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6 Attorneys for Defendants  
 The American Bottling Company (sued erroneously as American Bottling  
 7 Company), for itself and as successor in interest by merger to Cadbury Schweppes  
 Bottling Group, Inc. (sued erroneously as Cadbury Schweppes Bottling Group) and  
 8 Seven-Up/RC Bottling Company of Southern California, Inc. (sued erroneously as  
 7-UP/RC Bottling Company of Southern California), and Dr Pepper Snapple Group,  
 9 Inc. (sued erroneously as Dr. Pepper Snapple Group)

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UNITED STATES DISTRICT COURT  
 CENTRAL DISTRICT OF CALIFORNIA  
 WESTERN DIVISION

ROBERT M. WARD, et al.,  
 Plaintiffs,  
 vs.  
 CADBURY SCHWEPPE'S BOTTLING  
 GROUP, et al.,  
 Defendants.

CASE NO. CV09-3279 VBF (CWx)  
**JOINT STIPULATION AND  
 PROTECTIVE ORDER RE  
 CONFIDENTIAL INFORMATION**  
**NOTE CHANGES MADE BY  
 COURT**

1 **STIPULATED PROTECTIVE ORDER**

2 The Parties, by and through their respective counsel, hereby agree and  
3 stipulate as follows:

4  
5 1. **Scope of Order.** This Joint Stipulation and Protective Order Re  
6 Confidential Information (“Stipulated Protective Order”) governs the handling of all  
7 material produced, given, or filed during discovery or other proceedings in this  
8 action. The provisions of this Stipulated Protective Order shall apply to the Parties  
9 in this action, and any other Person producing, receiving, or disclosing Material in  
10 this action.

11 2. **Definitions.**

12 (a) As a general guideline, Materials designated as “Confidential” shall  
13 be those things that may be disclosed to the Parties for purposes of  
14 this litigation, but which must be protected from disclosure to third  
15 parties. Absent a specific order from this Court, Materials  
16 designated as “Confidential” shall be used by the Parties solely in  
17 connection with this litigation or other litigations, administrative  
18 proceedings and the like between any plaintiff, on the one hand, and  
19 defendants, on the other, and not for any other litigations or  
20 proceedings or any business, competitive, or governmental purpose  
21 or function, and such Materials shall not be disclosed to anyone  
22 except as provided herein.

23 (b) “Protected Material” means any type or classification of Material  
24 that is designated as “Confidential” by the producing person and  
25 that contains trade secrets, future business plans, information  
26 regarding products not released or announced to the public,  
27 nonpublic proprietary product development information, customer  
28 lists, nonpublic financial information, nonpublic business operations

1 information of a confidential nature, personnel information in an  
2 employee's confidential employment file, and/or information  
3 protected by the right to privacy. Publicly available information is  
4 not Protected Material. The Parties cannot reasonably anticipate all  
5 information that will be requested and produced in this action, and  
6 they therefore reserve the right to designate as Protected Material  
7 any document or category of information that they in good faith  
8 believe is entitled to the designation **pursuant to the standards of**  
9 **F. R. Civ. P. 26(c)** even if it is not expressly mentioned in the  
10 definition above.

11 (c) "Confidential Information" means any information contained in  
12 Protected Material, as defined above, and only the limited portions  
13 of briefs, memoranda, exhibits, or testimony, or the limited portions  
14 of any other writing filed with the Court that mentions, discusses, or  
15 refers to any Protected Material.

16 (d) "Material" means papers, documents, tapes, testimony, and other  
17 information produced, given, or filed during discovery or other  
18 proceedings in this action, including, but not limited to, answers to  
19 interrogatories, responses to requests for admissions, deposition  
20 testimony, information provided during any settlement discussions,  
21 and all copies, excerpts, summaries, and information derived from  
22 any such papers or documents.

23 (e) "Person" means a natural person, firm, association, organization,  
24 partnership, business, public entity, or other person acting on behalf  
25 of such person.

26 (f) "Party" or "Parties" means Plaintiffs Robert M. Ward, Robert E.  
27 Jones, Jose M. Valadez, Leonard Talton, Gary Suhay and Alfonso  
28 W. January, and Defendants The American Bottling Company (sued

1 erroneously as American Bottling Company), for itself and as  
2 successor in interest by merger to Cadbury Schweppes Bottling  
3 Group, Inc. (sued erroneously as Cadbury Schweppes Bottling  
4 Group) and Seven-Up/RC Bottling Company of Southern  
5 California, Inc. (sued erroneously as 7-UP/RC Bottling Company of  
6 Southern California), and Dr Pepper Snapple Group, Inc. (sued  
7 erroneously as Dr. Pepper Snapple Group) (including anyone else  
8 acting upon their behalf or at their direction or control), or any other  
9 Person who is joined in this action as a party.

10 (g) “Producing Person” means any Person, as defined above,  
11 producing or disclosing Material in this action.

12 (h) “Discovering Party” means any Party that requests and receives  
13 Materials in this action through the discovery process.

14 3. **Designation of Protected Material.** A Producing Party may designate  
15 Discovery Material as “Confidential” in the following manner:

16 (a) Designation of Documents: Any document (defined herein as  
17 including, but not limited to: exhibits, documents and things  
18 (including computer diskettes and other storage media) produced in  
19 response to discovery requests, interrogatory responses, responses to  
20 requests for admission, motions, briefs, memoranda, and copies of  
21 any of the foregoing) produced or given by any Producing Person  
22 during discovery, hearings, or trial in this case which sets forth or  
23 contains any Confidential Information may be so designated by  
24 affixing the legend “Confidential” on each page containing  
25 Confidential Information at the time such document is produced or  
26 provided, or as soon thereafter as the Producing Person seeking  
27 protection becomes aware of the confidential nature of the  
28 document. In addition, even if a party fails to affix “Confidential”

1 to a particular document that it produces in this action, if such  
2 document was treated by the parties as “Confidential” pursuant to  
3 Section 5 of their Application Services Provider Customer  
4 Agreement, or if it would have been treated by the parties as such,  
5 the document in question shall be protected as “Confidential” and  
6 maintained as Confidential Information in accordance with the  
7 terms of this Protective Order (so as to minimize the burden on the  
8 parties when producing materials that are potentially relevant to this  
9 action).

10 (b) Designation of Deposition Testimony: Deposition testimony may  
11 be designated “Confidential” by oral designation on the record, or  
12 within five (5) days after the transcript of such deposition is mailed  
13 (via overnight mail) to the designating Person. The designating  
14 Person shall instruct the court reporter to separately bind the  
15 portions of the deposition transcript so designated, and to stamp the  
16 word “Confidential” on each designated page of the transcript.  
17 Pending expiration of this five-day period, all Parties shall treat all  
18 deposition testimony and exhibits as if they had been designated as  
19 “Confidential.”

20 (c) Treatment of Court-Filed Materials. **This order does not create a**  
21 **right to filing under seal.** A Party that intends to file with the  
22 Court any information that another Party or non-party has  
23 designated as “Confidential” shall comply with the ~~sealing and~~  
24 ~~lodging~~ **lodging and filing** requirements of the Court’s Local Rules  
25 **regarding requests for filing under seal.** Where only a portion of  
26 the submission or filing contains Confidential Information, only that  
27 portion shall be ~~filed~~ **lodged for requested filing** under seal. The  
28 parties shall keep in confidence all copies of such Materials as

1 provided in this Order.

2 4. **Treatment of Protected Material.** Material designated “Confidential”  
3 may not be disclosed except as set forth in paragraph 5 below. Protected Material  
4 shall be kept in secure facilities, and access to those facilities shall be permitted only  
5 to those Persons having proper access thereto under this Stipulated Protective Order.  
6 Protected Material shall be used solely for the purposes of this litigation and shall  
7 not be used for any business or other purpose. The restrictions on use of Protected  
8 Material set forth in this Order shall survive the conclusion of the litigation, and,  
9 after conclusion of this litigation, the Court shall retain jurisdiction for the purpose  
10 of enforcing this Stipulated Protective Order.

11 5. **Access to Material Designated “Confidential.”** Material designated  
12 “Confidential” may be disclosed only to the following:

- 13 (a) a Party;
- 14 (b) any officer, director, employee, or former employee of a Party;
- 15 (c) any officer, director, employee, or former employee of a parent,  
16 subsidiary, or affiliate of a Party;
- 17 (d) Counsel of record for any Party, including in-house counsel and  
18 consulting attorneys;
- 19 (e) Paralegal, stenographic, clerical, and secretarial personnel regularly  
20 employed by counsel for any Party;
- 21 (f) Court personnel, including stenographic reporters engaged in such  
22 proceedings as are necessarily incident to preparation for trial and  
23 trial of this action;
- 24 (g) Personnel of copy service firms or attorney service firms retained by  
25 counsel in connection with this action;
- 26 (h) Any independent consultant or expert, not including a Party or a  
27 current or former employee of a Party, retained in connection with  
28 this action, provided that each such person first acknowledges in

1 writing, under oath, that he or she has read this Stipulated Protective  
2 Order and agrees to be bound by its terms. This acknowledgment  
3 shall be made by execution of the Declaration in the form attached  
4 hereto as Exhibit A. All such written acknowledgments shall be  
5 maintained by counsel making the disclosure of the Protected  
6 Material, and shall be provided to the opposing Party's counsel at  
7 the conclusion of this action; and

8 (i) Any other Person to whom the Producing Person agrees in writing.

9 **6. Examination of Third Party Witnesses.** Any Person may be  
10 examined as a witness during a deposition concerning any Protected Material that  
11 appears on its face or from other documents or testimony to have been received or  
12 authored by that Person. During examination, an examining Party may show such a  
13 witness such Protected Material. If a Party wishes to examine a witness during a  
14 deposition concerning any Protected Material of another Person, and the witness has  
15 not previously received, authored, or otherwise had lawful access to such Protected  
16 Material, the examining Party shall first obtain the consent of the Producing Person  
17 who designated the Material, or their attorneys, if any, and shall require the witness  
18 to agree to maintain the confidentiality of the Protected Material in accordance with  
19 the terms of this Stipulated Protective Order by execution of the Declaration  
20 attached hereto as Exhibit A.

21 **7. Challenging Confidentiality Designations.** By entering into this  
22 Stipulated Protective Order, no Party concedes that any Material designated as  
23 Protected Material has been properly so designated. Should any Party object to any  
24 confidentiality designation, the objecting Party shall provide written notice of the  
25 basis for such objection to the Producing Party and shall attempt in good faith to  
26 resolve the objection informally with the Producing Party as soon as practicable. If  
27 the objection cannot be informally resolved within a reasonable time, the objecting  
28 Party may move for an order determining whether the Materials are properly

1 designated. **On any such motion, the designating party bears the burden of**  
2 **establishing good cause pursuant to F. R. Civ. P. 26(c).** Until a motion is filed  
3 and resolved by the Court, all Materials shall be treated as Protected Materials. The  
4 foregoing is without prejudice to the right of any Person to apply to the Court for  
5 modification of this Stipulated Protective Order or for a further protective order  
6 relating to Confidential Information.

7       **8. Confidentiality Obligations to Third Parties.** In the event that  
8 information in the possession or control of a Person from whom discovery is sought  
9 involves the confidentiality rights of a non-party or that its disclosure would violate  
10 a Protective Order issued in another action, the Person with possession or control of  
11 the information will attempt to obtain the consent of the non-party to disclose the  
12 information subject to the terms of this Stipulated Protective Order. If the consent  
13 of the non-party cannot be obtained, the Person will notify the Party seeking  
14 discovery of: (a) the existence of the information without producing such  
15 information; (b) the identity of the non-party (provided, however, that such  
16 disclosure of the identity of the non-party in and of itself does not violate any  
17 confidentiality obligation). The Party seeking discovery may then make further  
18 application to the non-party or seek other means to obtain such information.

19       **9. Inadvertent Disclosure of Confidential Information.** Inadvertent  
20 failure to designate as Protected Material any information pursuant to this Order  
21 shall not constitute a waiver of any otherwise valid claim for protection thereof, so  
22 long as such designation is asserted promptly following discovery of the inadvertent  
23 failure.

24       **10. Disclosure to Plaintiffs.** Plaintiffs represent that their counsel of  
25 record in this action are authorized to receive Confidential Information belonging to  
26 any Plaintiff, and that they are authorized to share such Confidential Information  
27 with all Plaintiffs joined in this case.

28       **11. Conclusion of Action.** This Stipulated Protective Order, insofar as it



1 restricts the communication and use of Confidential Information, shall continue to  
2 be binding throughout and after the conclusion of this action, including any appeals.  
3 At the conclusion of this action, including appeals, counsel for each Party shall  
4 either return to the Producing Person or destroy all Protected Materials, and shall  
5 designate in writing that all such materials have in fact been returned or destroyed.  
6 Notwithstanding the foregoing, counsel for the Parties need not return or destroy  
7 any Protected Material that becomes a part of the Court record in this action, by use  
8 as a trial exhibit, inclusion in a court filing, inclusion in any record on appeal, or  
9 otherwise.

10           12.    **Inadmissibility.** This Stipulated Protective Order, the fact of its  
11 adoption or entry, and any provision of this Stipulated Protective Order or attached  
12 form shall not be admissible for any purpose of this litigation, except to the extent  
13 necessary to enforce its terms. In any such enforcement proceeding, the prevailing  
14 party shall recover its reasonable attorneys' fees and expenses in maintaining such  
15 proceeding.

16           13.    **Miscellaneous.** Nothing in this Order shall preclude any party from  
17 making any claim of privilege as to any information requested by another party.  
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1 Failure to designate Material as Protected Material shall not constitute a waiver of  
2 any other claim of privilege.

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IT IS SO STIPULATED.

DATED: September \_\_, 2009

LAW OFFICES OF MICHAEL F. BALTAXE  
TIMOTHY B. SOTTILE, APLC

By \_\_\_\_\_  
Timothy B. Sottile  
Attorneys for Plaintiffs  
Robert M. Ward, et al.

DATED: September \_\_, 2009

BAKER MARQUART CRONE &  
HAWXHURST LLP

By \_\_\_\_\_  
Gerald E. Hawxhurst  
Daryl M. Crone  
Attorneys for Defendants  
The American Bottling Company, et al.

**ORDER**

For good cause appearing, IT IS SO ORDERED.

Dated: January 19, 2010

  
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UNITED STATES MAGISTRATE  
JUDGE

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Exhibit A

UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA

ROBERT M. WARD, et al.,  
Plaintiffs,  
vs.  
CADBURY SCHWEPPEES  
BOTTLING GROUP, et al.,  
Defendants. \_\_\_\_\_

) Case No. CV09-3279 VBF  
) (CWx) \_\_\_\_\_  
) **DECLARATION RE JOINT**  
) **STIPULATION AND**  
) **PROTECTIVE ORDER RE**  
) **CONFIDENTIAL**  
) **INFORMATION**  
)

I, \_\_\_\_\_, declare as follows:

1. My address is \_\_\_\_\_.
2. I have received a copy of the Joint Stipulation and Protective Order Re Confidential Information (“Stipulated Protective Order”) entered by the United States District Court in this lawsuit.
3. I have carefully read and I know the contents of the Stipulated Protective Order, and I agree to be bound by it. I specifically understand and agree that I shall not use or disclose, in public or private, any Protected Materials or Confidential Information or information derived therefrom without the prior written consent of the designating Party or as otherwise set forth in the Stipulated Protective Order or permitted or required by an order of the Court. I agree that I will not keep any originals or copies of any Materials designated “Confidential” for any purpose, unless such Materials were in my possession prior to the commencement of this litigation.

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4. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Date: \_\_\_\_\_