

1 **DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING**
 Paula Pearlman (SBN 109038)
 2 Gregory J. Mann (SBN 200578)
 Francisco Balderrama (SBN 297250)
 3 320 West 4th Street, Suite 1000
 Los Angeles, CA 90013
 4 Telephone: (213) 439-6799
 Facsimile: (888) 382-5293

5 Attorneys for Plaintiff DEPARTMENT OF FAIR EMPLOYMENT AND
 6 HOUSING

7 **McGUIREWOODS LLP**
 Sabrina A. Beldner, Esq. (SBN 221918)
 8 Email: sbeldner@mcguirewoods.com
 Amy E. Beverlin, Esq. (SBN 284745)
 9 Email: abeverlin@mcguirewoods.com
 1800 Century Park East, 8th Floor
 10 Los Angeles, CA 90067
 Telephone: (310) 315-8200
 11 Facsimile: (310) 315-8210

12 Attorneys for Defendant COCA-COLA REFRESHMENTS USA, INC.

13 **UNITED STATES DISTRICT COURT**
 14 **CENTRAL DISTRICT OF CALIFORNIA**

15 DEPARTMENT OF FAIR
 EMPLOYMENT AND HOUSING, an
 16 agency of the State of California,
 17
 Plaintiff,
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 vs.
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 20 COCA-COLA REFRESHMENTS
 USA, INC. (aka BCI COCA-COLA
 21 BOTTLING COMPANY OF LOS
 ANGELES aka BCI COCA-COLA
 22 BOTTLING CO.), and DOES ONE
 through 10, inclusive,
 23
 Defendants,.
 24

 25 DIANE GANT,
 26
 Real Party in Interest.
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CASE NO. 2:17-cv-08243-DSF-SK
 [Discovery Document: Referred to
 Magistrate Judge Steve Kim]

**STIPULATED PROTECTIVE
 ORDER**

Discovery Cut-Off: December 24, 2018
 Pretrial Conference: April 22, 2019
 Trial Date: May 21, 2019

1 1.

2 **A. PURPOSES AND LIMITATIONS**

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

16 **B. GOOD CAUSE STATEMENT**

17 This action is likely to involve personal information and valuable research,
18 development, commercial, financial, technical and/or proprietary information for
19 which special protection from public disclosure and from use for any purpose other
20 than prosecution of this action is warranted, including, but not limited to, medical
21 records and medical documentation pertaining to the treatment of Diane Gant, and
22 undisclosed rates of pay, customer lists, and routes of CCR. Such confidential and
23 proprietary materials and information consist of, among other things, confidential
24 business or financial information, information regarding confidential business
25 practices, or other confidential research, development, or commercial information
26 (including information implicating privacy rights of third parties), information
27 otherwise generally unavailable to the public, or which may be privileged or
28 otherwise protected from disclosure under state or federal statutes, court rules, case

1 decisions, or common law. Accordingly, to expedite the flow of information, to
2 facilitate the prompt resolution of disputes over confidentiality of discovery
3 materials, to adequately protect information the parties are entitled to keep
4 confidential, to ensure that the parties are permitted reasonable necessary uses of
5 such material in preparation for and in the conduct of trial, to address their handling
6 at the end of the litigation, and serve the ends of justice, a protective order for such
7 information is justified in this matter. It is the intent of the parties that information
8 will not be designated as confidential for tactical reasons and that nothing be so
9 designated without a good faith belief that it has been maintained in a confidential,
10 non-public manner, and there is good cause why it should not be part of the public
11 record of this case.

12 **2. DEFINITIONS**

13 **2.1 Action:** The above-captioned federal action, *Department of Fair*
14 *Employment and Housing v. Coca-Cola Refreshments USA, Inc*, Case No. 2:17-cv-
15 08243-DSF-SK.

16 **2.2 Challenging Party:** a Party or Non-Party that challenges the
17 designation of information or items under this Order.

18 **2.3 “CONFIDENTIAL” Information or Items:** information (regardless
19 of how it is generated, stored or maintained) or tangible things that qualify for
20 protection under Federal Rule of Civil Procedure 26(c), and as specified above in
21 the Good Cause Statement.

22 **2.4 Counsel:** Outside Counsel of Record and House Counsel (as well as
23 their support staff).

24 **2.5 Designating Party:** a Party or Non-Party that designates information
25 or items that it produces in disclosures or in responses to discovery as
26 “CONFIDENTIAL.”

27 **2.6 Disclosure or Discovery Material:** all items or information,
28 regardless of the medium or manner in which it is generated, stored, or maintained

1 (including, among other things, testimony, transcripts, and tangible things), that are
2 produced or generated in disclosures or responses to discovery in this matter.

3 **2.7 Expert:** a person with specialized knowledge or experience in a matter
4 pertinent to the litigation who has been retained by a Party or its counsel to serve as
5 an expert witness or as a consultant in this Action.

6 **2.8 House Counsel:** attorneys who are employees of a party to this Action.
7 House Counsel does not include Outside Counsel of Record or any other outside
8 counsel.

9 **2.9 Non-Party:** any natural person, partnership, corporation, association,
10 or other legal entity not named as a Party to this action, including, but not limited to,
11 Real-Party-in-Interest Diane Gant, who is included within this definition for all
12 purposes other than this Stipulated Protective Order.

13 **2.10 Outside Counsel of Record:** attorneys who are not employees of a
14 party to this Action but are retained to represent or advise a party to this Action and
15 have appeared in this Action on behalf of that party or are affiliated with a law firm
16 which has appeared on behalf of that party, and includes support staff.

17 **2.11 Party:** any party to this Action, including all of its officers, directors,
18 employees, consultants, retained experts, and Outside Counsel of Record (and their
19 support staffs).

20 (a) *with respect to the Real-Party-in-Interest*, for the purposes of this
21 Stipulated Protective Order only, the term “Party” includes, but is not limited to,
22 Real-Party-in-Interest Diane Gant. For all purposes in this litigation other than this
23 Stipulated Protective Order, Ms. Gant remains a Real Party in Interest unless and
24 until she intervenes in this Action pursuant to Cal. Gov’t Code § 12965(a). *See*
25 *Peralta Cmty. Coll. Dist. v. FEHC*, 52 Cal.3d 40, 54 (1990) (“Under the FEHA,
26 moreover, the Department is the plaintiff and the employee only a witness.”).

27 **2.12 Producing Party:** a Party or Non-Party that produces Disclosure or
28 Discovery Material in this Action.

1 **2.13 Professional Vendors:** persons or entities that provide litigation
2 support services (e.g., photocopying, videotaping, translating, preparing exhibits or
3 demonstrations, and organizing, storing, or retrieving data in any form or medium)
4 and their employees and subcontractors.

5 **2.14 Protected Material:** any Disclosure or Discovery Material that is
6 designated as “CONFIDENTIAL.”

7 **2.15 Receiving Party:** a Party that receives Disclosure or Discovery
8 Material from a Producing Party.

9 **3. SCOPE**

10 The protections conferred by this Stipulation and Order cover not only
11 Protected Material (as defined above), but also (1) any information copied or
12 extracted from Protected Material; (2) all copies, excerpts, summaries, or
13 compilations of Protected Material; and (3) any testimony, conversations, or
14 presentations by Parties or their Counsel that might reveal Protected Material. Any
15 use of Protected Material at trial shall be governed by the orders of the trial judge.
16 This Order does not govern the use of Protected Material at trial.

17 **4. DURATION**

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

26 **5. DESIGNATING PROTECTED MATERIAL**

27 **5.1 Exercise of Restraint and Care in Designating Material for**
28 **Protection.** Each Party or Non-Party that designates information or items for

1 protection under this Order must take care to limit any such designation to specific
2 material that qualifies under the appropriate standards. The Designating Party must
3 designate for protection only those parts of material, documents, items, or oral or
4 written communications that qualify so that other portions of the material,
5 documents, items, or communications for which protection is not warranted are not
6 swept unjustifiably within the ambit of this Order.

7 Mass, indiscriminate, or routinized designations are prohibited. Designations
8 that are shown to be clearly unjustified or that have been made for an improper
9 purpose (e.g., to unnecessarily encumber the case development process or to impose
10 unnecessary expenses and burdens on other parties) may expose the Designating
11 Party to sanctions.

12 If it comes to a Designating Party's attention that information or items that it
13 designated for protection do not qualify for protection, that Designating Party must
14 promptly notify all other Parties that it is withdrawing the inapplicable designation.

15 **5.2 Manner and Timing of Designations.** Except as otherwise provided
16 in this Order (*see, e.g.*, second paragraph of section 5.2(a) below), or as otherwise
17 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
18 under this Order must be clearly so designated before the material is disclosed or
19 produced. Designation in conformity with this Order requires:

20 (a) *for information in documentary form* (e.g., paper or electronic
21 documents, but excluding transcripts of depositions or other pretrial or trial
22 proceedings), that the Producing Party affix at a minimum, the legend
23 "CONFIDENTIAL" (hereinafter "CONFIDENTIAL legend"), to each page that
24 contains protected material. If only a portion or portions of the material on a page
25 qualifies for protection, the Producing Party also must clearly identify the protected
26 portion(s) (e.g., by making appropriate markings in the margins).

27 A Party or Non-Party that makes original documents available for inspection
28 need not designate them for protection until after the inspecting Party has indicated

1 which documents it would like copied and produced. During the inspection and
2 before the designation, all of the material made available for inspection shall be
3 deemed “CONFIDENTIAL.” After the inspecting Party has identified the
4 documents it wants copied and produced, the Producing Party must determine which
5 documents, or portions thereof, qualify for protection under this Order. Then, before
6 producing the specified documents, the Producing Party must affix the
7 “CONFIDENTIAL legend” to each page that contains Protected Material. If only a
8 portion or portions of the material on a page qualifies for protection, the Producing
9 Party also must clearly identify the protected portion(s) (e.g., by making appropriate
10 markings in the margins).

11 (b) *for testimony given in depositions*, that the Designating Party
12 identify the Disclosure or Discovery Material on the record, before the close of the
13 deposition all protected testimony.

14 (c) *for information produced in some form other than documentary*
15 *and for any other tangible items*, that the Producing Party affix in a prominent place
16 on the exterior of the container or containers in which the information is stored the
17 legend “CONFIDENTIAL.” If only a portion or portions of the information
18 warrants protection, the Producing Party, to the extent practicable, shall identify the
19 protected portion(s).

20 **5.3 Inadvertent Failures to Designate.** If timely corrected, an inadvertent
21 failure to designate qualified information or items does not, standing alone, waive
22 the Designating Party’s right to secure protection under this Order for such material.
23 Upon timely correction of a designation, the Receiving Party must make reasonable
24 efforts to assure that the material is treated in accordance with the provisions of this
25 Order.

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1 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

2 **6.1 Timing of Challenges.** Any Party or Non-Party may challenge a
3 designation of confidentiality at any time that is consistent with the Court’s
4 Scheduling Order.

5 **6.2 Meet and Confer.** The Challenging Party shall initiate the dispute
6 resolution process under Local Rule 37.1, *et seq.* In conferring, the Challenging
7 Party must explain the basis for its belief that the confidentiality designation was not
8 proper and must give the Designating Party an opportunity to review the designated
9 material, to reconsider the circumstances, and, if no change in designation is offered,
10 to explain the basis for the chosen designation. A Challenging Party may proceed to
11 the next stage of the challenge process only if it has engaged in this meet and confer
12 process first or establishes that the Designating Party is unwilling to participate in
13 the meet and confer process in a timely manner.

14 **6.3 Judicial Intervention.** If the Parties cannot resolve a challenge,
15 including a challenge to the confidentiality designation, the Challenging Party shall
16 file and serve a motion to remove a confidentiality designation in accordance with
17 the Court’s Local Rules within 21 days of the initial notice of challenge or within 14
18 days of the parties agreeing that the meet and confer process will not resolve their
19 dispute, whichever is later. Each such motion must be accompanied by a competent
20 declaration affirming that the movant has complied with the meet and confer
21 requirements imposed in the preceding paragraph. Failure by the Challenging Party
22 to make such a motion including the required declaration within 21 days (or 14 days,
23 if applicable) shall automatically waive the confidentiality challenge for each
24 challenged designation.

25 **6.4 Burden of Persuasion.** The burden of persuasion in any such
26 challenge proceeding shall be on the Designating Party. Frivolous challenges, and
27 those made for an improper purpose (*e.g.*, to harass or impose unnecessary expenses
28 and burdens on other parties) may expose the Challenging Party to sanctions. Unless

1 the Designating Party has waived or withdrawn the confidentiality designation, all
2 parties shall continue to afford the material in question the level of protection to
3 which it is entitled under the Producing Party’s designation until the Court rules on
4 the challenge.

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

6 **7.1 Basic Principles.** A Receiving Party may use Protected Material that
7 is disclosed or produced by another Party or by a Non-Party in connection with this
8 Action only for prosecuting, defending, or attempting to settle this Action. Such
9 Protected Material may be disclosed only to the categories of persons and under the
10 conditions described in this Order. When the Action has been terminated, a
11 Receiving Party must comply with the provisions of section 13 below (FINAL
12 DISPOSITION).

13 Protected Material must be stored and maintained by a Receiving Party at a
14 location and in a secure manner that ensures that access is limited to the persons
15 authorized under this Order.

16 **7.2 Disclosure of “CONFIDENTIAL” Information or Items.** Unless
17 otherwise ordered by the court or permitted in writing by the Designating Party, a
18 Receiving Party may disclose any information or item designated
19 “CONFIDENTIAL” only to:

20 (a) the Receiving Party’s Outside Counsel of Record in this Action,
21 as well as employees of said Outside Counsel of Record to whom it is reasonably
22 necessary to disclose the information for this Action;

23 (b) the officers, directors, and employees (including House Counsel)
24 of the Receiving Party to whom disclosure is reasonably necessary for this Action.
25 Co-workers of Diane Gant, her supervisors, and non-managerial CCR employees are
26 not parties to whom disclosure is reasonably necessary for this Action, unless they
27 are or have been identified by the DFEH or Ms. Gant as a person with knowledge of
28 confidential facts, information, documents or materials relevant to this Action as

1 defined by this Stipulated Protective Order, including, without limitation, Ms. Gant’s
2 medical condition or medical records and information;

3 (c) Experts (as defined in this Order) of the Receiving Party to whom
4 disclosure is reasonably necessary for this Action and who have signed the
5 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

6 (d) the court and its personnel;

7 (e) court reporters and their staff;

8 (f) professional jury or trial consultants, mock jurors, and
9 Professional to whom disclosure is reasonably necessary for this Action and who
10 have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

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

13 (h) during their depositions, witnesses, and attorneys for witnesses,
14 in the Action to whom disclosure is reasonably necessary provided: (1) the deposing
15 party requests that the witness sign the form attached as Exhibit 1 hereto; and (2)
16 they will not be permitted to keep any confidential information unless they sign the
17 “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise
18 agreed by the Designating Party or ordered by the court. Pages of transcribed
19 deposition testimony or exhibits to depositions that reveal Protected Material may
20 be separately bound by the court reporter and may not be disclosed to anyone except
21 as permitted under this Stipulated Protective Order; and

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

25 **8. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE**
26 **PRODUCED IN THIS LITIGATION**

27 (a) The terms of this Order are applicable to information produced
28 by a Non-Party in this Action and designated as “CONFIDENTIAL.” Such

1 information produced by Non-Parties in connection with this litigation is protected
2 by the remedies and relief provided by this Order. Nothing in these provisions
3 should be construed as prohibiting a Non-Party from seeking additional protections.

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

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

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

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

16 (c) If the Non-Party fails to seek a protective order from this court
17 within 14 days of receiving the notice and accompanying information, the Receiving
18 Party may produce the Non-Party's confidential information responsive to the
19 discovery request. If the Non-Party timely seeks a protective order, the Receiving
20 Party shall not produce any information in its possession or control that is subject to
21 the confidentiality agreement with the Non-Party before a determination by the
22 court. Absent a court order to the contrary, the Non-Party shall bear the burden and
23 expense of seeking protection in this court of its Protected Material.

24 **9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

25 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
26 Protected Material to any person or in any circumstance not authorized under this
27 Stipulated Protective Order, the Receiving Party must immediately: (a) notify in
28 writing the Designating Party of the unauthorized disclosures; (b) use its best efforts

1 to retrieve all unauthorized copies of the Protected Material;(c) inform the person or
2 persons to whom unauthorized disclosures were made of all the terms of this Order;
3 and (d) request such person or persons to execute the “Acknowledgment and
4 Agreement to Be Bound” (Exhibit A).

5 **10. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
6 **PROTECTED MATERIAL**

7 When a Producing Party gives notice to Receiving Parties that certain
8 inadvertently produced material is subject to a claim of privilege or other protection,
9 the obligations of the Receiving Parties are those set forth in Federal Rule of Civil
10 Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure
11 may be established in an e-discovery order that provides for production without prior
12 privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as
13 the parties reach an agreement on the effect of disclosure of a communication or
14 information covered by the attorney-client privilege or work product protection, the
15 parties may incorporate their agreement in the stipulated protective order submitted
16 to the court.

17 **11. MISCELLANEOUS**

18 **11.1 Right to Further Relief.** Nothing in this Order abridges the right of
19 any person to seek its modification by the Court in the future.

20 **11.2 Right to Assert Other Objections.** By stipulating to the entry of this
21 Protective Order no Party nor Real-Party-in-Interest Diane Gant waives any right it
22 otherwise would have to object to disclosing or producing any information or item
23 on any ground not addressed in this Stipulated Protective Order. Similarly, no Party
24 waives any right to object on any ground to use in evidence of any of the material
25 covered by this Protective Order.

26 **11.3 Filing Protected Material.** A Party that seeks to file under seal any
27 Protected Material must comply with Civil Local Rule 79-5. Protected Material may
28 only be filed under seal pursuant to a court order authorizing the sealing of the

1 specific Protected Material at issue. If a Party's request to file Protected Material
2 under seal is denied by the court, then the Receiving Party may file the information
3 in the public record unless otherwise instructed by the court.

4 **12. FINAL DISPOSITION**

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

23 **13. VIOLATIONS**

24 Any violation of this Order may be punished by any and all appropriate
25 measures including, without limitation, contempt proceedings and/or monetary
26 sanctions.

27 [signatures on next page]
28

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

DATED: July 12, 2018

DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

By: /s/ Gregory J. Mann
 Gregory J. Mann, Esq.
 Francisco Balderrama, Esq.
 Attorneys for Plaintiff Department of Fair
 Employment & Housing and Real-Party-
 in-Interest Diane Gant

DATED: July 12, 2018

MCGUIREWOODS LLP

By: /s/ Sabrina A. Beldner
 Sabrina A. Beldner, Esq.
 Amy E. Beverlin, Esq.
 Attorneys for Defendant Coca-Cola
 Refreshments USA, Inc.

ATTESTATION

Pursuant to L.R. 5-4.3.4(a)(2)(i), the undersigned hereby attests that all other signatories listed, on whose behalf this filing is submitted, concur in the filing and consent to and have authorized the filing.

 /s/ Sabrina A. Beldner
 Sabrina A. Beldner

FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

Date: July 13, 2018



 HONORABLE STEVE KIM
 UNITED STATES MAGISTRATE JUDGE