

**IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY  
CAMDEN VICINAGE**

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LINDA FRANULOVIC, individually and on behalf of a class of persons,	)	CIVIL NO. 1:07-cv-00539-RMB-JS
	)	
Plaintiff,	)	CLASS ACTION
	)	
v.	)	
	)	Document Electronically Filed
THE COCA-COLA COMPANY,	)	
	)	
Defendant.	)	

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**DECLARATION OF JOSHUA L. BECKER**

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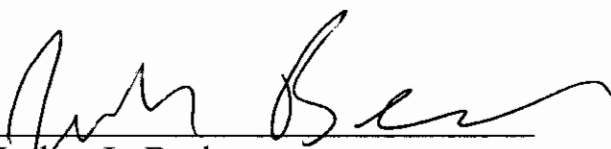
I, Joshua L. Becker, declare and say that I am counsel for The Coca-Cola Company in the above-referenced litigation. I make this declaration based upon my personal knowledge

CENTER FOR SCIENCE IN THE PUBLIC INTEREST V. THE COCA-COLA COMPANY et al

Doc. 116 Att. 1

The attached pages are a true and correct copy of the deposition testimony of Linda Franulovic that is cited in Defendant's Response to Plaintiff's Motion for Continuance and Reply in Support of Summary Judgment.

I declare under penalty of perjury that the foregoing is true and correct. Executed on this 18th day of March, 2009 in Atlanta, Georgia.

  
\_\_\_\_\_  
Joshua L. Becker

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY  
CAMDEN VICINAGE

LINDA FRANULOVIC, individually and  
on behalf of a class of persons,

Plaintiff,

CIVIL NO.:  
1:07-cv-00539-RMB-JS

v.

CLASS ACTION

THE COCA-COLA COMPANY,

Defendant.

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DEPOSITION OF

LINDA FRANULOVIC

TAKEN ON BEHALF OF THE DEFENDANT

September 30, 2008

9:05 a.m.

1100 Southeast 17th Street

Room 1120

Fort Lauderdale, Florida

Terri J. Flicek, Shorthand Reporter

1 February of 2007?

2 A. Right.

3 Q. Tell me in February of 2007 what a typical day  
4 would have been for you in terms of the food that you took  
5 in, what did you eat for breakfast, lunch, dinner, that  
6 kind of thing?

7 A. One cup soy milk, one cup Go Lean cereal, lunch  
8 probably a banana, chicken, and then again chicken, I eat  
9 six times a day, probably vegetables that I cooked, then  
10 I'd go home, probably eat more chicken, and maybe some  
11 yogurt, and probably Mike and Ike's, but if I was trying to  
12 cut them out then I wouldn't eat the Mike and Ike's.

13 Q. And when you say a cup of soy milk and a cup of  
14 cereal, did you actually measure it?

15 A. The cereal.

16 Q. You did?

17 A. Yeah.

18 Q. And you measured it every day?

19 A. Yeah.

20 Q. And this was in February of 2007?

21 A. Yes.

22 Q. How many calories are in a cup of --

23 A. Go Lean?

24 Q. -- a cup of soy milk?

25 A. I don't know.

1 A. Soy milk.

2 Q. Orange juice?

3 A. No.

4 Q. Fruit juice, anything like that?

5 A. Occasionally.

6 Q. For lunch --

7 MR. GARDNER: Scott, for clarification, are you  
8 still stuck at 2007? Because I think we're moving  
9 forward, just so we're clear?

10 Q. Sure. My questions right now all relate to  
11 February of 2007.

12 A. Okay.

13 Q. For lunch you mentioned, I think you said a  
14 banana and chicken?

15 A. Uh-huh.

16 Q. Tell me, when you say chicken, do you mean a  
17 chicken sandwich, do you mean a piece of chicken?

18 A. Piece of chicken, grilled chicken.

19 Q. And where would you get lunch?

20 A. I'd bring it.

21 Q. You brought it every day in February of 2007?

22 A. Almost every day.

23 Q. If you didn't bring your lunch, where would you  
24 get it?

25 A. Wa Wa or the grocery store across the street,

1 Stop and Shop.

2 Q. So a typical lunch for you would have been a  
3 banana and a piece of grilled chicken?

4 A. Yes, but I eat six times a day.

5 Q. Okay. And so, do you eat six times a day at a  
6 set time?

7 A. Every three hours.

8 Q. So in February of 2007 you were eating six times  
9 a day?

10 A. Yes.

11 Q. And were you eating every three hours then?

12 A. Yes.

13 Q. And what were the, give me the times?

14 A. My schedule is kind of strange, so I'll give you  
15 approximately, nine, twelve, three, six, and then nine  
16 again.

17 Q. Why was your schedule strange at that time?

18 A. Because Bernard's is open every day from 9:00 to  
19 10:00, sometimes 12:00, so we worked in shifts. Sometimes  
20 I had an early shift, sometimes I had a late shift.

21 Q. Did you have any other jobs at that time?

22 A. No.

23 Q. How are you employed currently?

24 A. Stylist, I'm a hair stylist.

25 Q. At a salon here in Fort Lauderdale?

1 A. Yes.

2 Q. At the, I don't know what you would call them, at  
3 the lunches in between breakfast and the last meal of the  
4 day, would you typically eat the same thing or different  
5 things?

6 A. Typically the same thing.

7 Q. And what would that be?

8 A. Besides the chicken and the vegetables?

9 Q. Right.

10 A. Fruit, yogurt, Power Bars, sometimes I would  
11 bring the crunch, the Go Lean Crunch, as a snack, I'm  
12 always eating healthy.

13 Q. How often do you eat a Power Bar?

14 A. You mean then?

15 Q. Right.

16 A. Maybe three times a week.

17 Q. How many calories are in a Power Bar?

18 A. I don't know.

19 Q. How many calories are in a banana?

20 A. I don't know.

21 Q. If I listed out the other foods that you listed  
22 for me, fruits, vegetables, grilled chicken, would you  
23 know how many calorie ares in any of them?

24 A. No, but I know how much fat is in them.

25 Q. But you don't know their caloric content?

1 A. No.

2 Q. In February of 2007 how often did you exercise?

3 A. Four times a week.

4 Q. And what did you do for exercise?

5 A. Tae Bo and running.

6 Q. Were you a member of a gym?

7 A. No.

8 Q. So in February of 2007 these habits that we've  
9 talked about, your eating and your exercise, were those  
10 new habits for you or things that you had been doing for  
11 awhile?

12 A. Things that I had been doing for awhile.

13 Q. Okay. And how much did you weigh in February of  
14 2007?

15 A. I don't know, approximately, I don't weigh  
16 myself.

17 Q. And between November of 2006 and May of 2007 how  
18 did your weight change, if at all?

19 A. I gained five pounds.

20 Q. Is there a particular reason that you remember  
21 that?

22 A. Because I was trying to lose five pounds.

23 Q. But you don't know what you weighed in February  
24 of '07?

25 A. No, I just know my clothes were tight.

1 Q. You talked about Mike and Ike's candy, did you eat  
2 any other candy, anything else, anything like that, this  
3 is in February of 2007?

4 MR. GARDNER: Object to the form of the question,  
5 can you get a little more descriptive on anything like  
6 that? I think you're saying junk food, will you do that?

7 Q. Junk food is a good description, we'll go with  
8 junk food.

9 A. No junk food. For some reason I only eat candy  
10 at night right before I go to bed.

11 Q. Don't eat ice cream?

12 A. No.

13 Q. Chocolate chip cookies?

14 A. No.

15 Q. Snack Wells, anything like that?

16 A. Maybe something homemade if my mom and grandma  
17 made it, maybe.

18 Q. How often did you eat out in February of 2007?

19 A. Once a month.

20 Q. Ms. Franulovic, would you agree that in February  
21 of 2007 you were aware that whether you gain or lose  
22 weight is a function of how many calories you take in  
23 versus how many calories you expend or use up?

24 A. Is a function? Can you rephrase that?

25 Q. Okay. Would you agree that in February of 2007



1 caloric consumption results in losing weight, do you  
2 believe that to be true?

3 A. Yes.

4 Q. To your understanding, you know, in your mind, to  
5 your knowledge, is there a difference between burning  
6 calories and reducing caloric consumption?

7 A. Yes.

8 Q. What's the difference?

9 A. When you burn calories, when I burn calories I  
10 should say, I'm working out, and if you're working out,  
11 specifically weight training, it helps you to burn  
12 calories even while standing still, so that Inviga was  
13 supposed to increase that, if you're just reducing  
14 calories you could put yourself in a state of starvation,  
15 which actually reduces your metabolism, which you could  
16 gain weight and not lose weight at all.

17 Q. Do you believe that reducing caloric consumption  
18 can result in losing weight?

19 A. It can, yes.

20 Q. And that's commonly referred to as dieting?

21 A. Yes.

22 Q. You understand and understood in February of 2007  
23 that one thing people do to lose weight is reduce caloric  
24 consumption?

25 A. Yes.

1 Q. And have you ever done that yourself?

2 A. Yes.

3 Q. Were you doing that in February of 2007?

4 A. Yes.

5 Q. And how were you trying to reduce your caloric  
6 consumption?

7 A. Cutting out the Mike and Ike's.

8 Q. Anything else?

9 A. No.

10 Q. Your diet generally that you've described for me,  
11 do you consider that a way of reducing caloric  
12 consumption?

13 A. Yes. Wait, I'm sorry, say that again.

14 Q. Your diet that you generally described for me is  
15 -- Let me put this way. In February of 2007 were you  
16 trying to eat healthy?

17 A. Yes.

18 Q. Were you trying to eat foods that you believed  
19 had a lower caloric content than alternative foods, than  
20 foods you weren't eating?

21 A. No. It --

22 Q. Go ahead.

23 A. I don't care about calories, I care more about  
24 fat and protein.

25 Q. So in your personal diet, the way you believe you

1 either lose weight or don't gain weight is to control the  
2 amount of fat and protein you're taking in?

3 A. Yes.

4 Q. The end of this sentence where it says, Or at  
5 least offsetting weight gain from other calories, what  
6 does that mean?

7 A. Offsetting weight gain, it means to tip the  
8 scales.

9 Q. I'm sorry?

10 A. To tip the scales, to work in the opposite  
11 direction. You're asking me to define a portion of a  
12 sentence?

13 Q. I'm asking you what that means to you in terms of  
14 this, this is an allegation in your complaint, in terms of  
15 this lawsuit.

16 A. I don't understand how else it can be explained  
17 except the way it's written.

18 Q. Okay. Was it your interpretation of the Inviga  
19 advertising that you could eat or drink whatever you  
20 wanted and as long as you were also drinking Inviga you  
21 would lose weight?

22 A. No.

23 Q. Why not?

24 A. Because that doesn't make sense. You're saying I  
25 can drink a milkshake and Inviga and still lose weight,

1 right, that's what you're trying to say?

2 Q. Right.

3 A. That's wrong.

4 Q. And you understood that that was wrong --

5 A. Yes.

6 Q. Let me finish my question.

7 You understood that was wrong the entire time you  
8 were drinking Inviga?

9 A. Yes.

10 Q. And the reason that's wrong is because you  
11 understood that even while you were drinking Inviga, if  
12 the other calories you were taking in put you in this  
13 state of taking in too many calories over the whole day,  
14 you would still gain weight?

15 A. Yes.

16 Q. From your description of your diet, to me it  
17 sounds to me like you pay a fair amount of attention to  
18 what you eat, would that be a fair characterization?

19 A. Yes.

20 Q. Let me turn with you to Paragraph 19, Paragraph  
21 19, the part I want to ask you about is in the second  
22 sentence there, I'm not going to read the whole thing, but  
23 it says, basically it says drinking three cans of Inviga  
24 every day over a lengthy period of time. And it's the  
25 over a lengthy period of time that I want to ask you

1 A. I don't think so.

2 (Defendant's Exhibit 12 was marked for  
3 identification.)

4 Q. And the last one here is Exhibit 12, do you know  
5 whether or not you've seen Exhibit 12 before?

6 A. I don't know.

7 Q. For how long did you drink three cans of Inviga  
8 per day?

9 A. Maybe two and-a-half months.

10 Q. How many times did you weigh yourself during that  
11 time period?

12 A. Zero.

13 Q. Do you ever drink diet soda?

14 A. No.

15 Q. Bottled water?

16 A. Yes.

17 Q. And do you ever drink bottled water instead of  
18 drinking other things that have calories in it like juice  
19 or tea or soda?

20 A. Yes.

21 Q. Okay. Will drinking bottled water make you lose  
22 weight?

23 A. No.

24 Q. Why not?

25 A. Because your body needs water, you have to drink

1 water, it's not designed to make you lose weight, there's  
2 nothing in it.

3 Q. If you drank bottled water instead of drinking  
4 orange juice, do you believe it would make you lose  
5 weight?

6 A. If you drank orange juice all the time, your  
7 entire life, and then stopped drinking it and then drank  
8 water? Yes.

9 Q. Because water has fewer calories?

10 A. Yes.

11 Q. Would making that change in your diet, do you  
12 believe, be a guarantee of weight loss?

13 A. No. Oh, yes, I'm sorry.

14 Q. You believe that would be a guarantee of weight  
15 loss?

16 A. Is that the one thing you're going to change?

17 Q. If you change that one thing, do you believe it  
18 would be a guarantee of weight loss?

19 A. Yes.

20 Q. No matter what else you did?

21 A. No.

22 Q. So it would depend on what else you were eating  
23 and drinking?

24 A. Yes.

25 Q. By the same token, you would agree that you never

1 thought that drinking Inviga was a guarantee of weight  
2 loss; is that fair?

3 A. Yes.

4 Q. I'm going to mark as a composite exhibit a  
5 printout, and some of this is hard to read so I apologize  
6 for that, but a printout of the Inviga website as Exhibit  
7 13.

8 (Defendant's Exhibit 13 was marked for  
9 identification.)

10 Q. Have you ever been to the Inviga website?

11 A. No.

12 Q. You've never logged on to Inviga.com?

13 A. No.

14 Q. Ever?

15 A. No.

16 Q. Let me ask you to flip to what's marked, you see  
17 the little numbers at the bottom of the page, those are  
18 called Bates Numbers, it's Bates Number 1740.

19 A. I'm there.

20 Q. This is just a picture of the back of the can  
21 that happens to come from the website, but you have seen  
22 the back of the can before, correct?

23 A. Yes.

24 Q. The top line there begins, Inviga is a delicious  
25 and refreshing sparkling green tea that invigorates your

1 Individual results may vary. Below that it says, Drinking  
2 more than three cans per day will not have an additional  
3 effect.

4 All of that that I just read, beginning with  
5 three cans and ending with additional effect, you read at  
6 some point while you were drinking Inviga, correct?

7 A. Uh-huh, yes.

8 Q. Was it your understanding that the calorie  
9 burning effect of drinking Inviga would be in the range of  
10 60 to 100 calories while you were drinking Inviga in 2007?

11 A. Yes.

12 Q. Do you know whether or not on any given day in  
13 2007 that you drank Inviga you, in fact, reduced your  
14 total caloric intake for that day by 100 calories?

15 A. No.

16 Q. And I believe you told me earlier that you don't  
17 know, and again we're talking about in 2007, you don't  
18 know how many calories you were taking in or trying to  
19 take in on a daily basis, right?

20 A. Right.

21 Q. Without counting your calories how would you know  
22 whether or not Inviga was burning calories?

23 A. Well, I was looking to increase my metabolism, so  
24 I was just going by that, and I know I wanted to lose a  
25 few pounds, five pounds, whatever, and it was right after



1 anything?

2 MR. ELDER: I mean eating anything.

3 MR. GARDNER: So if she had something that day  
4 that wasn't Inviga --

5 A. -- that also contained calorie burning  
6 qualities? No.

7 Q. No.

8 A. Say it again.

9 Q. On any given day that you drank Inviga, how would  
10 you know that you didn't eat or drink something that  
11 otherwise put you, for the day, for the total day, in a  
12 situation where you weren't reducing your overall  
13 calories?

14 A. I don't know.

15 Q. If you could turn with me to Page 1745, and this  
16 is in very small print, a picture of the Inviga website as  
17 of April 4, 2007, and under, Another simple positive  
18 choice, and you've never read this before because you  
19 never went to the website, right?

20 A. Right.

21 Q. And that sentence says, It's a fact that  
22 incorporating balanced nutrition and more activity into  
23 your lifestyle is the best way to stay healthy and much  
24 smarter than following fads, quick fixes and crash diets.  
25 Do you agree with that sentence?

1 A. Yes.

2 Q. Do you find it misleading in any way?

3 A. No.

4 Q. It goes on to say, That's why Inviga isn't  
5 designed to be a magic bullet. What does that mean to  
6 you?

7 A. Exactly what it says, that you can't just drink  
8 Inviga and drop weight.

9 Q. If you could flip with me to Page 1762, this is  
10 the section under frequently asked questions, and one of  
11 the questions says, Is Inviga recommended as part of a  
12 diet or weight loss program? Inviga is one of many  
13 helpful things that can be incorporated into an overall  
14 balanced lifestyle. Inviga is designed to compliment not  
15 replace regular exercise, a good diet and other healthy  
16 choices you make throughout the day --

17 (Discussion off the record.)

18 Q. The question and answer that I just read to you,  
19 do you believe that that question and answer is misleading  
20 in any way?

21 A. No.

22 Q. You mentioned in your interrogatory responses  
23 that you, let me turn to the response, Paragraph 9, if  
24 you'll flip back --

25 A. Which one, 1, 2?

1 A. Years.

2 Q. Always four times a week?

3 A. Varies, sometimes three, sometimes six,  
4 sometimes.

5 Q. And for how long do you exercise?

6 A. Then?

7 Q. Yes, in 2007.

8 A. 35 minutes.

9 Q. And that would be whether you're running or doing  
10 Tae Bo?

11 A. Yes.

12 Q. And Tae Bo is --

13 A. Kick boxing.

14 Q. -- kick boxing?

15 Had you gained any weight as of February 2007 in  
16 the past four or five months that you were trying to lose?

17 A. Yes.

18 Q. And how much weight do you believe that you had  
19 gained?

20 A. Three pounds.

21 Q. And why do you believe it's three pounds?

22 A. Because my pants were tight.

23 Q. Your eating habits that you described earlier, as  
24 of February of 2007 had you been eating that way for a  
25 number of months?