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Counsel for Plaintiff Linda Franulovic

**IN THE UNITED STATES DISTRICT COURT
 FOR THE DISTRICT OF NEW JERSEY**

Linda Franulovic , individually and on	§	
behalf of a class of persons,	§	
	§	Civil Action No. 07-539 (RMB)
Plaintiffs,	§	
	§	
v.	§	CLASS ACTION
	§	
The Coca-Cola Company ,	§	
Defendant.	§	

NOTICE OF MOTION FOR CONTINUANCE PURSUANT TO RULE 56(F)

TO: Gita F. Rothschild, Esquire
 Peter J. Boyer, Esquire
 McCarter & English, LLP
 Four Gateway Center
 100 Mulberry Street
 P.O. Box 652
 Newark, NJ 07102-0652

PLEASE TAKE NOTICE that on April 6, 2009, the undersigned, Mark R. Cuker, Esquire, of the law firm of WILLIAMS CUKER BEREZOFSKY, co-counsel for Plaintiff Linda

Franulovic and the Class, shall make application before the United States District Court for the District of New Jersey pursuant to Federal Rule 56(f) for an Order denying Defendant's Motion for Summary Judgment (Doc. 105) ("Motion") without prejudice to its right to renew the motion after the conclusion of merits discovery or, in the alternative, to grant a continuance of her response to the Motion until she has had the opportunity to complete merits discovery in this case, which the Court has not yet even ordered. Therefore, Franulovic moves the Court to deny the Motion at this time, without prejudice, or to enter an order continuing the consideration of this motion to allow her to take the necessary discovery. The Court has not yet entered an order scheduling merits discovery, pending the class certification motion, so Franulovic proposes that the Court continue her response until six months after the Court rules on her pending class certification motion.

Defendant has repeatedly refused to make discovery based on its assertion that the requested information relates to the merits and not to the pending class certification motion. However, having refused to make merits discovery, Defendant has now moved for summary judgment on the merits. Pending ruling on class certification, the parties have not designated experts on the merits of this case, and Franulovic has not deposed any of Defendant's employees or other persons with knowledge of the merits of this case. Thus, Franulovic cannot present evidence essential to justify her opposition.

PLEASE TAKE FURTHER NOTICE that the within application is made upon the papers, and unless counsel for Defendant otherwise object, no oral argument is requested.

Dated: March 1, 2009

WILLIAMS CUKER BEREZOFSKY

Counsel for Plaintiff Linda Franulovic and the Class

By: /s/ Mark R. Cuker
Mark R. Cuker

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Notice of Motion for Continuance Pursuant to Rule 56(f) and accompanying Memorandum of Law and Affidavit of Counsel have been served via ECF upon the following counsel for Defendant:

Gita F. Rothschild, Esq.
Peter J. Boyer, Esq.
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Jane Thorpe
Scott Elder
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One Atlantic Center
1201 West Peachtree Street
Atlanta, GA 30309-3424

/s/ Mark R. Cuker
Mark R. Cuker

Dated: March 1, 2009

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Defendant.

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Civil Action No. 07-539 (RMB)

CLASS ACTION

ORDER GRANTING CONTINUANCE PURSUANT TO RULE 56(F)

THIS MATTER having come before the Court on the motion of Mark R. Cuker,
Counsel for Plaintiff Linda Franulovic, and the Court having considered the motion papers and
for good cause shown.

IT IS on this _____ day of _____, 20__;

ORDERED that the motion is hereby **GRANTED**. Plaintiff's response to Defendant's
Motion for Summary Judgment is **CONTINUED** pursuant to Federal Rule of Civil Procedure

56(f) until six months after the Court rules on Plaintiff's pending Motion for Class Certification.

The Honorable Renee Marie Bumb
United States District Judge