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David S. Lavine, State Bar No. 166744
HIRST & CHANLER, LLP
2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710
Telephone: (510) 848-8880
Facsimile: (510) 848-8118

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

ENDORSED
FILED
San Francisco County Superior Court

APR 29 2008

GORDON PARK-LI, Clerk
BY: JOCELYN C. ROQUE
Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE CITY AND COUNTY OF SAN FRANCISCO
UNLIMITED CIVIL JURISDICTION

WHITNEY R. LEEMAN, Ph.D.,
Plaintiff,

v.

THE CHEESECAKE FACTORY, INC. and
DOES 1 through 150,
Defendants.

Case No. CGC-07-462957
(JCL)
~~PROPOSED~~ JUDGMENT
PURSUANT TO TERMS OF
STIPULATION AND ORDER RE:
CONSENT JUDGMENT
Date: April 29, 2008
Time: 9:30 a.m.
Dept.: 301
Judge: Hon. Peter Busch
Trial Date: March 24, 2008

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In the above-entitled action, Plaintiff WHITNEY R. LEEMAN, Ph.D. and Defendants THE CHEESECAKE FACTORY, INC., having agreed through their respective counsel that judgment be entered pursuant to the terms of the Proposition 65 settlement agreement in the form of a Stipulation and [Proposed] Order Re: Consent Judgment entered into by the parties, and after issuing an order approving this Proposition 65 settlement agreement and entering the Stipulation and Order Re: Consent Judgment on April 29, 2008,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that pursuant to Code of Civil Procedure § 664.5, judgment is entered in accordance with the terms of the Stipulation and Order Re: Consent Judgment attached hereto as **Exhibit 1** and lodged concurrently herewith.

IT IS SO ORDERED.

Dated: APR 29 2008

PETER J. BUSCH
JUDGE OF THE SUPERIOR COURT

Exhibit 1

1 BUCHALTER NEMER
A Professional Corporation
2 MICHAEL L. WACHTELL (SBN: 47218)
ARTHUR CHINSKI (SBN: 48945)
3 MICHAEL B. FISHER (SBN: 203620)
1000 Wilshire Boulevard, Suite 1500
4 Los Angeles, CA 90017-2457
Telephone: (213) 891-0700
5 Facsimile: (213) 896-0400

6 Attorneys for Defendant,
THE CHEESECAKE FACTORY INCORPORATED

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN FRANCISCO
UNLIMITED CIVIL JURISDICTION**

WHITNEY R. LEEMAN, Ph.D.,
Plaintiff,
vs.
THE CHEESECAKE FACTORY, INC.;
and DOES 1 through 150, inclusive,
Defendants.

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.”

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.

28

1 **2.3.4 Corrections.** Defendant shall be deemed to be in compliance with Section
2 2.2 and Proposition 65 if it corrects any deficiencies brought to its attention in writing pursuant
3 to Section 2.3.2, or noted during a Compliance Review pursuant to Section 2.3.1, within forty-
4 five (45) days of such notice or discovery.

5 **2.3.5 Right to Challenge Notice.** If, after receiving a written notice of
6 deficiency as described in Section 2.3.2, Defendant contends that the warning sign was properly
7 posted, Defendant may challenge the notice and alleged violation by seeking guidance or
8 clarification regarding the obligation under this Consent Judgment in the Superior Court of the
9 State of California.

10 **2.3.6 Access to Non-Public Areas.** Nothing in this Agreement shall be
11 construed as to give anyone, including Plaintiff, the right to enter areas in Defendant's
12 restaurants not usually accessible to the public in order to investigate compliance with Paragraph
13 2.2.3.

14 **3. MONETARY PAYMENTS.**

15 **3.1 Payments Pursuant to Health & Safety Code § 25249.7(b).** Pursuant to Health
16 & Safety Code Section 25249.7(b), Defendant shall pay a total of two thousand five hundred
17 dollars (\$2,500) within ten (10) days of the Effective Date as civil penalties. This payment shall be
18 made payable to "Hirst & Chanler LLP in Trust For Whitney R. Leeman," and shall be delivered
19 to Plaintiff's counsel at the following address:

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

25 After Court approval of this Consent Judgment pursuant to Section 6, the payment set forth in this
26 section shall be apportioned by Plaintiff in accordance with Health & Safety Code §25192, with
27 75% of these funds remitted to the State of California's Office of Environmental Health Hazard
28 Assessment and the remaining 25% of these monies retained by Plaintiff as provided by Health &
Safety Code § 25249.12(d). Plaintiff shall bear all responsibility for apportioning and paying to

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.

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 :**

The Cheesecake Factory
Attn: Legal Department
26901 Malibu Hills Road
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,
28

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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1 **14. MODIFICATION**

2 This Consent Judgment may be modified only by: (1) written agreement of the Parties
3 and upon entry of a modified Consent Judgment by the Court thereon, or (2) motion of any Party
4 as provided by law and upon entry of a modified Consent Judgment by the Court. The Attorney
5 General shall be served with notice of any proposed modification to this Consent Judgment at
6 least fifteen (15) days in advance of its consideration by the Court.
7

8 **15. APPLICATION OF CONSENT JUDGMENT**

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

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

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

16 **17. AUTHORIZATION**

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


20
21 **AGREED TO:**

AGREED TO:

22 Date: _____

Date: _____

23 By: _____
24 Plaintiff Whitney R. Leeman

By: 
25 Defendant The Cheesecake Factory
26 Incorporated
27 Exec. Vice Pres.

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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.

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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.

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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: 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:

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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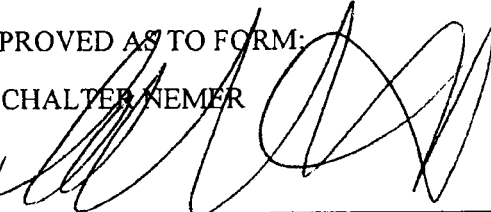
APPROVED AS TO FORM:

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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