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9 **UNITED STATES DISTRICT COURT**
10 **SOUTHERN DISTRICT OF CALIFORNIA**

11
12 NATIONAL FRANCHISEE ASSOCIATION,
a Nevada corporation, on behalf of its
13 members and on behalf of a class
composed of all Burger King® franchisees
14 located in the United States,

15 Plaintiff,

16 v.

17 BURGER KING CORPORATION, a Florida
corporation; and THE COCA-COLA
18 COMPANY, a Delaware Corporation,

19 Defendants.
20

CASE NO. 09cv0939-W-(NLS)

Assigned to The Hon. Thomas J. Whelan

**JOINT MOTION FOR DISMISSAL
WITHOUT PREJUDICE**

21
22 WHEREAS Plaintiff National Franchisee Association (“NFA”), brought this action on
23 May 4, 2009 seeking to assert claims on behalf of its members and on behalf of a class
24 composed of all Burger King® franchisees located in the United States (the “Lawsuit”) for
25 declaratory relief concerning Plaintiffs’ rights as alleged third party beneficiaries of certain
26 Restaurant Operating Funds (“ROF”) payable under that certain Soft Drink Agreement
27 (“SDA”) entered into in 1999 between Burger King Corporation (“BKC”) and The Coca-Cola
28 Company (“Coca-Cola”);

1 Plaintiff NFA and Defendants BKC and Coca-Cola hereby file this Joint Motion for
2 Dismissal Without Prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2) and state:

3 1. In reliance on BKC’s decision to cancel the implementation of the reallocation
4 of ROF, including without limitation as contemplated in the Sixth Amendment to the SDA,
5 that had been the impetus and cause of this Lawsuit, and on the facts and assertions
6 contained in the Motion to Dismiss Complaint as Moot filed by BKC, including the
7 supporting Declaration of Chuck Fallon [Doc. 37, 37-1, 37-2, 37-3], Plaintiff and Defendants
8 stipulate to and move for, the dismissal of this Lawsuit without prejudice, with each party to
9 bear its own attorneys’ fees and costs.

10 2. The parties further stipulate that neither the filing of this Joint Motion for
11 Dismissal Without Prejudice nor the NFA’s decision not to pursue, or to delay pursuing, the
12 issues presented by this Lawsuit at this time or in the future, shall constitute a waiver or
13 impairment of the rights, if any, of BKC, Coca-Cola, the NFA, the purported class members,
14 or any of them, as alleged in the Lawsuit, or constitute a basis for asserting laches or any
15 applicable statute of limitations, or similar defense of delay, should there be future litigation
16 involving BKC, Coca-Cola, the NFA, the purported class members, or any of them, relating
17 to the issues forming the subject matter of this Lawsuit.

18

19 Dated: March 4, 2010

SOLOMON WARD SEIDENWURM & SMITH, LLP

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By s/Norman L. Smith

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23 Dated: March 4, 2010

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27 *[Signatures continued on next page]*

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CERTIFICATE OF SERVICE

I caused the **JOINT MOTION FOR DISMISSAL WITHOUT PREJUDICE** to be served in the following manner:

Electronic Mail Notice List

The following are those who are currently on the list to receive e-mail notices for this case.

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Manual Notice List

The following is the list of attorneys who are not on the list to receive e-mail notices for this case (who therefore require manual noticing): None.

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