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6 Attorneys for Defendant,  
**THE CHEESECAKE FACTORY INCORPORATED**

7  
8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
9 **FOR THE COUNTY OF SAN FRANCISCO**  
10 **UNLIMITED CIVIL JURISDICTION**

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

13 Plaintiff,

14 vs.

15 THE CHEESECAKE FACTORY, INC.;  
and DOES 1 through 150, inclusive,

16 Defendants.  
17

CASE NO. CGC-07-462957

**STIPULATION AND [PROPOSED]  
ORDER RE: CONSENT JUDGMENT**

1     **1.     INTRODUCTION**

2             **1.1     Plaintiff and Defendant.** This Consent Judgment (“Consent Judgment” or  
3 “Agreement”) is entered into by and between plaintiff Whitney R. Leeman, Ph.D. (hereafter  
4 “Leeman” or “Plaintiff”) and Defendant The Cheesecake Factory Incorporated, its subsidiaries  
5 and affiliates (collectively referred to as the “Defendant”), with Plaintiff and Defendant  
6 collectively referred to as the “Parties” and Leeman and Defendant each being a “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     Defendant.** Defendant is a corporation that employs more than 10 persons that  
11 sells Products (as that term is defined in Section 1.5 of this Consent Judgment) in the State of  
12 California or has done so in the past.

13            **1.4     General Allegations.** Plaintiff alleges that Defendant has manufactured,  
14 distributed and/or sold in the State of California certain flame-broiled hamburgers, including the  
15 “Tons of Fun Burger,” containing benz[a]anthracene, benzo[a]pyrene, benzo[b]fluoranthene,  
16 benzo[k]fluoranthene, and indeno[1,2,3-cd]pyrene, which chemicals are listed in the Safe  
17 Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code § 25249.5  
18 et seq., also known as Proposition 65, to purportedly cause cancer. Benz[a]anthracene,  
19 benzo[a]pyrene, benzo[b]fluoranthene, benzo[k]fluoranthene, and indeno[1,2,3-cd]pyrene shall  
20 be referred to herein collectively as the “Listed Chemicals.” Plaintiff alleges that consumption of  
21 flame-broiled hamburgers sold by Defendant would allegedly expose consumers of that product  
22 to the Listed Chemicals in violation of Proposition 65.

23            **1.5     Product Descriptions.** The products that are covered by this Consent Judgment  
24 are as follows: flame cooked ground beef products allegedly containing the Listed Chemicals  
25 that have been manufactured, sold and/or distributed by Defendant in California. Such products  
26 collectively are referred to herein as the “Products.”

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1           **1.6 Notices of Violation.** On February 14, 2007, Leeman served Defendant and  
2 various public enforcement agencies with documents entitled “60-Day Notice of Violation”  
3 (“Notice”), alleging that Defendant was in violation of California Health & Safety Code §25249.6  
4 for failing to warn purchasers that the Products that it sold exposed users in California to the  
5 Listed Chemicals.

6           **1.7 Complaint.** On May 1, 2007, Leeman filed a complaint (hereafter referred to as  
7 the “Complaint” or the “Action”) in the Superior Court for the County of San Francisco against  
8 Defendant, and Does 1 through 150, alleging violations of California Health & Safety Code §  
9 25249.6 based on the alleged exposures to the Listed Chemicals purportedly contained in the  
10 Products sold by Defendant. Plaintiff further alleges that Defendant failed to post proper  
11 warnings prior to said alleged exposures.

12           **1.8 No Admission.** Defendant denies the material factual and legal allegations  
13 contained in Plaintiff’s Notice and Complaint and maintains that all products that it has sold and  
14 distributed in California, including the Products, have been and are in compliance with California  
15 Health & Safety Code § 25249.5 et seq. Defendant asserts that since at least May 2003, it has  
16 posted the Proposition 65 safe harbor notice in each of its retail locations and conducted annual  
17 audits of its retail locations to ensure that the safe harbor notices were posted. This Consent  
18 Judgment is the product of negotiations and compromise and is accepted by the Parties for the  
19 purpose of settling, compromising and resolving issues disputed in this action, including future  
20 compliance with Section 2 of this Consent Judgment, and compliance with Proposition 65 as to  
21 matters alleged in the Complaint. The Consent Judgment is entered into to avoid potentially  
22 lengthy and/or costly litigation between the Parties hereto. By execution of this Consent  
23 Judgment, the Defendant does not admit any facts or conclusions of law, including, but not  
24 limited to, any facts or conclusions of law suggesting or demonstrating any violation of  
25 Proposition 65. Nothing in this Consent Judgment shall be construed as an admission by  
26 Defendant of any fact, finding, issue of law or violation of law, nor shall compliance with this  
27 Consent Judgment constitute or be construed as an admission by Defendant of any fact, finding,  
28 conclusion, issue of law or violation of law.



1                   **2.2.3 Location of Employee Warning.** In addition to the warning set forth in  
2 Paragraph 2.2.2, above, a warning will be provided in an employee break area or employee  
3 message board through the posting of a sign at least 5 1/2 inches high by 8 1/2 inches wide, in  
4 substantially the same form as the example attached hereto as “Exhibit A.”

5                   **2.2.4 Timing.** Defendant will make reasonable efforts to ensure prompt  
6 compliance with Section 2.2.1. In any event, the warning specified in Section 2.2.1 will be in  
7 place at each of Defendant’s retail locations on or before the Effective Date.

8                   **2.3 Compliance.**

9                   **2.3.1 Compliance With Proposition 65’s Warning Provisions.** It is agreed  
10 and ordered that the warning language and location requirements detailed in Section 2.2.1 and  
11 Section 2.2.2 of this Consent Judgment fulfill Defendant’s obligation under California Health &  
12 Safety Code § 25249.5 et seq.

13                   **2.3.2 Compliance Review.** Beginning on the Effective Date and continuing for  
14 three years thereafter, Defendant will perform a compliance review of its retail locations at least  
15 once a year during which it owns or operates any restaurants in California to determine whether  
16 it is in compliance with all of the requirements of Section 2.2 of this Consent Judgment with  
17 respect to those restaurants (“Compliance Review”). A Compliance Review shall be  
18 documented and shall note on a per restaurant basis: (a) any deficiencies regarding compliance  
19 with Section 2.2, (b) the date those deficiencies were discovered, and (c) the date on which the  
20 deficiencies were corrected. All documentation regarding this Compliance Review will be  
21 retained by Defendant for at least one year following the date of the Compliance Review.

22                   **2.3.3 Written Notice.** If Plaintiff or any other person believes that Defendant is  
23 not in compliance of this Consent Judgment, notice shall be given to Defendant in writing by the  
24 method detailed in Section 9 of this Consent Judgment. Such notice must contain at least the  
25 following: (a) location of the retail location where the alleged violation occurred, (b) the date the  
26 alleged violation was observed, and (c) the identity of the person who observed the alleged  
27 violation.



1 the State of California the appropriate amounts paid in accordance with this section.

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

3 **4.1** The Parties attempted to (and did) reach an accord on the compensation due to  
4 Plaintiff and her counsel for all work performed through the Court's approval of the Agreement.  
5 Defendant shall pay Plaintiff and her counsel a total of thirty-seven thousand five hundred dollars  
6 (\$37,500) for all attorneys' fees, expert and investigation fees, and litigation costs. The payment  
7 shall be made payable to Hirst & Chanter LLP and shall be delivered to Plaintiff's counsel within  
8 ten (10) days of the Effective Date, at the following address:

9 HIRST & CHANLER LLP  
10 Attn: Prop 65 Controller  
11 2560 Ninth Street  
12 Parker Plaza, Suite 214  
Berkeley, CA 94710-2565

13 Except as specifically provided in this Consent Judgment, Defendant shall have no further  
14 obligation with regard to payment of any other monies, including but not limited to  
15 reimbursement of Plaintiff's attorneys' fees and costs with regard to this Action and the Products  
16 covered in this Action or any other matter whatsoever.

17 **5. RELEASE OF ALL CLAIMS**

18 **5.1 Plaintiff's Release.** In further consideration of the representations, warranties and  
19 commitments herein contained, and for the payments to be made pursuant to sections 3 of this  
20 Consent Judgment, Plaintiff, on behalf of herself, her past and current agents, representatives,  
21 attorneys, successors, assignees, or any person or entity who may now or in the future claim  
22 through her in a derivative manner, and in the interest of the general public, hereby waives all  
23 rights to institute or participate in, directly or indirectly, any form of legal action and releases all  
24 claims, including, without limitation, all actions, causes of action, in law or in equity, suits,  
25 liabilities, demands, obligations, damages, costs, fines, penalties, losses or expenses (including,  
26 but not limited to, investigation fees, expert fees and attorneys' fees) of any nature whatsoever,  
27 whether known or unknown, fixed or contingent (collectively "Claims"), against Defendant and  
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1 each of its distributors, wholesalers, licensees, auctioneers, retailers, dealers, customers, owners,  
2 purchasers, users, parent company, corporate affiliates, subsidiaries and their respective officers,  
3 directors, attorneys, representatives, shareholders, agents, representatives, insurers and employees  
4 (collectively, "Releasees") arising under Proposition 65 or any other statutory, common law or  
5 other law that was or could have been asserted based on the facts alleged in the Complaint or  
6 based on alleged exposures to any of the Listed Chemicals in any products, including the  
7 Products, at any restaurant owned and operated in California by Defendant or any successor of  
8 Defendant, now or in the future.

9 It is specifically understood and agreed that the Parties and the Court intend that  
10 compliance with the terms of this Consent Judgment resolves all issues and liability, now and in  
11 the future, concerning Defendant's compliance with the requirements of Proposition 65 as to the  
12 Listed Chemicals in or on the Products.

13 **5.2 Defendant's Release.** Defendant waives all rights to institute any form of legal  
14 action and releases all claims against Plaintiff or her attorneys or representatives, for any or all  
15 actions taken or statements made by Plaintiff or her attorneys or representatives, in the course of  
16 seeking enforcement of Proposition 65 in association with this Action occurring prior to the  
17 Effective Date.

## 18 **6. COURT APPROVAL**

19 This Consent Judgment is not effective until it is approved and entered by the Court and  
20 shall be null and void if it is not approved and entered by the Court within one year after it has  
21 been fully executed by all Parties. Further, in the event that the entry of the Consent Judgment is  
22 appealed, Defendant's obligations under the Consent Judgment shall be stayed until such time as  
23 any and all appeals are resolved and the entry of the Consent Judgment becomes final.

## 24 **7. SEVERABILITY**

25 If, subsequent to the Court's approval of this Consent Judgment, any non-material  
26 provision of this Consent Judgment is held by a court to be unenforceable, the validity of the  
27 enforceable provisions remaining shall not be adversely affected.  
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1     **8.     GOVERNING LAW**

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

7     **9.     NOTICES**

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

13             **For Plaintiff:**

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

13             **For Defendant :**

14             The Cheesecake Factory  
15             Attn: Legal Department  
16             26901 Malibu Hills Road  
17             Calabasas Hills, CA 91301

17             And

18             Michael L. Wachtell  
19             Arthur Chinski  
20             Buchalter Nemer  
21             1000 Wilshire Boulevard, Suite 1500  
22             Los Angeles, CA 90017-2457

21     **10.    COUNTERPARTS AND FACSIMILE SIGNATURES**

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

25     **11.    COMPLIANCE WITH CALIFORNIA HEALTH & SAFETY CODE § 25249.7(F)**

26             Plaintiff agrees to comply with the reporting form requirements referenced in California  
27 Health & Safety Code § 25249.7(f). Pursuant to regulations promulgated under that section,  
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1 Plaintiff shall present this Consent Judgment to the California Attorney General's Office within  
2 five (5) days after receiving all of the necessary signatures. A noticed motion to enter the  
3 Consent Judgment will then be served on the Attorney General's Office at least forty-five (45)  
4 days prior to the date a hearing is scheduled on such motion in the Superior Court for the County  
5 of San Francisco, unless the Court allows a shorter period of time.

6 **12. ADDITIONAL POST-EXECUTION ACTIVITIES**

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

21 **13. CONFIDENTIAL DOCUMENTS**

22 All documents produced in the course of this litigation that have been marked confidential  
23 by the producing party shall be returned to the producing party within five (5) days of the  
24 Effective Date. Plaintiff agrees that such information contained in said confidential documents  
25 shall remain absolutely confidential and that Plaintiff shall not disclose such confidential  
26 information directly or indirectly, verbally or in writing, to any person or entity for any reason  
27 whatsoever.  
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**14. MODIFICATION**

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

**15. APPLICATION OF CONSENT JUDGMENT**

This Consent Judgment shall apply to, be binding upon, and inure to the benefit of the Parties hereto, their divisions, subdivisions and subsidiaries, and the successors or assigns of any of them.

**16. AGREEMENT DEEMED DRAFTED BY BOTH PARTIES.**

This Consent Judgment has been drafted by counsel for all Parties. Any ambiguity shall not be construed against either Party on the basis of that Party having drafted the Consent Judgment.

**17. AUTHORIZATION**

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

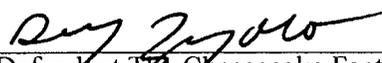
AGREED TO:

AGREED TO:

Date: \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Plaintiff Whitney R. Leeman

By:   
Defendant The Cheesecake Factory  
Incorporated  
Exec. Vice Pres.

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AGREED TO:

AGREED TO:

Date: 2/25/08

Date: \_\_\_\_\_

By: Whitney R. Lecman  
Plaintiff Whitney R. Lecman

By: \_\_\_\_\_  
Defendant The Cheesecake Factory

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APPROVED AS TO FORM:

APPROVED AS TO FORM:

HIRST & CHANLER LLP

BUCHALTER NEMER

By:   
David S. Lavine  
Attorneys for Plaintiff  
WHITNEY R. LEEMAN

By: \_\_\_\_\_  
Michael L. Wachtell  
Attorneys for Defendant  
THE CHEESECAKE FACTORY  
INCORPORATED

**IT IS SO ORDERED.**

Date: \_\_\_\_\_

\_\_\_\_\_  
JUDGE OF THE SUPERIOR COURT

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APPROVED AS TO FORM:

HIRST & CHANLER LLP

By: \_\_\_\_\_

David S. Lavine  
Attorneys for Plaintiff  
WHITNEY R. LEEMAN

APPROVED AS TO FORM:

BUCHALTER NEMER

By: \_\_\_\_\_

Michael L. Wachtell  
Attorneys for Defendant  
THE CHEESECAKE FACTORY  
INCORPORATED

**IT IS SO ORDERED.**

Date: \_\_\_\_\_

\_\_\_\_\_  
JUDGE OF THE SUPERIOR COURT

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