

Exhibit A

defendant for engaging in illegal, fraudulent, and deceptive business practices that harm New Jersey consumers.

2. Plaintiff Linda Franulovic (“Franulovic”) brings this action on her own behalf and on behalf of all New Jersey residents who bought Enviga. Defendant The Coca-Cola Company (“Coke”) has repeatedly engaged in illegal, fraudulent, and deceptive business practices that harm New Jersey consumers.

3. Coke conspired with Nestlé USA, Inc. and Beverage Partners Worldwide to introduce a drink called Enviga in New Jersey.

4. Enviga is a carbonated beverage, with a proprietary blend of caffeine and epigallocatechin gallate (EGCG), an antioxidant that occurs in green tea.

5. If Coke simply marketed Enviga as a soft drink, it would be perfectly legal.

6. However, the marketing for Enviga (which includes all forms of advertising and labeling) claims that it actually burns more calories than it provides, resulting in “negative calories.” Coke claims that the combination of EGCG and caffeine speeds up metabolism and increase energy use, that there is a “calorie burning effect from a single can,” that using Enviga is “much smarter than fads, quick-fixes, and crash diets,” and that Enviga keeps “those extra calories from building up.”

7. Coke made these claims without adequate prior substantiation for them. In fact, Coke made these claims knowing that, at best, a discrete segment of New Jersey residents — healthy young people with normal body weight — might see at most a minor benefit from prolonged and frequent use of Enviga, but that there was no evidence that anyone else would benefit at all.

8. Coke initially chose New Jersey as a test market for Enviga during the latter months of 2006, but then began selling the drink nationally in early 2007.

9. Franulovic seeks injunctive relief, declaratory relief, restitution or disgorgement, attorneys' fees, and costs against Coke.

PARTIES

10. Franulovic is a New Jersey resident who resides at 39 West Chestnut Street, Merchantville, New Jersey 08109. She purchased Enviga for her own consumption and has consumed it regularly.

11. The Coca-Cola Company (Coke) is a Delaware corporation, which has made appearance in this lawsuit.

12. The events complained of occurred in the State of New Jersey.

JURISDICTION AND VENUE

13. Jurisdiction of this Court arises under 28 U.S.C. § 1332, because plaintiff and defendant are citizens of different states and the amount in controversy excess the sum of value of \$75,000, exclusive of interest and costs.

14. Venue in this Court is proper in that defendant transacted business in this county and the conduct complained of occurred there, as well as elsewhere in the District of New Jersey.

CONDITIONS PRECEDENT

15. All conditions precedent have been performed or have occurred.

FACTS

16. Coke jointly conspired with others to market a new product called “Enviga,” which is a canned soft drink containing a proprietary combination of caffeine and an extract of green tea called “epigallocatechin gallate” or “EGCG.”

17. New Jersey was one of the test markets for Enviga. Coke’s advertising campaign was so extensive that, in some places in early 2007, every single advertisement in a bus or train car consisted of Enviga ads. Billboards containing extravagant Enviga claims were ubiquitous.

18. To the average reasonable consumer, in New Jersey and elsewhere in the United States, burning calories or reducing caloric consumption results in losing weight, or at least offsetting weight gained from other calories.

19. Coke markets Enviga as a weight-loss or weight-control product, based on a novel claim that drinking three cans of Enviga (over a quart) every day over a lengthy period of time will actually cause the expenditure of far more calories than the product contains.

20. However, the truth is that weight-loss representations for the product (whether express or implied) cannot be substantiated because the small number of studies that exist are conflicting and inadequate to substantiate the representations.

21. One press release for Enviga, dated October 11, 2006, reflects Coke’s marketing plan:

“The accumulated body of scientific research shows the ability of green tea’s powerful antioxidant EGCG (epigallocatechin gallate) to speed up metabolism and increase energy use, especially when combined with caffeine,” said Nestlé researcher Dr. Hilary Green.

That same release also says, “Enviga is a great tasting beverage that invigorates your metabolism to gently burn calories.”

22. The Enviga can itself makes multiple representations. The Principal Display Panel touts Enviga as “The Calorie Burner,” and the side panel contains many other claims:

- Enviga “increases your metabolism to gently increase calorie burning.”
- Enviga gives “your body a little extra boost.”
- The caffeine and EGCG in Enviga “invigorate your metabolism to burn calories.”
- The caffeine alone “stimulates your body to enhance the calorie burning process.”

23. The product website, www.enviga.com, makes similar claims, including that:

- “Enviga is a precise balance of ingredients that have been proven to invigorate your metabolism helping you burn more calories.”¹
- Enviga contains the “powerful EGCG.”²
- Including Enviga in the diet is “much smarter than following fads, quick-fixes, and crash diets.”³
- Each can of Enviga causes a consumer to “end up burning more [calories] than you consume — so for the first time you can actually ‘drink negative.’”⁴
- Enviga provides “another way to keep those extra calories from building up.”⁵
- “Enviga results in negative calories, because you burn more calories than you consume.”⁶
- “Enviga actually provides a negative calorie effect that’s never before been proven in a ready-to-drink green tea.”⁷
- “There is a calorie burning effect from a single can.”⁸
- “Enviga is expected to have a comparable effect on individuals over 35.”⁹

¹ www.enviga.com/#Benefits (accessed November 27, 2006).

² www.enviga.com/#Benefits (accessed November 27, 2006).

³ www.enviga.com/#Benefits (accessed November 27, 2006).

⁴ www.enviga.com/#Benefits (accessed November 27, 2006).

⁵ www.enviga.com/#Benefits (accessed November 27, 2006).

⁶ www.enviga.com/#FAQs (accessed November 27, 2006).

⁷ www.enviga.com/#CalorieBurning (accessed January 25, 2007).

⁸ www.enviga.com/#FAQs (accessed November 27, 2006).

⁹ www.enviga.com/#FAQs (accessed November 27, 2006).

- “Consuming the equivalent of three cans of Enviga beverage over the course of the day helped participants increase calorie burning by an average of 106 calories.”¹⁰
- “Enviga is the perfect refresher for you: everyday you do your bit to cut out or burn a few extra calories, Enviga is there doing its little bit to help.”¹¹

Outdoor advertising makes even plainer statements:

- “The calorie burner.”
- “Burning calories is now officially delicious.”
- “Be positive. Drink negative.”
- “Invigorate your metabolism.”

24. All of these claims are based on the abstract of a single, small, and short-term study — funded by Coke and/or Nestlé. This single study is, by itself, meaningless unless it is corroborated by larger and longer-term studies.

25. The small study itself showed that the EGCG and caffeine apparently actually *lowered* energy expenditure in some of the 31 subjects. Thus, the chemicals in Enviga would conceivably *contribute to weight gain, not loss*, for some consumers.

26. Coke chose to market this product to all New Jersey consumers, without qualification. However, the subjects in this study were young and lean. The average age was approximately 23, with a range of 18-35. The Body Mass Index (BMI) for the test subjects averaged 22, which is well within healthy weight levels. Someone six feet tall with a BMI of 22 weighs 160 pounds. In contrast, the great majority of American adults are overweight (BMIs of 25-30) or obese (BMIs of 30+).

27. In contrast, approximately 37 percent of New Jersey residents are overweight and 22 percent are obese.¹²

¹⁰ www.enviga.com/#FAQs (accessed November 27, 2006).

28. This study neither substantiates nor provides a reasonable basis for the claims made by Coke regarding Enviga.

29. There is in fact no substantiation or reasonable basis for claiming that Enviga (or the amounts of EGCG and caffeine in three cans of Enviga) has any effect on caloric balance or weight for the majority of adults, who are not young, healthy, and thin.

30. In addition, this study was a short-term (72-hour) study of a small number of test subjects in a tightly controlled environment. There is no evidence at all that Enviga has any positive effect of any kind on free-living consumers, whose every act and every calorie consumed is *not* controlled by Coke's hired scientists.

31. Even if Coke's one study is eventually shown by subsequent studies to apply to actual weight loss for consumers of *all* ages, shapes, and weights (the audience targeted by Coke's marketing efforts), the effect would be minimal and it would be necessary (and unrealistic) to drink several cans of Enviga every day over many months just to obtain the minimal effect.

32. To lose one pound, a person must burn 3,500 calories. Coke's study showed that, *at best*, a healthy, active, average-weight person *might* see a 100-calorie drop every day he or she drank three cans of Enviga. Thus, it would take 35 days of constant consumption of Enviga — 105 cans at a cost of about \$146 (at \$1.39 per can) — to see even one pound of possible weight loss — and that assumes that the consumers would not eat 100 extra calories worth of other foods.

¹¹ www.enviga.com/#BePositiveFeelGreat (accessed November 27, 2006).

¹² www.state.nj.us/health/chs/monthlyfactsheets/jul06_obesity.pdf (accessed January 24, 2007). In all likelihood, these percentages have increased since these statistics were collected.

33. And this is the best case from the study. The low end of effect claimed by Coke is 60 calories per day. At this rate, it would take this consumer almost 60 days —nearly 180 cans and \$250 — to see a one-pound drop. Maybe. After almost two months.

34. In fact, Enviga has no effect or possibly even the opposite effect on a significant proportion of consumers.¹³ Enviga in theory might then cause some consumers to burn fewer — not more — calories. Thus, if Coke’s theory about the long-term action of Enviga turns out to be substantiated when adequate long-term studies are completed, a significant number of Enviga users might *actually gain — not lose — weight*.

35. Coke’s study was presented at a conference sponsored by The Obesity Society (also known as “NAASO,” North American Association for the Study of Obesity), a professional organization of obesity researchers. NAASO took the extraordinary step of issuing its own rebuttal to the presentation, which said, in pertinent part, that the statement in Coke’s study that “when consumed regularly as part of a healthy diet and exercise regime such a beverage may provide added benefits to help in weight control” was “not a statement that the FDA or FTC or others would sanction [on the basis of] this study.” NAASO concluded that “it is improper to state or imply that the results of this study support any weight loss or any statement related to this.”

36. There are a few other published studies on the calorie-burning or weight-loss efficacy of EGCG in combination with caffeine. The evidence from these studies does not support the claim that taking a combination of EGCG and caffeine regularly over weeks or months will increase energy expenditure or affect body weight.

¹³ See, e.g., Am J Clin Nutr. 1999 Dec;70(6):1040-5; J Nutr. 2001 Nov;131(11):2848-52.

37. All these studies were done under the artificial conditions of a laboratory where the subjects' diets were strictly controlled. There is no evidence that *free-living* consumers in the real world who expended more calories due to EGCG and/or caffeine would not simply make up for these calories by eating a few extra bites of food.

38. There is no evidence that drinking one or two cans of Enviga daily would have any effect on calorie balance or body weight. Until shortly before this lawsuit was filed, Coke acknowledged on its web site that drinking one can of Enviga would not have a significant effect.

39. However, Coke revised that language, so that the website now tells prospective customers that they can in fact see the calorie burning benefit from drinking just one can of Enviga.¹⁴

40. No long-term studies substantiate or provide a reasonable basis for the claims made by Coke regarding Enviga.

41. The combination of EGCG and caffeine did not increase energy expenditure any more than a placebo on day 28 of an 83-day study of weight loss in 46 overweight women. Nor did it produce greater weight loss than a placebo by the end of the trial.¹⁵

42. The combination of EGCG and caffeine did not increase energy expenditure or affect body weight any more than a placebo in a 13-week study of weight-loss maintenance in 51 overweight men and women.¹⁶

¹⁴ “While Nestle's study was performed on three cans per day, prior scientific literature indicates that ***a single can would slightly increase your metabolism***. The size of this effect has not been quantified and would vary from person to person.” www.enviga.com/#FAQs (accessed January 26, 2007) (emphases added).

¹⁵ *Br J Nutr.* 2005 Dec;94(6):1026-34.

43. In a follow-up study of weight-loss maintenance in 38 overweight men and women, a combination of EGCG and caffeine did not affect energy expenditure or weight loss more than a placebo, except in a subset of habitual "low-caffeine" consumers, who averaged about 150 mg of caffeine daily.¹⁷

44. Thus, at the present time, there are no studies that substantiate or provide a reasonable basis for the claims made by Coke regarding Enviga.

FACTS AS TO FRANULOVIC

45. Franulovic saw advertisements for Enviga and began drinking a can per day while performing her work as a hairdresser in Cherry Hill.

46. After Franulovic read the Enviga can label's representations about calorie burning, she increased her consumption to three cans per day with the understanding that this would help her to lose weight. She also began buying cans of Enviga in bulk.

47. After seeing a television news story that refuted Coke's claim that drinking three cans of Enviga per day would help people lose weight, Franulovic reduced her consumption of Enviga, and later stopped drinking it altogether.

CLASS ACTION ALLEGATIONS

48. Franulovic brings this action on her own behalf and on behalf of all other persons similarly situated.

49. The class that Franulovic seeks to represent is composed of all persons in the State of New Jersey who purchased Enviga manufactured, distributed, marketed and sold by Coke during the Class Period.

¹⁶ *Br J Nutr.* 2004 Mar;91(3):431-7.

50. The class is composed of thousands of persons, the joinder of whom is not practicable. The disposition of their claims in a class action will benefit both the parties and the Court.

51. Coke has sold and continues to sell hundreds of thousands or millions of cans of the beverage Enviga in New Jersey and throughout the United States beginning in 2006, and thus the class is sufficiently numerous to make joinder impracticable, if not impossible.

52. There are questions of fact and law which are common to all members of the class, including:

- a. Whether Coke's marketing materials and advertisements included claims that were false and/or misleading;
- b. Whether Coke violated New Jersey food and drug law by misbranding Enviga;
- c. Whether Coke had a reasonable basis or substantiation for its advertising claims that Enviga burns calories; and
- d. Whether the class has been damaged and, if so, the appropriate measure of damages including the nature of the equitable relief to which the class is entitled.

53. These common issues of fact and law predominate over any arguable individualized issues.

54. Franulovic's claims are typical of the claims of the other members of the class because Franulovic's and all of the Class members' damages arise from and were caused by having purchased and/or consumed the Enviga beverage and having expended substantial sums on the purchase of the Enviga beverage. As a result, the evidence and the legal theories regarding Coke's alleged wrongful conduct are identical for Franulovic and all of the Class members.

¹⁷ *Obes Res.* 2005 Jul;13(7):1195-204.

55. Franulovic will fairly and adequately protect the interests of the members of the Class, and Franulovic has no interests that are contrary to or in conflict with those of the Class she seeks to represent. Franulovic has retained competent counsel experienced in class action litigation to further ensure such protection and to prosecute this action vigorously.

56. The prosecution of separate actions by individual members of the class would create a risk of inconsistent or varying adjudications with respect to individual members of the class, which would establish incompatible standards of conduct for the party opposing the class and would lead to repetitious trials of the numerous common questions of facts and law.

57. Franulovic does not believe that any difficulty will be encountered in the management of this litigation that would preclude its maintenance as a class action. Franulovic believes and therefore avers that claims are small in relation to the costs of an individual suit, and a class action is the only proceeding in which Class members can, as a practical matter, recover. As a result a class action is superior to other available methods for the fair and efficient adjudication of this controversy. Proper and sufficient notice of this action may be provided to the Class members through notice published in appropriate publications. Franulovic and the members of the Class have suffered irreparable harm and damages as a result of the Coke' wrongful conduct as alleged herein. Absent representative action, Franulovic and the members of the Class will continue to suffer losses, thereby allowing these violations of law to proceed without remedy, and allowing Coke to retain the proceeds of its ill-gotten gains.

COUNT I

**Illegal Practices in
Violation of the New Jersey Consumer Fraud Act
NJSA 56:8-2 et seq.**

58. As set forth above, Coke engaged in unconscionable commercial practices, deception, fraud, false pretence, false promise, misrepresentation, and know concealment or omission of material facts with the intent that others rely on such, in connection with the sale and advertisement of Enviga, in violation of the laws of New Jersey.

59. These acts in violation of the laws of New Jersey include, but are not limited to:
- a. Advertising Enviga without having prior substantiation for all advertised claims.
 - b. Advertising Enviga as effective by itself — e.g., “the calorie burner” — for weight control.
 - c. Advertising Enviga to all consumers, when Coke knew that the minimal study evidence showed that Enviga had a desirable effect only on a discrete and minor segment of the population.
 - d. Advertising Enviga without the material fact that one would have to drink three cans daily for as long as the person wanted to have whatever effect might occur.
 - e. Failing to disclose that it would be necessary to spend weeks drinking three cans of Enviga a day — at least 100 cans at an approximate cost of \$150 — just to enjoy a possible loss of one pound. One pound loss of weight over an extended period of time — in the unlikely event it did occur — is too minimal and conjectural to be meaningful.

60. This conduct violated the rights of Franulovic and other consumers residing in New Jersey, as set forth under New Jersey Law, i.e., the New Jersey Consumer Fraud Act.

61. Franulovic and other consumers residing in New Jersey suffered ascertainable losses as a direct result of this wrongful conduct and Coke has obtained monies from Class Members by means of the unlawful practices alleged herein.

COUNT II

Violations of New Jersey Food and Drug Laws, in Violation of the New Jersey Consumer Fraud Statute NJSA 56:8-2 et seq.

62. Throughout the period set forth in the complaint and for the reasons set out above, Coke violated New Jersey food and drug law by misbranding Enviga.

63. This conduct violated the rights of Franulovic and other consumers residing in New Jersey, as set forth under New Jersey Law, i.e., the New Jersey Consumer Fraud Act.

64. Franulovic and other consumers residing in New Jersey suffered ascertainable losses as a direct result of this wrongful conduct and Coke has obtained monies from Franulovic and other consumers residing in New Jersey by means of the unlawful practices alleged herein.

JURY DEMAND

Plaintiffs hereby request a trial by jury on all issues triable by right before a jury.

PRAYER FOR RELIEF

THEREFORE, CSPI and Franulovic pray for judgment as follows:

1. As soon as practicable, certifying this case as a class action.
2. Finding that Coke's conduct violates the New Jersey Consumer Fraud Act;
3. Enjoining Coke from its unlawful conduct;

4. Ordering Coke to refund to Franulovic all monies obtained from her by means of its violations of the New Jersey Consumer Fraud Act pursuant to N.J.S.A. 56:8-2.11; and/or awarding her triple damages pursuant to N.J.S.A. 56:8-19;

5. Awarding attorneys' fees, expenses and costs of this suit;

6. Awarding Franulovic pre-judgment interest, compounded daily; and

7. Granting such other, further, and different relief that the Court deems necessary,

just, and proper.

Respectfully submitted,

CENTER FOR SCIENCE IN THE PUBLIC INTEREST

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Attorneys for Linda Franulovic

By: _____




Mark Cuker, Esquire

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Second Amended Class Action Complaint has been served upon defendants via ECF upon the following counsel:

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Philadelphia, PA 19103



Mark R. Cuker, ESQ.

DATED: August 13, 2007

Exhibit B

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

LINDA FRANULOVIC, individually)	
and on behalf of a class of persons,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No.: 1:07-cv-00539-
)	RMB-JS
THE COCA-COLA COMPANY,)	
)	
Defendant.)	

DEFENDANT’S FIRST SET OF INTERROGATORIES TO PLAINTIFF

Pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure, Local Rule 33.1, and the Court’s Order dated August 7, 2007, Defendant The Coca-Cola Company (“TCCC”) requests that Plaintiff answer the following interrogatories in the time required by law.

DEFINITIONS

- (a) “**Class**” means the putative class alleged in the Complaint.
- (b) “**Communication**” means the transmittal of information (in the form of facts, ideas, inquiries, or otherwise).
- (c) “**Complaint**” means the Second Amended Complaint in the referenced action.
- (d) “**Concerning**” means relating to, referring to, describing, evidencing or constituting.
- (e) “**Document**” is defined to be synonymous in meaning and equal in scope to the usage of this term in Federal Rule of Civil Procedure 34(a), including, without

limitation, electronic or computerized data compilations. A draft or non-identical copy is a separate document within the meaning of the term. This includes, without limitation, correspondence, memoranda, e-mail, notes, desk calendars, diaries, statistics, letters, telegrams, facsimiles or faxes, computer printouts, minutes, contracts, reports, studies, checks, invoices, statements, receipts, returns, warranties, guarantees, pamphlets, prospectuses, inter-office and intra-office communications, notations of any sort of communications or meetings, worksheets, and all drafts or modifications of any of the foregoing, as well as tapes, tape recordings, transcripts, and all electronic, mechanical or electric records or representations of any kind, of which plaintiffs have knowledge and which are now or were formerly in plaintiffs' actual or constructive possession or control.

(f) When referring to a person, "**identify**" means to give, to the extent known, the person's full name, present or last known address, and when referring to a natural person, additionally, the present or last known place of employment. Once a person has been identified in accordance with this subparagraph, only the name of that person need be listed in response to subsequent discovery requesting the identification of that person.

(g) When referring to documents, "**identify**" means to give, to the extent known, the (i) type of document; (ii) general subject matter; (iii) date of the document; and (iv) author(s), addressee(s) and recipient(s).

(h) The term "**Lawsuit**" means the above captioned action.

(i) "**Location**" means: in the case of print advertising, the name of the publication and the publication date; in the case of billboard, subway, or other similar signage, or other marketing techniques, the address, intersection, transportation vehicle, retail store address, or other similar identifying information.

(j) **“Person”** means any natural person or any business, legal or governmental entity or association.

(k) **“Possession”** means your immediate possession, including items held by agents, employees, officers, directors and any and all other principals or assigns, as well as constructive possession by virtue of your ability to retrieve, request, order, copy, borrow, purchase or locate the aforesaid document or information.

(l) **“State”** and **“describe”** mean to set forth a complete and detailed statement of all information, circumstances and facts that refer to, relate to, reflect, comprise or bear upon the matter concerning which information is requested.

(m) **“You”** and **“Your”** means Plaintiff and her agents, employees, or other persons or entities related to Plaintiff or acting on her behalf.

(n) The following rules of construction apply to all discovery requests.

(1) **All/Each.** The terms “all” and “each” shall be construed as all and each.

(2) **And/Or.** The connectives “and” and “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside the scope.

(3) **Number.** The use of the singular form of any word includes the plural and vice versa.

INSTRUCTIONS

(a) These interrogatories are continuous in nature, and pursuant to Federal Rule of Civil Procedure 26(e), plaintiffs are under a duty to timely amend each prior

response to an interrogatory if plaintiffs learn that the response is in some material respect incomplete or incorrect, or if any information or documents are hereafter required.

(b) If any documents called for in this demand for production are withheld from production, furnish a list of such documents containing a complete description of each document, including: (i) the date and number of pages of the document; (ii) its title (if any); (iii) its subject matter; (iv) the identity of each attachment or appendices to the document; (v) the name and identification of each person to whom it is addressed; (vi) the name and identification of each person to whom the document is distributed, shown or explained; (vii) the name and identification of the person or persons by whom it was written; (viii) its present custodian; and (ix) the ground or grounds upon which it is being withheld. If a privilege is asserted as a ground for not producing, or otherwise responding to a production request, describe the factual basis for the claim of privilege in sufficient detail so as to permit the court to adjudicate the validity of the claim of privilege.

INTERROGATORIES

1. Identify each instance in which TCCC, Nestlé USA, Inc. or Beverage Partners Worldwide (North America) made a representation to you, or any member of the class, which you claim was false at the time it was made, and describe with particularity all facts supporting that each such representation was false at the time it was made.

2. Identify the specific representations and claims Plaintiff relied upon before, during, and after purchasing Enviga. For each such representation describe the marketing, labeling, or advertising containing the relied upon representations and claims,

including date of the first reliance, the method of marketing, labeling, or advertising relied upon, and the location of the marketing, labeling or advertising.

3. Identify all locations from which Plaintiff purchased Enviga and for each location provide the date(s) of purchase, amount purchased, price paid and describe any Enviga advertising seen in the store.

4. Identify all advertisements or other information (e.g. news article or other publication) regarding Enviga viewed by Plaintiff and for each such advertisement or other information provide the location (e.g. billboard, magazine, website, newspaper, etc.), date viewed and content.

5. Identify each person that witnessed Plaintiff purchasing, storing, or consuming Enviga.

6. State Plaintiff's current height and weight. Has Plaintiff's weight changed more than 5% within the past five years? If so, state whether Plaintiff has lost or gained weight and identify the amount of weight lost or gained.

7. Without regard to any time period, please identify any and all diet regimens Plaintiff has tried to lose weight, including all diet supplements purchased and/or used. If Plaintiff has purchased any products in the past five years in order to assist Plaintiff in losing weight, for each such product, state the name and manufacturer, the date of purchase(s), and the quantity purchased.

8. Please identify all physicians, clinics, gyms or other facilities where Plaintiff has been advised or counseled about weight loss or weight maintenance, nutrition or caloric intake.

9. Has Plaintiff purchased any food or beverage products in the past two years that were marketed, advertised or labeled as being light, diet, reduced calorie or fat, or as having no calories or fat? If yes, state the name and manufacturer for each such product.

10. Has Plaintiff purchased any food, beverage or other products in the past two years that consists of or contains green tea, green tea extract, or energy beverage? If yes, for each such product, state the name and manufacturer and the date of purchase.

11. Identify all reports, treatises, literature, studies, investigations, or publications that you contend support your allegation that Enviga does not burn calories or increase metabolism.

12. Please identify Plaintiff's employers, physicians, chiropractors, and osteopaths, or other healthcare providers for the last fifteen years.

13. Identify all persons employed or formerly employed by TCCC, Nestlé USA, Inc. or Beverage Partners Worldwide (North America) with whom you have communicated either orally or in writing, and identify all documents reflecting, referring or relating to such communication.

14. Please state whether your counsel of record initiated the first contact or communication with you and if the response is affirmative, please provide this information:

- (a) the date of the first contact or communication;
- (b) the duration of the first contact or communication;
- (c) the form of the first contact or communication (e.g., oral or written); and

(d) your fee and cost arrangement with your counsel.

15. Describe in detail the Plaintiff class, including the number of class members, names and identifying information for all class members known to you, the earliest date you claim to have been a member of the class, and the methods which you will use to identify all class members.

16. Do you contend that no member of the proposed class purchased Enviga for reasons other than calorie burning, increases in metabolism, or for the weight loss or weight management properties alleged in your complaint? If you so contend, identify the basis of such contention and identify all documents which reflect, refer or relate to such contention.

17. Identify all expert witnesses upon whose opinion testimony you intend to rely to support your motion for class certification.

18. Identify all members of the putative Plaintiff Class that you, or your attorneys, have had communications relating to the substance of this lawsuit, and for each such communication, identify the parties to the communication, state when it was made, and state the substance of the communication, including but not limited to whether the putative class member requested to be excluded, or indicated an unwillingness to be included, as a member of the putative Plaintiff Class.

19. For each claim alleged in the Complaint, and for the class as a whole, set forth: each item of damages that Plaintiff seeks, an explanation of how each item of damages is to be computed, and the identity of all documents that relate or pertain to each item of damages.

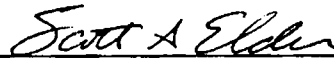
20. If you have not stated specific dollar amounts which you claim you were damaged, state the method, formula or theory by which you will compute your alleged damages and identify each person with whom you have consulted or who in any way participated in the derivation, construction, or creation of each such method, formula, or theory.

21. State whether you contend that the damages resulting from the allegedly misleading advertising alleged in the Complaint are the same per package or unit of Enviga purchased for each plaintiff and class member. If your answer is not yes, describe separately each difference you believe exists. State whether you contend that the damages resulting from the allegedly misleading advertising alleged in the Complaint are the same for each plaintiff and class member. If your answer is not yes, describe separately each difference you believe exists.

22. State whether Plaintiff is a member of the Center for Science in the Public Interest ("CSPI") or a subscriber to the CSPI newsletter and, if so, state the date on which she became a member and/or a subscriber.

23. Did anyone from the CSPI contact Plaintiff prior to her decision to file this lawsuit? If so, identify who contacted Plaintiff, the date of contact and the means of communication (e.g., phone call, letter, email, etc.).

Dated: August 15, 2007.



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**Attorneys for Defendant The Coca-Cola
Company**

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

LINDA FRANULOVIC, individually)	
and on behalf of a class of persons,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No.: 1:07-cv-00539-
)	RMB-JS
THE COCA-COLA COMPANY,)	
)	
Defendant.)	

CERTIFICATE OF SERVICE

I hereby certify that I caused to be served a copy of Defendant's First Set of Interrogatories to Plaintiff by electronic mail and regular mail this 15TH day of August 2007, upon Plaintiffs' Counsel:

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BY: Scott A Elder
Scott A. Elder

Exhibit C

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

LINDA FRANULOVIC, individually)	
and on behalf of a class of persons,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No.: 1:07-cv-00539-
)	RMB-JS
THE COCA-COLA COMPANY,)	
)	
Defendant.)	

**PLAINTIFF LINDA FRANULOVIC’S RESPONSES TO
DEFENDANT’S FIRST SET OF INTERROGATORIES**

Pursuant to Rule 33 of the Federal Rules of Civil Procedure, Plaintiff Linda Franulovic (“Plaintiff”) responds to Defendant’s First Set of Interrogatories.

GENERAL OBJECTIONS

The following objections may be independently or jointly interposed to one or more Interrogatories. For the sake of brevity, they are set forth here and will be incorporated by reference in response to the particular requests to which they apply. Plaintiff does not intend this section to set forth a blanket set of general objections which apply to each and every discovery request, and Defendant should not construe this section as having that effect.

1. **OBJECTION.** Plaintiff objects to the preface or instructions to the Interrogatories to the extent that they seek to impose obligations upon Plaintiff that exceed the requirements and scope of permissible discovery under the Federal Rules of Civil Procedure and United States District Court for the District of New Jersey Local Rules (“Local Rules”).
2. **OBJECTION.** The discovery request is calculated, or would operate to annoy, oppress, unduly burden or unduly cause expense to Plaintiff, or would be unduly vexatious or unduly burdensome to respond to, or would require Plaintiff to engage in

investigative efforts burdensome to the point of oppression on the ground that said discovery request exceeds the permissible scope of discovery under Fed. R. Civ. P. 26 and Fed. R. Civ. P. 33.

3. **OBJECTION.** The discovery request unreasonably requires Plaintiff to respond by acquiring or supplying information which would be irrelevant to the subject matter or issues of this action and not reasonably calculated to lead to the discovery of admissible evidence on the ground that said discovery request exceeds the permissible scope of discovery under Fed. R. Civ. P. 26 and Fed. R. Civ. P. 33.

4. **OBJECTION.** The discovery request requires Plaintiff to respond by disclosing information and documents that are protected by Attorney/Client privilege, and thus exceeds the permissible scope of discovery under Fed. R. Civ. P. 26 and Fed. R. Civ. P. 33.

5. **OBJECTION.** The discovery requests require Plaintiff to respond by disclosing her attorneys', or other of her representatives', mental impressions, conclusions, opinions, computations, calculations, projections, reasons, legal theories, trial preparation materials, other work product, or the identity of non-witness expert consultants. Such information and documents are protected from discovery by the work product/trial preparation materials privilege, and are outside the permissible scope of discovery under Fed. R. Civ. P. 26 and Fed. R. Civ. P. 33.

6. **OBJECTION.** The discovery request is unreasonably cumulative and duplicative, and therefore exceeds the permissible scope of discovery under Fed. R. Civ. P. 26 and Fed. R. Civ. P. 33.

OBJECTIONS AND RESPONSES TO INTERROGATORIES

SUBJECT TO the objections stated in responses to individual discovery requests below, on the basis of information now known to Plaintiff Franulovic and her counsel, and without waiving any of the foregoing objections or such other objections as may be interposed at any hearing or trial, and without admitting the relevancy or materiality of any of the information sought or contained in the following answers to discovery requests, Plaintiff Franulovic responds to Defendant's First Set of Interrogatories as follows:

OBJECTION TO ALL INTERROGATORIES: Objection number 1 is incorporated by reference in response to each of the Interrogatories.

OBJECTION TO ALL INTERROGATORIES: Plaintiff objects to any and all Interrogatories that inquire into personal information on the ground that this information is irrelevant to the subject matter of this litigation.

RESPONSE TO ALL INTERROGATORIES: Plaintiff reserves the right to supplement the responses as such information is uncovered through the discovery process and in accordance with the Federal Rules of Civil Procedure.

RESPONSE TO ALL INTERROGATORIES: Plaintiff's responses to each of the Interrogatories are limited to information on which she has personal knowledge and to documentation that is in her possession.

Plaintiff Franulovic responds further as follows:

INTERROGATORIES

1. Identify each instance in which TCCC, Nestle USA, Inc. or Beverage Partners Worldwide (North America) made a representation to you, or any member of the class, which you claim was false at the time it was made, and describe with particularity all facts support that each such representation was false at the time it was made.

ANSWER: Objection number 5 is incorporated by reference. Without waiving and subject to this objection: Plaintiff read the label of the Enviga can at the time she first purchased Enviga during the winter and spring of 2007. This label contained a "calorie burner" representation and a separate representation that she would burn calories if she drank three cans per day. Plaintiff claims these statements were false, deceptive, and misleading, and concealed or omitted material information. Plaintiff also viewed an Enviga advertisement either in a magazine, on television, or on a billboard, and claims that the "negative calories" representation she read or heard was false, deceptive, and misleading, and concealed or omitted material information. Regarding representations made to the Class, as alleged in Plaintiff's Second Amended Complaint filed on August

13, 2007, Defendant made false, deceptive, and misleading representations and concealed or omitted material information about Enviga in its labeling and advertising of the product that were directed to the Class as a whole. Regarding facts supporting these allegations, such facts are set forth in detail in the Complaint. Plaintiff otherwise relies upon the investigation of her counsel.

2. Identify the specific representations and claims Plaintiff relied upon before, during, and after purchasing Enviga. For each such representation describe the marketing, labeling, or advertising containing the relied upon representations and claims, including the date of the first reliance, the method of marketing, labeling, or advertising relied upon, and the location of the marketing, labeling or advertising.

ANSWER: Objection number 2 is incorporated by reference. Without waiving and subject to this objection: Regarding representations made specifically to Plaintiff, see Answer number 1 above.

3. Identify all locations from which Plaintiff purchased Enviga and for each location provide the date(s) of purchase, amount purchased, price paid and describe any Enviga advertising seen in the store.

ANSWER: Objection number 2 is incorporated by reference. Without waiving and subject to this objection: Plaintiff purchased individual cans of Enviga from the Wawa store on Springdale Road in Cherry Hill, New Jersey and, after she read the three cans per day representation on the Enviga label, purchased Enviga in bulk purchases of 12 cans from the Walgreen's stores in Blackwood, New Jersey and on Route 70 and

Grove Street in Cherry Hill, New Jersey on several occasions during the winter and spring of 2007.

4. Identify all advertisements or other information (e.g. news article or other publication) regarding Enviga viewed by Plaintiff and for each such advertisement or other information provide the location (e.g. billboard, magazine, website, newspaper, etc.), date viewed and content.

ANSWER: Objection number 2 is incorporated by reference. Without waiving and subject to this objection: See Answer number 1 above. Plaintiff saw Enviga advertisements either on a billboard, in magazines at the hair salon where she works, or on television that contained the “negative calories” representation during the winter or spring of 2007. Plaintiff also saw a television news or talk show story during this time that questioned Enviga’s calorie-burning claims.

5. Identify each person that witnessed Plaintiff purchasing, storing, or consuming Enviga.

ANSWER: Objection number 2 is incorporated by reference. Without waiving and subject to this objection: Plaintiff cannot specifically identify witnesses whom she knows saw her purchase, store, or consume Enviga, but sales clerks at the stores referenced in Answer number 3 may have seen Plaintiff purchase Enviga, and some of Plaintiff’s co-workers and/or customers may have seen her consume Enviga.

6. State Plaintiff's current height and weight. Has Plaintiff's weight changed more than 5% within the past five years? If so, state whether Plaintiff has lost or gained weight and identify the amount of weight lost or gained.

ANSWER: Plaintiff is 5 feet, seven inches tall and weighs approximately 130 pounds. In the last five years, Plaintiff estimates that her weight has decreased by approximately 5%.

7. Without regard to any time period, please identify and all diet regimens Plaintiff has tried to lose weight, including all diet supplements purchased and/or used. If Plaintiff has purchased any products in the past five years in order to assist Plaintiff in losing weight, for each such product, state the name and manufacturer, the date of purchase(s), and the quantity purchased.

ANSWER: Plaintiff relies on exercise and a healthy diet, i.e., eating low-fat and low-calorie foods, to maintain weight. Plaintiff does not follow any specific diet "regimen" and does not purchase diet supplements. During the past five years, the only product Plaintiff purchased to assist her in losing weight was Enviga.

8. Please identify all physicians, clinics, gyms or other facilities where Plaintiff has been advised or counseled about weight loss or weight maintenance, nutrition or caloric intake.

ANSWER: Objection number 2 is incorporated by reference. Without waiving and subject to this objection: Plaintiff states that there were none.

9. Has Plaintiff purchased any food or beverage products in the past two years that were marketed, advertised or labeled as being light, diet, reduced calorie or fat, or as having no calories or fat? If yes, state the name and manufacturer for each such product.

ANSWER: Objection number 2 is incorporated by reference. Without waiving and subject to this objection: Plaintiff offers the following examples responsive to this request: fat-free soy milk; Edy's brand light-churned ice cream; Hellman's brand light mayonnaise.

10. Has Plaintiff purchased any food, beverage or other products in the past two years that consists of or contains green tea, green tea extract, or energy beverage? If yes, for each such product, state the name and manufacturer and the date of purchase.

ANSWER: Objection number 2 is incorporated by reference. Without waiving and subject to this objection: Plaintiff has purchased the Rock Star energy beverage on numerous occasions during the spring and/or summer of 2007.

11. Identify all reports, treatises, literature, studies, investigations, or publications that you contend support your allegation that Enviga does not burn calories or increase metabolism.

ANSWER: Objection number 5 is incorporated by reference. Without waiving and subject to this objection: Plaintiff relies upon the investigation of her counsel. Responsive information is set forth in Plaintiff's Second Amended Complaint filed on August 13, 2007.

12. Please identify Plaintiff's employers, physicians, chiropractors, and osteopaths, or other healthcare providers for the last fifteen years.

ANSWER: Objections number 2 and 3 are incorporated by reference. Moreover, the time frame for this request is overly broad and seeks personal information that is not relevant to the issues of this litigation and not reasonably calculated to lead to the discovery of admissible evidence.

13. Identify all persons employed or formerly employed by TCCC, Nestle USA, Inc. or Beverage Partners Worldwide (North America) with whom you have communicated either orally or in writing, and identify all documents reflecting, referring or relating to such communication.

ANSWER: Objection number 5 is incorporated by reference. Without waiving and subject to this objection: Plaintiff does not possess any responsive information or documents.

14. Please state whether your counsel of record initiated the first contact or communication with you and if the response is affirmative, please provide this information:

- (a) the date of the first contact or communication;
- (b) the duration of the first contact or communication;
- (c) the form of the first contact or communication (e.g. oral or written); and

(d) your fee and cost arrangement with your counsel.

ANSWER: Objection number 4 is incorporated by reference. Without waiving and subject to this objection: Plaintiff responds in the negative.

15. Describe in detail the Plaintiff class, including the number of class members, names and identifying information for all class members known to you, the earliest date you claim to have been a member of the class, and the methods which you will use to identify all class members.

ANSWER: Objection number 5 is incorporated by reference. Without waiving and subject to this objection: Plaintiff relies upon the investigation and analysis of her counsel. The Class is defined in Plaintiff's Second Amended Complaint filed August 13, 2007. The request for names and number of class members is premature as this case is at the initial stages of discovery, and defendant is currently in exclusive possession of such information. Plaintiff became a class member upon her first purchase of Enviga, which was in the winter of 2007. Plaintiff will rely upon her counsel to notify the Class at the appropriate time, subject to the Court's approval.

16. Do you contend that no member of the proposed class purchased Enviga for reasons other than calorie burning, increases in metabolism, or for the weight loss or weight management properties alleged in your complaint? If you so contend, identify the basis of such contention and identify all documents which reflect, refer to or relate to such contention.

ANSWER: Objection number 5 is incorporated by reference. Without waiving and subject to this objection: Plaintiff relies upon the investigation of her counsel. The request is premature in that it seeks information that is the subject of fact and/or expert discovery, which has not yet taken place.

17. Identify all expert witnesses upon whose opinion testimony you intend to rely to support your motion for class certification.

ANSWER: Objection number 5 is incorporated by reference. Without waiving and subject to this objection: This request is premature. Plaintiff will identify experts at the appropriate time, as ordered by the Court.

18. Identify all members of the putative Plaintiff Class that you, or your attorneys, have had communications relating to the substance of this lawsuit, and for each such communication, identify the parties to the communication, state when it was made, and state the substance of the communication, including but not limited to whether the putative class member requested to be excluded, or indicated an unwillingness to be included, as a member of the putative Plaintiff Class.

ANSWER: Objections 4 and 5 are incorporated by reference. Without waiving and subject to these objections: Plaintiff has not had any such communications.

19. For each claim alleged in the Complaint, and for the class as a whole, set forth: each item of damages that Plaintiff seeks, an explanation of how each item of

damages is to be computed, and the identity of all documents that relate or pertain to each item of damages.

ANSWER: Objection number 5 is incorporated by reference. Without waiving and subject to this objection: Plaintiff's request for damages is set forth in the Second Amended Complaint filed on August 13, 2007. The Second Amended Complaint does not seek class-wide damages. Plaintiff seeks a refund of all moneys she paid for Enviga. Plaintiff does not possess any responsive documents.

20. If you have not stated specific dollar amounts which you claim you were damaged, state the method, formula or theory by which you will compute your alleged damages and identify each person with whom you have consulted or who in any way participated in the derivation, construction, or creation of each such method, formula, or theory.

ANSWER: Objections number 4 and 5 are incorporated by reference. Without waiving and subject to these objections: See Response number 19 above.

21. State whether you contend that the damages resulting from the allegedly misleading advertising alleged in the Complaint are the same per package or unit of Enviga purchased for each plaintiff and class member. If your answer is not yes, describe separately each difference you believe exists. State whether you contend that the damages resulting from the allegedly misleading advertising alleged in the Complaint are the same for each Plaintiff and class member. If your answer is not yes, describe separately each difference you believe exists.

ANSWER: Objections number 4 and 5 are incorporated by reference. Without waiving and subject to these objections: See Response number 19 above.

22. State whether Plaintiff is a member of the Center for Science in the Public Interest (“CSPI”) or a subscriber to the CSPI newsletter and, if so, state the date on which she became a member and/or a subscriber.

ANSWER: Objection number 3 is incorporated by reference. Without waiving and subject to this objection: Plaintiff is not a member of CSPI; nor is she a subscriber to its newsletter.

23. Did anyone from the CSPI contact Plaintiff prior to her decision to file this lawsuit? If so, identify who contacted Plaintiff, the date of contact and the means of communication (e.g., phone call, letter, email, etc.).

ANSWER: Objection number 3 is incorporated by reference. Without waiving and subject to this objection: No.

Dated: August 31, 2007

Respectfully submitted,

As to Answers,



Linda Franulovic

As to Objections,

WILLIAMS CUKER BEREZOFSKY



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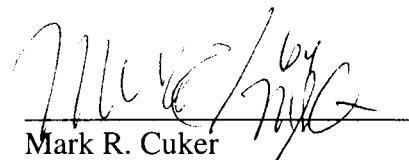
Counsel for Plaintiff Linda Franulovic

CERTIFICATE OF SERVICE

I, Mark R. Cuker, hereby certify that on August 31, 2007, I caused true and correct copies of the foregoing Plaintiff Linda Franulovic's Responses to Defendant's First Set of Interrogatories to be served by e-mail to the following counsel:

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