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ENDORSED
FILED
Superior Court of California
County of San Francisco

JUL 30 2013

CLERK OF THE COURT
BY: MEREDITH GRIER
Deputy Clerk

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA

12 COUNTY OF SAN FRANCISCO

13 UNLIMITED CIVIL JURISDICTION

14 **CGC-13-533219**

15 WHITNEY R. LEEMAN, PH.D.,

16 Plaintiff,

17 v.

18 HIGHGATE HOTELS, INC.; THE
19 BLACKSTONE GROUP L.P.; WYNDHAM
20 WORLDWIDE CORPORATION, LLC; BRE
21 PARC 55 OWNER LLC; and DOES 1-150,
22 inclusive,

23 Defendants.

Case No. _____

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

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

VIA FAX

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 These chemicals are: benz[a]anthracene, benzo[a]pyrene, benzo[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 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 *Traditional Angus Beef Burger*. All such flame-cooked ground beef items 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 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).

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VENUE AND JURISDICTION

18. Venue is proper in the San Francisco County Superior Court, pursuant to Code of Civil Procedure sections 393, 395, and 395.5, because this Court is a court of competent jurisdiction, because one or more instances of wrongful conduct occurred, and continue to occur, in San Francisco County, and/or because DEFENDANTS conducted, and continue to conduct, business in this county with respect to the PRODUCTS.

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

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

FIRST CAUSE OF ACTION

(Violation of Proposition 65 - Against All Defendants)

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

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

23. Proposition 65 states, “[n]o person in the course of doing business shall knowingly and intentionally expose any individual to a chemical known to the state to cause

1 cancer or reproductive toxicity without first giving clear and reasonable warning to such
2 individual” Health & Safety Code § 25249.6.

3 24. On May 17, 2013, plaintiff’s supplemental sixty-day notice of violation, together
4 with the requisite certificate of merit, was provided to DEFENDANTS and certain public
5 enforcement agencies stating that, as a result of DEFENDANTS’ sales of the PRODUCTS
6 containing PAHs, purchasers and consumers in the state of California were being exposed to
7 PAHs resulting from their reasonably foreseeable consumption of the PRODUCTS, without
8 having been provided with a “clear and reasonable warning” regarding such toxic exposures, as
9 required by Proposition 65.

10 25. Defendants have engaged in the manufacture, distribution, and offering of the
11 PRODUCTS for sale or consumption in violation of Health and Safety Code section 25249.6,
12 and DEFENDANTS’ violations have continued to occur beyond their receipt of plaintiff’s
13 supplemental sixty-day notice of violation. As such, DEFENDANTS’ violations are ongoing
14 and continuous in nature, and will continue to occur in the future.

15 26. After receiving the claims asserted in the supplemental sixty-day notice of
16 violation, the appropriate public enforcement agencies have failed to commence and diligently
17 prosecute a cause of action against DEFENDANTS under Proposition 65.

18 27. DEFENDANTS have allowed fat to drip onto the hot flame-broiler or grill,
19 thereby causing PAH-contaminated smoke to contact the PRODUCTS, and/or have allowed
20 flames to come into contact with the fat on the surface of the PRODUCTS, thereby creating
21 PAHs which collected in or on these PRODUCTS.

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

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

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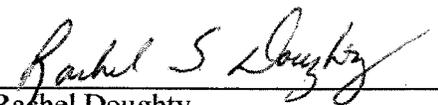
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reasonable warning” as defined by California Code of Regulations title 27, section 25601 *et seq.*, as to the harms associated with exposures to PAHs;

- 3. That the Court grant plaintiff his reasonable attorneys’ fees and costs of suit; and
- 4. That the Court grant such other and further relief as may be just and proper.

Dated: July 27, 2013

Respectfully Submitted,
THE CHANLER GROUP

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