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ENDORSED
FILED
San Francisco County Superior Court

MAY 23 2005

GORDON PARK-LI, Clerk
BY: CRISTINA E. BAUTISTA
Deputy Clerk

CASE MANAGEMENT CONFERENCE SET

PLAN I OCT 21 2005 9:00AM

DEPARTMENT 212

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

05-441498

16 WHITNEY R. LEEMAN, Ph.D.,)
17)
18 Plaintiff,)
19)
20 v.)
21)
22 ATICO INTERNATIONAL USA, INC.; NEW)
23 ATICO INTERNATIONAL USA, INC.;)
24 ATICO LTD.; and DOES 1 through 150,)
25)
26 Defendants.)

No. _____
**COMPLAINT FOR CIVIL
PENALTIES AND INJUNCTIVE
RELIEF**

Health & Safety Code §25249

23 WHITNEY R. LEEMAN, Ph.D., by and through her counsel, on behalf of herself, on behalf
24 all others similarly situated and on behalf of the general public, hereby alleges as follows:

25 **NATURE OF THE ACTION**

26 1. This Complaint is a representative action brought by plaintiff WHITNEY R.
27 LEEMAN, Ph.D., on behalf of citizens of the State of California, to enforce each citizen's right to
28 be informed of the presence of and nature of toxic chemicals in consumer goods.

1 2. This Complaint seeks to remedy defendants' continuing failures to warn the citizens
2 of the State of California about the presence of, the nature of and such citizens' actual and potential
3 exposure to lead present in or on consumer products placed into the stream of commerce by
4 defendants.

5 3. Lead is a chemical that is identified within 22 C.C.R. §12000 and that is known to
6 the State of California to cause birth defects and other reproductive harm. Lead shall hereafter be
7 referred to as "LISTED CHEMICAL".

8 4. The consumer products containing the LISTED CHEMICAL, and for which
9 defendant is responsible, are mugs and other ceramic containers intended for the consumption of
10 food or beverages with colored artwork or designs (containing lead) on the exterior, including but
11 not limited to, *Estr 12 oz. Taper Mug, Item #77082 (#0 12495 72004 2)*, and *16 oz. Stoneware Mug*
12 *(#0 12495 66382 0)*. All such consumer products containing the LISTED CHEMICAL shall
13 hereafter be referred to as the "PRODUCTS".

14 5. Under California's Safe Drinking Water and Toxic Enforcement Act of 1986, Health
15 & Safety Code §25249.5 *et seq.*¹ (hereafter "Proposition 65"), "No person in the course of doing
16 business shall knowingly and intentionally expose any individual to a chemical known to the state
17 to cause cancer or reproductive toxicity without first giving clear and reasonable warning to such
18 individual...."

19 6. On February 27, 1987, the State had listed lead as a chemical known to cause birth
20 defects and other reproductive harm. This chemical became subject to the warning requirement
21 one year later and was therefore subject to the "clear and reasonable warning" requirements of
22 Proposition 65, beginning on October 1, 1993 and February 27, 1988, respectively. (22 Code of
23 Regulations §12000(b)(c); Health and Safety Code §25249.5 *et seq.*)

24 7. Defendants' failure to provide proper mandatory warnings about exposure to the
25 LISTED CHEMICAL in conjunction with the sale of the PRODUCTS is a violation of Proposition
26 65 and subjects defendants to enjoinder of such conduct as well as civil penalties for each such
27

28 ¹ Unless specifically noted, all statutory citations refer to California law.

1 violation.

2 8. For defendants' violations of Proposition 65, plaintiff seeks preliminary injunctive
3 and permanent injunctive relief to compel defendants to provide users of the PRODUCTS with the
4 appropriate Proposition 65 warning regarding the hazards of such LISTED CHEMICAL.

5 9. Plaintiff also seeks civil penalties against defendants for their violations of
6 Proposition 65, as provided for by Health & Safety Code §25249.7(b).

7 PARTIES

8 10. Plaintiff WHITNEY R. LEEMAN, Ph.D. is a citizen of the State of California who
9 resides in the City and County of SACRAMENTO and who is dedicated to protecting the health of
10 California citizens, including the elimination or reduction of toxic exposures, and who brings this
11 action on behalf of the general public pursuant to Health & Safety Code §25249.7.

12 11. Defendant ATICO INTERNATIONAL USA, INC. ("ATICO INTERNATIONAL")
13 is a person doing business within the meaning of Health & Safety Code §25249.11.

14 12. ATICO INTERNATIONAL manufactures, distributes and/or offers the
15 PRODUCTS for sale or use in the State of California or implies by its conduct that it manufactures,
16 distributes and/or offers the PRODUCTS for sale or use in State of California.

17 13. Defendant NEW ATICO INTERNATIONAL USA, INC. ("NEW ATICO") is a
18 person doing business within the meaning of Health & Safety Code §25249.11.

19 14. NEW ATICO manufactures, distributes and/or offers the PRODUCTS for sale or
20 use in the State of California or implies by its conduct that it manufactures, distributes and/or offers
21 the PRODUCTS for sale or use in State of California.

22 15. Defendant ATICO LTD. ("ATICO LTD.") is a person doing business within the
23 meaning of Health & Safety Code §25249.11.

24 16. ATICO LTD. manufactures, distributes and/or offers the PRODUCTS for sale or
25 use in the State of California or implies by its conduct that it manufactures, distributes and/or offers
26 the PRODUCTS for sale or use in State of California.

27 17. DOES 1-50 (hereafter "MANUFACTURER DEFENDANTS") are each persons
28 doing business within the meaning of Health & Safety Code §25249.11.

1 provided to public enforcement agencies and to ATICO INTERNATIONAL, NEW ATICO,
2 ATICO LTD. stating that exposures to the LISTED CHEMICAL were occurring in the State of
3 California from the reasonably foreseeable uses of the PRODUCTS, without the individual users
4 first having been provided with a "clear and reasonable warning" regarding such exposure.

5 33. The appropriate public enforcement agencies have failed to commence and
6 diligently prosecute a cause of action, under Health & Safety Code §25249.6, *et seq.*, against
7 DEFENDANTS based on the claims asserted in Plaintiff's 60-Day Notices.

8 34. At all times relevant to this action, the PRODUCTS contained the LISTED
9 CHEMICAL.

10 35. At all times relevant to this action, the DEFENDANTS knew or should have known
11 that the PRODUCTS contained the LISTED CHEMICAL.

12 36. At all times relevant to this action, the LISTED CHEMICAL was present in or on
13 the PRODUCTS in such a way as to be available for transfer or release from PRODUCTS to
14 individuals during the reasonably foreseeable use of PRODUCTS.

15 37. The normal and reasonably foreseeable use of the PRODUCTS has caused and
16 continues to cause an exposure to the LISTED CHEMICAL, as such exposure is defined by
17 22 C.C.R. §12601.

18 38. Based on information and good faith belief, plaintiff alleges, that at all times
19 relevant to this action, DEFENDANTS had knowledge that individuals' normal and reasonably
20 foreseeable use of the PRODUCTS would cause an exposure to the LISTED CHEMICAL.

21 39. At all times relevant to this action, DEFENDANTS, and each of them, intended that
22 such exposures to the LISTED CHEMICAL from the reasonably foreseeable use of the
23 PRODUCTS would occur by their deliberate, non-accidental participation in the manufacture,
24 distribution and/or sale of PRODUCTS to individuals.

25 40. At all times relevant to this action, DEFENDANTS failed to provide a "clear and
26 reasonable warning" of reproductive toxicity (as defined by 22 C.C.R. §12601) to those consumers
27 or other individuals in the State of California who were or could become exposed to the
28 PRODUCTS and the LISTED CHEMICAL contained therein.

