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11 Attorneys for Plaintiffs,
12 WHITNEY R. LEEMAN, Ph.D.

13
14 SUPERIOR COURT OF THE STATE OF CALIFORNIA
15 COUNTY OF SACRAMENTO
16 UNLIMITED JURISDICTION

17 WHITNEY R. LEEMAN, Ph.D.,
18
19 Plaintiff,

20 v.

21 BURGER KING CORPORATION; CKE
RESTAURANTS, INC., et al.
22 Defendants.

No. 06AS02168

**[PROPOSED] CONSENT
JUDGMENT**

Action Filed: May 26, 2006
Trial Date: Not Set

1 **1. INTRODUCTION**

2 1.1 **Plaintiff and Defendant.** This Consent Judgment is entered into by and
3 between plaintiff Whitney R. Leeman, Ph.D (hereafter “Leeman” or “Plaintiff”) and defendant
4 Burger King Corporation (hereinafter “Burger King” or “Defendant”), with Plaintiff and
5 Defendant collectively referred to as the “Parties” and Leeman and Defendant each being a
6 “Party.”

7 1.2 **Plaintiff.** Leeman is an individual residing in California who seeks to promote
8 awareness of exposures to toxic chemicals and improve human health by reducing or eliminating
9 hazardous substances contained in consumer and industrial products.

10 1.3 **General Allegations.** Plaintiff alleges that Defendant franchises quick-service
11 restaurants in the State of California that serve flame-broiled hamburgers, specifically the Triple
12 Whopper™ sandwich, that contain various polycyclic aromatic hydrocarbons (“PAHs”),
13 including benzo[a]pyrene; benz[a]anthracene; benzo[a]pyrene; benzo[b]fluoranthene;
14 benzo[k]fluoranthene; chrysene; indeno [1,2,3-cd]pyrene; and naphthalene, as well as
15 polychlorinated biphenyls; polychlorinated dibenzo-p-dioxins, and polychlorinated
16 dibenzofurans. These chemicals are listed pursuant to the Safe Drinking Water and Toxic
17 Enforcement Act of 1986, California Health & Safety Code §§ 25249.5 *et seq.*, also known as
18 Proposition 65, as carcinogens and/or reproductive toxicants, and shall be referred to herein as the
19 “Listed Chemicals.” Plaintiff contends that the flame-broiling process generates PAHs, which
20 become airborne and accumulate on the flame-broiled meat. Plaintiff further contends that PAHs
21 are then ingested by consumers of Burger King® hamburgers. Plaintiff further contends that
22 Burger King® restaurants have not provided California consumers with warnings of this exposure
23 to Listed Chemicals in accordance with Proposition 65.

24 1.4 **Product Description.** The products that are covered by this Consent Judgment
25 are defined as follows: all flame-broiled meat products authorized for sale in Burger King®
26 restaurants by Burger King, including any meat products contained in any sandwiches and
27 breakfast items. Such products collectively are referred to herein as the “Products.”
28

1 1.5 **Notice of Violation.** On February 14, 2006, Leeman served Defendant and
2 various public enforcement agencies with a “60-Day Notice of Violation” that provided
3 Defendant and such public enforcers with notice that Defendant was allegedly in violation of
4 Health & Safety Code § 25249.6 for failing to warn purchasers that the Products expose users in
5 California to the Listed Chemicals.

6 1.6 **Complaint.** On May 26, 2006, Leeman, in the interest of the general public in
7 California, filed a complaint (hereafter referred to as the “Complaint” or the “Action”) in the
8 Superior Court for the City and County of Sacramento against Defendant and Does 1 through
9 150, alleging violations of Health & Safety Code § 25249.6 based on the alleged exposures to
10 PAHs contained in certain Products sold in Burger King restaurants.

11 1.7 **Denial of Allegations.** Defendant Burger King owns restaurants operating
12 under the Burger King® name and franchises independently-owned restaurants that operate under
13 the Burger King® name. All Burger King® restaurants in California are operated by independent
14 franchisees pursuant to franchise agreements. Defendant denies the material factual and legal
15 allegations contained in Plaintiff’s Notice and Complaint and maintains that all products sold and
16 distributed in Burger King restaurants in California, including the Products, have been and are in
17 compliance with all laws.

18 Burger King is aware of reports that certain broiling methods produce PAHs. To address
19 this issue, Burger King has researched, field tested, and sought patents on specific flame-arresting
20 broilers that reduce the incidence of the processes believed to produce PAHs. After evaluating
21 the new broilers’ effectiveness in reducing the production of benzo[a]pyrene (BaP) in laboratory
22 and field settings, Burger King concluded that its flame arresting technology successfully reduces
23 the levels of BaP on flame-broiled meat products to levels that can not be detected when analyzed
24 at a one part per billion (ppb) limit of detection, a generally acceptable limit of detection for BaP.
25 Further, because the new broiler technology reduces the processes by which any PAH would be
26 formed, Burger King has concluded that flame-broiled meats prepared on these broilers would not
27 contain sufficient levels of PAHs to result in an exposure that would require a warning pursuant
28 to Proposition 65.

1 To confirm Burger King’s results, the parties agreed upon an additional testing protocol
2 for burger patty samples taken from Burger King’s pilot restaurants at which the “New Broilers”
3 (as defined in Section 2.1) have been installed. The protocol is attached to this judgment as
4 Exhibit A. The results of this testing protocol will be reviewed by Plaintiff when they come
5 available in order to ascertain that the new grills act to reduce the levels of PAHs in Defendant’s
6 flame-broiled meat products — i.e. that the BaP content is shown to be no higher than 1.20 ppb at
7 the 90 percent upper confidence limit for the mean as to samples collected from each of the New
8 Broilers.

9 1.8 **No Admission.** Nothing in this Consent Judgment shall be construed as an
10 admission by Defendant of any fact, finding, issue of law, or violation of law, nor shall
11 compliance with this Consent Judgment constitute or be construed as an admission by Defendant
12 of any fact, finding, conclusion, issue of law or violation of law. However, this Section shall not
13 diminish or otherwise affect the obligations, responsibilities and duties of Defendant under this
14 Consent Judgment.

15 1.9 **Consent to Jurisdiction.** For purposes of this Consent Judgment only, the
16 Parties stipulate that this Court has jurisdiction over the Parties and concerning the alleged
17 violations at issue and personal jurisdiction over Defendant as to the acts alleged, that venue is
18 proper in the County of Sacramento, and that this Court has jurisdiction to enter this Consent
19 Judgment and to enforce the provisions thereof.

20 1.10 **Effective Date.** For purposes of this Consent Judgment, “Effective Date” shall
21 be July 30, 2007.

22 **2. INJUNCTIVE RELIEF**

23 2.1 **Definitions.**

24 (a) For purposes of this Consent Judgment, and in addition to other terms
25 defined herein, the following definitions apply:

26 “Flame-Broiled Meat” refers to all flame-broiled meat products authorized for sale in
27 Burger King® restaurants, including any meat products contained in any sandwiches and
28 breakfast items.

1 “New Broiler” refers to any broiler manufactured according to Burger King’s
2 specifications that includes the flame-arresting features designed to inhibit the formation of the
3 PAHs, including, without limitation the Nieco MBP 84 and the Duke Model 120 (Batch Broiler),
4 and that, in pilot operation in Burger King-owned restaurants, produced BAP levels that are
5 regularly non-detectable at a one ppb limit of detection.

6 “Franchisee” refers to the owner or operator of an individual Burger King restaurant
7 location in California (“Restaurant”) that is operated pursuant to a franchise agreement with
8 Burger King.

9 **2.2 New Broiler Installation.**

10 Subject to the terms of its franchise agreements, Burger King agrees to use all
11 commercially reasonable efforts, consistent with its franchise agreements, to require all of its
12 Franchisees to install the New Broiler in each Restaurant no later than March 31, 2009, as more
13 specifically described herein and pursuant to the schedule set forth in (b) below. A list of
14 Restaurants is provided as Exhibit B.

15 As of the Effective Date, all Restaurants are operated by Franchisees pursuant to a
16 franchise agreement with Burger King. If, at any point, a Restaurant is owned or operated by
17 Burger King Corporation (“Company Restaurant”), Burger King agrees that it will post the
18 Interim Warnings required in Section 2.3 in all Company Restaurants, as necessary, and that all
19 Company Restaurants shall install New Broilers on or before March 31, 2009.

20 (a) Burger King agrees to take all commercially reasonable measures to assure
21 that sufficient New Broilers are manufactured so that the Franchisees will be able to purchase and
22 install the New Broiler in each Restaurant before the deadline.

23 (b) Burger King shall submit the following reports to Plaintiff, as follows:

24 (i) Within nine months following the date of entry of this Consent
25 Judgment, a report showing that no less than 25% of the Restaurants have installed, purchased or
26 ordered the New Broiler.

1 (ii) Within fifteen months of the date of entry of this Consent
2 Judgment, a report showing that no less than 50% of the Restaurants have installed, purchased or
3 ordered the New Broiler.

4 (iii) On or before April 30, 2009, a report showing that no less than 95%
5 of the Restaurants have installed, purchased or ordered the New Broiler.

6 (iv) Within two years of the date of entry of this Consent Judgment, a
7 report showing that 100% of the Restaurants have installed, purchased, or ordered the New
8 Broiler ("Final Report"). If the report shows that more than 95% but fewer than 100% of the
9 Restaurants have installed, purchased, or ordered the New Broiler, Burger King shall take all
10 reasonable steps to assure that the New Broilers are installed in the remaining Restaurants within
11 60 days of issuance of the Final Report, and shall report to Plaintiff within 75 days of issuance of
12 the Final Report.

13 (c) Notwithstanding the requirements of Section 2.2 above, in the event that
14 there is an insufficient supply of New Broilers available, Burger King shall provide Plaintiff with
15 a declaration regarding the reason for the insufficient supply and provide a date by which the
16 New Broilers necessary to meet the dates in Section 2.2 will be available and installed.

17 **2.3 Interim Warnings.**

18 Unless and until a New Broiler is installed at a specific Restaurant, that Restaurant shall
19 provide warnings as set forth below commencing 30 days after the Effective Date. After a New
20 Broiler is installed in a Restaurant, that Restaurant need not provide the warnings set forth in this
21 Section 2.3.

22 (a) Warning message. The warning message provided, under any of the
23 permitted warning methods, shall include the following language, however these two paragraphs
24 need not be consecutive:

25 **WARNING**

26 Chemicals known to the State of California to cause cancer, or birth defects or
27 other reproductive harm may be present in foods or beverages sold or served here.

1 Some other chemicals that may be present in food or beverages served here and
2 known to the State of California to cause cancer and birth defects or other
3 reproductive harm, such as Polycyclic Aromatic Hydrocarbons and PhiP (2-
4 Amino-1-methyl-6- phenylimidazol[4,5-b]pyridine) are, like acrylamide, by-
5 products of cooking.

6 (b) Warning method. The warning shall be provided through any of the three
7 methods set forth below.

8 (i) Sign Warning: A warning set forth on a sign at least 10 inches high
9 by 10 inches wide, with the word "WARNING" centered three-quarters of an inch from the top of
10 the sign in ITC Garamond bold condensed type fact all in one-inch capital letters. Three-
11 sixteenths of an inch from the base of the word "warning" shall be a line extending from left to
12 right across the width of the sign one-sixteenth of an inch in thickness. Centered one-half inch
13 below the line shall be the body of the warning message in ITC Garamond bold condensed type
14 face. For the body of the warning message, left and right margins of at least one-half of an inch,
15 and a bottom margin of at least one-half inch shall be observed. Larger signs shall bear
16 substantially the same proportions of type size and spacing to sign dimension as the sign 10
17 inches high by 10 inches wide.

18 (ii) Sign and Brochure Combination: A combination of a sign and
19 brochure meeting the following requirements:

20 (1) Sign. The sign is at least 10 inches by 10 inches, with the
21 word "WARNING" centered three-quarters of an inch from the top of the sign in ITC Garamond
22 bold condensed type face all in one-inch capital letters. Three-sixteenths of an inch from the base
23 of the word "warning" shall be a line extending from left to right across the width of the sign
24 one-sixteenth of an inch in thickness. Centered one-half inch below the line shall be the body of
25 the warning message in ITC Garamond bold condensed type face. For the body of the warning
26 message, left and right margins of at least one-half of an inch, and a bottom margin of at least
27 one-half inch shall be observed. Larger signs shall bear substantially the same proportions of
28 type size and spacing to sign dimension as the sign 10 inches high by 10 inches wide.

The sign contains the following text:

1 **WARNING**

2 Chemicals known to the State of California to cause cancer, or birth defects or
3 other reproductive harm may be present in foods or beverages sold or served here.
4 For additional information, see the brochure [located at the cashier] [next to this
5 sign]

6 (2) Brochure. The brochure or handout must meet the
7 following requirements:

- 8 a. It must be at least 8 inches by 3 2/3 inches.
- 9 b. It must contain the text set forth in Section 2.2(a).
- 10 c. The text may be no smaller than 8 point font.

11 (iii) Combination with Nutrition Information. If Burger King provides
12 “Nutrition Facts,” i.e., information concerning the nutritional contents of the foods served in its
13 restaurants, the warning may be provided within that sign and accompanying materials, if all of
14 the following requirements are satisfied:

15 (1) The sign is titled “Nutrition Facts” or some other title
16 indicating that it describes the content of foods served in the restaurant.

17 (2) If the specific nutritional information about individual
18 products is provided on the sign itself, then the Proposition 65 warning shall be provided on the
19 sign. If the specific nutritional information about individual products is provided in a brochure,
20 then the Proposition 65 warning set forth above may be provided in the brochure, if (1) the
21 brochure is titled “Nutrition Facts” or some other title indicating that it describes the content of
22 foods served in the restaurant; and (2) the Proposition 65 warning is set forth in type of at least
23 the same size and visibility as the nutritional information.

24 (3) To the extent the Attorney General and Defendant reach a
25 settlement, entered in the form of a consent judgment, in *People of the State of California v. Frito*
26 *Lay, Inc. et al.*, Los Angeles Superior Court Case No. BC 338956, which includes a requirement
27 or compliance option containing the language identical or substantially similar to that set forth in
28 Section 2.3(a), and Burger King’s implementation of that compliance option has been approved
by the Attorney General, Burger King’s use of that approved warning and method of warning

1 shall satisfy the warning requirements of this Consent Judgment, provided that it makes specific
2 reference to polycyclic aromatic hydrocarbons.

3 (c) Warning location. Whichever warning method is used, any sign must be:

4 (i) located at or on the counter where food is purchased, on a wall
5 either adjacent and parallel to or clearly visible from the counter where food is purchased; or
6 located or at any other place that is reasonably likely to be seen and read by customers entering
7 the restaurant to order food;

8 (ii) not located at any of the following locations: On an entrance or exit
9 door, on a window, on a restroom door, in a restroom, in a hallway that leads only to restrooms,
10 on a refuse container.

11 (d) Periodic Modification of Warning Message. The warning message may be
12 modified to include other foods or beverages, with the approval of the Attorney General.

13 2.4 Implementation of Injunctive Relief.

14 Burger King agrees to notify its Franchisees about the terms of this Consent Judgment and
15 of their obligations thereunder within 20 days of the date this Consent Judgment is entered.

16 Burger King will provide all of its Franchisees with the information necessary for proper
17 operation and maintenance of the New Broilers, including the flame arrestor and ventilation
18 systems. Burger King shall provide all franchisees with sufficient supply of signs, and, if that
19 method of warning is selected, brochures, to meet the requirements of this Consent Judgment.

20 3. MONETARY PAYMENTS

21 3.1 **Payments Pursuant to Health & Safety Code § 25249.7(b)**. The total
22 settlement amount pursuant to this Section is \$980,000. Defendant shall receive a credit of
23 \$300,000 against the above-stated amount in light of its prompt cooperation with Plaintiff in
24 resolving this matter. Pursuant to Health & Safety Code Section 25249.7(b), Defendant shall pay
25 the remaining amount, to the extent required by this Consent Judgment, as follows:

26 (a) A total of \$80,000 shall be paid by Defendant ten days from the date of
27 entry of this Consent Judgment, as civil penalties, by way of a check made payable to "Hirst &
28 Chanler LLP in Trust For Whitney R. Leeman," at the address listed at the end of Section 3.1.

1 (b) A total of \$300,000 shall be paid by Defendant fifteen months and ten days
2 from the date of entry of this Consent Judgment, as civil penalties, by way of a check made
3 payable to "Hirst & Chanler LLP in Trust for Whitney R. Leeman."

4 This payment shall be forgiven if 50% of Restaurants then in existence have installed,
5 purchased, or ordered the New Broiler. If greater than 30% but less than 50% of Restaurants then
6 in existence have installed, purchased, or ordered the New Broiler, the penalty amount to be
7 forgiven shall be pro-rated based on the actual percentage, multiplied by two, of the restaurants
8 that have installed the new broilers (e.g., if 30% of Restaurants have installed, purchased, or
9 ordered the New Broiler by the deadline in 3.1(a), then 60% of the payment, or \$180,000 would
10 be forgiven.)

11 (c) A total of \$300,000 shall be paid by Defendant two years and ten days
12 from the date of entry of this Consent Judgment, as civil penalties, by way of a check made
13 payable to "Hirst & Chanler LLP in Trust for Whitney R. Leeman."

14 This payment shall be forgiven if 100% of Restaurants then in existence have installed,
15 purchased, or ordered the New Broiler. If greater than 80% of Restaurants then in existence have
16 installed, purchased, or ordered the New Broiler, but less than 100%, the penalty amount to be
17 forgiven shall be pro-rated based on the actual percentage of Restaurants that have installed,
18 purchased, or ordered the New Broiler (e.g., if 90% of Restaurants have installed, purchased, or
19 ordered the New Broiler by the deadline in 3.1(b), \$270,000 would be forgiven.)

20 Payments shall be delivered to the following address:

21 HIRST & CHANLER LLP
22 Attn: Prop 65 Controller
23 2560 Ninth Street
24 Parker Plaza, Suite 214
Berkeley, CA 94710-2565

25 **3.2 Payment to Dr. Leeman for Past Costs and Future Efforts.** The Parties
26 acknowledge that Dr. Leeman has brought, and continues to bring, her considerable scientific
27 expertise to bear on this case. Therefore, within ten (10) days after entry of this Consent
28 Judgment, Defendant shall pay \$20,000 to Dr. Leeman, which represents the full value, exclusive

1 of attorneys' fees and costs, of (a) her out-of-pocket costs incurred to date; (b) her time and
2 expense to be incurred to review and verify the testing results from the protocol described in
3 Exhibit A; and (c) her time and expense to review and verify the various reports to be supplied by
4 Burger King over the next two years (e.g., Section 2.2). Defendant's payment shall be made by
5 check payable to Dr. Whitney R. Leeman and sent to:

6 Dr. Whitney R. Leeman
7 c/o HIRST & CHANLER LLP
8 Attn: Prop 65 Controller
9 Parker Plaza, Suite 214
Berkeley, CA 94710-2565

10 **4. REIMBURSEMENT OF FEES AND COSTS**

11 4.1 The Parties acknowledge that Plaintiff and her counsel offered to resolve this
12 dispute without reaching terms on the amount of fees and costs to be reimbursed to them, thereby
13 leaving this fee issue to be resolved after the material terms of the agreement had been settled.
14 Defendant then expressed a desire to resolve the fee and cost issue shortly after the other
15 settlement terms had been finalized. The Parties then attempted to (and did) reach an accord on
16 the compensation due to Plaintiff and her counsel under the private attorney general doctrine
17 codified at Code of Civil Procedure § 1021.5 for all work performed through the Court's approval
18 of the Consent Judgment. Under the private attorney general doctrine codified at Code of Civil
19 Procedure § 1021.5, Defendant shall reimburse Plaintiff and her counsel for attorneys' fees and
20 costs incurred as a result of investigating, bringing this matter to Defendant's attention, litigating
21 and negotiating a settlement in the public interest, and seeking the Court's approval of this
22 Consent Judgment. Specifically, Defendant shall pay Plaintiff and her counsel \$200,000 for all
23 attorneys' fees, expert and investigation fees, and litigation costs. The payment shall be made
24 payable to Hirst & Chanler LLP and shall be delivered to Plaintiff's counsel on or before ten days
25 from the date the Court has approved this Consent Judgment and entered a final order. The check
26 shall be delivered to the following address:
27
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1 HIRST & CHANLER LLP
2 Attn: Prop 65 Controller
3 2560 Ninth Street
4 Parker Plaza, Suite 214
5 Berkeley, CA 94710-2565

6 Except as specifically provided in this Consent Judgment, Defendant shall have no further
7 obligation with regard to reimbursement of Plaintiff's attorney's fees and costs with regard to the
8 Products covered in this Action.

9 **5. RELEASE AND COVENANT NOT TO SUE**

10 **5.1 Settlement of All Claims.**

11 This Consent Judgment is a final and binding resolution between the Plaintiff and
12 Defendant, satisfying and releasing Defendant and its past and present parents, subsidiaries,
13 affiliates, divisions, predecessors, successors, officers, directors, employees, Franchisees,
14 suppliers, distributors, licensees, Restaurants, and customers ("Defendant's Releasees") from any
15 and all causes of action, damages, costs, penalties, attorneys fees and claims of any kind that were
16 made or could have been made in the Complaint, based upon alleged violations of Proposition
17 65, or arising from exposure to Listed Chemicals for which Defendant or Defendant's Releasees
18 are responsible. Compliance with this Consent Judgment in the future by Burger King shall be
19 deemed to satisfy its obligations under Proposition 65 with respect to Claims (as defined below),
20 and compliance with the terms of this Consent Judgment in the future by each Restaurant and
21 each Franchisee shall be deemed compliance by that Restaurant and that Franchisee with their
22 respective obligations under Proposition 65, with respect to claims made in the Notice and/or the
23 Complaint.

24 **5.2 Plaintiff's Release of Defendant.**

25 In further consideration of the representations, warranties and commitments herein
26 contained, and for the payments to be made pursuant to Sections 3 and 4, and subject to the
27 foregoing paragraph, Plaintiff, on behalf of herself, her past and current agents, representatives,
28 attorneys, successors, assignees, or any person or entity who may now or in the future claim
through her in a derivative manner, and in the interest of the general public, hereby waives all

1 rights to institute or participate in, directly or indirectly, any form of legal action and releases all
2 claims, including, without limitation, all actions, causes of action, in law or in equity, suits,
3 liabilities, demands, obligations, damages, costs, fines, penalties, losses or expenses (including,
4 but not limited to, investigation fees, expert fees and attorneys' fees) of any nature whatsoever,
5 whether known or unknown, fixed or contingent, against Defendant or Defendant's Releasees
6 arising under Proposition 65 or any other applicable law, including common law (collectively
7 "Claims") related to Defendant's or Defendant's Releasees' alleged failure to warn about
8 exposures to, or identification of the Listed Chemicals contained in the Products. It is specifically
9 understood and agreed that the Parties and the Court intend that Defendant's compliance with the
10 terms of this Consent Judgment resolves all issues and liability, now and in the future (so long as
11 Defendant complies with the terms of the Consent Judgment) concerning Defendant and the
12 Defendant's Releasees' compliance with the requirements of Proposition 65 as to the Listed
13 Chemicals in the Products; provided, however that the release contained in this Consent Judgment
14 with respect to claims for future conduct of any Franchisee is conditioned, as to each Restaurant
15 owned or operated by such Franchisee, upon such Restaurant's compliance with the obligation to
16 post warnings in accordance with this Consent Judgment, and to use only New Broilers to flame-
17 broil the Products once such New Broilers have been installed in the Restaurant.

18 **5.3 Covenant Not to Sue.**

19 Except as expressly provided in this Consent Judgment, Plaintiff agrees not to bring any
20 Claims, whether pursuant to Proposition 65 or any other law, against Burger King or Burger
21 King's Releasees with respect to inadequate product labeling, the provision of health or safety
22 warnings in Restaurants, or the presence of any of the Listed Chemicals or any other hazardous
23 substance alleged to be generally found within Burger King's Products sold in the Restaurants.
24 To the extent that a Franchisee fails to comply with the provisions of Section 2 of this Consent
25 Judgment for any particular Restaurant, this provision will have no force and/or effect as to said
26 Franchisee with respect to the noncompliant Restaurant(s).

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5.4 Defendant’s Release of Plaintiff.

Defendant waives all rights to institute any form of legal action against Plaintiff, or her attorneys or representatives, for all actions taken or statements made by Plaintiff or her attorneys or representatives, in the course of seeking enforcement of Proposition 65 in association with this Action.

6. COURT APPROVAL

This Consent Judgment is not effective until it is approved and entered by the Court and shall be null and void if, for any reason, it is not approved and entered by the Court within one year after it has been fully executed by all Parties. If the Court’s approval of this Consent Judgment is reversed by an appellate court, any monies that have been provided to Plaintiff or her counsel pursuant to section 3 and section 4 above, shall be refunded to Defendant within fifteen (15) days of the matter being remitted to the trial court. In the event that this Consent Judgment is not entered within one year due to one or more of the following occurrences, this provision will be tolled as follows: if an appeal is entered from the entry of the Consent Judgment, this provision will be tolled during the pendency of the appeal; if a stay is filed in this matter, this provision will be tolled for the duration of the stay; and/or if the Court takes the motion to approve the consent judgment under submission, this provision will be tolled during the period of submission.

7. SEVERABILITY

If, subsequent to court approval of this Consent Judgment, any of the provisions of this Consent Judgment are held by a court to be unenforceable, the validity of the enforceable provisions remaining shall not be adversely affected.

8. ATTORNEYS’ FEES

In the event that a dispute arises with respect to any provision(s) of this Consent Judgment, the prevailing party shall, except as otherwise provided herein, be entitled to recover reasonable and necessary costs and reasonable attorneys’ fees incurred from the resolution of such dispute, with the exception that if Defendant brings a motion to modify the Consent

1 Judgment, Defendant will not be entitled to recover any costs or attorneys' fees incurred in
2 connection with that motion.

3 **9. GOVERNING LAW**

4 The terms of this Consent Judgment shall be governed by the laws of the State of
5 California and apply within the State of California. In the event that Proposition 65 is repealed or
6 is otherwise rendered inapplicable by reason of law generally, or as to the Products specifically,
7 then Defendant shall have no further obligations pursuant to this Consent Judgment with respect
8 to, and to the extent that, those Products are so affected.

9 **10. NOTICES**

10 All correspondence and notices required to be provided pursuant to this Consent Judgment
11 shall be in writing and personally delivered or sent by: (i) first-class, registered, certified mail,
12 return receipt requested or (ii) overnight courier on either Party by the other at the addresses listed
13 below. Either Party, from time to time, may specify a change of address to which all notices and
14 other communications shall be sent.

15 For Plaintiff:

16 Whitney R. Leeman, Ph.D
17 c/o Hirst & Chanler LLP
18 2560 Ninth Street
19 Parker Plaza, Suite 214
20 Berkeley, CA 94710-2565

For Defendant:

General Counsel
Burger King Corporation
Law Department
5505 Blue Lagoon Drive
Miami, FL 33126

with a copy to:

19 Michèle B. Corash
20 Morrison & Foerster LLP
21 425 Market Street
San Francisco, CA 94105-2482

22 **11. COUNTERPARTS; FACSIMILE SIGNATURES**

23 This Consent Judgment may be executed in counterparts and by facsimile, each of which
24 shall be deemed an original, and all of which, when taken together, shall constitute one and the
25 same document.

26 **12. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(F)**

27 Plaintiff agrees to comply with the reporting form requirements referenced in Health &
28 Safety Code § 25249.7(f). Pursuant to regulations promulgated under that section, Plaintiff shall

1 present this Consent Judgment to the California Attorney General's Office within two (2) days
2 after receiving all of the necessary signatures. A noticed motion to enter the Consent Judgment
3 will then be served on the Attorney General's Office at least forty-five (45) days prior to the date
4 a hearing is scheduled on such motion in the Superior Court for the County of Sacramento unless
5 the Court allows a shorter period of time. The Parties agree that they shall cooperate to address
6 any issues raised by the Attorney General before the Consent Judgment is entered.

7 **13. ADDITIONAL POST EXECUTION ACTIVITIES**

8 The Parties shall mutually employ their best efforts to support the entry of this Agreement
9 as a Consent Judgment and to obtain approval of the Consent Judgment by the Court (on
10 shortened time, if necessary) on or before September 17, 2007. The Parties acknowledge that,
11 pursuant to Health & Safety Code § 25249.7, a noticed motion is required to obtain judicial
12 approval of this Consent Judgment. Accordingly, the Parties agree to file a Joint Motion to
13 Approve the Agreement ("Joint Motion"), the first draft of which Defendant's counsel shall
14 prepare, within a reasonable period of time after the execution date of this Consent Judgment (i.e.,
15 not to exceed ten (10) days unless otherwise agreed to by the Parties' counsel based on
16 unanticipated circumstances). Plaintiff's counsel shall prepare a declaration in support of the
17 Joint Motion which shall, inter alia, set forth support for the fees and costs to be reimbursed
18 pursuant to Section 4. Defendant shall have no additional responsibility to Plaintiff's counsel
19 pursuant to C.C.P. § 1021.5 or otherwise with regard to reimbursement of any fees and costs
20 incurred with respect to the preparation and filing of the Joint Motion and its supporting
21 declaration or with regard to Plaintiff's counsel appearing for a hearing or related proceedings
22 thereon.

23 **14. MODIFICATION**

24 This Consent Judgment may be modified only by: (1) written agreement of the Parties
25 and upon entry of a modified Consent Judgment by the Court thereon, or (2) motion of any Party
26 as provided by law and upon entry of a modified Consent Judgment by the Court. The Attorney
27 General shall be served with notice of any proposed modification to this Consent Judgment at
28 least fifteen (15) days in advance of its consideration by the Court.

1 **15. AUTHORIZATION**

2 The undersigned are authorized to execute this Consent Judgment on behalf of their
3 respective Parties and have read, understood and agree to all of the terms and conditions of this
4 Consent Judgment.

5 AGREED TO:

AGREED TO:

6
7 Date: 7/24/07
8 By: Whitney Leeman
9 Plaintiff, Whitney R. Leeman, Ph.D

Date: _____
By: _____
Defendant, Burger King Corporation

10 APPROVED AS TO FORM:

APPROVED AS TO FORM:

11 Date: 8/1/07
12 HIRST & CHANLER LLP
13 By: [Signature]
14 David Lavine
15 Attorneys for Plaintiff
WHITNEY R. LEEMAN, PH.D

Date: _____
MORRISON & FOERSTER LLP
By: _____
Michele B. Corash
Attorneys for Defendant
BURGER KING CORPORATION

16 **IT IS SO ORDERED.**

17
18 Date:

JUDGE OF THE SUPERIOR COURT

1 **15. AUTHORIZATION**

2 The undersigned are authorized to execute this Consent Judgment on behalf of their
3 respective Parties and have read, understood and agree to all of the terms and conditions of this
4 Consent Judgment.

5 **AGREED TO:**

AGREED TO:

6
7 **Date:** _____

Date: July 27, 2007

8 **By:**
9 **Plaintiff, Whitney R. Leeman, Ph.D**

By: Justin Helms - Klein
Defendant, Burger King Corporation

10 **APPROVED AS TO FORM:**

APPROVED AS TO FORM:

11
12 **Date:** _____
HIRST & CHANLER LLP

Date: July 30, 2007
MORRISON & FOERSTER LLP

13 **By:**
14 **David Lavine**
15 **Attorneys for Plaintiff**
WHITNEY R. LEEMAN, PH.D

By: Michelle B. Corash
Attorneys for Defendant
BURGER KING CORPORATION

16 **IT IS SO ORDERED.**

17
18 **Date:** _____

JUDGE OF THE SUPERIOR COURT

Exhibit A

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PAH REDUCTION VERIFICATION PROTOCOL

Leeman v. Burger King Corp. et al.
(Sacramento Super. Ct., Case No. 06AS02168)

that additional calls are necessary. Each party will have the right to a split of any sample upon request to the NFL with notice to the other party as set forth below.

Because benzo[a]pyrene is recognized as a marker for the high molecular weight PAHs that are at issue in this case,¹ NFL shall analyze each sample for only BaP using a 0.1 ppb method detection limit. Formal reports, including all calibration and recovery analyses, shall be prepared based on sample analysis for each of the two types of grills and distributed to both parties via electronic mail simultaneously as soon as practicable. If any party desires to conduct re-analysis or obtain split samples, it shall inform the other party within 3 days of receipt of NFL's analysis. Any further analysis shall be at the sole cost and expense of the requesting party. Each set of test results shall be deemed acceptable to the extent that the 90 percent upper confidence limit for the mean is equal to or less than 1.20 ppb. All non-detects shall be assigned a value of 0.05. NFL shall not be informed of what constitutes "acceptable" results. Burger King will pay for this analysis.

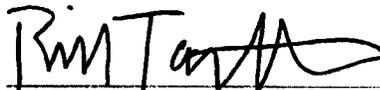
All results and other documentation generated by the process shall be kept confidential by both parties, and shall be protected by Evidence Code Section 1152 and thereby inadmissible in any proceeding for any purpose, except, and only with the consent of both parties, information generated during this process may be shared with the Attorney General to resolve any potential objections to a consent judgment, or with any mediator, arbitrator or other third-party neutral who is involved in facilitating settlement of this action between Burger King and Dr. Leeman. Use of the National Food Lab shall not affect Burger King's ability to retain NFL separately as a consultant or testifying expert in this action, and shall not serve to waive any pre-existing attorney work product protections over other data generated by NFL.

AGREED AND ACCEPTED.

Dated: July 17, 2007

MORRISON & FOERSTER LLP

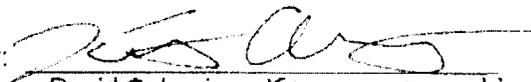
By:


William F. Tarantino

Dated: July 17, 2007

HIRST & CHANLER LLP

By:


David S. Lavine KA per authorization by DS

¹ European Commission, Health and Consumer Protection Directorate General, *Opinion of the Scientific Committee on Food on the risks to human health of Polycyclic Aromatic Hydrocarbons in food*, SCF/CS/CNTM/PAH/29 Final (4 December 2002); see also Kazerouni, N., et al., 2001. *Analysis of 200 food items for benzo[a]pyrene and estimation of its intake in an epidemiologic study*. Food Chem. Toxicol., 39, 423-436.