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14 **UNITED STATES DISTRICT COURT**
15 **CENTRAL DISTRICT OF CALIFORNIA**

16 SALVADOR AMAYA, on behalf of
17 himself and all others similarly situated,

18 Plaintiff,

19 v.

20 DOLE PACKAGED FOODS, LLC,

21 Defendant.

Case No.: 2:15-cv-7734

CLASS ACTION

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

DEMAND FOR JURY TRIAL

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1 Plaintiff Salvador Amaya, on behalf of himself, all others similarly situated, and the
2 general public, by and through his undersigned counsel, hereby brings this action against
3 Dole Packaged Foods, LLC (“Dole”), and alleges the following upon his own knowledge, or
4 where he lacks personal knowledge, upon information and belief including the investigation
5 of his counsel.

6 **INTRODUCTION**

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

12 2. Despite compelling evidence that added sugar consumption detrimentally
13 affects health Dole employs health and wellness claims to market high-sugar foods. These
14 claims are deceptive because they are incompatible with the dangers of the excessive sugar
15 consumption to which these foods contribute.

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

19 **THE PARTIES**

20 4. Plaintiff Salvador Amaya is a resident of Whittier, California.

21 5. Dole Packaged Foods, LLC is a California limited liability company with its
22 principle place of business at One Dole Drive, Westlake Village, California 91362.

23 **JURISDICTION AND VENUE**

24 6. This Court has jurisdiction over this action pursuant to 28 U.S.C. §
25 1332(d)(2)(A), the Class Action Fairness Act, because the matter in controversy exceeds the
26 sum or value of \$5,000,000 exclusive of interest and costs, at least one member of the class
27 of plaintiffs is a citizen of a State different from Defendant. In addition, more than two-thirds
28 of the members of the class reside in states other than the state in which Defendant is a citizen

1 and in which this case is filed, and therefore any exceptions to jurisdiction under 28 U.S.C. §
2 1332(d) do not apply. The Court also has jurisdiction pursuant to 28 U.S.C. § 1331 because
3 this action contains claims arising under the Magnuson-Moss Warranty Act, 15 U.S.C. §§
4 2301 *et seq.* The Court has supplemental jurisdiction over the pendent state law claims
5 pursuant to 28 U.S.C. § 1367, as they are so related to the claims within the Court's original
6 jurisdiction that they form part of the same case or controversy.

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

11 8. Venue is proper in this Southern District of California pursuant to 28 U.S.C. §
12 1391(b) and (c), because Defendant resides (i.e., is subject to personal jurisdiction) in this
13 district, and a substantial part of the events or omissions giving rise to the claims occurred in
14 this district.

15 FACTS

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

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

1 blood absorption, enzymes called sucrases cleave a sucrose molecule into its constituent parts,
2 glucose and fructose.

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

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

16 12. In the 1960s, the food industry developed technologies to extract starch from
17 corn, then convert it to glucose, some of which could then be converted to fructose, leading
18 to the development of corn-derived sweeteners, most notably high-fructose corn syrup
19 (HFCS).³ Although HFCS is comprised of both fructose and glucose, unlike with sucrose, the
20 fructose is not chemically bound to the glucose in a new molecule. Thus the fructose in HFCS
21 is referred to as "free" fructose. HFCS can be produced with different fructose-to-glucose
22 ratios. The most common are HFCS-42 and HFCS-55, containing 42% and 55% fructose.

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

27 ² *Id.*

28 ³ *Id.* (citation omitted).

1 Some HFCS, however, can be as much as 90% fructose, *i.e.*, HFCS-90. Food manufacturers
2 have recently begun referring to HFCS-90 on food label ingredients statements as simply
3 “fructose.”

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

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

14 15. Today, the majority of sugars in typical American diets are added to foods during
15 processing, preparation, or at the table.⁶ The two primary sources of added sugar in processed
16 food are HFCS and sucrose (*i.e.*, granulated sugar used, for example, in baked goods). Added
17 sugar is in more than 74% of processed foods,⁷ under more than 60 different names.⁸

18
19 ⁴ Bray, G., “How bad is fructose?,” *American Journal of Clinical Nutrition*, Vol. 86, 895-96
20 (2007) [hereinafter, “Bray, How Bad is Fructose?”].

21 ⁵ Bray, G.A., et al., “Consumption of high-fructose corn syrup in beverages may play a role
22 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”].

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

26 ⁷ Ng, S.W., et al., “Use of caloric and non-caloric sweeteners in US consumer packaged foods,
27 2005-9,” *Journal of the Academy of Nutrition and Dietetics*, Vol. 112, No. 11, 1828-34 (2012).

28 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

1 Although the tendency is to associate sugar with sweets, added sugar is found in many savory
2 processed foods, like bread, soup, and pasta sauce.

3 16. There has been a rise over the past 45 years in Americans' consumption of added
4 sugars. From 1970 to 2000, there was a 25% increase in available added sugars in the U.S.⁹
5 The American Heart Association found that between 1970 and 2005, sugars available for
6 consumption increased by an average of 76 calories per day, from 25 teaspoons (400 calories)
7 to 29.8 teaspoons (476 calories), a 19% increase.¹⁰ The Continuing Survey of Food Intake by
8 Individuals from 1994 to 1996 showed that the average person had a daily added sugars intake
9 of 79 grams, equal to 316 calories and about 15% of energy intake. Those in the top one-third
10 of fructose consumption ingested 137 grams of added sugars per day (548 calories, about
11

12
13 syrup, Castor sugar, coconut palm sugar, Coconut sugar, Confectioner's sugar, Corn
14 sweetener, Corn syrup, Corn syrup solids, Date sugar, Dehydrated case juice, Demerara
15 sugar, Dextrin, Dextrose, Evaporated cane juice, Free-flowing brown sugars, Fructose, Fruit
16 juice, Fruit juice concentrate, Glucose, Glucose solids, Golden sugar, Golden syrup, Grape
17 sugar, High-Fructose Corn Syrup (HFCS), Honey, Icing sugar, Invert sugar, Malt syrup,
18 Maltodextrin, Maltol, Maltose, Mannose, Maple syrup, Molasses, Muscovado, Palm sugar,
19 Panocha, Powdered sugar, Raw sugar, Refiner's syrup, Rice syrup, Saccharose, Sorghum
20 Syrup, Sucrose, Sugar (granulated), Sweet Sorghum, Syrup, Treacle, Turbinado sugar, and
21 Yellow sugar.

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

25 ¹⁰ Johnson, R.K., et al., on behalf of the American Heart Association Nutrition Committee of
26 the Council on Nutrition, Physical Activity, and Metabolism and Council on Epidemiology
27 and Prevention, "Dietary Sugars Intake and Cardiovascular Health: A Scientific Statement
28 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.").

1 26% of energy per day), and those in the top 10% of fructose consumption ingested 178 grams
2 of fructose per day (712 calories, about 34% of energy).¹¹

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

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

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

13 **1. The Body’s Response to Glucose**

14 19. The body needs some glucose, largely to meet the brain’s metabolic demands,
15 but also because all living cells use glucose for energy. Blood glucose levels below 25mg/dL
16 may result in coma, seizure, or death, while levels consistently exceeding 180 mg/dL can
17 cause long-term damage, including renal failure and atherosclerosis.

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

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

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

27 ¹⁴ *Id.* at 38.

28 ¹⁵ *Id.* at 35.

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

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

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

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

20 24. The liver is capable of processing relatively small amounts of sugar, meted out
21 slowly. This is one of the reasons that eating the fructose in fruit is not problematic: the fiber
22 slows the sugar’s uptake, and some sugars incased in fiber may not even be released, and thus
23 fruit consumption does not overwhelm the liver. Fruit also comes packaged with nutrients,
24 like vitamins, that are beneficial for health, and sends satiation signals to the brain, telling it
25 that the body is full.

26
27 ¹⁶ Ludwig, David S., “The Glycemic Index: Physiological Mechanisms Relating to Obesity,
28 Diabetes, and Cardiovascular Disease,” *Journal of the American Medical Association*, Vol.
287, No. 18, 2414-23, at 2415 (May 8, 2002) (citation omitted).

1 25. Because the liver has some capacity to process sugar, there does appear to be a
2 “safe” threshold of daily added sugar consumption, small enough not to overload the liver:
3 approximately 5% of calories, or about 38 grams (9 teaspoons, 150 calories) per day for men,
4 25 grams (6 teaspoons, 100 calories) per day for women,¹⁷ and 12-15 grams (3-6 teaspoons,
5 50-60 calories) for children depending on age and caloric needs.¹⁸

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

11 27. When excess sugar consumption overloads the liver, the glucose increases
12 insulin secretion, while the fructose gets turned into liver fat, causing insulin resistance. The
13 combination over time results in rapid and dramatic increases in blood glucose and insulin
14 concentrations.¹⁹ Over time, individuals with frequent insulin secretion may develop insulin
15 resistance, where the body produces insulin but does not use it effectively, so that glucose
16 builds up in the blood instead of being absorbed by the cells. Because the muscle, fat, and
17 liver cells do not respond properly to insulin and thus cannot easily absorb glucose from the
18 bloodstream, the body needs higher levels of insulin. Eventually the pancreas’ beta cells
19
20

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

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

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

1 cannot keep up with this increasing demand, and over time can no longer produce enough
2 insulin to overcome insulin resistance, so blood glucose levels remain high.

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

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

15 **2. The Body’s Response to Fructose**

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

20 31. Fructose is the most lipophilic carbohydrate, meaning it easily converts to a
21 form, glycerol, that supports conversion to fats, including free fatty acids, a damaging form
22 of cholesterol called very low-density lipoprotein (VLDL), and triglycerides, which get stored
23 as fat. Studies in humans and animals have shown that fructose is preferentially metabolized
24 to lipid (fat) in the liver, leading to increased triglyceride levels, which are associated with
25

26
27 ²⁰ Shapiro, A., et al., “Fructose-induced leptin resistance exacerbates weight gain in response
28 to subsequent high-fat feeding,” *American Journal of Physiology, Regulatory, Integrative
and Comparative Physiology*, Vol. 295, No. 5, R1370-75 (2008).

1 insulin resistance and cardiovascular disease.²¹ Fatty acids created during fructose
2 metabolism accumulate as fat droplets in the liver, also causing insulin resistance, as well as
3 non-alcoholic fatty liver disease. In addition, when the liver turns excess sugar into liver fat
4 and becomes insulin resistant, that generates hyperinsulinemia, which drives energy storage
5 into body fat.

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

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

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

17 3. The Addiction Response

18 35. Research shows that, for some people, eating sugar produces characteristics of
19 craving and withdrawal, along with chemical changes in the brain's reward center, the limbic
20

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

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

1 region, which can be similar to those of people addicted to drugs like cocaine and alcohol.²³
 2 These changes are linked to a heightened craving for more sugar.²⁴ This can create a vicious
 3 cycle leading to chronic illness.

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

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

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

14 38. In 2004, researchers reported their analysis of food consumption patterns from
 15 1967 to 2000. Noting that HFCS consumption increased more than 1,000% from 1970 to
 16 1990, "far exceeding the changes in intake of any other food or food group," researchers
 17 found this "mirrors the rapid increase in obesity" seen during the same period, as
 18 demonstrated in the below graphic.²⁵

19
 20
 21 ²³ Volkow, N.D., et al., "Drug addiction: the neurobiology of behavior gone awry," *Nature*
 22 *Reviews Neuroscience*, Vol. 5, No. 12, 963-70 (2004); Brownell, K.D., et al., "Food and
 addiction: A comprehensive handbook," *Oxford University Press* (2012).

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

25 ²⁵ Bray, HFCS Role in Obesity Epidemic, *supra* n.5, at 537, 540-41 & Table 2; *see also*
 26 Flegal, K.M., et al., "Prevalence and trends in obesity among US adults, 1999-2000," *Journal*
 27 *of the American Medical Association*, Vol. 288, 1723-27 (2002); Putnam, J.J., et al., "Food
 28 consumption, prices and expenditures, 1970-97," *U.S. Department of Agriculture Economic*
Research Service statistical bulletin no. 695 (April 1999).

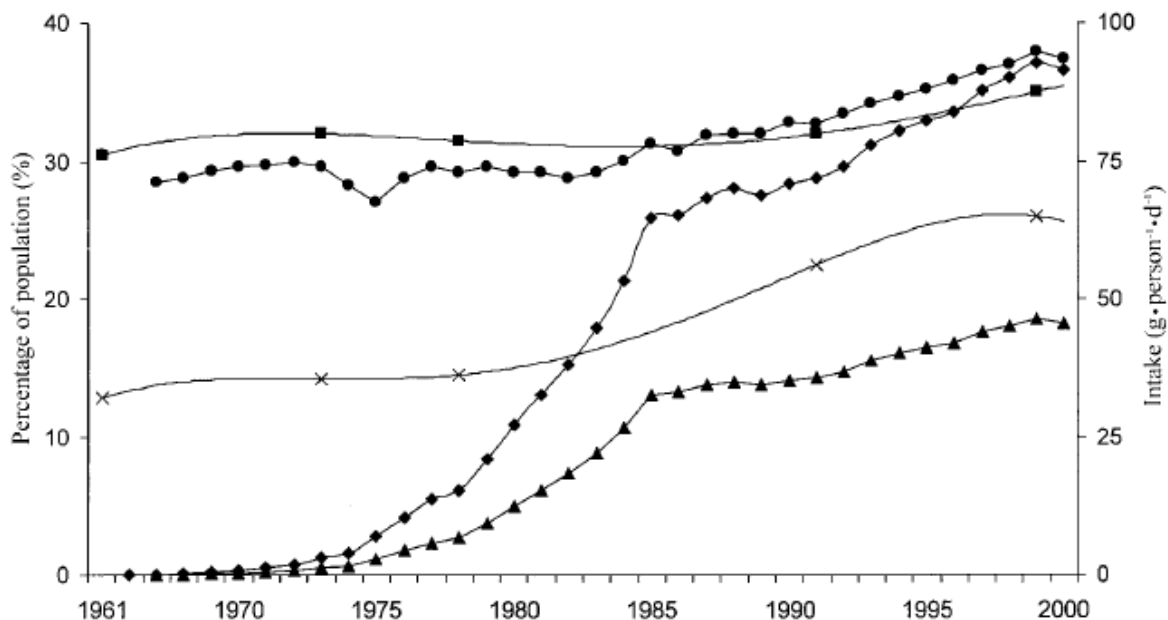


FIGURE 1. Estimated intakes of total fructose (●), free fructose (▲), and high-fructose corn syrup (HFCS, ◆) in relation to trends in the prevalence of overweight (■) and obesity (x) in the United States. Data from references 7 and 35.

39. 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

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

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

1. Excess Sugar Consumption Causes Metabolic Syndrome

42. Excess consumption of added sugar leads to metabolic syndrome by stressing and damaging crucial organs, including the pancreas and liver. When the pancreas, which

1 produces insulin, becomes overworked, it can fail to regulate blood sugar properly. Large
2 doses of fructose can overwhelm the liver, which metabolizes fructose. In the process, the
3 liver will convert excess fructose to fat, which is stored in the liver and released into the
4 bloodstream. This process contributes to key elements of metabolic syndrome, including high
5 blood fats and triglycerides, high cholesterol, high blood pressure, and extra body fat,
6 especially in the belly.²⁶

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

- 10 a. Large Waist Size (35” or more for women, 40” or more for men);
 - 11 b. High triglycerides (150mg/dL or higher, or use of cholesterol medication);
 - 12 c. High total cholesterol, or HDL levels under 50mg/dL for women, and 40
13 mg for men;
 - 14 d. High blood pressure (135/85 mm or higher); or
 - 15 e. High blood sugar (100mg/dL or higher).
- 16

17 44. More generally, “metabolic abnormalities that are typical of the so-called
18 metabolic syndrome . . . includ[e] insulin resistance, impaired glucose tolerance, high
19 concentrations of circulating triacylglycerols, low concentrations of HDLs, and high
20 concentrations of small, dense LDLs.”²⁷

21 45. 56 million Americans have metabolic syndrome, or about 22.9% over the age of
22 20, placing them at higher risk for chronic disease.

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

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

1 46. In 2010, Harvard researchers published a meta-analysis of three studies,
2 involving 19,431 participants, concerning the effect of consuming sugar-sweetened
3 beverages on risk for metabolic syndrome. They found participants in the highest quantile of
4 1-2 servings per day²⁸ had an average 20% greater risk of developing metabolic syndrome
5 than did those in the lowest quantile of less than 1 serving per day, showing “a clear link
6 between SSB consumption and risk of metabolic syndrome”²⁹

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

14 48. Recently, researchers concluded a study to determine whether the detrimental
15 effects of dietary sugar were due to extremely high dosing, excess calories, or because of its
16 effects on weight gain, rather than caused by sugar consumption directly.³¹ In other words,
17
18

19 ²⁸ Because 1 sugar-sweetened beverage typically has 140-150 calories and 35-37.5 grams of
20 sugar per 12-ounce serving, this is equivalent to between 140 and 300 calories per day, and
21 35 to 75 grams of sugar per day.

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

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

28 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).

1 the researchers dissociated the metabolic effects of dietary sugar from its calories and effects
2 on weight gain.

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

11 50. To perform the study, researchers assessed subjects' home diets by two
12 questionnaires to determine how many calories, and how much fat, protein, and carbohydrate
13 they were eating. Subjects were then tested at a hospital based on their home diets. Then, for
14 the next 9 days, researchers catered the subjects' meals. The macronutrient percentages of
15 fat, protein, and carbohydrate were not changed. Subjects were fed them the same calories
16 and percent of each macronutrient as their home diet; but within the carbohydrate fraction,
17 researchers took the added sugar out, and substituted starch. For example, researchers took
18 pastries out, and put bagels in; took yogurt out, and put baked potato chips in; took chicken
19 teriyaki out, and put turkey hot dogs in (although subjects were still given whole fruit).
20 Researchers reduced subjects' dietary sugar consumption from 28% to 10% of calories.
21 Researchers also gave subjects a scale to take home, and each day they would weigh
22 themselves. If they were losing weight, they were instructed to eat more. The goal was for
23 subjects to remain weight-stable over the 10 days of study. On the final day, subjects came
24 back to the hospital for testing on their experimental low-added sugar diet. The study team
25 analyzed the pre- and post-data in a blinded fashion so as not to introduce bias.³³

26
27 ³² *See id.* at 453-54.

28 ³³ *See id.* at 454-55.

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

7 52. In sum, the study indicated that subjects improved their metabolic status in just
8 10 days, even while eating processed food, by just removing added sugar and substituting
9 starch. The metabolic improvement, moreover, was unrelated to changes in weight or body
10 fat.

11 **2. Excess Sugar Consumption Causes Type 2 Diabetes**

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

15 54. In 2010, Harvard researchers also performed a meta-analysis of 8 studies
16 concerning sugar-sweetened beverage consumption and risk of type 2 diabetes, involving a
17 total of 310,819 participants. They concluded that individuals in the highest quantile of SSB
18 intake had an average 26% greater risk of developing type 2 diabetes than those in the lowest
19 quantile.³⁶ Moreover, "larger studies with longer durations of follow-up tended to show
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21
22 ³⁴ *See id.* at 455-56.

23
24 ³⁵ Aranceta Bartrina, J. et al., "Association between sucrose intake and cancer: a review of
25 the evidence," *Nutrición Hospitalaria*, Vol. 28 (Suppl. 4), 95-105 (2013); Garcia-Jimenez,
26 C., "A new link between diabetes and cancer: enhanced WNT/beta-catenin signaling by high
27 glucose," *Journal of Molecular Endocrinology*, Vol. 52, No. 1 (2014); Linden, G.J., "All-
cause mortality and periodontitis in 60-70-year-old men: a prospective cohort study," *Journal*
28 *of Clinical Periodontal*, Vol. 39, No. 1, 940-46 (October 2012).

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

1 stronger associations.”³⁷ Thus, the meta-analysis showed “a clear link between SSB
2 consumption and risk of . . . type 2 diabetes.”³⁸

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

10 56. The result of this analysis shows a statistically significant linear trend with
11 increasing sugar consumption.⁴¹

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17 ³⁷ *Id.* at 2481.

18 ³⁸ *Id.*

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

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

27 ⁴¹ Hu, F.B., et al., “Sugar-sweetened beverages and risk of obesity and type 2 diabetes:
28 Epidemiologic evidence,” *Physiology & Behavior*, Vol. 100, 47-54 (2010).

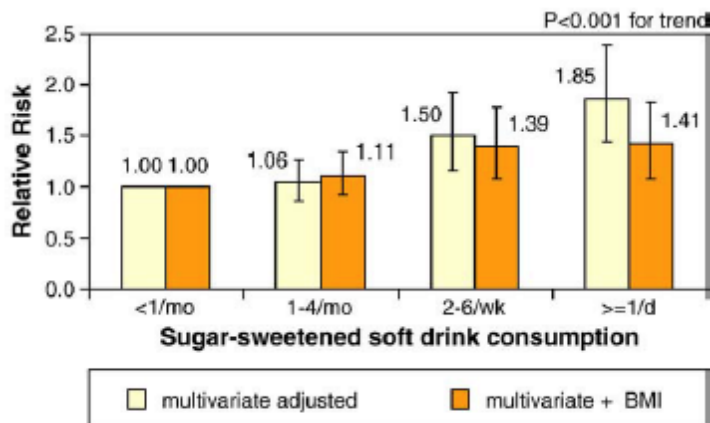


Fig. 4. Multivariate relative risks (RRs) of type 2 diabetes according to sugar-sweetened soft drink consumption in the Nurses' Health Study II 1991–1999 (Multivariate RRs were adjusted for age, alcohol (0, 0.1–4.9, 5.0–9.9, 10+ g/d), physical activity (quintiles), family history of diabetes, smoking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

57. 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

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

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

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

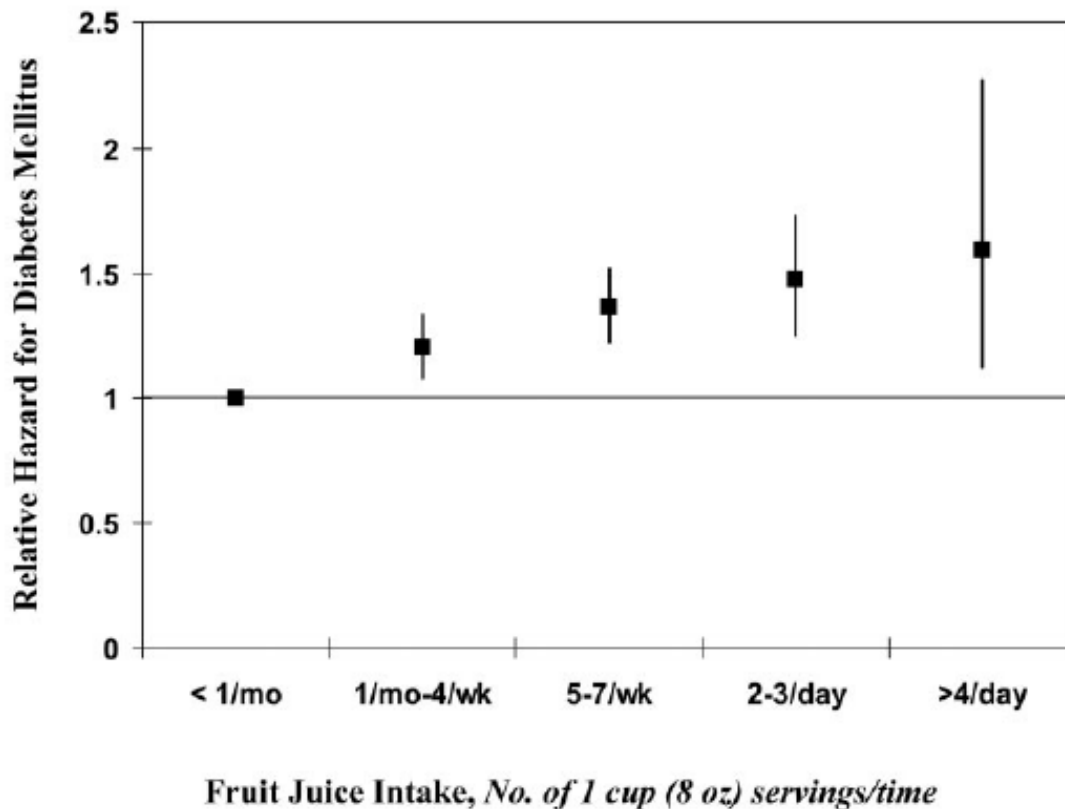


Figure 1—Multivariate-adjusted relative hazard of diabetes by category of cumulatively updated fruit juice intake. Values were adjusted for cumulatively updated BMI, physical activity, family history of diabetes, postmenopausal hormone use, alcohol use, smoking, and total energy intake. For an increase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

59. 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

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

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

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

4 **3. Excess Sugar Consumption Causes Cardiovascular Disease**

5 61. Sixteen million Americans have heart disease, which is the number one killer in
6 the United States.⁴⁶

7 62. Data obtained from NHANES surveys during the periods of 1988-1994, 1999-
8 2004, and 2005-2010, after adjusting for a wide variety of other factors, demonstrate that
9 those who consumed between 10% - 24.9% of their calories from added sugars had a 30%
10 greater risk of CVD mortality than those who consumed 5% or less of their calories from
11 added sugar. In addition, those who consumed 25% or more of their calories from added
12 sugars had an average 275% greater risk of CVD mortality than those who consumed less
13 than 5% of calories from added sugar.⁴⁷

14 63. Similarly, when compared to those who consumed approximately 8% of calories
15 from added sugar, participants who consumed approximately 17% - 21% (the 4th quintile) of
16 calories from added sugar had a 38% higher risk of CVD mortality, while the relative risk
17 was more than double for those who consumed 21% or more of calories from added sugar
18 (the 5th quintile). Thus, “[t]he risk of CVD mortality increased exponentially with increasing
19 usual percentage of calories from added sugar,”⁴⁸ as demonstrated in the chart below.
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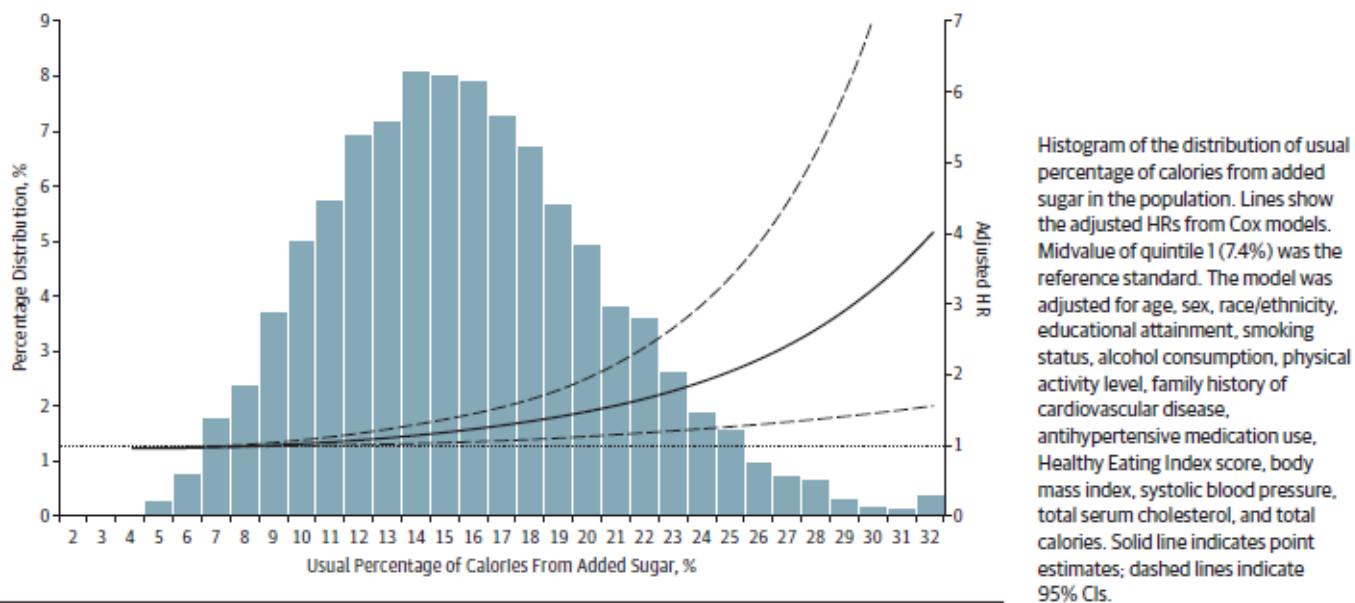
23 ⁴⁵ Basu, S., et al., “The Relationship of Sugar to Population-Level Diabetes Prevalence: An
24 Econometric Analysis of Repeated Cross-Sectional Data,” *PLOS Online*, Vol. 8, Issue 2
(February 27, 2013).

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

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

28 ⁴⁸ *Id.*

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



64. 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

65. 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

⁴⁹ *Id.* at E6.

⁵⁰ *Id.* at E8.

1 and 70 grams of sugar or more) had a 35% greater risk of coronary heart disease compared
2 with infrequent consumers.⁵¹

3 **4. Excess Sugar Consumption Causes Liver Disease**

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

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

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

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

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

24 ⁵³ Charlton, M.R., et al., “Frequency and outcomes of liver transplantation for nonalcoholic
25 steatohepatitis in the United States,” *Gastroenterology*, Vol. 141, No. 4, 1249-53 (October
26 2011).

27 ⁵⁴ Lindback, S.M., et al., “Pediatric Nonalcoholic Fatty Liver Disease: A Comprehensive
28 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*

1 **5. Excess Sugar Consumption Causes Obesity**

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

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

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24 *Disease*, Vol. 28, No. 4, 339-50 (2008); Schwimmer, J.B., et al., “Prevalence of Fatty Liver
25 in Children and Adolescents,” *Pediatrics*, Vol. 118, No. 4, 1388-93 (2006); Browning, J.D.,
26 et al., “Prevalence of hepatic steatosis in an urban population in the United States: Impact of
27 ethnicity,” *Hepatology*, Vol. 40, No. 6, 1387-95 (2004).

28 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).

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

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

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

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

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

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

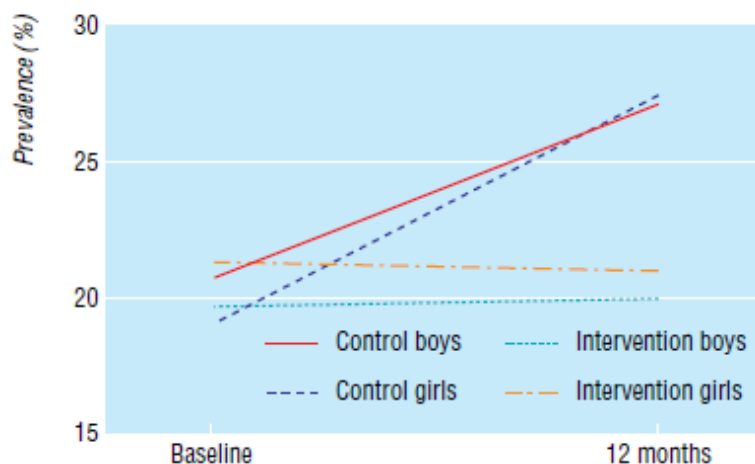
23 ⁵⁷ Dubois, L., et al., "Regular sugar-sweetened beverage consumption between meals
24 increases risk of overweight among preschool-aged children," *Journal of the American*
25 *Dietetic Association*, Vol. 107, Issue 6, 924-34 (2007).

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

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

28 ⁶⁰ Dhingra, Cardiometabolic Risk, *supra* n.30.

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



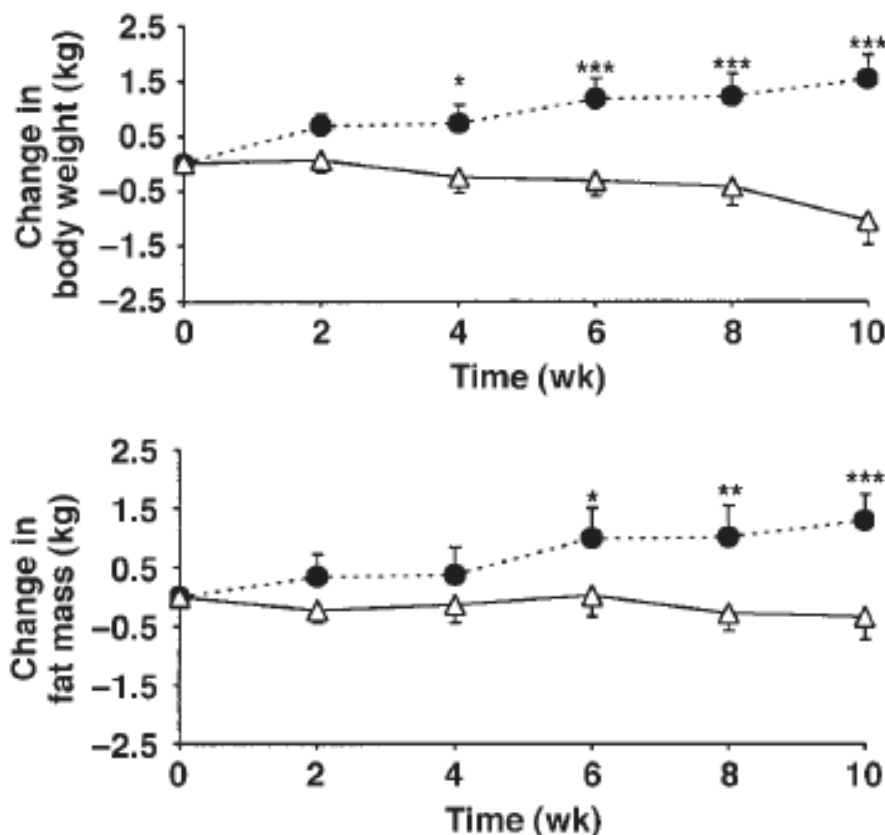
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 Fig 2 Mean change in prevalence of overweight and obese children from baseline to follow up at 12 months according to clusters

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

77. 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

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)).

1 and 1.3 kg for women, while the group that was supplemented with artificial sweeteners lost
2 weight—1.0 kg for men and 0.3 kg for women.⁶²



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

23 78. In another, 3-week study, researchers gave normal-weight subjects 1150 grams
24 of soda per day, sweetened with either aspartame or HFCS. The experiment found that
25

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

1 drinking artificially-sweetened soda reduced calorie intake and body weight of men, while
 2 drinking HFCS-sweetened soda significantly increased calorie intake and body weight of
 3 both sexes, as demonstrated in the chart below.⁶³

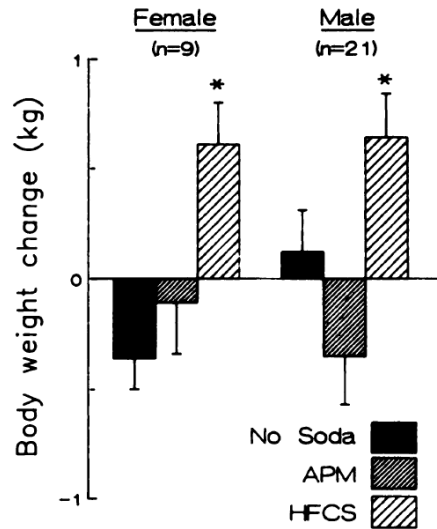


FIG 1. Changes in body weight during 3-wk periods when subjects drank 1150 g/d of soda sweetened with aspartame (APM), an equal weight of soda sweetened with high-fructose corn syrup (HFCS), or had no experimental manipulation (no soda). * $p < 0.05$ relative to weight gain in no-soda period.

6. Excess Sugar Consumption Causes Inflammation

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

80. 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-

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).

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).

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

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

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

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25 ⁶⁵ Sorensen, Inflammatory Markers, *supra* n.64.

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

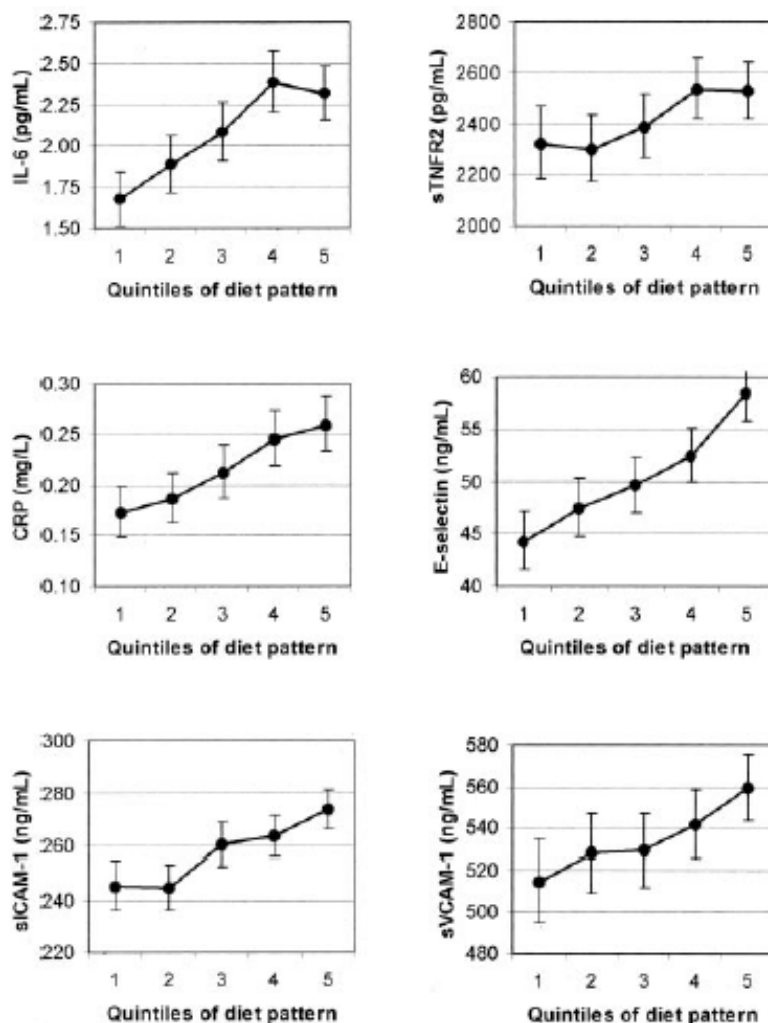


FIGURE 1. Geometric mean concentrations and 95% CIs of interleukin 6 (IL-6), soluble tumor necrosis factor α receptor 2 (sTNFR2), C-reactive protein (CRP), E-selectin, soluble intracellular cell adhesion molecule 1 (sICAM-1), and soluble vascular cell adhesion molecule 1 (sVCAM-1) by quintiles of diet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

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

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

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

3 84. When the liver is overwhelmed by large doses of fructose, it will convert excess
4 to fat, which is stored in the liver and then released into the bloodstream, contributing to key
5 elements of metabolic syndrome, like high blood fat and triglycerides, high total cholesterol,
6 and low HDL “good” cholesterol.⁷⁰

7 85. A study of more than 6,000 participants in the Framingham Heart Study found
8 those who consumed more than 1 soft drink per day had a 25% greater risk of
9 hypertriglyceridemia, and 32% greater risk of low HDL cholesterol than those who consumed
10 less than 1 soft drink per day.⁷¹

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

15 87. A cross-sectional study among more than 6,100 U.S. adults from the NHANES
16 1999-2006 data were grouped into quintiles for sugar intake as follows: (1) less than 5% of
17 calories consumed from sugar, (2) 5% to less than 10%, (3) 10% to less than 17.5%, (4) 17.5%
18 to less than 25%, and (5) 25% or more. These groups had the following adjusted mean HDL
19 levels (because HDL is the “good” cholesterol, higher levels are better): 58.7 mg/dL, 57.5,

21 ⁶⁸ Bray, G.A., “Soft Drinks and Obesity: The Evidence,” *CMR e-Journal*, Vol. 2, Issue, 2,
22 10-14, at 13 (Oct. 2009).

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

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

25 ⁷¹ Dhingra, Cardiometabolic Risk, *supra* n.30.

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

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% better 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

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

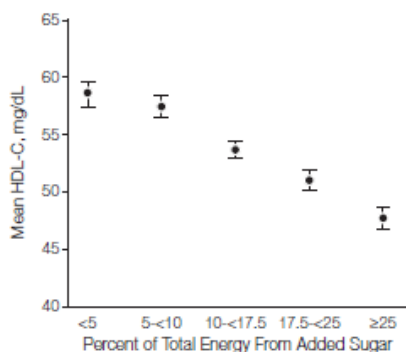


Figure 2. Multivariable-Adjusted Geometric Mean Triglyceride Levels by Level of Added Sugar Intake Among US Adults, NHANES 1999-2006

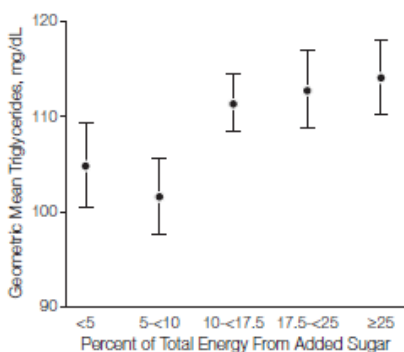
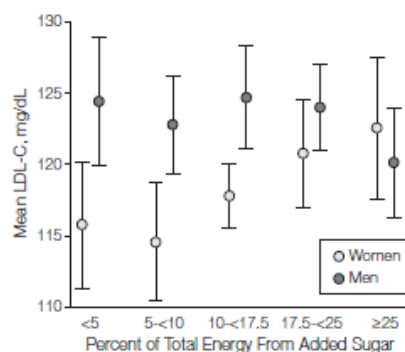


Figure 3. Multivariable-Adjusted Mean LDL-C Levels by Level of Added Sugar Intake Among US Men and Women, NHANES 1999-2006



88. 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

89. 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

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).

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).

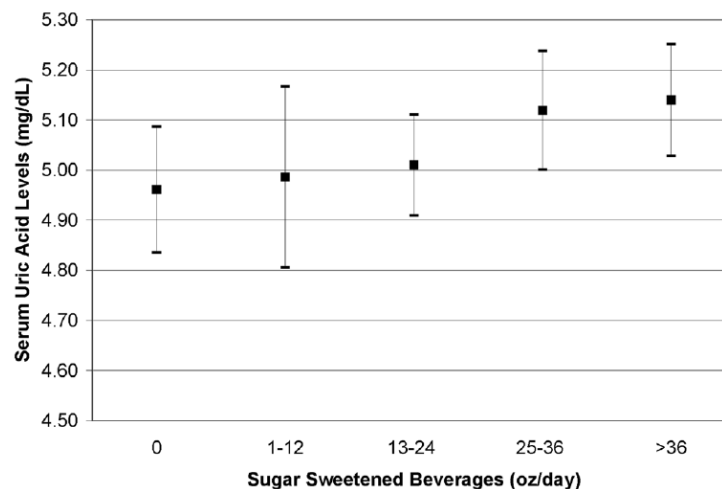
⁷⁵ Stanhope, K.L., et al., “Consuming fructose-sweetened, not glucose-sweetened, beverages increases visceral adiposity and lipids and decreases insulin sensitivity in overweight/obese humans,” *The Journal of Clinical Investigation*, Vol. 119, No. 5, 1322-34 (May 2009).

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

4 **8. Excess Sugar Consumption is Associated with Hypertension**

5 91. A study of more than 6,000 participants in the Framingham Heart Study found
6 those who consumed more than 1 soft drink per day had a 22% greater incidence, and an 18%
7 greater risk of high blood pressure than those who consumed less than 1 soft drink per day.⁷⁷

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



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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

21 93. In one study, 15 healthy men drank 500 ml water containing either no sugar, 60
22 grams of fructose, or 60 grams of glucose. Blood pressure, metabolic rate, and autonomic
23 nervous system activity were measured for 2 hours. While the administration of fructose was
24

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

27 ⁷⁷ Dhingra, *Cardiometabolic Risk*, supra n.30.

28 ⁷⁸ Nguyen, *Serum Uric Acid*, supra n.22.

1 associated with an increase in both systolic and diastolic blood pressure, blood pressure did
 2 not rise in response to either water or glucose ingestion, as demonstrated in the chart below.⁷⁹

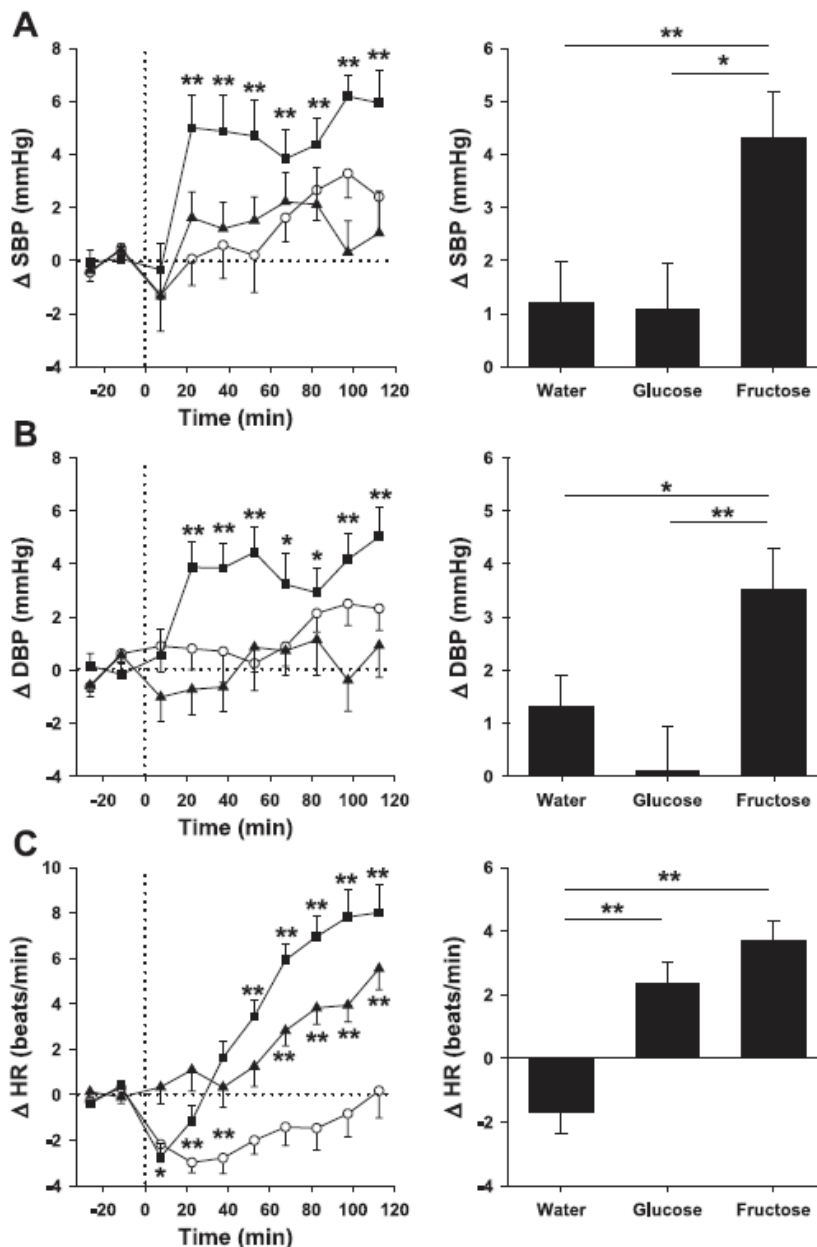


Fig. 1. Time course of the systolic blood pressure (SBP; A), diastolic blood pressure (DBP; B), and heart rate (HR; C) changes (left) and mean responses (right) to drinking water (○), glucose (▲), and fructose (■). **P* < 0.05 and ***P* < 0.01, statistically significant differences over time from baseline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

94. 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

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).

1 artificial sweetener group saw a decrease in systolic and diastolic blood pressure, of 3.1 and
2 1.2 mm Hg, respectively.⁸⁰

3 95. Another study took a variety of approaches to measuring the association between
4 sugar intake and blood pressure, concluding that an increase of 1 serving of sugar-sweetened
5 beverages per day (*i.e.*, 140-150 calories, and 35-37.5 grams of sugar) was associated with
6 systolic/diastolic blood pressure differences of +1.6 and +0.8 mm Hg (and +1.1/+0.4 mm Hg
7 with adjustment for height and weight), while an increase of 2 servings results in
8 systolic/diastolic blood pressure differences of +3.4/+2.2, demonstrating that the relationship
9 is direct and linear.⁸¹

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

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

17 97. “To evaluate a possible association between fructose mediated metabolic
18 changes and cognitive behaviour,” researchers “assessed the correlation of serum triglyceride
19 and insulin resistance levels with memory,” and “found a positive correlation between serum
20 triglyceride levels and insulin resistance index . . . , which indicates that increased serum
21 triglyceride levels may contribute to increase[d] insulin resistance” And researchers
22

23 _____
24 ⁸⁰ Raben, Sucrose vs. Artificial Sweeteners, *supra* n.62.

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

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

1 “found that the latency time varied in proportion to the insulin resistance . . . , which suggests
2 that memory performance may rely on levels of insulin resistance”⁸³

3 **10. Excess Sugar Consumption is Linked to Increased Risk of Some Cancers**

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

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

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

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

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

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

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

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)

DOLE’S UNLAWFUL ACTS AND PRACTICES

101. Dole markets and sells various fruit-based snack foods including, relevant here, Dole Fruit & Oatmeal and Dole Parfait, each of which are represented to be healthy despite that they contain substantial amounts of added sugar.

A. Dole Fruit & Oatmeal

102. Dole Fruit & Oatmeal is available in three flavors: Blueberries & Cream, Peaches & Vanilla Walnut, and Apple & Brown Sugar. Each flavor comes in a package that contains two cups. Each cup contains 2 oz. of fruit, and 1.25 oz. of Oatmeal (packaged separately and mixed during preparation). Each 92g fruit-and-oatmeal cup is one serving.



103. Regardless of flavor, each package of Dole Fruit & Oatmeal invites consumers to “Taste the delicious difference of real fruit,” and states that “It’s a healthy, satisfying breakfast you can enjoy anywhere,” and contains “No Trans Fat or Cholesterol.”

Dole Taste the delicious difference of real fruit!

Apples & Brown Sugar Oatmeal

Introducing sun-ripened DOLE all natural fruit in whole grain oatmeal. It's a healthy, satisfying breakfast you can enjoy anywhere.

DOLE. Make Every Day Shine.®

Amount/serving	%DV*	Amount/serving	%DV*
Total Fat 2g	3%	Potassium 160mg	5%
Sat. Fat 0g	0%	Total Carb. 37g	12%
Trans Fat 0g		Dietary Fiber 9g	36%
Cholesterol 0mg	0%	Sugars 13g	
Sodium 160mg	7%	Protein 3g	
Vitamin A 0%		Vitamin C 20%	
Calcium 2%		Iron 8%	

Nutrition Facts

Serving Size 1 Container (92g)
Servings 2
Calories 180
Calories from Fat 15

INGREDIENTS: FRUIT IN JUICE (APPLES, WHITE GRAPE JUICE FROM CONCENTRATE [WATER, WHITE GRAPE JUICE CONCENTRATE], LEMON JUICE FROM CONCENTRATE [WATER, LEMON JUICE CONCENTRATE], ASCORBIC ACID [TO PROMOTE COLOR RETENTION], NATURAL FLAVORS, AND CITRIC ACID), AND OATMEAL (OATS, CHICORY ROOT EXTRACT, BROWN SUGAR, NATURAL FLAVORS [CONTAINS MILK], CARRAGEENAN, SEA SALT, AND MIXED TOCOPHEROLS [TO MAINTAIN FRESHNESS]).

CAUTION: Contains Milk
Manufactured in a facility that uses Peanuts, Wheat, Tree Nuts, Soy, and Eggs

MANUFACTURED FOR ©DOLE PACKAGED FOODS, LLC, WESTLAKE VILLAGE, CA 91362-7300
PACKED IN USA

Excellent source of Fiber & Vitamin C

24g of Whole Grain Oats per Serving

NO Trans Fat or Cholesterol

try our other delicious flavors:
Blueberries and Cream Oatmeal | Peaches and Vanilla Walnut Oatmeal

FAST & EASY! Just add hot water or microwave.

For more than 100 years, Dole has been committed to our environment, our employees and the communities in which we operate. To learn how, please visit www.dole.com

1 104. Dole Fruit & Oatmeal Apples & Brown Sugar Oatmeal is sweetened with sugar
 2 and brown sugar, and contains 170 calories and 16g of sugar per serving. Thus, one 92g
 3 serving contains 17.4% sugar by weight, accounting for 37.6% of the product's calories. At
 4 16g of sugar, one Dole Fruit & Oatmeal Apples & Brown Sugar cup provides 42.1% of the
 5 AHA's recommendation for men's daily sugar intake of 38 grams, 64% of women's
 6 recommended daily intake of 25 grams, and 106.7-133.3% of children's recommended daily
 7 intake of 12-15 grams.

8 105. Dole Fruit & Oatmeal Blueberries & Cream is sweetened with sugar and cane
 9 syrup and contains 170 calories and 15g of sugar per serving. Thus, one 92g serving contains
 10 16.3% sugar by weight, accounting for 35.2% of the product's calories. At 15g of sugar, one
 11 Dole Fruit & Oatmeal Blueberries & Cream cup provides 39.5% of the AHA's
 12 recommendation for men's daily sugar intake of 38 grams, 60% of women's recommended
 13 daily intake of 25 grams, and 100-125% of children's recommended daily intake of 12-15
 14 grams.

15 106. Dole Fruit & Oatmeal Peaches & Vanilla Walnut is sweetened with sugar, dried
 16 cane syrup and contains 180 calories and 14g of sugar per serving. Thus, one 92g serving
 17 contains 15.2% sugar by weight, accounting for 31.1% of the product's calories. At 14g of
 18 sugar, one Dole Fruit & Oatmeal Apples & Brown Sugar cup provides 36.8% of the AHA's
 19 recommendation for men's daily sugar intake of 38 grams, 56% of women's recommended
 20 daily intake of 25 grams, and 93.3-116.7% of children's recommended daily intake of 12-15
 21 grams.

22 107. The foregoing is summarized in the table below.

Product	Sugar Content	% Calories From Sugar	AHA Max. Intake Contribution
Dole Fruit & Oatmeal Apples & Brown Sugar Oatmeal	16g	37.6%	M: 42.1% W: 64% C: 106.7-133.3%

Product	Sugar Content	% Calories From Sugar	AHA Max. Intake Contribution
Dole Fruit & Oatmeal Blueberries & Cream	15g	35.2%	M: 39.5% W: 60% C: 106.7-133.3%
Dole Fruit & Oatmeal Peaches & Vanilla Walnut	14g	31.1%	M: 36.8% W: 56% C: 93.3-116.7%
<i>Averages =</i>	<i>15g</i>	<i>34.6%</i>	

108. Dole’s representations that Dole Fruit & Oatmeal contains “real fruit!” and “No Trans Fat or Cholesterol,” and is “a healthy . . . breakfast” are false, or even if literally true at least highly misleading, in light of the substantial added sugar in the Dole Fruit & Oatmeal products.

109. Because regular consumption of Dole Fruit & Oatmeal is likely to contribute to excess sugar consumption that in turn is linked to chronic morbidity, reasonable consumers are likely to be misled by Dole’s claim that Dole Fruit & Oatmeal contains “real fruit!,” which downplays and distracts from its high added sugar content, and is “a healthy . . . breakfast,” in part because it contains “No Trans Fat or Cholesterol.”

B. Dole Parfait

110. Dole Parfait is available in three flavors: Apples & Crème, Pineapple & Crème, and Peaches & Crème. Each flavor comes in a package that includes four 4.3 oz. cups, with each cup one serving.



1 111. Regardless of the flavor, Dole Parfait’s packaging uses health and wellness
 2 claims, stating “Live Well,” and “Feel revitalized with the fresh taste of sun-ripened DOLE
 3 all natural fruit. Rich in nutrients, fruit gives you healthy energy so you feel refreshed and
 4 ready to shine.”



18 112. Dole’s website for Dole Parfait further states, “you can feel good about enjoying
 19 one any time you crave something sweet.”⁸⁸

20 113. Dole Parfait Pineapple & Crème is sweetened with sugar (the third ingredient
 21 after the fruit and water), and glucose syrup and contains 110 calories and 21g of sugar per
 22 123g serving. Thus, one serving contains 17.1% sugar by weight, accounting for 76.4% of
 23 the product’s calories. At 21g of sugar, one Dole Parfait Pineapple & Crème cup provides
 24 52.6% of the AHA’s recommendation for men’s daily sugar intake of 38 grams, 80% of
 25 women’s recommended daily intake of 25 grams, and 140-175% of children’s recommended
 26 daily intake of 12-15 grams.

27 ⁸⁸ A true and correct copy of Dole’s website for the three Dole Parfait flavors is attached
 28 hereto as Exhibit 1.

1 114. Dole Parfait Apples & Crème is sweetened with sugar (the third ingredient after
2 the fruit and water), and glucose syrup and contains 130 calories and 20g of sugar per 123g
3 serving. Thus, one serving contains 16.2% sugar by weight, accounting for 61.5% of the
4 product's calories. At 20g of sugar, one Dole Parfait Apples & Crème cup provides 52.6% of
5 the AHA's recommendation for men's daily sugar intake of 38 grams, 80% of women's
6 recommended daily intake of 25 grams, and 133.3-166.7% of children's recommended daily
7 intake of 12-15 grams.

8 115. Dole Parfait Peaches & Crème is sweetened with sugar (the third ingredient after
9 the fruit and water), and glucose syrup and contains 110 calories and 19g of sugar per 123g
10 serving. Thus, one serving contains 15.4% sugar by weight, accounting for 69.1% of the
11 product's calories. At 19g of sugar, one Dole Parfait Peaches & Crème cup provides 50% of
12 the AHA's recommendation for men's daily sugar intake of 38 grams, 76% of women's
13 recommended daily intake of 25 grams, and 126.7-158.3% of children's recommended daily
14 intake of 12-15 grams.

15 116. The foregoing is summarized in the table below.

16 Product	17 Sugar Content	18 % Calories From 19 Sugar	20 AHA Max. Intake 21 Contribution
22 Dole Parfait 23 Pineapple & Crème	24 21g	25 76.4%	26 M: 42.1% 27 W: 64% 28 C: 106.7-133.3%
Dole Parfait Apples & Crème	20g	61.5%	M: 39.5% W: 60% C: 106.7-133.3%
Dole Parfait Peaches & Crème	19g	69.1%	M: 36.8% W: 56% C: 93.3-116.7%
<i>Averages =</i>	<i>20g</i>	<i>69%</i>	

1 117. Dole’s representations that Dole Parfait is “Rich in nutrients,” “gives you
2 healthy energy,” and that you will “Live Well” and “Feel revitalized” by eating the products
3 are false, or at least highly misleading, in light of the substantial added sugar in the Dole
4 Parfait products, on average accounting for a whopping **69%** of the products’ calories, nearly
5 14 times the AHA’s recommended maximum.

6 118. Because regular consumption of Dole Parfait products is likely to contribute to
7 excess sugar consumption that in turn is linked to chronic morbidity, reasonable consumers
8 are likely to be misled by Dole’s claim that Dole Parfait is “Rich in nutrients,” “gives you
9 healthy energy,” and that you will “Live Well” and “Feel revitalized” by eating Dole Parfait.

10 **C. Dole’s Misrepresentations Are Knowing**

11 119. Dole’s use of deceptive health and wellness claims is knowing: Dole’s website
12 includes an article authored by “Dole Nutrition Institute,” referring to evidence discussed
13 above,⁸⁹ and noting that “Added Sugar Intake Doubles Heart Disease Death.”⁹⁰

14 120. Accordingly, Dole was well-aware when it labeled the Fruit & Oatmeal and
15 Parfait products with health and wellness claims that they were misleading in light of the
16 products’ high added sugar, and thus the contribution their consumption makes to chronic
17 disease.

18 **D. Dole’s Fruit & Oatmeal Labeling Claims Were Unlawful**

19 121. Dole’s claims that Fruit & Oatmeal contain “No Trans Fat,” and “No []
20 Cholesterol” are unlawful nutrient content claims, in violation of federal and state labeling
21 regulations.

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26 ⁸⁹ Yang, NHANES Analysis, supra n.12.

27 ⁹⁰ A true and correct copy of the article posted on Dole’s website, available at
28 <http://www.dole.com/Articles/2014/06/EAT-FRUIT-LIVE-LONGER>, is attached hereto as
Exhibit 2.

1 122. First, the statement “No Trans Fat” is an unauthorized nutrient content claim that
2 may not be made under any circumstances, and thus is in violation of 21 C.F.R. § 101.13 and,
3 as a result, 21 U.S.C. § 343(r).

4 123. Second, the statement “No [] Cholesterol” is unlawful because Dole Fruit &
5 Oatmeal is naturally cholesterol free, but in violation of 21 C.F.R. §§ 101.13(e)(2) &
6 101.62(d)(1)(i)(D), Dole failed to disclose that cholesterol is not usually present in the food.
7 Accordingly, this statement also violated 21 U.S.C. § 343(r).

8 124. By violating federal food labeling regulations, Dole also violated the California
9 Sherman Food, Drug, and Cosmetic Act, Cal. Health & Safety Code §§ 110100(a) (“All food
10 labeling regulations . . . adopted pursuant to the federal act . . . shall be the food labeling
11 regulations in this state.”), 110670 (“Any food is misbranded if its labeling does not conform
12 with the requirements for nutrient content or health claims set forth in Section 403(r) (21
13 U.S.C. Sec. 343(r)) of the federal act and the regulations adopted pursuant thereto.”), 110765
14 (“It is unlawful for any person to misbrand any food.”).

15 **PLAINTIFF’S RELIANCE AND INJURY**

16 125. Plaintiff purchased Dole Fruit & Oatmeal and Dole Parfait products on multiple
17 occasions.

18 126. As best he can recall, plaintiff purchased the Blueberries & Cream and Apples
19 & Brown Sugar varieties of Dole Fruit & Oatmeal several times over the past two or three
20 years, with his most recent purchase within approximately the last year. Plaintiff believes he
21 purchased Dole Fruit & Oatmeal approximately one every couple of months during this time
22 period, from the Wal-Mart located at 1340 South Beach Boulevard, in La Habra, California
23 90631.

24 127. When purchasing Dole Fruit & Oatmeal, plaintiff read and decided to purchase
25 the product in substantial part based upon Dole’s representation that Dole Fruit & Oatmeal
26 contains “real fruit” and “No Trans Fat or Cholesterol,” and is “a healthy . . . breakfast,”
27 which led plaintiff to believe that Dole Fruit & Oatmeal was a healthy food choice.
28

1 128. As best he can recall, plaintiff purchased the Pineapple & Crème and possibly
2 the Apple & Crème varieties of Dole parfait several times over the past two or three years,
3 with his most recent purchase approximately 1-2 years ago. During this time period, plaintiff
4 purchased the product approximately once every other month, from the Alberton's located at
5 1800 West Whittier Boulevard, La Habra, California 90631.

6 129. When purchasing Dole Parfait, plaintiff read and decided to purchase the product
7 in substantial part upon Dole's representation that by consuming Dole Parfait, plaintiff would
8 "Live Well," and "Feel revitalized," and that Dole Parfait is "Rich in nutrients," and "gives
9 you healthy energy," which led plaintiff to believe that Dole Parfait was a healthy food
10 choice.

11 130. When purchasing Dole Fruit & Oatmeal and Dole Parfait, plaintiff was seeking
12 products that were healthy to consume, that is, whose consumption would not increase his
13 risk of CHD, stroke, and other morbidity.

14 131. The health and wellness claims on the products' labels however, were
15 misleading, and had the capacity, tendency, and likelihood to confuse or confound plaintiff
16 and other consumers acting reasonably (including the putative class) because, as described in
17 detail herein, the products are not healthy but instead their consumption increases the risk of
18 CHD, stroke, and other morbidity.

19 132. Plaintiff is not a nutritionist or food scientist, but rather a lay consumer who did
20 not have the specialized knowledge that Dole had regarding the nutrients present in Dole Fruit
21 & Oatmeal and Dole Parfait. At the time of purchase, plaintiff was unaware of the scientific
22 evidence that, and the degree to which consuming high amounts of added sugar adversely
23 affects blood cholesterol levels and increases risk of CHD, stroke, and other morbidity.

24 133. Plaintiff acted reasonably in relying on Dole's health and wellness labeling
25 claims, which Dole intentionally placed on the Dole Fruit & Oatmeal and Dole Parfait labels
26 with the intent to induce average consumers into purchasing the products.

1 134. As a result of regularly consuming Dole Fruit & Oatmeal and Dole Parfait, it is
2 likely plaintiff has suffered bodily injury in the form of either increased risk for, or actual
3 contraction of disease or morbidity.

4 135. Plaintiff would not have purchased Dole Fruit & Oatmeal and Dole Parfait if he
5 knew that the products' health and wellness labeling claims were false and misleading.

6 136. The Dole Fruit & Oatmeal and Dole Parfait cost more than similar products
7 without misleading labeling, and would have cost less absent the misleading claims.

8 137. If Dole were enjoined from making the misleading claims, the market demand
9 and price for Dole Fruit & Oatmeal and Dole Parfait would drop.

10 138. Plaintiff paid more for Dole Fruit & Oatmeal and Dole Parfait than he otherwise
11 would have, and would only have been willing to pay less, or unwilling to purchase the
12 products at all, absent the misleading labeling statements complained of herein.

13 139. For these reasons, the Dole Fruit & Oatmeal and Dole Parfait were worth less
14 than what plaintiff paid for them.

15 140. Instead of receiving products that had actual healthful qualities, the products
16 plaintiff received were not healthy, but rather their consumption causes increased risk of
17 CHD, stroke, and other morbidity.

18 141. Plaintiff lost money as a result of Dole's deceptive claims and practices in that
19 he did not receive what he paid for when purchasing the Dole Fruit & Oatmeal and Dole
20 Parfait.

21 142. Plaintiff detrimentally altered his position and suffered damages in an amount
22 equal to the amount he paid for the product.

23 143. If plaintiff could be assured that any health and wellness labeling on Dole Fruit
24 & Oatmeal, Dole Parfait, or other Dole products was lawful and not misleading, or could trust
25 that Dole would not misleadingly label such products with similar health and wellness claims,
26 he would consider purchasing Dole products, including Dole Fruit & Oatmeal and Dole
27 Parfait in the future.
28

1 144. Dole's senior officers and directors allowed Dole Fruit & Oatmeal and Dole
2 Parfait to be sold with full knowledge or reckless disregard that the challenged health and
3 wellness claims are false and misleading.

4 **CLASS ACTION ALLEGATIONS**

5 145. Pursuant to Fed. R. Civ. P. 23, plaintiff seeks to represent a class comprised of
6 all persons in the United States who, at any time from four years preceding the date of the
7 filing of this Complaint to the time a class is notified, purchased Dole Fruit & Oatmeal or
8 Dole Parfait products for their own personal, family, or household use and not for resale.

9 146. Plaintiff nevertheless reserves the right to divide into subclasses, expand,
10 narrow, or otherwise modify the class definition prior to (or as part of) filing a motion for
11 class certification.

12 147. The members in the proposed class and subclass are so numerous that individual
13 joinder of all members is impracticable, and the disposition of the claims of all class members
14 in a single action will provide substantial benefits to the parties and Court. Fed. R. Civ. P.
15 23(a)(1).

16 148. Questions of law and fact common to plaintiff and the class (Fed. R. Civ. P.
17 23(a)(2) include, without limitation:

- 18 a. Whether the Dole Fruit & Oatmeal or Dole Parfait contain sufficient
19 added sugar to contribute substantially to the excessive consumption of
20 sugar;
- 21 b. Whether the excessive consumption of sugar presents significant health
22 risks;
- 23 c. Whether, if the former questions of fact are answered in the affirmative,
24 this renders misleading to the reasonable consumer Dole's use of health
25 and wellness claims on the packaging of Dole Fruit & Oatmeal and Dole
26 Parfait;
- 27 d. Whether the challenged Dole health and wellness claims were material;
- 28 e. Whether Dole made any statement it knew or should have known was
false or misleading;

- 1 f. Whether any of Dole's practices were immoral, unethical, unscrupulous,
2 or substantially injurious to consumers;
- 3 g. Whether the utility of any of Dole's practices, if any, outweighed the
4 gravity of the harm to its victims;
- 5 h. Whether Dole's conduct violated public policy, including as declared by
6 specific constitutional, statutory or regulatory provisions;
- 7 i. Whether Dole's conduct violated federal and state labeling laws and
8 regulations;
- 9 j. Whether the consumer injury caused by Dole's conduct was substantial,
10 not outweighed by benefits to consumers or competition, and not one
11 consumers themselves could reasonably have avoided;
- 12 k. Whether Dole's policies, acts, and practices with respect to Dole Fruit &
13 Oatmeal or Dole Parfait were designed to, and did result in the purchase
14 and use of the products by the class members primarily for personal,
15 family, or household purposes;
- 16 l. Whether Dole represented that Dole Fruit & Oatmeal and Dole Parfait
17 have characteristics, uses, or benefits which they do not have, within the
18 meaning of Cal. Civ. Code § 1770(a)(5);
- 19 m. Whether Dole represented Dole Fruit & Oatmeal and Dole Parfait is of a
20 particular standard, quality, or grade, when it was really of another, within
21 the meaning of Cal. Civ. Code § 1770(a)(7);
- 22 n. Whether Dole advertised Dole Fruit & Oatmeal and Dole Parfait with the
23 intent not to sell it as advertised, within the meaning of Cal. Civ. Code §
24 1770(a)(9);
- 25 o. Whether Dole represented that Dole Fruit & Oatmeal and Dole Parfait has
26 been supplied in accordance with a previous representation when it has
27 not, within the meaning of Cal. Civ. Code § 1770(a)(16);
- 28 p. Whether Dole'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, 21 U.S.C. §§ 301
et seq., the California Sherman Food, Drug, and Cosmetic Law, Cal.
Health & Safety Code §§ 109875 *et seq.*, or any other law, statute, or
regulation;

- 1 q. Whether Dole made express or implied warranties in describing the
- 2 products as healthy;
- 3 r. Whether Dole's affirmations of fact and promises constituted express or
- 4 implied warranties;
- 5 s. Whether Dole breached its express or implied warranties by selling
- 6 products that were not healthy, but which instead contained substantial,
- 7 excessive, and dangerous amounts of sugar, the consumption of which
- 8 causes increased risk of cardiovascular disease, metabolic disease, and
- 9 other morbidity;
- 10 t. The proper equitable and injunctive relief;
- 11 u. The proper amount of actual or compensatory damages;
- 12 v. The proper amount of restitution or disgorgement;
- 13 w. The proper amount of actual and punitive damages; and
- 14 x. The proper amount of reasonable litigation expenses and attorneys' fees.

15 149. Plaintiff's claims are typical of class members' claims in that they are based on
16 the same underlying facts, events, and circumstances relating to Dole's conduct.

17 150. Plaintiff will fairly and adequately represent and protect the interests of the class,
18 has no interests incompatible with the interests of the class, and has retained counsel
19 competent and experienced in class action, consumer protection, and false advertising
20 litigation, including the false advertising of foods.

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

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

26 153. As a result of the foregoing, class treatment is appropriate under Fed. R. Civ. P.
27 23(a), (b)(2), and (b)(3), and may be appropriate for certification "with respect to particular
28 issues" under Rule 23(c)(4).

1 **CAUSES OF ACTION**

2 **FIRST CAUSE OF ACTION**

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

5 154. Plaintiff realleges and incorporates the allegations elsewhere in the Complaint
6 as if fully set forth herein.

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

9 156. Dole’s use of health and wellness advertising for Dole Fruit & Oatmeal and Dole
10 Parfait products that contain substantial amounts of added sugar is deceptive in light of the
11 strong evidence that excessive sugar consumption greatly increases risk of chronic disease.

12 157. Dole knew, or reasonably should have known, that the challenged health and
13 wellness claims were untrue or misleading.

14 **SECOND CAUSE OF ACTION**

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

17 158. Plaintiff realleges and incorporates the allegations elsewhere in the Complaint
18 as if fully set forth herein.

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

22 160. Dole’s policies, acts, and practices were designed to, and did, result in the
23 purchase and use of the products primarily for personal, family, or household purposes, and
24 violated and continue to violate the following sections of the CLRA:

- 25 a. § 1770(a)(5): representing that goods have characteristics, uses,
26 or benefits which they do not have;
- 27 b. § 1770(a)(7): representing that goods are of a particular standard,
28 quality, or grade if they are of another;

- 1 c. § 1770(a)(9): advertising goods with intent not to sell them as
2 advertised; and
- 3 d. § 1770(a)(16): representing the subject of a transaction has been
4 supplied in accordance with a previous representation when it
5 has not.

6 161. In compliance with Cal. Civ. Code § 1782, plaintiff sent written notice to Dole
7 of his claims. Because Dole refused to remedy the violation within 30 days of receiving
8 written notice, plaintiff seeks actual and punitive damages, as well as restitution, injunctive
9 relief, and attorneys' fees and costs.

10 162. In compliance with Cal. Civ. Code § 1782(d), plaintiff's affidavit of venue is
11 filed concurrently herewith.

12 **THIRD CAUSE OF ACTION**

13 **VIOLATIONS OF THE CALIFORNIA UNFAIR COMPETITION LAW, 14 CAL. BUS. & PROF. CODE §§ 17200 ET SEQ.**

15 163. Plaintiff realleges and incorporates the allegations elsewhere in the Complaint
16 as if fully set forth herein.

17 164. The UCL prohibits any "unlawful, unfair or fraudulent business act or practice,"
18 Cal. Bus. & Prof. Code § 17200.

19 **Fraudulent**

20 165. Dole's use of the challenged health and wellness claims on Dole Fruit & Oatmeal
21 and Dole Parfait products containing high amounts of added sugar are likely to deceive
22 reasonable consumers.

23 **Unfair**

24 166. Dole's conduct with respect to the labeling, advertising, and sale of Dole Fruit
25 & Oatmeal and Dole Parfait was unfair because Dole's conduct was immoral, unethical,
26 unscrupulous, or substantially injurious to consumers and the utility of its conduct, if any,
27 does not outweigh the gravity of the harm to its victims. This is particularly true because Dole
28 is in a better position to know, and actually knows of the health dangers presented by the high
amounts of added sugar in Dole Fruit & Oatmeal and Dole Parfait, yet continued to market

1 the products with health and wellness claims anyway, leveraging them to charge more than it
2 could without the claims, and to increase sales of the products at the expense of consumers'
3 health.

4 167. Dole's conduct with respect to the labeling, advertising, and sale of Dole Fruit
5 & Oatmeal and Dole Parfait was also unfair because it violated public policy as declared by
6 specific constitutional, statutory or regulatory provisions, including the False Advertising
7 Law.

8 168. Dole's conduct with respect to the labeling, advertising, and sale of Dole Fruit
9 & Oatmeal, Dole Parfait, and Dole Fruit Crisp was also unfair because the consumer injury
10 was substantial, not outweighed by benefits to consumers or competition, and not one
11 consumers themselves could reasonably have avoided.

12 **Unlawful**

13 169. The acts alleged herein are "unlawful" under the UCL in that they violate the
14 following laws:

- 15 a. The False Advertising Law, Cal. Bus. & Prof. Code §§ 17500 *et seq.*;
16 b. The Consumers Legal Remedies Act, Cal. Civ. Code §§ 1750 *et seq.*;
17 c. The Federal Food, Drug, and Cosmetic Act, 21 U.S.C. §§ 301 *et seq.*; and
18 d. The California Sherman Food, Drug, and Cosmetic Law, Cal. Health &
19 Safety Code §§ 109875 *et seq.*

20 **FOURTH CAUSE OF ACTION**

21 **BREACH OF EXPRESS WARRANTY,**

22 **CAL. COM. CODE § 2313(1)**

23 170. Plaintiff realleges and incorporates the allegations elsewhere in the Complaint
24 as if set forth in full herein.

25 171. Through the Dole Fruit & Oatmeal and Dole Parfait labels, Dole made
26 affirmations of fact or promises, or descriptions of goods, that, *inter alia*, the products were
27 healthy. These representations were part of the basis of the bargain, in that plaintiff and other
28

1 class members purchased the Dole Fruit & Oatmeal and Dole Parfait in reasonable reliance
2 on those statements. Cal. Com. Code § 2313(1).

3 172. Dole breached its express warranties by selling products that are not healthy, but
4 which contain substantial and excessive amounts of sugar, the consumption of which
5 increases the risk of cardiovascular disease, metabolic disease, and other morbidity.

6 173. That breach actually and proximately caused injury in the form of the lost
7 purchase price that plaintiff and class members paid for the Dole Fruit & Oatmeal and Dole
8 Parfait.

9 174. Plaintiff gave Dole written notice of its breaches of express warranty, but Dole
10 failed to rectify the breaches.

11 175. As a result, plaintiff seeks, on behalf of himself and other class members, actual
12 damages arising as a result of Dole's breaches of express warranty.

13 **FIFTH CAUSE OF ACTION**

14 **BREACH OF IMPLIED WARRANTY,**

15 **CAL. COM. CODE § 2314**

16 176. Plaintiff realleges and incorporates the allegations elsewhere in the Complaint
17 as if set forth in full herein.

18 177. Dole, through its acts set forth herein, in the sale, marketing, and promotion of
19 the Dole Fruit & Oatmeal and Dole Parfait, made representations to plaintiff and the class
20 that, among other things, the products are healthy.

21 178. Dole is a merchant with respect to the goods of this kind which were sold to
22 plaintiffs and the class, and there was, in the sale to plaintiffs and other consumers, an implied
23 warranty that those good were merchantable.

24 179. However, Dole breached that implied warranty in that the Dole Fruit & Oatmeal
25 and Dole Parfait are not healthy, but instead increase risk of cardiovascular disease, metabolic
26 disease, and other morbidity.

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

4 181. Plaintiff gave Dole written notice of its breaches of implied warranty, but Dole
5 failed to rectify the breaches.

6 182. Plaintiff and the class have sustained damages as a proximate result of the
7 foregoing breaches of implied warranty in the amount of the Dole Fruit & Oatmeal and Dole
8 Parfait's purchase price.

9 **PRAYER FOR RELIEF**

10 183. Wherefore, plaintiff, on behalf of himself, all others similarly situated, and the
11 general public, prays for judgment against Dole as to each and every cause of action, and the
12 following remedies:

- 13 a. An Order certifying this as a class action, appointing plaintiff and his
14 counsel to represent the class, and requiring Dole to pay the costs of class
15 notice;
- 16 b. An Order enjoining Dole from labeling, advertising, or packaging Dole
17 Fruit & Oatmeal and Dole Parfait with the challenged health and wellness
18 statements or other health and wellness claims, so long as they contain
19 substantial amounts of added sugar;
- 20 c. An Order enjoining Dole from engaging in the deceptive practice of
21 labeling and advertising foods containing substantial amounts of added
22 sugar with health and wellness claims;
- 23 d. An Order compelling Dole to conduct a corrective advertising campaign
24 to inform the public that Dole Fruit & Oatmeal and Dole Parfait were
25 deceptively marketed;
- 26 e. An Order requiring Dole to pay actual, compensatory, punitive, and
27 statutory damages where permitted by law;
- 28 f. An Order requiring Dole to disgorge or return all monies, revenues, and
profits obtained by means of any wrongful or unlawful act or practice;
- g. An Order requiring Dole to pay restitution to restore funds acquired by
means of any act or practice declared by this Court to be an unlawful,

1 unfair, or fraudulent business act or practice, untrue or misleading
2 advertising, or a violation of the UCL, FAL, or CLRA, plus pre- and post-
3 judgment thereon;

- 4 h. Costs, expenses, and reasonable attorneys' fees; and
5 i. Any other and further relief the Court deems necessary, just, or proper.

6 **JURY DEMAND**

7 184. Plaintiff hereby demands a trial by jury on all issues so triable.

8
9 Dated: October 18, 2016

/s/ Jack Fitzgerald

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13 *Counsel for Plaintiff and the Putative Class*

14 **UNITED STATES DISTRICT COURT**
15 **CENTRAL DISTRICT OF CALIFORNIA**

16 SALVADOR AMAYA, on behalf of
17 himself and all others similarly situated,

18 Plaintiff,

19 v.

20 DOLE PACKAGED FOODS, LLC,

21 Defendant.

22 **CONSUMERS LEGAL REMEDIES ACT**
23 **VENUE AFFIDAVIT [CCP § 1780(d)]**

1 I, Salvador Amaya, declare as follows:

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

4 2. The Complaint in this action is filed in a proper place for the trial of this action
5 because defendant is doing business in this county.

6 3. The Complaint in this action is further filed in a proper place for the trial of this
7 action because the transactions that are the subject of the action occurred in this county.

8
9 I declare under penalty of perjury under the laws of the United States that the foregoing
10 is true and correct to the best of my knowledge.

11 Executed this 17th day of October, 2016, in Wittier, California.

12 

13 _____
14 Salvador Amaya