

Mark Cuker, Esquire  
**WILLIAMS CUKER BEREZOFSKY**  
Woodland Falls Corporate Center  
210 Lake Shore Drive East  
Suite 101  
Cherry Hill NJ 08002-1163  
856-667-0500  
Fax: 856-667-5133

Stephen Gardner, Esquire  
Director of Litigation  
**CENTER FOR SCIENCE IN THE PUBLIC INTEREST**  
5646 Milton Street, Suite 211  
Dallas, Texas 75206  
214-827-2774 (voice)  
214-827-2787 (fax)  
Admitted *pro hac vice*

*Attorneys for Plaintiffs*

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**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. §

Civil Action No.: 1:07-cv-539

**NOTICE OF RULE 15(a) MOTION FOR LEAVE TO FILE SECOND AMENDED  
CLASS ACTION COMPLAINT WITH AMENDED CASE CAPTION AND OF  
AND OF RULE 41(a) VOLUNTARY DISMISSAL OF CLAIMS**

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


Peter Jay Boyer  
McCarter & English, LLP  
Mellon Bank Center  
1735 Market Street, 7<sup>th</sup> Floor  
Philadelphia, PA 19103

**PLEASE TAKE NOTICE** that on August 17, 2007, the undersigned, Mark Cuker, Esquire, of the law firm of WILLIAMS CUKER BEREZOFSKY, co-counsel for Plaintiff, shall make application before the United States District Court for the District of New Jersey, for an Order granting Plaintiff leave to amend the Complaint and Case Caption in the within action pursuant to Federal Rule of Civil Procedure 15(a). In support of this motion, the undersigned shall rely upon the attached Affidavit submitted by Mark R. Cuker and appended exhibits. A proposed form of Order is attached.

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

**PLEASE TAKE FURTHER NOTICE** that, pursuant to Federal Rule of Civil Procedure 41(a), Plaintiff Center for Science in the Public Interest hereby voluntarily dismisses all claims against Defendants Nestle USA, Inc. and Beverage Partners Worldwide.

WILLIAMS CUKER BEREZOFSKY  
Counsel for Plaintiffs

By:   
Mark R. Cuker

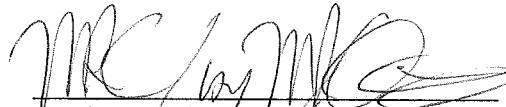
DATED: July 20, 2007

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing Notice of Rule 15(a) Motion for Leave to File Second Amended Class Action Complaint With Amended Case Caption and of Rule 41(a) Voluntary Dismissal of Claims and all papers submitted in support thereof have been served upon defendants via ECF upon the following counsel:

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

Peter Jay Boyer  
McCarter & English, LLP  
Mellon Bank Center  
1735 Market Street, 7<sup>th</sup> Floor  
Philadelphia, PA 19103

  
Mark R. Cuker, ESQ.

DATED: July 20, 2007

Mark Cuker, Esquire  
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Woodland Falls Corporate Center  
210 Lake Shore Drive East  
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**IN THE UNITED STATES DISTRICT COURT  
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**Center for Science in the Public Interest,**

Plaintiff,

v.

**The Coca-Cola Company, Nestlé USA, Inc.,  
and Beverage Partners Worldwide,**  
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Civil Action No.: 1:07-cv-539

**AFFIDAVIT OF MARK R. CUKER, ESQUIRE IN SUPPORT  
OF RULE 15(a) MOTION FOR LEAVE TO FILE SECOND  
AMENDED COMPLAINT WITH CASE CAPTION**

MARK R. CUKER, ESQUIRE, in lieu of oath or affidavit, hereby certifies and  
says:

1. I am a partner at the firm of Williams Cuker Berezofsky, attorneys for Plaintiff in the within matters. I submit this Certification in support of Plaintiff's Rule 15(a) Motion for Leave to File Second Amended Class Action Complaint and Amended Case Caption. I am personally familiar with the facts set forth herein.

2. On February 1, 2007, Plaintiff Center for Science in the Public Interest ("CSPI") filed its Complaint (Docket #1) in this matter.

3. On April 17, 2007, Plaintiff attempted to amend the case caption to clarify that one of the Defendant entities being sued was "Beverage Partners Worldwide," and not "Beverage Partners Worldwide, North America," as stated on the Complaint. The pleading Plaintiff filed was docketed as an "Amended Complaint" (Docket #4).

4. On May 14, 2007, Defendants filed a Joint Motion to Dismiss (Docket #13) and Memorandum of Law in Support thereof (Docket #14). Defendants' principal argument for dismissal was their allegation that CSPI lacks standing to bring a claim against them (Mem. at 4-10).


5. In response to Defendants' Motion, CSPI hereby submits pursuant to Federal Rule of Civil Procedure 15(a) its Second Amended Class Action Complaint with amended case caption (**Exhibit A hereto**) naming Linda Franulovic, a New Jersey resident and consumer who purchased Enviga, as a Plaintiff in this action.

6. Counsel for Defendant the Coca-Cola Company (Plaintiff has voluntarily dismissed all other Defendants pursuant to the accompanying Rule 41(a) Voluntary Dismissal of Claims) has agreed that Plaintiff is procedurally permitted to file an amended complaint at this time without obtaining leave of the Court, while reserving the right to object to the amended complaint's substance. A copy of written correspondence

from Defendant's Counsel providing this agreement is attached hereto as **Exhibit B**.

7. In light of Defendant's agreement not to contest Plaintiff's procedural right to file an amended complaint at this time, Plaintiff hereby submits its Second Amended Class Action Complaint as supported by this Affidavit without separate briefing.

I hereby certify that all of the foregoing statements made by me herein are true and accurate. I further certify that I am aware that if any of the statements made by me herein are willfully false, I am subject to punishment.

  
MARK R. CUKER, ESQUIRE

Dated: July 20, 2007

# **EXHIBIT A**