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~~FILED~~
~~ENDORSED~~
05 MAY 26 PM 2:13
LEGAL PROCESS #2

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO
UNLIMITED CIVIL JURISDICTION**

WHITNEY R. LEEMAN, Ph.D.

Plaintiff,

v.

BURGER KING CORPORATION; CKE
RESTAURANTS, INC.

Defendants.

Case No.

06AS02168

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

(Cal. Health & Safety Code §25249.6 et seq.)

1 NATURE OF THE ACTION

2 1. This Complaint is a representative action brought by plaintiff WHITNEY R.
3 LEEMAN, Ph.D. in the public interest of the citizens of the State of California, to enforce the
4 People’s right to be informed of the presence of numerous carcinogenic chemicals commonly
5 known as polycyclic aromatic hydrocarbons (commonly known as PAHs) found in certain flame-
6 broiled hamburgers sold by defendants in California.

7 2. By this Complaint, plaintiff seeks to remedy defendants’ continuing failure to warn
8 California citizens about their exposure to various cancer causing chemicals present in and/or on
9 certain flame-broiled hamburgers that defendants sell to consumers throughout the state of
10 California. These chemicals include: benz[a]anthracene, benzo[a]pyrene, benzo[b]fluoranthene,
11 benzo[k]fluoranthene, indeno[1,2,3-cd]pyrene, chrysene, and naphthalene (commonly known as and
12 hereinafter collectively referred to as “PAHs”).

13 3. PAHs are products of incomplete combustion and are normally found in smoke and
14 soot such as auto or diesel exhaust. High levels of PAHs are commonly found in barbeque smoke,
15 including smoke produced when hamburger is flame-broiled.

16 4. Under California’s Safe Drinking Water and Toxic Enforcement Act of 1986,
17 California Health & Safety Code §25249.6 *et seq.* (hereinafter “Proposition 65”), “No person in the
18 course of doing business shall knowingly and intentionally expose any individual to a chemical
19 known to the state to cause cancer or reproductive toxicity without first giving clear and reasonable
20 warning to such individual...” (*Cal. Health & Safety Code §25249.6.*)

21 5. Each of the PAHs are chemicals known to the State of California to cause cancer and
22 are listed as such pursuant to California Health & Safety Code §25249.8(a).

23 6. Each of the defendants sell flame-broiled hamburgers known as the “Triple
24 Whopper” or the “Double Six Dollar Burger” which contain excessive levels of PAHs. The “Triple
25 Whopper” and the “Double Six Dollar Burger” shall hereinafter collectively be referred to as the
26 “LARGE FLAME-BROILED BURGERS.”

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1 7. The PAHs in and/or on the LARGE FLAME-BROILED BURGERS sold by
2 defendants largely, if not completely, result from the burgers exposure to smoke contaminated with
3 PAHs.

4 8. Although some toxic chemicals (e.g., acrylamide or heterocyclic amines more
5 commonly known as HCAs) found in certain foods are produced when those foods are subjected to
6 the high temperatures needed to cook such foods, the PAHs found in and/or on the LARGE
7 FLAME-BROILED BURGERS sold by defendants are largely, if not completely, produced when fat
8 drips onto the hot flame-broiler, creating smoke contaminated with PAHs. Contaminated smoke
9 may also be produced when flames come into contact with the fat on the surface of the LARGE
10 FLAME-BROILED BURGERS. The PAHs are deposited onto the surfaces of the LARGE
11 FLAME-BROILED BURGERS when the contaminated smoke comes into direct contact with the
12 burgers.

13 9. There are methods available by which ground beef can be flame-broiled without
14 being exposed to excessive amounts of smoke contaminated with carcinogenic PAHs. Such
15 methods include, but are not limited to: using metal shields that would prevent fat drippings from
16 coming into contact with heated surfaces which would eliminate a substantial amount of the
17 contaminated smoke; using an exhaust system that would prevent excessive amounts of
18 contaminated smoke from rising and coming into contact with the beef; and/or only using heat
19 sources situated above the burger to prevent fat drippings from coming into contact with a hot
20 broiler, eliminating excessive amounts contaminated smoke.

21 10. Defendants' failure to warn consumers about their exposure to PAHs in conjunction
22 with defendants' sale of the LARGE FLAME-BROILED BURGERS is a violation of Proposition
23 65 and subjects defendants to enjoinder of such conduct as well as civil penalties for each such
24 violation.

25 11. For defendants' violations of Proposition 65, plaintiff seeks preliminary and
26 permanent injunctive relief to compel defendants to provide purchasers or users of the LARGE
27 FLAME-BROILED BURGERS with the required warning regarding the health hazards of PAHs.
28 (*Cal. Health & Safety Code §25249.7(a).*)

1 **VENUE AND JURISDICTION**

2 19. Venue is proper in the Sacramento County Superior Court, pursuant to Code of Civil
3 Procedure §§394, 395, 395.5 because this Court is a court of competent jurisdiction, because one or
4 more instances of wrongful conduct occurred, and continues to occur, in the County of Sacramento
5 and/or because DEFENDANTS conducted, and continue to conduct, business in Sacramento
6 County with respect to the LARGE FLAME-BROILED BURGERS.

7 20. The California Superior Court has jurisdiction over this action pursuant to California
8 Constitution Article VI, §10, which grants the Superior Court “original jurisdiction in all causes
9 except those given by statute to other trial courts.” The statute under which this action is brought
10 does not specify any other basis of subject matter jurisdiction.

11 21. The California Superior Court has jurisdiction over DEFENDANTS based on
12 plaintiff’s information and good faith belief that each of the DEFENDANTS is a person, firm,
13 corporation or association that either is a citizen of the State of California, has sufficient minimum
14 contacts in the State of California, or otherwise purposefully avails itself of the California market.
15 DEFENDANTS’ purposeful availment renders the exercise of personal jurisdiction by California
16 courts consistent with traditional notions of fair play and substantial justice.

17 **FIRST CAUSE OF ACTION**
18 **(Violation of Proposition 65)**

19 22. Plaintiff realleges and incorporates by reference, as is fully set forth herein,
20 paragraphs 1 through 21, inclusive.

21 23. The citizens of the State of California have expressly stated in the Safe Drinking
22 Water and Toxic Enforcement Act of 1986, California Health & Safety Code §25249.6, *et seq.*
23 (“Proposition 65”) that they must be informed about their exposure to chemicals that cause cancer,
24 birth defects and other reproductive harm. (*Cal. Health & Safety Code §25249.6.*)

25 24. Proposition 65 states, “No person in the course of doing business shall knowingly
26 and intentionally expose any individual to a chemical known to the state to cause cancer or
27 reproductive toxicity without first giving clear and reasonable warning to such individual....” (*Id.*)

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1 25. On July 1, 1987, the State of California listed benz[a]anthracene, benzo[a]pyrene,
2 benzo[b]fluoranthene, and benzo[k]fluoranthene as chemicals known to the state to cause cancer.

3 26. On January 1, 1988, the State of California listed indeno[1,2,3-cd]pyrene as a
4 chemical known to the state to cause cancer.

5 27. On January 1, 1990, the State of California listed chrysene as a chemical known to
6 the state to cause cancer.

7 28. On April 19, 2002, the State of California listed naphthalene as a chemical known to
8 the state to cause cancer.

9 29. The PAHs became subject to the Proposition 65 warning requirement one-year after
10 being listed as chemicals known to the State of California to cause cancer. (*Cal. Health & Safety*
11 *Code §25249.10(b).*)

12 30. On February 14, 2006, a 60-Day Notice of Violation, together with the requisite
13 certificate of merit, was provided to DEFENDANTS and various public enforcement agencies
14 stating that as a result of DEFENDANTS' sale of the LARGE FLAME-BROILED BURGERS,
15 purchasers and users in the State of California were being exposed to PAHs through ingestion
16 resulting from the reasonably foreseeable use of the LARGE FLAME-BROILED BURGERS
17 without the individual purchasers and users of the burgers having first been provided with a "clear
18 and reasonable warning" regarding such toxic exposures.

19 31. DEFENDANTS have engaged in the manufacture, distribution and/or offering of the
20 LARGE FLAME-BROILED BURGERS containing PAHs for sale or use in violation of California
21 Health & Safety Code §25249.6 and DEFENDANTS' manufacture, distribution and/or offering of
22 the LARGE FLAME-BROILED BURGERS containing PAHs for sale or use in violation of
23 California Health & Safety Code §25249.6 has continued to occur beyond DEFENDANTS' receipt
24 of plaintiff's 60-Day Notice of Violation. Plaintiff further alleges and believes that such violations
25 will continue to occur into the future.

26 32. After receipt of the claims asserted in the 60-Day Notice of Violation, the appropriate
27 public enforcement agencies have failed to commence and diligently prosecute a cause of action
28 against DEFENDANTS under Proposition 65.

1 33. The LARGE FLAME-BROILED BURGERS manufactured, distributed, and/or
2 offered for sale or use in California by defendant BURGER KING contained the PAHs listed in
3 paragraph two of this complaint above the allowable state limits.

4 34. The LARGE FLAME-BROILED BURGERS manufactured, distributed, and/or
5 offered for sale or use in California by defendant CKE contained the PAHs listed in paragraph two
6 of this complaint, with the exception of chrysene and naphthalene, above the allowable state limits.

7 35. DEFENDANTS knew or should have known that the LARGE FLAME-BROILED
8 BURGERS manufactured, distributed, and/or offered for sale or use by DEFENDANTS in
9 California contained PAHs.

10 36. PAHs were present in and/or on the LARGE FLAME-BROILED BURGERS in such
11 a way as to expose individuals to PAHs through ingestion during the reasonably foreseeable use of
12 the LARGE FLAME-BROILED BURGERS.

13 37. The normal and reasonably foreseeable use of the LARGE FLAME-BROILED
14 BURGERS caused and continues to cause consumer exposures to PAHs, as consumer exposure is
15 defined by 22 CCR §12601(b).

16 38. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of
17 the LARGE FLAME-BROILED BURGERS would expose individuals to PAHs through ingestion.

18 39. DEFENDANTS, and each of them, intended that such exposures to PAHs from the
19 reasonably foreseeable use of the LARGE FLAME-BROILED BURGERS would occur by their
20 deliberate, non-accidental participation in the manufacture, distribution and/or offer for sale or use
21 of LARGE FLAME-BROILED BURGERS to individuals in the State of California.

22 40. DEFENDANTS failed to provide a “clear and reasonable warning” to those
23 consumers or other individuals in the State of California who were or who could become exposed to
24 PAHs through ingestion during the reasonably foreseeable use of the LARGE FLAME-BROILED
25 BURGERS.

26 41. DEFENDANTS allowed fat to drip onto the hot flame-broiler and/or allowed flames
27 to come into contact with fat on the surface of the LARGE FLAME-BROILED BURGERS creating
28 smoke contaminated with PAHs.

1 associated with exposure to certain toxins.

2 3. That the Court grant plaintiff her reasonable attorney's fees and costs of suit; and

3 4. That the Court grant such other and further relief as may be just and proper.

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Dated: May 26, 2006

Respectfully submitted,
HIRST & CHANLER LLP



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