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17 UNITED STATES DISTRICT COURT
 18 FOR THE NORTHERN DISTRICT OF CALIFORNIA

19 JACKIE FITZHENRY-RUSSELL, on behalf
 20 of herself and all others similarly situated;

21 *Plaintiffs,*

22 vs.

24 The Coca-Cola Company;

26 *Defendants.*

Case No. 5:17-CV-00603-EJD

~~[PROPOSED]~~ **STIPULATED**
PROTECTIVE ORDER
 MODIFIED BY THE COURT

Judge: ~~Hon. Edward J. Davila~~
 Magistrate Judge Howard R. Lloyd

1 **1. PURPOSES AND LIMITATIONS**

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

15 **B. GOOD CAUSE STATEMENT**

16 This action may involve trade secrets, customer and pricing lists and other
17 valuable research, development, commercial, financial, technical and/or proprietary
18 information for which special protection from public disclosure and from use for any
19 purpose other than prosecution of this action is warranted. Such confidential and
20 proprietary materials and information consist of, among other things, confidential
21 business or financial information, information regarding confidential business practices,
22 or other confidential research, development, or commercial information (including
23 information implicating privacy rights of third parties), information otherwise generally
24 unavailable to the public, or which may be privileged or otherwise protected from
25 disclosure under state or federal statutes, court rules, case decisions, or common law.
26 Accordingly, to expedite the flow of information, to facilitate the prompt resolution of
27 disputes over confidentiality of discovery materials, to adequately protect information
28 the parties are entitled to keep confidential, to ensure that the parties are permitted

reasonable necessary uses of such material in preparation for and in the conduct of trial,

1 to address their handling at the end of the litigation, and serve the ends of justice, a
2 protective order for such information is justified in this matter. It is the intent of the
3 parties that information will not be designated as confidential for tactical reasons and
4 that nothing be so designated without a good faith belief that it has been maintained in a
5 confidential, non-public manner, and there is good cause why it should not be part of
6 the public record of this case. Further, by entering into this Stipulated Protective Order,
7 neither party concedes the relevance, discoverability, or admissibility of any category of
8 information.

9 **2. DEFINITIONS**

10 2.1 Action: This pending federal lawsuit, *Jackie Fitzhenry-Russell, et al. v.*
11 *The Coca-Cola Company*, United States District Court for the Northern District of
12 California, No. 5:17-CV-00603-EJD.

13 2.2 Challenging Party: a Party or Non-Party that challenges the designation
14 of information or items under this Order.

15 2.2 CONFIDENTIAL Information or Items: information (regardless of how
16 it is generated, stored or maintained) or tangible things that qualify for protection under
17 Federal Rule of Civil Procedure 26(c).

18 2.3 Counsel (without qualifier): Outside Counsel and In-House Counsel (as
19 well as their support staff).

20 2.4 Designating Party: a Party or Non-Party that designates information or
21 items that it produces in disclosures or in responses to discovery as “CONFIDENTIAL”
22 or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

23 2.5 Disclosure or Discovery Material: all items or information, regardless of
24 the medium or manner in which it is generated, stored, or maintained (including, among
25 other things, testimony, transcripts, and tangible things), that are produced or generated
26 in disclosures or responses to discovery in this matter.

27 2.6 Expert: a person with specialized knowledge or experience in a matter
28 pertinent to the litigation who (1) has been retained by a Party or its counsel to serve as
a testifying or non-testifying expert or consultant in this action, (2) is not a past or

1 current employee of a Party or of a Party’s competitor, and (3) at the time of retention,
2 is not anticipated to become an employee of a Party or of a Party’s competitor.

3 2.7 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”

4 Information or Items: extremely sensitive “Confidential Information or Items,”
5 disclosure of which to another Party or Non-Party would create a substantial risk of
6 serious harm that could not be avoided by less restrictive means.

7 2.8 In-House Counsel: attorneys who are employees of a Party to this Action.

8 In-House Counsel does not include Outside Counsel or any other outside counsel.

9 2.9 Non-Party: any natural person, partnership, corporation, association, or

10 other legal entity not named as a Party to this Action.

11 2.10 Outside Counsel: attorneys who are not employees of a party to this

12 Action but are retained to represent or advise a party to this Action and have appeared
13 in this Action on behalf of that party or are affiliated with a law firm which has
14 appeared on behalf of that party.

15 2.11 Party: any party to this Action, including all of its officers, directors,

16 employees, Experts, and Outside Counsel of Record (and their support staffs).

17 2.12 Producing Party: a Party or non-Party that produces Disclosure or

18 Discovery Material in this Action (including all of its officers, directors, employees,
19 consultants, retained experts, discovery vendors, and Outside Counsel (and their support
20 staff, employees, and agents).

21 2.13 Professional Vendors: persons or entities that provide litigation support

22 services (e.g., photocopying, videotaping, translating, preparing exhibits or
23 demonstrations, and organizing, storing, or retrieving data in any form or medium) to a
24 Party and their employees and subcontractors.

25 2.14 Protected Material: any Disclosure or Discovery Material that is

26 designated as “CONFIDENTIAL” or as “HIGHLY CONFIDENTIAL – ATTORNEYS’
27 EYES ONLY.”

28 2.15 Receiving Party: a Party that received Disclosure or Discovery Material

from a Producing Party.

1 **3. SCOPE**

2 The protections conferred by this Stipulation and Order cover not only Protected
3 Material (as defined above), but also: (1) any information copied or extracted from
4 Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected
5 Material; and (3) any testimony, conversations, or presentations by Parties or their
6 Counsel that might reveal Protected Material. However, the protections conferred by
7 this Stipulation and Order do not cover the following information: (a) any information
8 that is in the public domain at the time of disclosure to a Receiving Party or becomes
9 part of the public domain after its disclosure to a Receiving Party as a result of
10 publication not involving a violation of this Order, including becoming part of the
11 public record through trial or otherwise; and (b) any information known to the
12 Receiving Party prior to the disclosure or obtained by the Receiving Party after the
13 disclosure from a source who obtained the information lawfully and under no obligation
14 of confidentiality to the Designating Party. Any use of Protected Material at trial shall
15 be governed by a separate agreement or order.

16 **4. DURATION**

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

24 **5. DESIGNATING PROTECTED MATERIAL**

For a period of six months after final disposition of
this litigation, this court will retain jurisdiction to
enforce this
order.

25 5.1 Exercise of Restraint and Care in Designating Material for Protection.

26 Each Party or Non-Party that designates information or items for protection under this
27 Order must take care to limit any such designation to specific material that qualifies
28 under the appropriate standards. The Designating Party must, in good faith and to the
 extent it is practical to do so, designate for protection only those parts of material,

1 documents, items, or oral or written communications that qualify – so that other
2 portions of the material, documents, items, or communications for which protection is
3 not warranted are not swept unjustifiably within the ambit of this Order. Mass,
4 indiscriminate, or routinized designations are prohibited. Designations that have been
5 made for an improper purpose (e.g., to unnecessarily encumber or retard the case
6 development process or to impose unnecessary expenses and burdens on other parties)
7 expose the Designating Party to sanctions.

8 If it comes to a Designating Party’s attention that information or items that it
9 designated for protection do not qualify for protection that Designating Party must
10 promptly notify all other Parties that it is withdrawing the inapplicable designation.

11 5.2 Manner and Timing of Designations. Except as otherwise provided in
12 this Order (see, e.g., Paragraph 5.2(b) below), or as otherwise stipulated or ordered,
13 Disclosure or Discovery Material that qualifies for protection under this Order must be
14 clearly so designated before the material is disclosed or produced.

15 Designation in conformity with this Order requires:

16 (a) For information in documentary form (e.g., paper or electronic
17 documents, but excluding transcripts of depositions or other pretrial or trial
18 proceedings), that the Producing Party affix the legend “CONFIDENTIAL” or
19 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” to each page that
20 contains protected material.

21 A Party or Non-Party that makes original documents or materials available for
22 inspection need not designate them for protection until after the inspecting Party has
23 indicated which material it would like copied and produced. During the inspection and
24 before the designation, all of the material made available for inspection shall be deemed
25 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” After the inspecting
26 Party has identified the documents it wants copied and produced, the Producing Party
27 must determine which documents, or portions thereof, qualify for protection under this
28 Order. Then, before producing the specified documents, the Producing Party must affix
the appropriate legend (“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –

1 ATTORNEYS' EYES ONLY") to each page that contains Protected Material. If only a
2 portion or portions of the material on a page qualifies for protection, the Producing
3 Party also must clearly identify the protected portion(s) (e.g., by making appropriate
4 markings in the margins) and must specify, for each portion, the level of protection
5 being asserted.

6 (b) for testimony given in deposition or in other pretrial or trial
7 proceedings, that the Designating Party identify on the record, before the close of the
8 deposition, hearing, or other proceeding, all protected testimony and specify the level of
9 protection being asserted. When it is impractical to identify separately each portion of
10 testimony that is entitled to protection and it appears that substantial portions of the
11 testimony may qualify for protection, the Designating Party may invoke on the record
12 (before the deposition, hearing, or other proceeding is concluded) a right to have up to
13 thirty (30) days after receipt of the certified transcript of such testimony to identify the
14 specific portions of the testimony as to which protection is sought and to specify the
15 level of protection being asserted. Until the expiration of the thirty (30) days, the entire
16 transcript shall be treated as if it had been designated "HIGHLY CONFIDENTIAL –
17 ATTORNEYS' EYES ONLY" unless otherwise agreed. After the expiration of that
18 period, only those portions of the testimony that are appropriately designated for
19 protection within the 30 days shall be covered by the provisions of this Stipulated
20 Protective Order.

21 Transcripts containing Protected Material shall have an obvious legend on the
22 title page that the transcript contains Protected Material, and the title page shall be
23 followed by a list of all pages (including line numbers as appropriate) that have been
24 designated as Protected Material and the level of protection being asserted by the
25 Designating Party. The Designating Party shall inform the court reporter of these
26 requirements.

27 (c) for information produced in some form other than documentary and
28 for any other tangible items, that the Producing Party affix in a prominent place on the
exterior of the container or containers in which the information or item is stored the

1 legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
2 ONLY.” If only a portion or portions of the information or item warrant protection, the
3 Producing Party, to the extent practicable, shall identify the protected portion(s) and
4 specify the level of protection being asserted.

5 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
6 failure to designate qualified information or items does not, standing alone, waive the
7 Designating Party’s right to secure protection under this Order for such material. Upon
8 timely correction of a designation, the Receiving Party must make reasonable efforts to
9 assure that the material is treated in accordance with the provisions of this Order.

10 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

11 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
12 designation of confidentiality at any time. Unless a prompt challenge to a Designating
13 Party’s confidentiality designation is necessary to avoid foreseeable, substantial
14 unfairness, unnecessary economic burdens, or a significant disruption or delay of the
15 litigation, a Party does not waive its right to challenge a confidentiality designation by
16 electing not to mount a challenge promptly after the original designation is disclosed.

17 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
18 resolution process by providing written notice of the designation(s) it is challenging and
19 describing the basis for its challenge(s). To avoid ambiguity as to whether a challenge has
20 been made, the written notice must recite that the challenge to confidentiality is being
21 made in accordance with this specific paragraph of the Protective Order. The parties shall
22 attempt to resolve each challenge in good faith and must begin the process by conferring
23 directly (in voice to voice dialogue; other forms of communication are not sufficient)
24 within 14 days of the date of service of notice. In conferring, the Challenging Party must
25 explain the basis for its belief that the confidentiality designation was not proper and must
26 give the Designating Party an opportunity to review the designated material, to reconsider
27 the circumstances, and, if no change in designation is offered, to explain the basis for the
28 chosen designation. A Challenging Party may ~~proceed to the next stage of the challenge~~

~~process~~ only if it has engaged in this meet and confer process first or establishes that the

1 Designating Party is unwilling to participate in the meet and confer process in a timely
2 manner or the matter remains unresolved for over fourteen (14) days after a meet and
3 confer. ~~The Challenging Party may serve notice of a challenge, including a challenge to some or all of a~~
~~deposition transcript, at any time for good cause.~~

4 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court
5 intervention, the ~~Designating Party shall file and serve a motion to retain confidentiality~~
~~under Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable)~~

6 ~~within 21 days of the initial notice of challenge or within 14 days of the parties agreeing that~~
7 ~~the meet and confer process will not resolve their dispute, whichever is earlier. Each such~~
8 ~~motion must be accompanied by a competent declaration affirming that the movant has~~

9 Any Discovery Dispute Joint Report shall affirm compliance with both the terms of paragraph 6.2 in this
10 ~~complied with the meet and confer requirements imposed in the preceding paragraph.~~
11 ~~Failure by the Designating Party to make such a motion including the required declaration~~

12 ~~within 21 days (or 14 days, if applicable) shall automatically waive the confidentiality~~
13 ~~designation for each challenged designation. In addition, the Challenging Party may file a~~
14 ~~motion challenging a confidentiality designation at any time if there is good cause for doing~~

15 ~~so, including a challenge to the designation of a deposition transcript or any portions thereof.~~
16 ~~Any motion brought pursuant to this provision must be accompanied by a competent~~
17 ~~declaration affirming that the movant has complied with the meet and confer requirements~~

18 ~~imposed by the preceding paragraph.~~ both paragraph 6.2 of this protective order and the separate standing
19 order requirements.

20 The burden of persuasion in any such challenge proceeding shall be on the
21 Designating Party. Frivolous challenges, and those made for an improper purpose (e.g., to
22 harass or impose unnecessary expenses and burdens on other parties) may expose the
23 Challenging Party to sanctions. Unless the Designating Party has waived the

24 confidentiality designation by failing to ~~file a motion~~ ^{seek relief} to retain confidentiality as described
25 above, all parties shall continue to afford the material in question the level of protection to
26 which it is entitled under the Producing Party's designation until the court rules on the
27 ~~challenge.~~

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

1 7.1 Basic Principles. A Receiving Party may use Protected Material that is
2 disclosed or produced by another Party or by a Non-Party in connection with this case
3 only for prosecuting, defending, or attempting to settle this litigation. Such Protected
4 Material may be disclosed only to the categories of persons and under the conditions
5 described in this Order. When the litigation has been terminated, a Receiving Party
6 must comply with the provisions of paragraph 13 below (FINAL DISPOSITION).

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

10 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless
11 otherwise ordered by the Court or permitted in writing by the Designating Party, a
12 Receiving Party may disclose any information or item designated “CONFIDENTIAL”
13 only to the following individuals under the following conditions:

14 (a) the Receiving Party’s Outside Counsel in this Action, as well as
15 employees of said Outside Counsel to whom it is reasonably necessary to disclose the
16 information for this litigation;

17 (b) The Parties and the directors, officers, and employees (including In-
18 House Counsel) to whom disclosure is reasonably necessary for this litigation and who
19 have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

20 (c) Experts of the Receiving Party to whom disclosure is reasonably
21 necessary for this litigation and who have signed the “Acknowledgment and Agreement
22 to Be Bound” (Exhibit A);

23 (d) the Court and its personnel;

24 (e) court reporters and their staff, professional jury or trial consultants,
25 mock jurors, and Professional Vendors to whom disclosure is reasonably necessary for
26 this Action and who have signed the “Acknowledgment and Agreement to Be Bound”
27 (Exhibit A);

28 (f) during their depositions, witnesses in the action to whom disclosure is
reasonably necessary and who have signed the “Acknowledgment and Agreement to Be

1 Bound” (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the
2 court. Parties shall give the other parties notice if they reasonably expect a deposition,
3 hearing or other proceeding to include Protected Material so that the other parties can
4 ensure that only authorized individuals who have signed the “Acknowledgment and
5 Agreement to Be Bound” (Exhibit A) are present at those proceedings. The use of a
6 document as an exhibit at a deposition shall not in any way affect its designation as
7 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”;
8 and

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

11 (h) such other persons as the parties may agree or may be ordered by the
12 Court.

13 7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
14 ONLY” Information or Items. Unless otherwise ordered by the court or permitted in

15 writing by the Designating Party, a Receiving Party may disclose any information or item
16 designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” only to:

17 (a) the Receiving Party’s Outside Counsel of Record in this action, as well
18 as employees of said Outside Counsel of Record to whom it is reasonably necessary to
19 disclose the information for this litigation and who have signed the “Acknowledgment and
20 Agreement to Be Bound” that is attached hereto as Exhibit A;

21 (b) Experts of the Receiving Party (1) to whom disclosure is reasonably
22 necessary for this litigation, (2) who have signed the “Acknowledgment and Agreement to
23 Be Bound” (Exhibit A), and (3) as to whom the procedures set forth in paragraph
24 7.4(a)(1)-(2), below, have been followed;

25 (c) the court and its personnel;

26 (d) court reporters and their staff, professional jury or trial consultants, and
27 Professional Vendors to whom disclosure is reasonably necessary for this litigation and
28 who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A); and

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; and

3 (f) such other persons as the parties may agree or may be ordered by the
4 Court.

5 7.4 Procedures for Approving or Objecting to Disclosure of “HIGHLY
6 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or Items to Experts.

7 (a)(1) The parties recognize that certain trade secrets or other highly
8 confidential information that may be reflected in materials that are subject to disclosure in
9 the course of litigation should be absolutely protected from competitors. “HIGHLY
10 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information or items may be
11 disclosed to an Expert without disclosure of the identity of the Expert as long as the
12 Expert is not a current officer, director, employee, or consultant of a competitor of a Party,
13 is not anticipated to become one, and has not been an officer, director, employee, or
14 consultant of a competitor within the last five (5) years. Under no circumstances shall any
15 information or item that has been designated “HIGHLY CONFIDENTIAL –
16 ATTORNEYS’ EYES ONLY” be disclosed to an individual who is a current employee,
17 officer, director, or consultant of a competitor of a Party. As used in Section 7.4,
18 “Consultant” shall mean an individual who personally provided a service to a competitor
19 of a Party for which the competitor provided compensation, or personally assisted
20 someone in the provision of such services. “Services” as defined in this section shall mean
21 that the work was performed in connection with a soft drink product, defined to mean a
22 non-alcoholic carbonated beverage containing flavorings, sweeteners and other
23 ingredients. In Section 7.4, “Consultant” shall not include employees of an entity that
24 provided a service to a competitor of a Party, provided such employees did not personally
25 provide services to the competitor or assist those who did.

26 (a)(2) Unless otherwise ordered by the court or agreed to in writing by the
27 Designating Party, a Party that seeks to disclose to an individual who otherwise meets the
28 definition of “Expert” set forth in Paragraph 2.6, but who has been an officer, director,
employee, or consultant for a competitor within the last five (5) years, or is, at the time of

1 their retention, anticipated to become one, any information or item that has been
2 designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” pursuant to
3 paragraph 7.3(b) first must make a written request to the Designating Party that (1)
4 identifies the general categories of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
5 ONLY” information that the Receiving Party seeks permission to disclose to the Expert,
6 (2) sets forth the full name of the Expert and the city and state of his or her primary
7 residence, (3) attaches a copy of the Expert’s current resume, (4) identifies the Expert’s
8 current employer(s), (5) identifies each person or entity from whom the Expert has
9 received compensation or funding for work in his or her areas of expertise or to whom the
10 expert has provided professional services, including in connection with a litigation, at any
11 time during the preceding five years, and (6) identifies (by name and number of the case,
12 filing date, and location of court) any litigation in connection with which the Expert has
13 offered expert testimony, including through a declaration, report, or testimony at a
14 deposition or trial, during the preceding five years.

15 (b) A Party that makes a request and provides the information specified in
16 the preceding respective paragraphs may disclose the subject Protected Material to the
17 identified Expert unless, within 14 days of delivering the request, the Party receives a
18 written objection from the Designating Party. Any such objection must set forth in detail
19 the grounds on which it is based.

20 (c) A Party that receives a timely written objection must meet and confer
21 with the Designating Party (through direct voice to voice dialogue) to try to resolve the
22 matter by agreement within seven days of the written objection. If no agreement is
23 reached, the Party seeking to make the disclosure to the Expert may file a motion as
24 provided in Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if
25 applicable) seeking permission from the court to do so. Any such motion must describe
26 the circumstances with specificity, set forth in detail the reasons why the disclosure to the
27 Expert is reasonably necessary, assess the risk of harm that the disclosure would entail,
28 and suggest any additional means that could be used to reduce that risk. In addition, any
such motion must be accompanied by a competent declaration describing the parties’

1 efforts to resolve the matter by agreement (i.e., the extent and the content of the meet and
2 confer discussions) and setting forth the reasons advanced by the Designating Party for its
3 refusal to approve the disclosure.

4 In any such proceeding, the Party opposing disclosure to the Expert shall bear the
5 burden of proving that the risk of harm that the disclosure would entail (under the
6 safeguards proposed) outweighs the Receiving Party's need to disclose the Protected
7 Material to its Expert.

8 7.5 Discussion and Consultation with Clients

9 In the event that a Receiving Party's counsel believes in good faith that it is
10 reasonable to consult with its client, who would not otherwise be permitted access, about
11 information designated "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY,"
12 where such information either (1) relates to the identity or quantity of ginger and/or ginger
13 flavoring ingredients used in Seagram's Ginger Ale or variants thereof; (2) consists of data
14 reflecting the retail prices at which Seagram's Ginger Ale was sold during the putative
15 class period; or (3) consists of financial data reflecting the revenue for sales of Seagram's
16 Ginger Ale sold during the putative class period, the Receiving Party's counsel shall be
17 permitted to do so provided that (a) the document or information itself or any other portion
18 thereof is not given or disclosed to such client; (b) such client has signed an
19 Acknowledgment and Agreement to Be Bound (Exhibit A). In addition, a Receiving
20 Party's counsel may disclose to its client all pleadings, briefs, and/or other documents
21 filed with the Court, including drafts of such filings that quote or refer to information or
22 items designated "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY," to the
23 extent that such information either (1) relates to the identity or quantity of ginger and/or
24 ginger flavoring ingredients used in Seagram's Ginger Ale or variants thereof; (2) consists
25 of data reflecting the retail prices at which Seagram's Ginger Ale was sold during the
26 putative class period, or (3) consists of financial data reflecting the revenue for sales of
27 Seagram's Ginger Ale sold during the putative class period, provided that the client has
28 signed an Acknowledgment and Agreement to Be Bound (Exhibit A). Notwithstanding
the foregoing, Receiving Party's counsel will under no circumstances disclose information

1 to its client designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”
2 other than the information specifically identified in this Section 7.5.

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

5 If a Receiving Party is served with a subpoena or a court order issued in
6 other litigation that would compel disclosure of any information or items designated in
7 this Action as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’
8 EYES ONLY,” the Receiving Party must:

9 (a) promptly notify in writing the Designating Party (by fax and email, if
10 possible). Such notification must include a copy of the subpoena or court order;

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

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

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

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 prohibiting
8 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 confidential
12 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 agreement
15 with a Non-Party;

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

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

21 (c) If the Non-Party fails to object or seek a protective order from this court
22 within 14 days of receiving the notice and accompanying information, the Receiving
23 Party 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 not
25 produce any information in its possession or control that is subject to the confidentiality
26 agreement with the Non-Party before a determination by the court. Absent a court order
27 to the contrary, the Non-Party shall bear the burden and expense of seeking protection in
28 this court of its Protected Material.

10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

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

12 (a) 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 the obligations of the Receiving Parties are those set forth in Federal Rule of Civil
15 Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure
16 may be established in an e-discovery order that provides for production without prior
17 privilege review.

18 (b) Pursuant to Rule 502(d) and (e) of the Federal Rules of Evidence, if a
19 Producing Party discloses material that the Producing Party thereafter claims to be
20 privileged or protected by the attorney-client privilege or work product protection
21 (“Claw-Back Material”), the disclosure of such material will not constitute or be
22 deemed a waiver or forfeiture—in this or any other action—of any claim of privilege
23 or work product protection that the Producing Party would otherwise be entitled to
24 assert with respect to the material and its subject matter.

25 (c) A Producing Party must promptly notify the party receiving the material,
26 in writing, that it has disclosed Claw-Back Material without intending a waiver by
27 the disclosure. Upon such notification, the Receiving Party must—unless it contests
28 the claim of attorney-client privilege or work product protection in accordance with

1 paragraph 11(d) below—promptly: (i) notify the Producing Party that it will make
2 best efforts to identify and return, sequester or destroy (or in the case of
3 electronically stored information, delete) the Claw-Back Material and any
4 reasonably accessible copies it has and (ii) provide a certification that it will cease
5 further review, dissemination, and use of the Claw-Back Material. Within five (5)
6 business days of receipt of the notification from the Receiving Party, the Producing
7 Party must explain as specifically as possible why the Protected Information is
8 privileged.

9 (d) If the Receiving Party contests the claim of attorney-client privilege or
10 work product protection, the Receiving Party may keep the Claw-Back Material in
11 its possession only for purposes of submitting the same to the Court within 14
12 business days with an accompanying motion (“Disclosure Motion”) against the
13 proposed Claw-Back Material by the Producing Party, and for no other purpose.
14 Prior to the Court ruling upon such Disclosure Motion, Receiving Party shall take
15 necessary steps to quarantine the subject document(s) from further review, shall not
16 permit it to be disclosed to any individuals other than those involved in preparing the
17 Disclosure Motion, shall take reasonable steps to ensure that all individuals not
18 involved in preparing the Disclosure Motion have destroyed it, and shall submit with
19 its Disclosure Motion a statement that reasonably necessary steps to quarantine the
20 Claw-Back Material has been taken. The Disclosure Motion must be filed under
21 seal. Pending resolution of the Disclosure Motion, the Receiving Party must not use
22 the challenged information in any way or disclose it to any person other than those
23 required by law to be served with a copy of the sealed Disclosure Motion.

24 (e) The parties may stipulate to extend the time periods set forth in
25 paragraphs 11(c)-(d).

26 (f) The Producing Party retains the burden—upon challenge pursuant to
27 paragraph 11(d)—of establishing the privileged or protected nature of the Claw-
28 Back Material.

1 (g) Nothing in this Order limits the right of any party to petition the Court for
2 an in camera review of the Protected Information.

3 (h) This Order does not preclude a party from voluntarily waiving the
4 attorney-client privilege or work product protection. The provisions of Federal Rule
5 502(a) apply when the Disclosing Party uses or indicates that it may use information
6 produced under this Order to support a claim or defense.

7 **12. MISCELLANEOUS**

8 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
9 person to seek its modification by the Court in the future.

10 12.2 Right to Assert Other Objections. By stipulating to the entry of this
11 Protective Order no Party waives any right it otherwise would have to object to
12 disclosing or producing any information or item on any ground not addressed in this
13 Stipulated Protective Order. Similarly, no Party waives any right to object on any
14 ground to use in evidence of any of the material covered by this Protective Order.

15 12.3 Filing Protected Material. Without written permission from the
16 Designating Party or a court order secured after appropriate notice to all interested
17 persons, a Party may not file in the public record in this action any Protected
18 Material. A Party that seeks to file under seal any Protected Material must comply
19 with Civil Local Rule 79-5. Protected Material may only be filed under seal pursuant
20 to a court order authorizing the sealing of the specific Protected Material at issue.
21 Pursuant to Civil Local Rule 79-5, a sealing order will issue only upon a request
22 establishing that the Protected Material at issue is privileged, protectable as a trade
23 secret, or otherwise entitled to protection under the law. If a Receiving Party's
24 request to file Protected Material under seal pursuant to Civil Local Rule 79-5(d) is
25 denied by the court, then the Receiving Party may file the information in the public
26 record pursuant to Civil Local Rule 79-5(e) unless otherwise instructed by the court.

27 **13. FINAL DISPOSITION**

28 Within 60 days after the final disposition of this action, as defined in
paragraph 4, each Receiving Party must return all Protected Material to the

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

17 14. All discovery and disclosure disputes are subject to the undersigned's standing order re: discovery disputes.

18 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

19 DATED: August 30, 2017

20 /s/Marie McCrary /
21 Adam J. Gutride
22 Seth A. Safier
23 Marie A. McCrary
24 Matthew T. McCrary
25 GUTRIDE SAFIER LLP
26 Attorneys for Plaintiff Jackie Fitzhenry-
27 Russell

24 DATED: August 30, 2017

25 /s/ Steven A. Zalesin /
26 Steven A. Zalesin
27 Michelle W. Cohen
28 Patterson Belknap Webb & Tyler LLP

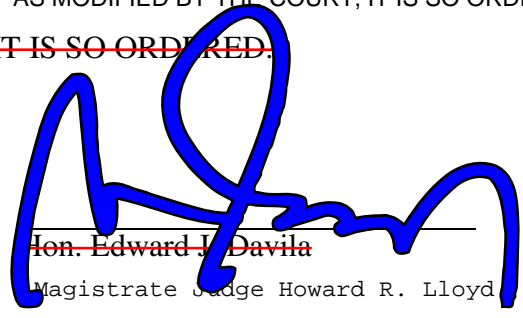
Tammy B. Webb
Shook Hardy & Bacon LLP
Attorneys for The Coca-Cola Company

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AS MODIFIED BY THE COURT, IT IS SO ORDERED.

PURSUANT TO STIPULATION, ~~IT IS SO ORDERED.~~

DATED: 9/6/2017



~~Hon. Edward J. Davila~~
Magistrate Judge Howard R. Lloyd

EXHIBIT A

ACKNOWLEDGEMENT AND AGREEMENT TO BE BOUND

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 Northern District of California on _____, in the case of *Jackie Fitzhenry-Russell v. The Coca-Cola Company*, Case No. 5:17-CV- 00603-EJD. 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 Northern 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.

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