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Admitted pro hac vice

Attorneys for Plaintiffs

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

Linda Franulovic, individually and on
behalf of a class of persons,

Plaintiffs,

v.

The Coca-Cola Company,
Defendant.

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Civil Action No. 07-539 (RMB)

**NOTICE OF MOTION TO COMPEL
ANSWERS TO DISCOVERY**

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


Jane Thorpe
Scott Elder
Alston & Bird, LLP
One Atlantic Center
1201 West Peachtree Street
Atlanta, GA 30309-3424

PLEASE TAKE NOTICE that on November 17, 2008, 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 Local Court Rule 7.1 for an Order compelling Defendant The Coca-Cola Company to answer discovery. 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 Defendant otherwise object, no oral argument is requested.

WILLIAMS CUKER BEREZOFSKY

Counsel for Plaintiff Linda Franulovic and the Class

By: 

Mark R. Cuker

Dated: October 21, 2008

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Notice of Motion to Compel Answers to Discovery and all papers submitted in support thereof have been served via ECF upon the following counsel for Defendant:

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

Jane Thorpe
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Alston & Bird, LLP
One Atlantic Center
1201 West Peachtree Street
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Mark R. Cuker

Dated: October 21, 2008

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Attorneys for Plaintiffs

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

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v.

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Civil Action No. 07-539 (RMB)

ORDER COMPELLING ANSWERS TO DISCOVERY

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 _____, 200_;

ORDERED that the motion is hereby GRANTED and Defendant The Coca-Cola
Company shall answer all requested interrogatories within fourteen (14) days hereof.

The Honorable Joel Schneider
United States Magistrate Judge

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v.

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Civil Action No. 07-539 (RMB)

**AFFIDAVIT OF MARK R. CUKER IN SUPPORT OF
MOTION TO COMPEL ANSWERS TO DISCOVERY**

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

1. I am a partner at the law firm of Williams Cuker Berezofsky, attorneys for Plaintiff Linda Franulovic and the Class in the above-captioned matter. I submit this

Affidavit in support of Plaintiff's Motion to Compel Answers to Discovery. I am personally familiar with the facts set forth herein.

2. On August 31, 2007, Coke served its responses to discovery requests promulgated by Franulovic. Attached as **Exhibit A**. There were four contention interrogatories, numbers 2-5, all of which related to class certification matters. These four interrogatories, and Coke's response, are (with emphases added):

Interrogatory 2:

If you contend that Franulovic's claims are not typical of the claims of the other members of the class, please state all facts on which you base that contention.

Response:

Defendant objects to this interrogatory to the extent that it seeks information protected by the attorney-client, work product or other applicable privilege. Subject to and without waiving this objection, *Defendant has not conducted any discovery of Franulovic at this time and will timely supplement this response as required.*

Interrogatory 3:

If you contend that Franulovic will not fairly and adequately protect the interests of the members of the Class, please state all facts on which you base that contention.

Response:

Defendant objects to this interrogatory to the extent that it seeks information protected by the attorney-client, work product or other applicable privilege. Subject to and without waiving this objection, *Defendant has not conducted any discovery of Franulovic at this time and will timely supplement this response as required.*

Interrogatory 4:

If you contend that Franulovic has any interests that are contrary to or in conflict with those of the Class she seeks to represent, please state all facts on which you base that contention.

Response:

Defendant objects to this interrogatory to the extent that it seeks information protected by the attorney-client, work product or other applicable privilege. Subject to and without waiving this objection, ***Defendant has not conducted any discovery of Franulovic at this time and will timely supplement this response as required.***

Interrogatory 5:

If you contend that Franulovic has not retained competent counsel experienced in class action litigation, please state all facts on which you base that contention.

Response:

Defendant objects to this interrogatory to the extent that it seeks information protected by the attorney-client, work product or other applicable privilege. Subject to and without waiving this objection, ***Defendant has not conducted any discovery of Franulovic at this time and will timely supplement this response as required.***

Id. at 18-19.

3. On August 15, 2007, Coke served discovery requests on Franulovic, to which Franulovic responded in a timely fashion. After discovery motions before the Court, Franulovic supplemented her responses in a timely fashion. Coke has not moved to compel additional responses, nor has it served additional discovery requests on Franulovic.

4. On October 26, 2007, Coke supplemented some of its discovery responses, but did not supplement its responses to these four interrogatories.

5. On September 18, 2008, Coke served notice of its intent to depose Franulovic on September 30. Franulovic appeared and gave her deposition on September 30, 2008.

6. On October 3, 2008, Franulovic's counsel wrote to counsel for Coke regarding Coke's duty to supplement its responses to the four contention interrogatories,

noting that in its responses to discovery requests, “Coke several times raised the need for additional discovery before it could respond fully. For example, in its responses to [the Contention] Interrogatories 2-5, Coke said, ‘Defendant has not conducted any discovery of Franulovic at this time and will timely supplement this response as required.’ Because you have now deposed Ms. Franulovic, please respond to these Interrogatories as soon as possible, but at least by October 14 (which is one week before our class cert motion is due). Similarly, as to other responses (such as the response to Interrogatory 1) where Coke raised lack of knowledge as a basis for not answering discovery responses fully, please supplement those responses by then as well. If there is any difficulty in your timely supplementation, please advise.” Correspondence attached as **Exhibit B**.

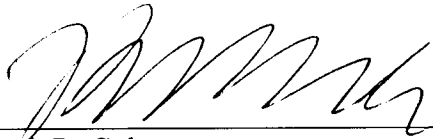
7. Coke’s counsel did not advise of any difficulty in supplementing as requested, but Coke failed to supplement by October 14 or since.

8. All four of these contention Interrogatories relate to the typicality and adequacy requirements of Rule 23(a), and thus are relevant to Franulovic’s motion for class certification.

9. FRCP 26(e)(1)(A) provides that any party who has responded to an interrogatory must supplement or correct its response “*in a timely manner* if the party learns that *in some material respect the disclosure or response is incomplete* or incorrect, and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing.”

10. Because Coke wholly failed to answer any of the four contention Interrogatories, it is under a duty to supplement its responses to these four contention interrogatories. Because Coke has failed to supplement, it is under a continuing violation of Rule 26(e)(1)(A).

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



Mark R. Cuker

Dated: October 21, 2008

Exhibit A

**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 RESPONSES AND OBJECTIONS TO PLAINTIFF'S
SUPPLEMENTAL DISCOVERY REQUESTS**

Defendant The Coca-Cola Company ("TCCC") hereby responds to Plaintiff's Supplemental Discovery Requests as follows:

GENERAL OBJECTIONS

Plaintiff's requests incorporate the Definitions, Rules of Construction and Instructions from the written discovery served by the Plaintiff in *Melfi v. The Coca-Cola Company, et al.*, No. 1:07-cv-00828, United States District Court, District of New Jersey. Accordingly, TCCC incorporates its General Objections in their entirety from TCCC's responses to both the interrogatories and document requests served in *Melfi*. TCCC further objects to Plaintiff's discovery requests to the extent they are duplicative of the requests in *Melfi* because Plaintiff has been provided with both the written responses and the documents produced in that case.

reasons; not all purported class members interpreted the Enviga advertising in the same manner; and the Enviga clinical trial and related scientific evidence demonstrates that Enviga burns more calories than the can provides.

2. If you contend that Franulovic's claims are not typical of the claims of the other members of the class, please state all facts on which you base that contention.

Response:

Defendant objects to this interrogatory to the extent that it seeks information protected by the attorney-client, work product or other applicable privilege. Subject to and without waiving this objection, Defendant has not conducted any discovery of Franulovic at this time and will timely supplement this response as required.

3. If you contend that Franulovic will not fairly and adequately protect the interests of the members of the Class, please state all facts on which you base that contention.

Response:

Defendant objects to this interrogatory to the extent that it seeks information protected by the attorney-client, work product or other applicable privilege. Subject to and without waiving this objection, Defendant has not conducted any discovery of Franulovic at this time and will timely supplement this response as required.

4. If you contend that Franulovic has any interests that are contrary to or in conflict with those of the Class she seeks to represent, please state all facts on which you base that contention.

Response:

Defendant objects to this interrogatory to the extent that it seeks information protected by the attorney-client, work product or other applicable privilege. Subject to and without waiving this objection, Defendant has not conducted any discovery of Franulovic at this time and will timely supplement this response as required.

5. If you contend that Franulovic has not retained competent counsel experienced in class action litigation, please state all facts on which you base that contention.

Response:

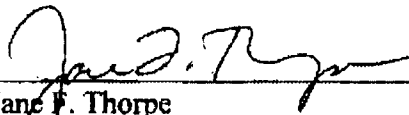
Defendant objects to this interrogatory to the extent that it seeks information protected by the attorney-client, work product or other applicable privilege. Subject to and without waiving this objection, Defendant has not conducted any discovery of Franulovic at this time and will timely supplement this response as required.

6. Identify all advertising, marketing, and promotional companies with which Nestlé, Beverage Partners Worldwide, or Defendant has communicated relating to Enviga.

Response:

Defendant objects to this request as overly broad and unduly burdensome to the extent it seeks the identity of companies with whom Defendant has communicated regarding Enviga but which did not otherwise work on the project. Subject to and without waiving this objection, the following companies were involved in the advertising, marketing, and promotion of Enviga:

Dated: August 31, 2007


Jane F. Thorpe
Scott A. Elder
ALSTON & BIRD, LLP
One Atlantic Center
1201 West Peachtree Street
Atlanta, GA 30309-3424
(404) 881-7000 – Telephone
(404) 881-7777 – Facsimile
Email: jane.thorpe@alston.com

Gita F. Rothschild
Peter J. Boyer
McCARTER & ENGLISH LLP
Four Gateway Center
100 Mulberry Street
Newark, NJ 07102
(973) 639-5959 – Telephone
(973) 297-3833 – Facsimile
Email: grothschild@mccarter.com

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

Exhibit B

From: Stephen Gardner <SGardner@cspinet.org>
Subject: Supplementing interrogatory responses
Date: October 3, 2008 11:35:43 AM CDT
To: Scott Elder <Scott.Elder@alston.com>, Jane Thorpe
<Jane.Thorpe@alston.com>
Cc: Michael Quirk <MQuirk@wcblegal.com>, Kate Campbell
<KCampbell@cspinet.org>



Jane and Scott--

In its responses to discovery requests, Coke several times raised the need for additional discovery before it could respond fully. For example, in its responses to Interrogatories 2-5, Coke said, "Defendant has not conducted any discovery of Franulovic at this time and will timely supplement this response as required."

Because you have now deposed Ms. Franulovic, please respond to these Interrogatories as soon as possible, but at least by October 14 (which is one week before our class cert motion is due).

Similarly, as to other responses (such as the response to Interrogatory 1) where Coke raised lack of knowledge as a basis for not answering discovery responses fully, please supplement those responses by then as well.

If there is any difficulty in your timely supplementation, please advise.

Thanks, and have a great weekend!

Steve

Stephen Gardner
Director of Litigation
Center for Science in the Public Interest
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5646 Milton Street, Suite 211
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