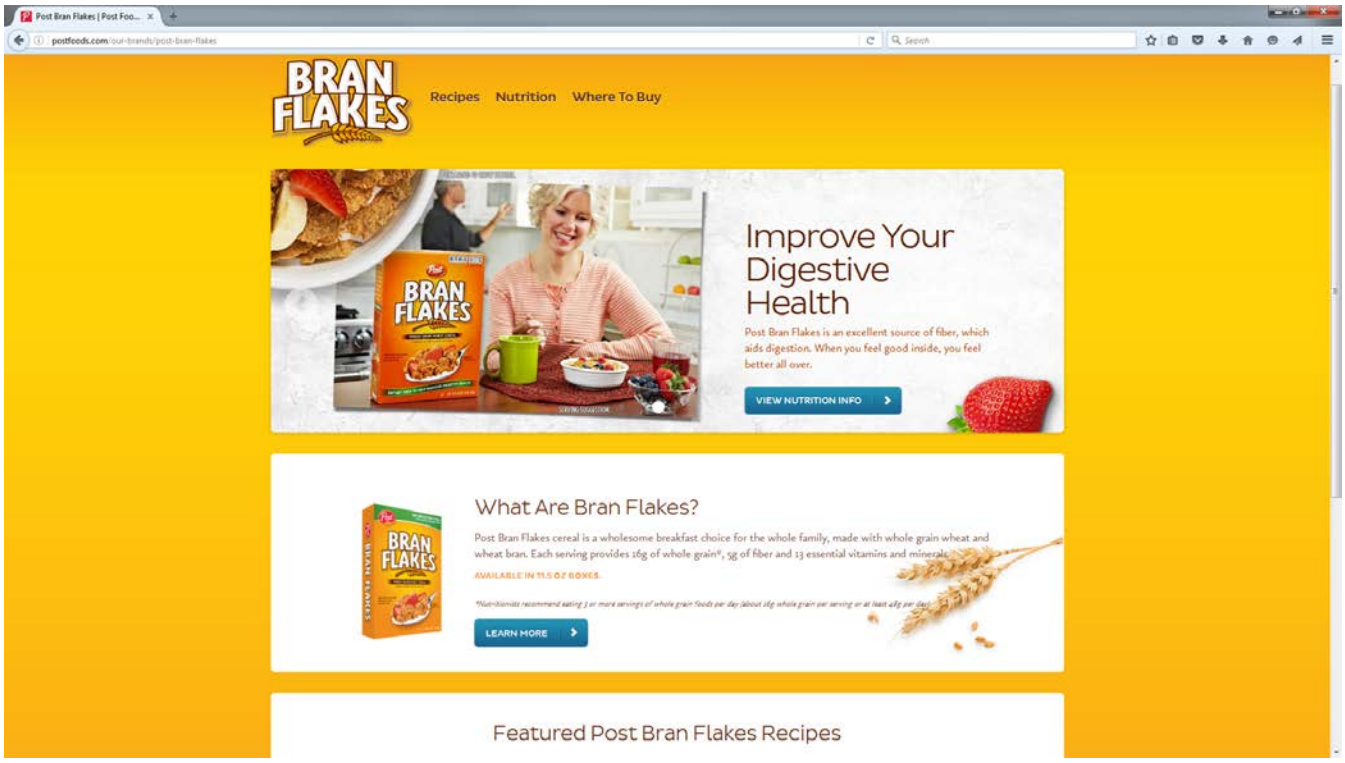
serving of whole grains per day. • Good source of fiber (5g per serving); fiber fills you up, helps keep you satisfied and is important to help maintain digestive health. • 12 essential vitamins and minerals; including iron and folic acid which are important for moms-to-be and growing children."



e. ***Post Honeycomb:*** The "Nutrition" link on the *Post Honeycomb* webpage asks, "Did You Know? Honeycomb cereal has: 8g of whole grain per serving • Excellent source of vitamin D • Low in fat and cholesterol-free • 10 essential vitamins and minerals."

f. ***Post Bran Flakes:*** Prominently displayed on the *Post Bran Flakes* page is a banner claiming the product will "Improve Your Digestive Health," because "Post Bran Flakes is an excellent source of fiber, which aids digestion. When you feel good inside, you feel better all over." Post further describes *Post Bran Flakes* as "a wholesome breakfast choice for the whole family, made with whole grain wheat and wheat bran. Each serving provides 16g of whole grain, 5g of fiber and 13 essential vitamin and minerals." The "Nutrition" link on the *Post Bran Flakes* webpage continues this health messaging by claiming that "Post Bran Flakes is an excellent source of fiber, which is good for your digestive health," and asking "Did You Know

Post Bran Flakes has: 16g of whole grin per serving* • 20% of your Daily Value for fiber (5f of fiber per serving) • Low in fat and cholesterol-free • 13 vitamins and minerals."



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

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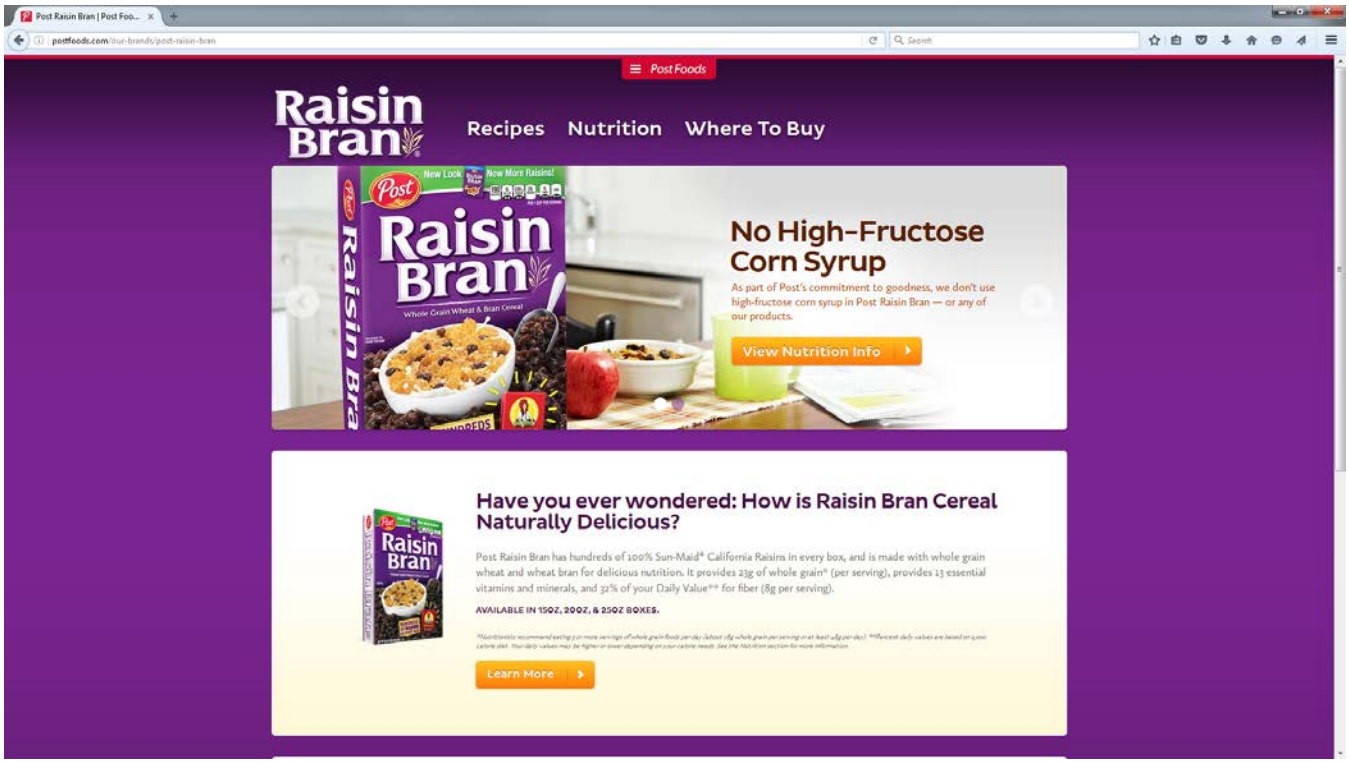

h. ***Post Shredded Wheat:*** Upon arriving at the *Post Shredded Wheat* webpage, consumers are greeted by a large banner depicting a bowl of Post Shredded Wheat next to the claim "Zero In On Your Health," underneath which Post claims, "The 100% whole grain goodness of Post Shredded Wheat has zero sodium, 0g sugar and zero cholesterol per serving." This is especially deceptive because Post does not distinguish between Post Shredded Wheat and sweetened varieties, such as Post Shredded Wheat Honey Nut, which contains 12g of sugar per serving. Each variety, including those sweetened varieties containing high amounts of added sugar, are pictured below the banner, and the "Nutrition" link on the same page takes a browser to information about all these varieties of shredded wheat.

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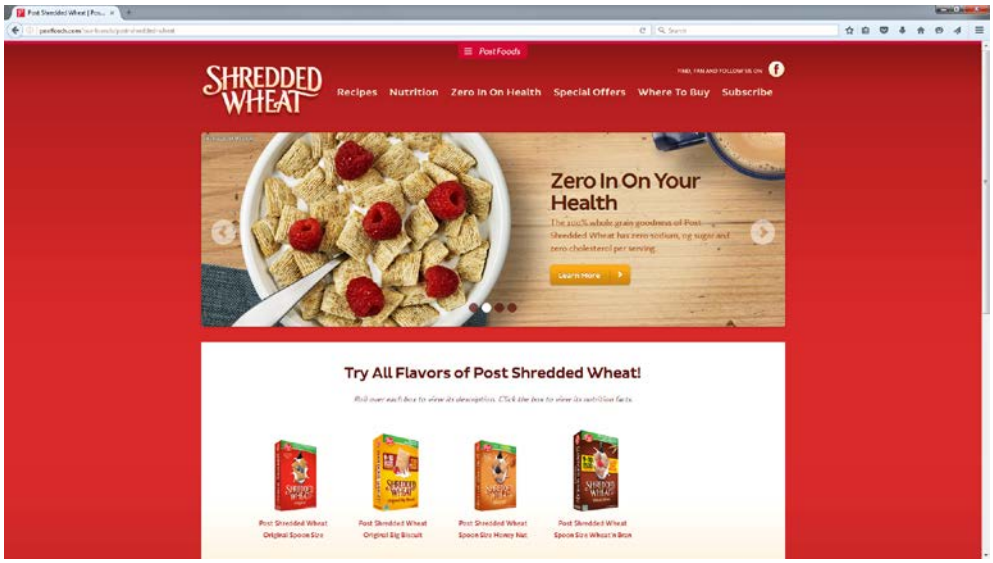
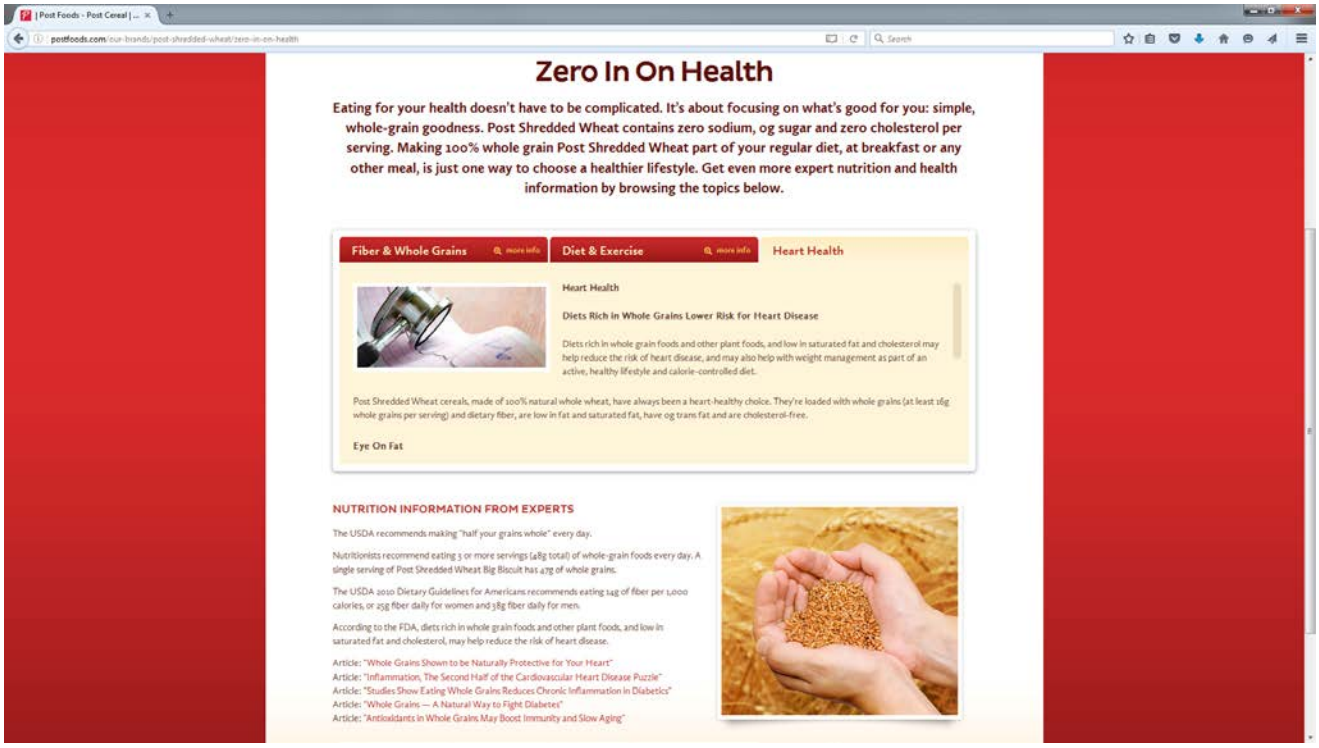
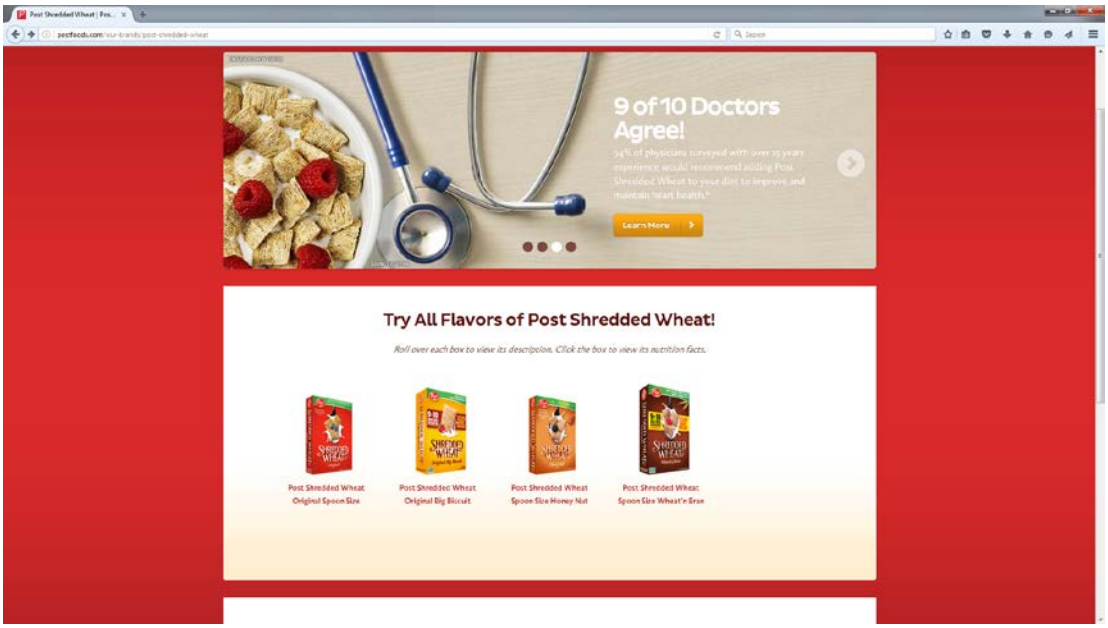


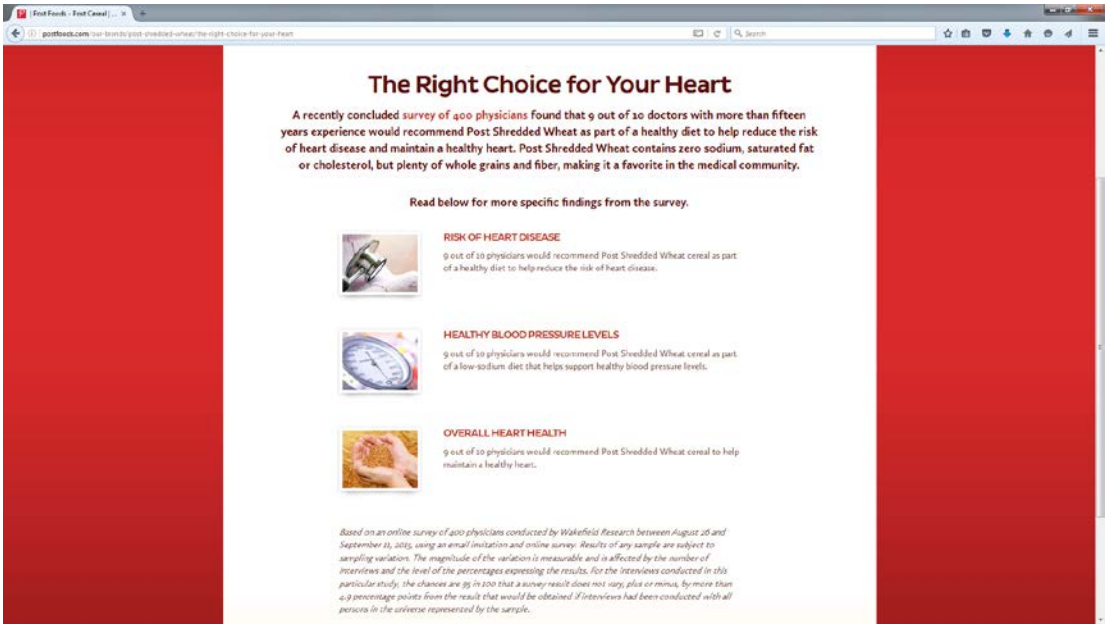
(i.) Clicking on the "Learn More" link on the "Zero In On Your Health" banner takes users to a page dedicated entirely to Post's deceptive health and wellness marketing strategy. Post claims "Making 100% whole grain Post Shredded Wheat part of your regular diet, at breakfast or any other meal, is just one way to choose a healthier lifestyle. Get even more expert nutrition and health information by browsing the topics below," which include "Fiber & Whole Grains," "Diet & Exercise" and "Heart Health," and include the following 5 articles: "Whole Grains Shown to be Naturally Protective for Your Heart," "Inflammation, The Second Half of the Cardiovascular Heart Disease Puzzle," "Studies Show Eating Whole Grains Reduces Chronic Inflammation in Diabetics," "Whole Grains—A Natural Way to Fight Diabetes," and "Antioxidants in Whole Grains May Boost Immunity and Slow Aging." Each of these supposed "articles" is actually just a summary of information found elsewhere, without identifying the author of any of the "articles." Each "article" concludes "With all this great news, why wait? Fill your bowl at least once a day with whole-grain Post cereal and be good to your heart! Our whole grains contain natural fiber and antioxidants — that's the Post Natural Advantage." All but one of these articles touts the health benefits of whole grains while omitting the negative health consequences of consuming the sugar in Post's products. The

one article that mentions sugar, "Inflammation, the Second Half of the Coronary Heart Disease Puzzle," declares that "a diet rich in high calorie, processed, easily digestible, nutrient poor foods is an underlying cause of inflammation . . . . These types of meals lead to spikes in blood sugar and fat, including oxidative stress which among other things leads to inflammation," demonstrating Post was and is well aware of the deleterious effects of the processed sugar in its products, yet leverages its whole grain messaging to convince consumers that its cereals are nonetheless healthy.

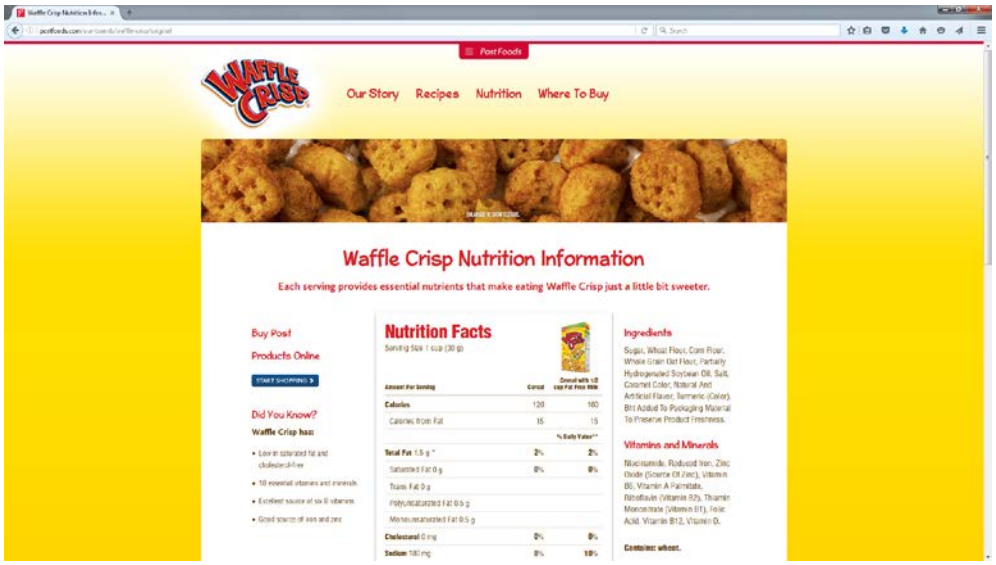


(ii.) The "Zero In On Your Health" banner also scrolls to reveal other health and wellness banners, such as "9 of 10 Doctors Agree! 94% of physicians surveyed with over 15 years experience would recommend adding Post Shredded Wheat to your diet to improve and maintain heart health." The "Learn More" link on the banner takes consumers to a page titled "The Right Choice for Your Heart" which makes further health and wellness claims.





i. ***Post Waffle Crisp:*** Post furthers its health and wellness messaging about *Post Waffle Crisp* online, as well. For example, the webpage for *Post Waffle Crisp* states that "Waffle Crist also provides 10 essential vitamins and minerals in every serving." The "Nutrition" link leads to a claim that "Each serving provides essential nutrients that make eating waffle crisp just a little bit sweeter," and asks "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."



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

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

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

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

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

312. The practices complained of herein, while specific to certain cereal lines, cereal

flavors or varieties, and certain packaging claims, are exemplary of, and consistent with, Post's longtime practice of intentionally and strategically marketing high-sugar cereals with health and wellness claims that both deceptively suggest the products are healthy, and deceptively omit the dangers of consuming the products.

313. These practices have been consistent notwithstanding Post's occasional discontinuation or introduction of new products or lines of cereal, reformulation of products, or labeling or packaging changes.

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

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

316. In fact, Neilsen's 2015 Global Health & Wellness Survey found "88% of those polled are willing to pay more for healthier foods."[94]

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

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

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

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

cereal as the labeled serving size. Federal regulations thus provide that the reference amount customarily consumed (RACC) for cereal is 110 grams. 21 C.F.R. § 101.12(b).

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

320. Another study, by Yale University's Rudd Center for Food Policy and Obesity, found that children 5 to 12 years old ate an average of 35 grams of low-sugar cereals, but an average of 61 grams of high-sugar cereals.[95]

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

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

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

PLAINTIFFS' PURCHASES, RELIANCE, AND INJURY

A. Plaintiff Debbie Krommenhock

324. Over the past approximately two years, plaintiff Debbie Krommenhock purchased the following Post cereals and granolas.

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

b. *Post Honey Bunches of Oats Granola – Honey Roasted*

c. *Post Shredded Wheat - Honey Nut*

d. *Post Raisin Bran*

325. Ms. Krommenhock purchased the foregoing Post cereals and granolas at either

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

the Lucky's located at 21001 San Ramon Valley Boulevard, in San Ramon, California 94583, or the Wal-Mart located at 9100 Alcosta Boulevard, in San Ramon, California 94583.

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

327. As best she can recall, Ms. Krommenhock purchased *Post Honey Bunches of Oats Granola – Honey Roasted* one time during the past two years.

328. As best she can recall, Ms. Krommenhock purchased *Post Shredded Wheat Honey Nut* approximately six times over the past several years, with her last purchase in around June 2016.

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

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

* * *

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

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

333. Ms. Krommenhock is not a nutritionist or food scientist, but rather a lay

consumer who did not have the specialized knowledge that Post had regarding the nutrients present in the Post cereals and granolas. At the time of purchase, plaintiff was unaware of the extent to which consuming high amounts of added sugar in any form adversely affects blood cholesterol levels and increases risk of CHD, stroke, and other morbidity, or what amount of sugar might have such an effect.

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

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

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

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

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

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

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

341. Ms. Krommenhock detrimentally altered her position and suffered damages in

an amount equal to the amount she paid for the products.

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

B. Plaintiff Stephen Hadley

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

344. Over the past several years, Mr. Hadley has purchased Post cereals on multiple occasions, including Post Great Grains cereals, Post Honey Bunches of Oats cereals and granolas, Post Shredded Wheat cereals, and various Post single cereals.

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

a. *Post Great Grains Blueberry Morning*

b. *Post Great Grains Cranberry Almond Crunch*

c. *Post Great Grains Banana Nut Crunch*

d. *Post Great Grains Raisins, Dates & Pecans*

e. *Post Great Grains Crunchy Pecans*

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

347. To the best of his recollection, Mr. Hadley has been purchasing *Post Great Grains* cereals since early 2012 (including in their earlier incarnation as *Post Selects* or *Post Selects/Great Grains*). Given plaintiff's habits, he believes he purchased one variety or another with a frequency of approximately once every couple of months. Plaintiff believes he purchased *Post Great Grains* cereals from locations including: (a) the Nob Hill Foods located at 900 Lighthouse Avenue, in Monterey, California 93940, (b) the Trader Joe's located at 570 Munras Avenue, in Monterey, California (c) the Safeway located at 815 Canyon Del Rey Boulevard, in Del Rey Oaks, California 93940, (d) the Grocery Outlet located at 1523

Freemont Boulevard, in Seaside, California 93955, (e) the Wal-Mart located at 150 Beach Road, in Marina, California 93933, and (f) the Target located at 2040 California Avenue, in Sand City, California 93955. Mr. Hadley believes he last purchased a *Post Great Grains* cereal in approximately April or May 2016.

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

349. ***Post Honey Bunches of Oats Cereals & Granolas.*** Over the past several years, Mr. Hadley has purchased the following varieties of *Post Honey Bunches of Oats* cereals and granolas:

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

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

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

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

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

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

g. *Post Honey Bunches of Oats Cereal – Whole Grain Honey Crunch*

h. *Post Honey Bunches of Oats Cereal – Greek Honey Crunch*

i. *Post Honey Bunches of Oats Granola – Honey Roasted*

j. *Post Honey Bunches of Oats Protein Granola – with Dark Chocolate*

350. Mr. Hadley believes he may also have purchased the *Apples & Cinnamon Bunches* variety of Honey Bunches of Oats cereal, and *Cinnamon* granola.

351. To the best of his recollection, Mr. Hadley has been purchasing *Post Honey Bunches of Oats* cereals since early 2012. Given plaintiff's habits, he believes he purchased one variety or another with a frequency of approximately once every two weeks. Plaintiff believes he purchased *Post Honey Bunches of Oats* cereals from locations including: (a) the

Safeway located at 815 Canyon Del Rey Boulevard, in Del Rey Oaks, California 93940, (b) the Wal-Mart located at 150 Beach Road, in Marina, California 93933, and (c) the Target located at 2040 California Avenue, in Sand City, California 93955. Plaintiff believes he last purchased a *Post Honey Bunches of Oats* cereal in July 2016.

352. To the best of his recollection, Mr. Hadley purchased *Post Honey Bunches of Oats* granolas likely one time, in the spring of 2013, from the Nob Hill Foods located at 900 Lighthouse Avenue, in Monterey, California 93940.

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

354. ***Post Shredded Wheat.*** Over the past several years, Mr. Hadley has purchased *Post Shredded Wheat Honey Nut* cereal.

355. To the best of his recollection, Mr. Hadley has been purchasing *Post Shredded Wheat Honey Nut* cereals since fall (approximately August or September) of 2014. Given plaintiff's habits, he believes he purchased one variety or another with a frequency of approximately once every four months. Plaintiff believes he purchased *Post Shredded Wheat Honey Nut* cereal from the Grocery Outlet located at 1523 Freemont Boulevard, in Seaside, California 93955. Plaintiff believes he last purchased *Post Shredded Wheat Honey Nut* cereal in summer 2015.

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

357. ***Post Singles Cereals.*** Over the past several years, Mr. Hadley has purchased the following "single" varieties of Post cereals:

a. *Raisin Bran*

b. *Bran Flakes*

c. *Alpha Bits*

d. *Honey-Comb*

e. *Waffle Crisp*

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

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

* * *

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

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

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

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

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

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

366. Mr. Hadley paid more for the Post cereals and granolas, and would only have been willing to pay less, or unwilling to purchase them at all, absent the misleading labeling statements complained of herein.

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

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

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

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

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

CLASS ACTION ALLEGATIONS

372. Pursuant to Fed. R. Civ. P. 23, plaintiffs seek to represent a class of all persons in California who, at any time from August 29, 2012 to the time a class is notified, purchased

high-sugar Post cereals bearing health and wellness claims for their own personal, family, or household use and not for resale.

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

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

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

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

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

c. Whether, if the former questions of fact are answered in the affirmative, this renders misleading to the reasonable consumer 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 in accordance with previous representations when they have not, within the meaning of Cal. Civ. Code § 1770(a)(16);

q. Whether through the challenged labels and advertising, Post made affirmations of fact or promises, or descriptions of the goods;

r. Whether Post's affirmations of fact or promises, or descriptions of the goods became part of the basis of the bargain for the Class's purchases;

s. Whether Post failed to provide the goods in conformation with its affirmations of fact, promises, and descriptions of the goods;

t. The proper equitable and injunctive relief;

u. The proper amount of restitution or disgorgement; and

v. The proper amount of reasonable litigation expenses and attorneys' fees.

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

377. Plaintiffs will fairly and adequately represent and protect the interests of the

class, have no interests incompatible with the interests of the class, and have retained counsel competent and experienced in class action, consumer protection, and false advertising litigation, including within the food industry.

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

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

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

CAUSES OF ACTION

FIRST CAUSE OF ACTION

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

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

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

383. 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.

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

SECOND CAUSE OF ACTION

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

385. Plaintiffs reallege and incorporate the allegations elsewhere in the Complaint as

if fully set forth herein.

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

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

a. § 1770(a)(5): representing that goods have characteristics, uses, or benefits which they do not have;

b. § 1770(a)(7): representing that goods are of a particular standard, quality, or grade if they are of another;

c. § 1770(a)(9): advertising goods with intent not to sell them as advertised; and

d. § 1770(a)(16): representing the subject of a transaction has been supplied in accordance with a previous representation when it has not.

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

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

THIRD CAUSE OF ACTION

VIOLATIONS OF THE CALIFORNIA UNFAIR COMPETITION LAW,

CAL. BUS. & PROF. CODE §§ 17200 *ET SEQ.*

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

391. The UCL prohibits any "unlawful, unfair or fraudulent business act or practice,"

Cal. Bus. & Prof. Code § 17200.

Fraudulent

392. Post's use of the challenged health and wellness claims on products containing high amounts of added sugar are likely to deceive reasonable consumers.

Unfair

393. Post's conduct with respect to the labeling, advertising, and sale of Post high-sugar cereals was and is unfair because Post's conduct was and is immoral, unethical, unscrupulous, or substantially injurious to consumers and the utility of its conduct, if any, does not outweigh the gravity of the harm to its victims.

394. Post's conduct with respect to the labeling, advertising, and sale of Post high-sugar cereals was also unfair because it violated public policy as declared by specific constitutional, statutory or regulatory provisions, including the False Advertising Law, the Federal Food, Drug, and Cosmetic Act, and the California Sherman Food, Drug, and Cosmetic Law.

395. Post's conduct with respect to the labeling, advertising, and sale of Post high-sugar cereals was also unfair because the consumer injury was substantial, not outweighed by benefits to consumers or competition, and not one consumers themselves could reasonably have avoided.

Unlawful

396. 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.*

FOURTH CAUSE OF ACTION

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

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

398. 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).

399. These affirmations and descriptions include, for example:

a. *Great Grains Blueberry Morning*

- "Less processed nutrition you can see"
- "it's good for you!"
- "less processed whole grain cereal"

b. *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"

c. *Great Grains Banana Nut Crunch*

- "Less processed nutrition you can see"
- "it's good for you!"
- "nutritious ingredients in every bite!"
- "less processed whole grain cereal"

d. *Great Grains Raisins, Dates & Pecans*

- "Less processed nutrition you can see"
- "it's good for you!"
- "nutritious ingredients in every bite!"

e. *Great Grains Crunchy Pecans*

- "Less processed nutrition you can see"
- "it's good for you!"
- "nutritious ingredients in every bite!"

f. *Great Grains Blueberry Pomegranate*

- "Less processed nutrition you can see"
- "it's good for you!"
- "nutritious ingredients in every bite!"

g. *Great Grains Protein Blend: Honey, Oats & Seeds*

- "HELPS SUPPORT A HEALTHY METABOLISM"
- "it's good for you!"
- "nutritious ingredients in every bite!"
- "Support a Healthy Metabolism"
- "less processed whole grain cereal"

h. *Great Grains Protein Blend: Cinnamon Hazelnut*

- "HELPS SUPPORT A HEALTHY METABOLISM"
- "nutritious ingredients in every bite!"
- "it's good for you!"
- "less processed whole grain cereal"
- "Support a Healthy Metabolism"

i. *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*

- "Heart Healthy"
- heart depictions
- "wholesome"

j. *Honey Bunches of Oats Cereal – Tropical Blends – Mango Coconut*

- "wholesome"

k. *Honey Bunches of Oats Cereal – Whole Grain Honey Crunch* and *Whole Grain With Vanilla Bunches*

- "a smart step toward eating a balanced diet"
- "Honey Bunches of Oats Whole Grain Cereal has it all. . . Fiber fills you up, helps keep you satisfied and is important to help maintain digestive health. Rich in nutrients: Honey Bunches of Oats Whole Grain Cereal is rich in nutrients . . . important for moms-to-be and growing children. . . . 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 for your family, good for your health, good for you"
- Heart design in "I" in "Whole Grain" name

l. *Honey Bunches of Oats Cereal – Greek Honey Crunch & Greek Mixed Berry*

- "WHOLESOME NUTRITION"

m. *Honey Bunches of Oats Granola – Honey Roasted*, *Raspberry*, and *Cinnamon*

- "wholesome"

n. *Honey Bunches of Oats Protein Granola with Dark Chocolate*

- "HELPS FUEL YOUR BODY WITH SUSTAINED ENERGY"

o. *Shredded Wheat Honey Nut*

- "An ingredient list that is so good, we have nothing to hide. Wouldn't it be great if it were easy to understand what is in your food? With Post Shredded Wheat, it's easy to be confident with your breakfast choice. It is made with nothing but goodness, so go ahead and enjoy a bowl."

• "We make it easy to understand what is in your food—we start with the goodness of whole grain wheat. No artificial flavors or colors added: Our flavor comes from whole grain wheat, honey, almonds, molasses and real sugar. That means vitamin and mineral fortified Post Shredded Wheat Honey Nut contains no High fructose corn syrup or artificial ingredients."

• "We make it easy to understand what is in your food—it's just the wholesome goodness of whole grain wheat."

• "No Sugar* [ ] Added: Our flavor comes from 100% whole grain wheat, nothing else. That means Post Shredded Wheat . . . has 0 grams of sugars per serving."

• "THE BISCUIT OF BENEFITS / Post Shredded Wheat Honey Nut is made with 100% whole grain wheat, for a natural source of fiber. . . . So what does this mean in terms of health benefits for you? They are so plentiful, the cereal could be renamed Biscuit of Benefits!"

• "**Heart Health**"

• "**Digestive Health:** Diets rich in fiber have many benefits and are important for maintaining digestive health."

p. *Shredded Wheat Crunch!*

• "POST SHREDDED WHEAT CRUNCH MAY HELP REDUCE THE RISK OF HEART DISEASE"

• "heart healthy"

q. *Raisin Bran*

• "Healthy"

• "Nutritious"

• "Where nutritious and delicious live in harmony"

• "good for digestive health"

r. *Bran Flakes*

- "TO HELP MAINTAIN DIGESTIVE HEALTH"
- "YOUR HEALTHY LIFESTYLE"
- "nutrients to help keep you healthy"
- "TO HELP WITH WEIGHT MANAGEMENT"

s. *Alpha-Bits*

- "ALPHA-BITS IS A GOOD SOURCE OF NUTRIENTS THAT ARE BUILDING BLOCKS FOR YOUR CHILD'S DEVELOPING BRAIN"

t. *Honey-Comb*

- "Nutritious"

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

401. 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.

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

403. 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.

FIFTH CAUSE OF ACTION

BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY,

CAL. COM. CODE § 2314

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

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

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

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

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

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

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

PRAYER FOR RELIEF

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

a. An Order certifying this as a class action, appointing plaintiffs and their counsel to represent the class, and requiring Post to pay the cost of class notice;

b. An Order enjoining Post from labeling, advertising, or packaging the Post high-sugar cereals identified herein with the challenged health and wellness statements identified herein;

c. An Order compelling Post to conduct a corrective advertising campaign

to inform the public that Post high-sugar cereals were deceptively marketed;

d. An Order enjoining Post's longstanding policy, practice, and strategy of marketing high-sugar cereals with misleading health and wellness claims;

e. An Order requiring Post to pay restitution to restore funds that may have been acquired by means of any act or practice declared by this Court to be an unlawful, unfair, or fraudulent business act or practice, untrue or misleading advertising, or a violation of the UCL, FAL, or CLRA;

f. An Order requiring Post to pay all statutory, compensatory, and punitive damages permitted under the causes of action alleged herein;

g. An Order requiring Post to disgorge or return all monies, revenues, and profits obtained by means of any wrongful or unlawful act or practice;

h. Pre- and post-judgment interest;

i. Costs, expenses, and reasonable attorneys' fees; and

j. Any other and further relief the Court deems necessary, just, or proper.

JURY DEMAND

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

Dated: September 14, 2017

/s/ Jack Fitzgerald

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APPENDIX 1

Product	Challenged Health & Wellness Claims	Added Sugars (in Order of Amount)	Serving Size	Calories Per Serving	Grams of Added Sugar Per Serving	% Added Sugar by Weight	% Calories From Added Sugar	Contribution of 1 Serving to AHA's Maximum Recommended Daily Intake
Great Grains Blueberry Morning 	• "Less processed nutrition you can see" • "nutritious Blueberries" • "Why less processed? Quite simply, because it's good for you!" • "We gently crack the whole wheat berry and add a mix of grains to 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." • Whole Grains Council Stamp	Sugar, Invert Sugar, Glycerin, Brown Sugar, Corn Syrup	55g	220	14g	25.5%	25.5%	M: 36.8% W:56 % C: 93.3-116.7%
Great Grains Cranberry Almond Crunch 	• "Less processed nutrition you can see" • "wholesome Almonds" • "nutritious Cranberries" • "Why less processed? Quite simply because it's good for you!" • "We gently crack the whole wheat berry and add a mix of grains to 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." • "It's whole foods from the field to your bowl, with whole grains, fiber and nutritious ingredients in every bite!" • Whole Grains Council Stamp	Sugar, Glycerin, Brown Sugar, Corn Syrup	56g	210	11g	19.6%	21%	M: 28.9% W: 44% C: 73.3-91.7%

Product	Challenged Health & Wellness Claims	Added Sugars (in Order of Amount)	Serving Size	Calories Per Serving	Grams of Added Sugar Per Serving	% Added Sugar by Weight	% Calories From Added Sugar	Contribution of 1 Serving to AHA's Maximum Recommended Daily Intake
Great Grains Banana Nut Crunch 	• "Less processed nutrition you can see" • "wholesome Walnuts" • "wholesome Almonds" • "Why less processed? Quite simply because it's good for you!" • "We gently crack the whole wheat berry and add a mix of grains to 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." • "wholesome walnuts and almonds." • "It's whole foods from the field to your bowl, with whole grains, fiber and nutritious ingredients in every bite!" • Whole Grains Council Stamp	Sugar, Brown Sugar, Corn Syrup	59g	230	9g	15.3%	15.7%	M: 23.7% W: 36% C: 60-75%
Great Grains Raisins, Dates & Pecans 	• "Less processed nutrition you can see" • "wholesome Pecans" • "naturally nutritious Raisins & Dates" • "Why less processed? Quite simply because it's good for you!" • "We gently steam, role 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." • "It's whole foods from the field to your bowl, with whole grains, fiber and nutritious ingredients in every bite!" • Whole Grains Council Stamp	Brown Sugar, Sugar, Corn Syrup	55g	210	7g	12.7%	13.3%	M: 18.4% W: 28% C: 46.7-58.3%

Product	Challenged Health & Wellness Claims	Added Sugars (in Order of Amount)	Serving Size	Calories Per Serving	Grams of Added Sugar Per Serving	% Added Sugar by Weight	% Calories From Added Sugar	Contribution of 1 Serving to AHA's Maximum Recommended Daily Intake
Great Grains Crunchy Pecans 	• "Less processed nutrition you can see" • "wholesome Pecans" • "Why less processed? Quite simply because it's good for you!" • "We gently steam, role 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." • "It's whole foods from the field to your bowl, with whole grains, fiber and nutritious ingredients in every bite!" • Whole Grains Council Stamp	Brown Sugar, Sugar, Corn Syrup	52g	210	8g	15.4%	15.2%	M: 21.1% W: 32% C: 53.3-66.7%
Great Grains Blueberry Pomegranate 	• "Less processed nutrition you can see" • "real Pomegranate Juice" • "nutritious Blueberries" • "Why less processed? Quite simply because it's good for you!" • "We gently steam, role 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." • "It's whole foods from the field to your bowl, with whole grains, fiber and nutritious ingredients in every bite!" • Whole Grains Council Stamp	Sugar, Evaporated Cane Juice, Pomegranate Juice Concentrate, Invert Sugar, Glycerin, Brown Sugar, Corn Syrup	50g	190	12g	24%	25.3%	M: 31.6% W: 48% C: 80-100%

Product	Challenged Health & Wellness Claims	Added Sugars (in Order of Amount)	Serving Size	Calories Per Serving	Grams of Added Sugar Per Serving	% Added Sugar by Weight	% Calories From Added Sugar	Contribution of 1 Serving to AHA's Maximum Recommended Daily Intake
Great Grains Protein Blend: Honey, Oats & Seeds 	• "HELPS SUPPORT A HEALTHY METABOLISM" • "wholesome Almonds" • "nutritious Pumpkin Seeds" • "sweetened with a kiss of honey" • "Why less processed? Quite simply, because it's good for you!" • "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 seeds and balance them with our grains for a great taste that's irresistible. • "It's whole foods from the field to your bowl, with whole grains, fiber and nutritious ingredients in every bite!" • "Support a Healthy Metabolism" • "The process of metabolism establishes the rate at which we burn our calories and, ultimately, how quickly we gain weight or how easily we lose it. Although some factors affecting metabolic rate, like age and genetics can't be changed, there are ways to maximize your metabolism." **Breakfast**: Eat breakfast. One important part of metabolism is how many calories you burn while at rest; did you know that eating breakfast to 'break the fast' can increase your metabolism by as much as 10%? Start your day with the less processed whole grain nutrition of Great Grains Protein Blend to help jumpstart your metabolism. **Protein**: Eat protein. Did you know that protein generally requires about 25% more energy 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. . . . Great Grains Blend	Sugar, Brown Sugar, Molasses, Honey	55g	220	9g	16.4%	16.4%	M: 23.7% W: 36% C: 60-75%

Product	Challenged Health & Wellness Claims	Added Sugars (in Order of Amount)	Serving Size	Calories Per Serving	Grams of Added Sugar Per Serving	% Added Sugar by Weight	% Calories From Added Sugar	Contribution of 1 Serving to AHA's Maximum Recommended Daily Intake
	can actually help enhance your metabolism!" [. . .] **Fiber**: Consume fiber. Diets rich in fiber help keep you fuller longer which is important for weight management. Great Grains Protein Blend can help keep you satisfied with the staying power of . . . fiber." • Whole Grains Council Stamp							
Great Grains Protein Blend: Cinnamon Hazelnut 	• "HELPS SUPPORT A HEALTHY METABOLISM" • "wholesome Almonds" • "nutritious Hazelnuts" • "less processed whole grain cereal" • "Why Less Processed? Quite simply because it's good for you!" • "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. The result? A crispy, delicious, less processed whole grain cereal . . . ." • "wholesome hazelnuts, almonds, and multi grain clusters with real cinnamon" • "It's whole foods from the field to your bowl, with whole grains, fiber and nutritious ingredients in every bite!" • "Support a Healthy Metabolism" • "The process of metabolism establishes the rate at which we burn our calories and, ultimately, how quickly we gain weight or how easily we lose it.	Sugar, Brown Sugar, Corn Syrup, Molasses, Honey	57g	230	9g	15.8%	15.7%	M: 23.7% W: 36% C: 60-75%

Product	Challenged Health & Wellness Claims	Added Sugars (in Order of Amount)	Serving Size	Calories Per Serving	Grams of Added Sugar Per Serving	% Added Sugar by Weight	% Calories From Added Sugar	Contribution of 1 Serving to AHA's Maximum Recommended Daily Intake
	Although some factors affecting metabolic rate, like age and genetics can't be changed, there are ways to maximize your metabolism." **Breakfast:** Eat breakfast. One important part of metabolism is how many calories you burn while at rest; did you know that eating breakfast to 'break the fast' can increase your metabolism by as much as 10%? Start your day with the less processed whole grain nutrition of Great Grains Protein Blend to help jumpstart your metabolism." **Protein:** Eat protein. Did you know that protein generally requires about 25% more energy 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. . . . Great Grains Blend can actually help enhance your metabolism!" [. . .] **Fiber:** Consume fiber. Diets rich in fiber help keep you fuller longer which is important for weight management. Great Grains Protein Blend can help keep you satisfied with the staying power of . . . fiber." • Whole Grains Council Stamp							
Honey Bunches of Oats Cereal – Honey Roasted 	• "Our Post Promise | No High Fructose Corn Syrup" • "Heart Healthy" • Depictions of heart in circle • "a Touch of Honey!" • "A delicious, wholesome start to your day!" • "4 Wholesome Grains" • Whole Grains Council Stamp	Sugar, Brown Sugar, Corn Syrup, Wildflower Honey, Malted Corn and Barley Syrup	30g	120	6g	20%	20%	M: 15.7% W: 24% C: 40-50%

Product	Challenged Health & Wellness Claims	Added Sugars (in Order of Amount)	Serving Size	Calories Per Serving	Grams of Added Sugar Per Serving	% Added Sugar by Weight	% Calories From Added Sugar	Contribution of 1 Serving to AHA's Maximum Recommended Daily Intake
Honey Bunches of Oats Cereal – With Almonds 	• "Our Post Promise | No High Fructose Corn Syrup" • "Heart Healthy" • Depictions of heart in circle • "a Touch of Honey!" • "A delicious, wholesome start to your day!" • "4 Wholesome Grains" • Whole Grains Council Stamp	Sugar, Brown Sugar, Corn Syrup, Malted Corn and Barley Syrup, Wildflower Honey	32g	130	6g	18.8%	18.5%	M: 15.7% W: 24% C: 40-50%
Honey Bunches of Oats Cereal – Raisin Medley 	• "Our Post Promise | No High Fructose Corn Syrup" • "Heart Healthy" • Depictions of heart in circle • "a Touch of Honey!" • "A delicious, wholesome start to your day!" • "4 Wholesome Grains" • Whole Grains Council Stamp	Sugar, Brown Sugar, Glycerin, Corn Syrup, Wildflower Honey, Malted Corn and Barley Syrup	52g	200	10g	19.2%	20%	M: 26.3% W: 40% C: 66.7-83.3%

Product	Challenged Health & Wellness Claims	Added Sugars (in Order of Amount)	Serving Size	Calories Per Serving	Grams of Added Sugar Per Serving	% Added Sugar by Weight	% Calories From Added Sugar	Contribution of 1 Serving to AHA's Maximum Recommended Daily Intake
Honey Bunches of Oats Cereal – With Pecan Bunches 	• "Our Post Promise | No High Fructose Corn Syrup" • "Heart Healthy" • Depictions of heart in circle • "a Touch of Honey!" • "A delicious, wholesome start to your day!" • "4 Wholesome Grains" • Whole Grains Council Stamp	Sugar, Brown Sugar, Corn Syrup, Wildflower Honey, Malted Corn and Barley Syrup	29g	120	6g	20.7%	20%	M: 15.7% W: 24% C: 40-50%
Honey Bunches of Oats Cereal – With Cinnamon Bunches 	• "Our Post Promise | No High Fructose Corn Syrup" • "Heart Healthy" • Depictions of heart in circle • "a Touch of Honey!" • "A delicious, wholesome start to your day!" • "4 Wholesome Grains" • Whole Grains Council Stamp	Sugar, Brown Sugar, Corn Syrup, Honey, Malted Corn and Barley Syrup	30g	120	6g	20%	20%	M: 15.7% W: 24% C: 40-50%

Product	Challenged Health & Wellness Claims	Added Sugars (in Order of Amount)	Serving Size	Calories Per Serving	Grams of Added Sugar Per Serving	% Added Sugar by Weight	% Calories From Added Sugar	Contribution of 1 Serving to AHA's Maximum Recommended Daily Intake
Honey Bunches of Oats Cereal – With Vanilla Bunches 	• "Our Post Promise | No High Fructose Corn Syrup" • "Heart Healthy" • Depictions of heart in circle • "a Touch of Honey!" • "A delicious, wholesome start to your day!" • "4 Wholesome Grains" • Whole Grains Council Stamp	Sugar, Brown Sugar, Corn Syrup, Honey	56g	220	12g	21.4%	21.8%	M: 31.6% W: 48% C: 80-100%
Honey Bunches of Oats Cereal – With Apples & Cinnamon Bunches 	• "Our Post Promise | No High Fructose Corn Syrup" • Whole Grains Council Stamp	Sugar, Brown Sugar, Corn Syrup, Wildflower Honey, Malted Corn and Barley Syrup, Apple Juice Concentrate	30g	120	6g	20%	20%	M: 15.8% W: 24% C: 40-50%

Product	Challenged Health & Wellness Claims	Added Sugars (in Order of Amount)	Serving Size	Calories Per Serving	Grams of Added Sugar Per Serving	% Added Sugar by Weight	% Calories From Added Sugar	Contribution of 1 Serving to AHA's Maximum Recommended Daily Intake
Honey Bunches of Oats Cereal – With Real Strawberries 	• "Our Post Promise | No High Fructose Corn Syrup" • "Heart Healthy" • Depictions of heart in circle • "a Touch of Honey!" • "A delicious, wholesome start to your day!" • "4 Wholesome Grains" • Whole Grains Council Stamp	Sugar, Brown Sugar, Corn Syrup, Wildflower Honey, Malted Corn and Barley Syrup	31g	120	7g	22.6%	23.3%	M: 18.4% W: 28% C: 46.7-58.3%
Honey Bunches of Oats Cereal – Fruit Blends – Banana Blueberry 	• "Our Post Promise | No High Fructose Corn Syrup" • "Heart Healthy" • Depictions of heart in circle • "a Touch of Honey!" • "A delicious, wholesome start to your day!" • "4 Wholesome Grains" • Whole Grains Council Stamp	Sugar, Brown Sugar, Corn Syrup, Malted Corn and Barley Syrup, Wildflower Honey	30g	120	6g	20%	20%	M: 15.8% W: 24% C: 40-50%

Product	Challenged Health & Wellness Claims	Added Sugars (in Order of Amount)	Serving Size	Calories Per Serving	Grams of Added Sugar Per Serving	% Added Sugar by Weight	% Calories From Added Sugar	Contribution of 1 Serving to AHA's Maximum Recommended Daily Intake
Honey Bunches of Oats Cereal – Fruit Blends – Peach Raspberry 	• "Our Post Promise | No High Fructose Corn Syrup" • "Heart Healthy" • Depictions of heart in circle • "a Touch of Honey!" • "A delicious, wholesome start to your day!" • "4 Wholesome Grains" • Whole Grains Council Stamp	Sugar, Brown Sugar, Corn Syrup, Malted Corn and Barley Syrup, Wildflower Honey	30g	120	6g	20%	20%	M: 15.8% W: 24% C: 40-50%
Honey Bunches of Oats Cereal – Tropical Blends – Mango Coconut 	• "Our Post Promise | No High Fructose Corn Syrup" • "a Touch of Honey!" • "4 Wholesome Grains" • Whole Grains Council Stamp	Sugar, Brown Sugar, Corn Syrup, Malted Corn and Barley Syrup, Wildflower Honey	30g	120	6g	20%	20%	M: 15.8% W: 24% C: 40-50%

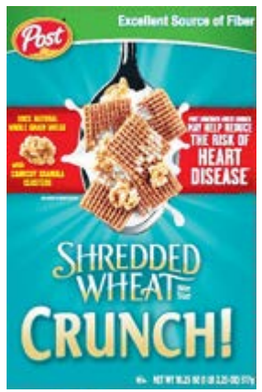
Product	Challenged Health & Wellness Claims	Added Sugars (in Order of Amount)	Serving Size	Calories Per Serving	Grams of Added Sugar Per Serving	% Added Sugar by Weight	% Calories From Added Sugar	Contribution of 1 Serving to AHA's Maximum Recommended Daily Intake
Honey Bunches of Oats Cereal – Whole Grain Honey Crunch 	• "Our Post Promise | No High Fructose Corn Syrup" • Heart design in "I" in "Whole Grain" name • "**WHOLE GRAINS** – good for your **family**, good for your **health**, good for **you.**" • "Staring your day with a bowl of Honey Bunches of Oats Whole Grain Cereal is a smart step toward eating a balanced diet." • "Honey Bunches of Oats Whole Grain Cereal has it all. . . Fiber fills you up, helps keep you satisfied and is important to help maintain digestive health. **Rich in nutrients**: Honey Bunches of Oats Whole Grain Cereal is rich in nutrients . . . important for moms-to-be and growing children. . . . Whole grains are an important part of a balanced diet, but on average, Americans eat less than 1 serving of whole grains per day." • Whole Grains Council Stamp	Sugar, Brown Sugar, Corn Syrup, Wildflower Honey	56g	220	12g	21.4%	21.8%	M: 31.6% W: 48% C: 80-100%
Honey Bunches of Oats Cereal – Whole Grain with Vanilla Bunches 	• "Our Post Promise | No High Fructose Corn Syrup" • Heart design in "I" in "Whole Grain" name. • "**WHOLE GRAINS** – good for your **family**, good for your **health**, good for **you.**" • "Staring your day with a bowl of Honey Bunches of Oats Whole Grain Cereal is a smart step toward eating a balanced diet." • "Honey Bunches of Oats Whole Grain Cereal has it all. . . . Fiber fills you up, helps keep you satisfied and is important to help maintain digestive health. **Rich in nutrients:** Honey Bunches of Oats Whole Grain Cereal is rich in nutrients . . . important for moms-to-be and growing children. . . . Whole grains are an important part of a balanced diet, but on average, Americans eat less than 1 serving of whole grains per day." • Whole Grains Council Stamp	Sugar, Brown Sugar, Corn Syrup, Wildflower Honey	56g	220	12g	21.4%	21.8%	M: 31.6% W: 48% C: 80-100%

Product	Challenged Health & Wellness Claims	Added Sugars (in Order of Amount)	Serving Size	Calories Per Serving	Grams of Added Sugar Per Serving	% Added Sugar by Weight	% Calories From Added Sugar	Contribution of 1 Serving to AHA's Maximum Recommended Daily Intake
Honey Bunches of Oats Cereal – Greek Honey Crunch 	• "Our Post Promise | No High Fructose Corn Syrup" • "a touch of wildflower honey" • "WHOLESOME NUTRITION" • "GOODNESS AND TASTE IN EVERY BOWL" • Whole Grains Council Stamp	Sugar, Corn Syrup, Wildflower Honey, Brown Sugar	58g	230	13g	22.4%	22.6%	M: 34.2% W: 52% C: 86.7-108.3%
Honey Bunches of Oats Cereal – Greek Mixed Berry 	• "Our Post Promise | No High Fructose Corn Syrup" • "a touch of wildflower honey" • "WHOLESOME NUTRITION" • "GOODNESS AND TASTE IN EVERY BOWL" • Whole Grains Council Stamp	Sugar, Corn Syrup, Wildflower Honey, Brown Sugar, Strawberry Juice Concentrate	58g	230	13g	22.4%	22.6%	M: 34.2% W: 52% C: 86.7-108.3%

Product	Challenged Health & Wellness Claims	Added Sugars (in Order of Amount)	Serving Size	Calories Per Serving	Grams of Added Sugar Per Serving	% Added Sugar by Weight	% Calories From Added Sugar	Contribution of 1 Serving to AHA's Maximum Recommended Daily Intake
Honey Bunches of Oats Granola – Honey Roasted 	• "[I]t's the perfect combination of wholesome goodness and honey-sweet crunch that everyone in your entire family will love." • Whole Grains Council Stamp	Brown Sugar, Corn Syrup, Sugar, Wildflower Honey	50g	220	12g	24%	21.8%	M: 31.6% W: 48% C: 80-100%
Honey Bunches of Oats Granola – Raspberry 	• "[I]t's the perfect combination of wholesome goodness and honey-sweet crunch that everyone in your entire family will love." • Whole Grains Council Stamp	Brown Sugar, Corn Syrup, Sugar, Wildflower Honey	50g	230	12g	24%	20.9%	M: 31.6% W: 48% C: 80-100%

Product	Challenged Health & Wellness Claims	Added Sugars (in Order of Amount)	Serving Size	Calories Per Serving	Grams of Added Sugar Per Serving	% Added Sugar by Weight	% Calories From Added Sugar	Contribution of 1 Serving to AHA's Maximum Recommended Daily Intake
Honey Bunches of Oats Granola – Cinnamon 	• "[I]t's the perfect combination of wholesome goodness and honey-sweet crunch that everyone in your entire family will love." • Whole Grains Council Stamp	Brown Sugar, Corn Syrup, Wildflower Honey, Sugar	50g	220	12g	24%	21.8%	M: 31.6% W: 48% C: 80-100%
Honey Bunches of Oats Protein Granola with Dark Chocolate 	• "HELPS FUEL YOUR BODY WITH SUSTAINED ENERGY" • "just a touch of wildflower honey" • Whole Grains Council Stamp.	Brown Sugar, Sugar, Corn Syrup, Wildflower Honey	50g	220	13g	26%	23.6%	M: 34.2% W: 52% C: 86.7-108.3%

Product	Challenged Health & Wellness Claims	Added Sugars (in Order of Amount)	Serving Size	Calories Per Serving	Grams of Added Sugar Per Serving	% Added Sugar by Weight	% Calories From Added Sugar	Contribution of 1 Serving to AHA's Maximum Recommended Daily Intake
Shredded Wheat Honey Nut 	• "May Help Reduce the Risk of Heart Disease" and depiction of heart. • "AN INGREDIENT LIST THAT IS SO GOOD, WE HAVE NOTHING TO HIDE." • "Wouldn't it be great if it were easy to understand what is in your food? With Post Shredded Wheat, it's easy to be confident with your breakfast choice. It is made with nothing but goodness, so go ahead and enjoy a bowl." • "We make it easy to understand what is in your food—we start with the goodness of whole grain wheat." • "We make it easy to understand what is in your food—it's just the wholesome goodness of whole grain wheat." • "Our flavor comes from 100% whole grain wheat, honey, almonds, molasses and real sugar. That means vitamin and mineral fortified Post Shredded Wheat Honey Nut contains no High fructose corn syrup or artificial ingredients." • "No Sugar* [ ] Added: Our flavor comes from 100% whole grain wheat, nothing else. That means Post Shredded Wheat . . . has 0 grams of sugars per serving." • "Natural source of fiber." • "Bite-sized health tip." • "Post Shredded Wheat is one of the simple things you can do to feel good each day." • "THE BISCUIT OF BENEFITS / Post Shredded Wheat Honey Nut is made with 100% whole grain wheat, for a natural source of fiber. . . . So what does	Sugar, Honey, Molasses	59g	220	12g	20.3%	21.8%	M: 31.6% W: 48% C: 80-100%

Product	Challenged Health & Wellness Claims	Added Sugars (in Order of Amount)	Serving Size	Calories Per Serving	Grams of Added Sugar Per Serving	% Added Sugar by Weight	% Calories From Added Sugar	Contribution of 1 Serving to AHA's Maximum Recommended Daily Intake
	this mean in terms of health benefits for you? They are so plentiful, the cereal could be renamed Biscuit of Benefits!" • "**Heart Health**" • "**Digestive Health**: Diets rich in fiber have many benefits and are important for maintaining digestive health." • "**Reduced Cancer Risk**" • Whole Grains Council Stamp							
Shredded Wheat Crunch! 	• "POST SHREDDED WHEAT CRUNCH MAY HELP REDUCE THE RISK OF HEART DISEASE" • "Post Shredded Wheat CRUNCH combines bite sized 100% natural whole grain wheat with granola cluster crunch for delicious heart healthy satisfaction. GOODNESS YOU CAN TASTE!" • Whole Grains Council Stamp	Sugar, Invert Sugar, Molasses, Corn Syrup	55g	210	12g	21.8%	22.9%	M: 31.6% W: 48% C: 80-100%

Product	Challenged Health & Wellness Claims	Added Sugars (in Order of Amount)	Serving Size	Calories Per Serving	Grams of Added Sugar Per Serving	% Added Sugar by Weight	% Calories From Added Sugar	Contribution of 1 Serving to AHA's Maximum Recommended Daily Intake
Raisin Bran 	• "contains NO HIGH FRUCTOSE Corn Syrup" • "No High Fructose Corn Syrup" • "Healthy" • "Nutritious" • "Where nutritious and delicious live in harmony" • "NATURAL ADVANTAGE" • "Fiber is good for digestive health" • Whole Grains Council Stamp	Sugar	59g	190	9g	15.2%	18.9%	M: 23.7% W: 36% C: 60-75%
Bran Flakes 	• "DIETARY FIBER TO HELP MAINTAIN DIGESTIVE HEALTH" • "Contains no high fructose corn syrup" • "THE IMPORTANCE OF WHOLE GRAIN AND FIBER" • "WHOLE GRAINS FOR YOUR HEALTHY LIFESTYLE" • "Whole grains provide fiber and other important nutrients to help keep you healthy." • "Getting enough fiber in your diet helps naturally regulate your digestive system. Choose a diet rich in a variety of fiber containing foods such as whole grain cereals, breads, and pastas and fruits and vegetables." • "FIBER TO HELP WITH WEIGHT MANAGEMENT" • "Experts recommend diets rich in fiber to help keep you satisfied while you exercise and cut calories to lose weight. Diets rich in fiber are usually lower in calories and larger in volume than low fiber diets, and require more chewing which helps promote a feeling of fullness and satisfaction after eating." • Whole Grains Council Stamp	Sugar	30g	100	5g	16.7%	20%	M: 13.2% W: 20% C: 33.3-41.7%

Product	Challenged Health & Wellness Claims	Added Sugars (in Order of Amount)	Serving Size	Calories Per Serving	Grams of Added Sugar Per Serving	% Added Sugar by Weight	% Calories From Added Sugar	Contribution of 1 Serving to AHA's Maximum Recommended Daily Intake
Alpha-Bits 	• "NO HIGH FRUCTOSE CORN SYRUP" • "ALPHA-BITS IS A GOOD SOURCE OF NUTRIENTS THAT ARE BUILDING BLOCKS FOR YOUR CHILD'S DEVELOPING BRAIN" • "Makes a Smart Snack!" • Whole Grains Council Stamp	Sugar	30g	120	6g	20%	20%	M: 15.7% W: 24% C: 40-50%
Honey-Comb 	• "Nutritious" (in "Nutritious Sweetened Corn & Oat Cereal") • "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" • "Each Serving Helps Start the Day in a HEALTHY Way" • Whole Grains Council Stamp	Sugar, Honey	32g	130	10g	31.3%	30.8%	M: 26.3% W: 40% C: 66.7-83.3%

Product	Challenged Health & Wellness Claims	Added Sugars (in Order of Amount)	Serving Size	Calories Per Serving	Grams of Added Sugar Per Serving	% Added Sugar by Weight	% Calories From Added Sugar	Contribution of 1 Serving to AHA's Maximum Recommended Daily Intake
Waffle Crisp 	• "NO HIGH FRUCTOSE CORN SYRUP!" • "Iron & Zinc for Growth"	Sugar *Note: Also made with PHVO containing artificial trans fat	30g	120	12g	40%	40%	M: 31.6% W: 48% C: 80-100%