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

THE PRAXIS PROJECT, a non-profit
corporation,

Plaintiff,

v.

THE COCA-COLA COMPANY and
AMERICAN BEVERAGE ASSOCIATION,

Defendants.

Case No. _____

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

DEMAND FOR JURY TRIAL

1 Plaintiff The Praxis Project (“Praxis” or “Plaintiff”) brings this action against The Coca-
2 Cola Company (“Coca-Cola”) and the American Beverage Association (“ABA”)
3 (collectively, “Defendants”). Plaintiff’s allegations against Defendants are based on information
4 and belief and on investigation of Plaintiff’s counsel, except for allegations specifically
5 pertaining to Plaintiff, which are based on Plaintiff’s personal knowledge.

6 **NATURE OF THE ACTION**

7 1. This is an action under the California Unfair Competition Law and False
8 Advertising Law to enjoin Coca-Cola and the ABA from engaging in false and misleading
9 marketing of sugar-sweetened beverages.¹ Plaintiff also asserts claims for the intentional and
10 negligent breach of a special duty.

11 2. Coca-Cola, the leading manufacturer and supplier in the world of sugar-
12 sweetened beverages, deceives consumers about their health impact. It does so independently,
13 and also with the assistance of and through statements made by the American Beverage
14 Association, a trade organization which Coca-Cola funds and materially directs.

15 3. For years, Defendants have engaged in a pattern of deception to mislead and
16 confuse the public (and governmental entities that bear responsibility for the public health) about
17 the scientific consensus that consumption of sugar-sweetened beverages is linked to obesity, type
18 2 diabetes, and cardiovascular disease.

19 4. Defendant Coca-Cola has also engaged in a pattern of deception to mislead the
20 public (and governmental entities that bear responsibility for the public health) regarding its
21 advertising to children.

22 5. Although Defendants have publicly pledged allegiance to objective scientific
23 criteria, they have instead represented falsely that sugar-sweetened beverages are not
24 scientifically linked to obesity, diabetes, and cardiovascular disease, and have waged an

25 _____
26 ¹ “Sugar-sweetened beverage” refers to any carbonated or non-carbonated drink that is sweetened
27 with sugar or high fructose corn syrup, or other caloric sweeteners, including soda, fruit drinks, teas,
28 coffees, sports drinks, and energy drinks. CTRS. FOR DISEASE CONTROL & PREVENTION, THE CDC
GUIDE TO STRATEGIES FOR REDUCING THE CONSUMPTION OF SUGAR-SWEETENED BEVERAGES 4
(2010), <http://goo.gl/OWgFs>.

1 aggressive campaign of disinformation about the health consequences of consuming sugar-
2 sweetened beverages.

3 6. Defendants have undertaken these actions even though they know and have
4 known that sugar-sweetened beverages are linked to serious medical conditions, including
5 obesity, diabetes, and cardiovascular disease, when consumed regularly.

6 7. Although Defendant Coca-Cola promised that it would not advertise sugar-
7 sweetened beverages to children, it has advertised to children on a massive scale.

8 8. A primary purpose of these ongoing campaigns of disinformation and
9 misrepresentation is to maintain and increase the sales of sugar-sweetened beverages, and to
10 thwart and delay efforts of government entities to regulate sugar-sweetened beverages through
11 warning labels, taxes, and other measures designed to make consumers aware of the potential for
12 harm.

13 9. Defendants have engaged in this conduct despite knowing that sugar-sweetened
14 beverages are scientifically linked to obesity, diabetes, and cardiovascular disease, and these
15 diseases are at epidemic levels in California and the United States.

16 10. Each year, millions of Californians, and others across the United States, will
17 either develop, or develop the markers for, obesity, type 2 diabetes, and/or cardiovascular
18 disease, owing at least in part to consumption of sugar-sweetened beverages.

19 11. Each year, Coca-Cola reaps huge profits from the sale of its sugar-sweetened
20 beverages.

21 12. Each year, Coca-Cola spends billions of dollars on misleading and deceptive
22 promotions and advertising that have enormous appeal to consumers, including children, which
23 advertising effects persist over years.

24 13. Plaintiff seeks injunctive relief for the conduct alleged in the complaint. Among
25 other things, Plaintiff seeks a permanent injunction to require the Defendants to: publicly
26 disclose their files on the potential health implications of consuming sugar-sweetened beverages;
27 fund a public education campaign to educate consumers about the association between sugar-
28 sweetened beverage consumption and obesity, diabetes, and cardiovascular disease; cease

1 prospectively all deceptive advertising and promotions that imply in any manner that sugar-
2 sweetened beverage consumption is not linked to obesity, diabetes, and cardiovascular disease,
3 and conversely is healthy; and, in the case of Coca-Cola, cease all advertising that reaches
4 children under the age of 12 in significant numbers.

5 PARTIES

6 14. Plaintiff Praxis is a nonprofit corporation pursuant to section 501(c)(3) of the
7 Internal Revenue Code, with offices in Oakland, California, and Washington, DC. Plaintiff's
8 mission is to build healthier communities, and through the efforts of its staff, Plaintiff engages in
9 significant advocacy relating to sugar-sweetened beverages and the health consequences of their
10 frequent consumption. Plaintiff's work is well recognized, including but not limited to the
11 efforts of its Executive Director, Xavier Morales. As alleged in more detail below, Plaintiff has
12 diverted significant resources to its advocacy concerning sugar-sweetened beverages. This
13 diversion has prevented Plaintiff from allocating resources to other projects that advance
14 healthier communities. Plaintiff could have avoided many of these expenditures if Defendants
15 had not engaged in deception about the consequences of consuming sugar-sweetened beverages,
16 consistent with its legal duty.

17 15. Defendant Coca-Cola is a public corporation, organized and existing under the
18 laws of the State of Delaware, and headquartered in Atlanta, Georgia. Coca-Cola describes itself
19 as the largest manufacturer, distributor, and marketer of nonalcoholic beverage concentrates and
20 syrups in the world, many of which are sugar-sweetened beverages, including its flagship Coca-
21 Cola, or Coke. In 2012, Coca-Cola's gross profits were \$28.96 billion.² In 2012, its advertising
22 budget was \$3.34 billion.³

23 16. Defendant American Beverage Association is a trade association headquartered in
24 Washington, DC that represents the manufacturers, bottlers and distributors of various drinks,

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27 ² The Coca-Cola Co., Annual Report (Form 10-K), at 50 (Feb. 27, 2013), <http://goo.gl/RzMbtF> (FY 2012).

28 ³ *Id.* at 54.

1 including sugar-sweetened beverages. Coca-Cola executives help manage and direct the ABA,
2 and materially fund its operations.

3 **JURISDICTION AND VENUE**

4 17. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C.
5 § 1332 because Plaintiff and Defendants are citizens of different states and the amount in
6 controversy exceeds \$75,000.

7 18. The Court has personal jurisdiction over Defendant Coca-Cola because it
8 conducts substantial business in this district and throughout the State of California, and over
9 Defendant American Beverage Association because it has made statements in this district and
10 has specifically sought to influence consumer perceptions on sugar-sweetened beverages in this
11 district.

12 19. Venue is proper in this Court under 28 U.S.C. § 1391(b) because a substantial
13 number of the acts and omissions alleged herein occurred within this district.

14 **ALLEGATIONS COMMON TO ALL CLAIMS FOR RELIEF**

15 **I. HEALTH CONSEQUENCES OF SUGAR-SWEETENED BEVERAGE**
16 **CONSUMPTION**

17 20. The American Heart Association recommends a daily maximum of six (6)
18 teaspoons of added sugar for adult women and children, and nine (9) teaspoons for men.⁴

19 21. A 16-ounce bottle of Coke, by comparison, has 12 teaspoons of sugar, a 15-
20 ounce bottle of Coca-Cola's Minute Maid Cranberry Grape Juice Beverage has approximately 13
21 teaspoons of added sugar, and a 20-ounce bottle of the company's vitaminwater has 8
22 teaspoons.⁵ Twelve teaspoons of sugar is 200% of the AHA recommended daily maximum for
23 women, and more than twice the sugar content of a Twix candy bar.⁶

24
25 _____
26 ⁴ *Added Sugars*, AM. HEART ASS'N, <http://goo.gl/PoigAa> (last visited Jan. 4, 2017).

27 ⁵ Of the parents who purchased vitaminwater for their children, 78% thought it was healthy. Tina
28 Rosenberg, *Labeling the Danger in Soda*, N.Y. TIMES (March 30, 2016), <http://goo.gl/TnryHW>.

⁶ *Id.*

1 22. Sugar-sweetened beverages are the leading source of added sugars in the
2 American diet.⁷

3 23. Sugar-sweetened beverage consumption is scientifically linked to obesity, type 2
4 diabetes, and cardiovascular disease.

5 24. Stronger evidence links these diseases with the consumption of sugar-sweetened
6 beverages than with the consumption of added sugar in non-liquid forms.⁸

7 25. Numerous governmental and medical bodies have recognized this link, including
8 the Centers for Disease Control and Prevention (“CDC”), the 2015 Dietary Guidelines Advisory
9 Committee, the Institute of Medicine, the American Heart Association, the Obesity Society, and
10 the World Health Organization, and have urged reduction of sugar-sweetened beverage
11 consumption, mainly as a means to address the epidemics of obesity, type 2 diabetes, and/or
12 cardiovascular disease.

13 26. Consistent with these conclusions and recommendations, and after entertaining
14 key expert testimony, this Court found that the warning required on certain sugar-sweetened
15 beverage advertisements in San Francisco—which reads, “WARNING: Drinking beverages
16 with added sugar(s) contributes to obesity, diabetes, and tooth decay”—is “factual and
17 accurate.”⁹

24 ⁷ U.S. DEP’T OF AGRIC. & U.S. DEP’T OF HEALTH & HUMAN SERVS., SCIENTIFIC REPORT OF THE 2015
25 DIETARY GUIDELINES ADVISORY COMMITTEE 148 fig. D1.36 (2015) (DIETARY GUIDELINES
ADVISORY COMMITTEE), <http://goo.gl/2rc9v3>.

26 ⁸ CREDIT SUISSE, SUGAR CONSUMPTION AT A CROSSROADS 8–9 (2013), <https://goo.gl/7rMhXY>;
27 Expert Report of Walter Willett at ¶ 10, *Am. Beverage Ass’n v. City & Cty. of San Francisco*, No. 3:15-cv-03415-EMC (N.D. Cal. filed Feb. 23, 2016) (“Willett Report”).

28 ⁹ *Am. Beverage Ass’n v. City & Cty. of San Francisco*, No. 3:15-cv-03415-EMC, 2016 WL 2865893,
at *18 (N.D. Cal. May 17, 2016).

1 27. Studies tracking thousands of adults for years show that those who consume
2 sugar-sweetened beverages have higher rates of obesity and obesity-related chronic diseases.¹⁰

3 28. One highly regarded study (double-blind, randomized controlled intervention trial
4 (“RCT”)) involving 641 Dutch children reported that those who were given just one 8-ounce
5 sugar-sweetened drink a day gained more weight and body fat over 1½ years than those who
6 were given sugar-free drinks. Similar findings have been reported in a number of other clinical
7 trials on adults and children.¹¹

8 29. Scientific research has also established a link between the consumption of sugar-
9 sweetened beverages and type 2 diabetes, which is only partly due to the impact of sugar-
10 sweetened beverages on weight gain.

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14 ¹⁰ See, e.g., Ravi Dhingra et al., *Soft Drink Consumption and Risk of Developing Cardiometabolic*
15 *Risk Factors and the Metabolic Syndrome in Middle-Aged Adults in the Community*, 116
16 *CIRCULATION* 480 (2007); Frank B. Hu & Vasanti S. Malik, *Sugar-Sweetened Beverages and Risk of*
17 *Obesity and Type 2 Diabetes: Epidemiologic Evidence*, 100 *PHYSIOLOGY & BEHAV.* 47 (2010);
18 Vasanti S. Malik et al., *Sugar Sweetened Beverages and Weight Gain in Children and Adults: A*
19 *Systematic Review and Meta-Analysis*, 98 *AM. J. CLINICAL NUTRITION* 1084 (2013); Julie R. Palmer
20 et al., *Sugar-Sweetened Beverages and Incidence of Type 2 Diabetes Mellitus in African American*
21 *Women*, 168 *ARCHIVES INTERNAL MED.* 1487 (2008); Qibin Qi et al., *Sugar-Sweetened Beverages*
22 *and Genetic Risk of Obesity*, 367 *NEW ENG. J. MED.* 1387 (2012); Matthias B. Schulze et al., *Sugar-*
23 *Sweetened Beverages, Weight Gain, and Incidence of Type 2 Diabetes in Young and Middle-Aged*
24 *Women*, 292 *JAMA* 927 (2004); Jiantao Ma, *Sugar-Sweetened Beverage but Not Diet Soda*
25 *Consumption Is Positively Associated with Progression of Insulin Resistance*, *J. OF NUTRITION*
26 234047 (Nov. 9, 2016),
27 <http://jn.nutrition.org/content/early/2016/11/09/jn.116.234047.full.pdf+html>.

28 ¹¹ Janne C. de Ruyter et al., *A Trial of Sugar-Free or Sugar-Sweetened Beverages and Body Weight*
29 *in Children*, 367 *NEW ENG. J. MED.* 1397 (2012); see also Cara B. Ebbeling et al., *A Randomized*
30 *Trial of Sugar-Sweetened Beverages and Adolescent Body Weight*, 367 *NEW ENG. J. MED.* 1407
31 (2012); Cara B. Ebbeling et al., *Effects of Decreasing Sugar-Sweetened Beverage Consumption on*
32 *Body Weight in Adolescents: A Randomized Controlled Pilot Study*, 117 *PEDIATRICS* 673 (2006);
33 Janet James et al., *Preventing Childhood Obesity by Reducing Consumption of Carbonated Drinks:*
34 *Cluster Randomised Controlled Trial*, 328 *BMJ* 1237 (2004); Anne Raben et al., *Increased*
35 *Postprandial Glycaemia, Insulinemia, and Lipidemia After 10 Weeks’ Sucrose-Rich Diet Compared*
36 *to an Artificially Sweetened Diet: A Randomized Controlled Trial*, 55 *FOOD NUTRITION RES.* 5961
37 (2011); Anne Raben et al., *Sucrose Compared with Artificial Sweeteners: Different Effects on Ad*
38 *Libitum Food Intake and Body Weight After 10 Wk of Supplementation in Overweight Subjects*, 76
39 *AM. J. CLINICAL NUTRITION* 721 (2002); Michael G. Tordoff & Anne M. Alleva, *Effect of Drinking*
40 *Soda Sweetened with Aspartame or High-Fructose Corn Syrup on Food Intake and Body Weight*, 51
41 *AM. J. CLINICAL NUTRITION* 963 (1990).

1 30. Put another way, the consumption of sugar-sweetened beverages is linked to an
2 increase in type 2 diabetes even after researchers account for the impact of sugar-sweetened
3 beverages on weight.¹²

4 31. The 2015 Dietary Guidelines Advisory Committee concluded that “[s]trong
5 evidence shows that higher consumption of added sugars, especially sugar sweetened beverages,
6 increases the risk of type 2 diabetes among adults and this relationship is not fully explained by
7 body weight.”¹³

8 32. Scientific studies also link sugar-sweetened beverage consumption to a higher risk
9 of other obesity-related conditions, including coronary heart disease and stroke (collectively,
10 cardiovascular disease).¹⁴

11 33. A systematic review and meta-analysis of 39 randomized clinical trials concluded
12 that higher intakes of sugars are associated with risk factors for cardiovascular disease including
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15 ¹² Ravi Dhingra et al., *Soft Drink Consumption and Risk of Developing Cardiometabolic Risk*
16 *Factors and the Metabolic Syndrome in Middle-Aged Adults in the Community*, 116 CIRCULATION
17 480 (2007); Darren C. Greenwood et al., *Association Between Sugar-Sweetened and Artificially*
18 *Sweetened Soft Drinks and Type 2 Diabetes: Systematic Review and Dose-Response Meta-*
19 *Analysis of Prospective Studies*, 112 BRIT. J. NUTRITION 725 (2014); Fumiaki Imamura et al.,
20 *Consumption of Sugar Sweetened Beverages, Artificially Sweetened Beverages, and Fruit Juice and*
21 *Incidence of Type 2 Diabetes: Systematic Review, Meta-Analysis, and Estimation of Population*
22 *Attributable Fraction*, 351 BMJ h3576 (2015); Lawrence de Koning et al., *Sugar-Sweetened and*
23 *Artificially Sweetened Beverage Consumption and Risk of Type 2 Diabetes in Men*, 93 AM. J.
24 *CLINICAL NUTRITION* 1321 (2011); Vasanti S. Malik et al., *Sugar-Sweetened Beverages and Risk of*
25 *Metabolic Syndrome and Type 2 Diabetes: A Meta-Analysis*, 33 DIABETES CARE 2477 (2010);
26 Andrew O. Odegaard et al., *Soft Drink and Juice Consumption and Risk of Physician-Diagnosed*
27 *Incident Type 2 Diabetes*, 171 AM. J. EPIDEMIOLOGY 701 (2010); Julie R. Palmer et al., *Sugar-*
28 *Sweetened Beverages and Incidence of Type 2 Diabetes Mellitus in African American Women*, 168
ARCHIVES INTERNAL MED. 1487 (2008); Matthias B. Schulze et al., *Sugar-Sweetened Beverages,*
Weight Gain, and Incidence of Type 2 Diabetes in Young and Middle-Aged Women, 292 JAMA 927
(2004); The InterAct Consortium, *Consumption of Sweet Beverages and Type 2 Diabetes Incidence*
in European Adults: Results from EPIC-InterAct, 56 DIABETOLOGIA 1520 (2013).

¹³ DIETARY GUIDELINES ADVISORY COMMITTEE, *supra* note 7, at Part D, Chapter 6, p. 20; *accord*
Willett Report, *supra* note 8, at ¶ 51 (“Findings from well-designed prospective cohort studies have
shown a strong and consistent association between SSB consumption and diabetes.”).

¹⁴ Adam M. Bernstein et al., *Soda Consumption and the Risk of Stroke in Men and Women*, 95 AM. J.
CLINICAL NUTRITION 1190 (2012); Lawrence de Koning et al., *Sweetened Beverage Consumption,*
Incident Coronary Heart Disease, and Biomarkers of Risk in Men, 125 CIRCULATION 1735 (2012);
Teresa T. Fung et al., *Sweetened Beverage Consumption and Risk of Coronary Heart Disease in*
Women, 89 AM. J. CLINICAL NUTRITION 1037 (2009).

1 higher levels of triglycerides, LDL ("bad") cholesterol, and blood pressure, and that "the relation
2 is independent of effects of sugars on body weight."¹⁵

3 34. Thus, the Dietary Guidelines Advisory Committee said, "higher intake of added
4 sugars, especially in the form of sugar-sweetened beverages, is consistently associated with
5 increased risk of hypertension, stroke, and [cardiovascular disease] in adults."¹⁶

6 35. Likewise, "[T]he recommendations from the Institute of Medicine, the American
7 Heart Association, the Obesity Society, and many other organizations [are] to reduce the
8 consumption of sugar-sweetened beverages in both children and adults."¹⁷

9 36. This is because the "consumption of sugar-sweetened beverages causes excess
10 weight gain and is associated with increased risk of type 2 diabetes and cardiovascular disease;
11 thus, these beverages are unique dietary contributors to obesity and related chronic diseases."¹⁸

12 37. Today, roughly one-third of children and two-thirds of adults in the United States
13 are overweight or obese.¹⁹ Since 1980, obesity rates in the United States have tripled in
14 children,²⁰ and doubled in adults.²¹

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17 ¹⁵ Te Morenga LA, et al. *Dietary Sugars and Cardiometabolic Risk: Systematic Review and*
18 *Meta-analyses of Randomized Controlled Trials of the Effects on Blood Pressure and Lipids*,
AM. J. CLINICAL NUTRITION 65-79 (2014).

19 ¹⁶ DIETARY GUIDELINES ADVISORY COMMITTEE, *supra* note 7, at Part D, Chapter 6, p. 20.

20 ¹⁷ Sonia Caprio, *Calories from Soft Drinks—Do They Matter?*, 367 NEW ENG. J. MED. 1462, 1463
(2012).

21 ¹⁸ Vasanti S. Malik & Frank B. Hu, *Fructose and Cardiometabolic Health: What the Evidence from*
Sugar-Sweetened Beverages Tells Us, 66 J. AM. C. CARDIOLOGY 1615 (2015).

22 ¹⁹ Cynthia L. Ogden et al., *Prevalence of Childhood and Adult Obesity in the United States, 2011–*
23 *2012*, 311 JAMA 806 (2014). Worldwide, according to McKinsey & Company, "almost half of the
24 world's adult population could be overweight or obese by 2030." MCKINSEY GLOB. INST.,
OVERCOMING OBESITY: AN INITIAL ECONOMIC ANALYSIS 11 (2014) (internal citation omitted). The
25 McKinsey Report added a critical public health perspective: the 2.1 billion obese or overweight
26 people in the world is two and a half times the number of undernourished people. *Id.* at 14.

26 ²⁰ CYNTHIA OGDEN & MARGARET CARROLL, CTRS. FOR DISEASE CONTROL & PREVENTION,
PREVALENCE OF OBESITY AMONG CHILDREN AND ADOLESCENTS: UNITED STATES, TRENDS 1963–
1965 THROUGH 2007–2008, at 5 (2010), <https://goo.gl/6afktw>.

27 ²¹ CHERYL D. FRYAR, MARGARET D. CARROLL & CYNTHIA L. OGDEN, CTRS. FOR DISEASE CONTROL
28 & PREVENTION, PREVALENCE OF OVERWEIGHT, OBESITY, AND EXTREME OBESITY AMONG ADULTS:
UNITED STATES, 1960–1962 THROUGH 2011–2012, at tbl. 2 (2014), <http://goo.gl/dc2UHy>.

1 38. Fifty-five percent (55%) of adult Californians are estimated to have diagnosed
2 diabetes, undiagnosed diabetes, or pre-diabetes.²²

3 39. Forty-six percent (46%) of adults in the United States have pre-diabetes or
4 diabetes.²³

5 40. Estimates on the annual cost of medical care and premature mortality attributable
6 to the consumption of sugar-sweetened beverages are astronomical. For example, in New York
7 City alone, the figure is estimated at between \$16.4 billion and \$17.96 billion.²⁴

8 **II. DEFENDANTS' FALSE PROMISES AND MISREPRESENTATIONS**

9 41. In 2012, faced with an established and growing body of scientific research linking
10 its products to obesity, type 2 diabetes, and cardiovascular disease, Coca-Cola and the ABA
11 ramped up their campaign of misrepresentation and deception.

12 42. Around the same time, various other city, county, and state regulators, as well as
13 foreign governments, were openly discussing a variety of measures intended to address the
14 epidemics of obesity, diabetes, and cardiovascular disease, and consumer misperceptions of
15 sugar-sweetened beverages and their potential for harm.

16 43. To combat this perceived threat to the security of the company's products and
17 corporate profitability, Coca-Cola executives embarked on an intensive public speaking and
18 marketing campaign in which they knowingly made material misrepresentations and omissions
19 to the public and, upon information and belief, to various governmental entities tasked with
20 protecting the public health, about the health consequences of consuming their sugar-sweetened
21 beverage products.

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24 ²² SUSAN H. BABEY ET AL., UCLA CTR. FOR HEALTH POLICY RESEARCH, PREDIABETES IN CALIFORNIA: NEARLY HALF OF CALIFORNIA ADULTS ON PATH TO
25 DIABETES 1 (2016), <https://goo.gl/f3NKqI>.

26 ²³ NATIONAL DIABETES STATICS REPORT OF THE CDC (2014),
27 <https://www.cdc.gov/diabetes/pubs/statsreport14/national-diabetes-report-web.pdf>.

28 ²⁴ Shi-Ling Hsu, *A Cost-Benefit Analysis of Sugary Drink Regulation in New York City*, 10 J. FOOD
L. & POL'Y 73, 103 tbl. 12 (2014).

1 44. In particular, Coca-Cola falsely propounded that sugar-sweetened beverages are
2 not linked to obesity, type 2 diabetes, or cardiovascular disease.

3 45. As part of this misrepresentation, Coca-Cola executives and agents misleadingly
4 sought to divert focus from sugar-sweetened beverage consumption to a purported lack of
5 exercise as the explanation for the rise in obesity-related chronic conditions, despite the fact that
6 they knew this explanation was not scientifically sound. To do this, Coca-Cola employed, and
7 together with the American Beverage Association continues to employ, various euphemisms like
8 “balance,” “calories in, calories out,” and “mixify.”

9 46. Defendants have made these representations in the face of an overwhelming body
10 of evidence establishing that sugar-sweetened beverages are linked to obesity, diabetes, and
11 cardiovascular disease, and that exercise alone—particularly of the type promoted by
12 Defendants—does not protect consumers from these harms.

13 47. Defendants continue to deny that sugar-sweetened beverages are linked to
14 obesity, diabetes type-2, and cardiovascular disease, and continue to misrepresent the science on
15 sugar-sweetened beverages despite widespread agreement in the scientific and medical
16 communities that sugar-sweetened beverages are a primary cause of obesity, type 2 diabetes, and
17 cardiovascular disease.

18 48. In addition to engaging in this deceptive campaign to promote false facts to
19 consumers, Coca-Cola also took the following actions to respond to the growing scientific
20 evidence linking consumption of its products to obesity, type 2 diabetes, and cardiovascular
21 disease: (A) it secretly funded and publicly promoted biased scientific research, and intentionally
22 mischaracterized objective scientific research on sugar-sweetened-beverage-consumption; (B) it
23 funded and worked with the American Beverage Association to organize expensive initiatives
24 that promoted exercise, or “balance,” in California, across the United States, and globally, as an
25 alternative to reducing consumption of sugar-sweetened beverages; and (C) it ran false and
26 misleading advertising campaigns.

27
28

1 **A. False Representations to Consumers by Coca-Cola and Its Front Groups**

2 49. Faced with a growing scientific consensus linking its products to obesity, type 2
3 diabetes, and cardiovascular disease, Coca-Cola’s top scientists and executives have
4 unambiguously pledged and represented to the public that sugar-sweetened beverage
5 consumption is not linked to obesity, type 2 diabetes, or cardiovascular disease. Coca-Cola’s
6 representatives have done so despite actual knowledge of facts to the contrary.

7 50. Coca-Cola knew or should have known that consumers (and regulatory agencies
8 responsible for protecting their health) would consider the Coca-Cola’s representations material
9 to their decisions whether to purchase Coca-Cola’s sugar-sweetened beverages, decisions that
10 consumers otherwise would have modified had Coca-Cola been truthful in its representations and
11 its public pledges about promoting unbiased science.

12 51. Coca-Cola’s Senior Vice President, Katie Bayne, has repeatedly been quoted
13 stating that “[t]here is no scientific evidence that connects sugary beverages to obesity.”²⁵

14 52. Coca-Cola’s former Chairman and Chief Executive Officer, Douglas Ivester, has
15 made similar high publicity misrepresentations, such as that “Coca-Cola is an excellent
16 complement to the habits of a healthy life.”²⁶

17 53. Coca-Cola also funded “front” groups, such as the Global Energy Balance
18 Network (“GEBN”) and the European Hydration Institute (“EHI”), that are presented to the
19 public as disinterested research entities but are or were actually Coca-Cola-funded and used by
20 Coca-Cola to more effectively misrepresent, suppress, and confuse the facts about sugar-
21 sweetened beverages and their health dangers.

22 54. Dr. Steven Blair, the vice president of GEBN, which claimed to fund unbiased
23 research into causes of obesity, put it this way: “Most of the focus in the popular media and the
24 scientific press . . . blames . . . sugary drinks [for the obesity epidemic], and there is really
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26 ²⁵ Bruce Horovitz, *Coke Says Obesity Grew as Sugar Drink Consumption Fell*, USA TODAY (June 7,
27 2012), <http://goo.gl/w0jFU2> (statement by Coke executive Katie Bayne).

28 ²⁶ *The Unhappy Truth About Soda*, CTR. FOR SCI. IN THE PUB. INTEREST, <http://www.therealbears.org/>
(last visited Sept. 16, 2016).

1 virtually no compelling evidence that that, in fact, is the cause. Those of us interested in science,
2 public health, medicine, we have to learn how to get the right information out there.”²⁷

3 55. In 2015, claiming to be “the voice of science,” GEBN touted “strong evidence”
4 that the key to preventing weight gain is not reducing sugar-sweetened beverage intake, “but
5 maintaining an active lifestyle and eating more calories.”²⁸

6 56. EHI touts the same message in Europe.²⁹ Notably, like GEBN, EHI professes
7 independence.³⁰ However, Coca-Cola co-founded EHI, and its Director, Dr. Jane Holdsworth, is
8 a paid Coca-Cola consultant.³¹

9 57. Whether through GEBN, or various universities, Coca-Cola spent approximately
10 \$120 million, between 2010–2015 alone, surreptitiously funding various research and programs
11 intending to confuse and misrepresent the science on the link between sugar-sweetened
12 beverages and obesity, type 2 diabetes, and cardiovascular disease.³²

13 58. An analysis of beverage studies published in PLOS Medicine found that those
14 funded by Coca-Cola, PepsiCo, and the American Beverage Association were five times more
15 likely to find no link between sugar-sweetened beverages and obesity than studies whose authors
16 reported no financial conflicts.³³ A recent study found by Dr. Schillinger of the University of
17

18 ²⁷ CrossFit, *Dr. Steven Blair of Coca-Cola and ACSM’s Global Energy Balance Network*,
19 YOUTUBE (Sept. 10, 2015), <https://goo.gl/h14Yq8>.

20 ²⁸ Anahad O’Connor, *Coca-Cola Funds Scientists Who Shift Blame for Obesity Away from Bad*
21 *Diets*, N.Y. TIMES (Aug. 9 2015), <http://goo.gl/tpfrg7> (quoting GEBN’s now-discontinued
22 website). See also Anahad O’Connor, *Coke’s Chief Scientist, Who Orchestrated Obesity*
Research, Is Leaving, N.Y. TIMES (Nov. 24, 2015), <http://goo.gl/u33ZNF> (while Coca-Cola said
it had no influence on GEBN, “reports show that Dr. Applebaum and other executives at Coke
helped pick the group’s leaders, create its mission statement and design its website”).

23 ²⁹ EUROPEAN HYDRATION INST., <http://goo.gl/JEKIb> (last visited Sept. 15, 2016).

24 ³⁰ “The members of the Science Advisory Board of the EHI do not have any conflicts of interest with
any commercial organization.” *Id.* (quote de-italicized).

25 ³¹ *What Is the European Hydration Institute?*, EUROPEAN HYDRATION INST., <http://goo.gl/TGOr6W>
26 (last modified June 14, 2016; last visited Sept. 16, 2016).

27 ³² Anahad O’Connor, *Coke Discloses Millions in Grants for Health Research and Community*
Programs, N.Y. TIMES (Sept. 22, 2015), <http://goo.gl/hK48HC>.

28 ³³ Anahad O’Connor, *Coca-Cola Funds Scientists Who Shift Blame for Obesity Away from Bad*
Diets, N.Y. TIMES (Aug. 9 2015), <http://goo.gl/tpfrg7> (referencing Maira Bes-Rastrollo et al.,
Financial Conflicts of Interest and Reporting Bias Regarding the Association Between Sugar-

1 California San Francisco’s Division of General Internal Medicine and Center for Vulnerable
 2 Populations, found an even greater impact. He found that 26 of 26 “negative” studies (finding no
 3 link between SSBs and obesity), or 100%, received funding from the soda industry, and only
 4 one of 34 “positive” studies received industry funding. His research led him to conclude that
 5 “[t]he SSB industry appears to be manipulating contemporary scientific processes to create
 6 controversy and advance their business interests at the expense of the public’s health.”³⁴

7 59. Just as the tobacco industry formed the Tobacco Industry Research Committee in
 8 1953 to respond to scientific evidence linking smoking to lung cancer, Coca-Cola’s strategy was
 9 one of “cultivating relationships” with scientists as a way to “balance the debate” on sugar-
 10 sweetened beverages.³⁵ Dr. Rhona Applebaum, Coca-Cola’s “Chief Science and Health Officer”
 11 was put in charge of locating such scientists.

12 60. Applebaum funded Dr. James Hill, of the University of Colorado, for example,
 13 after he explicitly proposed publishing research that would help Coca-Cola fend off criticism
 14 about its products by shifting the blame for obesity to lack of physical activity. “I . . . could
 15 provide a strong rationale for why a company selling sugar water should focus on promoting
 16 physical activity. This would be a very large and expensive study, but could be a game changer.
 17 We need this study to be done.”³⁶

22 *Sweetened Beverages and Weight Gain*, 10 PLOS MEDICINE e1001578 (2013)). Another analysis
 23 found that beverage industry-funding studies are as much as eight times more likely to be favorable
 24 to industry’s marketing interests. Willett Report, *supra* note 8, at ¶ 27 (citing Leonard I. Lesser et
 25 al., *Relationship Between Funding Source and Conclusion Among Nutrition-Related Scientific*
 26 *Articles*, 4 PLOS MEDICINE e5 (2007)).

25 ³⁴ Dr. Dean Schillinger, *Do Sugar-Sweetened Beverages Cause Obesity and Diabetes? Industry*
 26 *and the Manufacture of Scientific Controversy*, ANN AM. MEDICINE (NOV. 2016),
<https://www.ncbi.nlm.nih.gov/pubmed/27802504>.

27 ³⁵ Anahad O’Connor, *Coke’s Chief Scientist, Who Orchestrated Obesity Research, Is Leaving*, N.Y.
 28 TIMES (Nov. 24, 2015), <http://goo.gl/u33ZNF>.

³⁶ *Id.*

1 61. Dr. Hill further added, “I want to help your company avoid the image of being a
2 problem in people’s lives and back to being a company that brings important and fun things to
3 them.”³⁷

4 62. Coca-Cola’s Chief Executive Officer, Muhtar Kent, directed Dr. Applebaum to
5 seek to persuade CBS to invite Dr. Hill on “CBS This Morning,” so as to have him help shape
6 media coverage about sugar-sweetened beverages.³⁸

7 63. Meanwhile, Dr. Applebaum and various scientists misrepresented to the public
8 and consumers that the science Coca-Cola was funding constituted totally independent research
9 efforts with completely unrestricted funding.

10 64. Similarly, James Quincey, who is slated to become Defendant’s CEO as of May
11 2017, has repeatedly publicized that Coca-Cola’s role is to “get information [about obesity and
12 SSBs] into people’s hands” to empower their “choices.” Put another way, that Defendant is “not
13 trying to hide the information,” instead pledging that “we are focused on getting the information
14 out there.” Contemporaneously, he shifted responsibility for the obesity and diabetes epidemics
15 away from sugar-sweetened beverages and, explicitly, to a lack of activity, claiming that sugar-
16 sweetened beverages constitute less than 2% of all calories, and by implication, bear only a tiny
17 fraction of responsibility for the obesity epidemic.³⁹

18 65. Coca-Cola’s representations as to the state of the science, and about sponsoring
19 independent and objective research and “bringing the facts to light,” were false and deceptive.
20 They were made to gain the trust of the consuming public and to cast doubt on the substantial,
21 credible science linking Coca-Cola’s products to obesity, diabetes, and cardiovascular disease.

22 66. Likewise, Coca-Cola funded and guided industry groups in promoting its
23 deceptive campaign. Defendant ABA, a trade association of soda manufacturers, financed
24 extensively by Coca-Cola, reduced the entire body of scientific research linking sugar-sweetened
25

26 ³⁷ *Id.*

27 ³⁸ *Id.*

28 ³⁹ BBC Interview by Jeremy Paxman with James Quincey, in London, England (Nov. 27, 2013),
<https://www.youtube.com/watch?v=DWLQaz8nhQw> (last visited Jan. 4, 2017).

1 beverages and obesity and related diseases to a mere ‘emotional’ impulse. Its statement in June
 2 2016, argued that “[a]pplying a tax to certain items because those items have an emotional
 3 association to obesity in the minds of some groups is not only flawed, it’s shortsighted and
 4 lazy.”⁴⁰

5 67. Sandy Douglas, President of Coca-Cola North America, sits on the board of
 6 directors of the ABA, along with *six other* Coca-Cola executives and affiliate executives,
 7 including Claude Nielsen of Coca-Cola Bottling Company United, who is also an ex-officio
 8 officer.⁴¹

9 68. Beyond its management function, Coca-Cola principally funds the ABA, treating
 10 it as an arm of Coke’s public relations enterprise. Coca-Cola executives commonly refer to
 11 “working an issue through” the ABA.

12 69. As of September 2016, the ABA’s website was replete with misleading and
 13 materially incomplete representations about the link between sugar-sweetened beverages and
 14 obesity-related chronic diseases. For example, the following omits entirely the prominent role
 15 played by routine sugar-sweetened beverage consumption in the rise of obesity and related
 16 chronic diseases:

17 Soda is a hot topic. And the conversation is full of opinions and myths, but not
 18 enough facts. America’s beverage companies created this site to clear a few things
 19 up about the products we make. So read on. Learn. And share the clarity.

20 * * *

21 Fact: Obesity. Obesity is a complex condition, that can’t be boiled down to one
 22 specific product or ingredient. Many health organizations, including the Mayo
 23 Clinic, have found multiple risk factors including genetics, ages, and even lack of
 24 sleep.

25 * * *

26 ⁴⁰ *Taxing Beverages Is “Flawed” and “Lazy,”* AM. BEVERAGE ASS’N (June 24, 2016),
 27 <http://goo.gl/rcn2qb> (quoting Jeff Rogut, CEO of the Australasian Association of Convenience
 28 Stores) (last visited Sept. 16, 2016).

⁴¹ *Board of Directors*, AM. BEVERAGE ASS’N, <https://goo.gl/8lo6w> (last visited Sept. 16, 2016).

1 Focusing on [soda]—ignores the bigger problem and doesn’t offer real solutions.⁴²

2 70. Other red herrings advanced by the ABA include discussions of high fructose
3 corn syrup (“HFCS”)—which is irrelevant because whether sugar-sweetened beverages are
4 sweetened with HFCS or traditional sugar, their link with disease is established:

5 Myth: High Fructose Corn Syrup (HFCS) causes obesity and diabetes.

6 Fact: Actually, the American Medical Association has concluded that HFCS . . . is
7 not a unique contributor to either obesity or type 2 diabetes. In fact, HFCS is so
8 similar to sucrose (table sugar) that your body can’t tell the difference between the
9 two and processes both in the same way.⁴³

10 71. Coca-Cola and the ABA have marshalled an army of spokespersons who
11 systematically deny through various public relations means the science linking sugar-sweetened
12 beverages to obesity and related diseases and promote falsehoods and misimpressions in its
13 place.

14 72. By way of further example, in an op-ed entitled “Soda Tax is wrong formula,
15 regardless of ideology,” for example, Professor Baylen Linnekin—without disclosing that he is a
16 paid “expert” of Americans for Food & Beverage Choice, a self-identified “affiliate” of the
17 ABA—wrote that “key data shows the lack of a causal link between soda consumption and
18 obesity.”⁴⁴

19 73. Other paid experts asserted that “the claim linking diabetes to soda is remarkably
20 fragile,” “according to the American Diabetes Association, Type 2 diabetes is caused by genetics
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24 ⁴² Am. Beverage Ass’n, *Home*, LET’S CLEAR IT UP, <http://goo.gl/Ft8VNp> (last visited Sept. 16,
25 2016); Am. Beverage Ass’n, *Health*, LET’S CLEAR IT UP, <http://goo.gl/NZCwGy> (last visited Sept.
26 16, 2016); Am. Beverage Ass’n, *Beverages*, LET’S CLEAR IT UP, <http://goo.gl/D1o8EI> (last visited
27 Sept. 16, 2016).

⁴³ Am. Beverage Ass’n, *Obesity*, LET’S CLEAR IT UP, <http://goo.gl/AAUPzD> (last visited Sept. 16,
28 2016).

⁴⁴ Baylen J. Linnekin, Op-Ed., *Soda Tax Is Wrong Formula, Regardless of Ideology*, BERKELEYSIDE
(Oct. 14, 2014), <http://goo.gl/ydWgGK> (last visited Sept. 16, 2016).

1 and lifestyle factors, not soda,” and “eliminating soda and sugary beverages from your diet will
2 not save your health any more than over-emphasizing fruits and vegetables.”⁴⁵

3 74. ABA press releases follow the same approach, including:

- 4 • “You may have read articles recently suggesting that there is something
5 unique about soda when it comes to diabetes. Yes, diabetes. It’s always
6 something if you’re reading the headlines. But if you dig deep enough,
7 there’s no ‘there’ there”;⁴⁶
- 8 • “There is no unique link between soda consumption and obesity”;⁴⁷
- 9 • “[T]here’s nothing unique about beverage calories when it comes to obesity or
10 any other health condition. Sadly, however, the days of simply enjoying a
11 refreshing beverage are under assault – that is, if you choose to listen to our
12 critics”;⁴⁸
- 13 • “Sugar isn’t the enemy, the problem is calories. . . . demonizing [] sugar isn’t
14 going to improve public health”;⁴⁹
- 15 • “[T]he attack on added sugars is not founded on the totality of scientific
16 evidence. . . . Like past false food scares, the anti-soda campaign misleads
17 people with unsound science”;⁵⁰
- 18 • “You may have seen some attention to research presented at an American
19 Heart Association meeting that suggests that drinking two or more sugar-

21 ⁴⁵ Ams. for Beverage Choice, *Warning Labels on Soda? California’s Newest Crazy Idea*,
22 CALIFORNIANS FOR FOOD & BEVERAGE CHOICE (Feb. 14, 2014), <http://goo.gl/dd88US> (last visited
23 Sept. 16, 2016).

24 ⁴⁶ *Cut Through the Headlines and Get the Facts*, AM. BEVERAGE ASS’N (Nov. 8, 2013),
25 <http://goo.gl/s1w3eK> (last visited Sept. 16, 2016).

26 ⁴⁷ *Last Ditch Effort in New York Budget Debates*, AM. BEVERAGE ASS’N (May 24, 2010),
27 <http://goo.gl/kN3FZ6> (last visited Sept. 16, 2016).

28 ⁴⁸ *Simply Soda. . . .*, AM. BEVERAGE ASS’N (June 11, 2012), <http://goo.gl/JstcDx> (last visited Sept.
16, 2016).

⁴⁹ *Experts: Blaming Sugar Won’t Yield Results*, AM. BEVERAGE ASS’N (Oct. 1, 2015),
<http://goo.gl/19E0Gm> (quoting, in part, Dr. John L. Sievenpiper) (last visited Sept. 16, 2016).

⁵⁰ *The Added Sugar Fantasy*, AM. BEVERAGE ASS’N (June 17, 2015), <http://goo.gl/JngEQA> (last
visited Sept. 16, 2016).

1 sweetened beverages per day increases the risk of cardiovascular disease
2 among women. It's always worth questioning a news report on a study if it
3 only presents one side";⁵¹

- 4 • "In 1984, President Ronald Reagan designated July as National Ice Cream
5 Month, recognizing ice cream as a fun and nutritious food that 90% of our
6 population enjoys. . . . [W]e want to remind you to grab a beverage to go with
7 your ice cream. It's important to stay hydrated, especially in these warm
8 summer months";⁵²
- 9 • "Despite what you may read in frequent stories that come out in the media,
10 sugar-sweetened beverages are not a unique driver of public health concerns
11 such as obesity and diabetes. Simply put, it is wrong to say beverages cause
12 disease";⁵³
- 13 • "[A]ll calories are the same regardless of food source. . . . 100 calories from a
14 donut or a yogurt is still 100 calories";⁵⁴
- 15 • "Recently we've seen some food activists allege that sugar-sweetened
16 beverages 'cause' obesity, diabetes and a host of other adverse health
17 conditions. Obviously they are hoping you never look at the science behind
18 their claims. Because it doesn't exist";⁵⁵

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22 ⁵¹ *Here We Go Again*, AM. BEVERAGE ASS'N (Nov. 14, 2011), <http://goo.gl/0Ywg96> (last visited Sept. 16, 2016).

23 ⁵² *Did You Get Your Ice Cream*, AM. BEVERAGE ASS'N (July 26, 2013), <http://goo.gl/Y1emwi> (last visited Sept. 16, 2016).

24 ⁵³ *Taking a Closer Look at Recent Studies on Diabetes*, AM. BEVERAGE ASS'N (July 23, 2015),
25 <http://goo.gl/JQtXgK> (last visited Sept. 16, 2016).

26 ⁵⁴ *Setting the Record Straight on Calories*, AM. BEVERAGE ASS'N (Sept. 16, 2015),
27 <http://goo.gl/OHVYB3> (quoting Megan Meyer, PhD, program manager of health and wellness
28 communications at the Int'l Food Info. Council—a Coca-Cola-funded group) (last visited Sept. 16,
2016).

⁵⁵ *Clearing up the Conversation on Beverages*, AM. BEVERAGE ASS'N (June 24, 2015),
<http://goo.gl/tkL2Se> (last visited Sept. 16, 2016).

- 1 • “Consuming . . . sugar is not uniquely related to insulin resistance or diabetes.
- 2 . . . It is over-consumption of calories that increases the risk of health issues
- 3 like Type 2 diabetes and obesity”;⁵⁶ or
- 4 • “Overconsumption of anything (even water) can be risky.”⁵⁷

5 75. The ABA’s Americans for Food and Beverage Choice regularly pushes
6 misrepresentations through multiple media outlets as well. Such as statements that:

- 7 • “Managing diabetes is all about balancing what you eat with your activity
- 8 level. . . . A daily soda is fine”;⁵⁸
- 9 • “At the end of the day, all calories count—from any source. The body of
- 10 science is clear and supports that a calorie is still a calorie regardless of the
- 11 source”;⁵⁹ and
- 12 • “The same holds true for headlines that say drinking soda can cause obesity,
- 13 type 2 diabetes, or heart disease. What’s missing from those unfounded
- 14 statements is any evidence from randomized clinical trials.”⁶⁰

15 76. Coca-Cola also pays individual health professionals to promote sugar-sweetened
16 beverages. According to Coca-Cola spokesperson Ben Sheidler, Coca-Cola “ha[s] a network of
17 dietitians we work with.” In February of 2015, these dietitians wrote numerous online pieces for
18 American Heart Month, each including the suggestion that a soda could be a healthy snack, “like
19 . . . packs of almonds.”⁶¹

21 ⁵⁶ *Warning Labels Won't Work*, AM. BEVERAGE ASS’N (Mar. 16, 2015), <http://goo.gl/aSmnBa>
22 (quoting Lisa Katic, a registered dietitian and ABA consultant) (last visited Sept. 16, 2016).

23 ⁵⁷ *Overconsumption of Anything (Even Water) Can Be Risky*, AM. BEVERAGE ASS’N (Aug. 3, 2015),
<http://goo.gl/SvKeb2> (last visited Sept. 16, 2016).

24 ⁵⁸ Amy Myrdal Miller, *You Can’t Eat That! And Other Bad Advice*, AMS. FOR FOOD & BEVERAGE
CHOICE (Apr. 25, 2016), <http://goo.gl/htslCQ> (last visited Sept. 16, 2016).

25 ⁵⁹ Amber Pankonin, *Myth or Fact: Is a Calorie Just a Calorie?*, STOP THE ALA. BEVERAGE TAX
26 (Sept. 21, 2015), <https://goo.gl/qS8cQn> (site spearheaded by a chapter of the Americans for Food
and Beverage Choice) (last visited Sept. 16, 2016).

27 ⁶⁰ Robyn Flipse, *Bacon, Soda, and Longevity – What’s the Connection*, AMS. FOR FOOD &
BEVERAGE CHOICE (Aug. 24, 2015), <http://goo.gl/bH58TU> (last visited Sept. 16, 2016).

28 ⁶¹ Candice Choi, *Coca-Cola Teams up with Nutritionists to Push Coke as Healthy Treat*, FOOD
MANUFACTURING (Mar. 16, 2015), <http://goo.gl/CnWLgA>.

1 77. While designed to look like regular stories, the pieces were sponsored by Coca-
2 Cola, and ran in 1,000 or more news outlets. Sometimes the authors indicated that they were
3 “consultants,” other times not—but rarely if ever did any disclaimer make clear that Coca-Cola
4 paid for the columns even though such nutritionists presented themselves as trustworthy
5 authorities.⁶²

6 **B. Balance & Hydration: Coca-Cola’s Deceptive Advertising Campaign**

7 78. As part of its concerted campaign to shift attention away from the substantial,
8 credible science linking sugar-sweetened beverages to obesity, diabetes, and cardiovascular
9 disease, Coca-Cola also developed a direct advertising campaign that falsely and misleadingly
10 promoted to consumers that they could “balance” their consumption of sugar-sweetened
11 beverages with exercise and through careful monitoring of “calories-in, calories-out.”

12 79. Directly through its own advertising and through the ABA, Coca-Cola falsely and
13 misleadingly advertised that balance—of calories in and calories out—enables healthful
14 consumption of sugar-sweetened beverages and prevents obesity.

15 80. However, the scientific consensus is that exercise, especially light exercise like
16 the “75 seconds of laughing out loud” featured in one ad by Coca-Cola,⁶³ cannot offset the
17 negative health effects, including obesity and related chronic diseases, of drinking sugar-
18 sweetened beverages.

19 81. While health authorities such as the federal government’s 2008 Physical Activity
20 Guidelines encourage people to exercise, these same Guidelines acknowledge that “the
21 contribution that physical activity makes to weight loss and weight stability is relatively small.”⁶⁴

22 82. The tiny expenditures of exercise suggested in Coca-Cola ads pale in comparison
23 to the quantity of exercise needed to redress excess calories from sugar-sweetened beverages.

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26 ⁶² *Id.*

27 ⁶³ See The Coca-Cola Co., *Be OK*, YOUTUBE (Jan. 16, 2013), <https://goo.gl/l2e520> (video advertisement by Coke) (last visited Sept. 16, 2016).

28 ⁶⁴ See, e.g., Guidelines, https://health.gov/paguidelines/report/G4_energy.aspx#q1c.

1 Furthermore studies find that even intensive exercise programs often fail to lead to expected
2 weight loss.⁶⁵

3 83. As Dr. Margaret Chan, Director-General of the World Health Organization, told
4 the annual meeting of the National Academy of Medicine in October 2016:

5 When crafting preventive strategies, government officials must recognize that the
6 widespread occurrence of obesity and diabetes throughout a population is not a
7 failure of individual willpower to resist fats and sweets or exercise more. It is a
8 failure of political will to take on powerful economic operators, like the food and
9 soda industries.⁶⁶

9 84. Coca-Cola's advertising campaigns, however, represent otherwise.⁶⁷

10 85. For example, the "Be Ok" advertising campaign, which ran extensively in the
11 United States, including during the popular television show American Idol and the Super Bowl,
12 implied that light activities—always undertaken by trim and fit models, instead of overweight,
13 obese or diabetic consumers—like laughing for 75 seconds, or doing a victory jig in the bowling
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16 ⁶⁵ See, e.g., Timothy S. Church et al., *Changes in Weight, Waist Circumference and Compensatory*
17 *Responses with Different Doses of Exercise Among Sedentary, Overweight Postmenopausal Women*,
18 4 PLOS ONE e4515 (2009) (increased food intake because of heightened hunger); Emily J.
19 Dhurandhar et al., *Predicting Adult Weight Change in the Real World*, 39 INT'L J. OBESITY
20 (LONDON) 1181 (2015) (metabolic compensation via slowing of basal rate); Edward L. Melanson et
21 al., *Resistance to Exercise-Induced Weight Loss: Compensatory Behavioral Adaptations*, 45 MED. &
22 SCI. SPORTS & EXERCISE 1600 (2013) (compensatory behaviors like resting post exercise); Herman
23 Pontzer et al., *Constrained Total Energy Expenditure and Metabolic Adaptation to Physical Activity*
24 *in Adult Humans*, 26 CURRENT BIOLOGY 410 (2016) (energy expenditure ceiling); K. A. Shaw et al.,
25 *Exercise for Overweight or Obesity*, Cochrane Libr., Oct. 18, 2006 (meta-analysis of studies
26 showing exercise does not equate with weight loss); D. M. Thomas et al., *Why Do Individuals Not*
27 *Lose More Weight from an Exercise Intervention at a Defined Dose? An Energy Balance Analysis*,
28 13 OBESITY REV. 835 (2012) (overestimation of how much energy exercise burned versus calories
taken in); Klaas R. Westerterp, *Physical Activity and Physical Activity Induced Energy Expenditure*
in Humans: Measurement, Determinants, and Effects, 4 FRONTIERS PHYSIOLOGY 90 (2013) (exercise
accounts for small portion of daily calorie burn (10-30%) whereas calories in accounts for 100% of
energy intake of the body).

⁶⁶ Dr. Margaret Chan, *Obesity and diabetes: the slow-motion disaster*, KEYNOTE ADDRESS 47TH MTG
OF THE NATIONAL ACADEMY OF MEDICINE, [HTTP://WWW.WHO.INT/DG/SPEECHES/2016/OBESITY-
DIABETES-DISASTER/EN/](http://www.who.int/dg/speeches/2016/obesity-diabetes-disaster/en/).

⁶⁷ Tiffany Hsu, *Coca-Cola Takes on Obesity Issue in Prime-Time Ad Campaign*, L.A. TIMES (Jan.
14, 2013), <http://goo.gl/HMDF7F>; *Coca-Cola Ad Pushes Exercise, Soft Drink Moderation*, AJC.COM
(Jan. 14, 2013); <http://goo.gl/OOOP4m>.

1 alley, or 15 minutes of happy dancing—would offset the harmful health consequences of
2 consuming sugar-sweetened beverages. *See* Illustrations 1–3.

3 **Illustrations 1–3**

4 “A 12oz can of Coke = 140 calories. There are many ways to burn those calories
5 through EXTRA physical activity and have fun while doing so. Balance your
6 lifestyle. **Be OK. Open happiness.** Visit <http://comingtogether.com>.”



17 **Coca-Cola: 'Be OK' 139 calories advert**

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Be OK

 The Coca-Cola Co.  11,180

110,554



Coca-Cola: 'Be OK' 139 calories advert

86. Coca-Cola's claims are prolific that avoiding obesity and other bad health outcomes is substantially about "balance," or "energy in and energy out."

1 87. Coca-Cola has extensively promoted the claim that “[s]ugary drinks can be a part
2 of any diet as long as your calories in balance with the calories out.”⁶⁸

3 88. Likewise, the “Mixify” multi-platform advertising campaign, sponsored by Coca-
4 Cola, the American Beverage Association, and other sugar-sweetened beverage producers,
5 pitches kids on the notion that they should not be concerned about added sugar or calories. It
6 encourages them to consume sugar-sweetened beverages and then exercise more.⁶⁹
7 Advertisements sponsored by Coca-Cola through the Mixify campaign advise kids, “Just
8 finished an afternoon of Frisbee? Maybe you’ve earned a little more [soda].”⁷⁰

9 89. Cola-Cola’s “Coming Together” advertising campaign promotes a related
10 deception. It proclaims, “All calories count. No matter where they come from including Coca-
11 Cola and everything else with calories.”⁷¹ This statement is misleading given the health
12 consequences associated with drinking sugar-sweetened beverages, and their lack of nutritional
13 value.

14 90. As Professor Ruth Fagan, Wagley Professor of Biomedical Ethics and Director of
15 the Johns Hopkins Berman Institute of Bioethics, said of the Coming Together campaign,

16 For Coca-Cola to suggest that all calories are equal flies in the face of
17 reality. . . . Coca-Cola wants us to ignore the considerable research
18 confirming that sugary soda is a major contributor to obesity, and that
it has no nutritional value.⁷²

19 91. The Coming Together campaign also flies in the face of the CDC’s conclusion
20 that all calories are not equal because, among other things, “individuals may fail to compensate
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23 ⁶⁸ *Coke Executive Answers Questions About Sugary Drinks*, USA TODAY (June 7, 2012),
24 <http://goo.gl/z1SPqh> (statement made by Coke executive Katie Bayne during interview).

25 ⁶⁹ *Find Your Mixify*, MIXIFY, <http://goo.gl/6U05e7> (last visited Sept. 15, 2016).

26 ⁷⁰ *MyMixify*, *MyMixify*, YOUTUBE (Sept. 23, 2014), <https://goo.gl/8azpWA> (last visited Sept. 16,
2016).

27 ⁷¹ Isabela Carvalho Santos, *Coming Together The Real Ad from Coca Cola*, YOUTUBE (Oct. 25,
2013), <https://goo.gl/fZkvRO> (video advertisement by Coke) (last visited Sept. 16, 2016).

28 ⁷² Ruth Faden, *Coke’s Unconscionable New Ad*, THE ATLANTIC (Jan. 25, 2013),
<http://goo.gl/eGYEgI>.

1 for . . . calories consumed as liquid.”⁷³ More, some calories have nutritional value, and others
2 are neutral or adverse nutritionally; this distinction is the rationale for Dietary Guidelines.

3 92. As part of Coca-Cola’s insistence on refocusing the sugar-sweetened beverage
4 conversation around exercise and balance, in 2014, it spent \$22 million on “physical activity”
5 programs internationally,⁷⁴ in which it also advertised its products.⁷⁵ See Illustrations 4 & 5.⁷⁶

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16 ⁷³ CTRS. FOR DISEASE CONTROL & PREVENTION, THE CDC GUIDE TO STRATEGIES FOR REDUCING THE
17 CONSUMPTION OF SUGAR-SWEETENED BEVERAGES 4 (2010), <http://goo.gl/OWgFs>; accord Robin P.
18 Bolton et al., *The Role of Dietary Fiber in Satiety, Glucose, and Insulin: Studies with Fruit and Fruit*
19 *Juice*, 34 AM. J. CLINICAL NUTRITION 211 (1981); Diane M. DellaValle et al., *Does the Consumption*
20 *of Caloric and Non-Caloric Beverages with a Meal Affect Energy Intake?*, 44 APPETITE 187 (2005);
21 D. P. DiMiglio & R. D. Mattes, *Liquid Versus Solid Carbohydrate: Effects on Food Intake and*
22 *Body Weight*, 24 INT’L J. OBESITY 794 (2000); G. B. Haber et al., *Depletion and Disruption of*
23 *Dietary Fibre: Effects on Satiety, Plasma-Glucose, and Serum-Insulin*, 310 LANCET 679 (1977);
24 Jessica N. Kuzma et al., *No Difference in Ad Libitum Energy Intake in Healthy Men and Women*
25 *Consuming Beverages Sweetened with Fructose, Glucose, or High-Fructose Corn Syrup: A*
26 *Randomized Trial*, 102 AM. J. CLINICAL NUTRITION 1373 (2015); R. D. Mattes, *Beverages and*
27 *Positive Energy Balance: The Menace Is the Medium*, 30 INT’L J. OBESITY S60 (2006); D. M.
28 Mourao et al., *Effects of Food Form on Appetite and Energy Intake in Lean and Obese Young*
Adults, 31 INT’L J. OBESITY 1688 (2007); An Pan & Frank B. Hu, *Effects of Carbohydrates on*
Satiety: Differences Between Liquid and Solid Food, 14 CURRENT OPINION CLINICAL NUTRITION &
METABOLIC CARE 385 (2011).

⁷⁴ THE COCA-COLA CO., 2014/2015 SUSTAINABILITY REPORT 10 (2015), <http://goo.gl/E4N5gM> (last
visited Sept. 16, 2016).

⁷⁵ Notably too, Coke’s extravagant spending belies Coke’s Forward Looking Statements, which
clearly minimize the impact of “obesity concerns.” *E.g.*, The Coca-Cola Co., Current Report (Form
10-K), at 38 (Feb. 9, 2016).

⁷⁶ THE COCA-COLA CO., 2014/2015 SUSTAINABILITY REPORT 8, 11 (2015), <http://goo.gl/E4N5gM>
(last visited Sept. 16, 2016).

Illustrations 4 & 5



93. Beginning in May 2013, Coca-Cola introduced its “Get the Ball Rolling” program which hosted events it claimed were aimed at “bringing together happiness and movement in a way that only The Coca-Cola company can.”⁷⁷ According to a story posted on the company’s website, the program’s activities “build on our Company’s global commitments to help fight obesity and be part of the solution,” and involved seeking partners “to help address obesity in every community we serve.”⁷⁸ In its first year of operation, the company co-hosted “Get the Ball Rolling” events (targeted at children) with organizations such as the Boys & Girls Clubs of America, National Foundation for Governors’ Fitness Councils, NASCAR, and many others.⁷⁹ Coca-Cola continues to fund and promote the program.

⁷⁷ Stuart Cronauge, Coca-Cola USA Sets Goal To Inspire Americans To Rediscover The Joy Of Activity, COCA-COLA (May 13, 2013), <http://www.coca-colacompany.com/press-center/press-releases/coca-cola-gets-the-ball-rolling-for-a-fun-active-summer>.

⁷⁸ *Id.*

⁷⁹ Caren Pasquale Seckler, How Has Coca-Cola Inspired More Than 3 Million People To “Get The Ball Rolling”? COCA-COLA (Sept. 23, 2013), <http://www.coca-colacompany.com/coca-cola-unbottled/how-has-coca-cola-inspired-more-than-3-million-people-to-get-the-ball-rolling>.

1 94. Through the ABA, Coca-Cola also subsidized the 2016 Childhood Obesity
2 Prevention Awards. These high-fanfare grants are given by the U.S. Conference of Mayors to
3 six cities for their activity-focused nutrition programs.⁸⁰

4 95. In widely promoting these exercise programs, Coca-Cola proclaimed that “[w]ell-
5 being is integral part of our business—from the communities we serve to the people we refresh.
6 Our well-being commitments serve as a guide for our global efforts . . . with an end goal to
7 inspire happier, healthier lives.”⁸¹

8 96. Coca-Cola and the ABA also promoted a program called the “Balance Calories
9 Initiatives,” which, according to a Coca-Cola press release, “encourages people to balance all of
10 their calories – including beverages – with daily physical activity.”⁸² Susan K. Neely, President
11 and CEO of the ABA emphasized the collaborative nature of the project, noting that the common
12 goal of “health and wellbeing of communities across the country” overrides the normally
13 competitive nature of commercial interests, joining all the members of the Association.⁸³

14 97. Coca-Cola paid nutritionists, too, to blog about balance and sugar-sweetened
15 beverages as healthy snacks.⁸⁴

18 ⁸⁰ U.S. Conference of Mayors, *Six Cities Share \$445,000 in Grants to Support Childhood*
19 *Obesity Prevention Programs*, PR NEWSWIRE (Jan. 21, 2016), <https://goo.gl/X4IpQ7>; Press
20 Release, Am. Beverage Ass’n, *Six Cities Share \$445,000 in Grants to Support Childhood*
21 *Obesity Prevention Programs* (Jan. 21, 2016), <https://goo.gl/nS7Tkb> (last visited Sept. 15, 2016);
22 *see also* Press Release, Coca-Cola Co., *The Coca-Cola Foundation Awards \$8.1 in Third Quarter*
Benefitting 3.8 Million People Worldwide (Oct. 18, 2013), <https://goo.gl/SZRYkE> (promoting
Coca-Cola Foundation’s funding of foreign childhood obesity programs) (last visited Sept. 15,
2016).

23 ⁸¹ THE COCA-COLA CO., 2014/2015 SUSTAINABILITY REPORT 8 (2015), <http://goo.gl/E4N5gM> (last
visited Sept. 16, 2016).

24 ⁸² Journey Staff, *Coca-Cola Joins America's Beverage Companies and the Alliance for a*
25 *Healthier Generation in Landmark Partnership to Promote Healthy Lifestyles*, Coca-Cola (Sept.
26 26, 2014), <http://www.coca-colacompany.com/coca-cola-unbottled-old/coca-cola-joins-america-beverage-companies-and-the-alliance-for-a-healthier-generation-in-landmark-partnership-to-promote-healthy-lifestyles>.

27 ⁸³ *Id.*

28 ⁸⁴ Candice Choi, *Coke as a Sensible Snack? Coca-Cola Works with Dieticians Who Suggest Cola*
As A Snack, STAR TRIBUNE (Mar. 16, 2015), <https://goo.gl/2t44MM>.

1 98. For example, in her list of “sensible snacks for any time of day,” Robyn Flipse
2 equated Coca-Cola mini-cans with packs of almonds.⁸⁵ And in interviews, Dr. Rani Whitfield
3 similarly promoted drinking Coca-Cola mini-cans as part of a healthy, balanced diet,
4 commenting, “70 calories and my taste buds love it!”⁸⁶ In addition to deceiving on nutrition, Ms.
5 Flipse also missed on figures: Mini-cans of Coca-Cola have 90 calories.

6 99. To respond to the scientific consensus that sugar-sweetened beverages have no
7 nutritional value, Coca-Cola made claims that its sugar-sweetened beverages aren’t “empty
8 calories” but are sources of “essential hydration.”

9 100. According to its Senior Vice President Katie Bayne, “What our drinks offer is
10 hydration. That’s essential to the human body. We offer great taste and benefits whether it’s an
11 uplift or carbohydrates or energy. We don’t believe in empty calories. We believe in
12 hydration.”⁸⁷

13 101. Coca-Cola’s [now-departed] Chief Science and Health Officer, Rhona
14 Applebaum, routinely made similar claims like, “We started with one beverage that I personally
15 am very proud of. It’s safe, it hydrates, it’s enjoyable.”⁸⁸

16 102. Even Coca-Cola’s website promotes the “science” of hydration with links to
17 “Food Insight” publications—“Your Nutrition and Food Safety Resource”—produced by the
18 International Food Information Council Foundation (“IFIC”). These publications stress the
19 importance of hydration “whether you’re an elite athlete . . . or more the spectator type,” though

20 _____
21 ⁸⁵ Robyn Flipse, *Every Day Heart Health in February and Beyond*, NUTRITION COMMC’N SERVS.
(Feb. 19, 2015), <https://goo.gl/Pu5q5W> (last visited Sept. 15, 2016).

22 ⁸⁶ *Get Well Wednesday: Dr. Rani Whitfield Answers Your Questions About Prioritizing Health*,
23 BlackAmericaWeb.com, <https://goo.gl/oAouCD> (last visited Sept. 15, 2016) (transcript of radio
24 interview). Coca-Cola reported paying health professionals and scientific experts a total of \$2.3
25 million for “travel grants, related expenses and professional fees” between 2010 and 2015. *List
of Health Professionals and Scientific Experts*, THE COCA-COLA CO. (Mar. 24, 2016),
<https://goo.gl/VRU3BW> (last visited Sept. 15, 2016).

26 ⁸⁷ *Coke Executive Answers Questions About Sugary Drinks*, USA TODAY (June 7, 2012),
<http://goo.gl/OWgFs> (statement made by Coke executive Katie Bayne during interview).

27 ⁸⁸ Canadian Obesity-Network, *COS2013 Symposia - Coca Cola - Dr. Rhona Applebaum*, YOUTUBE
28 (May 29, 2013), <https://goo.gl/I1SK6M> (comments made by Dr. Rhona Applebaum,
during presentation at Canadian Obesity Network’s 2013 symposia) (17:55) (last visited Sept. 15,
2016).

1 almost no Americans are under-hydrated. More, IFIC emphasizes that with respect to hydration,
 2 “the term ‘water’ can mean more than just plain drinking water. . . . It includes . . . beverages
 3 such as soft drinks”⁸⁹

4 103. Coca-Cola financially supports the IFIC, but this is not indicated in IFIC
 5 publications.⁹⁰

6 104. The reasonable implication of this Coca-Cola and Coca-Cola-sponsored message
 7 is that the “essential hydration,” as offered by sugar-sweetened beverages, is good for the body.

8 105. More than half of the US population drinks soda on a daily basis.⁹¹ More than
 9 half of the world’s population has had a Coke.⁹² But untold millions are unaware of the health
 10 consequences of frequent consumption of a product billed as “essential hydration.”

11 106. In fact, scientific consensus is that frequent hydration by way of sugar-sweetened
 12 beverages is linked to obesity, diabetes, cardiovascular disease, and other chronic diseases.
 13 These beverages are not “*essential*,” or even advisable, for the human body; they are antithetical
 14 to well-being of the body if consumed routinely.

15 C. Advertising to Minors

16 107. Despite a pledge not to do so,⁹³ Coca-Cola continues to target children with its
 17 advertising for sugar-sweetened beverages.

18 108. Advertising messages for sugar-sweetened beverages are all-pervasive, appearing
 19 on billboards, buses, trains, magazines, newspapers, twitter, BUZZFEED, etc.

20 109. The goal of Coca Cola’s advertising is to convey to young people that sugar-
 21 sweetened beverages are desirable, safe, healthy and prevalent in society.

22
 23
 24 ⁸⁹ INT’L FOOD INFO. COUNCIL FOUND., HYDRATION: DOES IT ALWAYS HAVE TO BE WATER?, at 1
 (2011), <https://goo.gl/95XDIB> (last visited Sept. 15, 2016).

25 ⁹⁰ *See, e.g., id.*

26 ⁹¹ Willett Report, *supra* note 8, at ¶ 8.

27 ⁹² Muhtar Kent, *A Letter from Our Chairman and Chief Executive Officer*, THE COCA-COLA CO.
 (May 4, 2015), <http://goo.gl/yzdOHj>.

28 ⁹³ *Responsible Marketing*, THE COCA-COLA CO. (Sept. 25, 2015), <https://goo.gl/pPZfr> (last
 visited Sept. 15, 2016).

1 110. Despite its pledge not to do so, Coca-Cola continues to target children with a
2 material segment of its advertising. Like the tobacco industry, Coca Cola needs to replenish the
3 ranks of its customers, and it tries to recruit them young.

4 111. To attract young consumers to their sugar-sweetened beverages, for example,
5 Coca Cola has used cartoons, celebrities, over 300 apps, billboards at sponsored events, and
6 otherwise has massively disseminated other consumer products branded with Coca-Cola. The
7 advertising has been effective in attracting children and adolescents.

8 **III. PLAINTIFF HAS EXPENDED CONSIDERABLE RESOURCES COMBATTING**
9 **DEFENDANTS' MISINFORMATION CAMPAIGN ABOUT SUGAR-**
10 **SWEETENED BEVERAGES THAT IT COULD AND WOULD HAVE**
11 **ALLOCATED ELSEWHERE.**

12 112. Aware of the momentous health consequences of sugar-sweetened beverage
13 consumption—that is, their link to the rising epidemics of obesity, type 2 diabetes, and
14 cardiovascular disease—Plaintiff has been forced to expend substantial resources attempting to
15 educate the public and policy-makers about sugar-sweetened beverages, including the inaccuracy
16 of Defendants' messages on the science of sugar-sweetened beverages, the need for enhanced
17 regulation and transparency, and reduction in consumption.

18 113. Aware that consumers purchase Coca-Cola sugar-sweetened beverages believing
19 them to be part of a healthy diet, not linked to obesity, and/or good sources of hydration, and the
20 like, relying on Defendants' deceptive representations, and that consumers would not have
21 purchased them had they known the truth, Plaintiff has been forced to expend substantial
22 resources attempting to educate the public and policy-makers about sugar-sweetened beverages,
23 including the inaccuracy of Defendants' messages on the science of sugar-sweetened beverages,
24 and the need for reduction in consumption and marketing transparency.

25 114. Plaintiff has allocated significant resources to support advocacy about sugar-
26 sweetened beverages, including through its major initiative on obesity prevention for children
27 aged 0-5. In addition to providing educational materials, this initiative includes frequent
28 keynotes and speeches by Plaintiff's staff, including its Executive Director, and participation in

1 material conferences addressing the determinants of obesity, including SSBs, and rebutting
2 information disseminated by Coca-Cola and the ABA.

3 115. Plaintiff also serves on the national advisory committee for Voices for Healthy
4 Kids, and on the Advisory Board for Open Truth, which seeks to increase awareness of the
5 negative impacts of sugar-sweetened beverages on health and seeks to expose non-transparent
6 and manipulative marketing techniques by Defendants. Its Executive Director, Xavier Morales,
7 serves on the Berkeley Sugar-Sweetened Beverage Commission, which makes investment
8 recommendations for the Berkeley City Council relating to programs that aim, in key part, to
9 educate the public about the risks of routine consumption of sugar-sweetened beverages.

10 116. Plaintiff has allocated substantial resources to cover the cost of its advocacy,
11 including for meetings with policy makers in various local and state regulatory bodies.

12 117. The funding that Plaintiff expends on its sugar-sweetened-beverage advocacy
13 efforts requires it to divert resources away from other important public health and nutrition
14 initiatives.

15 118. Each of these resource-intensive activities was untaken prior to and independent
16 of this litigation, and not in furtherance of it.

17 119. If Plaintiff prevails in this litigation, it will no longer need to divert its resources
18 to combat the false and misleading representations and tactics employed by Defendants about
19 sugar-sweetened beverages, and can allocate such resources to other health-based projects.

20 **CLAIMS FOR RELIEF**

21 **FIRST CLAIM**

22 **Violation of the California Unfair Competition Law,
23 CAL. BUS. & PROF. CODE § 17200 *et seq.***

24 120. Plaintiff realleges and incorporates by reference the allegations in each of the
25 preceding paragraphs of this Complaint.

26 121. Cal. Bus. & Prof. Code § 17200 (the “UCL”) prohibits any “unlawful, unfair, or
27 fraudulent business act or practice.” Defendants have engaged in unlawful, unfair, and
28 fraudulent business acts and practices in violation of the UCL.

1 122. Defendant Coca-Cola has violated the unlawful prong of the UCL by virtue of its
2 violations of the False Advertising Law (“FAL”), as described below.

3 123. Defendants have violated the unfair prong of the UCL because the acts and
4 practices set forth herein offend established public policy supporting truth in advertising to
5 consumers. Defendants’ conduct is immoral, unethical, oppressive, unscrupulous, and injurious
6 to consumers. The harm that these acts and practices cause to consumers greatly outweighs any
7 benefits associated with them. Defendants’ conduct also impairs competition within the
8 beverage industry.

9 124. Defendants have violated the fraudulent prong of the UCL because their material
10 misrepresentations and omissions were likely to deceive a reasonable consumer and the true facts
11 would be material to a reasonable consumer.

12 125. As alleged herein, Defendants’ advertising and public relations campaigns create
13 the false impression that there is no link between consumption of sugar-sweetened beverages and
14 obesity, diabetes, cardiovascular disease, or other related conditions, that sugar-sweetened
15 beverages are a healthy component of any diet when “balanced” with some activity, and that
16 drinking beverages to hydrate is “essential” to human health and that sugar-sweetened beverages
17 are a good source of hydration.

18 126. Defendants have represented to the consumer public, and to those who advance
19 and protect their health, that they were disclosing objective, unbiased scientific facts about the
20 health consequences of consuming sugar-sweetened beverages when they were not.

21 127. Defendants have made and continue to make representations and statements about
22 the safety of sugar-sweetened beverages and their effect on human health. These representations
23 and statements have been materially false, incomplete, and fraudulent at the time Defendants
24 made them, and Defendants knew or had reason to know of their falsity.

25 128. At all relevant times, Defendants intentionally, willfully, or recklessly
26 misrepresented or failed to disclose material facts about the health consequences of regularly
27 consuming sugar-sweetened beverages, including their link to obesity, type 2 diabetes, and
28 cardiovascular disease.

1 129. Defendants' knowledge of the material facts about sugar-sweetened beverages
2 was and is superior to that of the consumer public.

3 130. By expressly raising the issue of sugar-sweetened beverage safety and denying
4 any link between sugar-sweetened beverages and obesity, type 2 diabetes, and cardiovascular
5 disease, and in addition making false statements about this issue, Defendants had a duty to reveal
6 all the material facts of which they had notice, in order not to deceive and mislead the consumer
7 public.

8 131. Defendants' disclosure of fragmentary information and half-truths and
9 suppression of relevant facts constitutes actionable misrepresentation under the UCL.

10 132. Defendants undertook such misrepresentations in order to induce the consumer
11 public to purchase and continue to purchase sugar-sweetened beverage products and raise profits.

12 133. By virtue of their affirmative misconduct, Defendants had a duty to disclose that
13 the scientific consensus is that: a) sugar-sweetened beverages are linked to obesity, type 2
14 diabetes, and cardiovascular disease; b) activity does not "balance" away, or negate, the link
15 between sugar-sweetened beverages and obesity-related chronic diseases; and c) hydration with
16 sugar-sweetened beverages is not healthful or "essential" to the human body. They also had a
17 duty to disclose all other material facts about the potential health hazards of sugar-sweetened
18 beverage consumption of which they had notice.

19 134. Defendants' omissions are material because reasonable consumers would consider
20 the omitted science linking sugar-sweetened beverages to chronic disease to be important in
21 determining whether or not to purchase sugar-sweetened beverages.

22 135. Reasonable consumers were likely to be deceived, and were in fact misled, by
23 Defendants' misrepresentations and omissions. Reasonable consumers relied on Defendants'
24 actions.

25 136. Coca-Cola knows or reasonably should have known that the promotion,
26 marketing and sale of its sugar-sweetened beverages was and is deceptive.

27
28

1 137. Plaintiff has suffered injury in fact as a result of Defendant’ unlawful, unfair,
2 and/or deceptive practices because Plaintiff has incurred costs and diverted resources educating
3 the public and public servants about Defendants’ material misrepresentations and omissions.

4 138. Moreover, as a direct and proximate result of Defendants’ fraudulent
5 misrepresentations and active concealment, the consumer public has suffered and will continue
6 to suffer substantial injuries and damages.

7 139. All of the wrongful conduct alleged herein occurred, and continues to occur, in
8 the business of selling sugar-sweetened beverages. Defendants’ wrongful conduct is part of a
9 general practice that is still being perpetuated and repeated throughout the State of California and
10 nationally.

11 140. Plaintiff requests that this Court enter such orders or judgments as may be
12 necessary to enjoin Defendants from continuing their unfair and deceptive business practices,
13 and to provide such other relief as set forth below.

14 **SECOND CLAIM**

15 **Violations of the California False Advertising Law,**
16 **CAL. BUS. & PROF. CODE § 17500, *et seq.***

17 141. Plaintiff realleges and incorporates by reference all paragraphs alleged herein.

18 142. California Business & Professions Code §§ 17500, *et seq.* (the “FAL”), broadly
19 proscribes deceptive advertising in this State. The FAL makes it unlawful for any corporation or
20 association intending to sell products or to induce the public to make purchases to make any
21 statement in connection therewith which is untrue or misleading, and which is known, or which
22 by the exercise of reasonable care should be known, to be untrue or misleading.

23 143. When a corporation or association has a duty to disclose material facts about a
24 product or about potential purchases of a product, representations to consumers without
25 disclosure of such material facts violates the FAL.

26 144. As alleged herein, Coca-Cola’s advertising and both Defendants’ promotion of
27 sugar-sweetened beverages creates the impression that their consumption is not linked to obesity,
28 type 2 diabetes, and cardiovascular disease, that it can be “balanced” with activity so as to be

1 healthful, and that it provides “essential” and healthful hydration. Defendants failed to disclose
2 in their promotion and advertising campaigns that scientific consensus about sugar-sweetened
3 beverages is to the contrary of each of these claims when they had a duty to make such
4 disclosure.

5 145. Defendants’ misrepresentations and omissions are material because reasonable
6 consumers would consider the omitted facts to be important in determining whether or not to
7 purchase sugar-sweetened beverages.

8 146. Reasonable consumers were likely to be deceived, and were in fact misled, by
9 Defendants’ misrepresentations and omissions.

10 147. Defendants know or reasonably should have known that statements they made in
11 the promotion, marketing and sale of sugar-sweetened beverage products were and are deceptive.

12 148. Plaintiff has suffered injury in fact as a result of Defendants’ unlawful, unfair,
13 and/or deceptive practices because Plaintiff has been required to incur costs and divert resources
14 educating the public and policy makers about the inadequacy and misleading nature of
15 Defendants claims and material omissions about sugar-sweetened beverages.

16 149. All of the wrongful conduct alleged herein occurred, and continues to occur, in
17 the business of selling sugar-sweetened beverages. Defendants’ wrongful conduct is part of a
18 general practice that is still being perpetuated and repeated.

19 150. Plaintiff requests that this Court enter such orders or judgments as may be
20 necessary to enjoin Defendants from continuing their false advertising and other false statements,
21 and provide such other relief as set forth below.

22 **THIRD CLAIM**

23 **Intentional Breach of Special Duty**

24 151. Plaintiff realleges and incorporates by reference all paragraphs alleged herein.

25 152. Defendants assumed a special duty to protect the consumer public when they
26 actively misrepresented that the wellbeing of consumers was an industry priority and that the
27 science they presented was objective, reliable, and demonstrated no link between sugar-
28 sweetened beverages and obesity, type 2 diabetes, and cardiovascular disease.

1 153. Defendants also undertook a special duty by funding and organizing deceptive
2 exercise-focused campaigns around California, the United States, and globally.

3 154. Continuing to date, Defendants’ spokespersons have repeatedly announced that
4 research is underway showing that sugar-sweetened beverages and obesity, type 2 diabetes, and
5 cardiovascular disease are not linked, and moreover that obesity is caused instead by lack of
6 exercise and “balance.” These actions were and remain a part of Defendants’ campaign of
7 disinformation designed to obscure the evidence that sugar-sweetened beverages are linked to
8 obesity, type 2 diabetes, and cardiovascular disease.

9 155. Defendants did not make these representations gratuitously, rather, they were
10 made to combat the emerging scientific consensus about the consumption of sugar-sweetened
11 beverages and, more specifically, to protect profits from the sale of sugar-sweetened beverages.

12 156. Defendants also represented that the well-being of their consumers was one of
13 their primary concerns.

14 157. Further, Defendant Coca-Cola represented repeatedly that it does not advertise to
15 children.

16 158. Each of these undertakings was designed to, among other purposes, cause
17 consumers to believe that they could continue to consume sugar-sweetened beverages on a
18 routine and often daily basis healthfully.

19 159. In making these representations, Defendants assumed duties to the public and
20 Plaintiff.

21 160. Defendants had a duty to disclose the whole truth about the link between sugar-
22 sweetened beverages and obesity, diabetes, and cardiovascular disease, and, by extension, the
23 truth about the science of “balance.” Defendants breached this duty.

24 161. Defendants could have reasonably foreseen the risk of harm to Plaintiff and the
25 public. Defendants knew and/or could foresee that their actions would result in continued
26 substantial consumption of sugar-sweetened beverages by the public and/or large portions
27 thereof—especially children and less-educated populations and consumers.

28

1 162. The very purpose behind the assumption of this duty was simultaneously to
2 promote the purchase and consumption of sugar-sweetened beverages, and to prevent or delay
3 regulatory activities designed to curb such purchase and consumption.

4 163. Defendants' intentional breach of their assumed duties therefore influenced the
5 conduct of Plaintiff to its detriment.

6 164. As a direct, foreseeable, and proximate cause of Defendants' intentional breach of
7 their specially assumed duties, the public continued to consume sugar-sweetened beverages
8 when they would not otherwise, and Plaintiff has been forced to expend and divert its resources
9 to fight these trends and inform consumers of the truth.

10 **FOURTH CLAIM**

11 **Negligent Breach of Special Duty**

12 165. Plaintiff realleges and incorporates by reference all paragraphs alleged herein.

13 166. Defendants knew or should have known that the special duties that they assumed
14 were important to consumer and to Plaintiff, and their failure to carry out these duties would
15 substantially increase the risk of harm to Plaintiff.

16 167. Defendants have breached and continue to breach their special duties, have failed
17 to exercise reasonable care in the performance of their special duties, and this has substantially
18 increased the risk of harm to Plaintiff.

19 168. As a direct and proximate result of Defendants' negligent breach of their specially
20 assumed duty of care, Plaintiff has suffered and continue to suffer substantial injuries and
21 damages for which it is entitled to recover.

22 **PRAYER FOR RELIEF**

23 WHEREFORE, Plaintiff respectfully requests that this Court enter a judgment against
24 Defendants and in favor of Plaintiff, as follows:

25 A. Declare, adjudge and decree the conduct of Defendants as alleged herein to be
26 unlawful, unfair, and/or deceptive, and in violation of the Unfair Competition Law;

27 B. Declare, adjudge and decree the conduct of Defendants as alleged herein to be a
28 violation of the Fair Advertising Law;

1 C. Declare, adjudge and decree the conduct of Defendants as alleged herein to be a
2 violation of their special duties;

3 D. Enjoin Defendants from continuing the unfair and deceptive promotion,
4 marketing and sale of sugar-sweetened beverages, including any claim that sugar-sweetened
5 beverages are not linked to obesity, diabetes, or cardiovascular disease;

6 E. Enjoin Defendant Coca-Cola from continuing the promotion, marketing and sale
7 of its sugar-sweetened beverages to children under 12, directly or indirectly;

8 F. Require Defendants to disclose, disseminate, and publish all research previously
9 conducted, directly or indirectly, through agents, affiliates, officers, directors, employees, and all
10 persons acting in concert with them, that relates to the impact of sugar-sweetened beverage
11 consumption on health;

12 G. Require Defendants to disclose, disseminate, and publish all research previously
13 conducted, directly or indirectly, through agents, affiliates, officers, directors, employees, and all
14 persons acting in concert with them, that relates to the impact of exercise on health and obesity,
15 as contrasted with consumption of sugar-sweetened beverages, or any other caloric intake;

16 H. Require Defendants to fund a corrective public education campaign to reduce the
17 consumption of sugar-sweetened beverages;

18 I. Require Defendants to prominently post on their websites that the consumption of
19 sugar-sweetened beverages can lead to obesity, diabetes, and cardiovascular disease.

20 J. Award Plaintiff reasonable attorneys' fees and costs; and

21 K. Award Plaintiff such other further and different relief as the nature of the case
22 may require or as may be determined to be just, equitable, and proper by this Court.

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JURY TRIAL DEMAND

Plaintiff demands a jury trial on all causes of action so triable.

Date: January 4, 2017

Respectfully submitted,

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