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MICHIGAN SUGAR Co., C&H SUGAR Co., INC., UNITED
11 STATES SUGAR CORPORATION, AMERICAN SUGAR
REFINING, INC., THE AMALGAMATED SUGAR COMPANY
12 LLC, IMPERIAL SUGAR COMPANY, MINN-DAK FARMERS
COOPERATIVE, THE AMERICAN SUGAR CANE LEAGUE
13 U.S.A., INC., and Plaintiff and Counterclaim-Defendant
THE SUGAR ASSOCIATION, INC.

14 UNITED STATES DISTRICT COURT
15 CENTRAL DISTRICT OF CALIFORNIA

16 WESTERN SUGAR COOPERATIVE,
17 *et al.*

Plaintiffs,

18 vs.

19 ARCHER-DANIELS-MIDLAND
20 COMPANY, *et al.*

Defendants.

21 ARCHER-DANIELS-MIDLAND
22 COMPANY, *et al.*

23 Counterclaim-Plaintiffs,

24 vs.

25 THE SUGAR ASSOCIATION, INC.,

26 Counterclaim-Defendant.

Case No. CV11-3473 CBM (MANx)

**THE SUGAR ASSOCIATION,
INC.'S ANSWER TO THE CORN
PROCESSOR DEFENDANTS'
COUNTERCLAIMS (REDACTED
VERSION)**

Action Filed: April 22, 2011
Trial Date: June 24, 2014

***[Answer to the Corn Processor
Defendants' Counterclaims
(Conditionally Lodged Under Seal),
Application to File Under Seal Its
Answer to the Corn Processor
Defendants' Counterclaims and
Proposed Order lodged concurrently
herewith]***

1 Plaintiff and counterclaim-defendant The Sugar Association, Inc. (“The
2 Sugar Association”), for its Answer to the identical Counterclaims (collectively the
3 “Counterclaim”) individually filed by defendants-counterclaimants Archer-Daniels-
4 Midland Company (“ADM”), Cargill, Inc. (“Cargill”), Ingredion Incorporated
5 (“Ingredion”), and Tate & Lyle Ingredients Americas, Inc. (“Tate & Lyle”)
6 (collectively the “Corn Processors”), states as follows. The numbered paragraphs
7 below correspond to the numbered paragraphs of the Counterclaim.

8 **NATURE OF THE COUNTERCLAIM**

9 1. The allegations in Paragraph 1 of the Counterclaim characterize the
10 relief requested and state legal conclusions, and therefore no response is
11 required. To the extent a response is required, The Sugar Association denies that it
12 made any false and misleading representations regarding high fructose corn syrup
13 (“HFCS”) or otherwise deceived consumers about HFCS. On information and
14 belief, The Corn Processors are well aware that their “[REDACTED]
15 [REDACTED]” and their “[REDACTED]
16 [REDACTED]” are supported by
17 “[REDACTED],” as one of the documents already produced in this litigation by Cargill
18 reveals. Indeed, the Corn Processors are the ones who, among other things, and on
19 information and belief, [REDACTED]—to hire [REDACTED]
20 [REDACTED], run by the infamous [REDACTED]
21 [REDACTED] with the specific “[REDACTED]
22 [REDACTED],” while conceding
23 that they themselves may be “[REDACTED].” The Sugar
24 Association denies Paragraph 1’s remaining allegations.¹

25
26 ¹ The redactions in this Answer reflect confidentiality designations made to documents produced
27 by the Corn Processors and/or defendant Corn Refiners Association, Inc. (“CRA”). The Sugar
28 Association believes such designations are improper and is meeting and conferring with CRA and
the Corn Processors regarding that issue.

1 belief with which to determine the truth or falsity Paragraph 7's allegation that Tate
2 & Lyle's principal place of business is a P.O. Box, and therefore denies the
3 allegation. The Sugar Association admits that Tate & Lyle produces and sells
4 various formulations of HFCS.

5 8. The Sugar Association admits the allegations concerning CRA's
6 corporate status and principal place of business. The Sugar Association admits that
7 CRA is a national trade association that represents the interests of the corn refining
8 industry and further admits that each Corn Processor is a member of the CRA that
9 has the ability to – and in fact does – control the CRA.

10 9. The Sugar Association admits that it is a corporation organized under
11 the laws of the State of Delaware having a principal place of business at 1300 L
12 Street, NW, Suite 1001, Washington D.C. 2005. The Sugar Association denies that
13 it "is a trade group comprised of eleven (11) member companies, each of which is a
14 producer of processed sugar in the United States." The Sugar Association denies
15 that it "and its members' business interests include the manufacture, promotion,
16 and/or sale of processed sugar in all its forms."

17 10. The Sugar Association admits that The Amalgamated Sugar Co.
18 ("Amalgamated") is a member of The Sugar Association and that Vic Jaro is on
19 The Sugar Association Board of Directors. The Sugar Association lacks knowledge
20 and information sufficient to form a belief as to the truth or falsity of Paragraph
21 10's remaining allegations and therefore denies them.

22 11. The Sugar Association admits that American Sugar Refining, Inc.
23 ("American Sugar") is a member of The Sugar Association and that José "Pepe"
24 Fanjul, Jr. is on The Sugar Association Board of Directors. The Sugar Association
25 lacks knowledge and information sufficient to form a belief as to the truth or falsity
26 of Paragraph 11's remaining allegations and therefore denies them.

27 12. The Sugar Association admits that C&H Sugar Company, Inc.
28 ("C&H") is a member of The Sugar Association and that Brian O'Malley is on The

1 Sugar Association Board of Directors. The Sugar Association lacks knowledge and
2 information sufficient to form a belief as to the truth or falsity of Paragraph 12's
3 remaining allegations and therefore denies them.

4 13. The Sugar Association admits that Imperial Sugar Company
5 ("Imperial") is a member of The Sugar Association. The Sugar Association denies
6 that John Sheptor is on The Sugar Association Board of Directors. The Sugar
7 Association lacks knowledge and information sufficient to form a belief as to the
8 truth or falsity of Paragraph 13's remaining allegations and therefore denies them.

9 14. The Sugar Association admits that Michigan Sugar Company
10 ("Michigan Sugar") is a member of The Sugar Association and that Mark
11 Flegenheimer is on The Sugar Association Board of Directors. The Sugar
12 Association admits that Charles Bauer, Mark Duffin, and Ervin Schlemmer are on
13 The Sugar Association Board of Directors. The Sugar Association admits that Mr.
14 Flegenheimer is the Chairman of The Sugar Association Board of Directors, and
15 denies that Russell Mauch is on The Sugar Association Board of Directors. The
16 Sugar Association lacks knowledge and information sufficient to form a belief as to
17 the truth or falsity of Paragraph 14's remaining allegations and therefore denies
18 them.

19 15. The Sugar Association admits that Minn-Dak Farmers Cooperative
20 ("Minn-Dak") is a member of The Sugar Association. The Sugar Association
21 denies that David Roche is on The Sugar Association Board of Directors. The
22 allegations regarding Charles Bauer, Mark Duffin, Ervin Schlemmer, and Russell
23 Mauch are duplicative of those averred in Paragraph 14 and require no further
24 response. The Sugar Association lacks knowledge and information sufficient to
25 form a belief as to the truth or falsity of Paragraph 15's remaining allegations and
26 therefore denies them.

27 16. The Sugar Association admits that Western Sugar Cooperative is a
28 member of The Sugar Association. The Sugar Association lacks knowledge and

1 information sufficient to form a belief as to the truth or falsity of Paragraph 16's
2 remaining allegations and therefore denies them.

3 17. The Sugar Association admits that The American Sugar Cane League
4 of the U.S.A., Inc. is a member of The Sugar Association. The Sugar Association
5 denies that Wallace Ellender is on The Sugar Association Board of Directors but
6 admits that James Simon is on The Sugar Association Board of Directors. The
7 Sugar Association admits that Mr. Simon is the immediate past Chairman of The
8 Sugar Association Board of Directors. The Sugar Association lacks knowledge and
9 information sufficient to form a belief as to the truth or falsity of Paragraph 17's
10 remaining allegations and therefore denies them.

11 18. The Sugar Association admits that its governing body is its Board of
12 Directors. The Sugar Association admits that its Board of Directors includes
13 individuals from Amalgamated, American Sugar Cane League, American Sugar,
14 C&H, Imperial, Michigan Sugar, and Minn-Dak. The Sugar Association denies
15 Paragraph 18's remaining allegations.

16 19. The Sugar Association denies the allegations of Paragraph 19.

17 20. The Sugar Association denies the allegations of Paragraph 20.

18 21. The Sugar Association admits that its members provide certain funding
19 for its activities. The Sugar Association denies Paragraph 21's remaining
20 allegations.

21 22. The Sugar Association denies the allegations of Paragraph 22.

22 23. The Sugar Association admits that its members pay regular
23 membership dues and fund certain activities of The Sugar Association. The Sugar
24 Association denies the remaining allegations of Paragraph 23.

25 24. The Sugar Association denies the allegations of Paragraph 24.

26 25. The Sugar Association lacks knowledge and information sufficient to
27 form a belief as to the truth or falsity of the allegations concerning the actions of its
28 members, and therefore denies them. The Sugar Association denies Paragraph 25's

1 remaining allegations. The assertion made in footnote 7 in Paragraph 25 is legal,
2 not factual, and requires no substantive response.

3 **JURISDICTION & VENUE**

4 26. The Sugar Association does not dispute that the Court has subject
5 matter jurisdiction over the Corn Processors' unmeritorious Counterclaim.

6 27. The Sugar Association does not dispute that venue is proper in this
7 judicial district.

8 **FACTUAL BACKGROUND**

9 **What is Sugar?**

10 28. The Sugar Association notes that "sucrose is the only sweetener that
11 has traditionally been referred to as 'sugar' by industry and consumers," as the
12 United States Food and Drug Administration ("FDA") has observed. Food
13 Labeling; Declaration of Ingredients, 58 Fed. Reg. 2,850, 2,857 (Jan. 6, 1993).
14 Indeed, the Code of Federal Regulations identifies sucrose as the only sweetener
15 that may be labeled simply as "sugar." 21 C.F.R. 101.4(b)20. The Sugar
16 Association admits that a monosaccharide is a type of carbohydrate molecule
17 comprising only carbon, hydrogen, and oxygen, and that glucose and fructose – as
18 well as galactose, mannose, xylose and ribose – are monosaccharides. The Sugar
19 Association admits that a disaccharide is another type of carbohydrate molecule,
20 such as lactose, maltose and sucrose, formed when two monosaccharides are
21 molecularly linked together and that, unlike sucrose, none of the formulations of
22 HFCS is a disaccharide.

23 29. The Sugar Association notes that "sucrose is the *only* sweetener that
24 has traditionally been referred to as 'sugar' by industry and consumers," as the
25 FDA has observed. Food Labeling; Declaration of Ingredients, 58 Fed. Reg. 2,850,
26 2,857 (Jan. 6, 1993) (emphasis added). The FDA has also announced – in rejecting
27 a petition to allow the use of "corn sugar" as an alternate name for various
28 formulations of HFCS – that "use of the term 'sugar' to describe HFCS, a product

1 that is a syrup, would not accurately identify or describe the basic nature of the food
2 or its characterizing properties.” FDA Letter to CRA (May 30, 2012) at 2. Other
3 allegations in Paragraph 29 comprise opinions (*e.g.*, regarding what “makes perfect
4 sense,” what “should be counted and considered by Americans” and legal argument
5 or interpretations about the “required . . . nutritional content portion of food
6 ingredient labels”) to which no response is required. To the extent a response is
7 required, and without intending to deny that individuals should be afforded the
8 ability easily to discern what they are consuming, including all the ingredients in
9 their foods and beverages, The Sugar Association denies these other allegations.

10 30. The allegations in Paragraph 30 are not specifically directed to The
11 Sugar Association, and no response is required. To the extent a response is
12 required, The Sugar Association admits that: cherries contain naturally occurring
13 fructose and sucrose, milk contains naturally occurring lactose and that none of the
14 various formulations of HFCS can be found anywhere in nature. The Sugar
15 Association denies that the individual products commonly denominated as “added
16 sugars” are the same, and denies that the various formulations of HFCS are the
17 same as either sugar or invert sugar.

18 **What is Table Sugar?**

19 31. The Sugar Association admits that the technical name for table sugar is
20 sucrose, which is naturally found within plants, and it is a disaccharide composed
21 of equal proportions of the monosaccharides glucose and fructose, joined together
22 by a covalent bond. The Sugar Association denies Paragraph 31’s remaining
23 allegations.

24 32. The Sugar Association admits that, unlike the synthesized glucose and
25 fructose in the various formulations of HFCS, the fructose and glucose naturally
26 joined together in sucrose (table sugar) interact with the naturally occurring enzyme
27 sucrase to cleave their covalent bond before they can be absorbed into the blood for
28

1 further metabolism. The Sugar Association denies Paragraph 32's remaining
2 allegations.

3 33. The Sugar Association lacks knowledge and information sufficient to
4 form a belief as to the truth or falsity of the allegations regarding the frequency and
5 amount of sucrose ingested for which the covalent bond naturally joining fructose
6 and glucose is first cleaved, and therefore denies such allegation. The Sugar
7 Association admits the process of cleaving the covalent bond is also referred to as
8 hydrolysis and that it "may occur" in certain environments, though the amount and
9 rate at which this "may occur" varies and depends upon many circumstances. The
10 Sugar Association denies Paragraph 33's remaining allegations.

11 **What is Invert Sugar?**

12 34. The Sugar Association admits that invertase can hydrolyze sucrose.
13 The Sugar Association lacks knowledge and information sufficient to form a belief
14 as to the truth or falsity of the alleged processes that the unidentified "sugar
15 companies" referenced in Paragraph 34 may use to produce "invert sugar," as the
16 phrase is used in that same paragraph, other than to deny that commercially
17 available invert sugar is comprised exclusively of sucrose for which the covalent
18 bond has been broken. The Sugar Association denies Paragraph 34's remaining
19 allegations.

20 35. The Sugar Association lacks knowledge and information sufficient to
21 form a belief as to the truth or falsity of Paragraph 35's allegations and therefore
22 denies them.

23 36. The Sugar Association admits that invert sugar is an ingredient in
24 certain foods and beverages. The Sugar Association lacks knowledge and
25 information sufficient to form a belief as to the truth or falsity of Paragraph 36's
26 allegations concerning any particular "food or beverage manufacturer . . . worry,"
27 and therefore denies them and Paragraph 36's remaining allegations.
28

1 37. The Sugar Association admits that invert sugar is not the same as any
2 of the formulations of HFCS. The Sugar Association further admits that unlike the
3 varied proportions of the synthesized fructose and glucose and other components
4 found in HFCS formulations (such as longer-chain saccharides, mercury and
5 significant levels of reactive dicarbonyls), invert sugar retains the equal proportions
6 of fructose and glucose that occurs naturally in sucrose, and that in its most
7 common forms it also retains a significant proportion of the naturally occurring
8 disaccharide sucrose. The Sugar Association further admits that invert sugar differs
9 from the various formulations of HFCS in terms of taste, viscosity, pH, flow
10 characteristics and concentration. Without intending to deny that the cited
11 reference attributes a quote to Tom Wilson, and to the extent a further response is
12 required, The Sugar Association denies Paragraph 37's remaining allegations.

13 **What are Other Added Sugars?**

14 38. The Sugar Association admits that “sucrose is the *only* sweetener that
15 has traditionally been referred to as ‘sugar’ by industry and consumers,” as the
16 FDA has observed. Food Labeling; Declaration of Ingredients, 58 Fed. Reg. 2,850,
17 2,857 (Jan. 6, 1993) (emphasis added). The Sugar Association further admits that
18 the FDA has announced—in rejecting a petition that would have allowed “corn
19 sugar” as an alternate name for HFCS—that “use of the term ‘sugar’ to describe
20 HFCS, a product that is a syrup, would not accurately identify or describe the basic
21 nature of the food or its characterizing properties.” FDA Letter to CRA (May 30,
22 2012) at 2. The Sugar Association lacks knowledge and information sufficient to
23 form a belief as to the truth or falsity of Paragraph 38's remaining allegations and
24 therefore denies them.

25 39. The allegations in Paragraph 39, and its accompanying footnotes 10
26 and 11, concern opinions (*e.g.*, regarding legal argument or interpretations about the
27 required method of calculating “sugars” for the labels of food products, and
28 purporting to confine the definition of HFCS to just two types of the commercially

1 available formulations despite the manufacture, sale and use of others) to which no
2 response is required. To the extent a response is required, The Sugar Association
3 admits that HFCS formulations comprise various proportions of synthetically
4 derived glucose and fructose (as well as other saccharides, reactive dicarbonyl
5 compounds and other components). The Sugar Association also admits that HFCS
6 can be synthesized from corn and other starches. The Sugar Association denies
7 Paragraph 39's remaining allegations.

8 40. The Sugar Association notes that the allegations of Paragraph 40
9 concern opinions (*e.g.*, the "different benefits" of HFCS, sugar and invert sugar)
10 that do not require a response. To the extent a response is required, The Sugar
11 Association admits that HFCS, sucrose, and invert sugar have "different
12 properties," and are sometimes used in different applications but certain
13 formulations of HFCS and sucrose are commonly used to sweeten foods or
14 beverages made for human consumption. The Sugar Association admits that when
15 sold as table sugar, "[s]ucrose is a granular solid," but also notes that sucrose also
16 readily dissolves in water without any cleavage of the naturally occurring covalent
17 bond between its constituent fructose and glucose molecules. The Sugar
18 Association denies Paragraph 40's remaining allegations.

19 **HFCS and Processed Sugar Are Nutritionally Equivalent**

20 41. Paragraph 41's allegations are not directed to The Sugar Association,
21 and therefore no response is required. To the extent a response is required, The
22 Sugar Association admits that although some variations exist among them, all
23 carbohydrates—and all proteins—are generally treated as though they present 4
24 calories per gram. This common and convenient assumption, of course, does not
25 make all such macronutrients "nutritionally the same" or render them such that
26 "your body can't tell the difference." The Sugar Association further admits that the
27 various formulations of HFCS and table sugar are different from one another, just
28 as they are different from other distinct caloric sweeteners. The Sugar Association

1 does not understand Paragraph 41’s allegation that “[t]he term ‘high-fructose corn
2 syrup’ *developed*,” because The Sugar Association is informed and believes that the
3 Corn Processors and others in the corn processing industry expressly *chose* that
4 name for the various formulations of HFCS – their industrial sweetener unknown to
5 the world until its invention and reduction to commercial use. The Sugar
6 Association lacks knowledge and information sufficient to form a belief as to the
7 truth or falsity of the purported reason for making this choice. The Sugar
8 Association admits that while HFCS-42 purportedly has a lower fructose-to-glucose
9 ratio than table sugar, HFCS-42 is often sold by the Corn Processors for industrial
10 use in food products in which it serves as a substitute for glucose syrup rather than
11 table sugar, and HFCS-42 is also often accompanied in final products by additional
12 fructose also sold by the Corn Processors. The Sugar Association denies Paragraph
13 41’s remaining allegations.

14 42. The Sugar Association admits that metabolism is a pharmacodynamic
15 process with multiple pharmacokinetic controllers that can be broken down into at
16 least two-phases: (1) catabolism, the breakdown of ingested molecules into smaller
17 units that can then be used to either construct new physiologic polymer molecules
18 or to further degrade the smaller units to generate the energy needed to sustain life,
19 and (2) anabolism, a myriad of physiologic processes that convert the various
20 monomer molecules into the physiologic polymer molecules or physiologic energy
21 needed to sustain life. The notion that “[t]he body cannot metabolize table sugar
22 (sucrose)” is nonsense and also, on information and belief, not the understanding of
23 the average consumer, and it is therefore denied. The notion that table sugar
24 (sucrose) and the various formulations of HFCS—or that the fructose and glucose
25 constituents of table sugar (sucrose) and the various formulations of HFCS—are
26 metabolized “the same way” is likewise nonsense and also, on information and
27 belief, not the understanding of the average consumer, and it is therefore denied.
28 The Sugar Association denies Paragraph 42’s remaining allegations.

1 43. The Sugar Association admits that Paragraph 43’s quoted language is
2 contained in the referenced 2008 publication, and that the quoted language from the
3 Academy of Nutrition and Dietetics in December 2008 is an inaccurate and
4 oversimplified normative expression of opinion about what “should . . . be of
5 concern” or “important” in nutrition that does not require a response. To the extent
6 that a response is required, The Sugar Association denies that the various
7 formulations of HFCS are nutritionally equivalent to sucrose. Indeed, in May 2012,
8 the Academy of Nutrition and Dietetics issued a new position paper clarifying and
9 cautioning that “[r]andomized trials dealing specifically with HFCS [have been] of
10 limited numbers, short duration, and of small sample size; therefore, long-term data
11 are needed.”²

12 44. The Sugar Association states that Paragraph 44’s quoted language
13 from the American Medical Association (AMA) and the reference cited in footnotes
14 14 and 15 are inaccurate and oversimplified normative expressions of opinion about
15 what “appear[ed]” likely or unlikely based on limited study and data in 2008 and
16 2009, to which no response is required. To the extent that a response is required,
17 The Sugar Association admits that in the very next sentence following the quoted
18 language accompanying footnote 13, the AMA called for further independent
19 research to be done on the health effects of high fructose syrup, expressly noting
20 that “there are few available studies on the health effects of high fructose syrup and
21 most are focused on the short-term effects.” The Sugar Association further admits
22 that the quoted text accompanying the 2009 publication cited in footnotes 14 and 15
23 similarly observed that:

- 24 • Few studies have evaluated “the potentially differential effect of
25 various sweeteners, particularly as they relate to health conditions such
26

27 ² Position of the Academy of Nutrition and Dietetics: Use of Nutritive and Nonnutritive
28 Sweeteners, *J. Acad. Nutrition & Dietetics*. (May 2012) 112: 739, 749.

1 as obesity, which develop over relatively long periods of time.
2 Improved nutrient databases are needed to analyze food consumption
3 in epidemiologic studies, as are more strongly designed experimental
4 studies, including those on the mechanism of action and relationship
5 between fructose dose and response.”

6 • “The literature on HFCS is limited. Improved nutrient databases are
7 needed to facilitate more independent research (including
8 epidemiologic studies) on the health effects of HFCS and other
9 sweeteners. Further evaluation is also necessary of the mechanism of
10 action and relationship between fructose dose and response.”

11 • “Epidemiologic studies on HFCS and health outcomes are unavailable,
12 beyond ecological studies, because nutrient databases do not contain
13 information on the HFCS content of foods and have only limited data
14 on added sugars in general.”

15 • “Epidemiologic studies have yet to directly measure total HFCS intake
16 in individuals, because food databases do not contain data on the
17 HFCS content of foods.”

18 • “More information is needed to clarify the impact of HFCS and other
19 sweeteners on health. While a few studies have examined the
20 metabolism of HFCS compared to sucrose, more research is required
21 on the long-term effects of high consumption of these sweeteners to
22 confirm their similarities and to compare their effects in beverages
23 versus solid foods. In addition, research is needed on the possible
24 effects of different sweeteners in various subpopulations, including
25 overweight and obese individuals, . . . because of concerns about the
26 adverse effects of excess fructose in the diet, more surveillance and
27 longitudinal research on fructose is needed [4], as well as research on
28

1 the mechanism of action and relationship between fructose dose and
2 response.”

- 3 • “[I]t is difficult to thoroughly examine the potentially differential
4 effect of various sweeteners, particularly as they relate to health
5 conditions such as obesity, which develop over relatively long periods
6 of time.”

7 45. The Sugar Association admits that 61 Fed. Reg. 165 contains the
8 quoted language and that: (1) FDA included just two types of HFCS in its final rule
9 recognizing HFCS as GRAS (*i.e.*, HFCS-42 and HFCS-55), (2) FDA’s safety
10 evaluation relied on an “exposure estimate” of “HFCS containing 55 percent
11 fructose (HFCS-55)” based on the fact that its glucose to fructose ratio is
12 “approximately the same” as sugar, without any study of the other differences
13 between HFCS and table sugar (sucrose) (such as the absence or presence of the
14 covalent bond), and (3) FDA also observed that for HFCS-90, another common
15 formulation manufactured and sold by The Corn Processors, the agency “does not
16 have adequate information to assess [its] safety,” and therefore cautions that “data
17 on the effects of fructose consumption that is not balanced with glucose
18 consumption would be needed to ensure that this product is safe.” This language is
19 likewise found in 61 Fed. Reg. 165, despite The Corn Processors’ convenient
20 omission of it. The Sugar Association denies Paragraph 45’s remaining allegations.

21 46. Paragraph 46’s vague reference to opinions proclaimed by unnamed
22 “leading members of the nutrition and medical communities” does not require a
23 response. To the extent that a response is required, the Corn Processors’ allegation
24 is denied as exemplary of *argumentum ad auctoritatem*, the logical fallacy that
25 describes an appeal to authority as proof for a proposition. Although *some* persons
26 may embrace the view espoused by the Corn Processors, *others* who can also be
27 characterized as “leading members of the nutrition and medical communities” have
28 published peer-reviewed studies that include data and conclusions at odds with that

1 view.³ Moreover, The Sugar Association is informed and believes that James M.
2 Rippe, M.D. – the individual who arguably is the most outspoken advocate of the
3 theory that the various formulations of HFCS and table sugar are “nutritionally
4 equivalent” and that “your body can’t tell the difference” between these sweeteners
5 – has [REDACTED] received a minimum of \$ [REDACTED] in consulting
6 fees from the Corn Processors through CRA, their captive trade association. The
7 Sugar Association is further informed and believes that Dr. Rippe and his company,
8 Rippe Lifestyle Institute, have received approximately \$ [REDACTED] in
9 consulting fees and research funds from the Corn Processors through CRA. The
10 Sugar Association is likewise informed and believes that John S. White, Ph.D. –
11 another advocate for the Corn Processors’ theory of metabolic and nutritional
12 equivalence between HFCS and table sugar – has received through his company,
13 White Technical Research, at least \$ [REDACTED] from the Corn Processors
14 through the CRA just since [REDACTED]. The Sugar Association is further informed and
15 believes that Dr. White is described in at least one document already produced by
16 Cargill as “[REDACTED],” and he has described Dr. Rippe as an “[REDACTED]
17 [REDACTED].” Dr. Rippe has even said that “[REDACTED]

18
19
20 ³ See, e.g., Le M, *et al.*, “Effects of high-fructose corn syrup and sucrose on the pharmacokinetics
21 of fructose and acute metabolic and hemodynamic responses in healthy subjects,” *Metabolism*
22 (2012) 61:641-651; Sheludiakova A, *et al.*, “Metabolic and behavioural effects of sucrose and
23 fructose/glucose drinks in the rat,” *Eur J Nutr* (2012) 51:445-454; Sánchez-Lozada LG, *et al.*,
24 “Comparison of free fructose and glucose to sucrose in the ability to cause fatty liver,” *Eur J*
25 *Nutr.* (2010) 49:1-9; Ventura EE, *et al.*, “Sugar Content of Popular Sweetened Beverages Based
26 on Objective Laboratory Analysis: Focus on Fructose Content,” *Obesity* (2010) 19[4]:868-874;
27 Bocarsly ME, *et al.*, “High-fructose corn syrup causes characteristics of obesity in rats: Increased
28 body weight, body fat and triglyceride levels,” *Pharmacology, Biochemistry and Behavior* (2010)
97:101-106; Light HR, *et al.*, “The type of caloric sweetener added to water influences weight
gain, fat mass, and reproduction in growing Sprague-Dawley female rats,” *Experimental Biology*
and Medicine (2009) 234[6]:651-661; Stanhope KL, *et al.*, “Twenty-four-hour endocrine and
metabolic profiles following consumption of high-fructose corn syrup-, sucrose-, fructose-, and
glucose-sweetened beverages with meals,” *Am. J. Clin. Nutr.* (2008) 87(5):1194-1203; Tsanzi E,
et al., “The effect of feeding different sugar-sweetened beverages to growing female Sprague-
Dawley rats on bone mass and strength,” *Bone* (2008) 42:960-968.

1 [REDACTED].” The Sugar Association denies Paragraph 46’s
2 remaining allegations.

3 47. The Sugar Association admits that the quote in Paragraph 47 from a
4 September 7, 2009 publication in a business periodical and attributed to Dr. David
5 Ludwig – and repeated from Paragraph 2 – constitutes the author’s expression of
6 opinion, not a fact to which a response is required. To the extent that a response is
7 required, The Sugar Association denies the truth of the statement attributed to Dr.
8 Ludwig and Paragraph 47’s remaining allegations.

9 48. The Sugar Association does not dispute that the 2006 publication
10 referenced in Paragraph 48 contains the quoted text and that the quoted text is a
11 speculative opinion to which a response is not required. The Sugar Association
12 lacks knowledge and information sufficient to form a belief as to the truth or falsity
13 of the allegation concerning what Dr. Walter Willett “think[s]” (or thought in
14 2006), and therefore denies it. The Sugar Association denies Paragraph 48’s
15 remaining allegations.

16 49. The Sugar Association does not dispute that the *Redbook* article
17 referenced in Paragraph 49 contains the quoted text, which ostensibly reflects the
18 individual author’s expression of opinion at the time, not a fact to which a response
19 is required. To the extent that a response is required, The Sugar Association denies
20 the truth of the statement attributed to Joan Blake. The Sugar Association denies
21 Paragraph 49’s remaining allegations.

22 50. The Sugar Association does not dispute that the 2008 article by Dr.
23 Marion Nestle referenced in Paragraph 50 contains the quoted text, explicitly
24 limited to “what [she] hear[s] these days,” but further notes that Dr. Nestle is also
25 quoted in the same article as asserting that “the research is still out on whether
26 HFCS differs from sucrose metabolically.” The Sugar Association denies
27 Paragraph 50’s remaining allegations.

28

1 51. The Sugar Association does not dispute that the 2009 publication
2 referenced in Paragraph 51 contains the quoted text, which ostensibly reflects that
3 author's expression of opinion at the time about "[t]he danger [she] see[s]," not a
4 fact to which a response is required. To the extent that a response is required, The
5 Sugar Association denies the truth of the statement attributed to Dr. Madelyn
6 Fernstrom. The Sugar Association denies Paragraph 51's remaining allegations.

7 52. The Sugar Association does not dispute that the March 8, 2010 Wall
8 Street Journal article referenced in Paragraph 52 contains the quoted language from
9 Professor Barry Popkin, but notes that he has since elaborated in the August 2013
10 edition of the refereed journal *Pediatric Obesity* that the notion that HFCS and
11 sugar should be treated the same for health purposes "hinges on knowing how
12 much fructose relative to glucose is in beverages made with HFCS. One recent
13 study showed that in popular beverages the ratio is 65:35 which is vastly different
14 from 50:50 ratio found in sugar and the widely circulated level of 55% fructose
15 which is often attributed to HFCS."⁴ The Sugar Association denies the truth of the
16 statement attributed to Dr. Popkin in Paragraph 52.

17 53. The Sugar Association does not dispute that the publication from
18 CRA's "Sweetener Studies" website referenced in Paragraph 53 contains the quoted
19 language, which ostensibly reflects the author's expression of opinion at the time
20 and is not a fact to which a response is required. To the extent that a response is
21 required, The Sugar Association denies the truth of the statement attributed to Dr.
22 Keith-Thomas Ayoob.

23 54. The Sugar Association does not dispute that the July 20, 2008
24 HealthNewsDigest.com publication referenced in Paragraph 54 contains the quoted
25 text, which ostensibly reflects the author's expression of opinion at the time and is
26

27 ⁴ Bray GA & Popkin BM, "Calorie-sweetened beverages and fructose: what we have learned 10
28 years later," *Pediatric Obesity*. (Aug. 2013) 8[4]:242-248.

1 not a fact to which a response is required. To the extent that a response is required,
2 The Sugar Association denies the truth of the statement attributed to Jo-Ann Heslin.
3 The Sugar Association admits that the FDA has specifically ruled that “the use of
4 the term ‘sugar’ to describe HFCS, a product that is a syrup, would not accurately
5 identify or describe the basic nature of the food or its characterizing properties.”
6 FDA Letter to CRA (May 30, 2012) at 2.

7 55. The Sugar Association does not dispute that the quoted language in
8 Paragraph 55 is excerpted from the referenced document written by Laurie Gorton
9 for BakingBusiness.com, but also denies that the referenced “consensus” of the
10 panelists exists or has any significance. Indeed, The Sugar Association is informed
11 and believes that two of the panelists, James M. Rippe, M.D. and John S. White,
12 Ph.D., have collectively received in excess of \$ [REDACTED] from the Corn
13 Processors through their captive trade group CRA (including [REDACTED]
14 [REDACTED]) at the time of announcing their views. The Sugar Association is
15 informed and believes that Drs. Rippe and White are not independent experts, but
16 rather are [REDACTED] mouthpieces for the Corn Processors. Moreover,
17 another panelist, Dr. George Bray, co-authored the statement published in the
18 August 2013 edition of the refereed journal *Pediatric Obesity*. There Dr. Bray
19 explained that any notion that HFCS and sugar should be treated the same for
20 health purposes “hinges on knowing how much fructose relative to glucose is in
21 beverages made with HFCS. One recent study showed that in popular beverages the
22 ratio is 65:35 which is vastly different from 50:50 ratio found in sugar and the
23 widely circulated level of 55% fructose which is often attributed to HFCS.”⁵ The
24 final panelist was Dr. Robert Lustig of the University of California San Francisco.
25 Dr. Lustig recently submitted an affidavit in a separate lawsuit, swearing under oath
26 that

27 _____
28 ⁵ *Id.*

- 1 • “Glucose and fructose that primarily comprises HFCS are a
2 monosaccharide which is lacking the covalent molecular bond found in
3 the organic sucrose molecule.”
- 4 • “Sucrose and HFCS have different metabolic effects including that the
5 fructose content of HFCS-55, HFCS-65, HFCS-90 and Crystalline
6 Fructose is higher than in sucrose, which is made up of 50% glucose
7 and 50% fructose.”
- 8 • “HFCS bypasses the insulin-driven satiety system, suppressing ‘the
9 degree of satiety’ that would normally result from a meal of glucose or
10 sucrose.”
- 11 • “Because insulin and leptin act as key afferent signals in the regulation
12 of food intake and body weight and dietary fructose from HFCS is
13 metabolized differently from sugar (sucrose) and because the
14 percentage of fructose in some foods containing HFCS have been
15 shown in peer reviewed studies to exceed 65%, HFCS is clearly a
16 significant factor in increased dietary food and energy (caloric) intake
17 in the population. It is not known, except by the Defendant HFCS and
18 processed food manufacturers the extent to which HFCS-65, HFCS-90
19 and Crystalline Fructose are in foods, other than that they are.”⁶

20 56. The Sugar Association denies the allegations in Paragraph 56 as the
21 referenced study has not “demonstrated that HFCS is no less healthy than sugar”
22 and because multiple studies have identified meaningful differences.

23 57. The Sugar Association denies the allegations in Paragraph 57, as the
24 referenced studies have not “found that the metabolic responses of women to HFCS
25 and sucrose consumption do not differ in any meaningful manner.” The referenced
26

27 ⁶ Affidavit of Robert H. Lustig, M.D. in *S.F. v. Archer-Daniels-Midland Co*, Case No. 1:13-cv-
28 634(S) (W.D.N.Y.) (filed Sept. 25, 2013).

1 studies speak for themselves and no response is required. To the extent a response
2 is required, The Sugar Association notes that each of the studies expressly limits its
3 findings. For example, the Melanson study observed that “research is required to
4 examine appetite responses and to determine if these findings hold true for obese
5 individuals, males, or longer periods.” The Melanson study also stated that
6 “because the present protocol was conducted in healthy-weight women, it cannot be
7 generalized to men or to overweight or obese populations. Thus, additional
8 research should be conducted to examine the effects of HFCS on endocrine
9 regulators of metabolism and appetite in such other groups. Additional metabolic
10 indices should be investigated as mechanistic studies of HFCS continue. Longer-
11 term investigations of the effect of HFCS on energy balance control systems are
12 also needed to further understand the potential effect of this sweetener on body
13 weight.” Moreover, each of the referenced studies examined only a select group of
14 short-term metabolic results and did not undertake longer-term examinations. Each
15 of the studies was also led by Dr. Rippe, whose serious conflicts of interest as a
16 [REDACTED] advocate for the Corn Processors’ interests calls into question
17 the objectivity of the studies and the written publications describing them. While
18 Dr. Rippe has at times publicly disclosed the fact of funding from the CRA, The
19 Sugar Association is informed and believes that he has not publicly disclosed the
20 [REDACTED] amounts of money that the Corn Processors have paid him through CRA.

21 58. The Sugar Association admits that Paragraph 58 purports to describe
22 certain referenced studies that speak for themselves and for which no response is
23 required. To the extent a response is required, The Sugar Association denies that
24 studies demonstrate “no meaningful differences in hunger, satiety, or energy
25 intake” between sucrose-sweetened and HFCS-sweetened beverages. For example
26 the referenced Monsivais study expressly limited its conclusion by noting that “the
27 putative effect of HFCS on satiety hormones awaits further research” and that the
28 study “does not resolve the underlying question of whether liquids differ from

1 solids in their satiating power.” The referenced Almiron-Roig and Drewnowski
2 study made no direct comparison of otherwise identical sucrose-sweetened versus
3 HFCS-sweetened beverages. The referenced Soenen and Westerterp-Plantenga
4 study explicitly recommended that “a long-term study to assess the effect on body
5 weight regulation would be a necessary follow-up.” The Sugar Association denies
6 Paragraph 58’s remaining allegations.

7 59. The Sugar Association admits that Paragraph 59 purports to describe
8 certain referenced studies that speak for themselves and for which no response is
9 required. To the extent a response is required, the Akgun & Ertel study qualified its
10 findings by noting that its “results are derived from a limited sample size, mainly in
11 males over 54 yr of age” and that “acute findings cannot be translated into a
12 recommendation . . . since we have not studied the long-term effects on control of
13 diabetes and its complications.” The Cozma study indicated its “conclusions,
14 however, are limited by the short follow-up, small sample size, and poor quality of
15 most trials included in our meta-analysis, as well as the large degree of unexplained
16 significant heterogeneity. Larger, longer, and higher-quality trials of controlled
17 fructose feeding that also weigh any possible glycemic benefit against adverse
18 metabolic effects are required for definitive confirmation of these findings.” The
19 Schorin study was not a study at all, but simply a review of preexisting literature for
20 which CRA paid (at least in part). The Sugar Association denies Paragraph 59’s
21 remaining allegations.

22 60. The Sugar Association admits that Paragraph 60 purports to describe
23 the referenced study that speaks for itself and for which no response is required. To
24 the extent a response is required, The Sugar Association denies the Sun and Empie
25 study demonstrates that populations who consume HFCS-sweetened beverages do
26 not have higher obesity rates or increased obesity risks than those that drink HFCS-
27 sweetened beverages less regularly. The study’s coauthors, Sam Sun and Mark
28 Empie, were employed by Corn Processor ADM at the time of the study and Mark

1 Empie currently is an executive at ADM, creating an appearance that the study is
2 not objective. Moreover, the referenced study qualified its observations by stating
3 that

- 4 • “Very limited long term prospective data are available to examine the
5 association between HFCS and obesity. In general, it is very difficult
6 and expensive to conduct a prospective population study to determine
7 the effect of a single dietary component on obesity occurrence.”
- 8 • “[F]ood and nutrient intake data in the population are usually not
9 normally distributed, potentially leading to inaccurate estimates of the
10 usual intake in the population.”
- 11 • “[T]he explanation of the differences in obesity rates between
12 databases would require extensive analysis and interpretation. . . .”
- 13 • “[A] food intake survey with a larger number of data collecting days
14 can provide more reliable data, especially for evaluating intakes of a
15 single food item or category, and that population mean intakes
16 obtained from one-day dietary data as NHANES can be significantly
17 over or under estimated”
- 18 • “There are several limitations to our work. First, the dietary intake data
19 in the databases were obtained from dietary recall questionnaires. It is
20 possible that the intake amounts were under reported. Secondly, the
21 body weight and height data in CSFII data were also self-reported
22 data. So, the CSFII data may not be as accurate as the data of
23 NHANES, where weight and height were measured. Thirdly, the SSB
24 consumption patterns cannot be absolutely categorized as ‘user’ or
25 ‘non-user’, because the portion of adults who consumed SSB either
26 every day or not at all would be very small. And lastly, although SSB
27 represent a significant portion of dietary added sugars, this study does
28 not address the question of whether there is a potential link between

1 added sugar consumption and obesity risk. Added sugars can cover a
2 variety of sweeteners including sucrose, HPCS [sic], syrups, glucose,
3 dextrose, maltose, fructose, and honey. It would be very meaningful to
4 conduct a similar study to examine if there is a link between added
5 sugar intake and obesity prevalence in the future.”

- 6 • “Lifestyle, behavior, and environment appear to have a more dominant
7 role in obesity prevalence than do individual foods.”

8 The Sugar Association denies Paragraph 60’s remaining allegations.

9 61. The Sugar Association admits that Paragraph 61 purports to describe
10 the referenced study that speaks for itself and for which no response is required. To
11 the extent a response is required, The Sugar Association specifically denies the
12 premise that HFCS and table sugar are equivalent. Further, the referenced study’s
13 lead author was Dr. James M. Rippe, who on this occasion disclosed having
14 received research for the study from CRA, while failing to disclose that he has also
15 been paid an [REDACTED] of \$ [REDACTED] by the Corn Processors through CRA –
16 separate and apart from the [REDACTED] that they have paid to his eponymous
17 laboratory – since at least [REDACTED]. Moreover, the referenced study qualified its
18 findings as follows:

- 19 • “Actual sucrose and/or HFCS consumption in the diets could not be
20 measured. Thus, actual sucrose or HFCS intake between the groups is
21 unknown.”
- 22 • “Randomized, clinical feeding trials have shown inconsistent results
23 from testing the effects of added sugar on weight gain.”
- 24 • “Further studies employing larger numbers of subjects from more
25 diverse population groups, and higher doses approaching 90th
26 percentile fructose intakes (approximately 15% of calories as fructose)
27 of either sucrose or HFCS, with longer duration appear warranted.”

28 The Sugar Association denies Paragraph 61’s remaining allegations.

1 62. The Sugar Association admits that Paragraph 62 purports to describe
2 certain referenced studies that speak for themselves and for which no response is
3 required. To the extent a response is required, The Sugar Association denies that
4 the existence of a settled matter of scientific fact that increases in obesity are
5 “independent of HFCS use.” Rather, the existence of an association between the
6 obesity epidemic and the meteoric rise in HFCS consumption has increasingly been
7 the focus of attention by medical, health and food science researchers and by
8 consumers. Further, Dr. John S. White authored the 2010 Am. J. Lifestyle Med.
9 review referenced in this paragraph. As detailed above, Dr. White worked in or
10 with the corn processing industry for much of his professional life and has apparent
11 conflicts of interest, including but not limited to the [REDACTED] that
12 the Corn Processors have paid him (through CRA) over the years. Dr. White’s
13 essay includes no independent study and merely purports to summarize and
14 interpret data limited to the examination of short-term differences, and the study
15 acknowledges that longer-term research has yet to be completed. Moreover, the
16 World Health Organization Report cited in this paragraph indicated that in England
17 and Australia, as in the United States, per capita consumption of sugar has declined
18 during the period in which obesity has risen. More important, the Corn Processors
19 (and CRA) have failed to disclose the vast, cloaked network of researchers,
20 dieticians, nutritionists, public relations consultants, and others whom they have
21 hired in an effort to saturate the media, press, and scientific literature with
22 messaging that advances their advertising campaign. The Sugar Association is
23 informed and believes that in non-public communications about their advertising
24 campaign, the Corn Processors have characterized many of these individuals as
25 “[REDACTED]” to whom the Corn Processors have collectively contributed over
26 \$ [REDACTED]. Indeed, The Sugar Association is informed and believes that the
27 Corn Processors (again through CRA) have even funded \$ [REDACTED] to
28 individuals who [REDACTED] that advances the Corn

1 Processors' and CRA's advertising campaign. The Sugar Association denies
2 Paragraph 62's remaining allegations.

3 **History of The Sugar Association's Vilification of HFCS**

4 63. The Sugar Association admits the "2004 report" referenced in
5 Paragraph 63 hypothesized a causal link between HFCS consumption and the rise
6 in obesity. The Sugar Association denies that this hypothesis "has now been
7 abandoned by its own authors." Although The Sugar Association admits that the
8 referenced quotes are accurately excerpted, the authors' most recent published
9 statement on the subject, in the August 2013 edition of the refereed journal
10 *Pediatric Obesity*, explains in a far more elaborate and retrospective analysis that
11 any notion that HFCS and sugar should be treated the same for health purposes
12 "hinges on knowing how much fructose relative to glucose is in beverages made
13 with HFCS. One recent study (14) showed that in popular beverages the ratio is
14 65:35 which is vastly different from 50:50 ratio found in sugar and the widely
15 circulated level of 55% fructose which is often attributed to HFCS."⁷ The Sugar
16 Association denies Paragraph 63's remaining allegations.

17 64. The Sugar Association denies Paragraph 64's allegations.

18 65. The Sugar Association denies Paragraph 65's allegations.

19 66. Mr. Briscoe's partially excerpted statements in Paragraph 66 speak for
20 themselves and no response is required. To the extent a response is required, other
21 than the fact of Mr. Briscoe's partial quotations, The Sugar Association denies
22 Paragraph 66's allegations.

23 67. The Sugar Association admits to openly providing financial support
24 for Citizens for Health, a public advocacy group that has existed independently
25 since 1992, but otherwise denies Paragraph 67's remaining allegations. The Sugar
26 Association expressly denies supporting any third party "masked" as anything.

27 _____
28 ⁷ See *supra* note 4.

1 **False and/or Misleading Representations by The Sugar Association**

2 68. The Sugar Association denies Paragraph 68’s allegations.

3 **The McElligott Article**

4 69. The Sugar Association admits that it posted on its website the article
5 entitled, “Dr. John McElligott weighs in on the high fructose corn syrup debate in
6 Land Line Magazine.” In particular, The Sugar Association further admits that the
7 article’s appearance on The Sugar Association website was an online republication
8 of an editorial authored by Dr. McElligott, and that Dr. McElligott’s editorial
9 contains the quoted words “dangers” and “laced.” The Sugar Association admits
10 that it tweeted a link to the republished editorial on February 3, 2012, and that it
11 emailed the article to a listserv of persons who asked to receive The Sugar
12 Association’s newsletter. The McElligott editorial speaks for itself, and many of
13 the views in it are explicitly characterized with statements of “belief” and
14 “opinion.” The Sugar Association denies any remaining allegations of Paragraph
15 69.

16 70. The Sugar Association admits that the McElligott editorial contains the
17 quoted language in the bullet points and that the editorial speaks for itself. The
18 Sugar Association denies Paragraph 70’s remaining allegations.

19 71. The Sugar Association admits that persons who viewed the McElligott
20 editorial on The Sugar Association website could choose to share it through social
21 media outlets. The Sugar Association denies Paragraph 71’s remaining allegations.

22 72. Dr. McElligott’s editorial speaks for itself, and no response is required
23 to the Corn Processors’ characterization of the editorial in this paragraph. To the
24 extent a response is required, The Sugar Association denies Paragraph 72’s
25 remaining allegations.

26 73. Dr. McElligott’s editorial speaks for itself, and no response to the Corn
27 Processors’ characterization of the editorial in this paragraph is required. To the
28

1 extent a response is required, The Sugar Association denies Paragraph 73's
2 remaining allegations.

3 74. Dr. McElligott's editorial speaks for itself, and no response to the Corn
4 Processors' characterization of the editorial in this paragraph is required. To the
5 extent a response is required, The Sugar Association denies Paragraph 74's
6 remaining allegations.

7 75. Dr. McElligott editorial speaks for itself, and no response to the Corn
8 Processors' characterization of the editorial in this paragraph is required. To the
9 extent a response is required, The Sugar Association denies Paragraph 75's
10 remaining allegations.

11 76. Dr. McElligott's editorial speaks for itself, and no response to the Corn
12 Processors' characterization of the editorial in this paragraph is required. To the
13 extent a response is required, The Sugar Association denies Paragraph 76's
14 remaining allegations.

15 The UCLA Article

16 77. The Sugar Association admits that it posted on its website the
17 investigative report entitled, "The Corn Refiners 'Get Their Way' With UCLA, or
18 Do They?" In particular, The Sugar Association admits that the referenced report's
19 appearance on The Sugar Association website was an online republication of an
20 investigative report authored by non-party Linda Bonvie, and that her report speaks
21 for itself. The Sugar Association denies that the investigative report falsely
22 disparaged HFCS; rather, the report accurately observed that a study conducted by
23 Dr. Fernando Gomez-Pinilla "found that a diet high in fructose can slow down
24 mental processes 'hampering memory and learning.'" The Sugar Association
25 denies Paragraph 77's remaining allegations.

26 78. The Sugar Association admits that it made a limited distribution of the
27 Bonvie investigative report on passive websites and listservs. The Sugar
28 Association denies Paragraph 78's remaining allegations.

1 79. Ms. Bonvie’s investigative report speaks for itself, and no response is
2 required to the Corn Processors’ characterization of the report in this paragraph. To
3 the extent a response is required, The Sugar Association admits that the Bonvie
4 investigative report accurately described CRA’s public relations effort with respect
5 to the Gomez-Pinilla research. The Sugar Association denies Paragraph 79’s
6 remaining allegations.

7 80. The Bonvie investigative report speaks for itself, and no response to
8 the Corn Processors’ characterization of the report in this paragraph is required. To
9 the extent a response is required, The Sugar Association admits that the Bonvie
10 investigative report accurately described CRA’s public relations effort with respect
11 to the Gomez-Pinilla research. The Sugar Association denies Paragraph 80’s
12 remaining allegations.

13 81. The Bonvie investigative report speaks for itself, and no response to
14 the Corn Processors’ characterization of the report in this paragraph is required. To
15 the extent a response is required, The Sugar Association denies that the Bonvie
16 investigative report is “The Sugar Association’s UCLA article”; rather, The Sugar
17 Association simply republished Bonvie’s original report. The Sugar Association
18 lacks knowledge and information sufficient to form a belief as to the truth or falsity
19 of allegations concerning the Bonvie investigative article’s links to other articles,
20 and therefore denies such allegations. The Sugar Association denies Paragraph
21 81’s remaining allegations.

22 82. The Bonvie investigative report speaks for itself, and no response to
23 the Corn Processors’ characterization of the report in this paragraph is required. To
24 the extent a response is required, The Sugar Association denies that the Bonvie
25 investigative report is “The Sugar Association’s UCLA article.” The Sugar
26 Association further admits that Paragraph 82 quotes certain, selective excerpts from
27 the Bonvie investigative report. The Sugar Association denies Paragraph 82’s
28 remaining allegations.

1 83. The Bonvie investigative report speaks for itself, and no response to
2 the Corn Processors' characterization of the report in this paragraph is required. To
3 the extent a response is required, The Sugar Association denies that Ms. Bonvie's
4 investigative report perpetuated any false belief. The Sugar Association denies
5 Paragraph 83's remaining allegations.

6 84. The Bonvie investigative report speaks for itself, and no response to
7 the Corn Processors' characterization of the report in this paragraph is required. To
8 the extent a response is required, The Sugar Association denies that the Bonvie
9 investigative report is "The Sugar Association's article." The Sugar Association
10 admits that the Bonvie investigative report contains the excerpted text and that the
11 report accurately described CRA's public relations effort with respect to the
12 Gomez-Pinilla research. The Sugar Association denies Paragraph 84's remaining
13 allegations.

14 85. The Sugar Association denies Paragraph 85's allegations.

15 **The "Enough is Enough" Press Release**

16 86. The referenced May 24, 2012 press release speaks for itself, and no
17 response to the Corn Processors' characterization of the press release in this
18 paragraph is required. To the extent a response is required, The Sugar Association
19 denies that the press release made false and misleading statements about "processed
20 sugar" and HFCS. The Sugar Association denies Paragraph 86's remaining
21 allegations.

22 87. The Sugar Association admits that it made a limited distribution of the
23 May 24, 2012 press release on passive websites and listservs. The Sugar
24 Association denies Paragraph 87's remaining allegations.

25 88. The May 24, 2012 press release speaks for itself, and no response to
26 the Corn Processors' characterization of the press release in this paragraph is
27 required. To the extent a response is required, The Sugar Association admits the
28 May 24, 2012 press release contains the excerpted text. The Sugar Association

1 denies that any part of the excerpted text “falsely represent[ed] that sugar is
2 healthier than HFCS” and further denies Paragraph 88’s remaining allegations.

3 89. The May 24, 2012 press release speaks for itself, and no response to
4 the Corn Processors’ characterization of the press release in this paragraph is
5 required. To the extent a response is required, The Sugar Association admits the
6 May 24, 2012 press release contains the excerpted text. The Sugar Association
7 denies Paragraph 89’s remaining allegations.

8 90. The allegations in Paragraph 90 are not directed to The Sugar
9 Association, and no response is required. To the extent a response is required, The
10 Sugar Association denies that the bond in sucrose is “not ‘meaningful’ to human
11 health.” The Sugar Association denies any remaining allegations of Paragraph 90.

12 91. The Sugar Association denies Paragraph 91’s allegations.

13 **Additional False Statements**

14 92. The Sugar Association admits that the April 1, 2012 press release
15 contains the excerpted language, and the August 23, 2012 op-ed contains the quoted
16 language. The press release and op-ed speak for themselves, and no response to the
17 Corn Processors’ characterization of each in this paragraph is required. To the
18 extent a response is required, The Sugar Association denies Paragraph 92’s
19 characterizations of the press release and op-ed. The Sugar Association denies
20 Paragraph 92’s remaining allegations.

21 93. The Sugar Association admits the quoted language in Paragraph 93
22 was contained in materials distributed on a limited basis. The press release and op-
23 ed speak for themselves, and no response to the Corn Processors’ characterization
24 of each in this paragraph is required. To the extent a response is required, The
25 Sugar Association denies such. The Sugar Association denies Paragraph 93’s
26 remaining allegations.

27 94. The Sugar Association admits that the excerpted language in
28 Paragraph 94 appears in the referenced article. The excerpted from the article

1 speaks for itself; because it expresses little more than an opinion by one person
2 about what is “the more important point,” no response is required. To the extent a
3 response is required, other than the fact of the quote, The Sugar Association denies
4 Paragraph 94’s remaining allegations.

5 95. The Sugar Association admits that the excerpted language appears in
6 the referenced article and that such language speaks for itself such that no response
7 is required. To the extent a response is required, The Sugar Association denies that
8 it is a settled scientific fact that negative health consequences such as the increases
9 in obesity are solely the result of a calorie imbalance in which consumption of
10 HFCS plays no role other than its contribution to caloric intake. The Sugar
11 Association denies Paragraph 95’s remaining allegations.

12 **CLAIM FOR RELIEF**

13 **Violations of Section 43(a) of the Lanham Act**

14 96. The Sugar Association reasserts and incorporates by reference each
15 and every response contained in Paragraphs 1 through 95 above as though set forth
16 fully herein.

17 97. The Sugar Association denies Paragraph 97’s allegations.

18 98. The Sugar Association denies Paragraph 98’s allegations.

19 99. The Sugar Association denies Paragraph 99’s allegations.

20 100. The Sugar Association denies Paragraph 100’s allegations.

21 101. The Sugar Association denies Paragraph 101’s allegations.

22 102. The Sugar Association denies Paragraph 102’s allegations.

23 103. The Sugar Association denies Paragraph 103’s allegations.

24 104. The Sugar Association denies each and every allegation not expressly
25 admitted herein.

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DEFENSES

FIRST DEFENSE

(Failure to State a Claim)

105. The Counterclaim fails to state a claim upon which relief can be granted.

SECOND DEFENSE

(Unclean Hands)

106. The Corn Processors' claims are barred under the doctrine of unclean hands.

THIRD DEFENSE

(No Commercial Advertising)

107. The Corn Processors' claims are barred because the statements at issue do not constitute commercial advertising or promotion under the Lanham Act.

FOURTH DEFENSE

(Insufficient Dissemination to Purchasing Public)

108. The Corn Processors' claims are barred because the statements at issue were not sufficiently disseminated to the relevant purchasing public.

FIFTH DEFENSE

(Communications Decency Act)

109. The Communications Decency Act bars the Corn Processors' claims relating to re-posted statements.

SIXTH DEFENSE

(Noerr-Pennington Doctrine)

110. The Corn Processors' claims are barred in whole or in part by operation of the Noerr-Pennington doctrine.

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SEVENTH DEFENSE

(Violation of the First Amendment)

111. The Corn Processors’ claims are barred because the purported wrongdoing constitutes activity protected by the First Amendment of the United States Constitution, which protects the rights to freedom of speech and to petition the government.

EIGHTH DEFENSE

(Additional Defenses)

112. Because The Sugar Association does not have sufficient information as to whether it has additional, as yet unstated, affirmative defenses, The Sugar Association reserves its right to assert such defenses in the event that discovery indicates the defense is appropriate.

PRAYER FOR RELIEF

WHEREFORE, The Sugar Association prays that the Court enter an order dismissing the Counterclaim, grant The Sugar Association an award of costs and expenses incurred in this action, and for such other and further relief as the Court deems just and proper.

JURY DEMAND

The Sugar Association demands a trial by jury on all claims and issues so triable.

October 15, 2013

SQUIRE SANDERS (US) LLP

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David S. Elkins

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PROOF OF SERVICE

I, Consuelo Lopez, declare:

I am a citizen of the United States and a resident of the State of California and over the age of eighteen years, and not a party to the within action; my business address is 555 S. Flower Street, 31st Floor, Los Angeles, CA 90071. On October 15, 2013, I served the within document(s):

**THE SUGAR ASSOCIATION, INC.'S ANSWER TO THE
CORN PROCESSOR DEFENDANTS' COUNTERCLAIMS
(REDACTED VERSION)**

Service was performed by electronic mail via the USDC ECF Court website. I concurrently sent a courtesy copy of the foregoing document by FedEx overnight to the persons below marked with an asterisk (*).

Gail J. Standish* gstandish@winston.com	Dan K. Webb dwebb@winston.com
Erin R. Ranahan eranahan@winston.com	Stephen V. D'Amore sdamore@winston.com
WINSTON & STRAWN LLP 333 S. Grand Avenue Los Angeles, CA 90071-1543	Cornelius M. Murphy (<i>admitted pro hac vice</i>) nmurphy@winston.com
	Bryna J. Dahlin* (<i>admitted pro hac vice</i>) bdahlin@winston.com
	WINSTON & STRAWN LLP 35 W. Wacker Drive Chicago, IL 60601-9703

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on October 15, 2013, at Los Angeles, California.

/s/ Consuelo M. Lopez
Consuelo Lopez