

1 RICHARDS, WATSON & GERSHON
A Professional Corporation
2 NORMAN A. DUPONT (085008)
MATTHEW E. COHEN (238161)
3 355 South Grand Avenue, 40th Floor
Los Angeles, CA 90071-3101
4 Telephone: (213) 626-8484
Facsimile: (213) 626-0078

5 DANIEL KINBURN (Pro Hac Vice pending)
6 5100 Wisconsin Avenue, NW
Washington, DC 20016
7 Telephone: (202) 686-2210
Facsimile: (202) 686-2215

8 Attorneys for Plaintiff,
9 PHYSICIANS COMMITTEE
FOR RESPONSIBLE MEDICINE

10
11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **COUNTY OF LOS ANGELES – CENTRAL DISTRICT**

13
14 PHYSICIANS COMMITTEE FOR
RESPONSIBLE MEDICINE,

15 Plaintiff,

16 vs.

17 McDONALD'S CORPORATION; BURGER
18 KING CORPORATION; TGI FRIDAY'S,
INC.; CARLSON RESTAURANTS
19 WORLDWIDE, INC.; APPLEBEE'S
INTERNATIONAL, INC.; CHICK-FIL-A,
20 INC.; BRINKER INTERNATIONAL, INC.;
and OSI RESTAURANT PARTNERS, INC.;

21 Defendants.

Case No.

**COMPLAINT FOR INJUNCTIVE
RELIEF, STATUTORY CIVIL
PENALTIES AND DECLARATORY
RELIEF**

[Complex Litigation Matter]

22
23
24 **INTRODUCTION**

25 1. This Complaint seeks an injunction, statutory civil penalties and declaratory relief
26 to prevent Defendants (specifically identified below) from continuing to sell grilled chicken
27 products to consumers without clear and reasonable warnings about the carcinogenic effects of
28 those products.

1 7. Defendant CARLSON RESTAURANT WORLDWIDE, INC., is the owner of,
2 parent company of, and controls defendant TGI FRIDAY'S, INC., a Delaware corporation that is
3 authorized to transact business in the State of California. Defendant TGI FRIDAY'S, INC. is a
4 business entity that either directly or through its subsidiaries, franchisees and/or licensees
5 distributes, sells and has sold the following grilled chicken products to consumers within the
6 state of California: Cobb Salad with Grilled Chicken and Grilled Chicken Flavor Shots.

7 8. Defendant APPLEBEE'S INTERNATIONAL, INC., a Delaware corporation that
8 is authorized to transact business in California, is a business entity that either directly or through
9 its subsidiaries, franchisees and/or licensees distributes, sells and has sold the following grilled
10 chicken products to consumers at some or all of its retail establishments within the state of
11 California: Grilled Italian Chicken Caesar Salad and Honey Grilled Chicken.

12 9. Defendant CHICK-FIL-A, INC., a Delaware corporation that is authorized to
13 transact business in the State of California, is a business entity that either directly or through its
14 subsidiaries, franchisees and/or licensees distributes, sells and has sold the following grilled
15 chicken product to consumers at some or all of its retail establishments within the state of
16 California: Chargrilled Chicken Sandwich.

17 10. Defendant BRINKER INTERNATIONAL, INC., a Delaware corporation that is
18 authorized to transact business in the State of California, is the owner of CHILI'S GRILL AND
19 BAR RESTAURANT chain, a business entity that either directly or through its subsidiaries,
20 franchisees and/or licensees distributes, sells and has sold the following grilled chicken products
21 to consumers at some or all of its retail establishments within the state of California: Grilled
22 Caribbean Chicken Salad and Guiltless Chicken Platter.

23 11. Defendant OSI RESTAURANT PARTNERS, INC., a Delaware corporation, is
24 the owner of OUTBACK STEAKHOUSE OF FLORIDA, INC., a corporation that is authorized
25 to transact business in the State of California, either directly or through its subsidiaries,
26 franchisees and/or licensees distributes, sells and has sold the following grilled chicken product
27 to consumers at some or all of its retail establishments within the state of California: Chicken on
28 the Barbie.

1 **JURISDICTION AND VENUE**

2 12. This court has jurisdiction pursuant to California Constitution Article VI, Section
3 10, because this case is not a cause given by statute to other trial courts.

4 13. This court has jurisdiction over the Defendants named above because they do
5 sufficient business in California, and otherwise have sufficient minimum contacts in California
6 to render jurisdiction over them by the California courts consistent with traditional notions of fair
7 play and substantial justice.

8 14. Venue is proper pursuant to Code of Civil Procedure Section 393 because a cause
9 of action arises in the County of Los Angeles where some of the violations have occurred.
10 Venue is also proper pursuant to Code of Civil Procedure Section 395.5 in that the statutory
11 liability arises in part from sales of grilled chicken products in this County.

12 **FACTS**

13
14 15. Proposition 65 was passed by California voters in November 1986, with the
15 purpose of protecting the health and safety of California residents. The health and safety
16 warning provision of Proposition 65 provides: "No person in the course of doing business shall
17 knowingly and intentionally expose any individual to a chemical known to the state to cause
18 cancer or reproductive toxicity without first giving clear and reasonable warning to such
19 individual, except as provided in Section 25249.10."

20 16. Proposition 65 required the State to develop a list of chemicals "known to the
21 state to cause cancer or reproductive toxicity."

22 17. On October 1, 1994, the chemical 2-AMINO-1-METHYL-6-PHENYLMIDAZO
23 [4,5-b]PYRIDINE ("PhIP") was listed pursuant to the requirements of Proposition 65 as a
24 chemical known to the State of California to cause cancer.

25 18. PhIP is not a chemical that naturally occurs in food.

26 19. PhIP is created in the cooking process used by Defendants in making their grilled
27 chicken products.

28 20. PhIP is ingested by consumers who are served the grilled chicken products sold

1 by each of the Defendants at some or all of their California retail outlets.

2 21. Proposition 65 provides that a business is not required to provide a clear and
3 reasonable warning concerning a listed chemical until one year after the chemical first appears
4 on the list of Chemicals Known to the State of California to Cause Cancer or Reproductive
5 Toxicity.

6 22. The one-year grace period before food service establishments were required to
7 have clear and reasonable warning regarding the products they sold containing PhIP ended on or
8 about October 1, 1995.

9 23. Each of the Defendants has knowingly and intentionally sold grilled chicken after
10 October 1, 1995, without a clear, reasonable and adequate accompanying warning, despite the
11 awareness of each Defendant that grilled chicken contains PhIP.

12 24. Each of the Defendants has knowingly and intentionally sold grilled chicken after
13 October 1, 1995, without a clear, reasonable and adequate accompanying warning, despite
14 placement of PhIP on California's list of cancer causing chemicals.

15 25. Each of the Defendants has knowingly and intentionally sold grilled chicken after
16 October 1, 1995, without a clear, reasonable and adequate accompanying warning, despite their
17 knowledge that individuals would consume their grilled chicken and be exposed to PhIP.

18 26. Defendants knew or should have known about the 1994 placement of PhIP on the
19 Proposition 65 list of chemicals as a chemical known to the state to cause cancer.

20 27. Defendants are large, sophisticated corporations engaged in the preparation,
21 service, and sale of food. Defendants are charged with the knowledge that a reasonable review
22 of the scientific data would reveal concerning the carcinogenic effects of PhIP.

23 28. Defendants' sale of grilled chicken to the public constitutes a "consumer products
24 exposure" within the meaning of California Code of Regulations, Title 22, Section 12601(b).

25 29. Proposition 65 requires that consumer warnings be reasonably calculated to warn
26 a potential consumer, prior to exposure, of food known by the State of California to contain
27 cancer causing chemicals. Health & Safety Code § 25249.6; California Code of Regulations,
28 Title 22, Section 12601(a).

1 30. In food service establishments, clear and reasonable warnings must be placed in
2 conspicuous locations and manner reasonably calculated to make the warnings likely to be
3 observed by all patrons. California Code of Regulations, Title 22, § 12601(a).

4 31. The Defendants have failed to post clear and reasonable warnings in accordance
5 with the statutory requirements of Proposition 65.

6 32. Plaintiff PCRMC conducted an analysis of grilled chicken sold directly by each of
7 the named Defendants or indirectly through their subsidiaries, franchisees and/or licensees.
8 Using a scientifically valid methodology, PCRMC purchased chicken samples from each
9 Defendant, tagged each sample using a code system that would blind the testing laboratory to the
10 source of the sample, and shipped the samples to Columbia Analytical Services. Columbia
11 Analytical Services is an independent environmental testing laboratory, listed by the California
12 Department of Health Services as an “Accredited Environmental Laboratory.”

13 33. Columbia Analytical Services tested a total of one hundred samples of grilled
14 chicken purchased from the Defendants for PhIP, including samples purchased from restaurants
15 owned or operated by each of the Defendants or their operating subsidiaries in this County.

16 34. All of the tested grilled chicken samples were found to contain the known
17 carcinogen PhIP.

18 35. None of the locations where Defendants grilled chicken products were purchased
19 for purposes of testing had posted clear and reasonable warnings that food sold on the premises
20 contained a chemical known to the State of California to cause cancer.

21 36. The cancer risk as a result of exposure to PhIP has been known for decades.
22 Heterocyclic amines (HCAs), the class of substances to which PhIP belongs, were first
23 discovered in 1977. M. Nagao and T. Sugimura, *FOODBORNE CARCINOGENS: HETEROCYCLIC*
24 *AMINES* (John Wiley & Sons 2002). As early as the 1970s, dietary exposure to PhIP was
25 implicated as a factor in cancer rates. Knize, J. and Felton, J., *Formation and Human Risk of*
26 *Carcinogenic Heterocyclic Amines Formed from Natural Precursors in Meat*, 63 *NUTRITION*
27 *REVIEWS* 158 (2005)(“Knize”).

28 37. Numerous studies have addressed the genotoxicity of HCAs. Genotoxicity

1 concerns the adverse effects of physical and chemical agents on the genetic material in cells and
2 the subsequent results of changes to those cells. HCAs are highly mutagenic in Salmonella
3 typhimurium, Escherichia coli, and cultured human cells. Other genotoxicity studies have
4 demonstrated DNA strand breaks, chromosomal aberrations, and sister chromatid exchanges
5 induced by HCAs. “There is a general consensus that human exposure to potent genotoxic
6 [HCAs] produced in meat during cooking is widespread. . . . Data show that, even at low doses,
7 [HCAs] form DNA adducts in . . . humans.” Knize, *supra*.

8 38. HCAs, including PhIP, have also been the subject of numerous human
9 epidemiological studies, the vast majority of which strongly suggest a correlation between
10 consumption of well-done meat and multisite carcinogenesis in humans. Studies have found
11 compelling correlations between PhIP exposure and several types of cancer, including colorectal,
12 breast, pancreatic, prostate, bladder, renal, esophagus, stomach, larynx, and hepatic, as well as
13 lymphomas. Knize, *supra*; R. Sinha, *An Epidemiologic Approach to Studying Heterocyclic*
14 *Amines*, 506-507 MUTATION RESEARCH 197 (2002); La Creis Kidd, et al., *Urinary Excretion of*
15 *2-Amino-1-methyl-6-phenylimidazo[4,5-b]pyridine (PhIP) in White, African-American, and*
16 *Asian-American Men in Los Angeles County*, 8 CANCER EPIDEMIOLOGY, BIOMARKERS &
17 PREVENTION 439 (1999).

18 39. Chicken is high in some types of PhIP precursors such as arginine, glutamic acid,
19 leucine, phenylalanine, tyrosine, and isoleucine. Knize, *supra*. Grilled chicken has therefore
20 been found to contain particularly high levels of PhIP. R. Sinha, *An Epidemiologic Approach to*
21 *Studying Heterocyclic Amines*, 506-507 MUTATION RESEARCH 197 (2002).

22 40. Defendants are responsible, through sale of their grilled chicken products, for
23 significant exposure to PhIP.

24 41. From 1995 to the present, Defendants have failed to provide consumers with
25 clear, reasonable and adequate warnings that consumption of any grilled chicken products
26 offered for sale by the Defendants would expose them to a chemical known to the state of
27 California to cause cancer.

28 42. Under Proposition 65, California may establish a “safe harbor” level for

1 chemicals known to cause cancer or reproductive harm. The safe harbor level is intended to
2 designate certain chemicals, known by California to cause cancer or reproductive harm at a
3 particular level, as fit for human consumption if those chemicals are consumed at established
4 levels deemed to be safe.

5 43. California has not established a safe harbor level for consumption of foods
6 containing PhIP.

7 44. Defendants knew or should have known and are currently aware that no safe
8 harbor level has been established by California for consumption of foods containing PhIP.

9 45. None of the three exemptions from the warning requirement contained in
10 California Health & Safety Code Section 25249.10 are applicable to this case:

- 11 (a) Federal preemption of warning requirements; or
- 12 (b) An exposure that takes place before the termination of the twelve months
13 grace period for substances known to the state to cause reproductive
14 toxicity; or
- 15 (c) An exposure for which the person responsible can prove poses no
16 significant risk, assuming lifetime exposure at the level in question, and
17 that will have no observable effect, assuming exposure at one thousand
18 (1,000) times the level in question, for substances known to the state to
19 cause reproductive toxicity.

20 46. Proposition 65 provides that any person who “violates or threatens to violate” the
21 statute may be enjoined in any court of competent jurisdiction. Health & Safety Code § 25249.7.
22 To “[t]hreaten to violate” is defined to mean “to create a condition in which there is a substantial
23 probability that a violation will occur.” Health & Safety Code § 25249.11(e). Violations are
24 punishable by civil penalties of up to \$2,500 per day for each violation recoverable in a civil
25 action. Health & Safety Code § 25249.7(b)(1).

26 47. Plaintiff PCRМ brings this action in the public interest. Actions to enforce
27 Proposition 65 may be brought “by any person in the public interest” provided that proper notice
28 is given to the defendant(s) and that “neither the Attorney General, district attorney, city
attorney, nor any prosecutor has commenced and is diligently prosecuting an action against the
violation.” Health & Safety Code § 25249.7(d).

48. As a membership organization with California members and a California office,

1 Plaintiff PCRM constitutes an association, included within the definition of person permitted to
2 bring actions in the public interest to enforce Proposition 65. Health & Safety Code § 25249.11.

3 49. Notice was provided in accordance with the requirements of Health & Safety
4 Code Section 25249.7 and California Code of Regulations, Title 22, Section 12903, upon each of
5 the Defendants. All notices contained the information required by the statute and regulation and
6 were served in accordance with the requirements of California Code of Regulations, Title 22,
7 Section 12903(c)(1)(2).

8 50. Notice was provided in accordance with the requirements of California Health &
9 Safety Code Section 25249.7 and California Code of Regulations, Title 22, Section 12903, upon
10 the District Attorney of every county in California, and upon the City Attorneys of Los Angeles,
11 San Diego, San Francisco and San Jose; the only four California cities listed in the most recent
12 decennial census of having populations of over 750,000. All notices contained the information
13 required by the statute and regulation and were served in accordance with the requirements of
14 California Code of Regulations, Title 22, Section 12903(c)(1)(2).

15 51. Notice was provided in accordance with the requirements of California Health &
16 Safety Code Section 25249.7 and California Code of Regulations, Title 22, Section 12903, upon
17 the Attorney General of the State of California. The notice to the Attorney General contained the
18 information required by the statute and regulation, including factual information sufficient to
19 establish the basis of the certificate of merit served on all parties. The notice was served in
20 accordance with the requirements of California Code of Regulations, Title 22, Section
21 12903(c)(1)(2).

22 52. Notice of the on-going violations was served upon all of the individuals and
23 entities identified above more than sixty days prior to the filing of this lawsuit.

24 53. On information and belief, each of the Defendants has continued to offer for sale,
25 without clear, reasonable and adequate warnings, the grilled chicken products identified in this
26 complaint, following receipt of the notice from the Plaintiff.

27 54. On information and belief, absent action by this Court, each of the Defendants
28 will continue to sell the identified grilled chicken products without clear, reasonable and

1 adequate warnings.

2 55. The Attorney General has not commenced any action against any of the
3 Defendants for failure to warn about the presence of PhIP in their grilled chicken products. On
4 information and belief, no district attorney, city attorney or prosecutor has commenced any
5 action against these violations.

6 56. Plaintiff is notifying the Attorney General of the filing of this action concurrently
7 with the filing of this complaint.

8

9 **FIRST CAUSE OF ACTION FOR INJUNCTIVE RELIEF FOR**
10 **VIOLATION OF STATUTE—PROPOSITION 65**

11 **(By Plaintiff Against All Defendants)**

12 57. Paragraphs 1 through 56 are realleged as if fully set forth herein.

13 58. On information and belief, each Defendant employs ten or more persons.

14 59. By committing the acts described above, each Defendant has, through the sale of
15 its grilled chicken products, knowingly and intentionally exposed individuals to PhIP, a chemical
16 known to the state of California since at least 1994 to cause cancer. Each of the Defendants has
17 sold and served grilled chicken, knowing of the cancer risks, without first giving clear,
18 reasonable and adequate warnings to consumers, as required by Health & Safety Code Section
19 25249.6.

20 60. By their actions, including the lack of clear, reasonable and adequate warnings,
21 Defendants have violated Proposition 65.

22 61. Proposition 65 expressly authorizes injunctive relief. No showing of irreparable
23 harm is required given this statutory authorization for injunctive relief.

24

25 **SECOND CAUSE OF ACTION FOR CIVIL PENALTIES**

26 **(By Plaintiff Against All Defendants)**

27 62. The allegations set forth in Paragraphs 1 through 56 are realleged as if fully set
28 forth herein.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

2. Order that civil penalties of \$ 2,500 per violation be imposed upon each Defendant in accordance with Proposition 65;

3. Enter a declaratory judgment ordering that the Defendants are specifically required to disclose the presence of PhIP in their grilled chicken and declaring that any warning that does not specifically mention the carcinogenic effects known by the State of California regarding grilled chicken is inadequate;

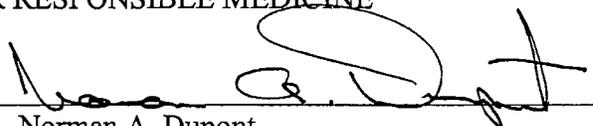
4. Award Plaintiff its costs of suit and its reasonable attorneys' fees;

5. Grant such other and further relief as the Court deems just and proper.

DATED: January 16, 2008

RICHARDS, WATSON & GERSHON
A Professional Corporation
NORMAN A. DUPONT
MATTHEW E. COHEN

DANIEL KINBURN
PHYSICIANS COMMITTEE
FOR RESPONSIBLE MEDICINE

By: 
Norman A. Dupont
Attorneys for Plaintiff,
PHYSICIANS COMMITTEE
FOR RESPONSIBLE MEDICINE