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20 THE CORN REFINERS ASSOCIATION, INC.

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

WESTERN SUGAR COOPERATIVE,  
a Colorado cooperative, *et al.*,

Plaintiffs,

v.

ARCHER-DANIELS-MIDLAND  
COMPANY, a Delaware corporation,  
*et al.*,

Defendants.

Case No. CV11-3473 CBM (MANx)

**CRA'S ANSWER TO PLAINTIFFS'  
SECOND AMENDED COMPLAINT**

Second Amended Complaint Filed:  
November 11, 2011

Defendant The Corn Refiners Association, Inc. ("CRA") hereby submits the following Answer to the Second Amended Complaint of Plaintiffs Western Sugar Cooperative, Michigan Sugar Company, Inc., United States Sugar Corporation, American Sugar Refining, Inc., The Amalgamated Sugar Company LLC, Imperial

1 Sugar Corporation, Minn-Dak Farmers Cooperative, The American Sugar Cane  
2 League of the U.S.A., Inc., and The Sugar Association, Inc. (collectively,  
3 “Plaintiffs”). CRA submits its Answer on behalf of CRA only. No allegations as to  
4 the other Defendants are admitted or denied. For its Answer, CRA states as follows:

5 **PROLOGUE**

6 1. CRA is informed and believes that HFCS began to be used in American  
7 food (but not beverages) in the late 1960s, and that the extent of its use has varied  
8 since that time. Further answering, CRA is informed and believes that there has been  
9 a growth in American obesity, but denies that the trend in American obesity has  
10 tracked the extent of reported per capita consumption of HFCS in the United States.  
11 CRA admits that some observers initially published a hypothesis of a theoretical  
12 correlation (based on partial and incomplete data) between the rise in HFCS  
13 consumption and obesity, but that at least one of these initial observers has recanted  
14 that hypothesis. CRA denies that there exists a correlation or any causative  
15 relationship in the data tracking HFCS consumption and obesity rates over time. CRA  
16 lacks knowledge sufficient to form a belief as to the truth of the allegation contained  
17 in the last sentence of Paragraph 1. CRA denies any remaining allegations of  
18 Paragraph 1.

19 2. CRA admits that some manufacturers have replaced HFCS with sucrose  
20 (referred to herein as “refined sugar” or “table sugar”) and have promoted their  
21 products’ absence of HFCS. CRA denies that there is any credible science showing a  
22 unique link between consumption of HFCS and obesity or other health problems that  
23 does not exist with respect to other sugars, including refined sugar produced from  
24 cane or beet plants. CRA denies the remaining allegations of Paragraph 2.

25 3. To the extent the allegations of Paragraph 3 are directed to the conduct of  
26 other Defendants, no response from CRA is required. If a response to such allegations  
27 is required, CRA lacks knowledge sufficient to form a belief as to the truth of such  
28 allegations and, on that basis, denies the same. CRA admits that it has submitted a

1 citizen's petition requesting, *inter alia*, the U.S. Food and Drug Administration  
2 ("FDA") to authorize "corn sugar" as an alternate common or usual name for HFCS  
3 (the "Citizen's Petition"). CRA further admits that it has undertaken an educational  
4 campaign to explain the merits of HFCS and its Citizen's Petition. CRA further  
5 admits that, as part of its educational campaign, it has stated that HFCS is "natural"  
6 pursuant to the policy used by the FDA; and that "sugar is sugar" and "your body  
7 can't tell the difference" between HFCS and refined sugar because HFCS is  
8 "nutritionally the same as table sugar" and metabolized by the body in the same way.  
9 CRA denies any remaining allegations of Paragraph 3.

10 4. The allegations of Paragraph 4 assert conclusions of law to which no  
11 response is required. To the extent a response is required, CRA denies the allegations  
12 of Paragraph 4.

13 5. CRA admits that "corn sugar" is currently one of multiple FDA-approved  
14 names for dextrose only for the purpose of food ingredient labeling. The remaining  
15 allegations of Paragraph 5 assert conclusions of law to which no response is required.  
16 To the extent a response is required, CRA denies the remaining allegations of  
17 Paragraph 5.

18 6. The allegations of Paragraph 6 assert conclusions of law to which no  
19 response is required. To the extent a response is required, CRA denies the allegations  
20 of Paragraph 6.

21 7. The allegations of Paragraph 7 assert conclusions of law to which no  
22 response is required. To the extent a response is required, CRA denies the allegations  
23 of Paragraph 7, including, without limitation, the allegation that sugar made from cane  
24 or beet plants is the only "real" sugar.

25 8. The allegations of Paragraph 8 assert conclusions of law to which no  
26 response is required. To the extent a response is required, CRA denies the allegations  
27 of Paragraph 8, including, without limitation, any allegation that sugar made from  
28 cane or beet plants is the only "real" sugar.

1           9.     The allegations of Paragraph 9 assert conclusions of law to which no  
2 response is required. To the extent a response is required, CRA denies the allegations  
3 of Paragraph 9, including, without limitation, any allegation that sugar made from  
4 cane or beet plants is the only “real” sugar.

5           10.    CRA, for itself, does not dispute that the Court has jurisdiction.

6           11.    CRA, for itself, does not dispute that venue is proper in this judicial  
7 district.

8           12.    CRA lacks knowledge and information sufficient to form a belief as to  
9 the truth or falsity of the allegations in Paragraph 12 and, on that basis, denies the  
10 same.

11          13.    CRA lacks knowledge and information sufficient to form a belief as to  
12 the truth or falsity of the allegations in Paragraph 13 and, on that basis, denies the  
13 same.

14          14.    CRA lacks knowledge and information sufficient to form a belief as to  
15 the truth or falsity of the allegations in Paragraph 14 and, on that basis, denies the  
16 same.

17          15.    CRA lacks knowledge and information sufficient to form a belief as to  
18 the truth or falsity of the allegations in Paragraph 15 and, on that basis, denies the  
19 same.

20          16.    CRA lacks knowledge and information sufficient to form a belief as to  
21 the truth or falsity of the allegations in Paragraph 16 and, on that basis, denies the  
22 same.

23          17.    CRA lacks knowledge and information sufficient to form a belief as to  
24 the truth or falsity of the allegations in Paragraph 17 and, on that basis, denies the  
25 same.

26          18.    CRA lacks knowledge and information sufficient to form a belief as to  
27 the truth or falsity of the allegations in Paragraph 18 and, on that basis, denies the  
28 same.

1           19. CRA lacks knowledge and information sufficient to form a belief as to  
2 the truth or falsity of the allegations in Paragraph 19 and, on that basis, denies the  
3 same.

4           20. CRA lacks knowledge and information sufficient to form a belief as to  
5 the truth or falsity of the allegations in Paragraph 20 and, on that basis, denies the  
6 same.

7           21. CRA lacks knowledge and information sufficient to form a belief as to  
8 the truth or falsity of the allegations in Paragraph 21 and, on that basis, denies the  
9 same.

10          22. CRA admits that it is a national trade association that was created in 1913  
11 and funded by its membership. CRA further admits that it is a Delaware corporation  
12 located at 1701 Pennsylvania Ave. NW, Suite 950, Washington, DC 20006. CRA  
13 further admits that it represents the corn refining (wet milling) industry of the United  
14 States and that certain CRA members' business includes the manufacture, promotion,  
15 and sale of HFCS. CRA denies any remaining allegations of Paragraph 22, including,  
16 without limitation, any allegation that it acts as the agent for any of its members.

17          23. CRA admits that Mark A. Bemis is a member of the CRA Board of  
18 Directors and that Dennis C. Riddle was the Chairman of the Board in 2010. CRA  
19 also admits that ADM is a CRA member. CRA denies that Mr. Riddle is a member of  
20 the CRA Board of Directors. CRA lacks knowledge and information sufficient to  
21 form a belief as to the truth or falsity of the remaining allegations in Paragraph 23,  
22 and, on that basis, denies the same.

23          24. CRA admits that Alan D. Willits and Jeff A. Cotter are members of the  
24 CRA Board of Directors. CRA also admits that Cargill is a CRA member. CRA  
25 denies that Mr. Willits is the current Chairman of the CRA Board of directors. CRA  
26 lacks knowledge and information sufficient to form a belief as to the truth or falsity of  
27 the remaining allegations in Paragraph 24, and, on that basis, denies the same.  
28

1           25. CRA admits that Richard N. Kyle and Terry W. Thomas are members of  
2 the CRA Board of Directors. CRA also admits that Corn Products is a CRA member.  
3 CRA denies that Mr. Kyle is the current Vice Chairman of the CRA Board of  
4 Directors. CRA lacks knowledge and information sufficient to form a belief as to the  
5 truth or falsity of the remaining allegations in Paragraph 25, and, on that basis, denies  
6 the same.

7           26. CRA admits that Dominique D. P. Taret and Richard A. O'Hara are  
8 members of the CRA Board of Directors. CRA also admits that Roquette is a CRA  
9 member. CRA lacks knowledge and information sufficient to form a belief as to the  
10 truth or falsity of the remaining allegations in Paragraph 26, and, on that basis, denies  
11 the same.

12           27. CRA admits that Matthew D. Wineinger is a member of the CRA Board  
13 of Directors. CRA also admits that Tate & Lyle is a CRA member. CRA denies that  
14 J. Patrick Mohan is a member of the CRA Board of Directors. CRA lacks knowledge  
15 and information sufficient to form a belief as to the truth or falsity of the remaining  
16 allegations in Paragraph 27, and, on that basis, denies the same.

17           28. CRA admits that its governing body is its Board of Directors, which  
18 includes, among other members, two individuals from each of the Member Companies  
19 as defined. CRA lacks knowledge and information sufficient to form a belief as to the  
20 amount of time each person on its Board of Directors spends on CRA business and, on  
21 that basis, denies the same. Further answering, CRA admits that it has estimated that  
22 persons on CRA's Board of Directors devoted between two and five hours per week to  
23 CRA business in 2010. CRA denies the remaining allegations of Paragraph 28.

24           29. CRA admits that all of its expenditures, including its educational  
25 campaign to explain the merits of HFCS, are funded predominantly (but not  
26 exclusively) by assessments paid by its members. The remaining allegations of  
27 Paragraph 29 are not directed toward CRA, assert conclusions of law, and are the  
28 subject of a motion to dismiss, and therefore no response to those allegations from

1 CRA is required. To the extent a response is required, CRA denies the remaining  
2 allegations of Paragraph 29.

3 30. CRA admits that HFCS is a commercial sweetener used in a variety of  
4 products, including soft drinks. CRA further admits that corn starch, which is  
5 commonly used as a thickening agent, and corn syrup, which is a viscous liquid  
6 containing various amounts of dextrose, are derived from corn. CRA also admits that  
7 Paragraph 30 quotes from selected portions of 21 C.F.R. 184.1857 and refers to that  
8 regulation for a complete statement of its terms. CRA denies the remaining  
9 allegations of Paragraph 30, including, without limitation, the allegation that HFCS,  
10 which is also made from corn, is not “natural.”

11 31. CRA admits that sucrose (refined sugar) is the only sweetener that may  
12 be listed simply as “sugar” on the food ingredient list of food labeling, but denies that  
13 only sucrose is considered a sugar for other parts of the food label, such as the  
14 nutrition facts label. CRA denies that 21 C.F.R. 184.1854 provides that sucrose is the  
15 only sweetener that may be labeled simply as “sugar.” CRA also admits that sucrose  
16 (refined sugar) is a disaccharide consisting of equal parts glucose and fructose  
17 chemically joined by a type of covalent bond known as a glycosidic bond. Further  
18 answering, CRA is informed and believes that refined sugar has been used by humans  
19 to sweeten food and drink for many years. CRA denies the remaining allegations of  
20 Paragraph 31.

21 32. CRA is informed and believes that HFCS has been commercially  
22 available since the late 1960s and that HFCS has been used as an ingredient in food  
23 production (but not beverages) since that time. CRA further admits that Paragraph 32  
24 describes, in general terms, the composition and part of the production of HFCS.  
25 CRA admits that the glucose and fructose that primarily comprise HFCS are  
26 monosaccharides that are not bonded together. CRA also admits that Paragraph 32  
27 describes certain portions of a referenced document and refers to that document for a  
28 complete statement of its terms. CRA denies that HFCS is a “man-made product,”

1 because HFCS is made from corn and, like refined sugar, nothing artificial or  
2 synthetic (including colors, regardless of source) is included in, or added to, HFCS  
3 that would not normally be expected to be there. CRA is unable to respond to the  
4 allegation that free fructose is “highly soluble in water and makes bread crusts  
5 browner, cookies softer and everything sweeter” in any meaningful manner because  
6 the allegation contains undefined comparative terms. To the extent a response is  
7 required to such allegation, CRA denies the same. CRA denies any remaining  
8 allegations of Paragraph 32.

9 33. CRA admits that Paragraph 33 describes certain portions of a referenced  
10 document and refers to that document for a complete statement of its terms. CRA  
11 specifically denies that the rise of HFCS mirrors the rise of the obesity epidemic, as  
12 set forth in the title preceding Paragraph 33. CRA denies any remaining allegations of  
13 Paragraph 33.

14 34. CRA admits that the obesity epidemic in the United States has received  
15 considerable public attention. CRA also admits that the remaining allegations of  
16 Paragraph 34 describe certain portions of a referenced document, website, and data,  
17 and CRA refers to that document, website, and data for a complete statement of their  
18 terms. CRA denies any remaining allegations of Paragraph 34.

19 35. CRA admits that the allegations of Paragraph 35 describe certain portions  
20 of a referenced document and refers to that document for a complete statement of its  
21 terms. CRA denies that any scrutiny has revealed that an ascent in the commercial use  
22 of HFCS is a unique cause or potential unique cause of the obesity epidemic. CRA  
23 denies any remaining allegations of Paragraph 35.

24 36. CRA admits that people have examined the association between obesity  
25 and consumption of HFCS, but CRA denies that any credible research has shown that  
26 there is any unique association between the two that does not exist with respect to  
27 other sugars, including refined sugar. CRA also admits that Paragraph 36 contains  
28 allegations describing certain portions of a referenced document and refers to that

1 document for a complete statement of its terms. CRA denies that the referenced  
2 document is a “landmark scientific report,” but rather asserts that it presented only a  
3 hypothesis that has since been recanted by at least one of its authors. CRA denies any  
4 remaining allegations of Paragraph 36.

5 37. CRA admits Paragraph 37 contains allegations describing certain  
6 portions of a referenced document and refers to that document for a complete  
7 statement of its terms. CRA denies that there exists any credible scientific evidence  
8 (and, hence, credible debate) linking the consumption of HFCS (as opposed to  
9 fructose alone or sugars generally, including refined sugar) to obesity or other health  
10 problems or demonstrating that the fructose contained in HFCS is metabolized by the  
11 body in any manner that is different from the manner in which the fructose contained  
12 in other sweeteners, including refined sugar, is metabolized. CRA denies any  
13 remaining allegations of Paragraph 37.

14 38. CRA denies that the Princeton Study is evidence that refined sugar  
15 (sucrose) and HFCS have different effects on the body or that HFCS is uniquely  
16 responsible for any health problems. CRA admits Paragraph 38 contains allegations  
17 describing certain portions of a referenced document and refers to that document for a  
18 complete statement of its terms. CRA denies any remaining allegations of Paragraph  
19 38.

20 39. CRA denies that the Princeton Study is evidence that refined sugar  
21 (sucrose) and HFCS have different effects on the body or that HFCS is uniquely  
22 responsible for any health problems. CRA admits that Paragraph 39 and its footnotes  
23 contain allegations describing certain portions of referenced documents and refers to  
24 those documents for a complete statement of their terms. CRA denies any remaining  
25 allegations of Paragraph 39, including any remaining factual allegations of Footnote  
26 11.

27 40. CRA is unable to respond to the allegations of Paragraph 40 in any  
28 meaningful manner because the phrases “other researchers,” “those researchers,” and

1 “taste profiles” are undefined. To the extent a response is required, CRA denies the  
2 allegations of Paragraph 40.

3 41. CRA admits that HFCS and its role in public health have been a matter of  
4 public discussion, including discussion in public forums. CRA denies the remaining  
5 allegations of Paragraph 41.

6 42. CRA admits that Paragraph 42 describes certain portions of a referenced  
7 document and website and refers to that document and website for a complete  
8 statement of their terms. CRA denies any remaining factual allegations of Paragraph  
9 42.

10 43. CRA admits that certain food and beverage producers have replaced  
11 HFCS in their products with refined sugar. CRA also admits that Paragraph 43  
12 describes certain portions of a referenced document and website and refers to that  
13 document and website for a complete statement of their terms. CRA denies any  
14 remaining allegations of Paragraph 43.

15 44. CRA lacks knowledge sufficient to form a belief as to the truth of the  
16 allegations in Paragraph 44 and, on that basis, denies the same.

17 45. CRA lacks knowledge sufficient to form a belief as to the truth of the  
18 allegation that the “growing concern over HFCS has thus led to its decreased sales.”  
19 CRA is informed and believes that consumption of HFCS has decreased from its level  
20 in 2003 to its level in April 2011. CRA admits that Paragraph 45 describes certain  
21 portions of a referenced document and data contained therein and refers to that  
22 document and data for a complete statement of their terms. CRA denies the remaining  
23 allegations of Paragraph 45.

24 46. CRA admits that HFCS has been the subject of vilification. CRA also  
25 admits that it has implemented an educational campaign to explain the merits of  
26 HFCS and its Citizen’s Petition. CRA further admits that it has stated that HFCS is  
27 “natural,” pursuant to FDA policy; and that “sugar is sugar,” and “your body can’t tell  
28 the difference” between HFCS and sugar because HFCS is “nutritionally the same as

1 table sugar” and metabolized by the body in the same way. The remaining allegations  
2 of Paragraph 46 are not directed toward CRA, assert conclusions of law, and are the  
3 subject of a motion to dismiss, and therefore no response to those allegations from  
4 CRA is required. To the extent a response is required, CRA denies the remaining  
5 allegations of Paragraph 46.

6 47. CRA lacks knowledge and information sufficient to form a belief as to  
7 the truth of the allegations in Paragraph 47 relating to the individual Member  
8 Companies’ evaluations and determinations of their economic interests, and, on that  
9 basis, denies the same. CRA admits that its expenditures, including its educational  
10 campaign to explain the merits of HFCS, are funded predominantly (but not  
11 exclusively) by assessments paid by its members. The remaining allegations of  
12 Paragraph 47 assert conclusions of law and are the subject of a motion to dismiss, and  
13 therefore no answer from CRA is required. To the extent an answer to such  
14 allegations is required, CRA denies the remaining allegations of Paragraph 47.

15 48. CRA lacks knowledge and information sufficient to form a belief as to  
16 the truth of the allegations in Paragraph 48 relating to the individual Member  
17 Companies’ evaluations and determinations of their rights and actions, and, on that  
18 basis, denies the same. Further answering, Paragraph 48 asserts conclusions of law  
19 and are the subject of a motion to dismiss, and therefore no response from CRA is  
20 required. Further answering, the allegation that CRA “has publicly acknowledged  
21 working with the Member Companies” is not detailed enough to enable CRA to  
22 respond meaningfully, and, on that basis, CRA denies the same. CRA denies any  
23 remaining allegations of Paragraph 48.

24 49. The allegations of Paragraph 49 assert conclusions of law and are the  
25 subject of a motion to dismiss, and therefore no response from CRA is required. To  
26 the extent a response is required, CRA denies the allegations of Paragraph 49.

27 50. CRA admits that its expenditures, including its educational campaign to  
28 explain the merits of HFCS, are funded predominantly (but not exclusively) by

1 assessments paid by its members. The remaining allegations of Paragraph 50 assert  
2 conclusions of law to which no response is required. To the extent a response is  
3 required, CRA denies the remaining allegations of Paragraph 50.

4 51. CRA admits that Paragraph 51 describes certain portions of a referenced  
5 document and website and refers to that document and website for a complete  
6 statement of their terms. CRA denies any remaining allegations of Paragraph 51.

7 52. CRA admits that its educational campaign features a website, Internet  
8 banners, exhibitions at professional organizations, and television and print materials  
9 dedicated to explaining the merits of HFCS and CRA's Citizen's Petition. CRA also  
10 admits that Paragraph 52 describes certain portions of a referenced document and  
11 website and refers to that document and website for a complete statement of their  
12 terms. CRA denies any remaining factual allegations of Paragraph 52.

13 53. Paragraph 53 asserts conclusions of law and are the subject of a motion  
14 to dismiss, and therefore no response from CRA is required. Further answering, the  
15 allegations of Paragraph 53 are not directed toward CRA, and therefore no response to  
16 those allegations from CRA is required. To the extent a response to such allegations  
17 is required, CRA lacks knowledge or information sufficient to form a belief as to the  
18 truth of such allegations, and therefore denies the same. CRA denies any remaining  
19 allegations of Paragraph 53.

20 54. CRA lacks knowledge sufficient to form a belief as to the truth of the  
21 allegation that "HFCS sales continued to slump into the second half of 2010." Further  
22 answering, CRA admits that published reports show a decline in the total U.S. per  
23 capita consumption of HFCS and a decrease in the U.S. shipments of HFCS from  
24 2009 to 2010. CRA admits that it has submitted a Citizen's Petition requesting, inter  
25 alia, the FDA to authorize "corn sugar" as an alternate common or usual name for  
26 HFCS. CRA denies the remaining allegations of Paragraph 54.

27 55. CRA admits that "corn sugar" is currently one of multiple FDA-approved  
28 names for dextrose only for the purpose of food ingredient labeling and that "high

1 fructose corn syrup” is currently an FDA-approved name for HFCS for purposes of  
2 food ingredient labeling, and has been since 1983. CRA further admits that dextrose  
3 and HFCS are not the same, but CRA denies that it has ever communicated that  
4 dextrose and HFCS are the same. CRA also admits that Paragraph 55 describes, in  
5 general terms, the production of HFCS and that HFCS can be blended to have  
6 different percentages of fructose. CRA lacks knowledge sufficient to form a belief as  
7 to the truth of the allegation that the corn refining industry proposed the name “high  
8 fructose corn syrup” to the FDA in a 1977 petition. CRA denies any remaining  
9 allegations of Paragraph 55.

10 56. CRA lacks knowledge sufficient to form a belief as to the truth of the  
11 allegation that “Defendants” proposed the FDA-approved label for HFCS over 30  
12 years ago, and therefore denies the same. CRA admits that it submitted its Citizen’s  
13 Petition on September 14, 2010, requesting, *inter alia*, the FDA to authorize “corn  
14 sugar” as an alternate common or usual name for HFCS for purposes of food  
15 ingredient labeling, and refers to that petition for a complete and accurate statement of  
16 its assertions. CRA denies the remaining allegations of Paragraph 56.

17 57. CRA admits that its Citizen’s Petition requesting the FDA to authorize  
18 “corn sugar” as an alternate common or usual name for HFCS for purposes of food  
19 ingredient labeling has received considerable media and public attention and that a  
20 large number of public comments have been submitted to the FDA both supporting  
21 and opposing the petition. CRA also admits that Paragraph 57 describes certain  
22 portions of referenced documents and websites and refers to those documents and  
23 websites for a complete statement of their terms. CRA lacks knowledge sufficient to  
24 form a belief as to the truth of the remaining allegations of Paragraph 57 and, on that  
25 basis, denies the same.

26 58. CRA admits that it has used the term “corn sugar” in documentation that  
27 clearly identifies its use of that term to describe HFCS as being a sugar made from  
28 corn. CRA lacks knowledge sufficient to form a belief as to the truth of the

1 allegations directed to any other Defendant, and on that basis denies the same. CRA  
2 denies any remaining allegations of Paragraph 58.

3 59. CRA admits that Paragraph 59 describes certain portions of a referenced  
4 document and refers to that document for a complete statement of its terms. CRA  
5 specifically denies that its “reply to comments” letter submitted to the FDA on April  
6 4, 2011 was a response on behalf of the Member Companies. CRA denies any  
7 remaining allegations of Paragraph 59.

8 60. CRA admits that it has used the term “corn sugar” in materials that  
9 clearly identify its use of that term to describe HFCS as a sugar made from corn.  
10 CRA also admits that Paragraph 60 describes certain portions of referenced  
11 documents and websites and refers to those documents and websites for a complete  
12 statement of their terms. CRA lacks knowledge sufficient to form a belief as to the  
13 truth of the allegations directed to the conduct of any other Defendant and, on that  
14 basis, denies the same. CRA denies any remaining allegations of Paragraph 60.

15 61. The allegations of Paragraph 61 are not directed toward CRA, assert  
16 conclusions of law, are subject to a motion to dismiss, and therefore, no response from  
17 CRA is required. To the extent that a response from CRA is required, CRA lacks  
18 knowledge sufficient to form a belief as to the truth of the allegations regarding  
19 Member Companies’ statements and conduct and, on that basis, denies the same.  
20 CRA denies any remaining allegations of Paragraph 61.

21 62. The allegations of Paragraph 62 are not directed toward CRA, assert  
22 conclusions of law, are subject to a motion to dismiss, and therefore, no response from  
23 CRA is required. To the extent that a response from CRA is required, CRA lacks  
24 knowledge sufficient to form a belief as to the truth of the allegations regarding the  
25 statements and conduct of other Defendants and, on that basis, denies the same. CRA  
26 denies any remaining allegations of Paragraph 62.

27 63. Paragraph 63 asserts conclusions of law to which no response is required.  
28 To the extent a response is required, CRA denies the allegations of Paragraph 63.

64. The allegations of Paragraph 64 are not directed toward CRA, and therefore, no response is required from CRA. To the extent that a response from CRA is required, CRA lacks knowledge sufficient to form a belief as to the truth of the allegations regarding the statements and conduct of other Defendants and, on that basis, denies the same. CRA denies any remaining allegations of Paragraph 64.

65. CRA repeats and realleges its answers to the above paragraphs and incorporates them in its answer to Paragraph 65 as if fully set forth herein.

66. CRA denies the allegations of Paragraph 66.

67. CRA denies the allegations of Paragraph 67.

68. CRA denies the allegations of Paragraph 68.

69. CRA denies the allegations of Paragraph 69.

70. CRA denies the allegations of Paragraph 70.

71. CRA admits that it filed a brief in connection with an antidumping investigation conducted by the government of the United Mexican States in the late 1990s. CRA specifically denies that any statements in the CRA brief are in conflict with its statements made in connection with its educational campaign regarding HFCS. CRA denies the remaining allegations of Paragraph 71.

72. CRA denies the allegations of Paragraph 72.

73. CRA denies the allegations of Paragraph 73.

74. CRA denies the allegations of Paragraph 74.

75. CRA denies the allegations of Paragraph 75.

CRA denies that Plaintiffs are entitled to any of the relief requested in the WHEREFORE clause following Paragraph 75 and in all the paragraphs and subparagraphs that follow, or any relief whatsoever.

Each and every allegation in Plaintiffs' Complaint that is not specifically admitted is hereby denied.

**AFFIRMATIVE DEFENSES**

Without conceding that it bears the burden of proof or persuasion as to any of the issues raised in these defenses (whether or not denominated as affirmative defenses or otherwise), as separate and distinct affirmative defenses to Plaintiff's Second Amended Complaint, CRA alleges as follows:

**FIRST AFFIRMATIVE DEFENSE**

**(Failure to State a Claim)**

1. The Complaint fails to state a claim upon which relief can be granted.

**SECOND AFFIRMATIVE DEFENSE**

**(Laches)**

2. The claims made in the Complaint and the relief sought therein are barred by laches, in that Plaintiffs have unreasonably delayed efforts to enforce their rights, if any, despite their full awareness of CRA's statements and conduct since at least 2008.

**THIRD AFFIRMATIVE DEFENSE**

**(Waiver and Estoppel)**

3. The Complaint and the relief sought therein are barred by the doctrines of waiver and estoppel, in that Plaintiffs have unreasonably delayed efforts to enforce their rights, if any, despite their full awareness of CRA's statements and conduct since at least 2008 and that any false perceptions that consumers may have regarding HFCS have been caused, in whole or in part, or perpetuated, in whole or in part, by Plaintiffs themselves or their agents and representatives, acting individually or collectively.

**FOURTH AFFIRMATIVE DEFENSE**

**(Unclean Hands)**

4. Plaintiffs are barred under the doctrine of unclean hands. Specifically, any false perceptions that consumers may have regarding HFCS have been caused, in whole or in part, or perpetuated, in whole or in part, by Plaintiffs themselves or their agents and representatives, acting individually or collectively.

**FIFTH AFFIRMATIVE DEFENSE**

**(No Commercial Advertising)**

5. Plaintiffs' claims are barred because CRA's statements do not constitute commercial advertising or promotion under the Lanham Act.

**SIXTH AFFIRMATIVE DEFENSE**

**(Failure to Mitigate)**

6. Plaintiffs' claims are barred because they failed to mitigate damages, if any.

**SEVENTH AFFIRMATIVE DEFENSE**

**(First Amendment)**

7. Plaintiffs' claims are barred because they violate CRA's rights under the First Amendment to the Constitution of the United States, which protects the rights to freedom of speech and to petition the government.

**EIGHTH AFFIRMATIVE DEFENSE**

**(Noerr-Pennington)**

8. Plaintiffs' claims are barred in whole or in part by operation of the *Noerr-Pennington* doctrine.

**NINTH AFFIRMATIVE DEFENSE**

**(Primary Jurisdiction)**

9. Plaintiffs' claims are barred in whole or in part because the FDA has primary jurisdiction over Plaintiffs' claims.

**TENTH AFFIRMATIVE DEFENSE**

**(Additional Defenses)**

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

**PRAYER FOR RELIEF**

WHEREFORE, CRA prays for judgment as follows:

1. That the Complaint be dismissed with prejudice;
2. That CRA be awarded its costs and attorneys' fees of defense as permitted by law; and
3. That CRA be awarded such other and further relief as the Court deems just and proper.

Dated: December 16, 2011

Respectfully submitted,  
WINSTON & STRAWN LLP

By: /s/ Gail J. Standish

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