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

WHITNEY R. LEEMAN, PH.D.,

Plaintiff,

v.

CRAFTWORKS RESTAURANTS &
BREWRIES, INC., GORDON BIERSCHE
BREWERY RESTAURANT GROUP, INC.;
and DOES 1-150, inclusive,

Defendants.

Case No. **13 CV 245141**

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

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

(ENDORSED)
FILED

APR 22 2013

David H. Yamashita, Clerk of the Superior Court
County of Santa Clara, California

By: D. Walden Deputy Clerk

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-cooked ground beef products sold by
6 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 flame-cooked ground beef products sold by defendants to consumers
10 throughout the state of California. These chemicals are: benz[a]anthracene, benzo[a]pyrene,
11 benzo[b]fluoranthene, benzo[k]fluoranthene, and indeno[1,2,3-cd]pyrene (commonly known as,
12 and hereinafter 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 or grilled in restaurants.

16 4. Under the Safe Drinking Water and Toxic Enforcement Act of 1986, codified at
17 Health and Safety Code section 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 and 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, benzo[b]fluoranthene, and benzo[k]fluoranthene as
23 chemicals known to cause cancer. Benz[a]anthracene, benzo[a]pyrene, benzo[b]fluoranthene,
24 and benzo[k]fluoranthene became subject to the “clear and reasonable warning” requirements of
25 the act one year later on July 1, 1988. Cal. Code Regs. tit. 27, § 27001(b); Health & Safety
26 Code §§ 25249.8 & 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-cooked ground beef items that
6 contain PAHs at levels that require a warning under Proposition 65, including, but not limited
7 to, the *Gordon Biersch Cheeseburger*. All such flame-cooked ground beef items containing one
8 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 drips onto a hot flame or surface, it creates smoke contaminated with
12 PAHs. PAHs may also be produced when flames come into contact with the fat on the surface
13 of the PRODUCTS. Either way, PAHs are deposited onto the surface of the PRODUCTS and
14 remain there through consumption.

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

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 and 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 occur, in Santa Clara County, and/or because CRAFTWORKS and GORDON BIRSCH
2 conducted, and continue to conduct, business in this county with respect to the PRODUCTS.

3 19. The California Superior Court has jurisdiction over this action pursuant to
4 California Constitution Article VI, section 10, which grants the Superior Court “original
5 jurisdiction in all causes except those given by statute to other trial courts.” The statute under
6 which this action is brought does not specify any other basis of subject matter jurisdiction.

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

13 **FIRST CAUSE OF ACTION**

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

15 21. Plaintiff realleges and incorporates by reference, as if fully set forth herein,
16 Paragraphs 1 through 20, inclusive.

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

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

25 24. On August 16, 2012, plaintiff’s sixty-day notice of violation, together with the
26 requisite certificate of merit, was provided to CRAFTWORKS and GORDON BIRSCH and
27 certain public enforcement agencies stating that, as a result of defendants’ sales of the
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1 PRODUCTS containing PAHs, purchasers and consumers in the state of California were being
2 exposed to PAHs resulting from their reasonably foreseeable consumption of the PRODUCTS,
3 without having been provided with a “clear and reasonable warning” regarding such toxic
4 exposures, as required by Proposition 65.

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

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

13 27. CRAFTWORKS and GORDON BIERSCHE have allowed fat to drip onto the hot
14 flame-broiler or grill, thereby causing PAH-contaminated smoke to contact the PRODUCTS,
15 and/or have allowed flames to come into contact with the fat on the surface of the PRODUCTS,
16 thereby creating PAHs which collected in or on these PRODUCTS.

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

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

23 30. Defendants had knowledge that the normal and reasonably foreseeable
24 consumption of the PRODUCTS expose individuals to PAHs through ingestion.

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

3 32. Defendants failed to provide a “clear and reasonable warning” to those consumers
4 and other individuals in the state of California who were or who would become exposed to
5 PAHs through ingestion during the consumption of the PRODUCTS.

6 33. Contrary to the express policy and statutory prohibition of Proposition 65 enacted
7 directly by California voters, individuals exposed to PAHs through ingestion resulting from the
8 consumption of the PRODUCTS sold by defendants without a “clear and reasonable warning,”
9 have suffered, and continue to suffer, irreparable harm for which they have no plain, speedy, or
10 adequate remedy at law.

11 34. Pursuant to Health and Safety Code section 25249.7(b), as a consequence of the
12 above-described acts, defendants are liable for a maximum civil penalty of \$2,500 per day for
13 each violation.

14 35. As a consequence of the above-described acts, Health and Safety Code
15 section 25249.7(a) also specifically authorizes the Court to grant injunctive relief against
16 defendants.

17 **PRAYER FOR RELIEF**

18 Wherefore, plaintiff prays for judgment against defendants as follows:

19 1. That the Court, pursuant to Health and Safety Code section 25249.7(b), assess
20 civil penalties against defendants in the amount of \$2,500 per day for each violation;

21 2. That the Court, pursuant to Health and Safety Code section 25249.7(a),
22 preliminarily and permanently enjoin defendants from preparing, distributing, or offering the
23 PRODUCTS for sale or consumption in California without first providing a “clear and
24 reasonable warning” as defined by California Code of Regulations title 27, section 25601 *et*
25 *seq.*, as to the harms associated with exposures to PAHs;

26 3. That the Court grant plaintiff his reasonable attorneys’ fees and costs of suit; and

27 4. That the Court grant such other and further relief as may be just and proper.
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1 Dated: April 9, 2013

2 Respectfully Submitted,
3 THE CHANLER GROUP

4 By: 
5 Rachel Doughty
6 Attorneys for Plaintiff
7 WHITNEY R. LEEMAN, PH.D.

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