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Obesity is Becoming a Growing Epidemic, Causing our Nation to Become Unhealthier; However, Instead of Finding Solutions, Americans Make Excuses.

INTRODUCTION

Thesis Statement

Obesity is a debilitating epidemic, plaguing our nation with harmful physical and psychological effects. Instead of retaliating with long-term solutions such as healthier lifestyles, most Americans perpetuate this widespread problem by not taking responsibility for their actions; they blame external causes, seek out fleeting “Hollywood” quick fixes, and remain ignorant about the food they consume.

Reason for Choice of Thesis Topic

As a person who has battled morbid obesity for so many years, I have struggled with the health problems and social isolation commonly associated with being extremely overweight. Last year, I made the decision to lead a healthier lifestyle, and in one short year, the results have been beyond my wildest dreams. This is why I have chosen to address obesity as the topic of my thesis. Until people take responsibility for their own actions and choices, the obesity epidemic will persist.

Scope

This thesis will include statistics, as well as excuses that people give for being obese, with case law, statutes, codes and Acts, showing the need for change, and the opinions of judges and experts that make it clear that in order to fight the obesity epidemic, people must take personal responsibility for what they do.

STATISTICS

The following statistics are hard evidence illustrating the rise of obesity globally, in the United States, and even in California, one of the top five healthiest states in the nation.

Worldwide

Before 1980, in countries that belong to the Organization for Economic Co-operation and Development (OECD), “fewer than one in ten people were obese. Since then, rates doubled or tripled and in 19 of 34 OECD countries. The majority of the population is now overweight or obese.”¹ While the rate of obesity is greater in women than men, the rate of obesity in men is faster growing than the rate of obesity in women.² The countries that belong to OECD are, in alphabetical order, Australia, Austria, Belgium, Canada, Chili, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea, Luxembourg, Mexico, Netherlands, New Zealand, Norway, Poland, Portugal, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Turkey, United Kingdom and the United States.³

Nationwide

According to the Centers for Disease Control and Prevention, using obesity statistics gathered in 2009 – 2010, for United States residents:

- 37.5 percent of adults in the United States were obese.
- 16.9 percent of children and adolescents were obese.
- Over 78 million adults and about 12.5 million children and adolescents were obese.⁴

According to the American Heart Association, Statistical Fact Sheet, 2012 update:

- Children, ages 2 – 19: 1 in 6 are obese (with a BMI above the 95th percentile). If an adolescent is overweight, he or she has a 70 – 80 percent chance of being overweight in adulthood.
- Americans, ages 20 and older, 149.3 million are overweight or obese, of which 34.9 million men and 40.1 million women are obese.⁵

¹ OCED, Obesity Update 2012. Undated. Web. 07 Nov. 2012. <<http://www.oecd.org/health/49716427.pdf>>.

² OCED, Obesity Update 2012. *supra*

³ Ourtimes. “OCED Education Rankings – 2012 Update.” Wordpress.com 10 April 2008. Web. 25, Nov. 2012. <<http://ourtimes.wordpress.com/2008/04/10/oecd-education-rankings/>>

⁴ Ogden CL, Carroll MD, Kit BK, Flegal KM, “Prevalence of Obesity in the United States, 2009 - 2010.” NCHS Data Brief, no. 82. Hyattsville, MD: National Center for Health Statistics. 2012. Web. 07 Nov. 2012. <<http://www.cdc.gov/nchs/data/databriefs/db82.pdf>>.

⁵ Roger VL, Go AS, Lloyd-Jones DM, Benjamin EJ, Berry JD, Borden WB, Bravata DM, Dai S, Ford ES, Fox CS, Fullerton HJ, Gillespie C, Hailpern SM, Heit JA, Howard VJ, Kissela BM, Kittner SJ, Lackland DT, Lichtman JH, Lisabeth LD, Makuc DM, Marcus GM, Marelli A, Matchar DB, Moy CS, Mozaffarian D, Mussolino ME, Nichol G, Paynter NP, Soliman EZ, Sorlie PD, Sotoodehnia N, Turan TN, Virani SS, Wong ND, Woo D, Turner MB; on behalf of the American Heart Association Statistics Committee and Stroke Statistics Subcommittee. Heart disease and stroke statistics—2012 update: a report from the American Heart Association. *Circulation*. 2012: published online before print December 15, 2011, 10.1161/CIR.0b013e31823ac046. <http://www.heart.org/idc/groups/heart-public/@wcm/@sop/@smd/documents/downloadable/ucm_319588.pdf>

California

Statistics show that obesity affects a large portion of the population.

“Obesity rates in the United States predict that by 2030 more than 45 percent of Californians will be obese, if residents don’t change their lifestyles,” according to the Trust for America’s Health and the Robert Wood Johnson Foundation.⁶ This would mean a rise in obesity of Californians from “23.8% to 46.6%.”⁷

BLAME

We, as Americans, are fortunate to live in this country, where choices are not a luxury but an everyday staple. Our health has been abused by the desire for convenience and the thirst for beverages filled with sugar. Feeding into this rising consumer trend, fast food restaurants are abundant, and coffee chains are available on almost every street corner. Recently, in response to growing health concerns, a remarkable shift in menu offerings has occurred, and as never before, Americans are given a variety of healthier choices side-by-side with foods that are unhealthy, all visibly labeled with calorie content.

Yet, as healthier choices multiply, obesity rates rise -- as does the blame. Lawsuits, instead of education, serve as the panacea to the public’s overweight woes, with little end in sight.

The article “Consumers Say Responsibility for Obesity Lies with Individuals; New Survey Indicates Large Majority Believe Smart Choices are Key, discusses a survey done by the Grocery Manufacturers of America, which concluded, “Most Americans say individuals are primarily responsible for the country's obesity problem, according to a new survey released by the Grocery Manufacturers of America. More than eight in ten Americans (83 percent) say that some personally controlled factor, either individual choice, a lack of exercise, or watching television, is responsible for obesity, compared to 86 percent in a similar survey conducted in December 2001. Notably, only 5 percent point to the fast food phenomenon or larger portion sizes, and 4 percent hold food manufacturers themselves responsible.”⁸

⁶ www.ktla.com. 18 Sept. 2012, 3:15 p.m. Web. 07 Nov. 2012. <<http://www.ktla.com/news/landing/ktla-obesity-rate-in-california-expected-to-double-by-2030.0.1157686.story>>.

⁷ www.ktla.com, *supra*

⁸ Highbeam Business. “Consumers Say Responsibility for Obesity Lies with Individuals; New Survey Indicates Large Majority Believe Smart Choices are Key.” U.S. Newswire via Comtex. 26 March 2003. Web. 25 November 2012. <<http://business.highbeam.com/1208/article-1G1-99194374/consumers-say-responsibility-obesity-lies-individuals>>

People can choose to blame external factors for being obese. If some problems are eliminated, weight loss may occur; however, for the most part, until one stops blaming others and takes personal responsibility for what they choose to consume, and for the activities they choose to do or not do, the problem cannot be resolved.

Although some excuses have some basis in reality as explained below, in order for change to occur, that reality needs to be reviewed and analyzed.

FAST FOOD

The “fast food” industry has long been blamed as a top contributor to obesity. Catering to the modern American with fast-paced lives and tight finances, drive-thru windows make processed foods readily available at any time of the day or night, and \$1 menus entice those watching their budget.

A recent L.A. Times article stated, “The fastest form of fast food is getting even more popular, with 12.4 billion trips made last year to the nation’s drive-thru windows -- a 2% increase from the year before.”⁹

The fast food industry has responded to mounting criticism by incorporating what appear to be healthier choices, such as salads, to their menus. Ultimately, the responsibility rests on the consumer for knowing the calorie count, as sometimes those “healthy salads” rival the calorie count of hamburgers.

In Barber v. McDonald's Corp. (N.Y. Sup. Ct.) (No. 23145/2002)¹⁰, a class action case, Caesar Barber, a 56-year-old man weighing 270 pounds ate fast food four to five times a week at McDonald’s Corporation, Burger King Corporation, Kentucky Fried Chicken, and Wendy’s International, Inc.¹¹ The result was that he, and others in the class action, became “obese, overweight, developed diabetes, coronary heart disease, high blood pressure, elevated cholesterol levels, and/or other detrimental and adverse health effects and/or diseases.”¹² Many obesity statistics were in the Complaint, as well as information on the affects of obesity on a person’s health. Barber claimed that the defendants were responsible for him having two heart attacks and diabetes. This lawsuit was subsequently withdrawn.

In Pelman v. McDonalds (2003) 237 F.Supp.2d 512 (S.D.N.Y. 2003), an action was filed by Ashley Pelman, a child under the age of 18 years, her mother and natural guardian Roberta Pelman, Roberta Pelman, individually, Jazlyn Bradley, a child under the age of 18 years, her

⁹Hsu, Tiffany. “So Much for Fast Food: Visits to fast food drive-thru windows up.” Los Angeles Times. 30 May 2012. Web. 26 Nov. 2012. <<http://articles.latimes.com/2012/may/30/business/la-fi-mo-drive-thru-20120530>>

¹⁰ Barber v. McDonald’s Corp (N.Y. Sup. Ct.) (No. 23145/2002). Complaint filed 23 July 2002.

¹¹ Sealey, Geraldine. “Obese Man Sues Fast-Food Chain.” ABC News. 26 July 2002. Web. 07 Nov. 2012. <<http://abcnews.go.com/US/story?id=91427&page=1>>.

¹² Barber v. McDonald’s Corp., *supra*

father and natural guardian Israel Bradley, and Israel Bradley, individually. They claimed McDonalds was involved in deceptive advertising, and based on this advertising, their children consumed large amounts of food at McDonald's, causing their children to gain weight and have health problems. The Court stated, "Questions of personal responsibility, common knowledge and public health are presented, and the role of society and the courts in addressing such issues."¹³

On page 516 of Pelman, the Court stated, "The issue of determining the breadth of personal responsibility underlies much of the law: where should the line be drawn between an individual's own responsibility to take care of herself, and society's responsibility to ensure that others shield her?"¹⁴ Again, the Court brought up the issue of personal responsibility.

The Court dismissed the lawsuit, without prejudice, allowing the plaintiffs to file an amended Complaint alleging that "the McDonald's products consumed by the plaintiffs were dangerous in any way other than that which was open and obvious to a reasonable consumer."¹⁵ This amended Complaint was filed, but it still did not sufficiently state a cause alleging elements of false advertising.

Consumers must take personal responsibility for what they choose to eat. If we choose to eat French fries, we cannot blame those that sell it. This concept is eloquently explained by Ninos Malek, an economics teacher at San Jose State University, as follows: "The lack of personal responsibility has even my high school students blaming their poor diets on the school cafeteria. Granted, our cafeteria sells burritos and pizza, but they also sell salads and other healthy food. And if that weren't good enough, I would tell them to wake up earlier and make their own healthy lunches. But that would involve a cost—waking up earlier. So I tell them to stop complaining and that they need to understand a simple economic concept—actions are what count. Obviously the benefit of eating their 'bad' lunches outweighs the cost of waking up earlier or taking the time to make their lunches the night before. Eating unhealthy lunches is their choice."¹⁶

John Doyle, the co-founder of the Center for Consumer Freedom, in response to Barber stated, "to win his suit he has to convince a jury or a judge that people are too stupid to feed themselves or their children."¹⁷

¹³ Pelman v. McDonalds (2003) 237 F.Supp.2d 512, 516 (S.D.N.Y. 2003),

¹⁴ Pelman v. McDonalds, *supra*

¹⁵ Wald, Jonathan. "McDonald's obesity suit tossed." CNN Money. 17 February 2003. Web. 22 November 2012. <<http://money.cnn.com/2003/01/22/news/companies/mcdonalds/>>

¹⁶ Malek, Ninos P., "Fast Food and Personal Responsibility." Foundation for Economic Education. Undated. Web. 17 Nov. 2012. <http://fee.org/the_freeman/detail/fast-food-and-personal-responsibility/>.

¹⁷ Sealey, Geraldine. "Obese Man Sues Fast-Food Chain." *ABC News*, *supra*, at page 2.

Lisa A. Rickard, President of the Chamber Institute for Legal Reform, stated, “Lawyers hungry for more money should resist the temptation to take a bite out of the fast food industry Overweight Americans will not find the solution to obesity in the courtroom but in making wise choices to eat smaller portions and healthier foods wherever they go.”¹⁸

SOFT DRINKS

Following in the footsteps of the “fast food” industry, the “soft drink” industry also faced blame for causes of obesity, with rampant claims of sweet-tooth, addiction-causing chemical ingredients as part of their secret formulas. Beverages labeled “diet” promising no sugar are replaced with artificial alternatives to maintain that sweet, popular flavor. The question remains, why would anyone knowingly ingest anything filled with chemicals?

Chris Mercer, in <http://www.beveragedaily.com/Financial/First-soft-drinks-obesity-lawsuit-set-for-Massachusetts>, stated, “A lawsuit aimed at getting financial soft drinks out of US schools on obesity grounds will be filed in Massachusetts, just as lawmakers there prepare to vote on school junk food ban.” This is a class action lawsuit, about which Professor Richard Daynard stated, “We have a product that has been shown to make a material contribution to childhood and adolescent obesity and we have it in schools where the kids are required to be for six or seven hours per day.”¹⁹

According to a recent Center for Science in the Public Interest article, “New Studies Add to Evidence Linking Soda to Weight Gain,” two new studies prove that “soda and other sugary drinks promote weight gain and obesity.”²⁰

The New York City Health Board, in its attempt to curb obesity, capped the serving sizes of soft drinks sold at restaurants which it regulates at 16 ounces, according to an article written by The Center for Science in the Public Interest entitled “New York City Health Board Caps Soda Serving Sizes.”²¹

Are the soft drinks that people choose to consume causing individuals to become obese? Will “capping” the serving size of beverages make any difference, especially when refills are available almost everywhere at no cost? Isn’t it obvious that it is up to the consumer to

¹⁸ U.S. Chamber of Commerce, “Chamber Study Shows Obesity Lawsuits No Diet Aid.” 02 July 2003. Web. 03 Oct. 2012 <<http://www.uschamber.com/press/releases/2003/july/chamber-study-shows-obesity-lawsuits-no-diet-aid>>.

¹⁹ Mercer, Chris. “First Soft Drinks Obesity Lawsuit Set for Massachusetts.” *Beveragedaily.com*, 13 Feb. 2006. Web. 01 Nov. 2012. <<http://www.beveragedaily.com/Financial/First-soft-drinks-obesity-lawsuit-set-for-Massachusetts>>.

²⁰ New Studies Add to Evidence Linking Soda to Weight Gain,” Center for Science in the Public Interest, 21 Sept. 2012. Web. 01 Nov 2012. <<http://www.cspinet.org/new/201209131.html>>.

²¹ New York City Health Board Caps Soda Serving Sizes,” Center for Science in the Public Interest, 13 Sept. 2012. Web. 01 Nov. 2011. <<http://www.cspinet.org/new/201209131.html>>.

make the decision to drink beverages which are healthier by being less caloric and less chemical-laden? The answers to these rhetorical questions are obvious.

TRANS FATS

Trans fats are another ingredient included on the obesity scapegoat list. Public outcry over claims of use of this flavor-enhancing ingredient fueled ideas of undisclosed weight gain dangers. A flurry of lawsuits and studies was sparked sprouting reasons why our nation is obese, apparently countering the idea that actual portion size has little to do with the actual problem.

Studies have shown that trans fats cause an increase in abdominal fat and body weight.²² After the following lawsuit was filed, the public became more aware of the dangers of trans fats, prompting food companies to remove them from their products and restaurants to advertise with pride that they no longer use trans fats.

A lawsuit filed in Marin County Superior Court sought to have Kraft remove Oreo cookies from the market until trans fats were removed from the cookies. The basis for this lawsuit was California Civil Code, Section 1714.45, “(a) In a product liability action, a manufacturer or seller shall not be liable if both of the following apply: (1) The product is inherently unsafe and the product is known to be unsafe by the ordinary consumer who consumes the product with the ordinary knowledge common to the community.”²³ Since the amount of trans fats was not on the label, the claim was made that Kraft was keeping the information from the consumers. The lawsuit was dropped the same month, when Kraft agreed to remove trans fats from its Oreo cookies.²⁴

While a simple switch from trans fat to a healthier fat might help, the consumption of fewer calories combined with more exercise is the only cure for obesity. Alice H. Lichtenstein, a professor of nutrition at Tufts University, wrote a letter to The New York Times stating, “Foods made free of trans fats can contain the same number of calories as foods made with trans fats. The major public health problem in the United States is overweight and obesity. It is

²² Hendry, Joene, “Experts Weigh In: Will Trans Fat Bans Affect Obesity Trends.” American Diabetes Association, DOC NWS, May 2007, Vol. 4, No. 5, 1-20. Web. 17 Nov. 2012. <<http://docnews.diabetesjournals.org/content/4/5/1.2.full>>.

²³ California Civil Code, Section 1714.45

²⁴ “The Oreo Case.” bantransfat. No date. Web. 07 Nov. 2012 <<http://www.bantransfat.com/theoreocase.html>>

delusional to think that consuming high-calorie food made with 'healthier oils' is going to have a significant impact on our overall health if we don't get our calorie intake under control."²⁵

In Peviani v. Hostess Brands, Inc., 750 F. Supp. 2d 1111 (2010), the plaintiff claimed that the defendants "use misleading, deceptive, and fraudulent misstatements and omissions to market six (6) varieties of baked-goods products under the label 'Hostess 100 Calorie Packs.'" The Court granted the defendant's Motion to Dismiss, as even though there are some hydrogenated oils in the products, the label complies with the FDA Food Labeling Guide, which states that if there is under 0.5 grams of trans fat per serving, it must be expressed on the label as 0.²⁶

The above statements exemplify the agreement of experts that obesity is not caused by having trans fats in foods, but by the consumption of excess calories and not enough exercise.

DIETS

On May 26, 2004, Jody Gorran filed a lawsuit against Atkins Nutritionals. Gorran v. Atkins Nutritionals, Inc., 464 F. Supp. 2d 315 (2006)²⁷ Gorran claimed that he went on the Atkins low carbohydrate diet, that he had low cholesterol before the diet, but the diet caused his cholesterol to go up, eventually leading to an angioplasty to unclog one of his arteries, and a stent being placed inside an artery to keep the artery clear. His claim was that the diet and the products sold were "defective and unreasonably dangerous." Atkins Nutritionals' motion for summary judgment was granted under Rule 12 (c) of the Federal Rules of Civil Procedure.²⁸ The court stated, on page 319, "Pastrami and cheesecake — large amounts of which Gorran admittedly consumed — may present risks, but these are risks of which consumers are aware. The average consumer surely anticipates that these and other high-fat or high-protein foods may increase cholesterol levels and the risk of heart disease."

It is obvious by this Court's holding that the Court believes people are aware of the risks of eating large amounts of unhealthy food, such as pastrami and cheesecake, and that a person must take responsibility for the risks when they choose to eat irresponsibly.

²⁵ Nizza, Mike, "Trans Fats and America's Obesity Problem." The New York Times. 27 Aug. 2007, Web. 17 Nov. 2012. < <http://thelede.blogs.nytimes.com/2007/08/27/trans-fats-and-americas-obesity-problem>>.

²⁶ Peviani v. Hostess Brands, Inc., 750 F. Supp. 2d 1111 (2010)

²⁷ Gorran v. Atkins Nutritionals, Inc., 464 F. Supp.2d 315 (Dist. Court, SD New York 2006)

²⁸ Federal Rules of Civil Procedure, Rule 12 (c)

PEOPLE DO NOT KNOW WHAT IS FATTENING AND WHAT IS NOT

Requirement of restaurants to put calorie count on menus, menu board

To aid consumers in making healthier choices, restaurants have been required to put calorie counts on menus and menu boards.

The Center for Science in the Public Interest article, “McDonalds to Put Calories on Menu Boards,” credits McDonalds with putting calorie counts on the items it serves on their menu boards and drive-through menus before required to do so by the federal government. This article states, “Though not all studies are able to measure an effect of menu labeling, bigger studies show that calorie labeling is helping consumers make lower calorie selections when eating out.”²⁹ Clearly, it is the consumer’s responsibility to make lower calorie selections when eating out.

In New York State Restaurant Association v. New York City Bd. Of Health (2009), 556 F. 3d 114 (Court of Appeals 2nd Circuit),³⁰ the New York State Restaurant Association made a constitutional challenge of New York City Health Code section 8150, requiring 10 percent of New York City restaurants, including many chains to post information on their menus and menu boards with the calorie count and content information of the items they are selling.³¹ The Court held that the First Amendment rights of the restaurants are not being violated, as it is “a simple factual disclosure of caloric information and is reasonably related to New York City’s goals of combating obesity.”

On page 134 - 135, the Court stated, “. . . obesity is epidemic and is a serious and increasing cause of disease; in New York City, 54% of adults, and 43% of elementary school children are overweight or obese and obesity is a contributing factor for heart disease, diabetes, stroke and cancer, which caused 70% of deaths in New York City in 2005.”

A portion of the Patient Protection and Affordable Care Act (ACA) of 2010 deals with the requirement of restaurants and food vendors that have 20 or more locations to show the calories of the food being offered for sale on their menus, menu boards and vending machines. While it does not have to be displayed, if someone requests to see it, the restaurants and food vendors must have available information regarding saturated fat, carbohydrate and sodium content of the food.³²

²⁹ Wootan, Margaret G. “McDonald’s to Put Calories on Menu Boards,” Center for Science in the Public Interest, 12 Sept. 2012. Web. 23 Nov. 2012. <<http://www.cspinet.org/new/201209121.html>>.

³⁰ New York State Restaurant Association v. New York City Bd. Of Health (2009), 556 F. 3d 114 (Court of Appeals 2nd Circuit)

³¹ New York City Health Code section 8150.

³² Patient Protection and Affordable Care Act, 42 USC 18001 note. Section 4205. Public Law 111-148, 111th Congress, H.R. 3590, 23 March 2010 Web. 17 Nov. 2012 <<http://www.gpo.gov/fdsys/pkg/PLAW-111publ148/pdf/PLAW-111publ148.pdf>>

Stanford Graduate School of Business did a study which concluded that after the calorie counts at Starbucks were added to the menu boards in New York City in 2008, there was a 6 percent reduction in calories per transaction for food. However, there was no difference for beverages³³ This would lead one to believe that having the knowledge of how many calories a food item has would make a difference in what is purchased and consumed. However, if the consumer ignores the calories in their beverage, there would be no marked reduction in calories.

As the Food and Drug Administration comes closer to issuing their guidelines in conjunction with the menu labeling rules, many experts are studying the benefits of labeling. On November 27, 2012, an article, "Will Menu Calorie Impact Consumer Choices? (Hint: Probably Not)," stated, "... studies so far on the impact of menu labeling show little impact on consumers' food choices. An enhanced type of nutritional menu labeling program is needed to meet the objective of getting people to avoid foods known to cause obesity and diet-related illnesses, according to a leading authority on national public health law."³⁴ The proposal discussed in that article is that the requirement for nutritional information on the menus be expanded to include information on the "fat, sodium and sugar" contained in the food being sold, as caloric content is not sufficient for people to understand the full health value of a food.³⁵

If the consumer has the knowledge of the calorie contents of the items he or she chooses to consume, it helps them to make their own personal choice of what to order. For some, the calorie count and content information will be ignored, just as people ignore the warnings on cigarette labels. Until most people decide to make healthier choices, the obesity epidemic will continue to rise. While the government may help give us the information to make the appropriate choices, it is our hands that pick up the fork.

MISREPRESENTATION OF PRODUCTS

A claim might be made that because some products are misrepresented, items are consumed that are more fattening than the product claims.

It is illegal to put false information on the ingredient panel of a product, and on its label.

³³ Stanford Graduate School of Business. "New Stanford Study Shows Posting Calories on Restaurant Menu Board Lowers Customers' Calorie Counts Per Visit." Feb. 2011. Web. 17 Nov. 2012.
<<http://www.gsb.stanford.edu/news/starbucks.html>>

³⁴ Takepart.com. "Will Menu Calorie Impact Consumer Choices? (Hint: Probably Not). 27 November 2012. Web. 28 November 2012. < <http://news.yahoo.com/posting-calories-alone-menus-won-t-help-consumers-193950006.html> >

³⁵ James G. Hodge Jr and Lexi C. White. "Supplementing National Menu Labeling." American Journal of Public Health: December 2012, Vol. 102, No. 12, pp. e11-e13. doi: 10.2105/AJPH.2012.301028

Federal Food, Drug and Cosmetics Act, 21 U.S.C. § 321³⁶ states,

“(n) If an article is alleged to be misbranded because the labeling or advertising is misleading, then in determining whether the labeling or advertising is misleading there shall be taken into account (among other things) not only representations made or suggested by statement, word, design, device, or any combination thereof, but also the extent to which the labeling or advertising fails to reveal facts material in the light of such representations or material with respect to consequences which may result from the use of the article to which the labeling or advertising relates under the conditions of use prescribed in the labeling or advertising thereof or under such conditions of use as are customary or usual.”

Klein v. Robert’s Am. Gourmet Food, Inc. (2006), 28 A.D. 3d 63, 808 N.Y.S. 2d 766 (N.Y. App. Div., 2d Dep’t 2006)³⁷, was a class-action lawsuit based on advertising claiming that Pirate’s Booty, Fruity Booty and Veggie Booty, created by Robert’s American Gourmet Food, Inc., and manufactured by Keystone Food Products, had less fat and calories than it actually had. The Appellate Court considered the reasonableness of the settlement reached in which Robert’s American Gourmet Food agreed to issue and redeem \$3.5 million in discount coupons, not only to members of the class action but to the consumers at large, reversed the order and judgment approving the settlement, and remitted the matter to the Supreme Court, Nassau County for further proceedings.

Janney v. General Mills, No. C12-cv03919 (U.S. Dist. Ct., N.D. Cal., filed July 26, 2012),³⁸ was a class action lawsuit against General Mills for false advertising and unfair competition, as Nature Valley claims their food products are “All Natural,” “Natural,” and “100% Natural.” They are not natural, because they include the ingredients high-fructose corn syrup, high-maltose corn syrup, maltodextrin and rice maltodextrin. This lawsuit was recently filed, and no decision has been made yet.

There have been studies that have shown that one result of eating a product containing GMO is an increase in weight. Many people refuse to eat products containing GMO. However, they may be still doing so, if a product is mislabeled or an advertisement is deceptive.

In Norway, some scientists have run tests on GMO for a 10-year period. This study showed, “The ones who had fed on GMO corn were slightly larger, they ate slightly more, their intestines had a different micro-structure, they were less able to digest proteins, and there were some changes to their immune system.”³⁹

³⁶Federal Food, Drug and Cosmetics Act, 21 U.S.C. § section 321

³⁷ Klein v. Robert’s Am. Gourmet Food, Inc. (2006), 28 A.D. 3d 63, 808 N.Y.S. 2d 766 (N.Y. App. Div., 2d Dep’t 2006)

³⁸ Janney v. General Mills, No. C12-3919 (U.S. Dist. Ct., N.D. Cal., filed July 26, 2012)

³⁹ Samsel, Anthony. “Obesity, Corn, GMOs.” The Cornucopia Institute. 24 July 2012. Web. 17 Nov. 2012. <
<http://www.cornucopia.org/2012/07/obesity-corn-gmos/>>

Hinton v. Naked Juice Company, Civil Action No. 8:11-cv-03740-AW (U.S. District Court, D. Maryland, filed April 27, 2012),⁴⁰ is a lawsuit brought by Kenn Hinton against Naked Juice Company and PepsiCo, Inc., because the products are labeled “Natural,” or “Non-GMO,” even though these products were “genetically modified” and contained “synthetic ingredients.” This case was dismissed under the first-to-file rule, because five other cases that were very similar were filed in the Central District of California.

Deaton v. Frito-Lay North America, Inc., No. 1:12-CV-01029 (U.S. District Court, WD Arkansas, El Dorado Division), filed September 11, 2012),⁴¹ is a class action lawsuit claiming that Tostitos and SunChips which are touted as being “All Natural” are misrepresented and not “natural,” because they contain GMO. This case was dismissed for lack of jurisdiction, because there was no legal certainty that the class members would recover more than \$5 million.

It is a person’s choice to choose to eat a product containing GMO. It is their own personal responsibility to look at labels and determine what is healthy for them to consume.

Many other lawsuits were filed by consumers, including one filed in Broward Circuit Court in 2001 against Big Daddy, DeConna Ice Cream Co., because the ice cream was labeled as being low fat, when it was not low fat. According to an article in the Chicago Tribune, “The label said a 12-ounce serving had 100-calories and 2 grams of fat. The serving actually contained 300 calories and 7 grams of fat.” This class action lawsuit was settled with the offer of refunds or two free cups of ice cream for each cup that was purchased.⁴²

While one could argue that their obesity may be caused by misrepresentation in advertising and labeling, the responsibility for what one eats or drinks, whether it is bars, juice, chips, or ice cream, is with the consumer. While snacks may be entwined in a healthy diet, if a person is gaining weight while eating them, that person must reassess what they are eating and take personal responsibility for their weight gain if they do not make any changes.

SOLUTIONS

Surgery

Is surgery the solution to the obesity epidemic?

After stating how bariatric surgery can help a person lose significant weight, the Mayo Clinic stated, “It’s also possible to not lose enough weight or to regain weight after any type of

⁴⁰ Hinton v. Naked Juice Company, No. 8:11-cv-03740-AW (U.S. District Court, D. Maryland, filed April 27, 2012)

⁴¹ Knight Ridder Newspapers, “Ice Cream Suit plaintiffs get 2-scoop deal.” Chicago Tribune. 29 Sept. 2003. Web. 03 October 2012. <http://articles.chicagotribune.com/2003-09-29/business/0309290192_1_ice-cream-erroneous-labels-big-daddy>

⁴² Deaton v. Frito-Lay North America, Inc., No. 1:12-CV-01029 (U.S. District Court, WD Arkansas, El Dorado Division), filed September 11, 2012)

weight-loss surgery, even if the procedure itself works correctly. This weight gain can happen if you don't follow the recommended lifestyle changes. To help avoid regaining weight, you must make permanent healthy changes in your diet and get regular physical activity and exercise. If you frequently snack on high-calorie foods, for instance, you may have inadequate weight loss.”

⁴³

Hence, even after surgery, in order to avoid regaining weight, a person still has to eat properly and get a sufficient amount of physical activity. Again, it becomes their personal responsibility.

As to the dangers of bariatric surgery, an article on the Schmidt & Clark LLP, a National Law Firm, website, “Bariatric Surgery Lawsuit,”⁴⁴ reads in pertinent part, “Recently, U.S. Food and Drug Administration (FDA) officials have begun to receive reports about issues with the surgical staples and medical staplers manufactured by the two major suppliers for the products. These suppliers, Ethicon and U.S. Surgical, provide nearly 100% of all the surgical staplers for bariatric surgery in the nation. **At least 9,000 reports about complications from the devices have been made to the FDA to date, as well as approximately 100 reports of deaths associated with the staples and staplers.**” (Emphasis added)

This same article states that “In May 2007, a jury found that a woman’s death was caused by a defective surgical stapler. The jury awarded the victim’s family \$5 million.”⁴⁵ The verdict in this matter was affirmed. Beard v. Johnson and Johnson, Inc., 41 A. 3d 823 (Pa: Supreme Court 2012)⁴⁶

Many lawsuits have been filed due to problems after surgery. One notable lawsuit is Thomas v. Sifers, 535 F. Supp. 2d 1200 (2007),⁴⁷ in which the plaintiff filed a lawsuit against her physician, and his estate (as he was then deceased) based on a surgery he performed for obesity. The surgery he was supposed to perform was a duodenal switch; however, he actually performed a biliopancreatic diversion. Throughout all of her 15 future visits with medical complaints, the doctor lied to her and told her the symptoms she was experiencing had nothing to do with the surgery he performed, and that they were not from the duodenal switch. She became seriously ill. Amongst her problems were severe diarrhea, lack of sleep, low blood pressure, hypothyroidism, heart palpitations, loss of hair, removal of her gall bladder and appendix, repair to incisional hernias, and she was not able to eat many things. None of these

⁴³ www.MayoClinic.com. Mayo Clinic Staff, “Gastric Bypass Surgery,”

<<http://www.mayoclinic.com/health/gastric-bypass/MY00825/DSECTION=why-its-done>>

⁴⁴ Schmit & Clark, LLP, a National Law Firm. “Bariatric Surgery Lawsuit.” Web. 23 November 2012.

<<http://www.schmidtandclark.com/bariatric-surgery>>

⁴⁵ Schmit & Clark, LLP, *supra*, at page 2

⁴⁶ Beard v. Johnson and Johnson, Inc., 41 A. 3d 823 (Pa: Supreme Court 2012)

⁴⁷ Thomas v. Sifers, 535 F. Supp. 2d 1200 (2007)

were symptoms of the duodenal switch; but she did not have a duodenal switch (which she hired the doctor to do), but had a biliopancreatic diversion. Dr. Sifers moved for summary judgment, which was denied in part as to the fraud and negligent claims, and granted in part as to the batter and Kansas Consumer Protection Action claims. As to the fraud and negligent claims, the Plaintiff had genuine issues of fact.

Had she taken the personal responsibility to watch what she consumed, and to exercise more, she would not have put herself in the position of needing and having surgery for obesity, all these problems would not have occurred, and she might be a healthy person today.

In Bush v. Merola, 2008 NY Slip Op 32725(U) (NY Supreme Court 2008),⁴⁸ a case in which the plaintiff, an executrix of the estate of her husband who passed away from complications due to gastric bypass surgery, the Court denied the defendant's motion for summary judgment as there were genuine issues of fact as to the product liability of the surgical stapling device.

While these surgeries are one solution to the problem, as can be seen by the above lawsuits, the risks are great. Hence, it is clear that if a person took personal responsibility for what he or she consumed, and how much activity he or she participated in, the risks associated with surgery would not be necessary to take.

TAX UNHEALTHY FOODS

In the last year, some of the 32 countries that belong to the Organization for Economic Cooperation and Development (OECD) imposed taxes on certain foods and beverages, with the belief that this will aid the obesity epidemic by the decrease in the consumption of these items.⁴⁹

Michael F. Jacobson and Kelly D. Brownell, in recommending that snacks be taxed, discussed the concept of taxing unhealthy foods, in their article, "Small Taxes on Soft Drinks and Snack Foods to Promote Health," by stating, "To compensate for an unhealthy food environment, it has been suggested that foods high in calories, fat, or sugar be subjected to special taxes and that the cost of healthful foods, such as fruits and vegetables, be subsidized. A steep tax would probably reduce the consumption of the taxed foods and could be used to generate funding to subsidize healthful foods. It is likely that such a subsidy would increase sales, but there are mixed opinions on the feasibility and desirability of a steep tax. In contrast, a *small* tax may be more politically feasible and still could generate significant revenues to support health measures We suggest that public health professionals consider

⁴⁸ Bush v. Merola, 2008 NY Slip Op 32725(U) (NY Supreme Court 2008)

⁴⁹ *OECD*, Obesity Update 2012 N.p, n.d. Web. 07 Nov. 2012. <<http://www.oecd.org/health/49716427.pdf>>.

recommending snack taxes as a means of funding healthy eating and physical activity programs. Such programs could result in better health and lower health care costs.”⁵⁰

Adding a tax on snacks may be a way for our government to make more money, but it certainly won't stop most people from eating unhealthy foods, no more than it stopped most smokers from smoking (cigarettes are taxed by both the federal government and by all of the states), or stopped most drivers from driving (gasoline fuel is taxed by both the federal government and most states. For us in California, that means 67 cents per gallon is federal, state and local taxes⁵¹). Additionally, taxing alcohol also did not stop people from drinking (most states have a spirit tax, a wine tax and a beer tax.)⁵²

INVOLVE THE GOVERNMENT

Many Senate and House bills have been presented, but rarely are they passed. Only four percent of House bills were enacted in 2009 – 2010.⁵³ Hence, involving the government is a very slow process and rarely successful. Again, if we want to find a “cure” for the obesity crisis, we must take personal responsibility.

Senate / House Bills

H.R. 6461⁵⁴ was sponsored by Rep. Marcia Fudge. The purpose of this bill, which is referred to as the Measures to Prevent Childhood Obesity Act of 2012, is to collect body mass index (BMI) for submission to the State by health care providers. It was introduced on September 13, 2012, and referred to the House Committee on Energy and Commerce on that same date. Nothing has happened since.

H.R. 402⁵⁵ was sponsored by Rep. James “Jim” Moran, Jr. on September 13, 2012, and it was referred to the House Committee on Energy and Commerce on the same date. The

⁵⁰ Jacobson, Michael F. and Brownell, Kelly D. “Small Taxes on Soft Drinks and Snack Foods to Promote Health.” American Journal of Public Health. June 2000. Vol. 90. No. 6. Web. 25 November 2012. <<http://ajph.aphapublications.org/doi/pdf/10.2105/AJPH.90.6.854>>

⁵¹ Laskoski, Gregg. “California’s High Gas Prices are Self-Inflicted.” U.S. News & World Report, L.P. 16 May 2012. Web. 30 Nov. 2012. <<http://www.usnews.com/opinion/blogs/on-energy/2012/05/16/californias-high-gas-prices-are-self-inflicted>>

⁵² Tax Foundation. “State Sales, Gasoline, Cigarette, and Alcohol Tax Rates by State, 2000-2010. 1 April 2010. Web. 30 Nov. 2012. <<http://taxfoundation.org/article/state-sales-gasoline-cigarette-and-alcohol-tax-rates-state-2000-2010>>

⁵³ GovtTrack.US, “H.R. 6461: Measures to Prevent Childhood Obesity Act of 2012” 112th Congress. 2011-2012. <<http://www.govtrack.us/congress/bills/112/hr6461>>

⁵⁴ House, Measures to Prevent Childhood Obesity Act of 2012, 112th Congress (2011-2012), introduced 20 Sept. 2012 H.R. 6461, referred to House Committee on Energy and Commerce, 20 Sept. 2012.

⁵⁵ House, Measures to Prevent Childhood Obesity Act of 2012, 112th Congress (2011-2012), introduced 20 Sept. 2012 H.R. 6461, referred to House Committee on Energy and Commerce, 20 Sept. 2012.

purpose of this bill, which is referred to as the House, Surveillance, Tracking, Observation, and Prevention of Obesity Act of 2012. Nothing has happened since.⁵⁶

Presidential Proclamations and Acts

In order to curb the rising obesity crisis amongst our children, President Barack Obama made a Presidential Proclamation, proclaiming March 2012 as National Childhood Obesity Awareness Month. In doing so, President Obama was encouraging “all Americans to learn about and engage in activities that promote healthy eating and greater physical activity by all our Nation’s children.”⁵⁷

The Healthy, Hunger-Free Kids Act of 2010, 42 USC 1751, 111th Congress [S. 3307],⁵⁸ was enacted to improve management, nutrition, and to expand the school breakfast programs.

The Healthy, Hunger-Free Kids Act of 2012, set higher standards for school breakfasts and lunches.⁵⁹

While these Acts have provided food for breakfast for the children, where they might not eat one at home, there are still serious questions whether these breakfasts are healthy. Can it be the fault of the schools, or the administrators, or the government, because the choice of food is not one that will help them from gaining weight? Who really is to blame?

The question remains as to whether the government should be responsible for feeding our children, or whether the personal responsibility is ours.

CONCLUSION

Although the filing of both Barber and Pelman were mocked in the press, these cases, along with others, were a catalyst for change, as through these cases and others, knowledge of

⁵⁶ GovtTrack.US, “H.R. 6402: Surveillance, Tracking, Observation, and Prevention of Obesity Act of 2012” 112th Congress. 2011-2012. <<http://www.govtrack.us/congress/bills/112/hr6402>>

⁵⁷ President, Proclamation, “Healthy, Hunger Free Kids Act – higher standards for school breakfasts and lunches, 2012National Childhood Obesity Awareness Month, September 2012. <<http://www.whitehouse.gov/the-press-office/2012/08/31/presidential-proclamation-national-childhood-obesity-awareness-month-2012Acts>>.

⁵⁸ Healthy, Hunger-Free Kids Act of 2010, 42 USC 1751, 111th Congress [S. 3307]

⁵⁹ USDA. “USDA Unveils Historic Improvements to Meals Served in America’s Schools. New Standards Will Improve the Health and Wellbeing of 32 Million Kids Nationwide.” 25 Jan. 2012 U.S.D.A. Office of Communications. Release No. 0023.12. Web. 13 Nov. 2012. <<http://www.usda.gov/wps/portal/usda/usdahome?contentid=2012/01/0023.xml>>

how unhealthy certain ingredients are spread through the news. However, the obesity epidemic still rises.

Fast food establishments will continue to sprout everywhere. Weight loss solutions will always invade television, radio and magazine advertisements as long as they are lucrative. In these examples, told through the eyes of several court cases, it is evident that education and moderation, combined with an active lifestyle and, most importantly, personal responsibility, are the weapons most effective in the war against obesity.

Works Cited

Barber v. McDonald's Corp. (N.Y. Sup. Ct.) (No. 23145/2002), complaint filed 23 July 2002.

Beard v. Johnson and Johnson, Inc., 41 A. 3d 823 (Pa: Supreme Court 2012)

Bush v. Merola, 2008 NY Slip Op 32725(U) (NY Supreme Court 2008)

California Civil Code, Section 1714.45

Deaton v. Frito-Lay North America, Inc., No. 1:12-CV-01029 (U.S. District Court, WD Arkansas, El Dorado Division, filed September 11, 2012).

Federal Food, Drug and Cosmetics Act, 21 U.S.C. § section 321

Federal Rules of Procedure, Rule 12 (c)

Gorran v. Atkins Nutritionals, Inc., 464 F. Supp.2d 315 (Dist. Court, SD New York 2006)

GovtTrack.US, "H.R. 6402: Surveillance, Tracking, Observation, and Prevention of Obesity Act of 2012." 112th Congress. 2011-2012.
<<http://www.govtrack.us/congress/bills/112/hr6402>>.

GovtTrack.US, "H.R. 6461: Measures to Prevent Childhood Obesity Act of 2012." 112th Congress. 2011-2012. <<http://www.govtrack.us/congress/bills/112/hr6461>>

Healthy, Hunger-Free Kids Act of 2010, 42 USC 1751, 13 Dec. 2010, 111th Congress [S. 3307]

Hendry, Joene, "Experts Weigh In: Will Trans Fat Bans Affect Obesity Trends." American Diabetes Association, DOC NWS, May 2007, Vol. 4, No. 5, 1-20. Web. 17 Nov. 2012.
<<http://docnews.diabetesjournals.org/content/4/5/1.2.full>>.

Highbeam Business. "Consumers Say Responsibility for Obesity Lies with Individuals; New Survey Indicates Large Majority Believe Smart Choices are Key." U.S. Newswire via Comtex. 26 March 2003. Web. 25 November 2012.
<<http://business.highbeam.com/1208/article-1G1-99194374/consumers-say-responsibility-obesity-lies-individuals>>.

Hinton v. Naked Juice Company, No. 8:11-cv-03740-AW (U.S. District Court, D. Maryland, filed April 27, 2012)

James G. Hodge Jr. and Lexi C. White. "Supplementing National Menu Labeling." *American Journal of Public Health*: December 2012, Vol. 102, No. 12, pp. e11-e13. doi: 10.2105/AJPH.2012.301028

House, Surveillance, Tracking, Observation, and Prevention of Obesity Act of 2012, 112th Congress (2011-2012), introduced 13 Sept. 2012, H.R. 6402, referred to House Committee on Energy and Commerce, 13 Sept. 2012.

House, Measures to Prevent Childhood Obesity Act of 2012, 112th Congress (2011-2012), introduced 20 Sept. 2012 H.R. 6461, referred to House Committee on Energy and Commerce, 20 Sept. 2012.

Hsu, Tiffany. "So Much for Fast Food: Visits to fast food drive-thru windows up." *Los Angeles Times*. 30 May 2012. Web. 26 November 2012.
<<http://articles.latimes.com/2012/may/30/business/la-fi-mo-drive-thru-20120530>>.

Jacobson, Michael F. and Brownell, Kelly D. "Small Taxes on Soft Drinks and Snack Foods to Promote Health." *American Journal of Public Health*. June 2000. Vol. 90. No. 6. Web. 25 November 2012.
<<http://ajph.aphapublications.org/doi/pdf/10.2105/AJPH.90.6.854>>.

Janney v. General Mills, No. C12-3919 (U.S. Dist. Ct., N.D. Cal., filed July 26, 2012)

Klein v. Robert's Am. Gourmet Food, Inc. (2006), 28 A.D. 3d 63, 808 N.Y.S. 2d 766 (N.Y. App. Div., 2d Dep't 2006)

Knight Ridder Newspapers, "Ice Cream Suit plaintiffs get 2-scoop deal." *Chicago Tribune*. 29 Sept. 2003. Web. 03 October 2012. http://articles.chicagotribune.com/2003-09-29/business/0309290192_1_ice-cream-erroneous-labels-big-daddy>.

Laskoski, Gregg. "California's High Gas Prices are Self-Inflicted." *U.S. News & World Report*, L.P. 16 May 2012. Web. 30 Nov. 2012. <<http://www.usnews.com/opinion/blogs/on-energy/2012/05/16/californias-high-gas-prices-are-self-inflicted>>.

Malek, Ninos P., "Fast Food and Personal Responsibility." Foundation for Economic Education. Undated. Web. 17 Nov. 2012. <http://fee.org/the_freeman/detail/fast-food-and-personal-responsibility/>.

Mercer, Chris. "First Soft Drinks Obesity Lawsuit Set for Massachusetts." *Beveragedaily.com*, 13 Feb. 2006. Web. 01 Nov. 2012. <<http://www.beveragedaily.com/Financial/First-soft-drinks-obesity-lawsuit-set-for-Massachusetts>>.

Nealy v. US Surgical Corp., 587 F. Supp. 2d 579 (Dist. Court, SD, New York 2008)

“New Studies Add to Evidence Linking Soda to Weight Gain,” 21 Sept. 2012. Web. 01 Nov 2012. <<http://www.cspinet.org/new/201209131.html>>.

“New York City Health Board Caps Soda Serving Sizes,” Center for Science in the Public Interest, 13 Sept. 2012. Web. 01 Nov. 2011. <<http://www.cspinet.org/new/201209131.html>>.

New York City Health Code, section 8150.

New York State Restaurant Association v. New York City Bd. Of Health (2009), 556 F. 3d 114 (Court of Appeals 2nd Circuit)

Nizza, Mike, “Trans Fats and America’s Obesity Problem.” The New York Times. 27 Aug. 2007, Web. 17 Nov. 2012. <<http://thelede.blogs.nytimes.com/2007/08/27/trans-fats-and-americas-obesity-problem>>.

OCED, Obesity Update 2012. Undated. Web. 07 Nov. 2012. <<http://www.oecd.org/health/49716427.pdf>>.

Ogden CL, Carroll MD, Kit BK, Flegal KM, “Prevalence of Obesity in the United States, 2009 - 2010.” NCHS Data Brief, no. 82. Hyattsville, MD: National Center for Health Statistics. 2012. Web. 07 Nov. 2012. <<http://www.cdc.gov/nchs/data/databriefs/db82.pdf>>.

Ourtimes. “OCED Education Rankings – 2012 Update.” Wordpress.com 10 April 2008. Web. 25, Nov. 2012. <<http://ourtimes.wordpress.com/2008/04/10/oecd-education-rankings/>>

Patient Protection and Affordable Care Act, 42 USC 18001 note. Section 4205. Public Law 111-148, 111th Congress, H.R. 3590, 23 March 2010. Web. 17 Nov. 2012 <<http://www.gpo.gov/fdsys/pkg/PLAW-111publ148/pdf/PLAW-111publ148.pdf>>

Pelman v. McDonalds (2003), 237 F.Supp.2d 512 (S.D.N.Y. 2003)

Peviani v. Hostess Brands, Inc., 750 F. Supp. 2d 1111 (2010)

President, Proclamation, “Healthy, Hunger Free Kids Act – higher standards for school breakfasts and lunches, 2012National Childhood Obesity Awareness Month, September 2012. <<http://www.whitehouse.gov/the-press-office/2012/08/31/presidential-proclamation-national-childhood-obesity-awareness-month-2012Acts>>

Roger VL, Go AS, Lloyd-Jones DM, Benjamin EJ, Berry JD, Borden WB, Bravata DM, Dai S, Ford ES, Fox CS, Fullerton HJ, Gillespie C, Hailpern SM, Heit JA, Howard VJ, Kissela BM, Kittner SJ, Lackland DT, Lichtman JH, Lisabeth LD, Makuc DM, Marcus GM, Marelli A, Matchar DB, Moy CS, Mozaffarian D, Mussolino ME, Nichol G, Paynter NP, Soliman EZ, Sorlie PD,

- Sotoodehnia N, Turan TN, Virani SS, Wong ND, Woo D, Turner MB; on behalf of the American Heart Association Statistics Committee and Stroke Statistics Subcommittee. Heart disease and stroke statistics—2012 update: a report from the American Heart Association. *Circulation*. 2012: published online before print December 15, 2011, 10.1161/CIR.0b013e31823ac046. <http://www.heart.org/idc/groups/heart-public/@wcm/@sop/@smd/documents/downloadable/ucm_319588.pdf>.
- Samsel, Anthony. "Obesity, Corn, GMOs." The Cornucopia Institute. 24 July 2012. Web. 17 Nov. 2012. <<http://www.cornucopia.org/2012/07/obesity-corn-gmos/>>
- Schmit & Clark, LLP, a National Law Firm. "Bariatric Surgery Lawsuit.." Web. 23 November 2012. <<http://www.schmidtandclark.com/bariatric-surgery>>.
- Sealey, Geraldine. "Obese Man Sues Fast-Food Chain." *ABC News*. N.p., 26 July 2002. Web. 07 Nov. 2012. <<http://abcnews.go.com/US/story?id=91427&page=1>>.
- Stanford Graduate School of Business. "New Stanford Study Shows Posting Calories on Restaurant Menu Board Lowers Customers' Calorie Counts Per Visit." Feb. 2011. Web. 17 Nov. 2012. <<http://www.gsb.stanford.edu/news/starbucks.html>>.
- Takepart.com. "Will Menu Calorie Impact Consumer Choices? (Hint: Probably Not). 27 November 2012. Web. 28 November 2012. <<http://news.yahoo.com/posting-calories-alone-menus-won-t-help-consumers-193950006.html>>
- Tax Foundation. "State Sales, Gasoline, Cigarette, and Alcohol Tax Rates by State, 2000-2010. 1 April 2010. Web. 30 Nov. 2012. <<http://taxfoundation.org/article/state-sales-gasoline-cigarette-and-alcohol-tax-rates-state-2000-2010>>
- "The Oreo Case," *bantransfat*. N.p, n.d. Web. 07 Nov. 2012. <<http://www.bantransfats.com/theoreocase.html>>.
- Thomas v. Sifers*, 535 F. Supp. 2d 1200 (2007)
- U.S. Chamber of Commerce, "Chamber Study Shows Obesity Lawsuits No Diet Aid." 02 July 2003. Web. 03 Oct. 2012 <<http://www.uschamber.com/press/releases/2003/july/chamber-study-shows-obesity-lawsuits-no-diet-aid>>.
- USDA. "USDA Unveils Historic Improvements to Meals Served in America's Schools. New Standards Will Improve the Health and Wellbeing of 32 Million Kids Nationwide." 25 Jan. 2012 U.S.D.A. Office of Communications. Release No. 0023.12. Web. 13 Nov. 2012. <<http://www.usda.gov/wps/portal/usda/usdahome?contentid=2012/01/0023.xml>>.

Wald, Jonathan. "McDonald's obesity suit tossed." CNN Money. 17 February 2003. Web. 22 November 2012. <<http://money.cnn.com/2003/01/22/news/companies/mcdonalds/>>

Wootan, Margaret G. "McDonald's to Put Calories on Menu Boards," Center for Science in the Public Interest, 12 Sept. 2012. Web. 23 Nov. 2012. <<http://www.cspinet.org/new/201209121.html>>.

www.ktla.com. N.p, September 18, 2012, 3:15 p.m. Web. 07 Nov, 2012. <<http://www.ktla.com/news/landing/ktla-obesity-rate-in-california-expected-to-double-by-2030.0.1157686.story>>.

www.MayoClinic.com, Mayo Clinic Staff, "Gastric Bypass Surgery," <<http://www.mayoclinic.com/health/gastric-bypass/MY00825/DSECTION=why-its-done>>