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16 FOR RESPONSIBLE MEDICINE

17 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
18 **COUNTY OF LOS ANGELES - CENTRAL DISTRICT**

19 PHYSICIANS COMMITTEE FOR
20 RESPONSIBLE MEDICINE,

21 Plaintiff,

22 vs.

23 McDONALD'S CORPORATION; BURGER
24 KING CORPORATION; TGI FRIDAY'S,
25 INC.; CARLSON RESTAURANTS
26 WORLDWIDE, INC.; APPLEBEE'S
27 INTERNATIONAL, INC.; CHICK-FIL-A,
28 INC.; BRINKER INTERNATIONAL, INC.;

and OSI RESTAURANT PARTNERS, INC.;

Defendants.

CONFORMED COPY
OF ORIGINAL FILED
Los Angeles Superior Court

SEP 27 2006

John A. Clarke, Executive Officer/Clerk
By D. Giles Deputy
D. Giles

BC359267

Case No.

**COMPLAINT FOR INJUNCTIVE
RELIEF, STATUTORY CIVIL
PENALTIES AND DECLARATORY
RELIEF**

INTRODUCTION

1. This Complaint seeks an injunction, statutory civil penalties and declaratory relief to prevent Defendants (specifically identified below) from continuing to sell grilled chicken products to consumers without clear and reasonable warnings about the carcinogenic effects of those products.

1 parent company of, and controls defendant TGI FRIDAY'S, INC., a Delaware corporation that is
2 authorized to transact business in the State of California. Defendant TGI FRIDAY'S, INC. is a
3 business entity that either directly or through its subsidiaries, franchisees and or licensees
4 distributes, sells and has sold the following grilled chicken products to consumers within the
5 state of California: Cobb Salad with Grilled Chicken and Grilled Chicken Flavor Shots.

6 8. Defendant APPLEBEE'S INTERNATIONAL, INC., a Delaware corporation, is a
7 business entity that either directly or through its subsidiaries, franchisees and/or licensees
8 distributes, sells and has sold the following grilled chicken products to consumers at all of its
9 numerous retail establishments within the state of California: Grilled Italian Chicken Caesar
10 Salad and Honey Grilled Chicken.

11 9. Defendant CHICK-FIL-A, INC., a Delaware corporation that is authorized to
12 transact business in the State of California, is a business entity that either directly or through its
13 subsidiaries, franchisees and or licensees distributes, sells and has sold the following grilled
14 chicken product to consumers at all of its numerous retail establishments within the state of
15 California: Chargrilled Chicken Sandwich.

16 10. Defendant BRINKER INTERNATIONAL, INC., a Delaware corporation that is
17 authorized to transact business in the State of California, is the owner of CHILI'S GRILL AND
18 BAR RESTAURANT chain, a business entity that either directly or through its subsidiaries,
19 franchisees and/or licensees distributes, sells and has sold the following grilled chicken products
20 to consumers at all of its numerous retail establishments within the state of California: Grilled
21 Caribbean Chicken Salad and Guiltless Chicken Platter.

22 11. Defendant OSI RESTAURANT PARTNERS, INC., a Delaware corporation, is
23 the owner of OUTBACK STEAKHOUSE OF FLORIDA, INC., a business entity that is
24 authorized to transact business in the State of California, either directly or through its
25 subsidiaries, franchisees and or licensees distributes, sells and has sold the following grilled
26 chicken product to consumers at all of its numerous retail establishments within the state of
27 California: Chicken on the Barbie.

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JURISDICTION AND VENUE

12. This court has jurisdiction pursuant to California Constitution Article VI, section 10, because this case is not a cause given by statute to other trial courts.

13. This court has jurisdiction over the Defendants named above because they do sufficient business in California, and otherwise have sufficient minimum contacts in California to render jurisdiction over them by the California courts consistent with traditional notions of fair play and substantial justice.

14. Venue is proper pursuant to Code of Civil Procedure Section 393 because a cause of action arises in the County of Los Angeles where some of the violations have occurred. Venue is also proper pursuant to Code of Civil Procedure Section 395.5 in that the statutory liability arises in part from sales of grilled chicken products in this County.

FACTS

15. Proposition 65 was passed by California voters in November 1986, with the purpose of protecting the health and safety of California residents. The health and safety warning provision of Proposition 65 provides: "No person in the course of doing business shall knowingly and intentionally expose any individual to a chemical known to the state to cause cancer or reproductive toxicity without first giving clear and reasonable warning to such individual, except as provided in Section 25249.10."

16. Proposition 65 required the State to develop a list of chemicals "known to the state to cause cancer or reproductive toxicity."

17. On October 1, 1994, the chemical 2-AMINO-1-METHYL-6-PHENYLIMIDAZO [4,5-b]PYRIDINE (known within the scientific community as "PhIP") was listed pursuant to the requirements of Proposition 65 as a chemical known to the State of California to cause cancer.

18. PhIP is not a chemical that naturally occurs in food.

19. PhIP is created in the cooking process used by Defendants in making their grilled chicken products.

20. PhIP is ingested by consumers who are served the grilled chicken products sold

1 by each of the Defendants at various of their California retail outlets.

2 21. Proposition 65 provides that a business is not required to provide a clear and
3 reasonable warning concerning a listed chemical until one year after the chemical first appears
4 on the list of Chemicals Known to the State of California to Cause Cancer or Reproductive
5 Toxicity.

6 22. The one-year grace period before food service establishments were required to
7 have clear and reasonable warning regarding all of the products they sold containing PhIP ended
8 on or about October 1, 1995.

9 23. Each of the Defendants has knowingly and intentionally sold grilled chicken after
10 October 1, 1995, without a clear, reasonable and adequate accompanying warning, despite the
11 awareness of each Defendant that grilled chicken contains PhIP.

12 24. Each of the Defendants has knowingly and intentionally sold grilled chicken after
13 October 1, 1995, without a clear, reasonable and adequate accompanying warning, despite
14 placement of PhIP on California's list of cancer causing chemicals.

15 25. Each of the Defendants has knowingly and intentionally sold grilled chicken after
16 October 1, 1995, without a clear, reasonable and adequate accompanying warning, despite their
17 knowledge that individuals would consume their grilled chicken and be exposed to PhIP.

18 26. Defendants knew of the 1994 placement of PhIP on the Proposition 65 list of
19 chemicals as a chemical known to the state to cause cancer.

20 27. Defendants are large, sophisticated corporations engaged in the preparation,
21 service, and sale of food. Defendants are charged with the knowledge which a reasonable review
22 of the scientific data would reveal concerning the carcinogenic effects of PhIP.

23 28. Defendants' sale of grilled chicken to the public constitutes a consumer products
24 exposure, within the meaning of California Code of Regulations, Title 22, section 12601(b).

25 29. Proposition 65 requires that consumer warnings must be reasonably calculated to
26 warn the potential consumer, prior to exposure, of food known by the State of California to
27 contain cancer causing chemicals. California Code of Regulations, Title 22, section 12601(a).

28 30. In food service establishments, clear and reasonable warnings must be placed in

1 conspicuous locations likely to be observed by all patrons. California Code of Regulations, Title
2 22, § 12601(a).

3 31. The Defendants have failed to post clear and reasonable warnings in accordance
4 with the statutory requirements of Proposition 65.

5 32. Plaintiff PCRМ conducted an analysis of grilled chicken sold directly or
6 indirectly by each of the named Defendants. Using a scientifically valid methodology, PCRМ
7 purchased chicken samples from each Defendant, tagged each sample using a code system that
8 would blind the testing laboratory to the source of the sample, and shipped the samples to
9 Columbia Analytical Services. Columbia Analytical Services is an independent environmental
10 testing laboratory, listed by the California Department of Health Services as an "Accredited
11 Environmental Laboratory."

12 33. Columbia Analytical Services tested a total of one hundred samples of grilled
13 chicken purchased from the Defendants for PhIP, including samples purchased from restaurants
14 owned or operated by each of the Defendants or their operating subsidiaries in this County.

15 34. All of the tested grilled chicken samples were found to contain the known
16 carcinogen PhIP.

17 35. None of the locations where Defendants grilled chicken products were purchased
18 for purposes of testing had posted clear and reasonable warnings that food sold on the premises
19 contained a chemical known to the State of California to cause cancer.

20 36. The cancer risk as a result of exposure to PhIP has been known for decades.
21 Heterocyclic amines (HCAs), the class of substances to which PhIP belongs, were first
22 discovered in 1977. M. Nagao and T. Sugimura, *FOODBORNE CARCINOGENS: HETEROCYCLIC*
23 *AMINES* (John Wiley & Sons 2002). As early as the 1970s, dietary exposure to PhIP was
24 implicated as a factor in cancer rates. Knize, J. and Felton, J., *Formation and Human Risk of*
25 *Carcinogenic Heterocyclic Amines Formed from Natural Precursors in Meat*, 63 *NUTRITION*
26 *REVIEWS* 158 (2005)("Knize").

27 37. Numerous studies have addressed the genotoxicity of HCAs. Genotoxicity
28 concerns the adverse effects of physical and chemical agents on the genetic material in cells and

1 the subsequent results of changes to those cells. HCAs are highly mutagenic in Salmonella
2 typhimurium, Escherichia coli, and cultured human cells. Other genotoxicity studies have
3 demonstrated DNA strand breaks, chromosomal aberrations, and sister chromatid exchanges
4 induced by HCAs. "There is a general consensus that human exposure to potent genotoxic
5 [HCAs] produced in meat during cooking is widespread. . . . Data show that, even at low doses,
6 [HCAs] form DNA adducts in . . . humans." Knize, *supra*..

7 38. HCAs, including PhIP, have also been the subject of numerous human
8 epidemiological studies, the vast majority of which strongly suggest a correlation between
9 consumption of well-done meat and multisite carcinogenesis in humans. Studies have found
10 compelling correlations between PhIP exposure and several types of cancer, including colorectal,
11 breast, pancreatic, prostate, bladder, renal, esophagus, stomach, larynx, and hepatic, as well as
12 lymphomas. Knize, *supra*; R. Sinha, *An Epidemiologic Approach to Studying Heterocyclic*
13 *Amines*, 506-507 MUTATION RESEARCH 197 (2002); La Creis Kidd, et al., *Urinary Excretion of*
14 *2-Amino-1-methyl-6-phenylimidazo[4,5-b]pyridine (PhIP) in White, African-American, and*
15 *Asian-American Men in Los Angeles County*, 8 CANCER EPIDEMIOLOGY, BIOMARKERS &
16 PREVENTION 439 (1999).

17 39. Chicken is high in some types of PhIP precursors such as arginine, glutamic acid,
18 leucine, phenylalanine, tyrosine, and isoleucine. Knize, *supra*. Grilled chicken has therefore
19 been found to contain particularly high levels of PhIP. R. Sinha, *An Epidemiologic Approach to*
20 *Studying Heterocyclic Amines*, 506-507 MUTATION RESEARCH 197 (2002).

21 40. Defendants are responsible, through sale of their grilled chicken products, for
22 significant exposure to PhIP.

23 41. People of color are particularly at risk of developing cancers caused by PhIP, as a
24 result of greater consumption of foods containing PhIP. The concentration of PhIP found in the
25 urine of African Americans greatly exceeds the levels found in that of Caucasian Americans.

26 42. From 1995 to the present, Defendants have failed to provide consumers with
27 clear, reasonable and adequate warnings that consumption of any grilled chicken products
28 offered for sale by the Defendants would expose them to a chemical known to the state of

1 California to cause cancer.

2 43. Under Proposition 65, California may establish a “safe harbor” level for
3 chemicals known to cause cancer or reproductive harm. The safe harbor level is intended to
4 designate certain chemicals, known by California to cause cancer or reproductive harm at a
5 particular level, as fit for human consumption if those chemicals are consumed at established
6 levels deemed to be safe.

7 44. California has not established a safe harbor level for consumption of foods
8 containing PhIP.

9 45. Defendants knew or should have known and are currently aware that no safe
10 harbor level has been established by California for consumption of foods containing PhIP.

11 46. None of the three exemptions contained in California Health & Safety Code
12 Section 25249.10 are applicable to this case.

13 47. Proposition 65 provides that any person who “violates or threatens to violate” the
14 statute may be enjoined in any court of competent jurisdiction. Cal. Health & Safety Code §
15 25249.7. To “[t]hreaten to violate” is defined to mean “to create a condition in which there is a
16 substantial probability that a violation will occur.” California Health & Safety Code §
17 25249.11(e). Violations are punishable by civil penalties of up to \$2,500 per day for each
18 violation recoverable in a civil action. California Health & Safety Code § 25249.7(b)(1).

19 48. Plaintiff PCRM brings this action in the public interest. Actions to enforce
20 Proposition 65 may be brought “by any person in the public interest” provided that proper notice
21 is given to the defendant(s) and that “neither the Attorney General, district attorney, city
22 attorney, nor any prosecutor has commenced and is diligently prosecuting an action against the
23 violation.” California Health & Safety Code § 25249.7(d).

24 49. As a membership organization with California members and a California office,
25 Plaintiff PCRM constitutes an association, included within the definition of person permitted to
26 bring actions in the public interest to enforce Proposition 65. California Health & Safety Code
27 § 25249.11.

28 50. Notice was provided in accordance with the requirements of California Health &

1 Safety Code Section 25249.7 and California Code of Regulations, Title 22, Section 12903, upon
2 each of the Defendants by serving the president and/or chief executive officer of the corporation,
3 the corporate general counsel and where applicable, the California registered agent for the
4 corporation. All notices contained the information required by the statute and regulation and
5 were served in accordance with the requirements of California Code of Regulations, Title 22,
6 Section 12903(c)(1)(2).

7 51. Notice was provided in accordance with the requirements of California Health &
8 Safety Code Section 25249.7 and California Code of Regulations, Title 22, Section 12903, upon
9 the District Attorney of every county in California, and upon the City Attorneys of Los Angeles,
10 San Diego, San Francisco and San Jose; the only four California cities listed in the most recent
11 decennial census of having populations of over 750,000. All notices contained the information
12 required by the statute and regulation and were served in accordance with the requirements of
13 California Code of Regulations, Title 22, Section 12903(c)(1)(2).

14 52. Notice was provided in accordance with the requirements of California Health &
15 Safety Code Section 25249.7 and California Code of Regulations, Title 22, Section 12903, upon
16 the Attorney General of the State of California. The notice to the Attorney General contained the
17 information required by the statute and regulation, including factual information sufficient to
18 establish the basis of the certificate of merit served on all parties. The notice was served in
19 accordance with the requirements of California Code of Regulations, Title 22, Section
20 12903(c)(1)(2).

21 53. Notice of the on-going violations was served upon all of the individuals and
22 entities identified above more than sixty days prior to the filing of this lawsuit.

23 54. On information and belief, each of the Defendants has continued to offer for sale,
24 without clear, reasonable and adequate warnings, the grilled chicken products identified in this
25 complaint, following receipt of the notice from the Plaintiff.

26 55. On information and belief, absent action by this Court, each of the Defendants
27 will continue to sell the identified grilled chicken products without clear, reasonable and
28 adequate warnings.

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56. The Attorney General has not commenced any action against any of the Defendants for failure to warn about the presence of PhIP in their grilled chicken products. On information and belief, no district attorney, city attorney or prosecutor has commenced any action against these violations.

57. Plaintiff is notifying the Attorney General of the filing of this action concurrently with the filing of this complaint.

FIRST CAUSE OF ACTION FOR INJUNCTIVE RELIEF FOR VIOLATION OF STATUTE—PROPOSITION 65

(By Plaintiff Against All Defendants)

58. Paragraphs 1 through 57 are realleged as if fully set forth herein.

59. On information and belief, each Defendant employs ten or more persons.

60. By committing the acts described above, each Defendant has, through the sale of its grilled chicken products, knowingly and intentionally exposed individuals to PhIP, a chemical known to the state of California since at least 1994 to cause cancer. Each of the Defendants has sold and served grilled chicken, knowing of the cancer risks, without first giving clear, reasonable and adequate warnings to consumers, as required by California Health & Safety Code Section 25249.6.

61. By their actions, including the lack of clear, reasonable and adequate warnings, Defendants have violated Proposition 65.

62. Proposition 65 expressly authorizes injunctive relief. In addition, irreparable harm and injury to individual citizens of this State will occur unless their sales of grilled chicken products containing PhIP are enjoined.

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SECOND CAUSE OF ACTION FOR CIVIL PENALTIES

(By Plaintiff Against All Defendants)

63. The allegations set forth in Paragraphs 1 through 57 are realleged as if fully set forth herein.

64. The knowing and intentional commitment of the acts alleged above renders each Defendant liable for civil penalties of up to \$2,500 per day for each violation pursuant to Proposition 65.

65. The nature and extent of Defendants' violations, together with the lack of good faith measures to comply with Proposition 65, merit the imposition of the full monetary penalty allowable under Proposition 65.

THIRD CAUSE OF ACTION FOR DECLARATORY JUDGMENT FOR VIOLATION OF PROPOSITION 65

(By Plaintiff Against All Defendants)

66. The allegations set forth in Paragraphs 1 through 57 are realleged as if fully set forth herein.

67. In order to adequately comply with the requirements of Proposition 65, the Defendants must conspicuously post specific warnings with respect to the carcinogenic dangers of the grilled chicken that they offer for sale.

68. On information and belief, the Defendants deny that they are required under the provisions of Proposition 65 to conspicuously post specific warnings with respect to the carcinogenic dangers of grilled chicken and will fail to do so without a specific declaration from this Court that they are required to do so.

69. Because the Defendants' position is inconsistent with Proposition 65 and its intended purpose to protect public health, the Plaintiff is entitled to declaratory judgment.

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PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays, as to each Defendant, that this honorable Court:

1. Pursuant to Proposition 65, enter a permanent injunction and any other necessary orders prohibiting Defendants from exposing persons within the State of California to PhIP in grilled chicken without providing clear, reasonable, specific and adequately placed warnings;
2. Order that civil penalties of \$ 2,500 per violation be imposed upon each Defendant in accordance with Proposition 65;
3. Enter a declaratory judgment ordering that the Defendants are specifically required to disclose the presence of PhIP in their grilled chicken and declaring that any warning that does not specifically mention the carcinogenic effects known by the State of California regarding grilled chicken is inadequate;
4. Award Plaintiff its costs of suit and its reasonable attorneys' fees;
5. Grant such other and further relief as the Court deems just and proper.

DATED: September 27, 2006

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DANIEL KINBURN
PHYSICIANS COMMITTEE
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