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22

23 UNITED STATES DISTRICT COURT
 24 CENTRAL DISTRICT OF CALIFORNIA

25 A&B BEVERAGE COMPANY, LLC; A.
 CAPPIONE, INC.; ADAMS
 26 BEVERAGES OF NY, LLC; AJAX
 TURNER COMPANY, INC.; AMERICAN
 27 EAGLE DISTRIBUTING CO.; ARK
 28 VALLEY DISTRIBUTING, INC.;

Case No. 2:15-cv-03548-MWF-AGR
~~PROPOSED~~ STIPULATED
 PROTECTIVE ORDER

[Proposed] Stipulated Protective Order
 Case No. 2:15-cv-03548-MWF-AGR

1 ARTHUR R. GREN COMPANY, INC.;
2 BOB RALPH DIST. CO., INC.; BROWN
DISTRIBUTING COMPANY, INC.;
3 CARDIN DISTRIBUTING COMPANY;
CENTRAL DISTRIBUTORS INC.; CITY
4 BEVERAGE COMPANY, INC.; CLARK
DISTRIBUTING COMPANY, INC.;
5 CLARKE DISTRIBUTORS, INC.;
COUNTY DISTRIBUTING CO., INC.;
6 DANA DISTRIBUTORS INC.; DEMO
DISTRIBUTORS, INC.; DUTCHESS
7 BEER DISTRIBUTORS, INC.; EAGLE
BEVERAGE CORPORATION; ED F.
8 DAVIS, INC.; FARRELL
DISTRIBUTING CORPORATION;
9 FEDERAL DISTRIBUTORS, INC.;
FLINT HILLS BEVERAGE, LLC; G.
10 HOUSEN & COMPANY, INC.; GREAT
RIVERS DISTRIBUTING COMPANY,
INC.; GREAT STATE BEVERAGES,
11 INC.; HOCH, INC. d/b/a H&H
DISTRIBUTING; HOFFMAN
12 BEVERAGE CO.; HOUSE OF SCHWAN,
INC.; J.F. FICK, INC.; L&H
13 DISTRIBUTING COMPANY, INC.;
LAKE BEVERAGE CORPORATION;
14 LAMONICA BEVERAGES INC.;
LUECKE DISTRIBUTING COMPANY,
15 INC.; M. PRICE DISTRIBUTING CO.;
MAGIC CITY BEVERAGE CO. INC.;
16 MAINE DISTRIBUTORS; MULLALLY
DISTRIBUTING CO., INC.; NATIONAL
17 DISTRIBUTORS, INC.; NEMONT
BEVERAGE CORPORATION; NEW
18 HAMPSHIRE DISTRIBUTORS, LLC;
NORTHERN EAGLE BEVERAGES,
19 INC.; O'MALLEY BEVERAGE, INC.;
O'MALLEY BEVERAGE OF KANSAS,
20 INC.; OWEGO BEVERAGE COMPANY,
LLC d/b/a EAGLE BEVERAGE
21 COMPANY; PESTINGER
DISTRIBUTING CO., INC.; QUEEN
22 CITY BEVERAGE, INC., d/b/a/ BRAUN
DISTRIBUTING; R.A. JEFFERIES
23 DISTRIBUTING COMPANY, LLC; R.H.
BARRINGER DISTRIBUTING CO.,
24 INC.; RIVER EAGLE DISTRIBUTING
CO.; R.L. LIPTON DISTRIBUTING,
25 LLC; ROCCO J. TESTANI, INC.;
SANDHILLS DISTRIBUTING LLC;
26 SANZO BEVERAGE CO., INC.;
SARATOGA EAGLE SALES &
27 SERVICE, INC.; SENECA WHOLESALE
COMPANY, INC.; STANDARD SALES
28 COMPANY, L.P.; STRATHMAN SALES

Third Amended Complaint Filed:
January 25, 2016

~~Proposed~~ Stipulated Protective Order
Case No. 2:15-cv-03548-MWF-AGR

1 COMPANY, INC.; SUPERIOR
2 BEVERAGE CO.; UNITED BEVERAGE
3 CO., LP; VALLEY DISTRIBUTORS,
4 INC.; VENTURE SOUTH
5 DISTRIBUTORS, INC. d/b/a
6 CENTENNIAL DISTRIBUTING;
7 VIDRICKSEN DISTRIBUTING
8 COMPANY, INC.; VIRGINIA EAGLE
9 DISTRIBUTING COMPANY, LLC;
10 VOLUNTEER DISTRIBUTING
11 COMPANY, INC.; WESTERN
12 BEVERAGE, INC.; WIL FISCHER
13 DISTRIBUTING CO.; AND WIL
14 FISCHER DISTRIBUTING OF KANSAS,
15 LLC,
16 Plaintiffs,
17
18 v.
19
20 THE COCA-COLA COMPANY,
21
22 Defendant.
23
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1 **1. PURPOSES AND LIMITATIONS**

2 Discovery in this action is likely to involve production of confidential,
3 proprietary, private or personal information, or other commercially sensitive
4 information, for which special protection from public disclosure and from use for
5 any purpose other than prosecuting this litigation may be warranted. Accordingly,
6 Plaintiffs and Defendant The Coca-Cola Company (“Defendant” or “Coca-Cola”)
7 hereby stipulate to and petition the Court to enter the following Stipulated
8 Protective Order (“Protective Order” or “Order”). The parties acknowledge that
9 this Order does not confer blanket protections on all disclosures or responses to
10 discovery and that the protection it affords from public disclosure and use extends
11 only to the limited information or items that are entitled to confidential treatment
12 under the applicable legal principles. The parties further acknowledge, as set forth
13 in Section 12.3 (Filing Protected Material), below, that this Order does not entitle
14 them to file confidential information under seal; Civil Local Rule 79-5 sets forth the
15 procedures that must be followed and the standards that will be applied when a
16 party seeks permission from the court to file material under seal.

17 **2. DEFINITIONS**

18 2.1 Action: *A&B Beverage Company, LLC, et al. v. The Coca-Cola*
19 *Company*, Case No. 2:15-cv-03548-MWF-AGR.

20 2.2 Challenging Party: A Party or Non-Party that challenges the
21 designation of information or items under this Order.

22 2.3 “CONFIDENTIAL” Information or Items:

23 Confidential, proprietary or commercially sensitive business or financial
24 information, trade secrets, or personal information which the Designating Party in
25 good faith considers confidential, and which is not generally known or publicly
26 available and which the Designating Party would not normally reveal to third
27 parties or would cause third parties to maintain in confidence, or information that
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1 otherwise meets the standard for protection set forth in Rule 26(c) of the Federal
2 Rules of Civil Procedure.

3 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as
4 their support staff).

5 2.5 Designating Party: A Party or Non-Party that designates information
6 or items that it produces or that are produced in disclosures or in response to
7 discovery as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL- ATTORNEYS’
8 EYES ONLY.”

9 2.6 Disclosure or Discovery Material: All items or information, regardless
10 of the medium or manner in which it is generated, stored, or maintained (including,
11 among other things, testimony, transcripts, exhibits and tangible things), that are
12 produced or generated in disclosures or responses to discovery in this matter by any
13 Party or Non-Party.

14 2.7 Expert: A person with specialized knowledge or experience in a
15 matter pertinent to the litigation who has been retained by a Party or its Counsel to
16 serve as an expert witness or as a consultant in this Action and who is not a past or
17 current employee of a Party or a current employee of a Party’s competitor and who,
18 at the time of retention, is not anticipated to become an employee of a Party or a
19 competitor of a Party. This definition includes a professional jury or trial
20 consultant retained in connection with this litigation.

21 2.8 “HIGHLY CONFIDENTIAL- ATTORNEYS’ EYES ONLY”
22 Information or Items: “Confidential Information or Items,” that the Designating
23 Party believes in good faith contain extremely sensitive information, which if
24 disclosed could create a substantial risk of serious competitive or other harm to the
25 Designating Party.

26 2.9 House Counsel: Attorneys who are employees of a party to this
27 Action. House Counsel does not include Outside Counsel of Record or any other
28 outside counsel.

1 2.10 Non-Party: Any natural person, partnership, corporation, association,
2 or other legal entity not named as a Party to this action.

3 2.11 Outside Counsel of Record: Attorneys who are not employees of a
4 party to this Action but are retained to represent or advise a party to this Action and
5 have appeared in this Action on behalf of that party or are affiliated with a law firm
6 which has appeared on behalf of that party, and includes support staff.

7 2.12 Party: Any party to this Action, including all of its officers, directors,
8 employees, consultants, retained experts, and Outside Counsel of Record (and their
9 support staffs).

10 2.13 Producing Party: A Party or Non-Party that produces Disclosure or
11 Discovery Material in this Action.

12 2.14 Professional Vendors: Persons or entities that provide litigation
13 support services (e.g., photocopying, videotaping, translating, preparing exhibits or
14 demonstrations, and organizing, storing, or retrieving data in any form or medium)
15 and their employees and subcontractors.

16 2.15 Protected Material: Any Disclosure or Discovery Material that is
17 designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL-
18 ATTORNEYS’ EYES ONLY.”

19 2.16 Receiving Party: A Party that receives Disclosure or Discovery
20 Material from a Producing Party.

21 **3. SCOPE**

22 The protections conferred by this Order cover not only Protected Material (as
23 defined above), but also (1) any information copied or extracted from Protected
24 Material; (2) all copies, excerpts, summaries, descriptions, communications or
25 compilations of Protected Material; and (3) any testimony, conversations, or
26 presentations by Parties or their Counsel that might reveal Protected Material. Any
27 use of Protected Material at trial shall be governed by the orders of the trial judge.
28 This Order does not govern the use of Protected Material at trial.

1 **4. DURATION**

2 Even after final disposition of this litigation, the confidentiality obligations
3 imposed by this Order shall remain in effect until a Designating Party agrees
4 otherwise in writing or a court order otherwise directs. Final disposition shall be
5 deemed to be the later of (1) dismissal of all claims and defenses in this Action,
6 with or without prejudice; and (2) final judgment herein after the completion and
7 exhaustion of all appeals, rehearings, remands, trials, or reviews of this Action,
8 including the time limits for filing any motions or applications for extension of time
9 pursuant to applicable law.

10 **5. DESIGNATING PROTECTED MATERIAL**

11 5.1 Exercise of Restraint and Care in Designating Material for Protection:

12 Each Party or Non-Party that designates information or items for protection under
13 this Order must take care to limit any such designation to specific material that
14 qualifies under the appropriate standards. To the extent it is practical to do so, the
15 Designating Party must designate for protection only those parts of material,
16 documents, items, or oral or written communications that qualify so that other
17 portions of the material, documents, items, or communications for which protection
18 is not warranted are not swept unjustifiably within the ambit of this Order. If it
19 comes to a Designating Party's attention that information or items that it designated
20 for protection do not qualify for protection, that Designating Party must promptly
21 notify all other Parties that it is withdrawing the inapplicable designation.

22 5.2 Manner and Timing of Designations: Except as otherwise provided in
23 this Order (*see, e.g.*, second paragraph of section 5.2(a) below), or as otherwise
24 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
25 under this Order must be clearly so designated before the material is disclosed or
26 produced. Designation in conformity with this Order requires:

27 (a) for information in documentary form (e.g., paper or electronic documents,
28 but excluding transcripts of depositions or other pretrial or trial proceedings), that

1 the Producing Party affix at a minimum, the legend "CONFIDENTIAL" or
2 "HIGHLY CONFIDENTIAL- ATTORNEYS' EYES ONLY", or similar
3 designation, to each page that contains protected material or to the extent produced
4 in native form, on the Placeholder page. If only a portion or portions of the
5 material on a page qualifies for protection, the Producing Party also must clearly
6 identify the protected portion(s) (e.g., by making appropriate markings in the
7 margins).

8 A Party or Non-Party that makes original documents available for inspection
9 need not designate them for protection until after the inspecting Party has indicated
10 which documents it would like copied and produced. During the inspection and
11 before the designation, all of the material made available for inspection shall be
12 deemed "HIGHLY CONFIDENTIAL- ATTORNEYS' EYES ONLY." After the
13 inspecting Party has identified the documents it wants copied and produced, the
14 Producing Party must determine which documents, or portions thereof, qualify for
15 protection under this Order. Then, before producing the specified documents, the
16 Producing Party must affix the "CONFIDENTIAL" or "HIGHLY
17 CONFIDENTIAL- ATTORNEYS' EYES ONLY" to each page that contains
18 Protected Material. If only a portion or portions of the material on a page qualifies
19 for protection, the Producing Party also must clearly identify the protected
20 portion(s) (e.g., by making appropriate markings in the margins).

21 (b) any Party may designate as Protected Material testimony given in a
22 ~~deposition or in other pre-trial or trial proceedings~~ by informing the reporter during
23 the deposition or by sending a written notice to all attorneys of record and to the
24 deposition reporter designating by page and line any portions of transcript to be so
25 restricted, or the entire transcript if applicable, within thirty (30) days after
26 receiving the deposition transcript and specifying the level of protection being
27 asserted. Each party shall attach a copy of such written notice to the transcript and
28 each copy thereof in that party's possession, custody or control.

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1 During this 30-day period, a transcript will be treated as if it had been
2 designated "HIGHLY CONFIDENTIAL- ATTORNEYS' EYES ONLY" in its
3 entirety unless otherwise agreed. After the expiration of that period, the transcript
4 shall be treated only as actually designated.

5 When deposition testimony is designated Protected Material by informing the
6 reporter during the deposition, the transcript containing Protected Material shall
7 have an obvious legend on the title page that the transcript contains Protected
8 Material, and the title page shall be followed by a list of all pages (including line
9 numbers-as appropriate) that have been designated as Protected Material and the
10 level of protection being asserted by the Designating Party. The Designating Party
11 shall inform the court reporter of these requirements.

12 Parties shall give the other parties notice if they reasonably expect a
13 deposition, ~~hearing or other proceeding~~ to include Protected Material so that the
14 other parties can ensure that only authorized individuals who have signed the
15 "Acknowledgment and Agreement to Be Bound" (Exhibit A) are present at those
16 proceedings. The use of a document as an exhibit at a deposition shall not in any
17 way affect its designation as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL-
18 ATTORNEYS' EYES ONLY."

19 (c) for information produced in some form other than documentary and for
20 any other tangible items, that the Producing Party affix in a prominent place on the
21 exterior of the container or containers in which the information is stored the legend
22 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL- ATTORNEYS' EYES
23 ONLY." If only a portion or portions of the information warrants protection, the
24 Producing Party, to the extent practicable, shall identify the protected portion(s).

25 5.3 Inadvertent Failures to Designate: An inadvertent failure to designate
26 qualified information or items does not, standing alone, waive the Designating
27 Party's right to secure protection under this Order for such material upon the
28 discovery of an inadvertent disclosure. Upon timely correction of a designation, the

1 Receiving Party must make reasonable efforts to assure that the material is treated
2 in accordance with the provisions of this Order, provided the Designating Party
3 asserts the appropriate designation.

4 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

5 6.1 Timing of Challenges: Any Party or Non-Party may challenge a
6 designation of confidentiality at any time that is consistent with the Court's
7 Scheduling Order. Unless a prompt challenge to a Designating Party's
8 confidentiality designation is necessary to avoid foreseeable, substantial unfairness,
9 unnecessary economic burdens, or a significant disruption or delay of the litigation,
10 a Party does not waive its right to challenge a confidentiality designation by
11 electing not to mount a challenge promptly after the original designation is
12 disclosed.

13 6.2 Meet and Confer: The Challenging Party shall initiate the dispute
14 resolution process under Local Rule 37.1 *et seq.* In conferring, the Challenging
15 Party must explain the basis for its belief that the confidentiality designation was
16 not proper and must give the Designating Party an opportunity to review the
17 designated material, to reconsider the circumstances, and, if no change in
18 designation is offered, to explain the basis for the chosen designation.

19 6.3 Burden: If the parties cannot resolve the challenge to the designation,
20 the Designating Party must within 30 days, file a motion for an order from the
21 Court to determine the propriety of the designation. The burden of persuasion in
22 any such challenge proceeding shall be on the Designating Party. Frivolous
23 challenges, and those made for an improper purpose (e.g., to harass or impose
24 unnecessary expenses and burdens on other parties) may expose the Challenging
25 Party to sanctions. Unless the Designating Party has waived or withdrawn the
26 confidentiality designation, all parties shall continue to afford the material in
27 question the level of protection to which it is entitled under the Designating Party's
28 designation until the Court rules on the challenge.

1 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

2 7.1 Basic Principles: A Receiving Party may use Protected Material that is
3 disclosed or produced by another Party or by a Non-Party in connection with this
4 Action only for prosecuting, defending, or attempting to settle this Action. Such
5 Protected Material may be disclosed, summarized, described or otherwise
6 communicated or made available in whole or in part, only to the categories of
7 persons and under the conditions described in this Order. When the Action has
8 been terminated, a Receiving Party must comply with the provisions of section 13
9 below (FINAL DISPOSITION). Protected Material must be stored and maintained
10 by a Receiving Party at a location and in a secure manner that ensures that access is
11 limited to the persons authorized under this Order.

12 7.2 Disclosure of "CONFIDENTIAL" Information or Items: Unless
13 otherwise ordered by the court or permitted in writing by the Designating Party, a
14 Receiving Party may disclose any information or item designated
15 "CONFIDENTIAL," or other similar designation, only to:

16 (a) the Receiving Party's Outside Counsel of Record in this Action, as well
17 as employees of said Outside Counsel of Record to whom it is reasonably necessary
18 to disclose the information for this Action;

19 (b) the Receiving Party, including current and former officers, directors, and
20 employees (including House Counsel) of the Receiving Party to whom disclosure is
21 reasonably necessary for this Action;

22 (c) Experts (as defined in this Order) of the Receiving Party to whom
23 disclosure is reasonably necessary for this Action and who have signed the
24 "Acknowledgment and Agreement to Be Bound" (Exhibit A);

25 (d) the court and its personnel;

26 (e) court reporters and their staff;

27 (f) professional jury or trial consultants, mock jurors, and Professional
28 Vendors to whom disclosure is reasonably necessary for this Action;

1 (g) the author or recipient of a document containing the information or a
2 custodian or other person who otherwise possessed or knew the information;

3 (h) during their depositions or in Court hearings, witnesses, and attorneys for
4 witnesses, in the Action to whom disclosure is reasonably necessary, provided they
5 sign the "Acknowledgment and Agreement to Be Bound" (Exhibit A), unless
6 otherwise agreed by the Designating Party or ordered by the court. Pages of
7 transcribed deposition testimony or exhibits to depositions that reveal Protected
8 Material must be separately bound by the court reporter and may not be disclosed to
9 anyone except as permitted under this Protective Order; and

10 (i) any mediator or settlement officer, and their supporting personnel,
11 mutually agreed upon by any of the parties engaged in settlement discussions.

12 7.3 Disclosure of "HIGHLY CONFIDENTIAL- ATTORNEYS' EYES
13 ONLY Information or Items: Unless otherwise ordered by the court or permitted
14 in writing by the Designating Party, any information or item designated "HIGHLY
15 CONFIDENTIAL- ATTORNEYS' EYES ONLY" or similar designation, may only
16 be disclosed, summarized, described or otherwise communicated or made available
17 in whole or in part, to:

18 (a) the Receiving Party's Outside Counsel of Record in this action, as well as
19 employees of said Outside Counsel of Record to whom it is reasonably necessary to
20 disclose the information for this litigation;

21 (b) Experts of the Receiving Party (1) to whom disclosure is reasonably
22 necessary for this litigation, and (2) who have signed the "Acknowledgment and
23 Agreement to Be Bound" (Exhibit A);

24 (c) the court and its personnel;

25 (d) court reporters and their staff, professional jury or trial consultants, mock
26 jurors, and Professional Vendors to whom disclosure is reasonably necessary for
27 this litigation; and
28

1 (e) the author or recipient of a document containing the information or a
2 custodian or other person who otherwise possessed or knew the information.

3 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED**
4 **PRODUCED IN OTHER LITIGATION**

5 If a Party is served with a subpoena by any Court, arbitrator, administrative
6 or legislative body, that compels disclosure of any information or items designated
7 in this Action as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL-
8 ATTORNEYS’ EYES ONLY” that Party must:

9 (a) promptly notify in writing the Designating Party. Such notification shall
10 include a copy of the subpoena or court order;

11 (b) promptly notify in writing the party who caused the subpoena or order to
12 issue in the other litigation that some or all of the material covered by the subpoena
13 or order is subject to this Protective Order. Such notification shall include a copy
14 of this Stipulated Protective Order; and

15 (c) cooperate with respect to all reasonable procedures sought to be pursued
16 by the Designating Party whose Protected Material may be affected.

17 If the Designating Party timely seeks a protective order, the Party served with
18 the subpoena or court order shall not produce any information designated in this
19 action as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL- ATTORNEYS’
20 EYES ONLY” before a determination by the court from which the subpoena or
21 order issued, unless the Party has obtained the Designating Party’s permission. The
22 Designating Party shall bear the burden and expense of seeking protection in that
23 court of its confidential material and nothing in these provisions should be
24 construed as authorizing or encouraging a Receiving Party in this Action to disobey
25 a lawful directive from another court.

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1 **9. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE**
2 **PRODUCED IN THIS LITIGATION**

3 (a) The terms of this Order are applicable to information produced by a Non-
4 Party in this Action and designated as "CONFIDENTIAL" or "HIGHLY
5 CONFIDENTIAL- ATTORNEYS' EYES ONLY." Such information produced by
6 Non-Parties in connection with this litigation is protected by the remedies and relief
7 provided by this Order. Nothing in these provisions should be construed as
8 prohibiting a Non-Party from seeking additional protections.

9 (b) In the event that a Party is required, by a valid discovery request, to
10 produce a Non-Party's confidential information in its possession, and the Party is
11 subject to an agreement with the Non-Party not to produce the Non-Party's
12 confidential information, then the Party shall:

13 (1) promptly notify in writing the Requesting Party and the Non-Party
14 that some or all of the information requested is subject to a confidentiality
15 agreement with a Non-Party;

16 (2) promptly provide the Non-Party with a copy of the Protective
17 Order in this Action, the relevant discovery request(s), and a reasonably
18 specific description of the information requested; and

19 (3) make the information requested available for inspection by the
20 Non-Party, if requested.

21 (c) If the Non-Party fails to seek a protective order from this court within 21
22 days of receiving the notice and accompanying information, the Receiving Party
23 may produce the Non-Party's confidential information responsive to the discovery
24 request. If the Non-Party timely seeks a protective order, the Receiving Party shall
25 not produce any information in its possession or control that is subject to the
26 confidentiality agreement with the Non-Party before a determination by the court.
27 Absent a court order to the contrary, the Non-Party shall bear the burden and
28 expense of seeking protection in this court of its Protected Material.

1 **10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

2 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
3 Protected Material to any person or in any circumstance not authorized under this
4 Protective Order, the Receiving Party must immediately (a) notify in writing the
5 Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve
6 all unauthorized copies of the Protected Material, (c) inform the person or persons
7 to whom unauthorized disclosures were made of all the terms of this Order, and (d)
8 request such person or persons to execute the “Acknowledgment and Agreement to
9 Be Bound” that is attached hereto as Exhibit A.

10 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
11 **PROTECTED MATERIAL**

12 When a Producing Party gives notice to Receiving Parties that certain
13 inadvertently produced material is subject to a claim of privilege or other protection
14 (e.g. work product immunity), the obligations of the Receiving Parties are those set
15 forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended
16 to modify whatever procedure may be established in an e-discovery order that
17 provides for production without prior privilege review. Pursuant to Federal Rule of
18 Evidence 502(d) and (e), the parties agree that the inadvertent or unintentional
19 disclosure by the Producing Party of material that is privileged or subject to other
20 protection shall not be deemed a waiver in whole or in part of the claim of privilege
21 or other protection, either as to the specific information disclosed or as to any other
22 information relating thereto on the same or related subject matter.

23 Upon learning of an inadvertent or unintentional disclosure of privileged
24 information, the Producing Party shall provide notice to the parties who have
25 received such information. Within ten (10) business days of the date of that notice,
26 the documents or materials described in that notice shall be returned to counsel for
27 the Producing Party, and in the same time frame, any notes or other writing or
28 recordings that copy, summarize, reflect, or discuss the content of the documents or

1 materials shall be destroyed. No use shall be made of such documents or materials
2 from such inadvertent production during deposition or at trial, nor shall such
3 documents or materials be provided to anyone who did not already have access to
4 them prior to the request by the Producing Party that they be returned. If the
5 Receiving Party intends to challenge the assertion of privilege, it must provide
6 written notice within this ten-day period, explaining the grounds for its challenge.
7 The Receiving Party may move the Court for an order compelling production of
8 any inadvertently produced or disclosed document or material, but the motion shall
9 not assert as a ground for production the fact of the inadvertent production or
10 disclosure. Pending the Court's ruling, the party challenging the assertion of
11 privilege shall segregate the affected documents and materials, place them in a
12 sealed envelope and shall not make any use of such information.

13 **12. MISCELLANEOUS**

14 12.1 Right to Further Relief: Nothing in this Order abridges the right of any
15 person to seek its modification by the Court in the future.

16 12.2 Right to Assert Other Objections: By stipulating to the entry of this
17 Protective Order no Party waives any right it otherwise would have to object to
18 disclosing or producing any information or item on any ground not addressed in
19 this Protective Order. Similarly, no Party waives any right to object on any ground
20 to use in evidence of any of the material covered by this Protective Order.

21 12.3 Filing Protected Material: A Party that seeks to file, cite to,
22 summarize, describe, introduce into evidence or otherwise use ~~in a court hearing or~~
23 in a motion or other submission filed with the Court in this action, any Protected
24 Material must comply with Civil Local Rule 79-5 and ^{apply to} file under seal, unless the
25 Designating Party gives its written permission to file in the public record.

26 **13. FINAL DISPOSITION**

27 After the final disposition of this Action, as defined in Section 4
28 (DURATION), within 60 days of a written request by the Designating Party, each

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1 Receiving Party must return all Protected Material to the Producing Party or destroy
2 such material. As used in this subdivision, "all Protected Material" includes all
3 copies, abstracts, compilations, summaries, and any other format reproducing or
4 capturing any of the Protected Material. Whether the Protected Material is returned
5 or destroyed, the Receiving Party must submit a written certification to the
6 Producing Party (and, if not the same person or entity, to the Designating Party) by
7 the 60 day deadline that (1) identifies (by category, where appropriate) all the
8 Protected Material that was returned or destroyed and (2) affirms that the Receiving
9 Party has not retained any copies, abstracts, compilations, summaries or any other
10 format reproducing or capturing any of the Protected Material. Notwithstanding
11 this provision, Counsel are entitled to retain an archival copy of all pleadings,
12 motion papers, trial, deposition, and hearing transcripts, legal memoranda,
13 correspondence, deposition and trial exhibits, expert reports, attorney work product,
14 and consultant and expert work product, even if such materials contain Protected
15 Material. Any such archival copies that contain or constitute Protected Material
16 remain subject to this Protective Order as set forth in Section 4 (DURATION).

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18 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

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Dated: August 31, 2016

ETTELMAN & HOCHHEISER, P.C.

By: /s/ Marc Sabow
Marc Sabow

Attorneys for Plaintiffs

MORRISON & FOERSTER LLP

By: /s/ Dan Marmalefsky
DAN MARMALEFSKY

Attorneys for Defendant
THE COCA-COLA COMPANY

ECF ATTESTATION

I, Dan Marmalefsky, am the ECF user whose ID and password are being used to file this [PROPOSED] STIPULATED PROTECTIVE ORDER. In compliance with Civil Local Rule 5-4.3.4, I hereby attest that Marc Sabow concurs in this filing's content and has authorized the filing.

Dated: August 31, 2016

MORRISON & FOERSTER LLP

By: /s/ Dan Marmalefsky
DAN MARMALEFSKY

IT IS SO ORDERED.
DATED: 9/28/2016
Alicia G. Rosenberg
UNITED STATES MAGISTRATE JUDGE

1 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

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3 _____
United States Magistrate Judge

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Date

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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

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I, _____ [print or type full name], of
_____ [print or type full address], declare under penalty of perjury
that I have read in its entirety and understand the Stipulated Protective Order that
was issued by the United States District Court for the Central District of California
on _____ [date] in the case of *A&B Beverage Company, LLC,*
etc., et al. v. The Coca-Cola Company, Case No. 2:15-cv-03548-MWF-AGR. I
agree to comply with and to be bound by all the terms of this Stipulated Protective
Order and I understand and acknowledge that failure to so comply could expose me
to sanctions and punishment in the nature of contempt. I solemnly promise that I
will not disclose in any manner any information or item that is subject to this
Stipulated Protective Order to any person or entity except in strict compliance with
the provisions of this Order. I further agree to submit to the jurisdiction of the
United States District Court for the Central District of California for the purpose of
enforcing the terms of this Stipulated Protective Order, even if such enforcement
proceedings occur after termination of this action. I hereby appoint
_____ [print or type full name] of
_____ [print or type full address and
telephone number] as my California agent for service of process in connection with
this action or any proceedings related to enforcement of this Stipulated Protective
Order.

Date: _____
City and State where sworn and signed: _____
Printed name: _____
Signature: _____