

1 MELINDA HAAG (CABN 132612)
 United States Attorney
 2 ALEX G. TSE (CABN 152348)
 Chief, Civil Division
 3 ERICA BLACHMAN HITCHINGS (MABN 669825)
 Assistant United States Attorney

FILED

FEB 06 2014

RICHARD W. WIEKING
 CLERK, U.S. DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA

4 450 Golden Gate Avenue, Box 36055
 5 San Francisco, California 94102-3495
 Telephone: (415) 436-7015
 6 FAX: (415) 436-6927
 erica.hitchings@usdoj.gov

7 Attorneys for the United States of America

8 UNITED STATES DISTRICT COURT
 9 NORTHERN DISTRICT OF CALIFORNIA
 10 SAN FRANCISCO DIVISION

11 UNITED STATES OF AMERICA ex rel.)	CASE NO. CV 13-2551 JCS
12 THOMAS P. THRASH,)	
13 Plaintiff,)	UNITED STATES' NOTICE OF ELECTION TO
)	DECLINE INTERVENTION; PROPOSED
14 v.)	ORDER TO UNSEAL
)	
15 THE COCA-COLA COMPANY and COCA-)	FILE UNDER SEAL
16 COLA REFRESHMENTS USA, INC.,)	
17 Defendants.)	

NOTICE OF ELECTION TO DECLINE INTERVENTION

18 Pursuant to the Federal False Claims Act, 31 U.S.C. § 3730(b)(4)(B), the United States notifies
19 the Court of its decision not to intervene in this action.

20 Although the United States declines to intervene, it respectfully refers the Court to 31 U.S.C.
 21 § 3730(b)(1), which allows the relator to maintain the action in the name of the United States; providing,
 22 however, that the action may be dismissed only if the court and the Attorney General give written
 23 consent to the dismissal and their reasons for consenting. *Id.* The United States Court of Appeals for
 24 the Ninth Circuit has held that, notwithstanding this language, the United States only has the right to a
 25 hearing when it objects to a settlement or dismissal of the action. *U.S. ex rel. Green v. Northrop Corp.*,
 26
 27

1 59 F.3d 953, 959 (9th Cir. 1995); *U.S. ex rel. Killingsworth v. Northrop Corp.*, 25 F.3d 715, 723 25 (9th
2 Cir. 1994).

3 Therefore, the United States requests that, should either the relators or the defendants propose
4 that this action be dismissed, settled, or otherwise discontinued, this Court provide the United States
5 with notice and an opportunity to be heard before ruling or granting its approval.

6 Furthermore, pursuant to 31 U.S.C. § 3730(c)(3), the United States requests that all pleadings
7 filed in this action be served upon the United States; the United States also requests that orders issued by
8 the Court be sent to counsel for the United States. The United States reserves its right to order any
9 deposition transcripts, to intervene in this action, for good cause, at a later date, and to seek the dismissal
10 of the relator's action or claim. The United States also requests that it be served with all notices of
11 appeal.

12 Finally, the United States requests that the Court unseal: (1) Relator's Complaint; (2) the
13 summons; (3) the scheduling order; (4) this Notice of Election to Decline Intervention, with (Proposed)
14 Order to Unseal; and (5) all other matters occurring in this action after the date the Court enters the
15 unsealing order. The United States requests that all other contents of the Court's file in this matter
16 (including, but not limited to, any applications filed by the United States for extensions of the
17 investigative period, any applications for partial lifting of the seal, and any orders previously entered in
18 this matter) remain under seal and not be made public or served upon Defendant.

19
20
21 DATED: February 4, 2014

Respectfully submitted,

MELINDA HAAG
United States Attorney

/s/ Erica Blachman Hitchings
ERICA BLACHMAN HITCHINGS
Assistant United States Attorney

26 Attorneys for the United States
27
28

1
2 **~~PROPOSED~~ ORDER**

3 The United States, having declined to intervene in this action pursuant to the Federal False
4 Claims Act, 31 U.S.C. § 3730(b)(4)(B), the Court rules as follows:

5 IT IS HEREBY ORDERED that,

6 1. All current contents of the Court's file in this action shall remain under seal and not be made
7 public or served upon the defendants, except for (1) Relator's Complaint; (2) the summons; (3) the
8 scheduling order; and (4) this Notice of Election to Decline Intervention, with (Proposed) Order to
9 Unseal, which are hereby unsealed.

10 2. The relator shall serve the Complaint upon the defendant.

11 3. The relator shall serve this Order and the accompanying Joint Notice of Election to Decline
12 Intervention upon the defendant after service of the Complaint.

13 4. The seal shall be lifted as to all other matters occurring in this action after the date of this
14 Order.

15 5. The parties shall serve all pleadings and motions filed in this action, including supporting
16 memoranda, upon the United States, as provided for in 31 U.S.C. § 3730(c)(3). The United States may
17 order any deposition transcripts and are entitled to intervene in this action, for good cause, at any time.


18 6. The parties shall serve all notices of appeal upon the United States.

19 7. All orders of this Court shall be sent to the United States.

20 8. Should the relator or the defendant(s) propose that this action be dismissed, settled, or
21 otherwise discontinued, the Court will provide the United States with notice and an opportunity to be
22 heard before ruling or granting its approval.

23 IT IS SO ORDERED.

24
25 Dated: 2/6, 2014


26 JOSEPH C. SPERO
27 UNITED STATES MAGISTRATE JUDGE
28

1 **CERTIFICATE OF SERVICE**

2 The undersigned hereby certifies that she is an employee of the Office of the United States
3 Attorney for the Northern District of California and is a person of such age and discretion to be
4 competent to serve papers. The undersigned further certifies that she is causing a copy of the following:
5 **UNITED STATES' NOTICE OF ELECTION TO DECLINE INTERVENTION; [PROPOSED]**
6 **ORDER TO UNSEAL**

7 to be served this date upon the person indicated below at the address shown:

8 Ben F. Pierce Gore
9 Pratt & Associates
10 1871 The Alameda, Suite 425
11 San Jose, CA 95126

12 **BY FIRST CLASS MAIL** by placing a true copy thereof in a sealed envelope with postage
13 thereon fully prepaid in the designated area for outgoing U.S. mail in accordance with this
14 office's practice.

15 **CERTIFIED MAIL (#)** by placing such envelope(s) with postage thereon fully prepaid in the
16 designated area for outgoing U.S. mail in accordance with this office's practice.

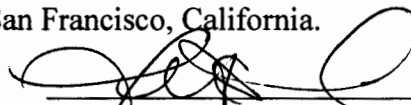
17 **BY PERSONAL SERVICE (BY MESSENGER):** I caused such envelope to be delivered by
18 hand to the person or offices of each addressee above.

19 **BY FACSIMILE (FAX):** I caused each such document to be sent by facsimile to the person or
20 offices of each addressee above.

21 **BY E-MAIL:** I caused each such document to be sent by e mail to the person or offices of each
22 address above.

23 **BY FEDERAL EXPRESS**

24 I declare under penalty of perjury under the laws of the State of California that the foregoing is
25 true and correct. Executed February 5, 2014 at San Francisco, California.

26 
27 _____
28 Jessica Meegan
Legal Assistant, Contractor

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, ex Rel.
THOMAS P. THRASH

No. 3:13-cv-2551 (JCS)

Plaintiff(s),

CERTIFICATE OF SERVICE

v.

THE COCA-COLA COMPANY, ET AL.,

Defendant(s).

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on February 6, 2014, I SERVED a true and correct copy of the attached, by placing said copy in a postage paid envelope addressed to the person(s) listed below, by depositing said envelope in the U.S. Mail; or by placing said copy into an inter-office delivery receptacle located in the Office of the Clerk.

Erica Blachman Hitchings
Asst. United States Attorney
450 Golden Gate Ave., Box 36055
San Francisco, CA 94102

Pierce Gore
Pratt & Associates
1871 The Alameda
Suite 425
San Jose, CA 95126

Dated: February 6, 2014

RICHARD W. WIEKING, CLERK

BY: Karen L. Hom
Karen L. Hom, Courtroom Deputy