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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

THE AMERICAN BEVERAGE  
ASSOCIATION, CALIFORNIA  
RETAILERS ASSOCIATION,  
CALIFORNIA STATE OUTDOOR  
ADVERTISING ASSOCIATION,

Plaintiffs,

vs.

THE CITY AND COUNTY OF SAN  
FRANCISCO,

Defendant.

Case No. 3:15-cv-03415 EMC

**BRIEF OF AMICI CURIAE AMERICAN  
HEART ASSOCIATION, AMERICAN  
MEDICAL ASSOCIATION, CALIFORNIA  
MEDICAL ASSOCIATION, CENTER FOR  
SCIENCE IN THE PUBLIC INTEREST,  
CHANGELAB SOLUTIONS, AND PUBLIC  
HEALTH LAW CENTER IN SUPPORT OF  
DEFENDANT’S MOTION FOR SUMMARY  
JUDGMENT AND IN OPPOSITION TO  
PLAINTIFFS’ MOTION FOR SUMMARY  
JUDGMENT**

Date: May 20, 2021  
Time: 1:30 p.m.  
Judge: Edward M. Chen  
Courtroom: 5, 17<sup>th</sup> Floor

Trial Date: October 25, 2021

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**Expert Reports**

- HSR Expert Report of David Hammond, Ph.D., June 12, 2020
- KSR Supplemental Expert Report of Dr. Richard A. Kahn, June 12, 2020
- SR Expert Report of Hilary Seligman, Sept. 18, 2020
- WSR Expert Report of Walter Willett, June 11, 2020
- WRR Expert Rebuttal Report of Walter Willett, Sept. 18, 2020

**Other Abbreviations**

- AAP American Academy of Pediatrics
- ABA American Beverage Association
- ADA American Diabetes Association
- AMA American Medical Association
- APHA American Public Health Association
- CDC Centers for Disease Control and Prevention
- DGAC Dietary Guidelines Advisory Committee
- FDA U.S. Food and Drug Administration
- GRAS Generally Recognized As Safe
- HHS U.S. Dept. of Health and Human Services
- IOM Institute of Medicine (now “National Academy of Medicine”)
- NFP Nutrition Facts Panel
- NIFLA National Institute of Family & Life Advocates
- RCT Randomized controlled trial
- SSB Sugar-sweetened beverage
- T2D Type 2 diabetes

1 **STATEMENT OF INTEREST OF *AMICI CURIAE***

2 *Amici curiae* are national and California public health and medical organizations, who  
 3 seek to share their expertise with the Court to explain why the challenged warning is a factual and  
 4 uncontroversial statement reflecting the consensus of the public health and medical communities.  
 5 Some *amici* were directly involved in the rulemakings at the Food and Drug Administration  
 6 (FDA) that are the subject of certain arguments in this case, and thus are well positioned to  
 7 provide the Court with an accurate account of those rulemakings. Warnings and other health-  
 8 related disclosures that help the public to make informed choices about their health are of critical  
 9 importance to *amici*'s work. Specific information about each *amicus* appears in the Appendix.<sup>1</sup>

10 **INTRODUCTION AND SUMMARY OF ARGUMENT**

11 Drinking beverages with added sugar can cause weight gain. Weight gain increases the risk  
 12 of obesity and type 2 diabetes (T2D). These are facts, and they are uncontroversial.

13 Clearly communicating these facts is an urgent priority for the City and County of San  
 14 Francisco. Almost half of all adults in San Francisco are overweight or obese. SR ¶ 10.<sup>2</sup> They face  
 15 significantly increased risk of T2D, heart disease, and stroke.<sup>3</sup> Although uncontroversial, the facts  
 16 about sugar-sweetened beverages (SSBs) are not yet known to many San Franciscans – including  
 17 many people with prediabetes or T2D – who consume SSBs at high levels. SR ¶¶ 41-42.

18 San Francisco's warning is a reasonable response to a serious problem, enhancing individ-  
 19 uals' ability to make informed choices about their health. "Protection of the robust and free flow of  
 20 accurate information is the principal First Amendment justification for protecting commercial  
 21 speech, and requiring disclosure of truthful information promotes that goal." *CTIA - The Wireless*  
 22 *Ass'n v. Berkeley* [*CTIA II*], 928 F.3d 832, 852 (9th Cir. 2019), *cert. denied* (2019). Therefore,  
 23 factual and uncontroversial disclosures and warnings attached to commercial advertisements are

24 <sup>1</sup> This Memorandum of Law is filed pursuant to the Court's Order to Permit Filing of Amicus  
 25 Briefs, February 12, 2021. No counsel of any party to this proceeding authored any part of this  
 26 brief. No party or party's counsel, or person other than *amici* and their members, contributed  
 money to the preparation or submission of this brief. None of the *amici* issue stock; no publicly  
 held corporation owns 10% or more of the stock in any *amicus curiae*.

27 <sup>2</sup> References to Expert Reports are abbreviated throughout as in San Francisco's Memorandum.  
 See Table of Abbreviations, *supra*, after Table of Authorities.

28 <sup>3</sup> CDC, *Adult Obesity Causes & Consequences* (2020), <https://bit.ly/3utU1qy>; see also SR ¶¶ 12-13.

1 subject to a deferential standard of First Amendment review, which requires only that the  
 2 statement be reasonably related to a substantial government interest and not “unjustified or unduly  
 3 burdensome.” *Am. Beverage Ass’n v. City & Cty. of San Francisco* [ABA III], 916 F.3d 749, 755-  
 4 56 (9th Cir. 2019) (*en banc*) (citing *Nat’l Inst. of Family & Life Advocates [NIFLA] v. Becerra*,  
 5 138 S. Ct. 2361, 2372 (2018) and *Zauderer v. Ofc. of Discipl. Counsel*, 471 U.S. 626, 651  
 6 (1985)).<sup>4</sup>

7 That standard is met here. SSBs’ contribution to weight gain, and weight gain’s connection  
 8 to obesity and T2D, are factual and uncontroversial. These facts are established by scientific  
 9 evidence and are recognized by virtually every major public health authority. The warning  
 10 requirement is neither unjustified nor unduly burdensome: it is reasonably related to San  
 11 Francisco’s substantial interest in the ability of its citizens to make informed decisions about their  
 12 health and, far from drowning out advertisers’ messages, it leaves fully 90% of the space to be  
 13 dedicated to product promotion.

14 Plaintiffs seek to manufacture controversy by misrepresenting the warning and the  
 15 evidence that supports it. They incorrectly represent the warning as suggesting to reasonable  
 16 consumers that SSBs cause weight gain under *isocaloric* conditions (*i.e.*, when calorie intake from  
 17 other sources is adjusted so that overall caloric intake stays constant), and they broadly and  
 18 repeatedly mischaracterize the statements of FDA.

## 19 ARGUMENT

### 20 I. THE WARNING IS FACTUAL AND UNCONTROVERSIAL.

21 The required warning consists of three factual statements: (1) Drinking SSBs can cause  
 22 weight gain; (2) Weight gain increases the risk of obesity; and (3) Weight gain increases the risk of  
 23

24  
 25 <sup>4</sup> The *en banc* panel may have treated the requirement that the disclosure be “‘reasonably related’  
 26 to a substantial government interest,” 916 F.3d at 755, as subsumed under “not unjustified or  
 27 unduly burdensome” in a three-factor test that did not specifically mention “reasonably related.”  
 28 *Id.* at 756. In any event, the Court found that an earlier, larger version of the warning did not pass  
 muster because it was “unduly burdensome.” The Court therefore did not consider the other  
 factors, including whether the statement was factual and uncontroversial, so that *Zauderer* review  
 applied in the first place. The Court reasoned that, because the warning failed *Zauderer* review, it  
 could not survive any higher level of scrutiny.



1 T2D. The literal truth of each is so well established as to be wholly uncontroversial,<sup>5</sup> and none is  
2 misleading. *Cf. CTIA II*, 928 F.3d at 847 (upholding required warning because each component  
3 was literally true and not misleading).

4 Plaintiffs do not dispute Statements (2) and (3). Nor could they. Of course weight gain  
5 increases the risk of obesity. People cannot become obese without gaining weight. The connection  
6 is not merely theoretical: weight gain, including that from SSB consumption, can cause obesity.  
7 SR ¶ 26. And there is no scientific dispute that weight gain increases the risk of T2D. WSR ¶ 64  
8 (citing meta-analyses). “Excess weight is an established risk factor for type 2 diabetes.”<sup>6</sup> In fact,  
9 89% of diabetes patients are overweight or obese.<sup>7</sup>

10 Unable to challenge the evidence that weight gain increases the risk of obesity and T2D,  
11 Plaintiffs argue that it is false – or at least controversial or misleading – to state that “Drinking  
12 beverages with added sugar(s) can cause weight gain.” It is not.

13 **A. SSB Consumption Leads to Weight Gain.**

14 The “evidence that SSB intake is causally related to increased risk of obesity” is  
15 “compelling” and “meets all key criteria commonly used to evaluate causal relationships in  
16 epidemiology,”<sup>8</sup> rendering it uncontroversial.

17 There have been two long-term, well-powered (large) randomized controlled trials (RCTs)  
18 on point. KSR ¶ 47.<sup>9</sup> In one, a definitive study of over 500 children, those receiving 8 ounces per  
19 day of an SSB had a significantly greater increase in body weight and fat after 18 months than  
20 children receiving a similar sugar-free drink.<sup>10</sup> In the other large trial, overweight and obese

21 \_\_\_\_\_  
22 <sup>5</sup> *NIFLA* introduced one further, narrow circumstance in which a disclosure may be controversial,  
23 and therefore subject to more stringent review: if “the compelled statement took sides in a heated  
24 political controversy.” *CTIA II*, 928 F.3d at 845. That circumstance is not relevant here.

25 <sup>6</sup> Robert Eckel *et al.*, *Obesity and Type 2 Diabetes*, 34 *DIABETES CARE* 1424, 1424 (2011),  
26 <http://bit.ly/2M2oNFH>.

27 <sup>7</sup> CDC, *National Diabetics Statistics Report 2020* at 9 (2020), <https://bit.ly/3kcjmRm>.

28 <sup>8</sup> Frank Hu, *Resolved: There Is Sufficient Scientific Evidence That Decreasing Sugar-Sweetened  
Beverage Consumption Will Reduce the Prevalence of Obesity and Obesity-Related Diseases*, 14  
*OBSIDITY REVIEWS* 606, 612 (2013), <https://bit.ly/3s0n0Ac>.

<sup>9</sup> Dr. Kahn criticizes both studies for not keeping total calorie intake constant between the two test  
groups. KSR ¶ 47. But in real life, people don’t keep their total calorie intake constant when  
they increase or decrease SSB consumption, as evidenced by the results of non-isocaloric studies.

<sup>10</sup> Janne de Ruyter *et al.*, *A Trial of Sugar-Free of Sugar-Sweetened Beverages and Body Weight  
in Children*, 367 *NEJM* 1397 (2012) (discussed at WSR ¶ 43), <https://bit.ly/3qtZknz>.

1 adolescent SSB drinkers who received interventions to motivate reduced SSB consumption  
 2 experienced significantly less increase in body-mass index than those in a control group.<sup>11</sup> The  
 3 results are corroborated by smaller-scale, well-designed RCTs.<sup>12</sup>

4 The evidence from RCTs is further corroborated by large prospective cohort studies (long-  
 5 term investigations tracking a population without intervention) across various populations,  
 6 including African-American women (59,000 subjects, 10 years),<sup>13</sup> middle-aged Chinese adults in  
 7 Singapore (43,000+ subjects, 5+ years),<sup>14</sup> and U.S. nurses and health professionals (120,000+  
 8 subjects in 3 cohorts, 12-20 years).<sup>15</sup> A review by the Harvard School of Public Health concluded:  
 9 “Findings from well-powered prospective cohorts have consistently shown a significant associa-  
 10 tion ... between SSB consumption and long-term weight gain and risk of type 2 diabetes.”<sup>16</sup>  
 11 Highly respected systematic reviews of the overall scientific evidence, including both RCTs and  
 12 cohort studies, also conclusively establish that SSB consumption can cause weight gain.<sup>17</sup>

14 <sup>11</sup> Cara Ebbeling *et al.*, *A Randomized Trial of Sugar-Sweetened Beverages and Adolescent Body*  
 15 *Weight*, 367 NEJM 407 (2012) (*see* WSR ¶ 41), <https://bit.ly/2ZqjOBU>. (Dr. Kahn criticizes the  
 16 study because the difference between the two groups did not persist significantly after a year  
 without further intervention, but that shows only that the interventions did not make lasting  
 changes in adolescent behavior, not that reducing SSB consumption did not reduce weight gain.)

17 <sup>12</sup> *E.g.* Kelly Higgins & Richard Mattes, *A Randomized Controlled Trial Contrasting the Effects*  
 18 *of 4 Low-Calorie Sweeteners and Sucrose on Body Weight in Adults with Overweight or Obesity*,  
 109 AM. J. CLIN. NUTR. 1288 (2019), <http://bit.ly/3bohC3b>; Janet James *et al.*, *Preventing*  
 19 *Childhood Obesity by Reducing Consumption of Carbonated Drinks*, 328 BMJ 1237 (2004),  
<https://bit.ly/2ZqjOtO>; Anne Raben *et al.*, *Sucrose Compared with Artificial Sweeteners*, 76 AM.  
 J. CLIN NUTR. 721 (2002), <http://bit.ly/3udKVhs>.

20 <sup>13</sup> Julie Palmer *et al.*, *Sugar-Sweetened Beverages and Incidence of Type 2 Diabetes Mellitus in*  
*African American Women*, 168 ARCH. INTERN. MED. 1487 (2008), <https://bit.ly/3qEyc5C>.

21 <sup>14</sup> Andrew Odegaard *et al.*, *Soft Drink and Juice Consumption and Risk of Physician-diagnosed*  
*Incident Type 2 Diabetes*, 171 AM. J. EPIDEMIOLOGY 701 (2010), <https://bit.ly/2ZweuNc>.

22 <sup>15</sup> Dariush Mozaffarian *et al.*, *Changes in Diet and Lifestyle and Long-Term Weight Gain in*  
*Women and Men*, 364 NEW ENGLAND J. MED. 2392 (2011), <https://bit.ly/3rXYiAG>.

23 <sup>16</sup> Hu, *Resolved*, *supra* note 8, at 606.

24 <sup>17</sup> *See* Lisa Te Morenga *et al.*, *Dietary Sugars and Body Weight: Systematic Review and Meta-*  
 25 *Analyses of Randomised Controlled Trials and Cohort Studies*, 346 BMJ e7492, e7492 (2012),  
 (finding strong evidence that “intake of free sugars or sugar sweetened beverages is a determinant  
 26 of body weight”), <https://bit.ly/2NyvuQh>; Vasanti Malik *et al.*, *Intake of Sugar-Sweetened*  
 27 *Beverages and Weight Gain*, Abstract, 84 AM. J. CLINICAL NUTR. 274 (2006) (“The weight of  
 28 epidemiologic and experimental evidence indicates that a greater consumption of SSBs is  
 associated with weight gain and obesity”), <https://bit.ly/3pEd5z2>; Miriam Vos *et al.*, *Added*  
*Sugars and Cardiovascular Disease Risk in Children: A Scientific Statement from the American*  
*Heart Association*, 135 CIRCULATION e1017, e1033 (2017) (“Higher SSB and added sugars intake  
 has been strongly linked to excess weight gain and an increased risk of obesity” in children and  
 adolescents), <https://bit.ly/3uwvAc4>.

**B. Whether SSB Consumption Leads to Weight Gain under Isocaloric Conditions Is Immaterial.**

Plaintiffs seek to counter the scientific evidence linking SSB consumption and weight gain by pointing to studies finding the link inconclusive *under isocaloric conditions*. *E.g.*, Pl. Mem. at 18. But that is irrelevant. In the real world, caloric intake does not stay constant when more SSBs are consumed because SSBs tend to be consumed in large part in addition to, rather than instead of, other sources of calories. WRR ¶ 39, WSR ¶ 38. Nor is it likely that consumers would understand the warning to refer to isocaloric conditions.

Because much of the effect of SSBs on weight gain is due to the fact that SSBs increase caloric intake, “adjusting” for total energy intake would “artificially underestimate the association between SSBs and body weight.”<sup>18</sup> To assess whether football increases the risk of brain damage, for example, one would not design a study that adjusts for frequency or severity of head injuries. The issue is not whether severe head injuries suffered while playing football are more detrimental than other equally severe head injuries. Rather, football players are more likely to develop brain damage precisely *because* they are more likely to suffer frequent and severe head injuries. Similarly, SSB drinkers gain more weight, largely *because* SSBs lead them to consume more calories. The warning makes no claim that SSB calories are more detrimental than other calories.

Nor does it matter why SSB consumption does not lead to a corresponding reduction in intake of other calories. Whether it is explained by liquids’ tendency to satisfy hunger less than do solid foods, *see* WSR ¶¶ 61-62; WRR ¶ 40, habit, or other mechanisms, RCTs and cohort studies show that greater SSB consumption in a population results in more weight gain in that population.

Plaintiffs’ refrain that “a calorie is a calorie,” Pl. Mem. at 3, 23, 29, is beside the point. SSB consumption tends to result in overall greater overall calorie consumption. Consequently, it is both true that “Drinking beverages with added sugar(s) can cause weight gain,” and true in practice that drinking such beverages often *does* cause weight gain.<sup>19</sup>

<sup>18</sup> Hu, *Resolved*, *supra* note 8, at 608.

<sup>19</sup> It is similarly irrelevant whether SSBs increase diabetes risk in ways other than weight gain. In fact, the 2015 DGAC noted evidence that SSBs increase the risk of T2D in adults even beyond their contribution to weight gain. 2015 DGAC, *Sci. Report*, at 344, <https://bit.ly/3bkR0jL>. But the San Francisco warning makes no claim on that score either. It states only that weight gain increases T2D risk, an undisputed fact.

1           **C.     SSB Consumption Causes Weight Gain *Because It Can Increase Caloric Imbalance.***

2           Plaintiffs argue that weight gain is caused not by SSB consumption, but by “caloric imbalance” (consuming more calories than one expends). Pl. Mem. at 17-18. But those are not rival  
3 explanations. Caloric imbalance explains why SSBs lead to weight gain. Simply put, the more one  
4 consumes SSBs, the greater the risk that one will consume more calories than one needs.

5           To say that a soda drinker’s weight gain is caused by caloric imbalance and therefore not  
6 caused by soda consumption is comparable to a criminal defendant charged with pushing a victim  
7 out the window arguing that the fall was caused not by being pushed, but by gravity.

8           Similarly, the fact that concussions are caused by hard hits to the head does not make false  
9 the statement that playing football can cause concussions. To the contrary, it explains why the  
10 statement is true: Playing football increases the risk of hard hits to the head, much as consuming  
11 SSBs increases the risk of caloric imbalance.

12           SSB consumption is a significant part of the explanation for population weight gain. For  
13 that reason, reducing soda consumption can contribute significantly to preventing weight gain.

14           **D.     The Link Between SSB Consumption and Weight Gain Is Not Controversial.**

15           Far from being controversial, the link between SSBs and weight gain, with consequent  
16 health harms, is recognized by virtually every public health authority with relevant expertise.  
17 Those authorities also unanimously advise the public to eliminate or limit SSB consumption:

- 18
- 19       • Centers for Disease Control and Prevention (CDC): “Frequently drinking sugar-sweetened  
20 beverages is associated with weight gain/obesity [and] type 2 diabetes”;<sup>20</sup> communities are  
advised to “discourage consumption of sugar-sweetened beverages.”<sup>21</sup>
  - 21       • World Health Organization: “[R]educing consumption of sugar-sweetened beverages  
22 would ... reduce the risk of ... overweight and obesity” in both children<sup>22</sup> and adults.<sup>23</sup>
  - 23       • American Heart Association: “There is a robust body of evidence that SSB consumption is

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25 <sup>20</sup> CDC, *Get the Facts: Sugar-Sweetened Beverages and Consumption* (2020),  
<http://bit.ly/3drk8sq>.

26 <sup>21</sup> Laura Kahn, *et al.*, CDC, *Recommended Community Strategies and Measurements to Prevent  
Obesity in the U.S.*, MORB. AND MORT. WEEKLY REP. (July 24, 2009), <http://bit.ly/3jZNz5Q>.

27 <sup>22</sup> World Health Org. [WHO], *Reducing Consumption of Sugar-sweetened Beverages to Reduce  
the Risk of Childhood Overweight and Obesity* (updated 2019), <https://goo.gl/5pDE9K>.

28 <sup>23</sup> WHO, *Reducing Consumption of Sugar-sweetened Beverages to Reduce the Risk of Unhealthy  
Weight Gain in Adults* (updated 2019), <https://goo.gl/Pn46gt>.

detrimental to health and ... associated with increased risk of ... T2DM [and] obesity.”<sup>24</sup>

- Institute of Medicine (IOM): “[R]esearchers have found strong associations between intake of sugar-sweetened beverages and weight gain.... [The link of SSBs] to obesity is stronger than that observed for any other food or beverage.”<sup>25</sup>
- 2015 Dietary Guidelines Advisory Committee (DGAC): “Obesity [and] type 2 diabetes ... are major public health concerns. Added sugars intake negatively impacts ... these conditions, and strong evidence supports reducing added sugars intake to reduce health risks.”<sup>26</sup>
- 2020 DGAC: “Among the beverages examined in the [Nutrition Evidence Systematic Review], only SSB intake was associated with adiposity and this held in both children and adults.... [I]t is important to continue encouraging only limited intake of this class of beverages.”<sup>27</sup>
- American Public Health Association (APHA): “Consumption of [SSBs] is a significant contributor to the obesity epidemic and increases the risk of type 2 diabetes.”<sup>28</sup>
- American Academy of Pediatrics (AAP): “Potential health problems [are] associated with high intake of sweetened drinks, [including] overweight or obesity”<sup>29</sup>; pediatricians “should promote a diet free of sugar-sweetened beverages.”<sup>30</sup>
- American Diabetes Association (ADA): “Research has shown that drinking sugary drinks is linked to type 2 diabetes”; ADA “recommends that people should avoid intake of sugar-sweetened beverages.”<sup>31</sup>
- American Medical Association (AMA): The AMA “acknowledges the adverse health impacts of sugar-sweetened beverage (SSB) consumption, and support[s] evidence-based strategies to reduce the consumption of SSBs,” including warning labels.<sup>32</sup>

If it is controversial that SSBs cause weight gain, with its consequent health risks, it is difficult to imagine what health warning might ever be uncontroversial.

<sup>24</sup> Linda Van Horn *et al.*, *Recommended Dietary Pattern to Achieve Adherence to the American Heart Association/American College of Cardiology (AHA/ACC) Guidelines: A Scientific Statement from the American Heart Association*, 134 CIRCULATION e505 (2016), <https://bit.ly/2ZOGiwA>. “T2DM” refers to Type 2 Diabetes Mellitus.

<sup>25</sup> IOM, *Accelerating Progress in Obesity Prevention* 167 (2012), <https://bit.ly/2NFUYeO>.

<sup>26</sup> 2015 DGAC, *Sci. Report, supra* note 19, at 346.

<sup>27</sup> 2020 DGAC, *Sci. Report*, Pt. D, Ch. 10, at 26, <https://bit.ly/2Mbl8pg>. The 2020 DGAC found moderate evidence that “dietary patterns ... low in sugar-sweetened foods and beverages ... are associated with favorable outcomes related to body weight.” *Id.*, Ch. 8, at 18. The 2020 DGAC also found moderate evidence that “higher sugar-sweetened beverage intake is associated with greater adiposity in children.” *Id.*, Pt. D, Ch. 10, at 13. The evidence was “limited” for adults, *id.*, largely because fewer well-designed RCTs were published between 2012 and 2019, the period encompassed in its review. *Id.* at 7.

<sup>28</sup> APHA, *Taxes on Sugar-Sweetened Beverages*, APHA Policy Statement 20072 (2012), <https://bit.ly/3st6mcG>.

<sup>29</sup> AAP, *Policy Statement, Soft Drinks in Schools*, 113 PEDIATRICS 152, 152 (2004), <https://bit.ly/37tldvX>.

<sup>30</sup> Stephen Daniels, *et al.*, *The Role of the Pediatrician in Primary Prevention of Obesity*, AAP Guidance, 136 PEDIATRICS e275, e275 (2015), <https://bit.ly/3k0xQ6F>.

<sup>31</sup> ADA, *Myths About Diabetes*, <http://bit.ly/3bE6PCc>

<sup>32</sup> AMA, *Strategies to Reduce the Consumption of Beverages with Added Sweeteners* (2017), <http://bit.ly/3uzQxTG>.

1           **E.       Plaintiffs Distort the FDA Record on SSB Risks.**

2           FDA likewise concluded in a 2016 rulemaking that “the evidence on sugar-sweetened  
3 beverages and body weight/adiposity [body fat] is strong and consistent.” 81 Fed. Reg. 33742,  
4 33803.<sup>33</sup> Nevertheless, Plaintiffs argue that the link between SSBs and weight gain is  
5 controversial, pointing to statements in FDA’s 2016 Nutrition Facts Panel (NFP) rulemaking, in  
6 which the agency was considering whether to add a new line and Daily Value for added sugars to  
7 *all* packaged foods (including but not limited to SSBs). Plaintiffs distort the record:

8           **Plaintiffs:** “U.S. consensus reports do not support a cause and effect relationship between  
9 added sugars consumption and risk of obesity.” Pl. Mem. at 10, 18 (quoting 81 Fed. Reg. at  
10 33760). **Context:** Plaintiffs elide the distinction between SSBs and “added sugars,” obscuring that  
11 FDA’s conclusion about SSBs and weight gain was the *opposite* of the one Plaintiffs suggest. FDA  
12 declined to conclude that *added sugars* cause weight gain, because a majority of studies of added  
13 sugars focus only on beverages but SSBs are not the only sources of added sugars in the diet. FDA  
14 actually was clear that there is “strong and consistent” evidence linking SSBs with weight gain and  
15 obesity. The agency was not willing to rely *only* on such evidence, given that it was issuing a rule  
16 to label added sugars on *all* packaged foods, including non-SSB sources of sugars. 81 Fed. Reg. at  
17 33803.<sup>34</sup> Notably, FDA had no need to do so, as the Dietary Guidelines advise limiting added  
18 sugars to less 10% percent of the Daily Value for a 2000-calorie diet, and such advice provides  
19 ample basis for labeling of added sugars.

20           FDA’s statement that warnings linking added sugars to obesity and T2D were “not consist-  
21 ent with [its] review of the evidence,” 81 Fed. Reg. at 33829, cited by Plaintiffs, Pl. Mem. at 1, is

22 <sup>33</sup> FDA, *Food Labeling: Revision of the Nutrition and Supplement Facts Labels* (May 27, 2016).

23 <sup>34</sup> “A substantial amount of research has been conducted on the association between consumption  
24 of sugar-sweetened beverages and risk of chronic disease.... The 2010 DGAC concluded that an  
25 increased intake of sugar-sweetened beverages is associated with greater adiposity in children.  
26 Since 2010, additional evidence on sugar sweetened beverages and their association with risk of  
27 disease has emerged. The 2015 DGAC concluded that there is strong and consistent evidence that  
28 intake of added sugars from foods and/or beverages is associated with excess body weight in  
children and adults. *We note that the majority of the evidence that the 2015 DGAC relied on for  
this conclusion was from studies on the relationship between intake of sugar-sweetened beverages  
and body weight. Although the evidence on sugar-sweetened beverages and body weight/adiposity  
is strong and consistent, sugar-sweetened beverages represent only 39 percent of food sources of  
added sugars.... [S]ugar-sweetened beverages may not be an appropriate proxy or surrogate for  
total added sugars intake.*” 81 Fed. Reg. at 33803 (emphasis added).

1 likewise based on the agency’s caution in generalizing from the robust data about SSBs to make  
 2 conclusions about added sugars generally. A commenter had suggested that FDA should adopt a  
 3 warning label scheme in addition to, or in lieu of, the new line for added sugars on the NFP. Such  
 4 a proposal was inconsistent with the agency’s approach to the NFP, which does “not require  
 5 warning labels or disclaimers for other nutrients on the label.” *Id.*<sup>35</sup> FDA noted, in passing, that  
 6 such a proposal was “not consistent with our review of the evidence (see our response to  
 7 comments 136 and 137),” *id.* – referring to the section described just above: FDA simply had no  
 8 need to extrapolate from the strong evidence about SSBs and weight gain as its basis for labeling  
 9 overall added sugars. *Id.* at 33803 (Response to Comment 136).

10 **Plaintiffs**: “[A]dded sugars, including sugar-sweetened beverages, are no more likely to  
 11 cause weight gain in adults than any other source of energy.” Pl. Mem. at 1, 12 (quoting 79 Fed.  
 12 Reg. 11880, 11904<sup>36</sup>). **Context**: Plaintiffs twice misleadingly omit the qualifier “under isocaloric  
 13 controlled conditions.” *Id.* Outside research labs, SSBs are *not* consumed under isocaloric  
 14 controlled conditions. As FDA explained: “Although foods containing solid fats and added sugars  
 15 do not contribute to weight gain any more than another calorie source, they make up a significant  
 16 percentage of the American diet and are a source of excess calories.” *Id.*

17 **Plaintiffs**: Added sugar is “generally recognized as safe” (GRAS) by FDA, such that it  
 18 may be used in food and beverages “with no limitation other than current good manufacturing  
 19 practice.” Pl. Mem. at 18 (quoting 21 C.F.R. §§ 184.1, 184.1866). **Context**: This conclusion about  
 20 *added sugars* is largely irrelevant to the evidence on the harms of SSBs. In any event, FDA’s  
 21 determination that added sugar is GRAS dates to 1988, *see* 53 Fed. Reg. 44862,<sup>37</sup> before  
 22 substantial evidence emerged linking SSBs to weight gain, *see id.* at 44865, and has never been  
 23 revisited.<sup>38</sup> Moreover, already in 1988, FDA could not determine “whether a significant increase in  
 24

25 <sup>35</sup> Such a product warning was not within FDA’s purview in a rulemaking, under the National  
 26 Labeling and Education Act, 21 U.S.C. § 323(q)(2)(A), on requiring added sugars in nutritional  
 27 labeling across all product categories. FDA lacked any legislative mandate to require warnings.

28 <sup>36</sup> FDA, *Food Labeling: Revision of the Nutrition and Supplement Facts Labels* (Mar. 3, 2014).

<sup>37</sup> Dept. of HHS, *GRAS Status of Corn Sugar, Corn Syrup, Invert Sugar, and Sucrose* (Nov. 7, 1988).

<sup>38</sup> *See* U.S. Govt. Accountability Ofc., *FDA Should Strengthen Its Oversight of Food Ingredients Determined to Be Generally Recognized as Safe (GRAS)* at 21 (2010), <https://bit.ly/3jZYvjS>

1 [added sugars] would constitute a dietary hazard.” 53 Fed. Reg. at 44863. A significant increase in  
 2 added sugars consumption *has* in fact occurred since then.<sup>39</sup>

3 **Plaintiffs**: “The FDA has concluded ... that sugar-sweetened beverages “can be a part of a  
 4 healthy dietary pattern.” Pl. Mem. at 19 (quoting 81 Fed. Reg. at 33829). **Context**: In reality FDA  
 5 said that “*added sugars* can be a part of a healthy dietary pattern” in small quantities. 81 Fed. Reg.  
 6 at 33829 (emphasis added). What can be included in a healthy diet are “nutrient dense foods with  
 7 small amounts of added sugars, such as whole-grain breakfast cereals or fat-free yogurt” or “limit-  
 8 ed amounts of added sugars ... to improve the palatability” of tart fruits and vegetables, *id.* at  
 9 33818, not SSBs. A single 20-ounce Coke contains 130% of the Daily Value for added sugars.<sup>40</sup>

10 **Plaintiffs**: “[A]dded sugars are not chemically different than sugars that are naturally  
 11 present in foods.” Pl. Mem. at 23 (quoting 81 Fed. Reg. at 33773). **Context**: This is irrelevant.  
 12 FDA distinguishes between added and naturally present sugars in foods in labeling, even though  
 13 they are chemically identical, because added sugars are linked to an excess of empty calories.<sup>41</sup>

14 **Plaintiffs**: “The recommendation that individuals not consume more than 10% of their  
 15 daily calories in the form of added sugar is not based on ... any determination that consuming  
 16 more than that amount causes weight gain.” Pl. Mem. at 26. **Context**: In reality, FDA repeatedly  
 17 tied high consumption of added sugars to issues with “weight management.” *E.g.* 79 Fed. Reg. at  
 18 11903, 11904; 81 Fed. Reg. at 33818. Federal dietary guidelines are based on the need to consume  
 19 sufficient amounts of various vital nutrients without exceeding overall calorie limits. Because  
 20 calories from added sugars do not contribute nutrients, 79 Fed. Reg. at 11903, “it is very unlikely  
 21 that [most people] can consume a high quality diet ... to meet nutrient needs as well as a  
 22 significant amount of added sugars and still stay within calorie limits.” 81 Fed. Reg. at 33806.

23 \_\_\_\_\_  
 24 (“Since 1982, FDA has not systematically reconsidered the safety of substances considered to be  
 GRAS as new scientific information has come to light.”).

25 <sup>39</sup> See Elyse Powell *et al.*, *Added Sugars Intake Across the Distribution of US Children and Adult*  
 26 *Consumers: 1977–2012*, 116 J. ACAD. NUTR. & DIETETICS 1543 (2016), <https://bit.ly/3dtoWgG>  
 (finding significant increase in added sugars consumption in U.S. from 1977 to 2003, only partly  
 offset by a decline from 2003 to 2012).

27 <sup>40</sup> See Coca-Cola Co., *Coca-Cola*, <https://bit.ly/2NwknrC> (click “Nutrition Facts”).

28 <sup>41</sup> “We ... disagree that there is no material difference between added and intrinsic sugars for  
 purposes of achieving a healthy dietary pattern to avoid excess discretionary calories from added  
 sugars and reduced risk of chronic disease.” 81 Fed. Reg. at 33762.



1 Exceeding calorie limits, of course, leads to weight gain.

2 In sum, FDA findings support, rather than undermine, the factual basis and reasonableness  
3 of San Francisco's SSB warning. The Ordinance is based on a view of the science fully congruent  
4 with that of FDA. Ruling that the City cannot develop a more effective means of communicating a  
5 known public health hazard would threaten "the happy incident[] of the federal system that a  
6 single courageous state [or locality] may, if its citizens choose, serve as a laboratory; and try novel  
7 social and economic experiments." *New State Ice Co. v. Liebmann*, 285 U.S. 262, 311 (1932)  
8 (Brandeis, J., diss.). Required calorie counts on restaurant menus, for example, originated in a city,  
9 before they were adopted by states and then by the nation as a whole.<sup>42</sup> The Court should be wary  
10 of a regime that would stifle such innovation.

11 **F. The Warning Is Not Misleading.**

12 Finally, the warning is not "misleading and, in that sense, untrue." *CTIA II*, 928 F.3d at  
13 847. Plaintiffs complain that the warning misleadingly implies: (1) SSBs cause weight gain, even  
14 when consumed in moderation, Pl. Mem. at 10; and (2) "[T]here is something uniquely and  
15 inherently harmful" about SSBs, compared to other sources of added sugars or of calories. *Id.* at  
16 11. But neither of these implications is misleading, except on the most strained interpretations.

17 Even moderate consumption – to say nothing of what may be *perceived* as moderate  
18 consumption<sup>43</sup> – does increase the risk of weight gain. Replacing just 8 ounces of SSB a day with  
19 the same amount of water or diet beverage results in less weight gain.<sup>44</sup> And SSBs *are* uniquely  
20 harmful. The Institute of Medicine, citing the 2010 DGAC Scientific Report, described the link  
21 between SSBs and obesity as "stronger than that observed for any other food or beverage."<sup>45</sup> SSBs  
22 are the largest source of added sugars in the American diet, *id.* ¶ 8, SR ¶ 24, without  
23 counterbalancing nutritional benefits, WSR ¶ 9, and are particularly unlikely to be compensated  
24 for with a reduction in other calories. *Id.* at ¶¶ 61-62; WRR ¶¶ 13, 39; SRR ¶ 13.

25 \_\_\_\_\_  
26 <sup>42</sup> Christine Cusick, *Menu Labeling Laws: A Move from Local to National Regulation*, 51 SANTA CLARA L. REV. 989 (2011), <https://bit.ly/3s7WISo>.

27 <sup>43</sup> See SR ¶ 42 (noting diabetes patients who think drinking "a couple" of SSBs a day is "fine").

28 <sup>44</sup> See An Pan *et al.*, *Changes In Water and Beverage Intake and Long-Term Weight Changes*, 37 INT'L J. OBESITY 1378 (2013), <https://bit.ly/3uy0Uak>; de Ruyter, *supra* note 10.

<sup>45</sup> IOM, *Accelerating Progress*, *supra* note 25.

1 If the mere presence of a warning misleadingly implies that a product is harmful in some  
 2 unique way, or harmful in any quantity, Pl. Mem. at 10, 11, few warnings could withstand  
 3 scrutiny. Even for a product as uniquely harmful – among products legally sold for human  
 4 consumption – as tobacco, until 2016 cigarette manufacturers could have argued that warnings  
 5 about addictiveness and disease risk were misleading because they were not required for cigars,  
 6 which pose similar risks. *See* 81 Fed. Reg. 28973.<sup>46</sup> Liquor companies could equally well argue  
 7 that warnings that “alcoholic beverages . . . may cause health problems, 27 U.S.C. § 215(a)(2), are  
 8 misleading, because someone might think that consuming one drop would lead to health  
 9 problems.<sup>47</sup> There is no reason to think that the City’s warning is more likely to mislead than are  
 10 any “health and safety warnings long considered permissible.” *NIFLA*, 138 S. Ct. at 2376. The  
 11 legality of such warnings is unquestioned. *Id.*

12 In sum, the warning is not misleading. Its claims are factual and uncontroversial.

13 **II. BECAUSE THE WARNING IS NOT UNJUSTIFIED OR UNDULY**  
 14 **BURDENSOME, IT DOES NOT OFFEND THE FIRST AMENDMENT.**

15 Because the warning consists only of factual and uncontroversial statements, it is reviewed  
 16 under the standard set out in *Zauderer*. 471 U.S. 626. It passes muster under that standard because  
 17 it is “‘reasonably related’ to a substantial government interest,” *ABA III*, 916 F.3d at 755, and is  
 18 “not unjustified or unduly burdensome.” *Id.* at 756.

19 The warning is reasonably related to the government’s interest in promoting greater public  
 20 understanding of health-related risks and informed consumer decision-making. *See Disc. Tobacco*  
 21 *City & Lottery, Inc. v. United States*, 674 F.3d 509, 564 (6th Cir. 2012) (upholding health warning  
 22 on this basis); *New York State Rest. Ass’n [NYSRA] v. New York City Bd. of Health*, 556 F.3d 114,  
 23 134 (2d Cir. 2009) (same for required posting of calorie information). Lower levels of consumer  
 24 awareness of health information are associated with significantly higher rates of SSB consump-

25 \_\_\_\_\_  
 26 <sup>46</sup> Dept. of HHS, *Deeming Tobacco Products To Be Subject to the Federal Food, Drug, and*  
*Cosmetic Act* (May 10, 2016).

27 <sup>47</sup> If the City tried to avert misunderstandings with a more nuanced warning, far more words  
 28 would be required, and Plaintiffs would certainly redouble their protests that their own message  
 would get drowned out, constituting an undue burden. Plaintiffs seek to set a bar that no warning  
 could clear.

1 tion, as well as with higher rates of obesity and T2D. SR ¶ 42. A recent meta-analysis of 23 studies  
 2 including over 16,000 participants found that SSB warning labels increased attention to Nutrition  
 3 Facts and increased knowledge of the health risks of SSBs. *Id.* ¶ 43.

4 The warning is not unduly burdensome. “A disclosure is ‘unduly burdensome’ when the  
 5 burden ‘effectively rules out’ the speech it accompanies.” *Nationwide Biweekly Admin., Inc. v.*  
 6 *Owen*, 873 F.3d 716, 734 (9th Cir. 2017) (quoting *Ibanez v. Fla. Dep’t of Bus. & Prof’l*  
 7 *Regulation*, 512 U.S. 136 (1994)). Thus disclosures have been struck down when their length  
 8 effectively ruled out fitting qualifications on business cards and letterheads, *Ibanez*, 512 U.S. at  
 9 146-47, or when a 29-word statement, repeated in as many as 13 languages in text at least as large  
 10 as the accompanying advertisement, would “drown[] out” the advertiser’s message on a billboard,  
 11 or, “[m]ore likely, ... ‘effectively rule[] out’” billboard advertising. *NIFLA*, 138 S. Ct. at 2378.  
 12 The Ninth Circuit sitting *en banc* found that an earlier version of the City’s warning would  
 13 similarly “drown out Plaintiffs’ messages and effectively rule out the possibility of having an  
 14 advertisement,” *ABA III*, 916 F.3d at 757, while “the Ordinance’s goals could [have been]  
 15 accomplished with a smaller warning.” *Id.* Now, after the size of the required warning has been  
 16 reduced to a level below which it would be difficult to read when placed on outdoor  
 17 advertisements, HSR ¶ 25, it is clear that the City’s goals could *not* be accomplished with a smaller  
 18 warning.<sup>48</sup>

19 The possibility that a warning about negative health consequences may be incongruent with  
 20 advertisers’ messaging or tarnish perceptions of a brand does not, as Plaintiffs suggest, Pl. Mem. at  
 21 13-14, 33, constitute an undue burden.<sup>49</sup> If it did, few warnings could survive. Presumably,  
 22 associating cigarettes with lung cancer is not the branding message manufacturers seek to convey,  
 23 nor are associations between alcoholic beverages and fetal damage, or between prescription  
 24

25 <sup>48</sup> The Court did not hold that a warning larger than the minimum size needed for legibility would  
 26 always be unconstitutional. *ABA III*, 916 F.3d at 757. What matters is that the warning not drown  
 out the message it accompanies. *See also Zauderer*, 471 U.S. 651 n.14 (review of factual  
 disclosures does not call for “‘least restrictive means’ analysis”).

27 <sup>49</sup> Plaintiffs again seek to trap regulators in a double-bind that would rule out any warning. A  
 28 warning that persuades consumers to drink fewer sodas “undermines and interferes with” adver-  
 tisers’ intended message, imposing an undue burden. But if the warning does not change con-  
 sumer behavior, they would argue that it is not reasonably related to San Francisco’s goals.

1 medications and potential side effects of stroke, heart disease, or suicidal thoughts.

2 Similarly, few warnings could survive if sellers' threats to stop local outdoor advertising if  
3 warnings are implemented count as evidence that their messages are drowned out, as Plaintiffs  
4 argue. Pl. Mem. at 14, 33. Advertisers do not have a constitutional right to veto any disclosure that  
5 they disfavor by threatening to take their ball and go home.

6 Nor does extending the mandate even to relatively low-calorie SSBs constitute an undue  
7 burden. *See* Compl. ¶¶ 69, 115(c), 116(c). Any cut-off point has an element of arbitrariness and –  
8 even when fundamental rights are at stake – where reasonable people might differ, courts in  
9 general “should defer to the legislature’s line-drawing.” *Solem v. Helm*, 463 U.S. 277, 311 n.3  
10 (1983). The additional burden is in any event minimal, as most SSB advertising is for either high-  
11 calorie products or for the brand in general,<sup>50</sup> and so would be covered by the Ordinance  
12 regardless. San Francisco’s choosing 25 calories instead of a slightly higher cut-off does not make  
13 the Ordinance unconstitutional.

14 Notwithstanding Plaintiffs’ arguments, the First Amendment does not set an impossibly  
15 high bar for disclosure mandates. It does not limit factual and uncontroversial warnings only to  
16 those that are ineffective, vanishingly small, approved by advertisers, and congruent with their  
17 branding, or those whose text could never be misconstrued. It does not require that no less  
18 burdensome alternative is imaginable. To the contrary, courts apply “a lower level of scrutiny” to  
19 factual and uncontroversial disclosures like this one. *NIFLA*, 138 S. Ct. at 2378; *accord ABA III*,  
20 916 F.3d at 755. Indeed, the “reasonable relationship” test of *Zauderer*, 471 U.S. 626, has often  
21 been likened to “rational basis” review. *See, e.g., Nationwide*, 873 F.3d at 732. Such deferential  
22 review of required disclosures is appropriate because “[t]he extension of First Amendment  
23 protection to commercial speech is justified principally by the value to consumers of the  
24 information such speech provides.” *Zauderer*, 471 U.S. at 651. Therefore, the “constitutionally  
25 protected interest in *not* providing any particular factual information ... is minimal.” *Id.* at 650.  
26 Elevating companies’ preference to keep their customers in the dark about the harmful effects of  
27 their products over the public’s interest in important information about health is the opposite of

28 <sup>50</sup> Rudd Center, *Sugary Drink FACTS 2020* (2020), at 7, <https://bit.ly/2ZxNPQ0>.

1 what the First Amendment calls for.

2 A standard that would strike down virtually any disclosure is incompatible with the Sup-  
3 reme Court’s recent affirmation that “we do not question the legality of health and safety warn-  
4 ings long considered permissible, or purely factual and uncontroversial disclosures about com-  
5 mercial products,” *NIFLA*, 138 S. Ct. at 2376, and would impede the flow of vital information  
6 that consumers need and the First Amendment favors. A regulation, such as San Francisco’s SSB  
7 warning, that is reasonably related to the City’s goal of informing citizens about serious health  
8 risks and does not drown out speakers’ messages, accords fully with the Constitution.

9 **CONCLUSION**

10 Because San Francisco’s SSB warning consists of only factual and uncontroversial state-  
11 ments, is reasonably related to the City’s goal of empowering informed decision-making about  
12 matters of health, and does not drown out advertisers’ speech, the City’s Motion for Summary  
13 Judgment should be granted, and Plaintiffs’ Motion for Summary Judgment should be denied.

14  
15 DATED: February 26, 2021

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on February 26, 2021, I caused to be filed electronically via the Court’s CM/ECF System, and thereby served on all counsel, a true and correct copy of this Brief of *Amici Curiae* American Heart Association, American Medical Association, California Medical Association, Center for Science in the Public Interest, ChangeLab Solutions, and Public Health Law Center.

/s/ Vanessa Buffington  
Vanessa Buffington

**APPENDIX**  
**Identity and Interest of *Amici Curiae***

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1. The American Heart Association (AHA) is a voluntary health organization that, since 1924, has been devoted to saving people from heart disease and stroke – the two leading causes of death in the world. AHA teams with millions of volunteers to fund innovative research, fight for stronger public health policies, and provide lifesaving tools and information to prevent and treat these diseases. The Dallas-based association with local offices in all 50 states, as well as in Washington DC and Puerto Rico, is the nation’s oldest and largest voluntary organization dedicated to fighting heart disease and stroke.

2. The American Medical Association (AMA) is the largest professional association of physicians, residents, and medical students in the United States. Additionally, through state and specialty medical societies and other physician groups seated in its House of Delegates, substantially all physicians, residents, and medical students in the United States are represented in the AMA’s policy-making process. The AMA was founded in 1847 to promote the art and science of medicine and the betterment of public health, and these remain its core purposes. AMA members practice in every medical specialty and in every state, including California. The AMA and CMA join this brief on their own behalves and as representatives of the Litigation Center of the American Medical Association and the State Medical Societies. The Litigation Center is a coalition among the AMA and the medical societies of each state and the District of Columbia. Its purpose is to represent the viewpoint of organized medicine in the courts.

3. California Medical Association (CMA) is a non-profit, incorporated professional physician association of approximately 50,000 members throughout the State of California. For more than 160 years, CMA has promoted the science and art of medicine, the care and well-being of patients, the protection of public health, and the betterment of the medical profession. CMA’s membership includes California physicians engaged in the private practice of medicine in all specialties and settings. CMA and its physician members advocate for laws and policies that promote the health of their patients and communities.

1           4.       The Center for Science in the Public Interest (CSPI) is America’s Food and Health  
2 Watchdog, a non-profit consumer education and advocacy organization that has worked since  
3 1971 to improve the public’s health through better nutrition and safer food. CSPI does not accept  
4 government or corporate donations and is supported by donations from individuals and  
5 foundations and subscribers to its *Nutrition Action Healthletter*. CSPI has long advocated for  
6 legislation, regulation, and judicial decisions to ensure that food labels are clear and transparent  
7 and convey useful public health information. In such efforts, CSPI supports healthy beverage  
8 choices through education, pricing strategies, labeling, corporate engagement, and other policies.  
9 Major victories include getting sugary drinks out of school foods<sup>51</sup> and successfully petitioning  
10 the FDA for a declaration of added sugars and daily value on the Nutrition Facts panel.<sup>52</sup>

11           5.       ChangeLab Solutions works across the nation to advance equitable laws and  
12 policies that ensure healthy lives for all. With more than two decades of experience in enacting  
13 policy, systems, and environmental changes at local and state levels, the organization focuses on  
14 eliminating health disparities by addressing the social determinants of health. ChangeLab  
15 Solutions is an interdisciplinary team of lawyers, planners, policy analysts, public health  
16 practitioners, and other professionals who collaborate with community-based organizations, local  
17 and state governments, and anchor institutions to create thriving, just communities. The  
18 organization’s priority is assisting communities whose residents are at the highest risk for poor  
19 health. ChangeLab Solutions works in many interconnected areas, including access to healthy  
20 foods and the broader commercial determinants of health. The warning ordinance at issue in this  
21 case is adapted from a model sugary drink warning policy drafted by ChangeLab Solutions.

22           6.       The Public Health Law Center is a public interest legal resource center dedicated  
23 to improving health through the power of law. Located at Minnesota’s largest law school, the  
24 Mitchell Hamline School of Law in Saint Paul, Minnesota, the Center helps community leaders  
25 improve health by strengthening public policies, with a focus on health equity, in the belief that

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27 <sup>51</sup> See CSPI, Health Group Calls USDA’s National School Nutrition Guidelines Historic,  
<https://bit.ly/3uvGBuh>.

28 <sup>52</sup> See CSPI, New Nutrition Facts Labels to Feature Added Sugars, with Daily Value,  
<https://bit.ly/3kASvPb>.



1 everyone deserves the opportunity to be healthy. The Center has prepared dozens of publications  
2 on the regulation of sugary drinks and assisted communities considering policies to regulate or tax  
3 them. The Center has filed seventy-five briefs as *amicus curiae* in the highest courts of the land,  
4 including a dozen briefs addressing the regulation of commercial speech harmful to public health.  
5 As the designated provider of legal technical assistance to the State of California’s Tobacco  
6 Control Program and its grantees, the Center has a particular interest in the government’s ability  
7 to require companies to warn consumers about the dangers of their products.

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