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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 COUNTY OF SANTA CLARA  
10 UNLIMITED CIVIL JURISDICTION

11 113 CV 243442

12 WHITNEY R. LEEMAN, PH.D.,

13 Plaintiff,

14 v.

15 THE HABIT RESTAURANTS, LLC; and  
16 DOES 1-150, inclusive,

17 Defendants.

Case No. \_\_\_\_\_

**COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF**

(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 known as  
5 polycyclic aromatic hydrocarbons found in certain ground beef products cooked at high  
6 temperatures sold by defendants in California.

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

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

16 4. Under the Safe Drinking Water and Toxic Enforcement Act of 1986, codified at  
17 Health and Safety Code § 25249.6 *et seq.* (“Proposition 65”), “[n]o person in the course of  
18 doing business shall knowingly and intentionally expose any individual to a chemical known to  
19 the state to cause cancer or reproductive toxicity without first giving clear and reasonable  
20 warning to such individual . . . .” Health & Safety Code § 25249.6.

21 5. Pursuant to Proposition 65, on July 1, 1987, California identified and listed  
22 benz[a]anthracene, benzo[a]pyrene, and benzo[k]fluoranthene as chemicals known to cause  
23 cancer. Benz[a]anthracene, benzo[a]pyrene, benz[b]fluoranthene, and benzo[k]fluoranthene  
24 became subject to the “clear and reasonable warning” requirements of the act one year later on  
25 July 1, 1988. Cal. Code Regs. tit. 27, § 27001(b); Health & Safety Code §§ 25249.8 &  
26 25249.10(b).

1           6. Pursuant to Proposition 65, on January 1, 1988, California identified and listed  
2 indeno[1,2,3-cd]pyrene as a chemical known to cause cancer. Indeno[1,2,3-cd]pyrene became  
3 subject to the “clear and reasonable warning” requirements of the act one year later on January  
4 1, 1989. Cal. Code Regs. tit. 27, § 27001(b); Health & Safety Code §§ 25249.8 & 25249.10(b).

5           7. Defendants manufacture, distribute, and sell flame-broiled or grilled ground beef  
6 burgers that contain PAHs at levels that require a warning under Proposition 65, including, but  
7 not limited to, the *Double Charburger*. All such flame cooked ground beef burgers containing  
8 one or more of the PAHs are referred to collectively hereinafter as “PRODUCTS.”

9           8. The PAHs in and/or on the PRODUCTS manufactured, distributed, and/or sold by  
10 defendants primarily result from the burgers’ exposure to smoke contaminated with PAHs—  
11 specifically, when fat is deposited on a hot flame-broiler or grill, it creates smoke contaminated  
12 with PAHs. PAHs may also be produced when flames come into contact with the fat on the  
13 surface of the PRODUCTS. Either way, PAHs are deposited onto the surface of the  
14 PRODUCTS and remain there through consumption.

15           9. There are methods by which ground beef can be prepared and cooked without  
16 being exposed to excessive amounts of smoke contaminated with carcinogenic PAHs, including  
17 methods designed to minimize the amount of fat reaching the heat source and the amount of  
18 smoke reaching the meat.

19           10. Defendants’ failure to warn consumers in the state of California about their  
20 exposure to PAHs in conjunction with defendants’ sale of the PRODUCTS is a violation of  
21 Proposition 65, and subjects defendants to enjoinder of such conduct as well as civil penalties  
22 for each violation. Health & Safety Code § 25249.7(a) & (b)(1).

23           11. For defendants’ violations of Proposition 65, plaintiff seeks preliminary and  
24 permanent injunctive relief to compel defendants to provide purchasers or consumers of the  
25 PRODUCTS with the required warning regarding the health hazards of the PAHs. Health &  
26 Safety Code § 25249.7(a).



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

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

9 **FIRST CAUSE OF ACTION**

10 **(Violation of Proposition 65 - Against All Defendants)**

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

13 21. In enacting Proposition 65, in the preamble to the Safe Drinking Water and Toxic  
14 Enforcement Act of 1986, the People of California expressly declared their right “[t]o be  
15 informed about exposures to chemicals that cause cancer, birth defects, or other reproductive  
16 harm.”

17 22. Proposition 65 states, “[n]o person in the course of doing business shall  
18 knowingly and intentionally expose any individual to a chemical known to the state to cause  
19 cancer or reproductive toxicity without first giving clear and reasonable warning to such  
20 individual . . . .” Health & Safety Code § 25249.6.

21 23. On July 11, 2012, plaintiff’s sixty-day notice of violation, together with the  
22 requisite certificate of merit, was provided to THE HABIT and certain public enforcement  
23 agencies stating that, as a result of defendants’ sales of the PRODUCTS containing PAHs,  
24 purchasers and consumers in the state of California were being exposed to PAHs resulting from  
25 their reasonably foreseeable consumption of the PRODUCTS, without having been provided  
26 with a “clear and reasonable warning” regarding such toxic exposures, as required by  
27 Proposition 65.

1           24. Defendants have engaged in the manufacture, distribution, and offering of the  
2 PRODUCTS for sale or consumption in violation of Health and Safety Code § 25249.6, and  
3 defendants' violations have continued to occur beyond their receipt of plaintiff's sixty-day  
4 notice of violation. As such, defendants' violations are ongoing and continuous in nature, and  
5 will continue to occur in the future.

6           25. After receiving the claims asserted in the sixty-day notice of violation, the  
7 appropriate public enforcement agencies have failed to commence and diligently prosecute a  
8 cause of action against defendants under Proposition 65.

9           26. THE HABIT has allowed fat to be deposited onto the hot flame-broiler or grill,  
10 thereby causing PAH-contaminated smoke to contact the PRODUCTS, and/or has allowed the  
11 heat source to come into contact with the fat on the surface of the PRODUCTS, thereby creating  
12 PAHs which collected in or on these PRODUCTS.

13           27. PAHs have been present in and/or on the PRODUCTS in such a way as to expose  
14 individuals to PAHs through ingestion during the reasonably foreseeable use of the  
15 PRODUCTS.

16           28. The normal and reasonably foreseeable consumption of the PRODUCTS have  
17 caused, and continue to cause, consumer exposures to PAHs, as such exposures are defined by  
18 California Code of Regulations title 27, § 25602(b).

19           29. Defendants had knowledge that the normal and reasonably foreseeable  
20 consumption of the PRODUCTS expose individuals to PAHs through ingestion.

21           30. Defendants intended that such exposures to PAHs from the reasonably  
22 foreseeable consumption of the PRODUCTS would occur by their deliberate, non-accidental  
23 participation in the preparation, cooking, and/or offering of the PRODUCTS for sale to  
24 individuals in the state of California.

25           31. Defendants failed to provide a "clear and reasonable warning" to those consumers  
26 and other individuals in the state of California who were or who would become exposed to  
27 PAHs through ingestion during the consumption of the PRODUCTS.  
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