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LEGAL PROCESS #3

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

12
13 WHITNEY R. LEEMAN, Ph.D.

14 Plaintiff,

15 v.

16 APPLEBEE'S INTERNATIONAL, INC.;
17 and DOES 1 through 150, inclusive,

18 Defendants.

Case No.

07AS01823

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

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

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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 known as
5 polycyclic aromatic hydrocarbons found in certain flame-broiled hamburgers sold by defendants in
6 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 sold by defendants to consumers throughout the state of
10 California. These chemicals include: benz[a]anthracene, benzo[a]pyrene, benzo[b]fluoranthene,
11 benzo[k]fluoranthene and indeno[1,2,3-cd]pyrene (commonly known as and hereinafter collectively
12 referred to as “PAHs”).

13 3. PAHs are products of incomplete combustion at high temperatures. High levels of
14 PAHs are commonly found in soot and smoke, including smoke produced when meat is flame-
15 broiled on restaurant broilers.

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 is a chemical known to the State of California to cause cancer and
22 is listed as such pursuant to California Health & Safety Code §25249.8(a).

23 6. Defendants sell flame-broiled hamburgers, including the “100% Angus Burger,”
24 which contain excessive levels of PAHs. The “100% Angus Burger,” and all other flame-cooked
25 ground beef products, shall hereinafter be referred to as the “Flame Cooked Ground Beef Products.”

26 7. The PAHs in and/or on the Flame Cooked Ground Beef Products sold by defendants
27 primarily result from the burgers’ exposure to smoke contaminated with PAHs – specifically, when
28 fat drips onto a hot flame-broiler, it thereby creates smoke contaminated with PAHs. PAHs may

1 also be produced when flames come into contact with the fat on the surface of the Flame Cooked
2 Ground Beef Products. Either way, PAHs are deposited onto the surfaces of the Flame Cooked
3 Ground Beef Products and remain there through consumption by consumers.

4 8. There are methods available by which ground beef can be flame-broiled without
5 being exposed to excessive amounts of smoke contaminated with carcinogenic PAHs, including
6 methods designed to minimize the amount of fat reaching the flame and the amount of smoke
7 reaching the burgers.

8 9. Defendants' failure to warn consumers about their exposure to PAHs in conjunction
9 with defendants' sale of the Flame Cooked Ground Beef Products is a violation of Proposition 65
10 and subjects defendants to enjoinder of such conduct as well as civil penalties for each such
11 violation.

12 10. For defendants' violations of Proposition 65, plaintiff seeks preliminary and
13 permanent injunctive relief to compel defendant to provide purchasers or users of the Flame Cooked
14 Ground Beef Products with the required warning regarding the health hazards of PAHs, or to reduce
15 the level of generated PAHs to a level deemed safe by the State of California. (*Cal. Health &*
16 *Safety Code §25249.7(a).*)

17 11. Plaintiff also seeks civil penalties against defendants for its violations of Proposition
18 65, as provided for by California Health & Safety Code §25249.7(b).

19 **PARTIES**

20 12. Plaintiff WHITNEY R. LEEMAN, Ph.D. ("PLAINTIFF") is a citizen of the State of
21 California currently residing in Sacramento County who is dedicated to protecting the health of
22 California citizens through the elimination or reduction of toxic exposures from certain food
23 products, and brings this action in the public interest pursuant to California Health & Safety Code
24 §25249.7.

25 13. Defendant APPLEBEE'S INTERNATIONAL, INC. ("APPLEBEE'S") either
26 directly or through its subsidiaries, franchisees, and/or licensees, operates approximately 112
27 Applebee's restaurants located throughout California, with a significant number located in
28 Sacramento County, and is a person in the course of doing business within the meaning of

1 California Health & Safety Code §25249.11. These restaurants operate under names such as
2 “Applebee’s” and “Applebee's Neighborhood Grill & Bar.”

3 14. APPLEBEE’S has the right to, and, in fact, does, exercise control over the means
4 and manner of the operations of its franchisees’ Applebee’s restaurants, as indicated by, *inter alia*,
5 the franchise agreements between APPLEBEE’S and its franchisees and the uniformity evident
6 across all such restaurants. As a franchisor exercising such control over its franchisees operations,
7 APPLEBEE’S is liable for their actions.

8 15. APPLEBEE’S either directly or through its subsidiaries, franchisees, and/or
9 licensees manufactures, distributes and/or offer Flame Cooked Ground Beef Products for sale or use
10 in the State of California, or implies by its conduct that it manufactures, distributes and/or offers the
11 Flame Cooked Ground Beef Products for sale or use in the State of California.

12 16. Defendants DOES 1 through 150 are persons within the course of doing business
13 within the meaning of California Health & Safety Code §25249.11, and either directly or through
14 their subsidiaries, franchisees, and/or licensees manufactures, distributes and/or offers Flame
15 Cooked Ground Beef Products for sale or use in the State of California without offering a “clear and
16 reasonable warning.” At this time, the true names of Defendants DOES 1 through 150, inclusive,
17 are unknown to plaintiff, who therefore sues said defendants by their fictitious name pursuant to
18 Code of Civil Procedure §474. Plaintiff is informed and believes, and on that basis alleges, that
19 each of the fictitiously named defendants is responsible for the acts and occurrences herein alleged.
20 When ascertained, their true names shall be reflected in an amended complaint.

21 **VENUE AND JURISDICTION**

22 17. Venue is proper in the Sacramento County Superior Court, pursuant to Code of Civil
23 Procedure §§ 394, 395, 395.5, because this Court is a court of competent jurisdiction, because one
24 or more instances of wrongful conduct occurred, and continues to occur, in the County of
25 Sacramento, and/or because APPLEBEE’S conducted, and continues to conduct, business in
26 Sacramento County with respect to the Flame Cooked Ground Beef Products.

27 18. The California Superior Court has jurisdiction over this action pursuant to California
28 Constitution Article VI, §10, which grants the Superior Court “original jurisdiction in all causes

1 except those given by statute to other trial courts.” The statute under which this action is brought
2 does not specify any other basis of subject matter jurisdiction.

3 19. The California Superior Court has jurisdiction over APPLEBEE’S based on
4 plaintiff’s information and good faith belief that APPLEBEE’S is a person, firm, corporation or
5 association that either is a citizen of the State of California, has sufficient minimum contacts in the
6 State of California, or otherwise purposefully avails itself of the California market. APPLEBEE’S
7 purposeful availment renders the exercise of personal jurisdiction by California courts consistent
8 with traditional notions of fair play and substantial justice.

9
10 **FIRST CAUSE OF ACTION**
(Violation of Proposition 65)

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

13 21. The citizens of the State of California have expressly stated in Proposition 65 that
14 they must be informed about their exposure to chemicals that cause cancer, birth defects and other
15 reproductive harm. (*Cal. Health & Safety Code §25249.6.*)

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

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

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

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

26 26. On February 14, 2006, a 60-Day Notice of Violation, together with the requisite
27 certificate of merit, was provided to APPLEBEE’S and various public enforcement agencies stating
28 that as a result of APPLEBEE’S sale of the Flame Cooked Ground Beef Products, purchasers and

1 that as a result of APPLEBEE'S sale of the Flame Cooked Ground Beef Products, purchasers and
2 users in the State of California were being exposed to PAHs through ingestion resulting from the
3 reasonably foreseeable use of the Flame Cooked Ground Beef Products without first providing
4 purchasers and/or consumers of these burgers with a "clear and reasonable warning" regarding such
5 toxic exposures.

6 27. APPLEBEE'S has engaged in the manufacture, distribution and/or offering of the
7 Flame Cooked Ground Beef Products containing PAHs for sale or use in violation of California
8 Health & Safety Code §25249.6. Moreover, APPLEBEE'S manufacture, distribution and/or
9 offering of the Flame Cooked Ground Beef Products containing PAHs for sale or use in violation of
10 California Health & Safety Code §25249.6 has continued to occur beyond its receipt of plaintiff's
11 60-Day Notice of Violation. Plaintiff further alleges and believes that such violations will continue
12 to occur into the future.

13 28. After receipt of the claims asserted in the 60-Day Notice of Violation, the
14 appropriate public enforcement agencies have failed to commence and diligently prosecute a cause
15 of action against APPLEBEE'S under Proposition 65.

16 29. APPLEBEE'S has allowed fat to drip onto the hot flame-broiler, thereby causing
17 PAH-contaminated smoke to contact the Flame Cooked Ground Beef Products, and/or has allowed
18 flames to come into contact with fat on the surface of the Flame Cooked Ground Beef Products,
19 thereby creating PAHs which collected in or on these products.

20 30. APPLEBEE'S has failed to utilize sufficient means, such as reducing the amount of
21 contaminated smoke coming into contact with the Flame Cooked Ground Beef Products, to
22 decrease the amount of PAHs in or on the Flame Cooked Ground Beef Products, so as to exempt
23 APPLEBEE'S from having to provide a clear and reasonable warning regarding the risk of cancer
24 associated with exposure to PAHs.

25 31. PAHs have been present in and/or on the Flame Cooked Ground Beef Products in
26 such a way as to expose individuals to PAHs through ingestion during the reasonably foreseeable
27 use of the Flame Cooked Ground Beef Products.

28 32. The normal and reasonably foreseeable use of the Flame Cooked Ground Beef

1 Products caused and continues to cause consumer exposures to PAHs, as consumer exposure is
2 defined by 22 CCR §12601(b).

3 33.. APPLEBEE’S knew that the normal and reasonably foreseeable use of the Flame
4 Cooked Ground Beef Products would expose individuals to PAHs through ingestion.

5 34. APPLEBEE’S intended that such exposures to PAHs from the reasonably
6 foreseeable use of the Flame Cooked Ground Beef Products would occur by its preparation,
7 cooking and/or offering for sale or use of Flame Cooked Ground Beef Products to individuals in the
8 State of California, as part of its normal course of business.

9 35. The Flame Cooked Ground Beef Products manufactured, distributed, and/or offered
10 for sale or use in California by APPLEBEE’S contained PAHs in levels requiring a warning, in that
11 PAHs are found in quantities above the allowable state limits where such limits have been set
12 pursuant to Health & Safety Code §25249.10(c), or in detectable quantities requiring a warning
13 pursuant to Health & Safety Code §25249.6 in the cases of listed chemicals without limits set
14 pursuant to §25249.10(c).

15 36. APPLEBEE’S failed to provide consistently, if at all, “clear and reasonable warning”
16 to consumers or other individuals in the State of California who were or who could become exposed
17 to PAHs through ingestion during the reasonably foreseeable use of the Flame Cooked Ground Beef
18 Products, as is required by law.

19 37. Contrary to the express policy and statutory prohibition of Proposition 65, enacted
20 directly by California voters, those individuals exposed to PAHs through ingestion resulting from
21 the reasonably foreseeable use of the Flame Cooked Ground Beef Products sold by APPLEBEE’S
22 without “clear and reasonable warning” have suffered, and continue to suffer, irreparable harm, for
23 which they have no plain, speedy or adequate remedy at law.

24 38. As a consequence of the above-described acts, APPLEBEE’S is liable for a
25 maximum civil penalty of \$2,500 per day for each violation pursuant to California Health & Safety
26 Code §25249.7(b).

27 39. As a consequence of the above-described acts, California Health & Safety Code
28 §25249.7(a) specifically authorizes the Court to grant injunctive relief against APPLEBEE’S.

1 **PRAYER FOR RELIEF**

2 Wherefore, plaintiff prays for judgment against DEFENDANTS as follows:

3 1. That the Court, pursuant to California Health & Safety Code §25249.7(b), assess
4 civil penalties against DEFENDANTS, in the amount of \$2,500 per day for each violation alleged
5 herein;

6 2. That the Court, pursuant to California Health & Safety Code §25249.7(a),
7 preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing or offering
8 the Flame Cooked Ground Beef Products for sale or use in California, without providing “clear and
9 reasonable warnings,” as defined by 22 CCR §12601, as to the harms associated with exposure to
10 certain toxins;

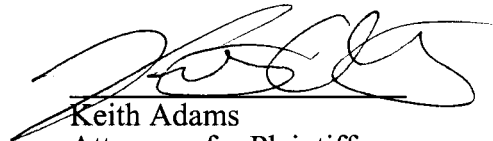
11 3. That the Court grant plaintiff her reasonable attorney’s fees and costs of suit; and

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

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14 Dated: April 19, 2007

Respectfully submitted,

HIRST & CHANLER LLP

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18 Keith Adams
Attorneys for Plaintiff
19 WHITNEY R. LEEMAN, Ph.D.
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