

## SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is entered into by and between Whitney R. Leeman, Ph.D. (hereinafter “Leeman”) and Antioch Grill dba Uno Chicago Grill (hereinafter “Uno - Antioch”), with Leeman and Uno - Antioch collectively referred to as the “Parties,” and is made with reference to the following:

### RECITALS

- A. Leeman.** Leeman is an individual residing in California who seeks to promote awareness of exposures to toxic chemicals and improve human health by reducing or eliminating hazardous substances contained in consumer and industrial products.
- B. Uno - Antioch.** Uno - Antioch is a franchise restaurant employing more than 10 persons in California. Uno - Antioch manufactures, distributes and/or sells products, as defined herein, in the State of California, and has done so in the past.
- C. General Allegations.** Leeman alleges that Uno - Antioch has manufactured, distributed and/or sold in the State of California certain flame-broiled hamburgers including, but not limited to, the Uno Burger, containing benz[a]anthracene, benzo[a]pyrene, benzo[b]fluoranthene, benzo[k]fluoranthene, and indeno[1,2,3-cd]pyrene, which are cancer-causing chemicals listed pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1996, California Health & Safety Code § 25249.5 *et seq.*, also known as Proposition 65. Benz[a]anthracene, benzo[a]pyrene, benzo[b]fluoranthene, benzo[k]fluoranthene, and indeno[1,2,3-cd]pyrene shall be referred to as the “Listed Chemicals.” Leeman alleges that consumption of these flame-broiled hamburgers would thereby expose consumers of these products to the Listed Chemicals in violation of Proposition 65.
- D. Product Descriptions.** The products that are covered by this Agreement are defined as follows: flame-broiled hamburgers containing the Listed Chemicals, manufactured, sold and/or distributed by Uno - Antioch in California. Such products collectively are referred to herein as the “Products.”

**E. Notice of Violation.** On November 28, 2008, Leeman served Uno Chicago Grill and various public enforcement agencies with documents, entitled "60-Day Notice of Violation" ("Notice"), that provided Uno - Antioch and such public enforcers with notice that alleged that Uno - Antioch was in violation of Health & Safety Code § 25249.6 for failing to warn purchasers that certain Products that it sold expose users in California to the Listed Chemicals. To the best of the parties' knowledge, no public enforcer has diligently prosecuted the allegations set forth in the Notice.

### **AGREEMENT**

Now, therefore, for valuable consideration and in consideration of the mutual promises set forth in this Agreement, Leeman and Uno - Antioch agree as follows:

- 1. Preliminary Statement.** This Agreement applies to the restaurant operated by Uno - Antioch only, and not to other Uno restaurants. After the Effective Date, any Products containing the Listed Chemicals shall not be sold in Uno - Antioch unless such Products are sold in compliance with Sections 4 and 5.
- 2. Effective Date.** For purposes of this Agreement, the "Effective Date" shall be April 30, 2009.
- 3. No Admission.** Uno - Antioch denies the material factual and legal allegations contained in the Notice, and maintains that all products that it has sold and distributed in California, including the Products, have been and are in compliance with all laws. Nothing in this Agreement shall be construed as an admission by Uno - Antioch of any fact, finding, issue of law, or violation of law, nor shall compliance with this Agreement constitute or be construed as an admission by Uno - Antioch of any fact, finding, conclusion, issue of law or violation of law. However, this action shall not diminish or otherwise affect the obligations, responsibilities and duties of Uno - Antioch under this Agreement.

4. **Warnings.** Any warning issued for Products pursuant to this section shall be prominently placed with such conspicuousness as compared with other words, statements, designs, or devices so as to render it likely to be read and understood by an ordinary individual under customary conditions before purchase or use.

(a) Warning Message. In response to the Notice, Uno - Antioch posted the signs described in this section 4(b) in its restaurant that are five inches wide by five inches high. Uno - Antioch represents and warrants that, within 30 days after signing of this Agreement, it will replace the 5 by 5 warning signs in its restaurant with warning signs that are five inches (5) high by ten inches (10) wide which contain the following language:

**“WARNING**

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

(b) Warning Method.

The warning signs described in Section 4(a) are posted (and will be posted) as follows:

(1) A warning sign posted on the outside of the To Go Entry Door approximately 57 inches from the ground (See Exhibit A – one picture);

(2) A warning sign posted on a picture inside the restaurant by the To Go Entry Door approximately 48 inches from the floor (See Exhibit B – one picture);

(3) A warning sign posted inside the restaurant approximately 42 inches from the floor attached to glass between the host stand and the main entrance to the restaurant (See Exhibit C – three pictures);

(4) A warning sign posted inside the restaurant in the bar area above the computer by the business licenses (See Exhibit D – one picture).

(c) Timing. Leeman acknowledges that warnings were posted voluntarily before the execution of this Agreement, but following and as a result of the Notice issued to

Uno. The warnings required by this Section shall remain posted indefinitely as of the Effective Date, except as may be required or allowed by law. Leeman agrees that the posting of these signs as described herein substantially meets Uno – Antioch’s obligations under Proposition 65 and related laws.

**5. Compliance Review.** Beginning on the Effective Date and continuing for one year thereafter, Uno - Antioch shall perform a compliance review of its restaurant at least twice during the year to determine whether it is in compliance with all of the requirements of Section 4 of this Agreement. A compliance review shall be documented and shall note, at a minimum: any deficiencies regarding compliance with Section 4, the date those deficiencies were discovered, and the date by which the deficiencies were corrected. All documentation regarding this compliance review shall be retained by Uno - Antioch for at least one year. Uno - Antioch shall be deemed to be in compliance with Section 4 if it corrects any deficiencies noted during the review, or otherwise brought to its attention by any person at any time, within thirty (30) days of such notice.

**6. Monetary Payments.**

(a) Payments Pursuant to Health & Safety Code § 25249.7(b). Pursuant to Health & Safety Code Section 25249.7(b), Uno - Antioch shall pay a total of \$12,500.00 as follows: (a) a payment of \$2,500 made on or before May 1, 2009; (b) a payment of \$2,500 made on or before June 1, 2009; (c) a payment of \$2,500 made on or before July 1, 2009; (d) a payment of \$2,500 made on or before August 1, 2009; and (e) a payment of \$2,500 made on or before September 1,

2009. Each payment shall be delivered to Leeman's counsel at the following address:

HIRST & CHANLER LLP  
Attn: Prop 65 Controller  
455 Capitol Mall, Suite 605  
Sacramento, CA 95814

The payments shall be apportioned in accordance with Health & Safety Code § 25192, with 75% of these funds remitted to the State of California's Office of Environmental Health Hazard Assessment and the remaining 25% of these monies retained by Leeman as provided by Health & Safety Code § 25249.12(d). Uno - Antioch shall issue two separate checks for each penalty installment payment: (a) one check made payable to "Hirst & Chanler LLP in Trust for OEHHA" in an amount reflecting 75% of the installment payment; and (b) one check to "Hirst & Chanler LLP in Trust for Whitney R. Leeman" in an amount reflecting 25% of the installment payment. Uno - Antioch shall issue a 1099 to Hirst & Chandler LLP (EIN: 20-3929984) for these payments.

(b) The parties have agreed on the reasonable attorneys' fees and costs to be paid Leeman pursuant to Health & Safety Code §§ 25249.7(f)(4)(B), and 25249.7(j). Specifically, Uno - Antioch shall pay Leeman and her counsel \$17,500.00 as follows: (a) a payment of \$7,500 made on or before May 1, 2009; (b) a payment of \$2,500 made on or before June 1, 2009; (c) a payment of \$2,500 made on or before July 1, 2009; (d) a payment of \$2,500 made on or before August 1, 2009; and (e) a payment of \$2,500 made on or before September 1, 2009. Each payment shall be made payable to Hirst & Chanler LLP and delivered to the address above. Uno - Antioch shall issue a 1099 to Hirst & Chandler LLP (EIN: 20-3929984) for these payments.

(c) Except as specifically provided in this Agreement, Uno - Antioch shall have no further obligation with regard to the payment of statutory penalties, the reimbursement of Leeman's attorneys' fees and costs or any other available monetary or equitable relief with regard to the Products covered in this action.

**7. Release of all Claims.**

(a) Release by Leeman. In further consideration of the representations, warranties and commitments, monetary and otherwise herein contained, Leeman, on behalf of herself, her past and current agents, representatives, 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 rights to institute or participate in, directly or indirectly, any form of legal action and releases all claims, including, without limitation, all actions, causes of action, in law or equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses or expenses (including, but not limited to, investigation fees, expert fees and attorneys' fees) of any nature whatsoever, whether known or unknown, fixed or contingent, against Uno - Antioch and its current and former owners, agents, officers, board members, employees, insurance carriers, attorneys and franchisor, arising under Proposition 65 or based on alleged exposures to any of the Listed Chemicals in the Products at the restaurant operated by Uno - Antioch only, and not to other Uno restaurants. It is specifically understood and agreed that the Parties intend that compliance with the terms of this Agreement resolves all issues and liability, now and in the future, concerning the compliance of the restaurant operated by Uno - Antioch with the requirements of Proposition 65 as to the Listed Chemicals in or on the Products.

(b) Release by Uno - Antioch. Uno - Antioch waives all rights to institute any form of legal action against Leeman, or her attorneys or representatives, for any or all actions taken or statements made by Leeman or her attorneys or

representatives, in the course of seeking enforcement of Proposition 65 in association with this matter.

8. **Severability.** If any of the provisions of this Agreement are held by a court to be unenforceable, the validity of the enforceable provisions remaining shall not be adversely affected.
9. **Governing Law.** The terms of this Agreement shall be governed by the laws of the State of California and apply within the State of California. In the event that Proposition 65 is repealed or is otherwise rendered inapplicable by force of law, whether generally or as to the Products or Listed Chemicals specifically, then Uno - Antioch shall have no further obligations pursuant to this Agreement with respect to, and to the extent that, those Products are so affected.
10. **Notices.** All correspondence and notices required to be provided pursuant to this Agreement shall be in writing and personally delivered or sent by: (i) first-class, registered, certified mail, return receipt requested or (ii) overnight courier on either Party by the other at the addresses listed below. Either Party, from time to time, may specify a change of address to which all notices and other communications shall be sent.

**For Leeman:**  
Proposition 65 Coordinator  
Hirst & Chanler LLP  
2560 Ninth Street  
Parker Plaza, Suite 214  
Berkeley, CA 94710-2565

**For Uno - Antioch:**  
Antioch Grill  
4827 Lone Tree Way  
Antioch, CA 94531

11. **Counterparts; Facsimile Signatures.** This Agreement may be executed in counterparts and by facsimile, each of which shall be deemed an original, and all of which when taken together, shall constitute one and the same document.
12. **Compliance with Health & Safety Code § 25249.9(f).** Leeman agrees to comply with the reporting requirements of Health & Safety Code § 25249.9(f). Pursuant to

regulations promulgated under that section, Leeman shall report this Agreement to the California Attorney General's Office within five (5) days after receiving all of the necessary signatures.

**13. Additional Post-Execution Activities.** The Parties shall work diligently and in good faith with respect to any required post-execution activities.

**14. Modification.** This Agreement may be modified only by a written agreement of the Parties. Leeman shall serve the Attorney General with notice of any such proposed modification.

**15. Application of Agreement.** This Agreement shall apply to, be binding upon, and inure to the benefit of the Parties hereto, their divisions, subdivisions, and subsidiaries, and the successors to, assigns of and those in privity-of-interest with, any of them.

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

**AGREED TO:**

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

By: \_\_\_\_\_  
Whitney R. Leeman, Ph.D.  
Plaintiff

**AGREED TO:**

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

By: \_\_\_\_\_, for  
Defendant, Antioch Grill

regulations promulgated under that section, Leeman shall report this Agreement to the California Attorney General's Office within five (5) days after receiving all of the necessary signatures.

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**15. Application of Agreement.** This Agreement shall apply to, be binding upon, and inure to the benefit of the Parties hereto, their divisions, subdivisions, and subsidiaries, and the successors to, assigns of and those in privity-of-interest with, any of them.

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

**AGREED TO:**

Date: 4/24/09

By: Whitney R. Leeman  
Whitney R. Leeman, Ph.D.  
Plaintiff

**AGREED TO:**

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

By: \_\_\_\_\_, for  
Defendant, Antioch Grill

# **EXHIBIT A**



**WARNING**

Of course, because in the  
State of California  
In Labor Union  
Do Both Debris Do Did or  
Reproductive Harm May Be  
Present In Food Or  
Beverages Sold  
Or Served Here



# **EXHIBIT B**



Famed Water Tower

**WARNING**

Chemicals Known To The  
State Of California  
To Cause Cancer,  
Or Birth Defects Or Other  
Reproductive Harm May Be  
Present In Foods Or  
Beverages Sold  
Or Served Here.



Hyerson Laboratory

# **EXHIBIT C**

DISCOVER



VISA



WARNING

Do not use this device if you are pregnant or nursing. Do not use this device if you are taking any medication. Do not use this device if you are taking any medication. Do not use this device if you are taking any medication.







**WARNING**

Chemicals Known To The  
State Of California  
To Cause Cancer,  
Or Birth Defects Or Other  
Reproductive Harm May Be  
Present In Foods Or  
Beverages Sold  
Or Served Here.

# **EXHIBIT D**

CITY OF SAN DIEGO  
BUSINESS LICENSE

**WARNING**  
Chemicals Known To The  
State Of California  
To Cause Cancer,  
Or Birth Defects Or Other  
Reproductive Harm May Be  
Present In Foods Or  
Beverages Sold  
Or Served Here.

AT&T

Did you know that we were named  
healthiest chain restaurant by Health  
Magazine???

City of San Diego

On our new L.T.O menu will be  
featuring our "Sunset Pizza!!"

