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10 Attorneys for Plaintiff,  
11 PHYSICIANS COMMITTEE  
FOR RESPONSIBLE MEDICINE

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
13 **COUNTY OF LOS ANGELES**

BC457193

14  
15 PHYSICIANS COMMITTEE FOR  
16 RESPONSIBLE MEDICINE,

Case No.

17 Plaintiff,

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

18 vs.

19 KFC CORPORATION, a Delaware  
20 Corporation and YUM! BRANDS, INC., a  
North Carolina Corporation

21 Defendants.

22  
23 **INTRODUCTION**

24 1. This Complaint seeks an injunction, statutory civil penalties, and  
25 declaratory relief to prevent Defendant KFC CORPORATION, and its parent company,  
26 YUM! BRANDS, INC., (collectively "Defendant" or "KFC") from continuing to sell  
27 grilled chicken products to consumers without clear and reasonable warnings about the  
28

1 carcinogenic risk of consuming these products.

2 2. Defendant knowingly and intentionally has sold and is continuing to sell  
3 grilled chicken products without clear and reasonable warnings, despite Defendant's  
4 awareness that these sales are exposing consumers to a chemical known to the State of  
5 California to cause cancer.

6 3. Defendant's actions violate the California Safe Drinking Water and Toxic  
7 Enforcement Act of 1986, codified at Health & Safety Code § 25249.5 *et seq.*,  
8 ("Proposition 65") under which restaurants and other businesses must provide persons  
9 with a "clear and reasonable warning" before exposing consumers to carcinogenic  
10 chemicals in the food that they sell and serve.

11  
12 **PARTIES**

13 4. Plaintiff PHYSICIANS COMMITTEE FOR RESPONSIBLE MEDICINE  
14 ("PCRM") is a national nonprofit membership organization headquartered in Washington, DC.  
15 PCRM is committed to promoting a safe and healthful diet and to protecting consumers from  
16 food and drink that are dangerous or unhealthful. PCRM has approximately 100,000 members,  
17 many of whom reside in California. Plaintiff is a "person [acting] in the public interest"  
18 pursuant to Health & Safety Code § 25249.7(d). Plaintiff has satisfied the conditions set forth  
19 in this section with respect to the required 60-day notice.

20 5. Defendant KFC CORPORATION is a Delaware corporation and a  
21 wholly-owned division of YUM! BRANDS, INC, a North Carolina Corporation with its  
22 principal office in Louisville, Kentucky. KFC is authorized to transact business in the  
23 State of California. KFC is a business entity that either directly or through its  
24 subsidiaries, franchisees, and/or licensees distributes, sells and has sold grilled chicken  
25 products to consumers within the State of California. YUM! BRANDS, INC. directly  
26 controls the operations and management of KFC both in its California operations and  
27 operations outside of the State of California. YUM! BRANDS, INC. directly controls  
28

1 the types of labeling of KFC products in California and in its 2008 Annual Report David  
2 Novak, the CEO of YUM! BRANDS, INC., reported his pride in the fact that: “[O]ur  
3 U.S. brands [including KFC brand] will be the first chains in the industry to post product  
4 calorie information on their respective menu boards in company-owned restaurants  
5 nationwide by January 1, 2011. All meals can be part of a balanced diet and we  
6 recognize our responsibility to continue to educate consumers about their choices.”

7  
8 **JURISDICTION AND VENUE**

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

11 7. This court has jurisdiction over Defendant because it does sufficient  
12 business in California, and otherwise has sufficient minimum contacts in California to  
13 render jurisdiction over it by California courts consistent with traditional notions of fair  
14 play and substantial justice.

15 8. Venue is proper pursuant to Code of Civil Procedure Section 393 because  
16 a cause of action arises in the County of Los Angeles, where violations have occurred  
17 and continue to occur. Venue is also proper pursuant to Code of Civil Procedure  
18 Section 395.5 in that the statutory liability arises in part from sales of grilled chicken  
19 products in this County. Venue is also proper pursuant to Health & Safety Code Section  
20 25249.7, which expressly permits an enforcement action to be brought in “any court of  
21 competent jurisdiction.”

22  
23 **FACTS**

24 9. Proposition 65 was passed by California voters in November 1986, with  
25 the purpose of protecting the health and safety of California residents. The health and  
26 safety warning provision of Proposition 65 provides as follows: “No person in the  
27 course of doing business shall knowingly and intentionally expose any individual to a  
28

1 chemical known to the state to cause cancer or reproductive toxicity without first giving  
2 clear and reasonable warning to such individual, except as provided in Section  
3 25249.10.”

4 10. Proposition 65 required the State to develop a list of chemicals “known to  
5 the state to cause cancer or reproductive toxicity.”

6 11. On October 1, 1994, the chemical 2-AMINO-1-METHYL-6-  
7 PHENYLIMIDAZO [4,5-b]PYRIDINE (“PhIP”) was listed pursuant to the  
8 requirements of Proposition 65 as a chemical known to the State of California to cause  
9 cancer.

10 12. PhIP is a chemical that does not naturally occur in food.

11 13. PhIP is created during the cooking process used by Defendant in making  
12 its grilled chicken products.

13 14. PhIP is ingested by consumers who are served grilled chicken products  
14 sold by Defendant at some or all of its California retail outlets, including retail outlets  
15 located in the County of Los Angeles.

16 15. Proposition 65 provides that a business is not required to provide a clear  
17 and reasonable warning concerning a listed chemical until one year after the chemical  
18 first appears on the list of Chemicals Known to the State of California to Cause Cancer  
19 or Reproductive Toxicity.

20 16. The one-year grace period before food service establishments were  
21 required to have clear and reasonable warning regarding the products they sold  
22 containing PhIP ended on or about October 1, 1995. See Health & Safety Code §  
23 25249.10(b).

24 17. Defendant has knowingly and intentionally sold grilled chicken after  
25 October 1, 1995, without a clear, reasonable and adequate accompanying warning,  
26 despite its awareness that grilled chicken contains PhIP.

27 18. Defendant has knowingly and intentionally sold grilled chicken after  
28

1 October 1, 1995, without a clear, reasonable and adequate accompanying warning,  
2 despite placement of PhIP on California's list of cancer causing chemicals.

3 19. Defendant has knowingly and intentionally sold grilled chicken after  
4 October 1, 1995, without a clear, reasonable and adequate accompanying warning,  
5 despite its knowledge that individuals would consume its grilled chicken and be exposed  
6 to PhIP.

7 20. Defendant knew or should have known about the 1994 placement of PhIP  
8 on the Proposition 65 list of chemicals as a chemical known to the State to cause cancer.

9 21. Defendant is a large, sophisticated corporation engaged in the preparation,  
10 service, and sale of food. Defendant is charged with the knowledge that a reasonable  
11 review of the scientific data would reveal concerning the carcinogenic effects of PhIP.

12 22. Defendant's sale of grilled chicken to the public constitutes a "consumer  
13 products exposure" within the meaning of California Code of Regulations, Title 27,  
14 Section 25602(b).

15 23. Proposition 65 requires that consumer warnings be reasonably calculated  
16 to warn a potential consumer, prior to exposure, of food known by the State of  
17 California to contain cancer causing chemicals. Health & Safety Code § 25249.6;  
18 California Code of Regulations, Title 27, Section 25601.

19 24. In food service establishments, clear and reasonable warnings must be  
20 placed in conspicuous locations and manner reasonably calculated to make the warnings  
21 likely to be observed by all patrons. California Code of Regulations, Title 27, §  
22 25603.1.

23 25. Defendant has failed to post clear and reasonable warnings regarding PhIP  
24 in accordance with the statutory requirements of Proposition 65.

25 26. Plaintiff PCRMC conducted an analysis of grilled chicken sold directly by  
26 Defendant or indirectly through its subsidiaries, franchisees, and/or licensees. Using a  
27 scientifically valid methodology, PCRMC purchased chicken samples from Defendant,  
28

1 tagged each sample using a code system that would blind the testing laboratory to the  
2 source of the sample, and shipped the samples to Columbia Analytical Services.  
3 Columbia Analytical Services is an independent environmental testing laboratory, listed  
4 by the California Department of Health Services as an “Accredited Environmental  
5 Laboratory.”

6 27. Columbia Analytical Services tested a total of twelve samples of grilled  
7 chicken for PhIP. These samples were purchased from restaurants owned or operated  
8 by the Defendant or its operating subsidiaries, franchisees, and/or licensees in the State  
9 of California.

10 28. All of the tested grilled chicken samples were found to contain the known  
11 carcinogen PhIP.

12 29. None of the locations where Defendant’s grilled chicken products were  
13 purchased for purposes of testing had posted clear and reasonable warnings that food  
14 sold on the premises contained a chemical known to the State of California to cause  
15 cancer. Although Defendant does post the food and beverage notice set out in the  
16 Proposition 65 regulations, this warning does not relate to Defendant’s sale of grilled  
17 chicken and is not clear and reasonable as required by the statute because a reasonable  
18 consumer would not know that Defendant’s grilled chicken products contain a known  
19 carcinogen. This warning is also not displayed in a manner calculated to render it as  
20 likely to be read and understood by an ordinary individual.

21 30. The cancer risk as a result of exposure to PhIP has been known for  
22 decades. Heterocyclic amines (HCAs), the class of substances to which PhIP belongs,  
23 were first discovered in 1977. M. Nagao and T. Sugimura, *FOODBORNE CARCINOGENS:  
24 HETEROCYCLIC AMINES* (John Wiley & Sons 2002). As early as the 1970s, dietary  
25 exposure to PhIP was implicated as a factor in cancer rates. Knize, J. and Felton, J.,  
26 *Formation and Human Risk of Carcinogenic Heterocyclic Amines Formed from Natural  
27 Precursors in Meat*, 63 *NUTRITION REVIEWS* 158 (2005) (“Knize”).  
28

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

10           32. HCAs, including PhIP, have also been the subject of numerous human  
11 epidemiological studies, the vast majority of which strongly suggest a correlation  
12 between consumption of well-done meat and multisite carcinogenesis in humans.  
13 Studies have found compelling correlations between PhIP exposure and several types of  
14 cancer, including colorectal, breast, pancreatic, and prostate. R. Sinha et al., *2-amino-1-*  
15 *methyl-6-phenylimidazo[4,5-b]pyridine, a carcinogen in high-temperature-cooked*  
16 *meat, and breast cancer risk*, 92 JOURNAL OF THE NATIONAL CANCER INSTITUTE 1352  
17 (2000); S. Nowell et al., *Analysis of total meat intake and exposure to individual*  
18 *heterocyclic amines in a case-control study of colorectal cancer: contribution of*  
19 *metabolic variation to risk*, 506-507 MUTATION RESEARCH 175 (2002); AJ Cross et al.,  
20 *A prospective study of meat and meat mutagens and prostate cancer risk*, 65 CANCER  
21 RESEARCH. 11779 (2005); LM Butler et al., *Heterocyclic amines, meat intake and*  
22 *association with colon cancer in a population-based study*, 157 Am J Epidemiol. 434  
23 (2003). KE Anderson et al., *Meat intake and cooking techniques: associations with*  
24 *pancreatic cancer*, 506-507 MUTATION RESEARCH 225 (2002).

25           33. Chicken is high in some types of PhIP precursors such as arginine,  
26 glutamic acid, leucine, phenylalanine, tyrosine, and isoleucine. Knize, *supra*. Grilled  
27 chicken therefore has been found to contain particularly high levels of PhIP. R. Sinha,  
28

1 *An Epidemiologic Approach to Studying Heterocyclic Amines, 506-507* MUTATION  
2 RESEARCH 197 (2002).

3 34. Defendant is responsible, through sale of its grilled chicken products, for  
4 significant exposure to PhIP.

5 35. Since the introduction of its grilled chicken products to the present,  
6 Defendant has failed to provide consumers with clear, reasonable and adequate  
7 warnings that consumption of grilled chicken products offered for sale by Defendant  
8 would expose them to a chemical known to the State of California to cause cancer.

9 36. Under Proposition 65, California may establish a “safe harbor” level at or  
10 below which exposure to a chemical known to the State of California to cause cancer is  
11 unlikely to be harmful. California Code of Regulations, Title 27, Section 25705.

12 37. California has not established a safe harbor level for consumption of foods  
13 containing PhIP.

14 38. Defendant knew or should have known and is currently aware that no safe  
15 harbor level has been established by California for consumption of foods containing  
16 PhIP.

17 39. None of the three exemptions from the warning requirement contained in  
18 Health & Safety Code Section 25249.10 are applicable to this case:

- 19 (a) Federal preemption of warning requirements; or  
20 (b) An exposure that takes place before the termination of the twelve  
21 months grace period for substances known to the state to cause  
22 reproductive toxicity; or  
23 (c) An exposure for which the person responsible can prove poses no  
24 significant risk, assuming lifetime exposure at the level in question,  
25 and that will have no observable effect, assuming exposure at one  
26 thousand (1,000) times the level in question, for substances known  
27 to the state to cause reproductive toxicity.

28 40. Proposition 65 provides that any person who “violates or threatens to  
violate” the statute may be enjoined in any court of competent jurisdiction. Health &  
Safety Code § 25249.7. To “[t]hreaten to violate” is defined to mean “to create a

1 condition in which there is a substantial probability that a violation will occur.” Health  
2 & Safety Code § 25249.11(e). Violations are punishable by civil penalties of up to  
3 \$2,500 per day for each violation recoverable in a civil action. Health & Safety Code §  
4 25249.7(b)(1).

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

10 42. As a membership organization with California members, Plaintiff PCRMM  
11 constitutes an association, included within the definition of person permitted to bring  
12 actions in the public interest to enforce Proposition 65. Health & Safety Code  
13 § 25249.11.

14 43. Notice was provided in accordance with the requirements of Health &  
15 Safety Code Section 25249.7 and California Code of Regulations, Title 27, Section  
16 25903, upon Defendant. The notice contained the information required by the statute  
17 and regulation and was served in accordance with the requirements of California Code  
18 of Regulations, Title 27, Section 25903(c).

19 44. Notice was provided in accordance with the requirements of Health &  
20 Safety Code Section 25249.7 and California Code of Regulations, Title 27, Section  
21 25903, upon the District Attorney of every county in California and upon the City  
22 Attorneys of Los Angeles, San Diego, San Francisco, and San Jose, the only four  
23 California cities listed in the most recent decennial census as having populations of over  
24 750,000. All notices contained the information required by the statute and regulation  
25 and were served in accordance with the requirements of California Code of Regulations,  
26 Title 27, Section 25903(c).

27 45. Notice was provided in accordance with the requirements of Health &  
28

1 Safety Code Section 25249.7 and California Code of Regulations, Title 27, Section  
2 25903, upon the Attorney General of the State of California. The notice to the Attorney  
3 General contained the information required by the statute and regulation, including  
4 factual information sufficient to establish the basis of the certificate of merit served on  
5 all parties. The notice was served in accordance with the requirements of California  
6 Code of Regulations, Title 27, Section 25903(c). The California Attorney General's  
7 website for Proposition 65 contains a copy of the Notice Letter dated June 2, 2009.

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

10 47. On information and belief, Defendant has continued to offer for sale,  
11 without clear, reasonable and adequate warnings, grilled chicken products following  
12 receipt of the notice from Plaintiff.

13 48. On information and belief, absent action by this Court, Defendant will  
14 continue to sell grilled chicken products without clear, reasonable and adequate  
15 warnings.

16 49. The Attorney General has not commenced any action against Defendant  
17 for failure to warn about the presence of PhIP in its grilled chicken products. On  
18 information and belief, no district attorney, city attorney or prosecutor has commenced  
19 any action against these violations.

20 50. Plaintiff is notifying the Attorney General of the filing of this action  
21 concurrently with the filing of this complaint.

22  
23 **FIRST CAUSE OF ACTION FOR INJUNCTIVE RELIEF FOR**  
24 **VIOLATION OF STATUTE—PROPOSITION 65**

25 **(By Plaintiff Against Defendant)**

26 51. Paragraphs 1 through 50 are realleged as if fully set forth herein.

27 52. On information and belief, Defendant employs ten or more persons.

1           53. By committing the acts described above, Defendant has, through the sale  
2 of its grilled chicken products, knowingly and intentionally exposed individuals to PhIP,  
3 a chemical known to the State of California since at least 1994 to cause cancer.  
4 Defendant has sold and served grilled chicken, knowing of the cancer risks, without first  
5 giving clear, reasonable and adequate warnings to consumers, as required by Health &  
6 Safety Code Section 25249.6.

7           54. By its actions, including the lack of clear, reasonable and adequate  
8 warnings, Defendant has violated Proposition 65.

9           55. Proposition 65 expressly authorizes injunctive relief. No showing of  
10 irreparable harm is required given this statutory authorization for injunctive relief.

11  
12                           **SECOND CAUSE OF ACTION FOR CIVIL PENALTIES**

13                                   **(By Plaintiff Against Defendant)**

14           56. The allegations set forth in Paragraphs 1 through 50 are realleged as if  
15 fully set forth herein.

16           57. The knowing and intentional commitment of the acts alleged above  
17 renders Defendant liable for civil penalties of up to \$2,500 per day for each violation  
18 pursuant to Proposition 65.

19           58. The nature and extent of Defendant's violations, together with the lack of  
20 good faith measures to comply with Proposition 65, merit the imposition of the full  
21 monetary penalty allowable under Proposition 65.

22  
23                           **THIRD CAUSE OF ACTION FOR DECLARATORY JUDGMENT FOR**

24                                   **VIOLATION OF PROPOSITION 65**

25                                   **(By Plaintiff Against Defendant)**

26           59. The allegations set forth in Paragraphs 1 through 50 are realleged as if  
27 fully set forth herein.

1           60. In order to adequately comply with the requirements of Proposition 65,  
2 Defendant must conspicuously post specific warnings with respect to the carcinogenic  
3 dangers of the grilled chicken that it offers for sale.

4           61. On information and belief, Defendant denies that it is required under the  
5 provisions of Proposition 65 to conspicuously post specific warnings with respect to the  
6 carcinogenic dangers of grilled chicken and will fail to do so without a specific  
7 declaration from this Court that it is required to do so.

8           62. Because Defendant's position is inconsistent with Proposition 65 and its  
9 intended purpose to protect public health, Plaintiff is entitled to declaratory judgment  
10 determining that Defendant is in violation of Proposition 65.

**PRAYER FOR RELIEF**

13           WHEREFORE, Plaintiff prays, as to Defendants KFC and Yum! Brands, Inc., that  
14 this honorable Court:

15           1. Pursuant to Proposition 65, enter a permanent injunction and any other  
16 necessary orders prohibiting Defendants from exposing persons within the State of  
17 California to PhIP in grilled chicken without providing clear, reasonable, specific and  
18 adequately placed warnings;

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

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

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

26 ///  
27 ///

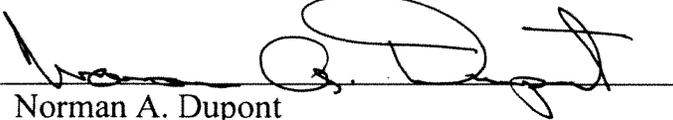
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5. Grant such other and further relief as the Court deems just and proper.

DATED: March 15, 2011

RICHARDS, WATSON & GERSHON  
A Professional Corporation  
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