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**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA  
CIVIL DIVISION**

PASTOR WILLIAM H. LAMAR IV, [REDACTED]  
[REDACTED],  
PASTOR DELMAN L. COATES, [REDACTED]  
[REDACTED],  
[REDACTED], and THE PRAXIS PROJECT, [REDACTED]  
[REDACTED],  
[REDACTED], on behalf of  
themselves and the general public,

Plaintiffs,

v.

THE COCA-COLA COMPANY, 1 Coca-  
Cola Plaza, Atlanta, GA 30301,  
and the AMERICAN BEVERAGE  
ASSOCIATION, 1275 Pennsylvania Ave.,  
NW, Suite 1100, Washington, D.C. 20004,

Defendants.

Case No. 2017 CA 004801 B

**COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF**

**DEMAND FOR JURY TRIAL**

On behalf of themselves and the general public, Plaintiffs The Praxis Project (“Praxis”) and Pastors Delman L. Coates and William H. Lamar IV (collectively, “Plaintiffs”), bring this action against The Coca-Cola Company (“Coca-Cola”) and the American Beverage Association (“ABA”) (collectively, “Defendants”) for their deceptive marketing, labeling, and sale of Coca-Cola’s sugar-sweetened beverages, and allege the following based on information, belief, and the investigation of counsel.

### **NATURE OF THE ACTION**

1. This is an action under the District of Columbia Consumer Protection Procedures Act (“DCCPPA”) for declaratory and injunctive relief against Coca-Cola and the ABA for their false, deceptive, and misleading advertising and promotion of sugar-sweetened beverages.<sup>1</sup>

2. Aware of the science linking sugar-sweetened beverages to obesity and obesity-related conditions, including type 2 diabetes and cardiovascular disease, and of growing public concern over this link, Coca-Cola and the ABA have engaged in an aggressive campaign to protect profits earned from the sale of sugar-sweetened beverages by flooding the market with countervailing representations that obscure this link between the beverages and disease.

3. In doing so, Coca-Cola, the leading manufacturer and supplier in the world of sugar-sweetened beverages, misleads and deceives consumers about the characteristics of sugar-sweetened beverages. It does so independently and with the assistance of, and through, the ABA, a trade association of beverage manufacturers that Coca-Cola funds and materially influences.

4. In addition to denying outright established science on sugar-sweetened beverages, Defendants have sought deceptively to switch the focus from sugar-sweetened beverages to inactivity as the key driver of obesity and related epidemics, including through their expenditure of hundreds of millions of dollars on research and programs that almost exclusively highlight exercise.

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<sup>1</sup> “Sugar-sweetened beverage” refers to any carbonated or non-carbonated drink that is sweetened with sugar or high fructose corn syrup, or other caloric sweetener, including soda, fruit drinks, teas, 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), <https://goo.gl/1rj6eZ>.

5. Contemporaneous with their false and misleading representations on sugar-sweetened beverages, Defendants have represented to the public that their positions are consistent with objective scientific criteria, even claiming that they represent the voice of science.

6. Defendants have undertaken these actions knowing that sugar-sweetened beverages are linked to serious medical conditions, including obesity, diabetes, and cardiovascular disease, and that substantial science exists to support this conclusion.

7. In addition to misleading the general public, Coca-Cola's advertising systematically targets children, who are particularly susceptible to advertising influence, even though publicly Coca-Cola represents that it does not advertise to children under 12.

8. A primary purpose of Defendants' campaign of disinformation and misrepresentation is to maintain and increase the sale and use of sugar-sweetened beverages.

9. Continued sales of Coca-Cola's flagship product, Coke, are particularly critical to Coca-Cola's market dominance and financial future. Coke garners exceptional brand loyalty—unlike Dasani water, for example.

10. Obesity, type 2 diabetes, and cardiovascular disease, have reached epidemic levels in the District of Columbia and the United States.

11. Each year, tens of thousands of Washingtonians, and millions across the United States, will either develop, or develop the markers for, obesity, type 2 diabetes, and cardiovascular disease.

12. Each year, Coca-Cola and the various other sugar-sweetened beverage manufacturers that comprise the ABA reap huge profits from the sale and use of their sugar-sweetened beverages.

13. Each year, Coca-Cola spends billions of dollars on misleading and deceptive promotions and advertising. The impact on consumers of such messaging persists for years.

14. Coca-Cola and the ABA intend for consumers to rely on their representations about sugar-sweetened beverages, and reasonable consumers have so relied.

15. Reasonable consumers lack the scientific knowledge necessary to determine that many of Defendants' representations about sugar-sweetened beverages are false and misleading,

including that they omit material facts about the link between such beverages and obesity, type 2 diabetes, and cardiovascular disease.

16. Defendants' false and misleading representations and omissions violate the District of Columbia Consumer Protection Procedures Act ("DCCPPA"), D.C. Code §§ 28-3901 *et seq.*

17. In 2012, the DCCPPA was amended to clarify that actionable misrepresentations include omissions. According to the Consumer Affairs Committee Report, which accompanied the amendments, "while facts may exist in the public domain as to veracity of claims made, merchants nevertheless flood the market with countervailing representations to hide the truth. . . . New 28-3904(f-1) seeks to . . . provide a cause of action when merchants bury the truth and leave false impressions without outright stating falsehoods."<sup>2</sup>

18. Because Defendants' branding and advertising tend to mislead and are materially deceptive about the true nature, characteristics, and quality of their sugar-sweetened beverages, Plaintiffs bring this case on behalf of themselves and the general public and seek relief, including an injunction, to halt Defendants' false marketing of sugar-sweetened beverages.

### **PARTIES**

19. Reverend William H. Lamar IV serves as Pastor of the historic Metropolitan African Methodist Episcopal Church ("AME") in Washington, D.C. He focuses on community outreach and social justice, and is a contributor to many publications including *The Washington Post*, *Christian Century*, and *Divinity*. Pastor Lamar is a graduate of Florida Agricultural and Mechanical School (B.S.), and Duke University Divinity School (M.Div.). He previously served as Managing Director of Leadership Education at Duke University Divinity School.

20. On July 12, 2017, Pastor Lamar purchased several sugar-sweetened beverages sold by Coca-Cola from CVS Pharmacy, 1418 P Street, NW, Washington, D.C. 20005, Giant Food, 1400 7<sup>th</sup> Street, NW, Washington, D.C. 20001, and Safeway, 490 L Street, NW,

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<sup>2</sup> COUNCIL OF THE DISTRICT OF COLUMBIA, COMMITTEE ON PUBLIC SERVICE AND CONSUMER AFFAIRS, COMMITTEE REPORT: REPORT ON BILL 19-0581, THE "CONSUMER PROTECTION AMENDMENT ACT 2012," at 7 (2012), <https://goo.gl/2NxNgK>.

Washington, D.C. 20001.<sup>3</sup> As alleged *infra* at ¶¶ 151–52, he did so in order to evaluate and test their purported qualities and characteristics, including but not limited to their sugar content and potential effects on blood sugar levels and Defendants’ representation that a calorie of Coke is equivalent nutritionally to a calorie of any other food. Pastor Lamar’s efforts to provide spiritual guidance to congregant families and the larger community regarding the hazards posed by sugar-sweetened beverages are hampered by Defendants’ deceptive marketing, labeling, and sale of Coca-Cola’s sugar-sweetened beverages.

21. Reverend Delman L. Coates serves as Senior Pastor of Mt. Ennon Baptist Church in Clinton, Maryland. As Pastor, he administers to nearly 9,000 members, many of whom live and/or work in the District of Columbia. He is a known advocate on issues of social justice and health. Pastor Coates is a graduate of Morehouse College (B.A.), Harvard Divinity School (M.Div.), and Columbia University (Ph.D.) and, among other accolades, was named by *Ebony* magazine as one of their “Power 100” and *The African American Pulpit* as one of the “20 to Watch.”

22. On July 6 and 12, 2017, Pastor Coates purchased several sugar-sweetened beverages sold by Coca-Cola from Rite Aid, 4635 South Capitol Street, SW, Washington, D.C. 20032, Giant Food, 1400 7<sup>th</sup> Street, NW, Washington, D.C. 20001, and Safeway, 490 L Street, NW, Washington, D.C. 20001.<sup>4</sup> As alleged *infra* at ¶¶ 156–57, he did so, in order to evaluate and test their purported qualities and characteristics, including but not limited to their sugar content and Defendants’ representation that a calorie of Coke is equivalent nutritionally to a calorie of any other food. Pastor Coates’ efforts to counsel congregant families and the larger community

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<sup>3</sup> Pastor Lamar purchased the following sugar-sweetened beverages: Barq’s Root Beer; Coke (original, cherry, vanilla); Fanta (grape, berry, pineapple, orange, fruit punch); Fuze Iced Tea; Gold Peak Lemon Tea; Gold Peak Salted Caramel Coffee Drink; Honest Tea Peach Tea; Mello Yello; Minute Maid (pink lemonade, lemonade); Odwalla Blueberry Protein Shake; Pibb Xtra; PowerAde Fruit Punch; Seagram’s Ginger Ale; Simply Lemonade; Sprite; and VitaminWater Energy.

<sup>4</sup> Pastor Coates purchased the following sugar-sweetened beverages: Barq’s Root Beer; Coke (original, cherry, vanilla); Fanta (grape, berry, pineapple, orange, fruit punch); Fuze Iced Tea; Gold Peak Lemon Tea; Gold Peak Salted Caramel Coffee Drink; Honest Tea Peach Tea; Mello Yello; Minute Maid (pink lemonade, lemonade, fruit punch); Odwalla Blueberry Protein Shake; Pibb Xtra; PowerAde Fruit Punch; Seagram’s Ginger Ale; Simply Lemonade; Sprite; and VitaminWater Power-C.

regarding the hazards posed by sugar-sweetened beverages are hampered by Defendants' deceptive marketing, labeling, and sale of Coca-Cola's sugar-sweetened beverages.

23. Plaintiff Praxis is a nonprofit corporation pursuant to section 501(c)(3) of the Internal Revenue Code. Praxis's mission is to build healthier communities, including through the advocacy of its Executive Director, Xavier Morales, concerning sugar-sweetened beverages. Praxis diverts resources from other advocacy work in order to advocate on sugar-sweetened beverages.

24. Praxis performs its work throughout the United States, including in the District of Columbia. As of January 2017, Praxis maintains one of its two principal offices in the District, and routinely holds annual meetings of its Board of Directors and advocates in the District. Several of its staff members also reside in or work in the greater District of Columbia metropolitan area.

25. On June 27 and July 12, 2017, Praxis purchased several sugar-sweetened beverages sold by Coca-Cola from CVS, 1025 Connecticut Avenue, NW, Washington, D.C. 20036, Giant Food, 1400 7<sup>th</sup> Street, NW, Washington, D.C. 20001, and Safeway, 490 L Street, NW, Washington, D.C. 20001.<sup>5</sup> As alleged *infra* at ¶ 167, Praxis did so, in order to evaluate and test their purported qualities and characteristics, including but not limited to their sugar content and Defendants' representation that a calorie of Coke is equivalent nutritionally to a calorie of any other food.

26. Defendant Coca-Cola is a public corporation, organized and existing under the laws of the State of Delaware, with its principal place of business in Atlanta, Georgia. Coca-Cola describes itself as the largest manufacturer, distributor, and marketer of nonalcoholic beverage concentrates and syrups in the world, many of which are sugar-sweetened beverages, including its flagship Coca-Cola, or Coke. In 2016, Coca-Cola's gross profits were \$25.4 billion.<sup>6</sup> In 2016,

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<sup>5</sup> Praxis purchased the following sugar-sweetened beverages: Barq's Root Beer; Coke (original, cherry, vanilla); Fanta (grape, berry, pineapple, orange, fruit punch); Gold Peak Lemon Tea; Gold Peak Salted Caramel Coffee Drink; Honest Tea Peach Tea; Mello Yello; Minute Maid (pink lemonade, lemonade); Odwalla Blueberry Protein Shake; Pibb Xtra; PowerAde Fruit Punch; Seagram's Ginger Ale; Simply Lemonade; Sprite; and VitaminWater Refresh.

<sup>6</sup> THE COCA-COLA CO., ANNUAL REPORT FORM 10-K: FISCAL YEAR 2016, at 47 (Feb. 24, 2017), <https://goo.gl/W4z4Jg>.

its advertising budget was \$4.0 billion.<sup>7</sup> Given its history as one of America's oldest and most successful companies, and through its major financial support of key civil rights groups, Coca-Cola enjoys enormous good will from consumers, including in the District of Columbia. Coca-Cola is well-aware of this good will and the trust consumers implicitly place in its representations.

27. Defendant American Beverage Association is a trade association headquartered in Washington, D.C. The ABA, which self-proclaims, "We are America's Beverage Companies," serves "as a unified voice for the refreshment beverage industry."<sup>8</sup> Among its commercial functions is to promote the sale and use of sugar-sweetened beverages, including through advertisements, and to defend their profitability. Coca-Cola executives heavily populate the ABA's board and directly and indirectly fund and direct its operations.

#### **JURISDICTION AND VENUE**

28. This Court has subject matter jurisdiction over this action and venue is proper in this Court pursuant to D.C. Code § 11-921 and § 28-3905(k).

29. This Court has personal jurisdiction over the parties in this case.

30. Pastor Lamar is a resident of, and works in, the District of Columbia.

31. Pastor Coates maintains a presence in the District of Columbia through ministerial contacts with parishioners who reside or work in in the District of Columbia, and otherwise.

32. Praxis maintains an office in the District of Columbia and does business in the District.

33. The ABA maintains its headquarters in the District of Columbia.

34. Coca-Cola has sufficient minimum contacts with the District of Columbia to establish personal jurisdiction because, *inter alia*, Coca-Cola is engaged in deceptive schemes and acts directed at persons residing in, located in, or doing business in, the District, or otherwise purposefully avails itself of the laws of this District through its marketing and sales of sugar-sweetened beverages in this District.

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<sup>7</sup> *Id.* at 51.

<sup>8</sup> AM. BEVERAGE ASS'N, <http://www.ameribev.org> (last visited July 7, 2017).

## ALLEGATIONS

### **I. THE INTERESTS OF THE GENERAL PUBLIC**

35. This action is brought by Plaintiffs on behalf of themselves and the general public pursuant to D.C. Code § 28-3905(k)(1)(A–D).

36. Faced with a growing scientific consensus linking sugar-sweetened beverages to obesity, type 2 diabetes, and cardiovascular disease, Defendants made numerous false and deceptive representations, including by way of material omissions, about the consequences of drinking sugar-sweetened beverages routinely, the character of the calories in sugar-sweetened beverages, and sugar-sweetened beverages' purported value as healthful sources of hydration for most consumers.

37. Defendants' statements, representations, and material omissions are directed at the general consumer public, including District of Columbia consumers, with the purpose of persuading consumers to purchase Coca-Cola's sugar-sweetened beverages and to discourage them from considering, or drowning out, the contrary advice of medical experts and scientists.

38. Defendants knew or should have known that consumers would consider their representations material to their decisions whether to purchase Coca-Cola's sugar-sweetened beverages, decisions that the general consumer public, including District of Columbia consumers, otherwise would have modified had Defendants been truthful in their representations and their public pledges about promoting unbiased and objective science.

39. Upon information and belief, Defendants have caused injury and adverse effects to the general consumer public, including District of Columbia consumers.

40. Prior to the initiation of this lawsuit, Plaintiffs purchased several sugar-sweetened beverages sold by Coca-Cola in order to evaluate and test the characteristics of each product, as further alleged *infra* at ¶¶ 144–167.



## II. ESTABLISHED SCIENCE ON THE CHARACTERISTICS OF SUGAR-SWEETENED BEVERAGES

41. Sugar-sweetened beverages are the leading source of added sugars in the American diet,<sup>9</sup> providing approximately 34.4% of all added sugars. By contrast, candy comprises 6.7% of the total.<sup>10</sup>

42. A 16-ounce bottle of Coke has 12 teaspoons of added sugar, a 15-ounce bottle of Coca-Cola's Minute Maid Cranberry Grape Juice Beverage has approximately 13 teaspoons of added sugar, and a 20-ounce bottle of the company's vitaminwater has 8 teaspoons of added sugar.<sup>11</sup> Twelve teaspoons of sugar is 200% of the AHA recommended daily maximum for women and more than twice the sugar content of a Twix candy bar.<sup>12</sup>

43. The American Heart Association recommends a daily maximum of six (6) teaspoons of added sugar for adult women and children and nine (9) teaspoons for men.<sup>13</sup> The American Heart Association also recommends a maximum of one eight (8) ounce sugar drink a week for children and teens.<sup>14</sup>

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

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<sup>9</sup> U.S. DEP'T OF AGRIC. & U.S. DEP'T OF HEALTH & HUMAN SERVS., SCIENTIFIC REPORT OF THE 2015 DIETARY GUIDELINES ADVISORY COMMITTEE 148 fig. D1.36 (2015), <http://goo.gl/2rc9v3>.

<sup>10</sup> Adam Drewnowski & Colin D. Rehm, *Consumption of Added Sugars Among US Children and Adults by Food Purchase Location and Food Source*, 100 AM. J. CLINICAL NUTRITION 901, 904 (2014).

<sup>11</sup> Of the parents who purchased vitaminwater for their children, 78% thought it was healthy. Tina Rosenberg, *Labeling the Danger in Soda*, N.Y. TIMES (Mar. 30, 2016), <http://goo.gl/TnryHW>; Christina R Munsell et al., *Parents' beliefs about the healthfulness of sugary drink options: opportunities to address misperceptions*, 19 PUBLIC HEALTH NUTRITION 46, 50 (2015).

<sup>12</sup> *Id.*

<sup>13</sup> *Added Sugars*, AM. HEART ASS'N, <http://goo.gl/PoigAa> (last visited July 7, 2017).

<sup>14</sup> *Children Should Eat Less Than 25 Grams of Added Sugar Daily*, Am. Heart Ass'n, <https://goo.gl/KcYKns> (last visited July 7, 2017); Rachel K. Johnson et al., *Dietary Sugars Intake and Cardiovascular Health: A Scientific Statement From the American Heart Association*, 120 CIRCULATION 1011 (2009); Miriam B. Vos et al., *Added Sugars and Cardiovascular Disease Risk in Children: A Scientific Statement From the American Heart Association*, 135 CIRCULATION e1017 (2017).

45. Stronger evidence links these diseases with the consumption of sugar-sweetened beverages than with the consumption of added sugar in non-liquid forms.<sup>15</sup>

46. Numerous governmental and medical bodies have recognized this link, including the Centers for Disease Control and Prevention (“CDC”), the 2015 Dietary Guidelines Advisory Committee, the American Heart Association, the Obesity Society, and the American Medical Association (“AMA”), and have urged reduction of sugar-sweetened beverage consumption, mainly as a means to address the epidemics of obesity, type 2 diabetes, and cardiovascular disease.

47. On June 14, 2017, the AMA passed a resolution supporting a comprehensive campaign to reduce consumption of sugar-sweetened beverages. According to its press release, the AMA explicitly recognizes the need affirmatively to warn consumers of health harms linked with sugar-sweetened beverages. AMA “[d]elegates also adopted a policy favoring evidence-based strategies to reduce consumption of SSBs including: imposing excise taxes; restricting access to SSBs in schools and other settings; using warning labels to educate consumers on the health harms of SSBs and using plain packaging.”<sup>16</sup>

48. Consistent with these conclusions and recommendations, and after entertaining key expert testimony, the District Court for the Northern District of San Francisco found that the warning required on certain sugar-sweetened beverage advertisements in San Francisco—which reads, “WARNING: Drinking beverages with added sugar(s) contributes to obesity, diabetes, and tooth decay”—is “factual and accurate.”<sup>17</sup>

49. Studies tracking thousands of adults for years show that those who consume sugar-sweetened beverages have higher rates of obesity and obesity-related chronic diseases.<sup>18</sup>

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<sup>15</sup> Expert Report of Walter Willett ¶ 10, *Am. Beverage Ass’n v. City & Cty. of San Francisco*, No. 3:15-cv-03415-EMC (N.D. Cal. filed Feb. 23, 2016), ECF No. 56-1 (“Willett Report”); CREDIT SUISSE, SUGAR CONSUMPTION AT A CROSSROADS 8–9 (2013), <https://goo.gl/7rMhXY>;

<sup>16</sup> Sara Berg, *AMA Backs Comprehensive Approach Targeting Sugary Drinks*, AMA WIRE (June 14, 2017), <https://goo.gl/tyAgGf>.

<sup>17</sup> *Am. Beverage Ass’n*, 187 F. Supp. 3d at 1126, 1136.

<sup>18</sup> See, e.g., Ravi Dhingra et al., *Soft Drink Consumption and Risk of Developing Cardiometabolic Risk Factors and the Metabolic Syndrome in Middle-Aged Adults in the Community*, 116 CIRCULATION 480 (2007); Frank B. Hu & Vasanti S. Malik, *Sugar-Sweetened Beverages and Risk of Obesity and Type 2 Diabetes: Epidemiologic Evidence*, 100 PHYSIOLOGY

50. One highly regarded study (double-blind, randomized controlled intervention trial (“RCT”)) involving 641 Dutch children reported that those who were given just one 8-ounce sugar-sweetened drink a day gained more weight and body fat over 1½ years than those who were given sugar-free drinks. Similar findings have been reported in a number of other clinical trials on adults and children.<sup>19</sup>

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

52. Put another way, the consumption of sugar-sweetened beverages is linked to an increase in type 2 diabetes risk even after researchers account for, that is, in addition to, the impact of sugar-sweetened beverages on weight.<sup>20</sup>

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& BEHAV. 47 (2010); Vasanti S. Malik et al., *Sugar Sweetened Beverages and Weight Gain in Children and Adults: A Systematic Review and Meta-Analysis*, 98 AM. J. CLINICAL NUTRITION 1084 (2013); Julie R. Palmer et al., *Sugar-Sweetened Beverages and Incidence of Type 2 Diabetes Mellitus in African American Women*, 168 ARCHIVES INTERNAL MED. 1487 (2008); Qibin Qi et al., *Sugar-Sweetened Beverages and Genetic Risk of Obesity*, 367 NEW ENG. J. MED. 1387 (2012); 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); Jiantao Ma, *Sugar-Sweetened Beverage but Not Diet Soda Consumption is Positively Associated with Progression of Insulin Resistance*, 146 J. OF NUTRITION 2544 (Nov. 9, 2016).

<sup>19</sup> Janne C. de Ruyter et al., *A Trial of Sugar-Free or Sugar-Sweetened Beverages and Body Weight in Children*, 367 NEW ENG. J. MED. 1397 (2012); see also Cara B. Ebbeling et al., *A Randomized Trial of Sugar-Sweetened Beverages and Adolescent Body Weight*, 367 NEW ENG. J. MED. 1407 (2012); Cara B. Ebbeling et al., *Effects of Decreasing Sugar-Sweetened Beverage Consumption on Body Weight in Adolescents: A Randomized Controlled Pilot Study*, 117 PEDIATRICS 673 (2006); Janet James et al., *Preventing Childhood Obesity by Reducing Consumption of Carbonated Drinks: Cluster Randomised Controlled Trial*, 328 BMJ 1237 (2004); Anne Raben et al., *Increased Postprandial Glycaemia, Insulinemia, and Lipidemia After 10 Weeks’ Sucrose-Rich Diet Compared to an Artificially Sweetened Diet: A Randomized Controlled Trial*, 55 FOOD NUTRITION RES. 5961 (2011); Anne Raben et al., *Sucrose Compared with Artificial Sweeteners: Different Effects on Ad Libitum Food Intake and Body Weight After 10 Wk of Supplementation in Overweight Subjects*, 76 AM. J. CLINICAL NUTRITION 721 (2002); Michael G. Tordoff & Anne M. Alleva, *Effect of Drinking Soda Sweetened with Aspartame or High-Fructose Corn Syrup on Food Intake and Body Weight*, 51 AM. J. CLINICAL NUTRITION 963 (1990).

<sup>20</sup> Dhingra et al., *supra* note 18, at 480; Darren C. Greenwood et al., *Association Between Sugar-Sweetened and Artificially Sweetened Soft Drinks and Type 2 Diabetes: Systematic Review and Dose-Response Meta-Analysis of Prospective Studies*, 112 BRIT. J. NUTRITION 725 (2014); Fumiaki Imamura et al., *Consumption of Sugar Sweetened Beverages, Artificially Sweetened*

53. The 2015 Dietary Guidelines Advisory Committee concluded that “[s]trong evidence shows that higher consumption of added sugars, especially sugar sweetened beverages, increases the risk of type 2 diabetes among adults and this relationship is not fully explained by body weight.”<sup>21</sup>

54. Scientific studies also link sugar-sweetened beverage consumption to a higher risk of other obesity-related conditions, including coronary heart disease and stroke (collectively, cardiovascular disease).<sup>22</sup>

55. A systematic review and meta-analysis of 39 randomized clinical trials concluded that higher intakes of sugars are associated with risk factors for cardiovascular disease including higher levels of triglycerides, LDL (“bad”) cholesterol, and blood pressure, and that “[t]he relation is independent of effects of sugars on body weight.”<sup>23</sup>

56. The Dietary Guidelines Advisory Committee said, “higher intake of added sugars, especially in the form of sugar-sweetened beverages, is consistently associated with increased risk of hypertension, stroke, and [coronary heart disease] in adults.”<sup>24</sup>

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*Beverages, and Fruit Juice and Incidence of Type 2 Diabetes: Systematic Review, Meta-Analysis, and Estimation of Population Attributable Fraction*, 351 *BMJ* h3576 (2015); Lawrence de Koning et al., *Sugar-Sweetened and Artificially Sweetened Beverage Consumption and Risk of Type 2 Diabetes in Men*, 93 *AM. J. CLINICAL NUTRITION* 1321 (2011); Vasanti S. Malik et al., *Sugar-Sweetened Beverages and Risk of Metabolic Syndrome and Type 2 Diabetes: A Meta-Analysis*, 33 *DIABETES CARE* 2477 (2010); Andrew O. Odegaard et al., *Soft Drink and Juice Consumption and Risk of Physician-Diagnosed Incident Type 2 Diabetes*, 171 *AM. J. EPIDEMIOLOGY* 701 (2010); Palmer et al., *supra* note 18, at 1487; Schulze et al., *supra* note 18, at 927; The InterAct Consortium, *Consumption of Sweet Beverages and Type 2 Diabetes Incidence in European Adults: Results from EPIC-InterAct*, 56 *DIABETOLOGIA* 1520 (2013).

<sup>21</sup> DIETARY GUIDELINES ADVISORY COMMITTEE, *supra* note 9, at pt. D, ch. 6, p. 20; *accord* Willett Report, *supra* note 15, ¶ 51 (“Findings from well-designed prospective cohort studies have shown a strong and consistent association between SSB consumption and diabetes.”).

<sup>22</sup> 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).

<sup>23</sup> Te Morenga LA et al., *Dietary Sugars and Cardiometabolic Risk: Systematic Review and Meta-analyses of Randomized Controlled Trials of the Effects on Blood Pressure and Lipids*, *AM. J. CLINICAL NUTRITION* 65–79 (2014).

<sup>24</sup> DIETARY GUIDELINES ADVISORY COMMITTEE, *supra* note 9, at pt. D, ch. 6, p. 20.

57. Likewise, “the recommendations from the Institute of Medicine, the American Heart Association, the Obesity Society, and many other organizations [are] to reduce the consumption of sugar-sweetened beverages in both children and adults.”<sup>25</sup>

58. This is because the “consumption of [sugar-sweetened beverages] causes excess weight gain and is associated with increased risk of type 2 diabetes and [cardiovascular disease]; thus, these beverages are unique dietary contributors to obesity and related chronic diseases.”<sup>26</sup>

59. Today, roughly one-third of children and two-thirds of adults in the United States are overweight or obese.<sup>27</sup> Since 1980, obesity rates in the United States have tripled in children<sup>28</sup> and doubled in adults.<sup>29</sup>

60. In Mexico, where consumption of sugar-sweetened beverages is high, diabetes is now the leading cause of death.<sup>30</sup>

61. The adult obesity rate in the District of Columbia has increased approximately 50% in the last 25 years.<sup>31</sup> In 2011, roughly 40% of the residents in Wards 7 and 8 were obese

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<sup>25</sup> Sonia Caprio, *Calories from Soft Drinks—Do They Matter?*, 367 *NEW ENG. J. MED.* 1462, 1463 (2012).

<sup>26</sup> 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).

<sup>27</sup> Cynthia L. Ogden et al., *Prevalence of Childhood and Adult Obesity in the United States, 2011–2012*, 311 *JAMA* 806 (2014). Worldwide, according to McKinsey & Company, “almost half of the 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 McKinsey Report added a critical public health perspective: the 2.1 billion obese or overweight people in the world is two and a half times the number of undernourished people. *Id.* at 14.

<sup>28</sup> 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>.

<sup>29</sup> CHERYL D. FRYAR, MARGARET D. CARROLL & CYNTHIA L. OGDEN, *CTRS. FOR DISEASE CONTROL & PREVENTION, PREVALENCE OF OVERWEIGHT, OBESITY, AND EXTREME OBESITY AMONG ADULTS: UNITED STATES, 1960–1962 THROUGH 2011–2012*, at tbl. 2 (2014), <http://goo.gl/dc2UHx>.

<sup>30</sup> WHO, *MEXICO: WHO STATISTICAL PROFILE 3* (2015), <https://goo.gl/qlMNLO>.

<sup>31</sup> *Adult Obesity in the United States*, TRUST FOR AMERICA’S HEALTH AND THE ROBERT WOOD JOHNSON FOUNDATION (2015), <http://stateofobesity.org/adult-obesity/> (last visited July 7, 2017).

(excluding those who were overweight). This compared to roughly 24% of D.C. residents overall.<sup>32</sup>

62. According to the District of Columbia’s Department of Health, “obese residents were more likely than residents who were a normal weight or overweight to drink soda three or more times within the past seven days.”<sup>33</sup>

63. Forty-seven percent (47%) of District of Columbia adult residents—about half—are also estimated to have pre-diabetes or diabetes.<sup>34</sup>

64. More District of Columbia residents die each year from complications related to obesity than from AIDS, cancer, and homicides combined.<sup>35</sup>

65. Estimates on the annual cost of medical care and premature mortality attributable to the consumption of sugar-sweetened beverages are astronomical. For example, in New York City, the figure is estimated to be between \$3.23 billion and \$13.17 billion.<sup>36</sup> Globally, the McKinsey Global Institute has estimated that the cost of mitigating obesity exceeds two trillion dollars annually—roughly matching the annual economic burden of armed conflict and tobacco.<sup>37</sup>

### **III. DEFENDANTS’ FALSE AND MISLEADING REPRESENTATIONS ABOUT THE CHARACTER OF SUGAR-SWEETENED BEVERAGES**

66. In 2012, faced with a growing body of scientific research establishing the link between its products and obesity, type 2 diabetes, and cardiovascular disease, Coca-Cola and the ABA ramped up their campaign of misrepresentation and deception.

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<sup>32</sup> DISTRICT OF COLUMBIA DEP’T OF HEALTH, OBESITY IN THE DISTRICT OF COLUMBIA, 2014, at 22 (2014), <https://goo.gl/bQHxjy>.

<sup>33</sup> *Id.* at 5.

<sup>34</sup> AMERICAN DIABETES ASSOCIATION, THE BURDEN OF DIABETES IN THE DISTRICT OF COLUMBIA (2015), <https://goo.gl/00wIFR>.

<sup>35</sup> DISTRICT OF COLUMBIA DEP’T OF HEALTH, CHRONIC DISEASE PREVENTION STATE PLAN FOR THE DISTRICT OF COLUMBIA, 2014–2019, at 4 (2014), <https://goo.gl/Jw93DN>.

<sup>36</sup> 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).

<sup>37</sup> MCKINSEY GLOB. INST., *supra* note 27, at 1.

67. Various scientists, regulators, and health professionals were drawing attention to the science linking the epidemics of obesity, diabetes, and cardiovascular disease to sugar-sweetened beverages, as well as proposed solutions.

68. To combat these scientific developments, which were antagonistic to profits, Coca-Cola and ABA executives embarked on an intensive public promotions and marketing campaign.

69. Defendants' campaign sought to reverse the growing public perception that sugar-sweetened beverages are linked to obesity, type 2 diabetes, or cardiovascular disease, and to provide a straw man instead: lack of caloric balance and exercise.

70. To aid this deception—that exercise alone can counteract routine consumption of sugar-sweetened beverages and halt the obesity epidemic—Coca-Cola adopted, and together with the ABA continues to push, euphemistic slogans such as “balance,” “calories in, calories out,” and “mixify,” as well as “a calorie is a calorie” or “all calories are equal,” coupling them with deceptive science denials.

71. Defendants have made these representations despite overwhelming scientific evidence of the link between sugar-sweetened beverages and obesity, type 2 diabetes, and cardiovascular disease, and, moreover, that exercise alone—particularly of the type promoted by Defendants on various platforms—will not protect consumers from developing these conditions if they routinely consume sugar-sweetened beverages.

72. Defendants carried out their campaign of deception by a variety of means.

**A. False Representations to the Public by Coca-Cola Executives**

73. In response to adverse science, Coca-Cola's top scientists and executives embarked on an aggressive communications crusade to inform the public, falsely, that sugar-sweetened beverage consumption is not linked to obesity, type 2 diabetes, or cardiovascular disease.

74. Coca-Cola's executives issued their public denials despite actual knowledge of facts to the contrary, directing such denials at the general consumer public, including District of Columbia consumers, with the purpose of persuading consumers to purchase Coca-Cola's sugar-sweetened beverages. Coca-Cola knew or should have known that consumers would consider

these representations about the character of such beverages material to their purchasing decisions, decisions that consumers otherwise would have modified had Coca-Cola been truthful.

75. Coca-Cola's Senior Vice President, Katie Bayne, for example, has repeatedly been quoted for her blanket denial, stating that "[t]here is no scientific evidence that connects sugary beverages to obesity."<sup>38</sup>

76. Coca-Cola's former Chairman and Chief Executive Officer, Douglas Ivester, claimed that "Coca-Cola is an excellent complement to the habits of a healthy life."<sup>39</sup>

77. James Quincey, who was named Coca-Cola's Chief Executive Officer in May 2017, has also joined the campaign of deception, stating in an interview, "The experts are clear—the academics, the government advisors, diabetes associations. . . . A calorie is a calorie."<sup>40</sup>

#### **B. Coca-Cola's Secret Funding of Scientific Research**

78. In addition to the public denials of its own executives, who relied on the good will of one of America's oldest and most iconic companies to mislead the public, Coca-Cola also funded "front" groups, such as the Global Energy Balance Network ("GEBN") and the European Hydration Institute ("EHI") to message deceptively. These groups were presented to the public as disinterested research entities but are and were secretly funded by Coca-Cola to suppress and obfuscate the facts about sugar-sweetened beverages.

79. Coca-Cola regularly relied on, and republished, such studies to support its misleading claims about sugar-sweetened beverages.

80. Dr. Steven Blair, formerly vice president of GEBN, claimed that "[m]ost of the focus in the popular media and the scientific press . . . blames . . . sugary drinks [for the obesity epidemic], and there is really virtually no compelling evidence that that, in fact, is the cause.

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<sup>38</sup> Bruce Horovitz, *Coke Says Obesity Grew as Sugar Drink Consumption Fell*, USA TODAY (June 7, 2012), <http://goo.gl/w0jFU2> (statement by Coke executive Katie Bayne).

<sup>39</sup> *The Unhappy Truth About Soda*, CTR. FOR SCI. IN THE PUB. INTEREST, <http://www.therealbears.org/> (last visited July 7, 2017).

<sup>40</sup> CNN, *Interview by Richard Quest with James Quincey, in London, England*, YOUTUBE (May 9, 2013), <https://goo.gl/dw6RHp>; see also Ignoredvoices, *BBC Interview by Jeremy Paxman with James Quincey, in London, England*, YOUTUBE (Nov. 27, 2013), <https://goo.gl/4Y7xVN> (shifting responsibility for the obesity and diabetes epidemics away from sugar-sweetened beverages and, explicitly, to a lack of activity).



Those of us interested in science, public health, medicine, we have to learn how to get the right information out there.”<sup>41</sup>

81. Claiming to be “the voice of science,” GEBN touted “strong evidence” that the key to preventing weight gain is not reducing sugar-sweetened beverage intake, “but maintaining an active lifestyle and eating more calories.”<sup>42</sup>

82. EHI has touted the same message.<sup>43</sup> Like GEBN, EHI professes scientific independence.<sup>44</sup> But Coca-Cola co-founded EHI, and its Director, Dr. Jane Holdsworth, is a paid Coca-Cola consultant.<sup>45</sup>

83. Whether through GEBN, or payments to professors or centers at certain universities, Coca-Cola spent approximately \$120 million in just five years to secretly fund research and related programs as part of its campaign to mislead the public about the true characteristics of sugar-sweetened beverages, and specifically the science linking sugar-sweetened beverages to obesity, type 2 diabetes, and cardiovascular disease.<sup>46</sup>

84. A recent study by Dr. Schillinger, of the University of California San Francisco’s Division of General Internal Medicine and Center for Vulnerable Populations, found that 26 of 26 “negative” studies—those aberrantly finding no link between sugar-sweetened beverages and obesity or diabetes—received funding from the sugar-sweetened beverage industry. Conversely, only one of the 34 “positive” studies received industry funding. Dr. Schillinger concluded that

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<sup>41</sup> CrossFit, *Dr. Steven Blair of Coca-Cola and ACSM’s Global Energy Balance Network*, YOUTUBE (Sept. 10, 2015), <https://goo.gl/h14Yq8>.

<sup>42</sup> 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> (quoting GEBN’s now-discontinued 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 . . .”).

<sup>43</sup> EUROPEAN HYDRATION INST., <http://goo.gl/JEKIb> (last visited Sept. 16, 2016) (website discontinued, now available only on website archives: <https://goo.gl/dYtzdJ>).

<sup>44</sup> *Id.* (“The members of the Science Advisory Board of the EHI do not have any conflicts of interest with any commercial organization.”) (quote de-italicized).

<sup>45</sup> *What Is the European Hydration Institute?*, EUROPEAN HYDRATION INST., <http://goo.gl/TGOr6W> (last visited Sept. 16, 2016) (website discontinued, now available only on website archives: <https://goo.gl/RYjNJa>).

<sup>46</sup> Anahad O’Connor, *Coke Discloses Millions in Grants for Health Research and Community Programs*, N.Y. TIMES (Sept. 22, 2015), <http://goo.gl/hK48HC>.

“[t]he SSB industry seems to be manipulating contemporary scientific processes to create controversy and advance their business interests at the expense of the public’s health.”<sup>47</sup>

85. Coca-Cola has admitted to “cultivating relationships” with scientists as a way to “balance the debate” on sugar-sweetened beverages, a euphemism for distortion.<sup>48</sup> This effort was, for a time, directed by Dr. Rhona Applebaum, Coca-Cola’s “Chief Science and Health Officer.”

86. Dr. Applebaum cultivated Dr. James Hill, of the University of Colorado, for example. He pledged, in return for research funding, to “provide a strong rationale for why a company selling sugar water should focus on promoting physical activity. This would be a very large and expensive study, but could be a game changer.”<sup>49</sup>

87. As part of his funding appeal, Dr. Hill added, “I want to help your company avoid the image of being a problem in people’s lives . . . .”<sup>50</sup>

88. Coca-Cola’s then-Chief Executive Officer, Muhtar Kent, liked this so much that he directed Dr. Applebaum to get CBS to invite Dr. Hill on “CBS This Morning.”<sup>51</sup>

89. Coca-Cola also surreptitiously funded Dr. Hill to organize several obesity conferences for science journalists, where these journalists were exposed to “Coca-Cola friendly dogma.”<sup>52</sup>

90. Meanwhile, Dr. Applebaum publicly represented that Coca-Cola’s funding was unrestricted and any scientists that it funded were independent.

91. So too, James Quincey explained in a widely-circulated television interview that Coca-Cola “get[s] information [about obesity and SSBs] into people’s hands” to empower their “choices.” Coca-Cola is “not trying to hide the information,” “we are focused on getting the information out there.” Quincey also claimed deceptively that sugar-sweetened beverages

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<sup>47</sup> Dean Schillinger et al., *Do Sugar-Sweetened Beverages Cause Obesity and Diabetes? Industry and the Manufacture of Scientific Controversy*, 165 ANNALS INTERNAL MEDICINE 895 (2016).

<sup>48</sup> Anahad O’Connor, *Coke’s Chief Scientist, Who Orchestrated Obesity Research, Is Leaving*, N.Y. TIMES (Nov. 24, 2015), <http://goo.gl/u33ZNF>.

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

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

<sup>51</sup> *Id.*

<sup>52</sup> Paul Thacker, *Coca-Cola’s Secret Influence on Medical and Science Journalists*, 357 BMJ 1638 (2017).

constitute a minute percent of all calories, and by implication, bear only a tiny fraction of responsibility for the obesity epidemic.<sup>53</sup>

### **C. Coca-Cola’s Funding of Bloggers and Other Health Professionals**

92. In addition to scientific researchers, Coca-Cola has paid a network of health professionals and blogger-dietitians to promote sugar-sweetened beverages. According to one key executive, Coca-Cola “ha[s] a network of dietitians we work with.” In February of 2015, for example, Coca-Cola paid dietitians to write numerous online pieces for American Heart Month that included the suggestion that a soda could be a healthy snack, “like . . . packs of almonds.”<sup>54</sup>

93. While designed to look like regular stories, the pieces were sponsored by Coca-Cola and ran in 1,000 or more news outlets. Sometimes the authors indicated that they were “consultants,” other times not—but rarely, if ever, did any disclaimer make clear that Coca-Cola paid for the columns. Instead, such dietitians presented as trustworthy authorities.<sup>55</sup>

94. Coca-Cola’s representations to the public and those of its agents and/or paid spokespersons about the character of sugar-sweetened beverages, and the state of the science relating thereto, were false and deceptive. They were made to gain the trust of the consuming public and to cast doubt on, and/or bury, the substantial, credible science linking Coca-Cola’s sugar-sweetened beverages to obesity, diabetes, and cardiovascular disease.

### **D. Coca-Cola’s Partner in Deception: the ABA and Its Deception Campaign**

95. Alongside Coca-Cola, the ABA engaged in a similar campaign to deceive the public about sugar-sweetened beverages.

96. The ABA exists to promote the sale and use of beverages and to protect the interests of its members, including, in particular, with respect to sugar-sweetened beverages. Its commercial purpose is self-evident. As prominently stated on its homepage, “We are America’s beverage companies . . . . We make American products.”<sup>56</sup>

97. Coca-Cola extensively finances and influences the ABA.

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<sup>53</sup> *BBC Interview by Jeremy Paxman with James Quincey*, *supra* note 40.

<sup>54</sup> Candice Choi, *Coca-Cola Teams up with Nutritionists to Push Coke as Healthy Treat*, FOOD MANUFACTURING (Mar. 16, 2015), <http://goo.gl/CnWLgA>.

<sup>55</sup> *Id.*

<sup>56</sup> AM. BEVERAGE ASS’N, <http://www.ameribev.org> (last visited July 7, 2017).

98. Sandy Douglas, President of Coca-Cola North America, sits on the board of directors of the ABA, along with six additional Coca-Cola executives and affiliate executives.<sup>57</sup>

99. The ABA functions in concert with Coca-Cola's public relations enterprise.

100. Coca-Cola executives casually refer to "working an issue through" the ABA.

101. For example, Coca-Cola's State & Local Government Relations Director noted that she had "worked closely with ABA to manage" a *New York Times* story on sugar-sweetened beverages,<sup>58</sup> and thereafter, that the ABA will manage this story "with strong input and guidance from the Coca-Cola system."<sup>59</sup>

102. The ABA has made numerous deceptive representations about the characteristics of sugar-sweetened beverages and their effect on human health.

103. These statements, as well as the ABA-sponsored advertising campaigns discussed below, are directed at the public, including District of Columbia consumers, with the purpose of persuading them to purchase sugar-sweetened beverages. The ABA knew or should have known that consumers would consider its representations material to their decisions whether to purchase sugar-sweetened beverages, decisions that consumers otherwise would have modified had the ABA been truthful in its representations.

104. As of March 2017, the ABA's website was replete with misleading and materially incomplete representations about the link between sugar-sweetened beverages and obesity and obesity-related chronic diseases. For example, the following discussion denies the prominent role that routine sugar-sweetened beverage consumption has in the rise of obesity and related chronic diseases:

Soda is a hot topic. And the conversation is full of opinions and myths, but not enough facts. America's beverage companies created this site to clear a

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<sup>57</sup> *Board of Directors*, AM. BEVERAGE ASS'N, <https://goo.gl/8lo6w> (last visited July 7, 2017).

<sup>58</sup> E-mail from Jennifer Lemming, State & Local Government Relations Director, to Matt Echols, Senior Vice President of Public Affairs and Communications, and Ben Deutsch, Vice President of Corporate Communications (Apr. 3, 2016) (on file with CSPI).

<sup>59</sup> E-mail from Jennifer Lemming, State & Local Government Relations Director, to Matt Echols, Senior Vice President of Public Affairs and Communications (Mar. 14, 2016) (on file with CSPI).

few things up about the products we make. So read on. Learn. And share the clarity.

\* \* \*

Focusing on [sugar-sweetened beverages] ignores the bigger problem and doesn't offer real solutions.<sup>60</sup>

105. Other deceptions advanced by the ABA include distracting discussions of high fructose corn syrup (“HFCS”). Omitted from this discussion is the fact that, scientifically, whether sugar-sweetened beverages are sweetened with HFCS or traditional sugar, their link with obesity and diabetes is documented.

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

Fact: . . . . HFCS is so similar to sucrose (table sugar) that your body can't tell the difference between the two and processes both in the same way.<sup>61</sup>

106. ABA press releases follow a similar pattern of deception:

- “You may have read articles recently suggesting that there is something unique about soda when it comes to diabetes. Yes, diabetes. It’s always something if you’re reading the headlines. But if you dig deep enough, there’s no ‘there’ there”,<sup>62</sup>
- “[T]here’s nothing unique about beverage calories when it comes to obesity or any other health condition. Sadly, however, the days of simply enjoying a refreshing beverage are under assault—that is, if you choose to listen to our critics”,<sup>63</sup>

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<sup>60</sup> Am. Beverage Ass’n, LET’S CLEAR IT UP, <http://goo.gl/Ft8VNp> (last visited July 7, 2017); Am. Beverage Ass’n, *Health*, LET’S CLEAR IT UP, <http://goo.gl/NZCwGy> (last visited July 7, 2017); Am. Beverage Ass’n, *Beverages*, LET’S CLEAR IT UP, <http://goo.gl/D1o8EI> (last visited July 7, 2017).

<sup>61</sup> Am. Beverage Ass’n, *Obesity*, LET’S CLEAR IT UP, <http://goo.gl/AAUPzD> (last visited July 7, 2017).

<sup>62</sup> *Cut Through the Headlines and Get the Facts*, AM. BEVERAGE ASS’N (Nov. 8, 2013), <https://goo.gl/rpdmm2> (last visited July 7, 2017).

<sup>63</sup> *Simply Soda . . . .*, AM. BEVERAGE ASS’N (June 11, 2012), <https://goo.gl/d2wYyq> (last visited July 7, 2017).

- “Sugar isn’t the enemy, the problem is calories. . . . demonizing [] sugar isn’t going to improve public health”;<sup>64</sup>
- “[T]he attack on added sugars is not founded on the totality of scientific evidence. . . . Like past false food scares, the anti-soda campaign misleads people with unsound science”;<sup>65</sup>
- “You may have seen some attention to research presented at an American Heart Association meeting that suggests that drinking two or more sugar-sweetened beverages per day increases the risk of cardiovascular disease among women. It’s always worth questioning a news report on a study if it only presents one side”;<sup>66</sup>
- “In 1984, President Ronald Reagan designated July as National Ice Cream Month, recognizing ice cream as a fun and nutritious food that 90% of our population enjoys. . . . [W]e want to remind you to grab a beverage to go with your ice cream. It’s important to stay hydrated, especially in these warm summer months”;<sup>67</sup>
- “Despite what you may read in frequent stories that come out in the media, sugar-sweetened beverages are not a unique driver of public health concerns such as obesity and diabetes”;<sup>68</sup>
- “[A]ll calories are the same regardless of food source. . . . 100 calories from a donut or a yogurt is still 100 calories”;<sup>69</sup>

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<sup>64</sup> *Experts: Blaming Sugar Won’t Yield Results*, AM. BEVERAGE ASS’N (Oct. 1, 2015), <https://goo.gl/kRDPp2> (quoting, in part, Dr. John L. Sievenpiper) (last visited July 7, 2017).

<sup>65</sup> *The Added Sugar Fantasy*, AM. BEVERAGE ASS’N (June 17, 2015), <https://goo.gl/guS42d> (last visited July 7, 2017).

<sup>66</sup> *Here We Go Again . . .*, AM. BEVERAGE ASS’N (Nov. 14, 2011), <https://goo.gl/Dv5PFt> (last visited July 7, 2017).

<sup>67</sup> *Did You Get Your Ice Cream*, AM. BEVERAGE ASS’N (July 26, 2013), <https://goo.gl/kvBAEp> (last visited July 7, 2017).

<sup>68</sup> *Taking a Closer Look at Recent Studies on Diabetes*, AM. BEVERAGE ASS’N (July 23, 2015), <https://goo.gl/Bbr95Q> (last visited July 7, 2017).

<sup>69</sup> *Setting the Record Straight on Calories*, AM. BEVERAGE ASS’N (Sept. 16, 2015), <https://goo.gl/2AXtAl> (last visited July 7, 2017) (quoting Megan Meyer, PhD, program manager of health and wellness communications at the International Food Information Council—a Coca-Cola-funded group)

- “Recently we’ve seen some food activists allege that sugar-sweetened beverages ‘cause’ obesity, diabetes and a host of other adverse health conditions. Obviously they are hoping you never look at the science behind their claims. Because it doesn’t exist”,<sup>70</sup>
- “According to leading health organizations, beverage consumption is not a known risk factor for type 2 diabetes . . .”,<sup>71</sup> and
- “Overconsumption of anything (even water) can be risky.”<sup>72</sup>

107. The ABA’s subsidiary, Americans for Food and Beverage Choice, regularly pushes misrepresentations through multiple media outlets as well. Such as:

- “[E]liminating soda and sugary beverages from your diet will not save your health any more than over-emphasizing fruits and vegetables;”<sup>73</sup> and
- “The same holds true for headlines that say drinking soda can cause obesity, type 2 diabetes, or heart disease. What’s missing from those unfounded statements is any evidence from randomized clinical trials . . . .”<sup>74</sup>

#### **E. Deceptive Campaigns on Balance**

108. Another facet of Coca-Cola’s deception is its direct advertising that falsely and misleadingly promotes to the public that they can or will “balance” routine consumption of sugar-sweetened beverages through casual exercise.

109. Established scientific research shows that exercise, especially light exercise like walking a dog or the “75 seconds of laughing out loud” featured in one ad by Coca-Cola,<sup>75</sup>

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<sup>70</sup> *Clearing up the Conversation on Beverages*, AM. BEVERAGE ASS’N (June 24, 2015), <https://goo.gl/8QDFY1> (last visited July 7, 2017).

<sup>71</sup> *Beverage Industry Responds to British Medical Journal Paper on Diabetes*, AM. BEVERAGE ASS’N (July 22, 2015), <https://goo.gl/U5jEIn> (last visited July 7, 2017).

<sup>72</sup> *Overconsumption of Anything (Even Water) Can Be Risky*, AM. BEVERAGE ASS’N (Aug. 3, 2015), <https://goo.gl/wqf9Vz> (last visited July 7, 2017).

<sup>73</sup> Kim Galeaz, *Veggie Halos and Soda Demons*, AMS. FOR FOOD & BEVERAGE CHOICE (Jan. 12, 2015), <https://goo.gl/t5xdD2> (last visited July 7, 2017).

<sup>74</sup> Robyn Flipse, *Bacon, Soda, and Longevity – What’s the Connection*, AMS. FOR FOOD & BEVERAGE CHOICE (Aug. 24, 2015), <http://goo.gl/bH58TU> (last visited July 7, 2017).

<sup>75</sup> See The Coca-Cola Co., *Be OK*, YOUTUBE (Jan. 16, 2013), <https://goo.gl/l2e520> (video advertisement by Coke).

cannot offset the negative health effects, including obesity and related chronic diseases, of drinking sugar-sweetened beverages routinely.

110. The federal government itself has acknowledged that “the contribution that physical activity makes to weight loss and weight stability is relatively small.”<sup>76</sup>

111. And beyond maintaining weight, the fallacy of achieving a healthy weight for the percentage of overweight or obese Coca-Cola consumers is apparent. Even intensive exercise programs often fail to improve weight.<sup>77</sup>

112. According to Dr. Margaret Chan, Director-General of the World Health Organization:

[T]he widespread occurrence of obesity and diabetes throughout a population is not a failure of individual willpower to resist fats and sweets or exercise more. It is a failure of political will to take on powerful economic operators, like the food and soda industries.<sup>78</sup>

113. Coca-Cola’s “Be Ok” advertising campaign ran extensively, including during the popular television show *American Idol* and the Super Bowl. It implied that consumers would “be ok” if consumption were coupled with various light activities—always undertaken by

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<sup>76</sup> See, e.g., *Physical Activity Guidelines Advisory Committee Report Part G. Section 4: Energy Balance*, U.S. DEP’T OF HEALTH & HUMAN SERVS, <https://goo.gl/3p57wo> (last visited July 7, 2017).

<sup>77</sup> See, e.g., Timothy S. Church et al., *Changes in Weight, Waist Circumference and Compensatory Responses with Different Doses of Exercise Among Sedentary, Overweight Postmenopausal Women*, 4 PLOS ONE e4515 (2009); Emily J. Dhurandhar et al., *Predicting Adult Weight Change in the Real World*, 39 INT’L J. OBESITY (LONDON) 1181 (2015); Edward L. Melanson et al., *Resistance to Exercise-Induced Weight Loss: Compensatory Behavioral Adaptations*, 45 MED. & SCI. SPORTS & EXERCISE 1600 (2013); Herman Pontzer et al., *Constrained Total Energy Expenditure and Metabolic Adaptation to Physical Activity in Adult Humans*, 26 CURRENT BIOLOGY 410 (2016); K. A. Shaw et al., *Exercise for Overweight or Obesity*, COCHRANE DATABASE OF SYSTEMATIC REVIEWS (2006); D. M. Thomas et al., *Why Do Individuals Not Lose More Weight from an Exercise Intervention at a Defined Dose? An Energy Balance Analysis*, 13 OBESITY REV. 835 (2012); Klaas R. Westerterp, *Physical Activity and Physical Activity Induced Energy Expenditure in Humans: Measurement, Determinants, and Effects*, 4 FRONTIERS PHYSIOLOGY 90 (2013).

<sup>78</sup> Dr. Margaret Chan, *Obesity and diabetes: the slow-motion disaster: Keynote Address 47<sup>th</sup> Mtg of the National Academy of Medicine*, WORLD HEALTH ORGANIZATION (Oct. 17, 2016), <https://goo.gl/AVE9Zv>.



deceptively trim models—like laughing for 75 seconds, or doing a victory jig in the bowling alley, or 15 minutes of happy dancing. *See* Illustrations 1–3.

### Illustrations 1–3


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



Coca-Cola: 'Be OK' 139 calories advert



Be OK

 The Coca-Cola Co.   
 11,180

110 554



### Coca-Cola: 'Be OK' 139 calories advert

114. According to Coca-Cola and ABA promotions, “[s]ugary drinks can be a part of any diet as long as your calories in balance with the calories out.”<sup>79</sup>

115. The “Mixify” multi-platform advertising campaign, which is sponsored by both Coca-Cola and the ABA, deceptively markets that kids who do some exercise should drink even more sugar-sweetened beverages.<sup>80</sup> “Just finished an afternoon of Frisbee? Maybe you’ve earned a little more [soda].”<sup>81</sup>

116. Coca-Cola’s “Coming Together” advertising campaign promotes a related deception. It proclaims, “All calories count. No matter where they come from including Coca-Cola and everything else with calories.”<sup>82</sup>

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

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<sup>79</sup> *Coke Executive Answers Questions About Sugary Drinks*, USA TODAY (June 7, 2012), <http://goo.gl/z1SPqh> (statement made by Coke executive Katie Bayne during interview).

<sup>80</sup> MIXIFY, <http://deliveringchoices.org/mixify/> (last visited Sept. 16, 2016) (website discontinued, now available only on website archives: <https://goo.gl/3mY57q>).

<sup>81</sup> *MyMixify*, YOUTUBE (Sept. 23, 2014), <https://goo.gl/8azpWA> (last visited Mar. 6, 2017) (video has been removed).

<sup>82</sup> Erdi Özüağ, *Coca Cola Coming Together*, YOUTUBE (Jan. 25, 2013), <https://goo.gl/BpjxqP> (video advertisement by Coke).

For Coca-Cola to suggest that all calories are equal flies in the face of reality. . . . Coca-Cola wants us to ignore the considerable research confirming that sugary soda is a major contributor to obesity, and that it has no nutritional value.<sup>83</sup>

118. That calorie sources carry different values is the basis for the Dietary Guidelines for Americans, published by the U.S. Office of Disease Prevention and Health Promotion.

119. The Centers for Disease Control distinguish between types of calories too, adding that “individuals may fail to compensate for . . . calories consumed as liquid.”<sup>84</sup>

120. In order to highlight exercise as the panacea to the obesity crisis, however, and to draw attention away from sugar-sweetened beverage consumption, Coca-Cola has spent heavily on promoting physical activity. According to published figures, in 2014 alone it spent \$22 million.<sup>85</sup>

121. Coca-Cola has used such programs to deceptively brand itself as a purveyor of health and wellness to the public, in addition to refocusing the obesity debate on exercise alone. See Illustrations 4, 5–9.<sup>86</sup>

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<sup>83</sup> Ruth Faden, *Coke’s Unconscionable New Ad*, THE ATLANTIC (Jan. 25, 2013), <http://goo.gl/eGYEgI>.

<sup>84</sup> CTRS. FOR DISEASE CONTROL & PREVENTION, *supra* note 1, at 4; accord Robin P. Bolton et al., *The Role of Dietary Fiber in Satiety, Glucose, and Insulin: Studies with Fruit and Fruit Juice*, 34 AM. J. CLINICAL NUTRITION 211 (1981); Diane M. DellaValle et al., *Does the Consumption of Caloric and Non-Caloric Beverages with a Meal Affect Energy Intake?*, 44 APPETITE 187 (2005); D. P. DiMeglio & R. D. Mattes, *Liquid Versus Solid Carbohydrate: Effects on Food Intake and Body Weight*, 24 INT’L J. OBESITY 794 (2000); G. B. Haber et al., *Depletion and Disruption of Dietary Fibre: Effects on Satiety, Plasma-Glucose, and Serum-Insulin*, 310 LANCET 679 (1977); Jessica N. Kuzma et al., *No Difference in Ad Libitum Energy Intake in Healthy Men and Women Consuming Beverages Sweetened with Fructose, Glucose, or High-Fructose Corn Syrup: A Randomized Trial*, 102 AM. J. CLINICAL NUTRITION 1373 (2015); R. D. Mattes, *Beverages and Positive Energy Balance: The Menace Is the Medium*, 30 INT’L J. OBESITY S60 (2006); D. M. 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).

<sup>85</sup> THE COCA-COLA CO., 2014/2015 SUSTAINABILITY REPORT 10 (2015), <https://goo.gl/VWPnsP>.

<sup>86</sup> *Id.* at 8, 11.

#### Illustration 4



122. Coca-Cola’s “Get the Ball Rolling” effort is part of this activity campaign. According to Coca-Cola, the campaign derived from “our Company’s global commitments to help fight obesity and be part of the solution.”<sup>87</sup> Coca-Cola has co-hosted “Get the Ball Rolling” events with organizations such as the Boys & Girls Clubs of America, National Foundation for Governors’ Fitness Councils, NASCAR, and others.<sup>88</sup>

123. Local “Get the Ball Rolling” events have included flag-football tournaments for students aged 5 and older—in partnership with the Washington Redskins. *See* Illustrations 5–9.

124. As officially described, “Coca-Cola’s Get the Ball Rolling initiative is a partnership between the Redskins, Coca-Cola and other Washington, D.C. area professional sports teams to combat childhood obesity. . . . Get the Ball Rolling is part of Coca-Cola’s commitment to encourage healthy living. . . .”<sup>89</sup> However, Defendant uses such events to heavily promote the consumption of Coke.

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<sup>87</sup> Stuart Cronauge, *Coca-Cola USA Sets Goal To Inspire Americans To Rediscover The Joy Of Activity*, COCA-COLA (May 13, 2013), <https://goo.gl/1rPoLf>.

<sup>88</sup> Caren Pasquale Seckler, *How Has Coca-Cola Inspired More Than 3 Million People To “Get The Ball Rolling”?*, THE COCA-COLA CO. (Sept. 23, 2013), <https://goo.gl/3KN55m>.

<sup>89</sup> *Richmond Initiatives*, REDSKINS, <https://goo.gl/ydboiu> (last visited July 7, 2017).



### Illustrations 5-9





125. Other “healthy” events locally have included a “morning of fun” at Benning Park in July 2016. Here too, Coca-Cola branded itself as a purveyor of public health, emblazoning its product promotions across the event. *See* Illustration 10.

126. The Union of Concerned Scientists noted that “DC DPR’s tweets from the ceremony revealed photos of teens wearing Coca-Cola tee-shirts and young children dressed as Coca-Cola cans.”<sup>90</sup>

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<sup>90</sup> *Coca-Cola and NRPA Celebrate Court Improvements at Benning Park Community Center*, DC DEPARTMENT OF PARKS AND RECREATION, <https://goo.gl/LXfwQH> (last visited May 26, 2017); Genna Reed, *Coca-Cola Breaks Pledge Not to Advertise to Kids (Again)*, UNION OF CONCERNED SCIENTISTS, <https://goo.gl/eHPjxp> (last visited July 7, 2017).



## Illustration 10



127. Coca-Cola and the ABA also sponsor the annual Childhood Obesity Prevention Awards. These are high-fanfare honors conveyed by the U.S. Conference of Mayors to six cities for their exercise-based anti-obesity programs.<sup>91</sup>

128. According to Coca-Cola, one of the most trusted American brands, “[w]ell-being is an integral part of our business—from the communities we serve to the people we refresh.”<sup>92</sup>

### F. Deceptive Campaigns on Hydration

129. Coca-Cola and the ABA have also engaged in deception about hydration. Defendants represent to the public that their sugar-sweetened beverages aren’t merely “empty calories” but sources of “essential hydration.”

130. According to Coca-Cola Senior Vice President Katie Bayne, “What our drinks offer is hydration. That’s essential to the human body. We offer great taste and benefits whether

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<sup>91</sup> U.S. Conference of Mayors, *Six Cities Share \$445,000 in Grants to Support Childhood Obesity Prevention Programs*, PR NEWswire (Jan. 21, 2016), <https://goo.gl/X4IpQ7>; *Six Cities Share \$445,000 in Grants to Support Childhood Obesity Prevention Programs*, AM. BEVERAGE ASS’N (Jan. 18, 2016), <https://goo.gl/vbP87T> (last visited July 7, 2017); *see also Coca-Cola Foundation Awards \$8.1 in Third Quarter Benefitting 3.8 Million People Worldwide*, THE COCA-COLA CO. (Oct. 18, 2013), <https://goo.gl/SZRYkE> (last visited July 7, 2017) (promoting Coca-Cola Foundation’s funding of foreign childhood obesity programs).

<sup>92</sup> THE COCA-COLA CO., *supra* note 85, at 8.

it's an uplift or carbohydrates or energy. We don't believe in empty calories. We believe in hydration."<sup>93</sup>

131. According to Coca-Cola's former Chief Science and Health Officer, Dr. Rhona Applebaum, "We started with one beverage that I personally am very proud of. It's safe, it hydrates, it's enjoyable."<sup>94</sup>

132. Coca-Cola's website promotes the "science" of hydration with links to "Food Insight" publications—"Your Nutrition and Food Safety Resource"—produced by the International Food Information Council Foundation ("IFIC").

133. These publications stress the importance of hydration "whether you're an elite athlete . . . or more the spectator type." And, IFIC emphasizes that, with respect to hydration, "the term 'water' can mean more than just plain drinking water. . . . It includes . . . beverages such as soft drinks . . . ." <sup>95</sup>

134. Coca-Cola sponsors the IFIC, but this is not indicated in IFIC publications.<sup>96</sup>

135. The ABA's website proclaims that "[d]rinking fluids is absolutely essential" and that "[a]dults and children can consume a wide variety of fluids each day, including . . . regular . . . soft drinks . . . to meet their hydration needs."<sup>97</sup>

136. The reasonable implication of Coca-Cola's and the ABA's message to the public is that hydration, including by routine consumption of sugar-sweetened beverages, is necessary and safe.

137. However, untold millions are unaware of the health consequences of frequent consumption of a product aggressively marketed as "essential hydration."

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<sup>93</sup> *Coke Executive Answers Questions About Sugary Drinks*, *supra* note 79 (statement made by Coke executive Katie Bayne during interview).

<sup>94</sup> Canadian Obesity-Network, *COS2013 Symposia - Coca Cola - Dr. Rhona Applebaum* at 17:55, YOUTUBE (May 29, 2013), <https://goo.gl/I1SK6M> (comments made by Dr. Rhona Applebaum, during presentation at Canadian Obesity Network's 2013 symposia).

<sup>95</sup> INT'L FOOD INFO. COUNCIL FOUND., *HYDRATION: DOES IT ALWAYS HAVE TO BE WATER?*, at 1 (2011), <https://goo.gl/95XDIB>.

<sup>96</sup> *See, e.g., id.*

<sup>97</sup> Am. Beverage Ass'n, *Hydration, LET'S CLEAR IT UP*, <https://goo.gl/S3ayia> (last visited June 2, 2017).



138. Scientific consensus is that frequent hydration by way of sugar-sweetened beverages is linked to obesity, diabetes, and cardiovascular disease.

#### **G. Advertising to Minors**

139. Despite its public representation to the contrary,<sup>98</sup> Coca-Cola continues to target children with its advertising for sugar-sweetened beverages.

140. Advertising messages for sugar-sweetened beverages are all-pervasive, appearing on, but not limited to, billboards, buses, trains, magazines, newspapers, Twitter, and BuzzFeed.

141. The goal of Coca-Cola's advertising is to convey to young people that sugar-sweetened beverages are desirable, safe, healthy, and even necessary.

142. Coca-Cola targets children with a material segment of its advertising because youth are particularly impressionable, the effects of such advertising are long-term, and Defendant seeks to replenish the ranks of its consumers.

143. To attract young consumers to its sugar-sweetened beverages, for example, Coca Cola has used cartoons, celebrities, signage, swag, and over 300 apps.

### **IV. PLAINTIFFS' INJURIES**

#### **A. Plaintiffs**

144. Prior to the initiation of this lawsuit, Plaintiffs purchased several sugar-sweetened beverages sold by Coca-Cola from stores located in Washington, D.C., to evaluate and test.

145. Plaintiffs have been exposed to Defendants' false and deceptive advertising, depriving them of their statutory right under the DCCPPA to truthful information and to be free from improper trade practices.

146. Plaintiffs have diverted resources to combat the false and misleading representations and tactics employed by Defendants about sugar-sweetened beverages.

147. In the absence of prospective relief, Plaintiffs will continue to be exposed to Defendants' false and deceptive advertising, which in turn inhibits their ability to provide counsel or pastoral care for others, and will continue to divert resources to combating the false

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<sup>98</sup> *Responsible Marketing*, THE COCA-COLA CO. (Sept. 25, 2015), <https://goo.gl/pPZfr> (last visited July 7, 2017).

and misleading representations and tactics employed by Defendants about sugar-sweetened beverages.

**B. Plaintiff Lamar**

148. In his profession as a pastor, and as a concerned citizen, Plaintiff Lamar provides pastoral care for and spiritual guidance to congregants and members of the public who are at risk of, or suffering from, obesity and obesity-related diseases, such as type 2 diabetes and cardiovascular disease.

149. Because many of these individuals routinely consume sugar-sweetened beverages, Plaintiff Lamar frequently provides guidance to these congregants and the community at large, especially children and others at risk of becoming diabetic, about the health hazards linked with sugar-sweetened beverages, recommending that they reduce their consumption.

150. These efforts are necessitated and hampered by, or require a larger investment of time and money by Plaintiff Lamar because of, Defendants' false representations and material omissions about the science and safety of sugar-sweetened beverages and their effect on human health, hydration, and otherwise.

151. On July 12, 2017, Pastor Lamar purchased several sugar-sweetened beverages sold by Coca-Cola to test and evaluate their characteristics from CVS Pharmacy, 1418 P Street, NW, Washington, D.C. 20005, Giant Food, 1400 7<sup>th</sup> Street, NW, Washington, D.C. 20001, and Safeway, 490 L Street, NW, Washington, D.C. 20001.<sup>99</sup>

152. Plaintiff Lamar intends to share his evaluations variously to congregant families and the larger community in furtherance of his efforts to discourage consumption of sugar-sweetened beverages, especially by children, and to counteract the effects of Defendants' misrepresentations.

**C. Plaintiff Coates**

153. In his profession as a pastor, and as a concerned citizen, Plaintiff Coates provides pastoral care for and spiritual guidance to congregants and members of the public who are at risk of, or suffering from, obesity and obesity-related diseases, such as type 2 diabetes and cardiovascular disease.

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<sup>99</sup> See *supra* note 3.

154. Because many of these individuals routinely consume sugar-sweetened beverages, Plaintiff Coates provides guidance to these congregants and the community at large, especially children and others at risk of becoming diabetic, about the health hazards linked with sugar-sweetened beverages, recommending that they reduce their consumption.

155. Owing to the cumulative impact of Defendants' misrepresentations, which glorify the drinking of Coca-Cola and denies any associated health risks, like Plaintiff Lamar, Plaintiff Coates has been hampered in his ability to provide spiritual guidance to congregants and the larger community about the harmful effects of sugar-sweetened beverages.

156. On July 6 and 12, 2017, Pastor Coates purchased several sugar-sweetened beverages sold by Coca-Cola to test and evaluate their characteristics from Rite Aid, 4635 South Capitol Street, SW, Washington, D.C. 20032, Giant Food, 1400 7<sup>th</sup> Street, NW, Washington, D.C. 20001, and Safeway, 490 L Street, NW, Washington, D.C. 20001.<sup>100</sup>

157. Plaintiff Coates has and intends to share his evaluations variously with congregant families and the larger community in aid of his efforts to discourage consumption of sugar-sweetened beverages, especially by children.

#### **D. Plaintiff Praxis**

158. Praxis has led numerous initiatives to educate the public and policy-makers about the inaccuracy of Defendants' messages on the science of sugar-sweetened beverages and the need to reduce consumption of sugar-sweetened beverages.

159. Defendants' numerous false representations and material omissions about the safety of sugar-sweetened beverages and their effect on human health directly conflicts with Praxis' mission to build healthier communities. As discussed herein, sugar-sweetened beverages have momentous health consequences and are linked to the rising epidemics of obesity, type 2 diabetes, and cardiovascular disease.

160. Aware that consumers, relying on Defendants' deceptive representations, purchase Coca-Cola and other sugar-sweetened beverages believing them to be part of a healthy diet, not linked to obesity, and/or good sources of hydration, and the like, and that consumers would not have purchased them had they known the truth, Praxis has been forced to expend

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<sup>100</sup> See *supra* note 4.

resources attempting to educate the public and policy-makers about the inaccuracy of Defendants' messages on the science of sugar-sweetened beverages and the need for reduction in consumption of sugar-sweetened beverages.

161. In particular, Praxis has taken concrete steps to become a national intermediary between organizations with expertise in implementing sugar-sweetened beverage reduction initiatives and individuals, not-for-profit organizations, and policy makers seeking to reduce the consumption of sugar-sweetened beverages in their communities.

162. Sugar-sweetened beverage reduction initiatives might include: school-based education programs, such as nutrition education seminars, "hydration stations," and "water ambassador programs;" and policy initiatives, such as public-education campaigns, sugar-sweetened beverage warning labels, and sugar-sweetened beverage taxes.

163. For example:

- a. Xavier Morales, the Executive Director of Praxis, has made numerous presentations addressing the health risks of sugar-sweetened beverages and rebutting information disseminated by Coca-Cola and the ABA;
- b. Praxis serves on the strategic advisory committee for Voices for Healthy Kids and on the advisory board for Open Truth. These organizations seek to increase awareness of the negative impacts of sugar-sweetened beverages on health and expose non-transparent and manipulative marketing techniques by Defendants;
- c. Xavier Morales appeared as a radio guest on WPFW (FM 89.3), which serves the District of Columbia, to explain why communities of color should support efforts to reduce the consumption of sugar-sweetened beverages; and
- d. Xavier Morales has met with stakeholders from the District of Columbia, as well as other metropolitan areas, to discuss processes for educating communities about the health consequences of consuming sugar-sweetened beverages.

164. Praxis has allocated resources to cover the cost of its advocacy, including for meetings with policy makers in various local and state regulatory bodies.

165. The funding that Praxis expends on its sugar-sweetened beverage advocacy efforts requires it to divert resources away from other important public health and nutrition initiatives, including initiatives based out of Praxis' office located in Washington, D.C.

166. The above activities are necessary, made more difficult, or require a larger investment of time and money by Praxis because of Defendants' false and misleading representations.

167. On June 27 and July 12, 2017, Praxis purchased several sugar-sweetened beverages sold by Coca-Cola from CVS, 1025 Connecticut Avenue, NW, Washington, D.C. 20036, Giant Food, 1400 7<sup>th</sup> Street, NW, Washington, D.C. 20001, and Safeway, 490 L Street, NW, Washington, D.C. 20001,<sup>101</sup> to test and evaluate the characteristics and effects of the product in order to further inform, and to share as part of, its advocacy efforts with the public.

### **CLAIM FOR RELIEF**

#### **Violation of the District of Columbia Consumer Protection Procedures Act D.C. CODE § 28-3901 *et seq.***

168. Plaintiffs reallege and incorporate by reference the allegations in each of the preceding paragraphs of this Complaint.

169. Coca-Cola and the ABA have marketed sugar-sweetened beverages so as to suggest, among other deceptions, that: their consumption has not been linked scientifically to obesity, diabetes, and cardiovascular disease; their value is equivalent to other foods with the same caloric content; they are beneficial for purposes of redressing hydration needs; and their consumption is not central to concerns about obesity and, by corollary, that mild exercise can redress such concerns.

170. Defendants' marketing of sugar-sweetened beverages misrepresents, tends to mislead, and omits material facts regarding the source, characteristics, standard, quality, and grade of sugar-sweetened beverages.

171. Defendants' representations omit the truth about the character of sugar-sweetened beverages, including that abundant, credible science links sugar-sweetened beverage consumption to obesity, diabetes, and cardiovascular disease.

172. Sugar-sweetened beverages lack the characteristics, benefits, standards, qualities, or grades that Coca-Cola and the ABA imply in their marketing and branding.

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<sup>101</sup> See *supra* note 5.

173. The Defendants' misstatements, innuendos, and omissions are material and have the tendency to mislead.

174. Defendants have flooded the market with such misstatements, innuendos, and omissions.

175. The products Coca-Cola and the ABA market and sell do not have the characteristics they claim.

176. The facts as alleged herein demonstrate that Defendants' acts, misrepresentations, omissions, innuendos, and practices, including republication of deceptive representations, constitute unlawful trade practices in violation of the following provisions of D.C. CODE § 28-3904:

- a. Section 28-3904(a), which prohibits "represent[at]ions that goods or services have a source, sponsorship, approval, certification, accessories, characteristics, ingredients, uses, benefits, or quantities that they do not have";
- b. Section 28-3904(d), which prohibits "represent[at]ions that goods or services are of particular standard, quality, grade, style, or model, if in fact they are of another";
- c. Section 28-3904(e), which prohibits "misrepresent[at]ions as to a material fact which has a tendency to mislead";
- d. Section 28-3904(f), (f-1), which prohibits "fail[ing] to state a material fact if such failure tends to mislead" and the "use of innuendo or ambiguity as to a material fact, which has a tendency to mislead"; and
- e. Section 28-3904(h), which prohibits "advertis[ing] or offer[ing] goods or services . . . without the intent to sell them as advertised or offered."

177. The Committee Report on Section 28-3904(f-1) states that, "while facts may exist in the public domain as to veracity of claims made, merchants nevertheless flood the market with countervailing representations to hide the truth. . . . New 28-3904(f-1) seeks to . . . provide a cause of action when merchants bury the truth and leave false impressions without outright

stating falsehoods.”<sup>102</sup> Defendants have sought to bury the truth about sugar-sweetened beverages.

178. D.C. Code § 28-3904 prohibits any “unlawful trade practice” “whether or not any consumer is in fact misled, deceived, or damaged thereby.”

179. Though Plaintiffs need not show proof of deception to succeed on their claim, consumers were in fact deceived.

180. Coca-Cola and the ABA knew, or should have known, that reasonable consumers would believe their representations.

181. Defendants undertook such misrepresentations in order to induce the consumer public to purchase and continue to purchase sugar-sweetened beverage products.

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

183. Absent these misrepresentations, reasonable consumers would not have purchased sugar-sweetened beverages, purchased as much sugar-sweetened beverages, or purchased them as routinely.

184. As a direct and proximate result of Defendants’ fraudulent misrepresentations and active concealment, Plaintiffs and the general consumer public, including District of Columbia consumers, have suffered and will continue to suffer substantial injuries.

185. All of the wrongful conduct alleged herein occurred, and continues to occur, in the business of selling sugar-sweetened beverages. Defendants’ wrongful conduct is part of a general practice that is still being perpetuated and repeated throughout the District of Columbia and nationally.

186. Plaintiffs request that this Court enter such orders or judgments as may be necessary to enjoin Defendants from continuing their unfair and deceptive business practices, and to provide such other relief as set forth below.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs respectfully request that this Court enter a judgment against Defendants and in favor of Plaintiffs, as follows:

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<sup>102</sup> COUNCIL OF THE DISTRICT OF COLUMBIA, *supra* note 2, at 7.

- A. Declare, adjudge, and decree the conduct of Defendants as alleged herein to be unlawful, unfair, and/or deceptive, and in violation of the DCCPPA;
- B. Enjoin Defendants from continuing the unfair and deceptive promotion, marketing, and sale of sugar-sweetened beverages, including any claim that there is no scientific evidence linking sugar-sweetened beverages to obesity, diabetes, or cardiovascular disease;
- C. Enjoin Defendant Coca-Cola from continuing the promotion, marketing, and sale of its sugar-sweetened beverages to children under 12, directly or indirectly;
- D. Require Defendants to fund a corrective public education campaign to publicize the scientific consensus that calories have variable benefits and harms depending on their composition, which variations are highly significant to human health, that science has linked sugar-sweetened beverages to obesity, diabetes, and cardiovascular disease, and that light exercise does not offset the potential harm caused by routine consumption of sugar-sweetened beverages;
- E. Award Plaintiffs reasonable attorneys' fees and costs; and
- F. Award Plaintiffs such other further and different relief as the nature of the case may require or as may be determined to be just, equitable, and proper by this Court.

**JURY TRIAL DEMAND**

Plaintiffs demand a jury trial on all causes of action so triable.

Date: July 13, 2017

Respectfully submitted,

\_\_\_\_\_  
/s/  
Maia C. Kats

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