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NATIONAL FRANCHISEE ASSOCIATION

8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA

10 '09 CV 940 JAH JMA

11 NATIONAL FRANCHISEE ASSOCIATION,
a Nevada corporation, on behalf of its
12 members and on behalf of a class
composed of all Burger King® franchisees
13 located in the United States,
14 Plaintiff,
15 v.
16 BURGER KING CORPORATION, a Florida
corporation; and DR PEPPER SNAPPLE
17 GROUP, INC., a Delaware corporation,
f/k/a DR PEPPER/SEVEN UP, INC.,
18 Defendants.
19

CASE NO.
CLASS ACTION COMPLAINT FOR
DECLARATORY RELIEF; JURY DEMAND
CLASS ACTION

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

21 INTRODUCTION

22 1. At a collective cost of many 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 predecessor of Dr Pepper Snapple Group, Inc. ("Dr Pepper®"). In
27 return, as required by the SDA, Dr Pepper® has made semi-annual payments of "Restaurant
28 Operating Funds" ("ROFs") directly to the Franchisee Restaurant Owners. The ROFs are

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

BY: DEPUTY

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1 calculated as an amount per gallon for each gallon of syrup ("Syrup") manufactured and sold
2 by or under the authority of Dr Pepper® and then purchased by the Franchisee Restaurant
3 Owners to make the Dr Pepper® product.

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 many millions of dollars for the projected remaining term of the SDA.

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

11 **PARTIES**

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

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

28

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 required by the SDA. The
9 claim is for declaratory relief only and does not involve any potentially differing claims for
10 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 Franchise Restaurant Owners.

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 Dr Pepper® cannot
21 amend the SDA to eliminate or reduce the payment of ROFs, or performance under the
22 SDA, to the 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 Dr Pepper® or (b) that
2 adjudications with respect to individual class members would, as a practical matter, be
3 dispositive of the interests of the other members not parties to the individual adjudications or
4 would substantially impair their ability to protect their interests.

5 18. BKC and Dr Pepper® have acted or refused to act on grounds that apply
6 generally 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 Dr Pepper® 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 Dr Pepper®.

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

18 21. BKC and Dr Pepper® entered into the SDA in 1999.

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

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

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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 100,000,000 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 100,000,000 gallons of Syrup by the Franchisee Restaurant
7 Owners and BKC company-owned restaurants, together, from Dr Pepper®.

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

15 28. BKC has a separate, but interrelated, Soft Drink Agreement with The Coca-
16 Cola Company ("Coke®") which requires that BKC approve exclusively Coke® products for
17 sale at U.S. Burger King® restaurants. There is, however, a "one valve exception" to that
18 exclusivity that specifically allows Burger King® restaurants to devote one valve of each soft
19 drink dispensing unit to, among other drinks, Dr Pepper®.

20 29. Throughout the term of the SDA, BKC must approve and mandate the
21 purchase and sale of Dr Pepper® Syrup by Burger King® restaurants. In other words, BKC is
22 contractually obligated to Dr Pepper® to require its Franchisee Restaurant Owners and
23 company-owned restaurants to sell Dr Pepper® for as long as the SDA remains in effect.

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

25 30. In exchange for approval by BKC for the sale of Dr Pepper® in its own
26 restaurants and those of the Franchisee Restaurant Owners for as long as it takes those
27 restaurants to purchase more than 100,000,000 gallons of syrup, Dr Pepper® agrees in the
28 SDA to provide to BKC and/or the Franchisee Restaurant Owners certain marketing,

1 promotional and equipment programs.

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

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

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

18 34. In short, the ROFs are a rebate that Dr Pepper® agreed to pay and pays directly
19 to the Franchisee Restaurant Owners for, and computed based on, their purchases of Dr
20 Pepper® Syrup.

21 **THE FRANCHISEE RESTAURANT OWNERS ARE INTENDED THIRD PARTY**
22 **BENEFICIARIES OF THE SOFT DRINK AGREEMENT**

23 35. The express terms, negotiation, and performance of the SDA all evince a clear
24 intent by BKC and Dr Pepper® to make the Franchisee Restaurant Owners beneficiaries of
25 SDA including, without limitation, beneficiaries of payment of the ROFs.
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1 **Numerous Provisions In the SDA Express the Intent that the Franchisee Restaurant Owners**
2 **Are Third Party Beneficiaries**

3 36. The SDA contains numerous provisions establishing the Franchisee Restaurant
4 Owners' direct right to receive the ROFs including, without limitation, the following:

5 a. The SDA provides that, in consideration of BKC's grant of approval with
6 respect to Dr Pepper® Syrup during the term of the agreement, and BKC's agreement to work
7 with Dr Pepper® on the on-going development and implementation of marketing and
8 promotional programs that will benefit both the Burger King® and Dr Pepper® brands, Dr
9 Pepper® agrees to provide to BKC and/or the Franchisee Restaurant Owners, certain
10 marketing, promotional and equipment programs.

11 b. The SDA provides that Dr Pepper® shall pay certain marketing allowances
12 to the Franchisee Restaurant Owners at an agreed rate per gallon for each gallon of Syrup
13 purchased by each Burger King® restaurant.

14 c. The SDA provides that Dr Pepper® shall pay the ROFs to the Franchisee
15 Restaurant Owners.

16 37. The SDA clearly and explicitly provides for payment of ROFs directly to the
17 Franchisee Restaurant Owners because, *inter alia*, the Syrup purchased by them counts
18 toward the more than 100,000,000 gallon purchase commitment BKC has made to Dr
19 Pepper®. Although this purchase commitment is made by BKC, it is the Franchisee
20 Restaurant Owners that are required to satisfy most of the purchase commitment.

21 38. The SDA recognizes that, because the Franchisee Restaurant Owners'
22 purchases of Syrup contribute to Dr Pepper®'s benefits under the SDA through BKC's
23 commitments under the SDA, the Franchisee Restaurant Owners—and only the Franchisee
24 Restaurant Owners—are entitled to the rebate from Dr Pepper® (the ROFs) resulting from
25 those purchases under the SDA.

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

27 39. The Franchisee Restaurant Owners' prominent role in the written provisions
28 and practical function of the SDA is no surprise. The Franchisee Restaurant Owners—

1 through the NFA—were directly and extensively involved throughout the negotiation of the
2 SDA.

3 40. The NFA is informed and believes that every draft of the SDA was circulated
4 to the Chairman of the NFA for input and comment.

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

7 41. From the inception of the SDA in 1999, the Franchisee Restaurant Owners
8 have performed their required obligations under BKC's agreements with Dr Pepper® and, in
9 return, Dr Pepper® has paid the ROFs to the Franchisee Restaurant Owners, without offset,
10 diminution, reduction, or discount unless a particular Franchisee Restaurant Owner
11 consented thereto.

12 42. Every action and statement by BKC and Dr Pepper® during the term of the
13 SDA (until the April announcement), has confirmed, ratified, and reinforced the Franchisee
14 Restaurant Owners' reasonable belief in and reliance on the fact that the Franchisee
15 Restaurant Owners have the right to receive the ROFs pursuant to the SDA's terms.

16 43. Neither Dr Pepper® nor BKC has ever diminished, reduced, withheld, or
17 stopped paying the ROFs to the Franchisee Restaurant Owners—or ever attempted to—nor in
18 any other way failed or refused to pay in full accord with the terms of the SDA, unless a
19 particular Franchisee Restaurant Owner has consented thereto.

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

26 45. BKC has never disclosed to the Franchisee Restaurant Owners any secret
27 intent or understanding that the rebates generated under the SDA as a result of the
28 Franchisee Restaurant Owners' purchases of Syrup from Dr Pepper®—that is, the ROFs—are

1 not the right and property of the Franchisee Restaurant Owners, or that BKC and Dr Pepper®
2 have the right, without the Franchisee Restaurant Owners' consent, to divert or appropriate
3 the ROFs. Most states require franchisors such as BKC to disclose such a material term to
4 their franchisees. Indeed, BKC has repeatedly represented and disclosed to the Franchisee
5 Restaurant Owners the nature and amount of suppliers' contributions to the national
6 advertising fund administered by BKC in consideration of purchases by franchisees.
7 Notably, BKC has never included or referred to the ROFs as part of those contributions,
8 reinforcing the fact that the ROFs belong to the Franchisee Restaurant Owners, not BKC.

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

13 **THE FRANCHISEE RESTAURANT OWNERS' ASSENT, RELIANCE, AND**
14 **CHANGE IN POSITION**

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

22 48. Of the numerous, extensive obligations the SDA (and the interrelated Coke®
23 SDA) impose on the Franchisee Restaurant Owners, and which the Franchisee Restaurant
24 Owners have performed, are:

- 25 a. The purchase, lease, repair, maintenance, replacement and/or upgrade of
26 equipment;
27 b. The purchase and maintenance of water filter systems;
28 c. Participation in quality maintenance programs, including meeting the

1 standards of a "Total Soft Drink Quality Program";

2 d. Meeting certain performance criteria, including the purchase and use of
3 specially designated cups;

4 e. Complying with inspections by BKC and Dr Pepper® to ensure the
5 Franchisee Restaurant Owners' performance and satisfaction of these standards.

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

9 50. Had the Franchisee Restaurant Owners known that BKC and Dr Pepper®
10 intended to modify or eliminate the ROFs, they would not have undertaken these substantial
11 expenses, debts, and obligations.

12 51. Because of the Franchisee Restaurant Owners' assent to the SDA, reasonable
13 reliance on the promise of payment of the ROFs, and their resulting change in position, the
14 Franchisee Restaurant Owners are intended beneficiaries under the SDA and BKC, and Dr
15 Pepper® may not, without the Franchisee Restaurant Owners' consent, amend the SDA to
16 divest the Franchisee Restaurant Owners of their rights under the SDA, including their right
17 to receive the ROFs.

18 **BKC AND DR PEPPER® ANNOUNCE THEIR INTENTION TO DIVEST THE FRANCHISEE**
19 **RESTAURANT OWNERS OF THE ROFS**

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

24 53. According to BKC's calculations, the amount of ROFs it intends to take away
25 from the Franchisee Restaurant Owners and appropriate to itself totals approximately \$5
26 million in 2010, increasing to almost \$10 million in 2012 and beyond.

27 54. BKC claims that it intends to use the appropriated ROFs to increase national
28 advertising. The Franchisee Restaurant Owners already contribute to national advertising by

1 paying, pursuant to the terms of their individual Franchise Agreements with BKC, a
2 percentage of their sales to BKC. Indeed, this obligation is one that most states require
3 franchisors such as BKC to disclose to franchisees in advance of entering into any agreement
4 and upon the occurrence of any material change in that obligation. BKC has never disclosed
5 to the Franchisee Restaurant Owners an intention to modify their Franchise Agreements to
6 increase the amount the Franchisee Restaurant Owners must pay to BKC to contribute to
7 national advertising.

8 55. BKC has represented to the Franchisee Restaurant Owners that Dr Pepper®
9 agrees to and supports the proposed divestiture of the Franchisee Restaurant Owners' ROFs.

10 **CLAIM FOR RELIEF**

11 **(DECLARATORY JUDGMENT)**

12 56. The NFA re-alleges and incorporates paragraphs 1 through 51, above.

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

17 58. Certain disputes have arisen between the NFA, on behalf of the Franchisee
18 Restaurant Owners, on the one hand, and BKC and Dr Pepper®, on the other, arising out of
19 and relating to the SDA.

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

26 60. The NFA contends that the Franchisee Restaurant Owners are intended third-
27 party beneficiaries of the SDA, particularly with respect to the obligation of Dr Pepper® to
28 pay them ROFs under the terms of the SDA. The NFA is informed and believes, and on that

1 basis alleges, that BKC and Dr Pepper® contend that the Franchisee Restaurant Owners are
2 not intended third-party beneficiaries of the SDA.

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

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

18 63. The NFA accordingly desires a judicial declaration that:

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

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

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

27 64. A judicial declaration is necessary and appropriate at this time under the
28 circumstances so that the parties to this action may ascertain their rights and duties under the

1 SDA. Given BKC's announcement referenced above, the facts have sufficiently crystallized
2 to permit an intelligent and useful decision to be made, and the issues are fit for a judicial
3 determination.

4 **PRAYER**

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

- 7 1. For a judicial declaration that:
 - 8 a. The Franchisee Restaurant Owners are intended third-party beneficiaries
 - 9 under the SDA including, particularly, the obligation of Dr Pepper® to pay ROFs to the
 - 10 Franchisee Restaurant Owners in accordance with the terms of the SDA;
 - 11 b. BKC and Dr Pepper® may not amend or terminate the SDA to divest the
 - 12 Franchisee Restaurant Owners of their rights under the SDA, including their right to payment
 - 13 of the ROFs, without the Franchisee Restaurant Owners' consent; and
 - 14 c. Dr Pepper® is legally obligated to continue paying the ROFs to the
 - 15 Franchisee Restaurant Owners in the manner and amount prescribed by the SDA.
- 16 2. For costs.
- 17 3. For such other and further relief as the Court deems just and proper.

18 DATED: May 4, 2009

SOLOMON WARD SEIDENWURM & SMITH, LLP

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20 By: 
 21 NORMAN L. SMITH
 22 PAUL A. REYNOLDS
 23 TANYA M. SCHIERLING
 24 Attorneys for Plaintiff
 25 NATIONAL FRANCHISEE ASSOCIATION

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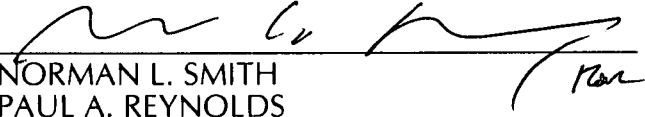
JURY DEMAND

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

DEFENDANTS

BURGER KING CORPORATION, a Florida corporation; and DR. PEPPER SNAPPLE GROUP, INC., a Delaware corporation, f/k/a DR PEPPER/SEVEN UP, INC.

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

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY) COURT NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known) BY: DEPUTY

(c) Attorney's (Firm Name, Address, and Telephone Number)

Norman L. Smith, [SBN 106344] SOLOMON WARD SEIDENWURM & SMITH, LLP 401 B Street, Suite 1200 San Diego, CA 92101 (619) 231-0303

'09 CV 940 JAH JMA

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

- 1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
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)

- Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
Incorporated or Principal Place of Business In This State
Incorporated and Principal Place of Business In Another State
Foreign Nation

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

Table with columns: CONTRACT, REAL PROPERTY, TORTS (PERSONAL INJURY, CIVIL RIGHTS, PRISONER PETITIONS), FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN

- 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 # 000377 AMOUNT 350. APPLYING IFP JUDGE MAG. JUDGE

Court Name: USDC California Southern
Division: 3
Receipt Number: CAS000377
Cashier ID: sramirez
Transaction Date: 05/04/2009
Payer Name: NATIONWIDE LEGAL, INC

CIVIL FILING FEE

For: NATIONAL FRANCHISEE V. BURGER
Case/Party: D-CAS-3-09-CV-000940-001
Amount: \$350.00

CHECK

Check/Money Order Num: 107603
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.