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6 MATEEL ENVIRONMENTAL JUSTICE
FOUNDATION

7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 CITY AND COUNTY OF SAN FRANCISCO - UNLIMITED JURISDICTION

10
11 MATEEL ENVIRONMENTAL JUSTICE
FOUNDATION,

Case No. 04-429922

[PROPOSED] CONSENT JUDGMENT

12 Plaintiff,

13 vs.

14 ATICO INTERNATIONAL USA, INC.;
15 RITE AID CORPORATION; and DOES 1
through 100 inclusive,

16 Defendants.

17
18 1. **INTRODUCTION**

19 1.1. Mateel Environmental Justice Foundation (“Plaintiff” or “Mateel”), and
20 defendant Atico International USA, Inc. (“Atico”) are party to an earlier consent judgment
21 entered by the San Francisco County Superior Court on July 26, 2001, covering the same
22 subject matter as this Consent Judgment (Exhibit A hereto). The July 26, 2001 consent
23 judgment was entered in Mateel v. Atico et al, San Francisco Superior Court Case No.
24 315868. As to Atico, this Consent Judgment is intended to modify and supersede in its
25 entirety the July 26, 2001 judgment, but the entry of this Consent Judgment is not intended to
26 otherwise affect that earlier judgment.

1 1.2. On March 25, 2004, Mateel, acting on behalf of itself and the general
2 public, filed a complaint for civil penalties and injunctive relief in San Francisco County
3 Superior Court, Case No. 04-429922, against defendants Atico, Rite Aid Corp. (“Rite Aid”)
4 (collectively “Defendants”) and Does 1 through 100 (the “Complaint”). The Complaint
5 alleges, among other things, that Defendants violated Health & Safety Code §§ 25249.5 et
6 seq. (“Proposition 65”) and Business & Professions Code §§ 17200 et seq. (the “Unfair
7 Competition Act”) by knowingly and intentionally exposing persons to certain brass
8 irrigation products containing lead and/or lead compounds, which are chemicals known to the
9 State of California to cause cancer and birth defects or other reproductive harm, without first
10 providing a clear and reasonable warning to such individuals. The Complaint was based
11 upon a 60-day notice letter (the “Notice Letter”) sent by Mateel to Atico, Rite Aid, the
12 California Attorney General, all District Attorneys, and all City Attorneys with populations
13 exceeding 750,000.

14 1.3. For purposes of this Consent Judgment, the term “Covered Products”
15 shall be defined as irrigation and garden watering products, such as hose nozzles, sprinklers,
16 wands, shower heads, sprayers, hose couplings, connectors, quick connects, caps, converters,
17 valves, shut offs, unions and hose ends, made from leaded brass, or for which leaded brass is
18 a component, to the extent such irrigation and garden watering products are distributed and
19 sold within the state of California, and are manufactured, imported, distributed and/or
20 marketed by Atico, or any entity that distributes, markets or sells Covered Products
21 manufactured or distributed by Atico, including but not limited to Rite Aid, , regardless of
22 whether Atico or another party’s label is on the Covered Products.

23 1.4. Defendants are businesses that employ 10 or more persons and that
24 distribute and/or market Covered Products within the State of California. Lead and lead
25 compounds are chemicals known to the State of California to cause cancer, and lead is a
26 chemical known to the State of California to cause reproductive toxicity pursuant to Health
27 and Safety Code Section 25249.9. Plaintiff alleges that Covered Products manufactured,
28 distributed, sold and/or marketed by Defendants for use in California containing lead and/or

1 lead compounds require a warning under Proposition 65, and violate the Proposition 65
2 prohibition on the discharge of lead and/or lead compounds into drinking water.

3 1.5. For purposes of this Consent Judgment only, Mateel and Atico
4 (collectively the “parties”) stipulate that this Court has jurisdiction over the allegations of
5 violations contained in the Complaint, that venue is proper in the County of San Francisco,
6 and that this Court has jurisdiction to enter this Consent Judgment as a full settlement and
7 resolution of the allegations contained in the Complaint, and of all claims which were or
8 could have been raised by any person or entity related in any way to the facts alleged therein.
9 All releases for Covered Products provided by this Consent Judgment shall apply to any
10 Proposition 65 claim that could have been asserted against Atico related to Covered Products.

11 1.6. This Consent Judgment resolves claims between the parties to this
12 action that are denied and disputed. The parties enter into this Consent Judgment pursuant to
13 a full and final settlement of any and all claims between the parties for the purpose of
14 avoiding prolonged litigation. By execution of this Consent Judgment, Atico does not admit
15 any violations of Proposition 65, the Unfair Competition Act, or any other law of any kind,
16 specifically denies that it has committed any violations of any such laws, and maintains that
17 all Covered Products it has sold and distributed in California have been and are in compliance
18 with all laws. Nothing in this Consent Judgment shall be construed as an admission by Atico
19 of any fact, finding, conclusion, issue of law, or violation of law. Neither this Consent
20 Judgment nor Atico’s compliance with it may be used as evidence of any wrongdoing,
21 misconduct, culpability or liability on the part of Atico or the Atico Releasees as defined in
22 paragraph 4.1.

23 2. **SETTLEMENT PAYMENTS**

24 2.1. In settlement of all of the claims that are alleged, or could have been
25 alleged, in the Complaint concerning Atico and Rite Aid, within ten (10) days following the
26 Court’s entry of a final judgment. Atico shall pay \$17,500 to the Klamath Environmental
27 Law Center (“KELC”) to cover Plaintiff’s attorneys’ fees and costs. Additionally, within ten
28 (10) days following the Court’s entry of a final judgment, Atico shall pay \$3,750 to

1 Californians for Alternatives to Toxics; and \$3,750 to the Ecological Rights foundation for
2 use toward reducing exposures to toxic chemicals and other pollutants, and toward increasing
3 consumer, worker and community awareness of health hazards posed by lead and other toxic
4 chemicals. The parties agree and acknowledge that the charitable contributions made
5 pursuant to this section shall not be construed as a credit against personal claims absent third
6 parties may make for restitution against Atico, which claims (if any are brought) Atico is free
7 to dispute . Atico shall not be required to pay a civil penalty pursuant to Health and Safety Code
8 section 25249.7(b).

9 2.2. Rite Aid shall not be required to make any monetary payments under
10 this Consent Judgment.

11 3. **ENTRY OF CONSENT JUDGMENT**

12 3.1. The parties hereby request that the Court promptly enter this Consent
13 Judgment. Upon entry of the Consent Judgment, Atico and Plaintiff waive their respective
14 rights to a hearing or trial on the allegations of the Complaint, and any rights they may have
15 to appeal the judgment.

16 4. **MATTERS COVERED BY THIS CONSENT JUDGMENT**

17 4.1 This Consent Judgment is a final and binding resolution between Plaintiff
18 Mateel, acting on behalf of itself and the general public, as to those matters described in the
19 Notice Letter, and Atico of: (i) any violation of Proposition 65 or the Unfair Competition Act
20 with respect to Covered Products, (ii) any other statutory or common law claim, to the fullest
21 extent that any of the foregoing described in (i) or (ii) were or could have been asserted by any
22 person or entity against Atico based upon, arising out of or relating to Atico's compliance with
23 Proposition 65, or regulations promulgated thereunder, and Business and Professions Code
24 Sections 17200, *et seq.*, with respect to the Covered Products, and (iii) as to alleged exposures to
25 Covered Products, any alleged discharges or releases to sources of drinking water from Covered
26 Products, and any other claim based in whole or part on the facts alleged in the Complaint,
27 whether based on actions committed by Atico and/or any of its manufacturers, distributors,
28 wholesalers, licensors, licensees, auctioneers, retailers (including but not limited to Rite Aid,

1 Walgreen Co. and East West Distributing Co.), dealers, customers, owners, purchasers, users,
2 parent companies, corporate affiliates, subsidiaries and their respective officers, directors,
3 attorneys, representatives, shareholders, agents, and employees or any other person in the
4 course of doing business who may use, maintain, distribute, manufacture or sell Covered
5 Products (collectively the "Atico Releasees"). As to alleged exposures to Covered Products
6 and to discharges or releases to drinking water from Covered Products, compliance with the
7 terms of this Consent Judgment resolves any issue, now and in the future, concerning compliance
8 by the Atico Releasees, with the requirements of Proposition 65 and the Unfair Competition Act,
9 with respect to Covered Products and any alleged exposures to lead in violation of Proposition
10 65.

11 4.2 As to alleged exposures to Covered Products and as to alleged discharges
12 or releases to sources of drinking water from Covered Products, Plaintiff Mateel and the Klamath
13 Environmental Law Center ("KELC"), by and on behalf of the general public, themselves, and
14 their respective agents, successors and assigns, waive all rights to institute any form of legal
15 action, and release all claims against the Atico Releasees, who may use, maintain, distribute or
16 sell Covered Products, whether under Proposition 65 or the Unfair Competition Act or otherwise,
17 relating in any way to Covered Products and the claims identified in Plaintiff's Notice Letter. In
18 furtherance of the foregoing, Plaintiff Mateel and KELC hereby waive any and all rights and
19 benefits which they now have, or in the future may have, conferred upon them with respect to
20 Covered Products by virtue of the provisions of Section 1542 of the California Civil Code, which
21 provides as follows:

22 "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
23 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT
24 THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM
25 MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE
26 DEBTOR."

27 Mateel and KELC understand and acknowledge that the significance and consequence of this
28 waiver of California Civil Code Section 1542 is that even if Mateel or KELC suffer future

1 damages relating in any way to Covered Products, they will not be able to make any claim for
2 those damages against the Atico Releasees. Furthermore, Plaintiff Mateel and KELC
3 acknowledge that they intend these consequences for any such claims which may exist as of the
4 date of this release but which Mateel or KELC do not know exist, and which, if known, would
5 materially affect their decision to enter into this Consent Judgment, regardless of whether its lack
6 of knowledge is the result of ignorance, oversight, error, negligence, or any other cause.

7 4.4. **Release of Plaintiff.** Defendants waive all rights to institute any form
8 of legal action against Plaintiff or its attorneys or representatives, for all actions taken or
9 statements made by Plaintiff and its attorneys or representatives, in the course of seeking
10 enforcement of Proposition 65, the Unfair Competition Act, or any other law in this action.

11 5. **DISMISSAL OF DEFENDANT RITE AID**

12 After notice of entry of this Consent Judgment and simultaneously at the time
13 of receipt of the monetary payments required by paragraph 2.2, Plaintiff shall dismiss Rite
14 Aid with prejudice and its attorneys shall provide to counsel for Defendants the executed
15 dismissal of all claims in the Complaint against Rite Aid with prejudice for filing with the
16 Court.

17 6. **ENFORCEMENT OF JUDGMENT**

18 6.1. The terms of this Consent Judgment shall be enforced exclusively by the
19 parties hereto except as set forth in paragraph 6.3 below. The parties may, by noticed motion or
20 order to show cause before the Superior Court of San Francisco County, giving the notice
21 required by law, enforce the terms and conditions contained herein. In any proceeding brought
22 by either party to enforce this Consent Judgment, such party may seek whatever fines, costs,
23 penalties or remedies as may be provided by law for any violation of the Consent Judgment.
24 Additionally, if in such a proceeding the Court finds that Atico failed to make all reasonable good
25 faith efforts to comply with the warning requirements specified in Section 8 of this Consent
26 Judgment, and notwithstanding any other provision of this Consent Judgment, then as to Covered
27 Products for which warnings were not provided pursuant to Section 8 of this Consent Judgment,
28 and only as to such Covered Products, it shall not benefit from any release from liability specified

1 in any provision of this Consent Judgment.

2 6.2. Before moving to enforce the terms of this Consent Judgment or filing any
3 new action against Atico or the Atico Releasees with respect to Covered Products, the parties
4 (and any other enforcers) must follow the procedures set forth in paragraph 6.3.

5 6.3. Should Plaintiff and/or its attorneys, agents, assigns or any other person
6 ("Notifying Party") identify one or more failures to comply with paragraph 8.2 of this
7 Consent Judgment, Plaintiff or its attorneys shall notify Atico, in writing of such alleged
8 failure(s) to warn ("Notice"). The Notice must be sent by certified mail or Federal Express,
9 with proof of service, to the persons identified in paragraph 12 to receive Notices for Atico,
10 and must be served within sixty (60) days of the date the alleged violation(s) was/were
11 observed. The Notice must, at a minimum, set forth the date(s) the alleged violation(s)
12 was/were observed, where the violation(s) was/were observed, and a description of Covered
13 Products and the alleged violation(s) with sufficient detail to allow the receiving party to
14 determine the basis of the claim being asserted. If the receiving party corrects the alleged
15 violation(s) within sixty (60) days of receipt of the Notice, the parties agree to engage in good
16 faith negotiations, given the facts and circumstances, to resolve issues raised by the Notice
17 without resorting to litigation or an enforcement proceeding under the Consent Judgment. In
18 the event the parties are able to mutually resolve the issues raised by the Notice, then
19 Plaintiff, the notifying party, and/or their attorneys shall notify the Attorney General of the
20 "Supplemental Settlement" and shall prepare and file a noticed motion for approval of the
21 ("Supplemental Settlement"). Any monetary payment agreed to as part of the settlement shall
22 cover the Plaintiff's, or notifying party's, attorneys' fees and costs accrued in the matter with
23 the remainder paid as a civil penalty pursuant to Health and Safety Code section 25249.7(b).
24 Civil penalties shall be apportioned pursuant to Health and Safety Code section 25192. The
25 payments shall be made within twenty (20) days of the court's approval of the Supplemental
26 Settlement. Once the court approves the Supplemental Settlement, Plaintiff, the notifying
27 party, and/or their attorneys shall take no further enforcement action with respect to such
28 violation(s), and waive any claims with respect thereto. Atico will provide to Plaintiff upon

1 written request evidence of correction of any alleged violations within 60 days of receipt of
2 the Notice. After meeting and conferring in good faith, if Plaintiff does not agree that the
3 alleged violations have been corrected, or if the parties cannot reach an agreement on
4 settlement, then Plaintiff may move to enforce this Consent Judgment and/or bring a new
5 enforcement action for the alleged violations.

6 **7. MODIFICATION OF JUDGMENT**

7 7.1. If Proposition 65 warnings for lead and lead compounds should no
8 longer be required, then Atico shall have no further warning obligations pursuant to Section 8
9 of this Consent Judgment. If the manner of warning or warning language different from that
10 set forth in this Consent Judgment is required because of a change or changes in law or
11 regulations, then Atico's obligations pursuant to Section 8 of this Consent Judgment shall
12 conform to any such changes in law or regulations by operation of law.

13 7.2. This Consent Judgment may be modified only pursuant to this Section,
14 or upon written agreement of the parties and upon entry of a modified Consent Judgment by
15 the Court thereon, or upon motion of any party as provided by law and upon entry of a
16 modified Consent Judgment by the Court. Notwithstanding any other provision of law, or the
17 refusal to consent thereto by Plaintiff, the warning provisions of Section 8 may be modified
18 upon a showing that the Attorney General's office consents in writing to such modification,
19 and upon written consent by the Attorney General's office, such modified warnings will be
20 deemed to comply with this Consent Judgment whether or not the parties bring a motion to
21 modify the Consent Judgment. Any request by Atico to the Attorney General to modify this
22 Consent Judgment must be simultaneously served on Plaintiff with an opportunity for
23 Plaintiff to provide its views on any proposed modification to the Attorney General.

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1 8. **INJUNCTIVE RELIEF – CLEAR AND REASONABLE**
2 **WARNING**

3 8.1. As to any Covered Products which are made of brass containing lead
4 (hereafter “leaded brass”) or which have a component made of leaded brass, and for which
5 the normally intended use of the product involves the user gripping or holding the product by
6 gripping or holding a component made from leaded brass, a warning as described in
7 paragraph 8.2 below shall be provided on any units of such Covered Products that Atico
8 manufactures, imports, markets, sells or distributes for sale in the State of California, or that
9 Atico distributes to its customers (including but not limited to Rite Aid, Walgreen and East
10 West) for sale in the State of California.

11 8.2. All units of Covered Products manufactured, imported, marketed, sold
12 or distributed for sale in the State of California by Atico or distributed by Atico to its
13 customers (including but not limited to Rite Aid, Walgreen and East West) for sale in
14 California shall contain a Proposition 65 warning as follows:

15 **WARNING:** This product contains lead, a chemical known to
16 the State of California to cause cancer and birth defects or other
 reproductive harm. *Wash your hands after handling.*

17 The word “WARNING” shall be in bold and capital letters. The words “Wash your hands
18 after handling” shall be in bold and italicized. Atico, on behalf of itself and its customers for
19 or to whom Covered Products are manufactured, imported, marketed, sold or distributed for
20 sale in California, shall provide such warning by printing the warning on the unit package of
21 the Covered Products or by affixing the warning (such as by sticker or hang tag) to the unit
22 package of the Covered Products. Such warning shall be prominently printed on or affixed to
23 each Covered Product, its label or package, and displayed with such conspicuousness, as
24 compared with other words, statements, designs, or devices on the Covered Product, its label
25 or package, so as to render it likely to be read and understood by an ordinary individual under
26 customary conditions of purchase or use. The warning shall be at least the same size as the
27 largest of any other safety warnings, if any, on the Covered Product, its package or label. If
28 printed on the label itself, the warning shall be contained in the same section of the label that

1 states other safety warnings, if any, concerning the use of the Covered Product.

2 8.3. The warning requirements set forth in paragraph 8.2 above shall not
3 apply to: (a) Covered Products in Atico's or any of its customers' inventory as of the date of
4 entry of this Consent Judgment; (b) Covered Products manufactured, distributed, marketed,
5 sold or shipped for sale or use outside the State of California; and/or (c) Covered Products for
6 which the normally intended use does not involve the user gripping or holding a leaded brass
7 component of the Covered Product.

8 8.4. If Atico customers (rather than Atico) are responsible for the packaging
9 on Covered Products, Atico may: (1) send a letter to such customers advising them that if
10 they sell Covered Products in California, they must comply with the warning requirements
11 contained in paragraph 8.2; and (2) must obtain written approval that such entities will
12 comply with the warning requirements in paragraph 8.2 before selling or distributing to any
13 such customer Covered Products for sale in California. Atico shall fully and completely
14 satisfy its obligation to provide a warning under this Consent Judgment by providing the
15 foregoing notification and obtaining the foregoing consent, and will provide any such
16 consents to Plaintiff within thirty (30) days upon Plaintiff's written request. Atico customers
17 who do not comply with the warning requirements of this Section after providing the written
18 consent specified herein shall not benefit from any release from liability specified in any
19 provision of this Consent Judgment for those products for which they do not provide the
20 required warnings.

21 8.5. The requirement for product labeling set forth in paragraph 8.2 above is
22 imposed pursuant to the terms of this Consent Judgment. The parties recognize that product
23 labeling is not the exclusive method of providing a warning under Proposition 65 and its
24 implementing regulations.

25 8.6. Except as provided in Section 7 of this Consent Judgment, in the event
26 that Atico ceases to implement or modifies the warnings required by this Consent Judgment,
27 it shall provide written notice to Plaintiff of its intent to do so, and of the basis for its intent,
28 no less than thirty (30) days in advance. Plaintiff shall notify Atico in writing of any

1 objection within thirty (30) days of its receipt of such notice, or such objection by Plaintiff
2 shall be waived.

3 8.7 Atico does not need to provide the warnings for Covered Products under
4 this Consent Judgment where Atico obtains and relies in good faith on testing information
5 that such Covered Products do not contain detectable amounts of lead. If Atico believes one
6 or more of its products meet the lead-free requirement of this exemption, it shall produce a
7 sample of each such product and, if requested by Mateel, any supporting test results to Mateel
8 within thirty (30) days of the products' sale or distribution in the State of California.

9 9. **AUTHORITY TO STIPULATE**

10 9.1. Each signatory to this Consent Judgment certifies that he or she is fully
11 authorized by the party he or she represents to enter into this Consent Judgment and to
12 execute it on behalf of the party represented and legally to bind that party.

13 10. **RETENTION OF JURISDICTION**

14 10.1. This Court shall retain jurisdiction of this matter to implement the
15 Consent Judgment.

16 11. **COMPLIANCE WITH HEALTH & SAFETY CODE SECTION
25249.7(f)**

17 11.1. Plaintiff agrees to comply with the reporting requirements referenced in
18 California Health & Safety Code § 25249.7(f). Pursuant to the regulations promulgated
19 under that section, Plaintiff shall present this Consent Judgment to the California Attorney
20 General's Office within ten (10) days after receipt of all necessary signatures. The parties
21 acknowledge that, pursuant to Health & Safety Code § 25249.7, a noticed motion must be
22 filed to obtain judicial approval of the Consent Judgment. Accordingly, the parties agree to
23 file a joint motion for approval of the settlement, which shall be prepared by Plaintiff within a
24 reasonable period of time after the date this agreement is signed by all parties. Plaintiff
25 agrees to serve a copy of the noticed motion to approve and enter the Consent Judgment on
26 the Attorney General's Office and Defendants at least forty-five (45) days prior to the date set
27 for hearing of the motion in the Superior Court of the City and County of San Francisco.

28 11.2. It is expressly understood and agreed by the parties hereto that the rights

1 and obligations contained in this Consent Judgment are expressly conditioned on the non-
2 opposition by the California Attorney General's Office to this Consent Judgment. Should the
3 Attorney General object to the Consent Judgment within fourteen (14) days of submission
4 thereto, the parties shall negotiate in good faith to modify the Consent Judgment in a manner
5 that resolves the objection of the Attorney General. If the parties cannot agree on appropriate
6 modifications within 15 days of receiving the Attorney General's objections, this Consent
7 Judgment shall, at any party's option, be deemed null and void as to both parties, shall not
8 bind either party, shall not be construed as an admission or waiver of any claim or defense
9 either party may have, and cannot be used for any purpose.

10 12. **NOTICES**

11 12.1. All notices required pursuant to this Judgment and all correspondence
12 shall be sent to the following by regular mail unless otherwise specified:

13 For Plaintiff:

14 William Verick, Esq.
15 424 First Street
16 Eureka, CA 95501

17 For Defendants:

18 General Counsel
19 Atico International USA, Inc.
20 501 S. Andrews Ave.
21 P.O. Box 14368
22 Ft. Lauderdale, FL 33302

23 14. **ENTIRE AGREEMENT**

24 14.1. This Consent Judgment contains the sole and entire agreement and
25 understanding of the parties with respect to the entire subject matter hereof, and any and all
26 prior discussions, negotiations, commitments and understandings related hereto, and as to
27 defendant Atico entirely supercedes the Consent Judgment entered by the Court in Mateel v.
28 Atico, et al, San Francisco Superior Court Case No. 315868. No representations, oral or
otherwise, express or implied, other than those contained herein have been made by any party
hereto. No other agreements between Plaintiff and Atico not specifically referred to herein,

1 oral or otherwise, shall be deemed to exist or to bind any of the parties.

2 15. **GOVERNING LAW**

3 15.1. The validity, construction and performance of this Consent Judgment
4 shall be governed by the laws of the State of California, without reference to any conflicts of
5 law provisions of California law.

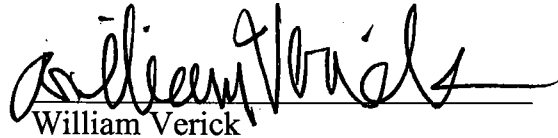
6 16. **COURT APPROVAL**

7 16.1. If this Consent Judgment is not approved by the Court, it shall be of no
8 force or effect, and cannot be used in any proceeding for any purpose.

9 IT IS SO STIPULATED:

10
11 Dated: _____

KLAMATH ENVIRONMENTAL LAW
CENTER

12
13 
14 William Verick

Mateel Environmental Justice Foundation

15
16 Dated: _____

ATICO INTERNATIONAL USA, INC.

17
18
19
20 BY: _____
21 ITS: _____

22
23 IT IS SO ORDERED, ADJUDGED AND DECREED:

24 Dated: _____

25 _____
26 JUDGE OF THE SUPERIOR

27
28