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 Application *pro hac vice* pending

Attorneys for Plaintiffs

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

Center for Science in the Public Interest,

Plaintiff,

v.

**The Coca-Cola Company, Nestlé USA,
 Inc., and Beverage Partners Worldwide,
 Defendants.**

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Civil Action No. 1:07-cv-00539-JHR-JS

**NOTICE OF MOTION FOR
 ORDER SETTING PRETRIAL CONFERENCE**

PLEASE TAKE NOTICE that on July 6, 2007 the undersigned, Mark Cuker Esquire, of the law firm of WILLIAMS CUKER BEREZOFSKY, co-counsel for Plaintiff Center for Science in the Public Interest, shall make application before the United States District Court for the District of New Jersey, for an Order setting the date of a pretrial conference in this matter.

PLEASE TAKE FURTHER NOTICE that this motion is made upon the papers, and no oral argument is requested.

WILLIAMS CUKER BEREZOFSKY
Co-counsel for Plaintiffs

By: 
Mark Cuker

DATED: June 11, 2007

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MOTION FOR PETRIAL CONFERENCE

The Center for Science in the Public Interest (“CSPI”) requests that the Court enter an Order directing the Magistrate Judge to conduct an initial conference pursuant to F.R.Civ.P. 16 on an expedited basis.

1. CSPI is a non-profit organization based in Washington, DC, with approximately 900,000 members and subscribers in the United States and Canada who

subscribe to its *Nutrition Action Healthletter*. CSPI has worked to improve the nation's health through better nutrition and safer food since 1971. CSPI has over 6000 members and over 28,000 subscribers who reside in New Jersey.

2. CSPI filed this action on its own behalf and on behalf of its members and subscribers residing in New Jersey against defendants who together have repeatedly engaged in illegal, fraudulent, and deceptive business practices relating to the marketing and sale of a soft drink called Enviga that harm New Jersey consumers.

3. Prior to filing, CSPI had given notice of intent to sue to defendants, but was unable to reach resolution.

4. Shortly after CSPI gave this notice, Connecticut Attorney General Richard Blumenthal notified one or more defendants that his office had opened an investigation into Enviga. On information and belief, that investigation is pending.

5. In some instances, an investigation by one state Attorney General may change into a multi-state investigation by two or more Attorneys General from different states, often coordinated through the National Association of Attorneys General. This is a possible development with respect to Enviga.

6. Soon after this suit was filed, counsel for CSPI were contacted by lawyers who advised that they had filed private class actions in this Court and in the United States District Court for the Eastern District of Pennsylvania. The complaints in these lawsuits were near identical copies of CSPI's complaint.

7. The Federal Trade Commission also has authority to investigate defendants' practices with respect to the marketing and sale of Enviga. CSPI has filed a complaint with the Commission requesting that it open an investigation. The Commission

will neither confirm nor deny that an investigation exists but it is possible that the Commission has already decided to open an investigation.

8. All the pending litigation and investigation(s) all focus on the marketing and sale of Enviga. On information and belief, the focus of any governmental agency investigation would be identical or similar to the complaint filed by CSPI.

9. In order to avoid conflicts in these matters, CSPI believes that it is appropriate for it to know what defendants already know — the details of the other cases. Defendants refused to provide this information voluntarily.

10. In addition, CSPI is concerned about the retention of electronic materials that are subject to discovery. A protective order confirming the retention duties of defendants is appropriate to insure that no discoverable materials are destroyed, whether accidentally or otherwise. Defendants refuse to make any specific commitments on retention, making only a vague commitment that they have taken steps to preserve documents.

11. These matters could be raised at the initial Rule 16 conference, which Federal Rules 16(b) and 26(f) provide should occur shortly after a defendant has appeared, but the Federal Rule timing is modified by Local Civil Rule 16.1(a)(1), which provides that the initial conference be held “within 60 days of filing of an initial answer.”

12. This case was filed on February 1, 2007. Allowing for service of citation, defendants’ responses would have been due in mid-March. However, defendants requested an extension of time to file in response to the complaint, until May 14, 2007, and CSPI agreed.

13. On May 14, Defendants filed a motion to dismiss this case, thus effecting a delay in the date of the initial conference because they did not file answers.

14. By agreement with Defendants, CSPI will request that the motion date on the motion to dismiss be moved from June 15 to August 3.

15. Because the briefing and consideration of these motions is likely to take a number of months, during which time the other lawsuits or investigation(s) could develop in ways that impact the Court's jurisdiction over this case, CSPI asks that the Court proceed with the initial conference at this time, conducted by the Magistrate Judge.

16. The proposed Order sets out the matters to be resolved at the initial conference, including:

a. **Initial disclosures.** CSPI asks that the Court direct the parties to make the initial disclosures required by Rule 26(a) within 10 days of the date of that order, and provide that disclosures shall include an organizational diagram of the information systems group, identifying those with knowledge and control/access over all aspects of the systems, as well as a schematic overview of the computer systems, to explain the flow of information and the various components of the systems.

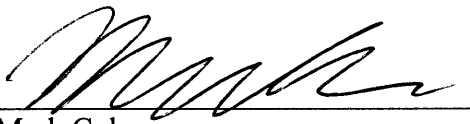
b. **Electronic discovery.** CSPI asks that the Court (1) direct the parties to preserve all forms of electronic data, regardless where the data exists, without modification to or deletion of any potentially discoverable data; (2) provide that that procedures that may alter (including erase) computer data be suspended; (3) instruct the parties to take affirmative steps necessary to prevent deleting, overwriting, defragmenting, or compressing the data; (4) direct the parties to preserve all archived back-up tapes and provide that (a) if archive tapes are rotated, the relevant tapes should be removed from the rotation; (b) if back-ups

are made to hard drives, the hard drive should be preserved as well; (5) direct the parties to preserve the contents of all hard drives, network drives, tape drives, optical drives, floppy disks, CD and DVD drives, and all other types of drives or storage media that are within the possession, custody, or control of all people who have knowledge of relevant facts and those who work with them, such as assistants; (6) direct the parties to preserve the contents of all Information on portable computers used by those people, such as laptops and palmtops, as well as home computers if these are used for work purposes; (7) direct the parties to preserve the contents of all data on computers that were used since February 1, 2001 that are no longer in use, but the drives of which were not erased, or “wiped”; and (8) direct that electronic information be included as part of the Rule 26 initial disclosures.

c. **Related cases.** CSPI asks that the Court direct defendants to provide counsel for plaintiff a description of all other lawsuits, investigations, or other legal matters relating to Enviga, whether by private parties or governmental parties. This description shall be sufficient to identify the matters and shall include at least: (1) the nature and location of the matter, (2) the other parties involved, (3) contact information for counsel for the other parties, and (4) the substance of the matter.

Accordingly, CSPI moves for an Order setting an initial conference.

WILLIAMS CUKER BEREZOFSKY
Co-counsel for Plaintiffs

By: 
Mark Cuker

DATED: June 11, 2007

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ORDER ON PRETRIAL CONFERENCE

This matter is before the Court on the motion of Mark Cuker, co-counsel for Plaintiff Center for Science in the Public Interest.

The Court has considered the motion papers and **FINDS** that the motion should be granted. Therefore, for good cause shown,

IT IS on this _____ day of _____, 2007, **ORDERED** that

1. The Magistrate Judge shall conduct a conference pursuant to Fed. R. Civ. P. 16 within 20 days of this Order.

2. At this conference each party shall be represented by an attorney who shall have full authority to bind that party in all pretrial matters.

3. At or after the initial conference, the Magistrate Judge shall enter a scheduling order which shall include, but need not be limited to, the following:

a. **Initial disclosures.** The order shall direct the parties to make the initial disclosures required by Rule 26(a) within 10 days of the date of that order, and shall provide that disclosures shall include an organizational diagram of the information systems group, identifying those with knowledge and control/access over all aspects of the systems, as well as a schematic overview of the computer systems, to explain the flow of information and the various components of the systems.

b. **Electronic discovery.** The order shall (1) direct the parties to preserve all forms of electronic data, regardless where the data exists, without modification to or deletion of any potentially discoverable data; (2) provide that that procedures that may alter (including erase) computer data be suspended; (3) instruct the parties to take affirmative steps necessary to prevent deleting, overwriting, defragmenting, or compressing the data; (4) direct the parties to preserve all archived back-up tapes and provide that (a) if archive tapes are rotated, the relevant tapes should be removed from the rotation; (b) if back-ups are made to hard drives, the hard drive should be preserved as well; (5) direct the parties to preserve the contents of all hard drives, network drives, tape drives, optical drives,

floppy disks, CD and DVD drives, and all other types of drives or storage media that are within the possession, custody, or control of all people who have knowledge of relevant facts and those who work with them, such as assistants; (6) direct the parties to preserve the contents of all Information on portable computers used by those people, such as laptops and palmtops, as well as home computers if these are used for work purposes; (7) direct the parties to preserve the contents of all data on computers that were used since January 1, 2003 that are no longer in use, but the drives of which were not erased, or “wiped”; (8) and direct that electronic information be included as part of the Rule 26 initial disclosures.

c. **Related cases.** The order shall direct defendants to provide counsel for plaintiff a description of all other lawsuits, investigations, or other legal matters relating to Enviga, whether by private parties or governmental parties. This description shall be sufficient to identify the matters and shall include at least: (1) the nature and location of the matter, (2) the other parties involved, (3) contact information for counsel for the other parties, and (4) the substance of the matter.

d. **Other matters.** The Magistrate Judge shall advise each party of the provisions of L.Civ.R. 73.1(a). The conference may also consider (1) dates by which parties must move to amend pleadings or add new parties; (2) dates for submission of experts' reports; (3) dates for completion of fact and expert discovery; (4) dates for filing of dispositive motions after due consideration whether such motions may be brought at an early stage of proceedings (i.e., before completion of fact discovery or submission of experts' reports); (5) a

pretrial conference date; and (6) any designation of the case for arbitration, mediation, appointment of a special master or other special procedure; and (7) any limitations on the scope, method or order of discovery as may be warranted by the circumstances of the particular case to avoid duplication, harassment, delay or needless expenditure of costs.

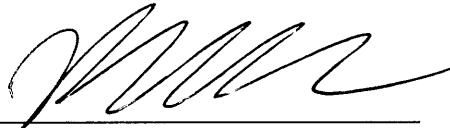
U.S.D.C.M.J.

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Notice of Motion for Order Setting Pretrial Conference and all papers submitted in support thereof has been served upon defendants via ECF upon the following counsel:

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Mark Cuker, ESQ.

DATED: June 11, 2007