

FILED

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CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

DEPUTY

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8 NATIONAL FRANCHISEE ASSOCIATION

9 UNITED STATES DISTRICT COURT
10 SOUTHERN DISTRICT OF CALIFORNIA

'09 CV 939 W NLS

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

CASE NO.

**CLASS ACTION COMPLAINT FOR
DECLARATORY RELIEF; JURY DEMAND**

14 Plaintiff,

CLASS ACTION

15 v.

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

18 Defendants.

19
20 Plaintiff National Franchisee Association ("NFA") alleges as follows:

21 INTRODUCTION

22 1. At a collective cost of hundreds of millions of dollars, Burger King® restaurants
23 owned and operated by franchisees of Burger King Corporation ("BKC") across the United
24 States (the "Franchisee Restaurant Owners") have over the past decade substantially relied
25 on and performed under the terms of a Soft Drink Agreement (the "SDA") entered into
26 between BKC and The Coca-Cola Company ("Coke®"). In return, as required by the SDA,
27 Coke® has made semi-annual payments of "Restaurant Operating Funds" ("ROFs") directly to
28 the Franchisee Restaurant Owners. The ROFs are calculated as an amount per gallon for

CR

1 each gallon of syrup ("Syrup") manufactured and sold by or under the authority of Coke®
2 and then purchased by the Franchisee Restaurant Owners to make exclusive Coke®
3 products.

4 2. On April 6, 2009, BKC announced its intention to unilaterally strip the
5 Franchisee Restaurant Owners of their right to a substantial percentage of the ROFs and to
6 divert and appropriate those funds to BKC's designated use, at a loss to the Franchisee
7 Restaurant Owners of hundreds of millions of dollars for the projected remaining term of the
8 SDA.

9 3. The NFA brings this action on behalf of the Franchisee Restaurant Owners to
10 preserve and protect their rights under the SDA, including without limitation their
11 entitlement to the ROFs.

12 **PARTIES**

13 4. The NFA is a corporation organized in Nevada with its principal place of
14 business in Georgia. The NFA is organized and exists for the purpose of protecting and
15 preserving the rights of the Franchisee Restaurant Owners and serves as the official voice of
16 the Burger King® franchisee community. All Franchisee Restaurant Owners may be
17 individual members of the NFA, and approximately 75% of them are; they may also be
18 members of the respective geographical "regional associations" of Burger King® franchisees,
19 and those regional associations are themselves members of the NFA. The NFA brings this
20 action on behalf of its members and on behalf of a class comprised of all Franchisee
21 Restaurant Owners. Under the terms of the Burger King® Restaurant Franchise Agreements
22 between Franchisee Restaurant Owners and BKC, the NFA (referred to in the Franchise
23 Agreements as the "Franchisee Association" or the "Franchisee Advisory Counsel") is
24 expressly designated to represent Franchisee Restaurant Owners with respect to certain
25 matters including in relation to royalty and advertising contributions.

26 5. Defendant BKC is a Florida corporation with its principal place of business in
27 Florida. BKC is in the business of operating, and granting franchises to operate, Burger
28 King® restaurants.

1 as an association to foster and coordinate the activities of independent Burger King®
2 franchisees and to serve as the official voice of the Burger King® franchisee community; . . .
3 to protect and preserve the rights of independent Burger King® franchisees; and to do all
4 things necessary and proper to the advancement of independent Burger King® franchisees.”

5 12. Finally, neither the claim asserted nor the relief requested requires the
6 participation of individual members of the NFA (i.e., the Franchisee Restaurant Owners).
7 The claim for relief involves an issue that is common to all members of the NFA—their right
8 to continue to receive, unabated and undiminished, the ROFs as set forth and required by
9 the SDA. The claim is for declaratory relief only and does not involve any potentially
10 differing claims for monetary compensation.

11 **CLASS ACTION ALLEGATIONS**

12 13. The NFA brings this action as a class action pursuant to Federal Rule of Civil
13 Procedure 23(a) and (b) (1), (2), and/or (3) on behalf of a class consisting of all Franchisee
14 Restaurant Owners, whether members of the NFA or not. Non-franchised (i.e., company-
15 owned) Burger King® restaurants are not included in this definition of the class.

16 14. The members of the class are so numerous that joinder of all members is
17 impracticable. There are approximately 6300 franchised restaurants in the United States,
18 owned by approximately 850 different franchisees.

19 15. The NFA’s claim is typical of the claims of the members of the class. Indeed,
20 its claim is the same as the claims of all class members—that BKC and Coke® cannot amend
21 the SDA or performance under the SDA to eliminate or reduce the payment of ROFs to the
22 Franchisee Restaurant Owners without their consent.

23 16. The NFA will fairly and adequately protect the interests of the members of the
24 class; indeed, the NFA’s *raison d’etre* is to preserve and protect the interests of the members
25 of the class, the vast majority of which are also the NFA’s members. The NFA has also
26 retained counsel competent and experienced in class action litigation.

27 17. Prosecuting separate actions by individual class members would create a risk
28 (a) of inconsistent adjudications with respect to individual class members that would

1 establish incompatible standards of conduct for BKC and Coke® or (b) that adjudications
2 with respect to individual class members would, as a practical matter, be dispositive of the
3 interests of the other members not parties to the individual adjudications or would
4 substantially impair their ability to protect their interests.

5 18. BKC and Coke® have acted or refused to act on grounds that apply generally
6 to the class, so that declaratory relief is appropriate respecting the class as a whole.

7 19. Common questions of law and fact exist as to all members of the class and
8 predominate over any questions solely affecting individual members of the class. Those
9 common questions are: whether and to what extent all class members have rights under the
10 SDA and whether BKC and Coke® have the right to amend that agreement to the class
11 members' detriment and without their consent after their acceptance of, performance under,
12 and reliance upon, the SDA. Because the NFA is seeking only declaratory relief, no
13 individualized damages issues exist.

14 **THE SOFT DRINK AGREEMENT**

15 20. This action concerns the Franchisee Restaurant Owners' rights under the SDA
16 between BKC and Coke®.

17 ***Effective Date and Essential Purpose***

18 21. BKC and Coke® entered into the SDA in 1999. On information and belief, the
19 SDA followed previous, similar agreements between BKC and Coke® that had been in effect
20 since at least 1990.

21 22. The SDA prescribes the terms and conditions for the sale and promotion of
22 certain of Coke®'s post-mix beverage products in **all** Burger King® restaurants located in the
23 United States, i.e., all company-owned Burger King® restaurants, as well as all restaurants
24 owned and operated by the Franchisee Restaurant Owners. More than 80% of Burger King®
25 restaurants in the United States are owned and operated by Franchisee Restaurant Owners.

26 23. Under BKC's Franchise Agreements with the Franchisee Restaurant Owners,
27 only food and beverages from certain suppliers (such as Coke®) approved by BKC may be
28 used or sold by the franchised restaurants.

1 ***The Purchase Commitment and Exclusive Approval***

2 24. The SDA's term ends on the date the restaurants, including company-owned
3 Burger King® restaurants and franchised restaurants, have achieved a purchase commitment
4 of in excess of 600,000,000 gallons of Syrup from and after the effective date of the SDA.

5 25. Thus, the purchase commitment is satisfied, and the SDA expires, only after
6 the purchase of more than 600,000,000 gallons of Syrup by the Franchisee Restaurant
7 Owners and BKC company-owned restaurants, together, from Coke®.

8 26. Based on BKC's Uniform Franchise Offering Circular, historical data and
9 reasonable business projections, the NFA is informed and believes, and on that basis alleges,
10 that the SDA's purchase commitment will be met, and the SDA will expire, no sooner than
11 2022, 13 years from now.

12 27. Under the SDA, Coke® is required to make all Burger King® restaurants—
13 company owned and franchised restaurants—eligible to purchase Syrup at Coke®'s national
14 chain account prices and under Coke®'s standard terms and conditions.

15 28. Throughout the term of the SDA, BKC must approve the purchase and sale
16 exclusively of Coke® post-mix products by Burger King® restaurants. (There is a "one valve"
17 exception to this exclusivity, which allows Burger King® restaurants to devote one valve of
18 each soft drink dispensing unit to, among other drinks, Dr Pepper®.) In other words, BKC is
19 contractually obligated to Coke® to require its Franchisee Restaurant Owners and company-
20 owned restaurants to sell (with the exception noted above) only Coke® products for as long
21 as the SDA remains in effect.

22 ***Marketing Promotions and the Payment of ROFs***

23 29. In exchange for exclusive approval by BKC for the sale of Coke® products in
24 its own restaurants and those of the Franchisee Restaurant Owners for as long as it takes
25 those restaurants to purchase more than 600,000,000 gallons of syrup, Coke® agrees in the
26 SDA to provide to BKC and/or the Franchisee Restaurant Owners certain marketing,
27 promotional and equipment programs.

28

1 30. Of the numerous marketing, promotional, and equipment programs Coke®
2 must provide to BKC and the Franchisee Restaurant Owners under the SDA, the most critical
3 and valuable to the Franchisee Restaurant Owners is the payment of the ROFs. The SDA
4 requires Coke® to pay—and Coke® has paid—the ROFs **to the Franchisee Restaurant**
5 **Owners directly.**

6 31. The SDA expressly contemplates that the Franchisee Restaurant Owners use
7 the ROFs to offset the substantial costs of their required compliance with and performance of
8 the terms of the SDA, and they have done so. The Franchisee Restaurant Owners have been
9 required by BKC, through the SDA, to purchase, lease, repair and maintain the equipment
10 approved by BKC for use in the franchised restaurants to dispense Coke® products; to
11 conduct merchandising and promotional activities featuring Coke® products; and to
12 implement the performance criteria of the SDA which BKC and Coke® diligently monitor.

13 32. The per-gallon amount of the ROFs is based upon a schedule, with the amount
14 of the ROFs per gallon increasing annually. Additionally, the amount of ROFs is further
15 escalated based on increases in the price of the Syrup.

16 33. In short, the ROFs are a rebate that Coke® agreed to pay and pays directly to
17 the Franchisee Restaurant Owners for, and computed based on, their purchases of Coke®
18 Syrup.

19 **THE FRANCHISEE RESTAURANT OWNERS ARE INTENDED THIRD PARTY**
20 **BENEFICIARIES OF THE SOFT DRINK AGREEMENT**

21 34. The express terms, negotiation, and performance of the SDA all evince a clear
22 intent by BKC and Coke® to make the Franchisee Restaurant Owners beneficiaries of the
23 SDA including, without limitation, beneficiaries of the payment of the ROFs.

24 ***Numerous Provisions In the SDA Express the Intent that the Franchisee Restaurant Owners***
25 ***Are Third Party Beneficiaries***

26 35. The SDA contains numerous provisions establishing the Franchisee Restaurant
27 Owners' direct right to receive the ROFs, including, without limitation, the following:
28

1 a. The SDA provides that, in consideration of BKC's grant of an exclusive
2 approval with respect to certain exclusive Coke® products during the term of the agreement,
3 and BKC's agreement to work with Coke® on the on-going development and implementation
4 of marketing and promotional programs that will benefit both the Burger King® and Coke®
5 brands, Coke® agrees to provide to BKC and/or the Franchisee Restaurant Owners, certain
6 marketing, promotional and equipment programs.

7 b. The SDA provides that Coke® shall pay certain marketing allowances to the
8 Franchisee Restaurant Owners at an agreed rate per gallon for each gallon of Syrup
9 purchased by each Burger King® restaurant.

10 c. The SDA provides that Coke® shall pay the ROFs to the Franchisee
11 Restaurant Owners.

12 36. The SDA clearly and explicitly provides for payment of ROFs directly to the
13 Franchisee Restaurant Owners because, *inter alia*, the Syrup purchased by them counts
14 toward the more than 600,000,000 gallon purchase commitment BKC has made to Coke®.
15 Although such purchase commitment is made by BKC, it is the Franchisee Restaurant
16 Owners that are required to satisfy most of such purchase commitment.

17 37. The SDA recognizes that, because the Franchisee Restaurant Owners'
18 purchases of Syrup contribute to Coke®'s benefits under the SDA through BKC's
19 commitment under the SDA, the Franchisee Restaurant Owners—and only the Franchisee
20 Restaurant Owners—are entitled to the rebate from Coke® (the ROFs) resulting from those
21 purchases under the SDA.

22 ***The Negotiations of the SDA Show an Intent to Benefit the Franchisee Restaurant Owners***

23 38. The Franchisee Restaurant Owners' prominent role in the written provisions
24 and practical function of the SDA is no surprise. The Franchisee Restaurant Owners—
25 through the NFA—were directly and extensively involved throughout the negotiation of the
26 SDA.

27 39. The NFA is informed and believes that every draft of the SDA was circulated
28 to the Chairman of the NFA for input and comment.

1 ***The Performance of the Agreement and BKC's Representations Show the Franchisee***
2 ***Restaurant Owners Are Intended Beneficiaries***

3 40. From the inception of the SDA in 1999—and, indeed, since the inception of its
4 predecessors since at least 1990—the Franchisee Restaurant Owners have performed their
5 required obligations under BKC's agreements with Coke® and, in return, Coke® has paid the
6 ROFs to the Franchisee Restaurant Owners, without offset, diminution, reduction, or
7 discount unless a particular Franchisee Restaurant Owner consented thereto.

8 41. Every action and statement by BKC and Coke® during the term of the SDA
9 (until the April announcement), and during the term of its predecessor agreement, has
10 confirmed, ratified, and reinforced the Franchisee Restaurant Owners' reasonable belief in
11 and reliance on the fact that the Franchisee Restaurant Owners have the right to receive the
12 ROFs pursuant to, and subject to performance under, the SDA's terms.

13 42. Neither Coke® nor BKC has ever diminished, reduced, withheld, or stopped
14 paying the ROFs to the Franchisee Restaurant Owners—or ever attempted to—nor in any
15 other way failed or refused to pay in full accord with the terms of the SDA (or its
16 predecessor, as applicable), unless a particular Franchisee Restaurant Owner has consented
17 thereto.

18 43. The NFA is informed and believes that BKC has repeatedly expressly and/or
19 impliedly represented to the Franchisee Restaurant Owners that they could and should apply
20 the ROFs to offset their cost of compliance with the SDA requirements, but the precise use
21 and application of the ROFs is at the discretion of each individual Franchisee Restaurant
22 Owner. BKC and the Franchisee Restaurant Owners have consistently acted in accordance
23 with these representations by BKC.

24 44. BKC has never disclosed to the Franchisee Restaurant Owners any secret
25 intent or understanding that the rebates generated under the SDA as a result of the
26 Franchisee Restaurant Owners' purchases of Syrup from Coke®—that is, the ROFs—are not
27 the right and property of the Franchisee Restaurant Owners, or that BKC and Coke® have the
28 right, without the Franchisee Restaurant Owners' consent, to divert or appropriate the ROFs.

1 Most states require franchisors such as BKC to disclose such a material term to their
2 franchisees. Indeed, BKC has repeatedly represented and disclosed to the Franchisee
3 Restaurant Owners the nature and amount of suppliers' contributions to the national
4 advertising fund administered by BKC in consideration of purchases by franchisees.
5 Notably, BKC has never included or referred to the ROFs as part of those contributions,
6 reinforcing the fact that the ROFs belong to the Franchisee Restaurant Owners, not BKC.

7 45. In sum, BKC's representations and the parties' consistent course of
8 performance demonstrate and establish that BKC and Coke® intended to benefit the
9 Franchisee Restaurant Owners through the SDA including, particularly, by Coke®'s promise
10 to pay ROFs in accordance with the terms of the SDA.

11 **THE FRANCHISEE RESTAURANT OWNERS' ASSENT, RELIANCE, AND**
12 **CHANGE IN POSITION**

13 46. By performing, at substantial cost and allocation of resources, the obligations
14 imposed by the SDA, the Franchisee Restaurant Owners have assented to and relied on the
15 promise and representations of continued receipt of ROFs from Coke® to the full extent
16 promised in the SDA. Further, the NFA is informed and believes that the ROFs have been
17 reported by Franchisee Restaurant Owners in their financial records and then relied upon in
18 connection with obtaining credit, and used as a basis for cash flow projections and
19 operational planning.

20 47. Of the numerous, extensive obligations the SDA imposes on the Franchisee
21 Restaurant Owners (and which the Franchisee Restaurant Owners have performed) are:

- 22 a. The purchase, lease, repair, maintenance, replacement and/or upgrade of
23 equipment;
- 24 b. The purchase and maintenance of water filter systems;
- 25 c. Participation in quality maintenance programs, including meeting the
26 standards of a "Total Soft Drink Quality Program;"
- 27 d. Meeting certain performance criteria, including the purchase and use of
28 specially designated cups;

1 e. Complying with inspections by BKC and Coke® to ensure the Franchisee
2 Restaurant Owners' performance and satisfaction of these standards.

3 48. In short, the Franchisee Restaurant Owners materially changed their positions
4 in reasonable reliance upon the promise they would receive ROFs per the SDA's terms by
5 performing these acts and incurring these expenses, debts, and obligations.

6 49. Had the Franchisee Restaurant Owners known that BKC and Coke® intended
7 to modify or eliminate the ROFs, they would not have undertaken these substantial
8 expenses, debts, and obligations.

9 50. Because of the Franchisee Restaurant Owners' assent to the SDA, reasonable
10 reliance on the promise of payment of the ROFs, and their resulting change in position, the
11 Franchisee Restaurant Owners are intended beneficiaries under the SDA and BKC, and
12 Coke® may not, without the Franchisee Restaurant Owners' consent, amend the SDA to
13 divest the Franchisee Restaurant Owners of their rights under the SDA, including their right
14 to receive the ROFs.

15 **BKC AND COKE® ANNOUNCE THEIR INTENTION TO DIVEST THE FRANCHISEE**
16 **RESTAURANT OWNERS OF THE ROFS**

17 51. On April 6, 2009, BKC announced to the Franchisee Restaurant Owners that it
18 intended, effective from the payment of ROFs due in February, 2010, to divert and
19 appropriate to itself up to 40% of the ROFs payable to the Franchisee Restaurant Owners
20 under the SDA.

21 52. According to BKC's calculations, the amount of ROFs it intends to take away
22 from the Franchisee Restaurant Owners and appropriate to itself totals approximately \$25
23 Million in 2010, increasing to almost \$40 Million in 2012 and beyond.

24 53. BKC claims that it intends to use the appropriated ROFs to increase national
25 advertising. The Franchisee Restaurant Owners already contribute to national advertising by
26 paying, pursuant to the terms of their individual Franchise Agreements with BKC, a
27 percentage of their sales to BKC. Indeed, this obligation is one that most states require
28 franchisors such as BKC to disclose to franchisees in advance of entering into any agreement

1 and upon the occurrence of any material change in that obligation. BKC has never disclosed
2 to the Franchisee Restaurant Owners an intention to modify their Franchise Agreements to
3 increase the amount the Franchisee Restaurant Owners must pay to BKC to contribute to
4 national advertising.

5 54. BKC has represented to the Franchisee Restaurant Owners that Coke® agrees
6 to and supports the proposed divestiture of the Franchisee Restaurant Owners' ROFs.

7 **CLAIM FOR RELIEF**

8 **(DECLARATORY JUDGMENT)**

9 55. The NFA re-alleges and incorporates paragraphs 1 through 51, above.

10 56. The Declaratory Judgment Act, 28 U.S.C. § 2201, *et seq.*, grants the Court, in
11 cases of actual controversy such as this one, the power to issue judgments declaring the
12 rights and other legal relations of any interested party, whether or not further relief is or
13 could be sought.

14 57. Certain disputes have arisen between the NFA, on behalf of the Franchisee
15 Restaurant Owners, on the one hand, and BKC and Coke®, on the other, arising out of and
16 relating to the SDA.

17 58. These disputes include (1) whether the Franchisee Restaurant Owners are
18 intended beneficiaries under the SDA including, in particular, the obligation of Coke® to pay
19 ROFs to the Franchisee Restaurant Owners under the terms of the SDA; and (2) whether BKC
20 and Coke® may, without the Franchisee Restaurant Owners' consent, amend the SDA to
21 divest the Franchisee Restaurant Owners of their rights under the SDA, including their full
22 entitlement to ROFs.

23 59. The NFA contends that the Franchisee Restaurant Owners are intended third-
24 party beneficiaries of the SDA, particularly with respect to the obligation of Coke® to pay
25 them ROFs under the terms of the SDA. The NFA is informed and believes, and on that
26 basis alleges, that BKC and Coke® contend that the Franchisee Restaurant Owners are not
27 intended third-party beneficiaries of the SDA.

28

1 60. The NFA further contends that BKC and Coke® cannot amend or terminate the
2 SDA to divest the Franchisee Restaurant Owners of any rights thereunder, including any
3 modifications that diminish or eliminate Coke®'s obligation to pay the ROFs to the
4 Franchisee Restaurant Owners pursuant to the terms of the SDA, without the Franchisee
5 Restaurant Owners' consent. The NFA is informed and believes, and on that basis alleges,
6 that BKC and Coke® contend that they can amend the SDA without the Franchisee
7 Restaurant Owners' consent, including by entering into amendments resulting in a
8 reduction, diversion, or elimination of the ROFs payable to the Franchisee Restaurant
9 Owners.

10 61. Therefore, an actual controversy has arisen and now exists between the NFA,
11 on the one hand, and BKC and Coke®, on the other, concerning the Franchisee Restaurant
12 Owners' right to ROFs under the express terms of the SDA, and BKC's and Coke®'s right, if
13 any, to amend the SDA to reduce, divert, or eliminate payment of the ROFs to the
14 Franchisee Restaurant Owners without the Franchisee Restaurant Owners' consent.

15 62. The NFA accordingly desires a judicial declaration that:

16 a. The Franchisee Restaurant Owners are intended third-party beneficiaries
17 under the SDA including, particularly, the obligation of Coke® to pay ROFs to the Franchisee
18 Restaurant Owners in accordance with the terms of the SDA;

19 b. BKC and Coke® may not amend or terminate the SDA to divest the
20 Franchisee Restaurant Owners of their rights under the SDA, including their right to payment
21 of the ROFs, without the Franchisee Restaurant Owners' consent; and

22 c. Coke® is legally obligated to continue paying the ROFs to the Franchisee
23 Restaurant Owners in the manner and amount prescribed by the SDA.

24 63. A judicial declaration is necessary and appropriate at this time under the
25 circumstances so that the parties to this action may ascertain their rights and duties under the
26 SDA. Given BKC's announcement referenced above, the facts have sufficiently crystallized
27 to permit an intelligent and useful decision to be made, and the issues are fit for a judicial
28 determination.

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PRAYER

The NFA prays that the Court enter judgment in the NFA's favor and against BKC and Coke®, as follows:

1. For a judicial declaration that:

a. The Franchisee Restaurant Owners are intended third-party beneficiaries under the SDA including, particularly, the obligation of Coke® to pay ROFs to the Franchisee Restaurant Owners in accordance with the terms of the SDA;

b. BKC and Coke® may not amend or terminate the SDA to divest the Franchisee Restaurant Owners of their rights under the SDA, including their right to payment of the ROFs, without the Franchisee Restaurant Owners' consent; and

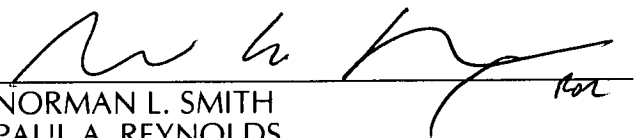
c. Coke® is legally obligated to continue paying the ROFs to the Franchisee Restaurant Owners in the manner and amount prescribed by the SDA.

2. For costs.

3. For such other and further relief as the Court deems just and proper.

DATED: May 4, 2009

SOLOMON WARD SEIDENWURM & SMITH, LLP

By: 
NORMAN L. SMITH
PAUL A. REYNOLDS
TANYA M. SCHIERLING
Attorneys for Plaintiff
NATIONAL FRANCHISEE ASSOCIATION

JURY DEMAND

Plaintiff hereby demands a jury trial of all claims triable by a jury.

DATED: May 4, 2009

SOLOMON WARD SEIDENWURM & SMITH, LLP

By: 
NORMAN L. SMITH
PAUL A. REYNOLDS
TANYA M. SCHIERLING
Attorneys for Plaintiff
NATIONAL FRANCHISEE ASSOCIATION

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS
 NATIONAL FRANCHISEE ASSOCIATION, a Nevada corporation, on behalf of its members and on behalf of a class composed of all Burger King® franchisees located in the United States

(b) County of Residence of First Listed Plaintiff Fulton County Georgia
 (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)
 Norman L. Smith, [SBN 106344]
 SOLOMON WARD SEIDENWURM & SMITH, LLP
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 San Diego, CA 92101
 (619) 231-0303

DEFENDANTS
 BURGER KING CORPORATION, a Florida corporation; and THE COCA-COLA COMPANY, a Delaware corporation

County of Residence of First Listed Defendant 09 MAY -4 AM 10:59
 (IN U.S. PLAINTIFF CASES ONLY)
 NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED, OTHERWISE, DISTRICT OF CALIFORNIA

Attorneys (If Known) BY DEPUTY

'09 CV 439 W NLS

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

1 U.S. Government Plaintiff
 3 Federal Question (U.S. Government Not a Party)
 2 U.S. Government Defendant
 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input checked="" type="checkbox"/> 5	<input checked="" type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input checked="" type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury—Med. Malpractice <input type="checkbox"/> 365 Personal Injury—Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)

1 Original Proceeding
 2 Removed from State Court
 3 Remanded from Appellate Court
 4 Reinstated or Reopened
 5 Transferred from another district (specify)
 6 Multidistrict Litigation
 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. 2201

Brief description of cause:
Declaratory Judgment

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 **DEMAND \$** _____

CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE _____ DOCKET NUMBER _____

DATE 5/4/09 SIGNATURE OF ATTORNEY OF RECORD _____

FOR OFFICE USE ONLY
 RECEIPT # 000395 AMOUNT 350. APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

DUPLICATE

Court Name: USDC California Southern
Division: 3
Receipt Number: CAS000375
Cashier ID: sramirez
Transaction Date: 05/04/2009
Payer Name: NATIONWIDE LEGAL

CIVIL FILING FEE

For: NATIONAL FRANCHISE V. BURGER K
Case/Party: D-CAS-3-09-CV-000939-001
Amount: \$350.00

CHECK

Check/Money Order Num: 107604
Amt Tendered: \$350.00

Total Due: \$350.00
Total Tendered: \$350.00
Change Amt: \$0.00

There will be a fee of \$45.00
charged for any returned check.