

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

YASMIN EXCEVARRIA and JOETTE PHOENIX  
on behalf of themselves, all others similarly  
situated, and the general public,

Plaintiffs,

v.

DR PEPPER SNAPPLE GROUP INC., DR  
PEPPER/SEVEN UP, INC.

Defendant.

Case No.: 17-cv-7957-GBD

**PLAINTIFF'S NOTICE OF APPEAL**

Judge: Hon. George B. Daniels

TO THE COURT, ALL PARTIES, AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE THAT, Plaintiffs Yasmin Excevarria and Joette Phoenix hereby appeal to the United States Court of Appeals for the Second Circuit, the Court's April 18, 2018, Order granting the Defendant's motion to dismiss the Plaintiffs' Complaint (Dkt. 54) and the Court's subsequent May 15, 2018, Order Denying Plaintiff's motion for leave to amend the Complaint with the Proposed First Amended Complaint (Dkt. No. 59).

A service list for the appeal is set forth below.

Dated: May 15, 2018

/s/ Abe Melamed

**DEREK SMITH LAW GROUP, PLLC**

ABRAHAM Z. MELAMED (AM1520)

*Abe@dereksmithlaw.com*

DEREK T. SMITH (DS1747)

*dtslaws@msn.com*

30 Broad Street, 35<sup>th</sup> Floor

New York, New York 10004

Phone: (212) 587-0760

**THE LAW OFFICE OF JACK FITZGERALD, PC**

JACK FITZGERALD (JF3831)

*jack@jackfitzgeraldlaw.com*

TREVOR M. FLYNN (*phv*)

*trevor@jackfitzgeraldlaw.com*  
MELANIE PERSINGER (*phv*)  
*melanie@jackfitzgeraldlaw.com*  
Hillcrest Professional Building  
3636 Fourth Avenue, Suite 202  
San Diego, California 92103  
Phone: (619) 692-3840  
Fax: (619) 362-9555

**SACKS WESTON DIAMOND, LLC**

ANDREW SACKS (*phv*)  
*asacks@sackslaw.com*  
JOHN WESTON (*phv*)  
*jweston@sackslaw.com*  
1845 Walnut Street, Suite 1600  
Philadelphia, Pennsylvania 19103  
Phone: (215) 764-3008

***Counsel for Plaintiffs and the Proposed Class***

**SERVICE LIST FOR APPEAL**

**Counsel for Plaintiffs**

**DEREK SMITH LAW GROUP, PLLC**

ABRAHAM Z. MELAMED (AM1520)

*Abe@dereksmithlaw.com*

DEREK T. SMITH (DS1747)

*dtslaws@msn.com*

30 Broad Street, 35<sup>th</sup> Floor

New York, New York 10004

Phone: (212) 587-0760

**THE LAW OFFICE OF JACK FITZGERALD, PC**

JACK FITZGERALD (JF3831)

*jack@jackfitzgeraldlaw.com*

TREVOR M. FLYNN (*phv*)

*trevor@jackfitzgeraldlaw.com*

MELANIE PERSINGER (*phv*)

*melanie@jackfitzgeraldlaw.com*

Hillcrest Professional Building

3636 Fourth Avenue, Suite 202

San Diego, California 92103

Phone: (619) 692-3840

Fax: (619) 362-9555

**SACKS WESTON DIAMOND, LLC**

ANDREW SACKS (*phv*)

*asacks@sackslaw.com*

JOHN WESTON (*phv*)

*jweston@sackslaw.com*

1845 Walnut Street, Suite 1600

Philadelphia, Pennsylvania 19103

Phone: (215) 764-3008

**Counsel for Defendant**

**BAKER BOTTS L.L.P.**

Douglas W. Henkin

*douglas.henkin@bakerbotts.com*

30 Rockefeller Center Plaza

New York, NY 10112

Telephone: (212) 408-2520

Facsimile: (212) 259-2520

Van H. Beckwith (*pro hac vice*)

*van.beckwith@bakerbotts.com*

Monica R. Hughes (*pro hac vice to be filed*)

monica.hughes@bakerbotts.com  
Jessica E. Underwood (pro hac vice)  
jessica.underwood@bakerbotts.com  
2001 Ross Avenue, Suite 600  
Dallas, TX 75201  
Telephone: (214) 953-6505  
Facsimile: (214) 661-4505

Ariel D. House (pro hac vice)  
ariel.house@bakerbotts.com  
101 California Street, Suite 3600  
San Francisco, California 94111  
Telephone: (415) 291-6200  
Facsimile: (415) 291-6300

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

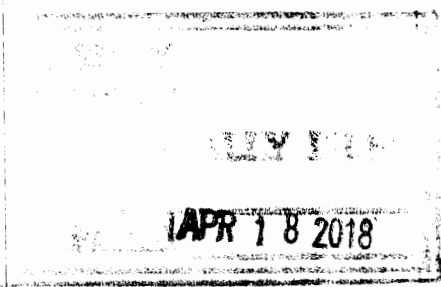
YASMIN EXCEVARRIA, JOETTE PHOENIX, *on  
behalf of themselves, all others similarly situated, and  
the general public,*

Plaintiffs,

-against-

DR. PEPPER SNAPPLE GROUP INC.,  
DR. PEPPER/SEVEN UP, INC.,

Defendants.



ORDER


17 Civ. 7957 (GBD)

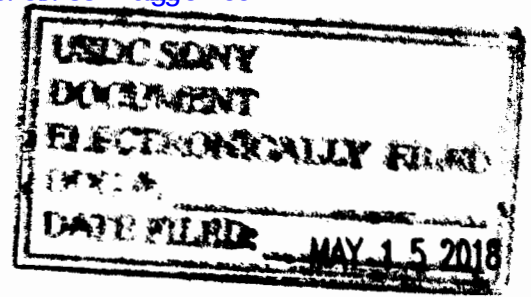
GEORGE B. DANIELS, United States District Judge:

For the reasons articulated by the Court at the April 18, 2018 oral argument, and consistent with the decisions in *Becerra v. Coca-Cola Company*, No. 17 Civ. 5916 (WHA) (N.D. Cal. Feb. 27, 2018), and *Becerra v. Dr. Pepper/Seven Up, Inc.*, No. 17 Civ. 5921 (WHO) (N.D. Cal. Mar. 30, 2018), Defendants' motion to transfer this action to the United States District Court for the Eastern District of Texas (ECF No. 32) is DENIED. Defendants' motion to dismiss Plaintiffs' complaint (ECF No. 34) is GRANTED. Plaintiffs may seek leave to amend the complaint by May 18, 2018. The Clerk of Court is directed to close the motions at ECF Nos. 32 and 34, accordingly.

Dated: New York, New York  
April 18, 2018

SO ORDERED.

  
\_\_\_\_\_  
GEORGE B. DANIELS  
United States District Judge



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

----- X  
YASMIN EXCEVARRIA AND JOETTE PHOENIX, :  
*on behalf of themselves, all others similarly situated,* :  
*and the general public,* :

Plaintiffs, :

-against- :

DR. PEPPER SNAPPLE GROUP, INC. AND DR. :  
PEPPER/SEVEN UP, INC., :

Defendants. :

----- X  
GEORGE B. DANIELS, United States District Judge:

Plaintiffs' motion for leave to amend the Complaint with the proposed First Amended  
Complaint, (ECF No. 55), is DENIED as futile.

Dated: New York, New York  
May 15, 2018

SO ORDERED.

*George B. Daniels*  
\_\_\_\_\_  
GEORGE B. DANIELS  
United States District Judge

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

YASMIN EXCEVARRIA and JOETTE PHOENIX  
on behalf of themselves, all others similarly  
situated, and the general public,

Plaintiffs,

v.

DR PEPPER SNAPPLE GROUP INC., DR  
PEPPER/SEVEN UP, INC.

Defendant.

Case No.: 17-cv-7957-GBD

**EXHIBIT C – SEVICE LIST**

Judge: Hon. George B. Daniels

**SERVICE LIST FOR APPEAL**

**Counsel for Plaintiffs**

**DEREK SMITH LAW GROUP, PLLC**

ABRAHAM Z. MELAMED (AM1520)

*Abe@dereksmithlaw.com*

DEREK T. SMITH (DS1747)

*dtslaws@msn.com*

30 Broad Street, 35<sup>th</sup> Floor

New York, New York 10004

Phone: (212) 587-0760

**THE LAW OFFICE OF JACK FITZGERALD, PC**

JACK FITZGERALD (JF3831)

*jack@jackfitzgeraldlaw.com*

TREVOR M. FLYNN (*phv*)

*trevor@jackfitzgeraldlaw.com*

MELANIE PERSINGER (*phv*)

*melanie@jackfitzgeraldlaw.com*

Hillcrest Professional Building

3636 Fourth Avenue, Suite 202

San Diego, California 92103

Phone: (619) 692-3840

Fax: (619) 362-9555

**SACKS WESTON DIAMOND, LLC**

ANDREW SACKS (*phv*)

*asacks@sackslaw.com*

JOHN WESTON (*phv*)

*jweston@sackslaw.com*

1845 Walnut Street, Suite 1600  
Philadelphia, Pennsylvania 19103  
Phone: (215) 764-3008

**Counsel for Defendant**

**BAKER BOTTS L.L.P.**

Douglas W. Henkin  
douglas.henkin@bakerbotts.com  
30 Rockefeller Center Plaza  
New York, NY 10112  
Telephone: (212) 408-2520  
Facsimile: (212) 259-2520

Van H. Beckwith (pro hac vice)  
van.beckwith@bakerbotts.com  
Monica R. Hughes (pro hac vice to be filed)  
monica.hughes@bakerbotts.com  
Jessica E. Underwood (pro hac vice)  
jessica.underwood@bakerbotts.com  
2001 Ross Avenue, Suite 600  
Dallas, TX 75201  
Telephone: (214) 953-6505  
Facsimile: (214) 661-4505

Ariel D. House (pro hac vice)  
ariel.house@bakerbotts.com  
101 California Street, Suite 3600  
San Francisco, California 94111  
Telephone: (415) 291-6200  
Facsimile: (415) 291-6300