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THE HONORABLE RICHARD A. JONES

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

DESIRÉ HUNTER,

Plaintiff,

v.

THE COCA-COLA COMPANY, a Delaware Corporation; COCA-COLA REFRESHMENTS USA, INC., a Delaware Corporation; BCI COCA-COLA BOTTLING COMPANY OF LOS ANGELES, a Delaware Corporation,

Defendants.

No. 2:14-cv-00609-RAJ

STIPULATED PROTECTIVE ORDER

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1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket protection on all disclosures or responses to discovery, the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles, and it does not presumptively entitle parties to file confidential information under seal.

2. “CONFIDENTIAL” MATERIAL

“Confidential” material shall include the following documents and tangible things produced or otherwise exchanged: : (1) personnel information of individuals where disclosure of that information might violate a person’s privacy; (2) private contact or identification information; (3) financial information, including but not limited to payroll records, tax returns, financial statements, banking records, brokerage records, and electronic data containing financial information; (4) trade secret information; (5) proprietary and/or competitive business information in the form of company contracts, amendments and scopes of work, client lists, client contact information, call lists, company audio phone recordings; and (6) medical records and healthcare information pertaining to individuals.

3. SCOPE

The protections conferred by this agreement cover not only confidential material (as defined above), but also (1) any information copied or extracted from confidential material; (2) all copies, excerpts, summaries, or compilations of confidential material; and (3) any testimony, conversations, or presentations by parties or their counsel that might reveal confidential material. However, the protections conferred by this agreement do not cover

1 information that is in the public domain or becomes part of the public domain through trial or
2 otherwise.

3 **4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL**

4 4.1 Basic Principles. A receiving party may use confidential material that is
5 disclosed or produced by another party or by a non-party in connection with this case only for
6 prosecuting, defending, or attempting to settle this litigation. Confidential material may be
7 disclosed only to the categories of persons and under the conditions described in this
8 agreement. Confidential material must be stored and maintained by a receiving party at a
9 location and in a secure manner that ensures that access is limited to the persons authorized
10 under this agreement.

11 4.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise
12 ordered by the court or permitted in writing by the designating party, a receiving party may
13 disclose any confidential material only to:

14 (a) the receiving party’s counsel of record in this action, as well as
15 employees of counsel to whom it is reasonably necessary to disclose the information for this
16 litigation;

17 (b) a party, the officers, directors, managers, human resources employees, and
18 in house counsel of the receiving party to whom disclosure is reasonably necessary for this
19 litigation;

20 (c) experts and consultants to whom disclosure is reasonably necessary for
21 this litigation and who have signed the “Acknowledgment and Agreement to Be Bound”
22 (Exhibit A), which includes each such person’s clerical and support staff;

23 (d) the court, court personnel, and court reporters and their staff;

24 (e) copy or imaging services retained by counsel to assist in the duplication
25 of confidential material, provided that counsel for the party retaining the copy or imaging
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1 service instructs the service not to disclose any confidential material to third parties and to
2 immediately return all originals and copies of any confidential material;

3 (f) during their depositions, witnesses in the action to whom disclosure is
4 reasonably necessary, or potential witnesses identified in initial disclosures or amended initial
5 disclosures who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A),
6 unless otherwise agreed by the designating party or ordered by the court;

7 (g) the author or recipient of a document containing the information or a
8 custodian;

9 (h) the videographer who videotapes Confidential Information at a
10 deposition in this litigation;

11 (i) any mediator or discovery referee in this litigation, and employees and
12 personnel of said mediator or discovery referee;

13 (j) any other individuals agreed to in writing by the designating party.

14 4.3 Filing Confidential Material. Before filing confidential material or discussing
15 or referencing such material in court filings, the filing party shall confer with the designating
16 party to determine whether the designating party will remove the confidential designation,
17 whether the document can be redacted, or whether a motion to seal or stipulation and proposed
18 order is warranted. Local Civil Rule 5(g) sets forth the procedures that must be followed and
19 the standards that will be applied when a party seeks permission from the court to file material
20 under seal.

21 **5. DESIGNATING PROTECTED MATERIAL**

22 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each
23 party or non-party that designates information or items for protection under this agreement
24 must take care to limit any such designation to specific material that qualifies under the
25 appropriate standards. The designating party must designate for protection only those parts of
26 material, documents, items, or oral or written communications that qualify, so that other

1 portions of the material, documents, items, or communications for which protection is not
2 warranted are not swept unjustifiably within the ambit of this agreement.

3 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
4 shown to be clearly unjustified or that have been made for an improper purpose (e.g., to
5 unnecessarily encumber or delay the case development process or to impose unnecessary
6 expenses and burdens on other parties) expose the designating party to sanctions.

7 If it comes to a designating party's attention that information or items that it designated
8 for protection do not qualify for protection, the designating party must promptly notify all other
9 parties that it is withdrawing the mistaken designation.

10 5.2 Manner and Timing of Designations. Except as otherwise provided in this
11 agreement, or as otherwise stipulated or ordered, disclosure or discovery material that qualifies
12 for protection under this agreement must be clearly so designated before or when the material
13 is disclosed or produced.

14 (a) Information in documentary form: (e.g., paper or electronic documents
15 and deposition exhibits, but excluding transcripts of depositions or other pretrial or trial
16 proceedings), the designating party must affix the word "CONFIDENTIAL" to each page that
17 contains confidential material. If only a portion or portions of the material on a page qualifies
18 for protection, the producing party also must clearly identify the protected portion(s) (e.g., by
19 making appropriate markings in the margins).

20 (b) Testimony given in deposition or in other pretrial or trial proceedings:
21 the parties must identify on the record, during the deposition, hearing, or other proceeding, all
22 protected testimony, without prejudice to their right to so designate other testimony after
23 reviewing the transcript. Any party or non-party may, within fifteen days after receiving a
24 deposition transcript, designate portions of the transcript, or exhibits thereto, as confidential.

25 (c) Other tangible items: the producing party must affix in a prominent
26 place on the exterior of the container or containers in which the information or item is stored

1 the word "CONFIDENTIAL." If only a portion or portions of the information or item warrant
2 protection, the producing party, to the extent practicable, shall identify the protected portion(s).

3 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
4 designate qualified information or items does not, standing alone, waive the designating party's
5 right to secure protection under this agreement for such material. Upon timely correction of a
6 designation, the receiving party must make reasonable efforts to ensure that the material is
7 treated in accordance with the provisions of this agreement.

8 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

9 6.1 Timing of Challenges. Any party may challenge a designation of
10 confidentiality at any time. Unless a prompt challenge to a designating party's confidentiality
11 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
12 burdens, or a significant disruption or delay of the litigation, a party does not waive its right to
13 challenge a confidentiality designation by electing not to mount a challenge promptly after the
14 original designation is disclosed.

15 6.2 Meet and Confer. The parties must make every attempt to resolve any dispute
16 regarding confidential designations without court involvement. Any motion regarding
17 confidential designations or for a protective order must include a certification, in the motion or
18 in a declaration or affidavit, that the movant has engaged in a good faith effort to meet and
19 confer with other affected parties in an effort to resolve the dispute without court action. The
20 certification must list the date, manner, and participants to the conference. A good faith effort
21 to confer requires a face-to-face meeting or a telephone conference.

22 6.3 Judicial Intervention. If the parties cannot resolve a challenge without court
23 intervention, the designating party may file and serve a motion to retain confidentiality under
24 Local Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden
25 of persuasion in any such motion shall be on the designating party. Frivolous challenges, and
26 those made for an improper purpose (e.g., to harass or impose unnecessary expenses and

1 burdens on other parties) may expose the challenging party to sanctions. All parties shall
2 continue to maintain the material in question as confidential until the court rules on the
3 challenge.

4 **7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN**
5 **OTHER LITIGATION.**

6 If a party is served with a subpoena or a court order issued in other litigation that
7 compels disclosure of any information or items designated in this action as
8 “CONFIDENTIAL,” that party must:

9 (a) promptly notify the designating party in writing and include a copy of
10 the subpoena or court order;

11 (b) promptly notify in writing the party who caused the subpoena or order to
12 issue in the other litigation that some or all of the material covered by the subpoena or order is
13 subject to this agreement. Such notification shall include a copy of this agreement; and

14 (c) cooperate with respect to all reasonable procedures sought to be pursued
15 by the designating party whose confidential material may be affected.

16 **8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

17 If a receiving party learns that, by inadvertence or otherwise, it has disclosed
18 confidential material to any person or in any circumstance not authorized under this agreement,
19 the receiving party must immediately (a) notify in writing the designating party of the
20 unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the
21 protected material, (c) inform the person or persons to whom unauthorized disclosures were
22 made of all the terms of this agreement, and (d) request that such person or persons execute the
23 “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A.

24 **9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
25 **PROTECTED MATERIAL**

26 When a producing party gives notice to receiving parties that certain inadvertently
produced material is subject to a claim of privilege or other protection, the obligations of the

1 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This
2 provision is not intended to modify whatever procedure may be established in an e-discovery
3 order or agreement that provides for production without prior privilege review. Parties shall
4 confer on an appropriate non-waiver order under Fed. R. Evid. 502.

5 **10. NONTERMINATION AND RETURN OF DOCUMENTS**

6 Within 60 days after the termination of this action, including all appeals, each receiving
7 party must return all confidential material to the producing party, including all copies, extracts
8 and summaries thereof. Alternatively, the parties may agree upon appropriate methods of
9 destruction.

10 Notwithstanding this provision, counsel are entitled to retain one archival copy of all
11 documents filed with the court, trial, deposition, and hearing transcripts, correspondence,
12 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert
13 work product as part of the client file, which either party may maintain for up to six years as
14 recommended by the WSBA *Guide to Best Practices for Client File Retention and*
15 *Management*, even if such materials contain confidential material. While counsel may retain
16 Confidential material in compliance with the WSBA’s *Guide to Best Practices for Client File*
17 *Retention and Management*, counsel may not disclose any Confidential material in any way
18 that would violate this Confidentiality Agreement.

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1 **EXHIBIT A**

2 **ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

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4 I, _____, [print or type full name], of _____,
5 [print or type full address], declare under penalty of perjury that I have read in its entirety and
6 understand the Stipulated Protective Order that was issued by the United States District Court
7 for the Western District of Washington on _____ [date] in the case of *DESIRÉ*
8 *HUNTER. v. THE COCA-COLA COMPANY, ET AL.*, Cause No. 2:14-CV-00609-RAJ. I
9 agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I
10 understand and acknowledge that failure to so comply could expose me to sanctions and
11 punishment in the nature of contempt. I solemnly promise that I will not disclose in any
12 manner any information or item that is subject to this Stipulated Protective Order to any person
13 or entity except in strict compliance with the provisions of this Order.

14 I further agree to submit to the jurisdiction of the United States District Court for the
15 Western District of Washington for the purpose of enforcing the terms of this Stipulated
16 Protective Order, even if such enforcement proceedings occur after termination of this action.

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18 Date: _____

19
20 City and State where sworn and signed: _____

21
22 Printed name: _____

23 Signature: _____