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Attorneys for Plaintiff Linda Franulovic and the Class

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

Linda Franulovic, individually and on behalf
of a class of persons,

Plaintiff,

v.

The Coca-Cola Company,
Defendant.

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Civil Action No. 1:07-cv-00539-RMB-JS

ORAL ARGUMENT REQUESTED

**AFFIDAVIT OF MARK R. CUKER IN SUPPORT OF APPEAL
FROM MAGISTRATE JUDGE'S DISCOVERY ORDER**

MARK R. CUKER, ESQUIRE, in lieu of oath or affidavit, hereby certifies and says:

1. I am a partner at the law firm of Williams Cuker Berezofsky, attorneys for Plaintiffs Linda Franulovic and the Class in the above captioned matter. I submit this Certification in support of Plaintiff's Rule 72.1(c)(1) Appeal from Magistrate Judge's Discovery

Order. I am personally familiar with the facts set forth herein and more fully in the accompanying Memorandum of Law.

2. Attached as **Exhibit A** is Plaintiff's Second Amended Class Action Complaint, filed August 13, 2007.

3. Attached as **Exhibit B** is Defendant's First Set of Interrogatories dated August 15, 2007 and served pursuant to the Court's Scheduling Order for class certification discovery.

4. Attached as **Exhibit C** is Plaintiff's Responses to Defendant's First Set of Interrogatories, dated August 31, 2007.

5. Attached as **Exhibit D** is Defendant's letter to Counsel for Plaintiff responding to her objections to interrogatories, dated September 13, 2007.

6. Attached as **Exhibit E** is Defendant's Letter Brief to Magistrate Judge Schneider dated September 17, 2007, arguing in support of Defendant's asserted right to take discovery of Plaintiff's medical records.

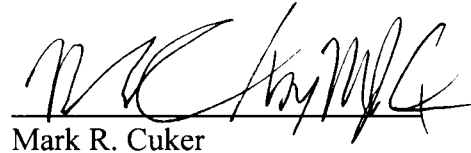
7. Attached as **Exhibit F** is Plaintiff's Letter Brief of September 24, 2007 arguing in response that her medical records are not discoverable because they are irrelevant to her consumer fraud claims and are privileged under applicable New Jersey law.

8. Attached as **Exhibit G** is Magistrate Judge Schneider's Order issued on October 5, 2007, requiring Plaintiffs in the three cases consolidated for discovery to produce all of their medical and employment records for the past ten years.

9. Attached as **Exhibit H** is the March 7, 2000 Opinion of the New Jersey Superior Court, Law Division, in the case of *Cummis v. Philip Morris Companies, Inc.*, No. MID-L-

15216-99 MT and No. MID-L-11263-98 MT, holding in a consumer fraud action under New Jersey law that the plaintiffs' medical records were not discoverable and were privileged.

I hereby certify that all of the foregoing statements are true and accurate. I further certify that I am aware that if any of the statements made by me herein are willfully false, I am subject to punishment.



Mark R. Cuker

Dated: October 25, 2007