

**IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MISSOURI  
WESTERN DIVISION**

**IN RE: SIMPLY ORANGE ORANGE  
JUICE MARKETING AND SALES  
PRACTICES LITIGATION**

**ALL ACTIONS**

MDL No. 2361

Master Case No. 4:12-MD-02361-FJG

**AMENDED PROTECTIVE ORDER <sup>1</sup>  
GOVERNING CONFIDENTIAL INFORMATION**

Defendants have advised the Court that confidential and highly confidential information may be disclosed in discovery, at hearing, and at trial. Plaintiffs do not oppose the entry of a Protective Order in general, but have opposed certain provisions of the Protective Order proposed by Defendants. After considering the parties' positions, the Court finds that it is appropriate to enter the following Protective Order.

**IT IS HEREBY ORDERED:**

**1. Definitions.**

As used in this Stipulated Protective Order (the "Order"):

(a) "Discovery Materials" means the information, documents and tangible things, and testimony produced or offered by the Parties or nonparties in the Action.

(b) "Producing Party" and "Designating Party" shall include any person, whether or not a party to the Action, who provides Discovery Materials in the Action.

(c) "Action" shall mean *In re Simply Orange Orange Juice Marketing and Sales*

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<sup>1</sup> This order grants Doc. No. 62 and serves to Amend Doc. No. 61 due to a typographical error.

*Practices Litigation*, Master Case No. 4:12-MD-02361-FJG, pending in the United States District Court for the Western District of Missouri, Western Division, the individual cases that have been consolidated under this caption, and all subsequent related actions, which are added-on, transferred or consolidated under this caption.

(d) “Outside Counsel” for Plaintiffs means the liaison counsel, executive committee, and co-lead counsel that the Court has appointed in this Action and their law firms. *See* July 20, 2012 Order ¶¶ 1, 3 (Dkt. No. 19).

(e) “Designated Material” means any Discovery Materials designated as “Confidential” or “Highly Confidential – Attorneys’ Eyes Only.”

(f) “Party” or “Parties” means the named Plaintiffs and/or the Defendants in this Action.

(g) “Expert” means a person with specialized knowledge or experience in a matter pertinent to the litigation who (1) has been retained by a Party or its counsel to serve as an expert witness or a consultant in this Action, (2) is not a current employee or consultant of Coca-Cola or one of its competitors, and (3) at the time of retention, does not have plans or intention to become an employee or consultant of Coca-Cola or one of its competitors.

(h) “Receiving Party” shall include any person that receives Designated Material from a Producing Party.

## 2. **Designation of Discovery Materials.**

(a) “Confidential” and “Highly Confidential – Attorneys’ Eyes Only” Designations: Any Producing Party may designate as Confidential or Highly Confidential – Attorneys’ Eyes Only, in the manner set forth in Paragraph 2(b) and 2(c) below, Discovery Materials that have been or will be made available in this Action. Confidential information is information that

qualifies for protection under Federal Rule of Civil Procedure 26(c). Highly Confidential – Attorneys’ Eyes Only information includes, but is not limited to, trade secrets; confidential business, marketing and sales plans or forecasts; research, development, and testing of products that have not been published; financial information at a level of detail beyond that disclosed in publicly available sources; results of research studies or other complex analyses that would be useful to current or potential competitors; the terms of contracts with a Producing Party’s suppliers or customers that could be used by current or potential competitors in their own negotiations with suppliers or customers; proprietary formulas or proprietary manufacturing processes; product concepts in development that have not been launched into the market; and other commercially sensitive information regarding the development, production, testing, marketing, branding, sales or promotion of a Producing Party’s products, the disclosure of which to another Party or nonparty would reasonably be expected to result in detriment to the Producing Party and/or affiliates of the Producing Party.

(b) Designation of Documents and Things:

(i) Any Producing Party may designate discovery as Confidential or Highly Confidential – Attorneys’ Eyes Only by affixing in a conspicuous place, respectively, the legend “Confidential” or “Highly Confidential – Attorneys’ Eyes Only” on any Discovery Materials that it believes contain information specified in Paragraph 2(a) above. Such designation shall, to the extent possible, be made at the time the discovery is produced. If, however, a Producing Party determines that Discovery Materials containing information specified in Paragraph 2(a) above have inadvertently been produced previously without a “Confidential” or “Highly Confidential – Attorneys’ Eyes Only” legend, that Producing Party may so designate such information by providing properly marked copies of the materials to all other Parties with instructions that such

other Parties shall either destroy or return all previously produced undesignated copies of the materials they may have.

(ii) Where electronic files and electronic documents are produced in native electronic format, such electronic files and documents may be designated for protection under this Order by appending to the file name or document name the words “Confidential” or “Highly Confidential – Attorneys’ Eyes Only”; or by placing the legend “Confidential” or “Highly Confidential – Attorneys’ Eyes Only” visibly within the electronic files or documents; or by transmitting such electronic files and documents in electronic media such as a computer disk or tape, in which case designations may be made by labeling the outer surface of the electronic media with the legend “Confidential” or “Highly Confidential – Attorneys’ Eyes Only.” If the Producing Party has designated Discovery Materials as Confidential or Highly Confidential – Attorneys’ Eyes Only by labeling the outer surface of electronic media in which the Discovery Materials were produced, any Party printing hard copies from that electronic media shall mark the hard copies as “Confidential” or “Highly Confidential – Attorneys’ Eyes Only.”

(c) Designation of Depositions:

(i) Counsel for any Producing Party may designate any part of a deposition held in the Action as Confidential or Highly Confidential – Attorneys’ Eyes Only if it contains the types of information specified in Paragraph 2(a) above. The Producing Party will effect such designation by making a statement on the record during the course of the deposition or by giving notice to the court reporter and all other Parties in a writing served within ten (10) days of receipt of the transcript of such deposition. All Parties shall treat the deposition and its transcript as Highly Confidential – Attorneys’ Eyes Only provisionally for ten (10) days after the receipt of the transcript. If deposition testimony or other pretrial testimony or statements are designated as

Confidential or Highly Confidential – Attorneys’ Eyes Only, the court reporter shall affix the appropriate legend on the face of the transcript and shall indicate in a prominent place the specific transcript pages and/or exhibits that have been designated Confidential or Highly Confidential – Attorneys’ Eyes Only.

(ii) A deponent shall not be permitted to retain copies of Designated Material unless the deponent is otherwise entitled to receive and retain such copies under the terms of this Order. A deponent’s counsel shall not be permitted to retain any copies of Designated Material unless such counsel is Outside Counsel as defined in Paragraph 1(d) or is otherwise entitled to receive and retain such copies under the terms of this Order. Nothing in this Paragraph shall prevent a deponent or a deponent’s counsel from having reasonable access to the transcript of the deponent’s deposition for purposes of reading and signing the transcript, preparing to testify further in this Action, or for other purposes specially agreed to by the parties.

(iii) At any deposition, when counsel for a Party believes that a question or answer will result in the disclosure of information with respect to his or her client that may legitimately be designated as Confidential or Highly Confidential – Attorneys’ Eyes Only, counsel may request that all persons except the deponent, reporter, videographer, Outside Counsel for the Parties, counsel for the deponent, and other individuals authorized to receive disclosure pursuant to Paragraph 4 of this Order leave the deposition room during the portion of the deposition that counsel believes will result in the disclosure of the information. The failure of any person to comply with a valid request of this type shall constitute substantial justification for the objecting counsel to require that the response to the question be delayed pending application to the Court for an appropriate protective order.

(iv) Parties shall give the other Parties notice if they reasonably expect a

deposition, hearing or other proceeding to include Designated Material so that the other Parties can request that the deponent and any others planning to attend the deposition sign the “Acknowledgment and Agreement to Be Bound” (Exhibit A). The use of a document as an exhibit at a deposition shall not in any way affect its designation as Confidential or Highly Confidential – Attorneys’ Eyes Only.

### 3. **Scope**

The protections conferred by this Order cover not only Designated Material, but also (1) any information copied or extracted from Designated Material; (2) all copies, excerpts, summaries, or compilations of Designated Material; and (3) any testimony, conversations, or presentations by Parties or their Counsel that might reveal Designated Material. Any use of Designated Material at trial shall be governed by a separate agreement or order.

### 4. **Disclosure**

(a) Discovery Materials designated as Highly Confidential – Attorneys’ Eyes Only may be disclosed only to the following persons and may be used by such persons solely for the purposes of prosecuting, defending, and investigating claims between the Parties relevant to this Action, and for no other business or other purposes whatsoever, and may not be disclosed to anyone, described to anyone, or discussed with anyone, except to any other person authorized under this Order to receive Highly Confidential – Attorneys’ Eyes Only materials:

- (i) Outside Counsel for the Parties in this Action, as defined in Paragraph 1(d) above;
- (ii) employees of Outside Counsel who are engaged in assisting such counsel in the prosecution or defense of this Action, including secretaries and paralegal assistants;
- (iii) court officials involved in this Action, if the Designated Material is filed

pursuant to Paragraph 6 of this Order;

(iv) court reporters and persons operating video recording equipment at depositions;

(v) professional vendors who provide litigation support services (e.g., photocopying, videotaping, preparing exhibits or demonstrations, storing data) and their employees, provided that such persons shall be given a copy of this Order, advised that they are bound by it, and have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(vi) a mediator or other dispute resolution facilitator retained by the Parties to facilitate a potential settlement, provided that such persons shall be given a copy of this Order, advised that they are bound by it, and have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(vii) Experts, as defined in Paragraph 1(g) above, of a Receiving Party to whom disclosure of Designated Material is reasonably necessary for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A); and

(viii) during their depositions, witnesses in this Action to whom disclosure is reasonably necessary and who have signed the “Acknowledgement and Agreement to Be Bound” (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the court. Pages of transcribed deposition testimony or exhibits to depositions that reveal Designated Material must be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this Stipulated Protective Order.

(b) Discovery Materials designated as Confidential may be disclosed only to the following persons and may be used by such persons solely for the purposes of prosecuting, defending, and investigating claims between the Parties relevant to this Action, and for no other

business or other purposes whatsoever, and may not be disclosed to anyone, described to anyone, or discussed with anyone, except to any other person authorized under this Order to receive

Confidential materials:

- (i) the persons indicated in Paragraph (4)(a) above;
- (ii) the Parties in this Action; and
- (iii) other counsel of record in addition to Outside Counsel as defined in

Paragraph 1(d).

(c) Designated Material must be stored and maintained by a Receiving Party at a secure location and in a secure manner that ensures that access is limited to the persons authorized under this Order.

#### **5. Objections to Designation**

If any Party objects to a designation of Discovery Materials as Confidential or Highly Confidential – Attorneys’ Eyes Only based upon a good faith belief that the Discovery Materials are not entitled to such protection, counsel for the objecting Party shall state the objection by letter to counsel for the Designating Party. Upon receipt of the letter containing such objection, counsel for the Party that designated such Discovery Materials shall have fifteen (15) business days to confer with counsel for the objecting Party and respond to the request and objections. If, at the end of the ten-day period, the objecting Party and Designating Party are unable to agree on the propriety of the objected-to designation(s), the Party asserting the designation may move the Court for a protective order. Unless directed otherwise by the Court, the Receiving Party shall have fifteen (15) business days to respond to such application, and the Designating Party shall have five (5) business days to reply. Any Discovery Materials that have been designated Confidential or Highly Confidential – Attorneys’ Eyes Only shall be treated as properly

designated until such time as the Court rules that such Discovery Materials should not be so designated.

**6. Filing of Discovery Materials**

In the event that any Designated Materials are contained in any pleading, motion, exhibit, or other paper (collectively “Papers”) filed or to be filed with the Court, the Clerk of the Court shall be so informed by the Party filing such Papers, and the Clerk shall keep such Papers under seal until further order of the Court. Information filed under seal shall be placed in sealed envelopes on which shall be written the title to this Action, the words “FILED UNDER SEAL,” and a statement substantially in the following form: “This envelope is sealed pursuant to order of this Court and contains confidential information filed in this case by [name of party] and is not to be opened or the contents thereof to be displayed or revealed except by order of the Court.”

**7. No Prejudice to Use, Admissibility, or Recognized Privileges**

(a) Nothing herein shall be construed to affect in any way the admissibility of any evidence at trial, in any pretrial hearing, or other proceedings.

(b) Nothing herein shall preclude any Party from asserting, if applicable, the attorney-client privilege, a claim of work product protection, or any other applicable privilege or protection as to any Discovery Materials or to assert any defense or objection to the use of such information at trial.

(c) Nothing herein shall prevent or restrict counsel from rendering legal advice to the Parties with respect to this Action and, in the course thereof, from relying generally on counsel’s examination of Discovery Materials, but without disclosing or describing the specific content of any Designated Material the disclosure of which is contrary to the terms of this Order.

**8. Revocation of Confidential or Highly Confidential – Attorneys’ Eyes Only Status**

(a) Any Party or nonparty that has produced Designated Material pursuant to this Order may consent that such designation be removed or revoked by so notifying counsel for the Receiving Parties in writing or by so stating on the record at any hearing or deposition, provided that any such revocation shall not prejudice or otherwise affect the right any other Party may have to designate the same Discovery Materials as Confidential or Highly Confidential – Attorneys' Eyes Only.

(b) If the designation of Discovery Materials as Confidential or Highly Confidential – Attorneys' Eyes Only is withdrawn voluntarily or by Order of this Court, all other Parties to the Action shall be notified of such change.

#### **9. Inadvertent Production**

The inadvertent production by a Producing Party of any Discovery Materials protected by the attorney-client privilege, work-product doctrine, or any other privilege from disclosure shall be without prejudice to any subsequent claim by the Producing Party that such Discovery Materials are privileged or attorney work product and shall not be deemed a waiver of any such privilege or protection. If, after Discovery Materials are disclosed, a Producing Party notifies all Receiving Parties that materials inadvertently produced are privileged or work-product, the Receiving Party shall not make any use of the material and shall return to the Producing Party all copies thereof in its possession. Nothing in this provision shall be construed to prevent or restrict any Party's right to object to the propriety of any other's assertion that materials are properly protected by the attorney-client privilege, work-product doctrine, or any other applicable privilege or protection.

#### **10. Unauthorized Disclosure of Designated Material**

If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Designated Material to any person or in any circumstance not authorized under this Stipulated Protective Order, the Receiving Party must immediately

- (a) notify in writing the Designating Party of the unauthorized disclosures;
- (b) use its best efforts to retrieve all unauthorized copies of the Designated Material;
- (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Order; and
- (d) request such person or persons to execute the “Acknowledgement and Agreement to Be Bound” that is attached hereto as Exhibit A.

**11. Designated Material Subpoenaed or Ordered Produced in Other Proceedings**

(a) If a party receives any request, including but not limited to a subpoena or a court order, in other proceedings that calls for disclosure of any information or items designated in this Action as Confidential or Highly Confidential – Attorneys’ Eyes Only, that Party must:

- (i) promptly notify in writing the Designating Party; such notification shall include a copy of the subpoena or court order;
- (ii) promptly notify in writing the person who caused the subpoena or order to issue in the other proceeding; such notification shall state that some or all of the material responsive to the subpoena or order is subject to this Protective Order, and such notification shall include a copy of this Order; and
- (iii) cooperate with respect to all reasonable procedures sought to be pursued by the Designating Party whose Designated Material may be affected.

(b) If the Designating Party timely seeks a protective order, the Party served with the subpoena or court order shall not produce any Designated Material before a ruling on the

protective order by the court from which the subpoena or order issued, unless the Party has obtained the Designating Party's permission or is ordered to do so by a Court of competent jurisdiction. The Designating Party shall bear the burden and expense of seeking protection in that court of its Designated Material. Nothing in these provisions should be construed as authorizing or encouraging a Receiving Party in this Action to disobey a lawful directive from another court.

**12. Protections of This Order Extend to Nonparties**

The terms of this Order are applicable to information produced by a nonparty in this Action and designated as Confidential or Highly Confidential – Attorneys' Eyes Only. Such Designated Material produced by nonparties in connection with this litigation is protected by the remedies and relief provided by this Order. Nothing in these provisions should be construed as prohibiting a nonparty from seeking additional protections.

**13. Duration**

The confidentiality obligations imposed by this Order shall remain in effect after the final disposition of the Action, until a Designating Party agrees otherwise in writing or a court order otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all claims and defenses in this Action, with or without prejudice; and (2) final judgment after the completion and exhaustion of all appeals, rehearing, remands, trials, or reviews, including the time limits for filing any motions or applications for extension of time pursuant to applicable law.

**14. Return or Destruction of Discovery Materials**

Within sixty (60) days after the final disposition of this Action, as defined in Paragraph 13, each Receiving Party must return all Designated Material to the Producing Party or destroy

such material. As used in this subdivision, “all Designated Material” includes all copies, abstracts, compilations, summaries, and any other format reproducing or capturing any of the Designated Material. Whether the Designated Material is returned or destroyed, the Receiving Party must submit a written certification to the Producing Party (and, if not the same person or entity, to the Designating Party) by the sixty-day deadline that (1) identifies (by category, where appropriate) all the Designated Material that was returned or destroyed, and (2) affirms that the Receiving Party has not retained any copies, abstracts, compilations, summaries or any other format reproducing or capturing any of the Designated Material. Notwithstanding this provision, counsel are entitled to retain an archival copy of all pleadings, motion papers, transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work product, even if such materials contain Designated Material. Any such archival copies that contain or constitute Designated Material remain subject to this Order as set forth in Paragraph 13. For a period of one year following the final resolution of this Action, original executed copies of the “Acknowledgment and Agreement to Be Bound” (Exhibit A) shall be retained by the counsel disclosing the Designated Material to the person who executed the “Acknowledgment and Agreement to Be Bound” (Exhibit A).

15. **Modification of Order**

Nothing herein shall prevent any Party, on notice to all Parties, from applying to the Court for a modification of this Order.

16. **Counterpart Signatures**

This Order may be signed in counterparts.

**IT IS SO ORDERED.**

Dated: July 17, 2013

/s/ Fernando J. Gaitan, Jr.  
FERNANDO J. GAITAN JR.  
CHIEF UNITED STATES DISTRICT JUDGE

**EXHIBIT A****Acknowledgment and Agreement to Be Bound**

My name is \_\_\_\_\_.

I work for \_\_\_\_\_.

My business contact information is:

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

I have read the attached Stipulated Protective Order Governing Confidential Information (“Order”) entered by the Court in the matter of *In re Simply Orange Orange Juice Marketing and Sales Practices Litigation*, United States District Court, Western District of Missouri, Western Division, Master Case No. 4:12-MD-02361-FJG.

I understand the responsibilities and obligations the Order imposes on me regarding **Confidential** or **Highly Confidential – Attorneys’ Eyes Only** information I review in this Action.

I agree to be bound by all of the provisions of the Order.

I certify that:

I did not receive any Confidential or Highly Confidential – Attorneys’ Eyes Only information before signing this Exhibit A;

I meet all requirements for receipt of information and other material designated as Confidential or Highly Confidential Information, pursuant to the Order;

I am not directly employed by any party to this Action;

I am not under contract with any party to this Action for any purpose other than this Action.

I have received a copy of the Order for my personal use and reference, and I have retained an executed copy of this Exhibit A.

Signed: \_\_\_\_\_

Dated: \_\_\_\_\_