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**IN THE UNITED STATES DISTRICT COURT
 DISTRICT OF NEW JERSEY
 CAMDEN VICINAGE**

LINDA FRANULOVIC, individually and on)	CIVIL NO. 1:07-cv-00539-RMB-JS
behalf of a class of persons,)	
)	
Plaintiff,)	CLASS ACTION
)	
v.)	
)	Document Electronically Filed
THE COCA-COLA COMPANY,)	
)	
Defendant.)	

**DEFENDANT’S BRIEF IN SUPPORT OF MOTION FOR LEAVE TO FILE
 SUR-REPLY TO PLAINTIFF’S REPLY IN SUPPORT OF
 MOTION FOR CLASS CERTIFICATION**

March 10, 2009

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I. FACTUAL AND PROCEDURAL HISTORY

Plaintiff Linda Franulovic filed her Motion for Class Certification on October 21, 2008 and TCCC filed its Brief in Opposition to Plaintiff's Motion for Class Certification on December 11, 2008. Plaintiff thereafter took the deposition of Joel Steckel, Ph.D., TCCC's expert in support of its opposition to class certification, on January 8, 2009. Dr. Steckel is the only expert to have offered an opinion in this litigation. TCCC filed a Notice of New Legal Authority on January 28, 2009 to introduce a recent decision by the Third Circuit Court of Appeals.¹

After receiving a briefing extension, Plaintiff filed her Reply Memorandum in Support of Class Certification on February 20, 2009. Plaintiff subsequently filed on February 25, 2009 a Notice of Recently Entered Legal Authority in which she seeks to present for the Court's consideration the case of *Bosland v. Warnock Dodge, Inc.*, 2009 WL 414336, (N.J. Feb. 19, 2009) which was filed on February 19, 2009, the day before Plaintiff filed her reply brief.

II. ARGUMENT

TCCC seeks leave to file a short sur-reply for the limited purpose of addressing three issues raised by Plaintiff in her reply in support of class certification. First, Plaintiff mistakenly suggests in her reply brief that New Jersey state law should direct this Court to grant class certification. Second, Plaintiff failed to address the language of *In re Hydrogen Peroxide Antitrust Litigation*, which was filed subsequent to TCCC's response and which has direct applicability to this litigation. Not only that, but on February 25, 2009 she filed a Notice of Recently Entered Legal Authority. Plaintiff cannot expect to file authority allegedly in support of class certification that was not in existence at the time of TCCC's response to her class

¹ *In re Hydrogen Peroxide Antitrust Litigation*, 2008 WL 5411562, No. 07-1689 (3d Cir. Jan. 16, 2009).

certification brief and not thereafter allow TCCC the opportunity to respond to that authority. Even more, the decision was entered on the day before Plaintiff filed her reply, so she had the opportunity to incorporate it into her briefing. Third, Plaintiff misrepresented the deposition testimony of Joel Steckel, Ph.D. when she introduced that testimony for the first time in her reply brief. In support of this motion, TCCC notes that District of New Jersey jurisprudence provides for a sur-reply in circumstances such as those presented in the instant case.²

III. CONCLUSION

For the reasons set forth above, TCCC hereby requests that the Court grant its motion for a sur-reply brief and consider the attached sur-reply in its evaluation of plaintiff's request for class certification.

Dated: March 10, 2009

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² See, e.g., *In re Honeywell Int'l ERISA Litig.*, No. Civ. 03-1214 (DRD), 2004 WL 3245931, at *1 n. 5 (D.N.J. Sept. 14, 2004) (granting leave to file sur-reply, stating: “[t]o the extent that the surreply or later submissions added to the discussion authorities that the Court finds persuasive, it would be nonsensical for the Court to ignore such authorities merely because they were not presented in the first round of briefing”); *Nat'l Utility Svc., Inc. v. Chesapeake Corp.*, 45 F. Supp. 2d 438, 445 (D.N.J. Apr. 14, 1999) (granting defendants leave to file sur-reply because the interests of justice so required); *Portfolio Tech., Inc. v. Church & Dwight Co.*, 2006 WL 288082, No. Civ.A. 04-6340(JAG) (D.N.J. Feb. 6, 2006).

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