

# Exhibit A

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.

~~~~~

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 the 17 cans.

2 A. That it was, that you needed to drink 17 cans a  
3 day in order for the claims that they're claiming to be  
4 true.

5 Q. What else, if anything, about the advertising or  
6 the claims do you believe to be untrue?

7 A. All of them.

8 Q. Okay. When you say all of them, what do you  
9 mean?

10 A. Well, they didn't do anything for me, and if  
11 they're advertising on TV just to drink it and it burns  
12 calories, then you actually have to go to the back of the  
13 can and read the very small print and read that it's three  
14 cans, which I did one day because I just happened to be  
15 reading the can, then that's not true, it's just --  
16 Everything is not true.

17 Q. Tell me when you first purchased Inviga.

18 A. February.

19 Q. February of 2007?

20 A. Yes.

21 Q. And at that time were you trying to lose weight?

22 A. Yes.

23 Q. What things were you doing to try to lose  
24 weight?

25 A. Exercise, removing a few things from my daily

1 A. If you eat too many calories you gain weight.

2 Q. And how many calories do you have to eat to gain  
3 weight?

4 A. I think it's, everybody is different.

5 Q. By the same token, you understand that if you  
6 take in fewer calories you might lose weight?

7 A. Yes, but you have to burn 3,200 calories to lose  
8 one pound.

9 Q. And do you understand that if you take in the  
10 same number of calories that you are expending, using up,  
11 that your weight will stay the same?

12 A. Yes.

13 Q. And did you understand that in February of 2007?

14 A. Yes. But your product claims to burn calories  
15 just by sitting there.

16 Q. Tell me what things you were doing in February of  
17 2007 to -- Well, let me back up. Were you doing things in  
18 February of 2007 to reduce the number of calories you were  
19 consuming?

20 A. Yes.

21 Q. And were you attempting to reduce the number of  
22 calories by any certain amount?

23 A. No.

24 Q. And you don't know how many calories you were  
25 taking in or trying to take in on a daily basis in

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. 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 you understood, you knew, that whether or not your weight  
2 went up or down, you gained or lost weight, was a function  
3 of how many calories you took in versus how many calories  
4 you used up?

5 A. Yes?

6 MR. GARDNER: Object to the form of the question,  
7 could you define function?

8 MR. ELDER: The question has been asked and  
9 answered, Steve.

10 MR. GARDNER: I have objected to it, I gave you  
11 the opportunity to fix it.

12 MR. ELDER: You can object to form, it's a proper  
13 question.

14 Q. (By Mr. Elder) Is it fair to say that while you  
15 were drinking Inviga you don't know how many calories you  
16 were taking in on a daily basis?

17 A. Yes.

18 Q. Tell me about the first time you purchased a can  
19 of Inviga.

20 A. What led up to it?

21 Q. Yes, just tell me about buying it.

22 A. I went into the Wa Wa and I saw it in the aisle,  
23 and I picked it up and took it to the counter and paid for  
24 it.

25 Q. Did you see any, when you say you saw it in the



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 lawsuit for the class members?

2 A. Restitution.

3 Q. So you believed before you walked in here today  
4 that in your lawsuit you were seeking money damages? I  
5 think when you say restitution you mean money damages,  
6 right? Yes?

7 A. Yes.

8 Q. So before you came to your deposition today you  
9 believed that in your lawsuit you were seeking money  
10 damages for the class members just like you're seeking  
11 money damages for yourself?

12 A. Yes.

13 Q. I'll show you a document in a minute, but for  
14 right now I will just represent to you that, in fact, that  
15 is not what you're seeking for the class members in this  
16 case. Did you know prior to my questioning that you are  
17 not seeking money damages for those class members?

18 A. I was aware that this was not about money, yes, I  
19 know, I know what you're going to say, but --

20 MR. GARDNER: Why don't you listen and see what  
21 he's going to say.

22 A. Sorry.

23 Q. Do you understand, Ms. Franulovic, that as the  
24 representative of the class, that you have input and, in  
25 fact, duties -- Let me back up. Do you understand that as

1 you ever discussed this issue, that is whether or not you  
2 plan to seek damages for the other class members, with  
3 anyone prior to this deposition today?

4 A. Yes.

5 Q. And you discussed that with your attorneys?

6 A. Um, Mike.

7 Q. Yes?

8 A. Yes.

9 Q. And tell me why you believe it's appropriate in  
10 this lawsuit that you receive money damages but that the  
11 class members who you are representing as the class  
12 representative don't receive money damages.

13 MR. GARDNER: Again, I will permit Linda to  
14 answer, but I will instruct her not to use any  
15 conversations with Mike Quirk as the basis for the  
16 answer.

17 A. Can you repeat the question?

18 Q. Yes. Can you tell me why you believe it's fair  
19 that you are seeking and intend to receive if you prevail,  
20 money damages in this lawsuit, but you are not seeking  
21 those damages on behalf of the absent class members who  
22 you are representing?

23 MR. GARDNER: And the same instruction as to the  
24 prior question.

25 A. Because I'm here and they're not.

1 Q. Do you understand my question?

2 A. It wasn't the same question, she can look it up  
3 if you want.

4 Q. Do you understand the question that I just asked?

5 A. Yeah.

6 Q. Okay. Can you answer it?

7 A. I think that they should, personally I think  
8 everyone should be compensated in some way. But because  
9 this lawsuit is not about compensating people, it's really  
10 about making Coke stop with the false claims, then they're  
11 not going to get compensated.

12 But my personal opinion is yes, maybe with  
13 coupons or something, some free stuff, I don't know, but  
14 they should get something. I'm not saying that those  
15 people should not get anything.

16 Q. So it is your belief that the class members  
17 should receive money damages?

18 A. Yes.

19 Q. But you have elected not to seek those damages on  
20 behalf of the class members in this case?

21 A. Yes.

22 Q. Okay. And in light of that election not to seek  
23 damages for the class members, do you believe that you are  
24 fairly and adequately representing those class members in  
25 this lawsuit?

1 ascertainable losses as a direct result of this wrongful  
2 conduct and Coke has obtained monies from class members by  
3 means of the unlawful practices alleged herein. Do you  
4 think that the allegation in Paragraph 61 is a true  
5 allegation?

6 A. Yes.

7 Q. And do you believe that Coke has obtained monies  
8 from class members by means of the unlawful practices  
9 alleged herein, meaning in this complaint?

10 A. Yes.

11 Q. I would like you to put on the record your, this  
12 is a very important question, your best explanation as to  
13 why you are not seeking in this lawsuit the return of  
14 those monies that you believe Coke has obtained from the  
15 class members through unlawful practices.

16 MR. GARDNER: Scott, that has been asked and  
17 answered at least twice, I'm going to instruct her not to  
18 answer.

19 MR. ELDER: You're instructing her not to answer  
20 based on an asked and answered objection?

21 MR. GARDNER: I want to move on, it's asked and  
22 answered.

23 MR. ELDER: I'm entitled to an answer to that  
24 question, and I'm absolutely not going to move on.

25 MR. GARDNER: Then let's call the judge on that

1 if you want that --

2 MR. ELDER: Fair enough.

3 MR. GARDNER: All right. How many more times are  
4 you going to ask the same question of her? Because I will  
5 stop it and I will terminate, and I won't call the judge.

6 MR. ELDER: I don't believe it's been answered,  
7 so I'm going to ask it --

8 MR. GARDNER: Not the way you want it, no.

9 MR. ELDER: I'm going to ask it until I get an  
10 answer.

11 MR. GARDNER: No, but I'll let you ask it one  
12 more time and then I will instruct her not to answer  
13 because it becomes harassment.

14 Q. (By Mr. Elder) Ms. Franulovic, I will repeat my  
15 question because I want to make sure that it is clear on  
16 the record, and what I would like to know is your  
17 understanding and your rationale for not seeking money  
18 damages from Coke that you refer to in Paragraph 61 of  
19 Exhibit 2 for the absent class members in this lawsuit?

20 MR. GARDNER: Object, form.

21 A. Because the lawsuit is about stopping Coke from  
22 making false accusations, and if I have to choose between  
23 the two I would choose not to get the money and have them  
24 stop doing what they're doing.

25 Q. Why do you believe you have to choose between the



1 two?

2 MR. GARDNER: Again, I will instruct Linda to  
3 answer as fully as she can without using discussions with  
4 Counsel as part of her answer.

5 A. From what I understand this is a non-profit law  
6 firm, so they don't seek money damages, they just they  
7 seek for things to be done properly as far as what people  
8 consume.

9 Q. When you say this is a non-profit law firm, to  
10 what are you referring?

11 A. To the law firm.

12 Q. Which law firm?

13 A. The one that Mike works for, the one that Steve  
14 works for, these guys.

15 Q. Okay. Keep that page open please. Let me back  
16 up. You believe -- First of all --

17 MR. GARDNER: Just for the record, that page is  
18 the first page of Exhibit 1?

19 MR. ELDER: That is right.

20 Q. (By Mr. Elder) The first page of Exhibit 1 that  
21 you just referred to has at the top, Mark Cuker at the  
22 Williams Cuker Berezofsky firm, do you know Mark Cuker?

23 A. No, I've never met him.

24 Q. You know Mike Quirk?

25 A. Yes.

1 Q. You understand that Mike Quirk is either a  
2 partner in or an employee of the Williams Cuker Berezofsky  
3 law firm?

4 A. Yes.

5 Q. Okay.

6 (Discussion off the record.)

7 Q. Do you understand --

8 MR. GARDNER: Scott, the five minute break I  
9 needed was about 10 minutes ago.

10 MR. ELDER: We'll get there.

11 Q. (By Mr. Elder) Is it your understanding that the  
12 Williams Cuker Berezofsky law firm is some type of not for  
13 profit law firm that doesn't seek to make money?

14 A. I don't know.

15 Q. When you were referring earlier to a non-profit  
16 law firm, I think is what you called it, were you  
17 referring to the Center For Science In The Public  
18 Interest?

19 A. Yes.

20 Q. And is it your understanding that you are somehow  
21 limited in terms of the relief that you seek in this  
22 lawsuit by the mission or the purpose of the Center For  
23 Science In The Public Interest?

24 MR. GARDNER: And again, Linda, if you can answer  
25 without getting into attorney/client discussions with me

1 the how dare you. That conversation is not privileged,  
2 I'm entitled to know what it was about, I'm entitled to  
3 know if you instructed her, you influenced her, if you  
4 discussed this case one bit.

5 MR. GARDNER: She's answered you that we did not  
6 discuss the case, so you've got your answer, go on. And  
7 if it helps, Scott, we didn't, but we did talk.

8 Q. Ms. Franulovic --

9 A. Can I ask you something?

10 Q. Sure.

11 A. Can you call me Linda?

12 Q. If it's preferable to you, I certainly can.

13 (Discussion off the record.)

14 A. It's kind of a long name and it's so formal.

15 Q. At depositions we're always formal, but if Linda  
16 is more comfortable, I'm happy to call you Linda.

17 Linda, why not seek both what we call injunctive  
18 relief, and that means the change to the advertising, to  
19 what you've said, to get Coke to stop advertising the way  
20 it's advertising, do you understand that that's called  
21 injunctive relief?

22 A. I do now.

23 Q. When I'm referring to injunctive relief, that's  
24 what I'm referring to. Why not seek both injunctive  
25 relief and money damages for the class members in this

1 lawsuit?

2 MR. GARDNER: And again, I will ask her not to  
3 base her answer on discussions with counsel, but otherwise  
4 no problem.

5 A. Why not? I don't know, I guess I didn't think it  
6 was possible. Maybe it's not possible, maybe it is, I  
7 don't know.

8 Q. You're not even sure whether or not that's  
9 possible?

10 A. To ask for them, no. I don't know if I'm  
11 supposed to ask for them. I think I'm allowed to ask for  
12 me, but not -- I can ask for what I spent, right? Because  
13 it's in here.

14 Q. I understand. And you're not sure whether it's  
15 possible to ask for money damages for the other class  
16 members --

17 MR. GARDNER: Can I stop you? Can I have the  
18 same instruction in this line of questioning or should I  
19 interrupt each time?

20 MR. ELDER: Sure.

21 MR. GARDNER: Linda, the instruction is, don't  
22 answer based on what you've talked about with me or Mike,  
23 but otherwise feel free to answer. When he's asking for  
24 opinions of these things I'm instructing you not to use  
25 knowledge you've gained from talking to me or Mike, but

1 I'm not trying to stop you from answering. And if that's  
2 the only way you know, then that's the only way you know.

3 Q. Okay. Is it fair to say that you don't know  
4 whether or not you're even able to ask for damages for the  
5 other class members?

6 A. Yes.

7 Q. Tell me what you understand the Center For  
8 Science And The Public Interest to be.

9 A. They go after people that make false accusations,  
10 or false claims on products. I'm sure they do more than  
11 that.

12 Q. When did you first become aware of the Center For  
13 Science And The Public Interest?

14 A. When Mike told me about them.

15 Q. Mike?

16 A. Mike Quirk.

17 Q. And prior to Mike telling you about the Center  
18 For Science In The Public Interest, had you ever heard of  
19 that organization before?

20 A. I don't think so, no.

21 Q. You're not a member of the of CSPI?

22 A. No.

23 Q. Do you subscribe to their newsletter?

24 A. No.

25 Q. Have you ever visited their website?

1 Interrogatory Number 1 which is on Page 3, it says here  
2 that you viewed Inviga advertisements in either a  
3 magazine, on television or on a billboard, do you think  
4 that you ever saw an Inviga advertisement on television?

5 A. I don't know, I don't remember.

6 Q. I will represent to you that I don't believe that  
7 an Inviga advertisement has ever run on television.

8 A. Okay.

9 Q. Would you have any reason to disagree with that?

10 A. No.

11 Q. Do you know as between a magazine and a billboard  
12 whether you saw one on a magazine, on a billboard, or  
13 both?

14 A. Magazine.

15 Q. Do you know whether you ever saw one on a  
16 billboard?

17 A. I don't remember.

18 Q. Okay. Do you know which magazine?

19 A. No.

20 Q. Do you recall what the ad said?

21 A. No. I mean, verbatim or --

22 Q. Anything that you recall about it?

23 A. Calorie burning, negative calories, first  
24 negative calorie drink, that's it.

25 Q. Do you believe you saw more than one magazine ad?

1 A. Yes.

2 Q. Do you know how many?

3 A. No.

4 Q. And how many ads do you believe you saw before  
5 you purchased Inviga?

6 A. A few.

7 Q. A few meaning less than --

8 A. More than one, less than five.

9 Q. Okay. That's fair. What magazines would you  
10 typically -- Let me ask you, was this at work?

11 A. Yes.

12 Q. What magazines would you typically have at work?

13 A. A lot.

14 Q. In a hair salon there's a few magazines?

15 A. GQ, National Geographic, People, OK, Design  
16 Stuff, all kinds of crap.

17 MR. GARDNER: She meant stuff.

18 A. Mona Vie.

19 Q. What is that?

20 A. That's the name of the anti-oxidant fruit drink.

21 (Defendant's Exhibit 3 was marked for  
22 identification.)

23 Q. I've marked an ad as Exhibit 3, have you ever  
24 seen that ad before?

25 A. Maybe.

1 Q. Do you know whether or not you've seen that  
2 before?

3 A. Probably.

4 Q. Do you know definitely whether or not you've seen  
5 the ad before?

6 A. Yes, it was a different color.

7 Q. You think you've seen this ad in a different  
8 color?

9 A. Uh-huh.

10 Q. Okay. This ad which says, Proven to burn  
11 calories, and then below it it says, Introducing Inviga,  
12 the refreshing sparkling green tea that invigorates your  
13 metabolism to gently increase calorie burning. It's  
14 another positive step you can take towards a healthy,  
15 balanced lifestyle.

16 Do you believe that this ad is misleading?

17 MR. GARDNER: Object to form. Are you talking  
18 about that quote or the entire ad?

19 Q. The entire ad.

20 A. No.

21 (Defendant's Exhibit 4 was marked for  
22 identification.)

23 Q. I'll show you what I've marked as Exhibit 4, and  
24 ask you if you've ever seen Exhibit 4 before?

25 A. Yes.



1 Q. You believe you've seen that one before?

2 A. I think so, yeah.

3 Q. Okay. Do you believe that Exhibit 4 is  
4 misleading?

5 A. Do you mean as I read it today?

6 Q. I mean as you read it any time.

7 A. But what I know today is different than what I  
8 knew in February of '07.

9 Q. Okay. Explain what you mean.

10 A. Today I know that this, I'm biased, so if I'm  
11 reading this today I'm going to believe that this is  
12 misleading. But if you ask me this in February of '07,  
13 I'm going to have a different opinion.

14 Q. What would your opinion have been in February of  
15 '07?

16 A. Looks good to me, I'm going to try it.

17 Q. And today why do you have a different opinion?

18 A. Because I know that it's, I know that it's not  
19 true, I'm biased.

20 Q. And when you say that it's not true, what  
21 specific part is not true?

22 A. Burning calories is officially delicious, because  
23 I don't like this flavor.

24 Q. Other than the flavor, are there any other parts  
25 that you believe are not true?

1           A.    Not true, no.

2                   MR. GARDNER:  Scott, this seems like merits  
3 questioning, I don't mind, but can you tell me why it  
4 isn't?

5                   MR. ELDER:  I could, but I have no duty to so I  
6 choose not to.

7                           (Defendant's Exhibit 5 was marked for  
8 identification.)

9           Q.    I've handed you Exhibit 5, Exhibit 5 is an  
10 advertisement, it says, the bigger print says, The  
11 refreshing way to burn calories, have you seen this ad  
12 before?

13          A.    Maybe.

14          Q.    You're not sure?

15          A.    I mean, probably.

16          Q.    Do you know whether or not you've seen it before?

17          A.    I know I've seen ads before, whether it's exactly  
18 like this, you know, I can't be sure.

19          Q.    Okay.  So is it fair to say you are not sure if  
20 you have seen it before?

21          A.    Yes.

22          Q.    Do you believe that this ad is misleading?

23          A.    Again, are you asking me today or in 2007?

24          Q.    I'm asking you today.

25          A.    Yes.

1 Q. Why?

2 A. Because, Invigorates your metabolism, I'm not  
3 sure about that part, and I'm also not sure if it's a  
4 positive step towards taking a healthy, balanced  
5 lifestyle, because I'm not sure if drinking 17 of these a  
6 day to invigorate your metabolism is a healthy choice.

7 Q. Your understanding about -- Well, let me ask you  
8 this, does your knowledge about whether or not Inviga  
9 burns calories comes from any source other than that TV,  
10 it's not an episode, but TV show that you saw?

11 A. I'm sorry. Say it one more time.

12 Q. Do you know whether or not Inviga, drinking  
13 Inviga makes you burn calories?

14 A. No.

15 Q. But you have an opinion about that?

16 A. Yes.

17 Q. And what I'm trying to find out is, what's the  
18 basis of that opinion? Where have you received what you  
19 believe to be facts about whether or not drinking Inviga  
20 results in calorie burning?

21 A. Okay. It started from the TV episode, and then  
22 the rest of the information I received, I guess is  
23 privileged.

24 Q. The rest of the information that you know about  
25 that subject comes from your lawyers?

1 A. Right.

2 Q. And on the TV show, when you refer to the 17  
3 cans, was it, did the TV show say that Inviga doesn't burn  
4 calories, or that it doesn't burn calories in the  
5 quantities that are contained in a can?

6 A. That it didn't, you had to drink 17 in order to  
7 get the results that they claimed.

8 Q. And what results did they claim?

9 A. To burn calories.

10 (Defendant's Exhibit 6 was marked for  
11 identification.)

12 Q. I've marked another advertisement as Exhibit 6,  
13 do you know whether or not you've ever seen Exhibit 6  
14 before?

15 A. Yes.

16 Q. Yes you've seen it, or yes you know?

17 A. Yes, I've seen it.

18 Q. Where did you see it?

19 A. In magazines.

20 Q. And did you ever, this particular ad here is for  
21 a coupon, did you ever use any coupons when you purchased  
22 Inviga?

23 A. No.

24 Q. Did you ever see any coupons?

25 A. Yes.

1 Q. And you believe this is the one you saw?

2 A. Yes.

3 Q. Did you tear out the coupon but not use it later?

4 A. I had stopped drinking it.

5 Q. So you did see this ad but it was after you

6 had --

7 A. Right.

8 Q. -- stopped drinking Inviga?

9 A. Yes.

10 Q. The other ads that we talked about in Exhibits 3,  
11 4 and 5, do you know whether or not you saw those ads  
12 before or after you stopped drinking Inviga?

13 A. Before.

14 (Defendant's Exhibit 7 was marked for  
15 identification.)

16 Q. I've marked another ad as Exhibit 7, do you know  
17 whether or not you've ever seen Exhibit 7?

18 A. No, I would have remembered this word.

19 Q. Schmalorie? Do you believe that Exhibit 7 is  
20 misleading?

21 A. I'd have to answer again the same way I did  
22 before, it's misleading today.

23 Q. And why is that?

24 A. Because I know that you have to drink 17 cans to  
25 invigorate your metabolism.

1 Q. If you were to assume for purposes of my question  
2 that your TV show was not right and that, in fact, if you  
3 drink three cans of Inviga you'll burn 60 to 100 calories,  
4 and just for purposes of my question if you assumed that  
5 to be true, would you find this advertising to be  
6 misleading under those circumstances?

7 MR. GARDNER: Object, form.

8 A. How many calories did you say?

9 Q. 60 to 100.

10 A. From three cans? And I know that? No.

11 Q. And what I'm trying to learn is, you believe  
12 these ads are misleading because you don't think the  
13 product works; is that right?

14 A. Right.

15 Q. And are there, for example this ad that we have  
16 in front of us as Exhibit 7, there aren't other things  
17 about that ad that you believe are misleading?

18 A. Well, maybe one thing.

19 Q. What's that?

20 A. It doesn't say you have to drink three cans.

21 Q. It doesn't say in the ad that you have to drink  
22 three cans, that's on the back of the can.

23 A. But you asked me about the ad.

24 Q. But you're aware that that information is on the  
25 back --

1           A.     But not if I was just looking at this.

2           Q.     I understand, but you are aware that it's on the  
3 back?

4           MR. GARDNER:   Are you asking her to testify to  
5 the ad or the ad with the added knowledge of what the can  
6 says?   Because I thought you were asking her to talk about  
7 the ad.   Object to form.

8           MR. ELDER:   I asked her if that information was  
9 on the back of the can.

10          MR. GARDNER:   Your hypothetical doesn't include  
11 that, I'm asking if you want her to include that in the  
12 hypothetical.

13          Q.     (By Mr. Elder)   You're aware that the information  
14 is on the back of the can, you're aware of that?

15          A.     Yes.

16          Q.     In fact, you started buying three cans?

17          A.     Right.

18                 (Defendant's Exhibit 8 was marked for  
19 identification.)

20          Q.     I've marked another ad as Exhibit 8, do you know  
21 whether or not you have ever seen Exhibit 8 before?

22          A.     Yes.

23          Q.     You have seen it before?

24          A.     Yeah, I'm pretty sure, definitely.   No, yes,  
25 probably.

1 Q. Okay. When you say probably, do you know whether  
2 or not you have seen Exhibit 8 before?

3 A. No.

4 (Defendant's Exhibit 9 was marked for  
5 identification.)

6 Q. I've marked another ad as Exhibit 9, do you know  
7 whether or not you have ever seen Exhibit 9 before?

8 A. No.

9 (Defendant's Exhibit 10 was marked for  
10 identification.)

11 Q. Exhibit 10 is another ad, do you know whether or  
12 not you've ever seen Exhibit 10 before?

13 A. I know I've seen this phrasing, but --

14 Q. You believe you've seen the phrasing on Exhibit  
15 10 but you're not sure whether it was in an ad?

16 A. I mean, they all look the same, I know I've seen  
17 the coupon, I know I've heard all the phrases, but I  
18 haven't seen them lately.

19 Q. And all I'm trying to learn here is whether or  
20 not you can remember these particular ads and whether you  
21 can tell me if you've seen these particular ads before.

22 So I've marked Exhibit 11 as another  
23 advertisement, have you seen that before?

24 (Defendant's Exhibit 11 was marked for  
25 identification.)



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 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 Q. Those are the only things you drank?

2 A. Besides soy milk, yeah.

3 Q. Have you reviewed any of the documents that Coke  
4 has produced in this case?

5 A. No.

6 MR. GARDNER: Scott, for clarity you mean prior  
7 to today, since she's certainly seen them here?

8 MR. ELDER: Right.

9 Q. (By Mr. Elder) Do you have a file on this case?

10 A. No.

11 Q. A stack of papers?

12 A. Um, yeah, I guess, a stack, I don't know.

13 Q. Do you have any kind of a file of papers related  
14 to this case?

15 A. Papers, yeah.

16 Q. How big is it?

17 A. About this big, I guess.

18 Q. Less than a quarter of an inch?

19 A. No.

20 Q. Less than half an inch?

21 A. Half inch.

22 Q. You said earlier that you promoted Inviga, what  
23 did you mean?

24 A. People would come up to me and ask me about the  
25 drink, ask me if I liked it, ask me what I thought of it.

1 Q. Do you know or have you ever met any of the  
2 attorneys who work at the Berger and Montague firm?

3 A. No.

4 Q. Never met Sherrie Savette?

5 A. No.

6 Q. Michael Fantini?

7 A. No.

8 Q. Russell Paul?

9 A. No.

10 MR. GARDNER: Do you want to name them all,  
11 Scott, or are you just asking if she's met, she may have  
12 met these folks, and I don't want you to trip her up later  
13 if she happens to have socially seen somebody who works at  
14 Berger.

15 Q. Have you ever spoken to anyone that you knew to  
16 be with Berger and Montague about this litigation?

17 A. No.

18 MR. GARDNER: Scott, because I can tell you're  
19 cogitating, I'm going to need a break, it can be a short  
20 one. I don't know if Linda needs to eat, would it serve  
21 us to take one now?

22 MR. ELDER: It's 12:15, that would be fine.

23 (Recess taken from 12:15 to 12:30.)

24 Q. Linda, going back to the class members that we've  
25 been talking about, do you know how that class is defined

1 in your complaint?

2 A. No.

3 Q. Did you help decide what the class would be?

4 A. No.

5 Q. Did you help decide who would be named as a  
6 defendant in this lawsuit?

7 A. No.

8 (Discussion off the record.)

9 Q. Do you know how any of the costs in this lawsuit  
10 are paid?

11 A. No.

12 Q. Do you know whether or not you are personally  
13 responsible for any costs associated with this litigation?

14 A. No.

15 Q. No you don't know, or no you don't think you are?

16 A. No I don't think I am.

17 Q. There have been several motions to dismiss or  
18 motions in opposition for leave to amend your complaint in  
19 this case and responses to those, have you reviewed any of  
20 those pleadings?

21 A. I'm not sure of your question.

22 Q. Other than the complaints in this case, have you  
23 reviewed any other pleadings, things that we call briefs  
24 that are written arguments?

25 A. No.



1 A. No.

2 Q. Have you ever been to the Coke website?

3 A. No.

4 Q. Other than Mr. Gardner have you ever met anyone  
5 from CSPI?

6 A. CSPI?

7 Q. Center For Science In The Public Interest.

8 A. No.

9 Q. To your knowledge, does Mr. Riback remain  
10 involved in this lawsuit?

11 A. I don't know, no, I don't know, I don't think so.

12 Q. You haven't dealt with him since receiving papers  
13 from Mr. Quirk; is that right?

14 A. In a legal matter?

15 Q. In a legal matter.

16 A. No.

17 Q. Okay. Have you otherwise seen him since then?

18 A. Yes.

19 Q. Where was that?

20 A. The salon.

21 Q. Did you understand Inviga to be an energy drink?

22 A. Yes.

23 Q. And when you say it's an energy drink, what do  
24 you mean by that?

25 MR. GARDNER: Object to form, she didn't say it

VERY LOW SODIUM

## Nutrition Facts

Serv. Size 1 Can

### Amount Per Serving

Calories 5

|               | % Daily Value* |
|---------------|----------------|
| Total Fat 0g  | 0%             |
| Sodium 35mg   | 1%             |
| Total Carb 0g | 0%             |
| Protein 0g    |                |

Calcium 20%

Not a significant source of fat cal., sat. fat, trans fat, cholest., fiber, sugars, vitamin A, vitamin C and iron.

\*Percent Daily Values are based on a 2,000 calorie diet.

**Nestlé Coca-Cola**  
INTERNATIONAL SCIENCE  
"Combining global resources and Nestlé expertise  
in nutritional science for the advancement of  
health and wellness beverages"

**enviga** is a delicious and refreshing sparkling green tea that invigorates your metabolism to gently increase calorie burning. By giving your body a little extra boost, **enviga** is a simple and positive step you can take toward a healthy balanced lifestyle.

**enviga** contains an optimum blend of fruit essences and naturally active plant ingredients. **enviga** is designed to work with your body.

1 Concentrated natural green tea extracts provide 90mg/erving of natural Epigallocatechin gallate (EGCG), one of nature's most powerful antioxidants, and a combination with caffeine invigorates your metabolism to burn calories.

2 Caffeine (100mg/erving, the same level found in an average cup of coffee) stimulates your body to enhance the calorie burning process.

3 Calcium (200 mg/erving) **enviga** is a good source of calcium.

Three cans per day of **enviga** have been shown to increase calorie burning by 60-700 calories in healthy normal weight 18-35 year olds. Individual results may vary.

Drinking more than three cans per day will not have an additional effect.

**enviga™**

INVIGORATE YOUR METABOLISM!

To understand how **enviga** works  
visit [www.enviga.com](http://www.enviga.com)  
Consumer Information Call  
1-866-327-4992