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**ENDORSED
FILED
ALAMEDA COUNTY**

JAN 28 2013

CLERK OF THE SUPERIOR COURT
By Kmel Dhillon Deputy

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

11
12 WHITNEY R. LEEMAN, PH.D.,

13 Plaintiff,

14 v.

15 HILLSTONE RESTAURANT GROUP, INC.;
16 and DOES 1-150, inclusive,

17 Defendants.
18

Case No. **RG13 665022**

**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 *Cheeseburger*. All such flame cooked ground beef burgers containing one or
8 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 with a “clear and reasonable warning” regarding such toxic exposures, as required by
2 Proposition 65.

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

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

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

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

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

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

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

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Dated: January 25, 2013

Respectfully Submitted,
THE CHANLER GROUP

By: 

Rachel Doughty
Attorneys for Plaintiff
WHITNEY R. LEEMAN, PH.D.