FILED
San Francisco County Superior Court WILLIAM VERICK, SBN 140972 FREDRIC EVENSON, SBN 198059 JUL 1 9 2010 2 KLAMATH ENVIRONMENTAL LAW CENTER 424 First Street **CLERK OF THE COURT** 3 Eureka, CA 95501 BY: MELINKA JONES Telephone: (707) 268-8900 Deputy Clerk (707) 268-8901 4 Facsimile: Email: wverick@igc.org Email: ecorights@earthlink.net 5 DAVID WILLIAMS, SBN 144479 6 BRIAN ACREE, SBN 202505 370 Grand Avenue, Suite 5 7 Oakland, CA 94610 Telephone: (510) 271-0826 8 (510) 271-0829 Facsimile: 9 Email: davidhwilliams@earthlink.net Email: brianacree@earthlink.net 10 Attorneys for Plaintiff, MATEEL 11 ENVIRONMENTAL JUSTICE FOUNDATION 12 13 SUPERIOR COURT OF THE STATE OF CALIFORNIA 14 FOR THE COUNTY OF SAN FRANCISCO 15 16 MATEEL ENVIRONMENTAL Case Nos. CGC-09-486678 and CGC-09-17 488624 (Consolidated herein) JUSTICE FOUNDATION. 18 Plaintiff. 19 CONSENT JUDGMENT AS TO **DEFENDANTS THE NEIMAN** VS. MARCUS GROUP, INC., AMERICA 20 THE NEIMAN MARCUS GROUP, RETOLD, INC., AND GO HOME LTD. INC.; and AMERICA RETOLD, 21 22 Defendants. MATEEL ENVIRONMENTAL 23 JUSTICE FOUNDATION, 24 Plaintiff. 25 VS. 26

CONSENT JUDGMENT

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GO HOME LTD..

Case Nos. 486678 and 488624

Mateel v. The Neiman Marcus Group, Inc., et al.,

Defendant.

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Mateel v. The Neiman Marcus Group, Inc., et al., Case Nos. 486678 and 488624

INTRODUCTION

- 1.1 On or about March 27, 2009, MATEEL ENVIRONMENTAL JUSTICE FOUNDATION ("Mateel") acting on behalf of itself and the general public, filed a complaint for civil penalties and injunctive relief in the above captioned matter in San Francisco County Superior Court against defendants The Neiman Marcus Group, Inc. ("Neiman Marcus") and America Retold, Inc. ("Amercia Retold").
- 1.2 On or about May 22, 2009, Mateel acting on behalf of itself and the general public, filed a separate complaint for civil penalties and injunctive relief in the San Francisco County Superior Court against defendant Go Home Ltd. ("Go Home"), Case No. CGC-09-488624. Upon approval and entry of this Consent Judgment by the Court, Case Numbers CGC-09-486678 and CGC-09-488624 shall be deemed to have been consolidated by the Court on its own motion and the Consent Judgment shall be filed in and deemed to bring a full, final, and binding conclusion to both actions in their entirety.
- 1.3 Collectively, Neiman Marcus, America Retold, and Go Home are referred to herein as "Settling Defendants" and Mateel and the Settling Defendants are referred to herein collectively as the "parties" or individually as a "party."
- 1.4 The Complaint alleges, among other things, that Settling Defendants violated provisions of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code Section 25249.5, et seq. ("Proposition 65"). In particular, Mateel alleges that Settling Defendants have knowingly and intentionally exposed persons to products which use beverage dispensing jars or vessels that incorporate brass spigots which contain lead and/or lead compounds, which are chemicals known to the State of California to cause cancer and birth defects or other reproductive harm, without first providing a clear and reasonable warning to such individuals.
- 1.5 For purposes of this Consent Judgment, the term "Covered Products" shall be defined as those beverage dispensing jars or vessels that incorporate leaded brass spigots, that Settling Defendants distribute, market and/or sell within the State of California, regardless of whether they bear Settling Defendants' labels. Except as

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otherwise specifically provided herein, "Covered Products" shall not include any beverage dispensing jars or vessels provided to Neiman Marcus by The Gerson Company during the period beginning one year prior to the filing of this action to January 16, 2010.

- On or about December 23, 2008, a 60 Day Notice Letter was sent by Mateel to Neiman Marcus and America Retold, the California Attorney General, all California District Attorneys, and all City Attorneys of each California city with a population exceeding 750,000. On or about February 24, 2009, a separate 60 Day Notice Letter ("60 Day Notice Letter") was sent by Mateel to Go Home, the California Attorney General, all California District Attorneys, and all City Attorneys of each California city with a population exceeding 750,000. The 60 Day Notice Letters referred to in this paragraph are collectively referred to herein as the "60 Day Notice Letter."
- 1.7 Settling Defendants are businesses that employ ten or more persons and manufacture, distribute, supply and/or otherwise market or sell within the State of California Covered Products, which are alleged to contain lead and/or lead compounds. Lead and lead compounds are chemicals known to the State of California to cause cancer. and lead is a chemical known to the State of California to cause reproductive toxicity pursuant to Health and Safety Code Section 25249.9. Under specified circumstances, products containing lead and/or lead compounds that are sold or distributed in the State of California are subject to the Proposition 65 warning requirement set forth in Health and Safety Code Section 25249.6. Plaintiff Mateel alleges that the Covered Products which have been manufactured, distributed, and/or marketed by Settling Defendants for sale in California and/or which have been sold in California by Settling Defendants require a warning under Proposition 65.
- 1.8 For purposes of this Consent Judgment only, the parties stipulate that this Court has jurisdiction over the allegations of violations contained in the Complaint and personal jurisdiction over Settling Defendants as to the acts alleged in the Complaint, that venue is proper in the County of San Francisco and that this Court has jurisdiction to enter this Consent Judgment as a full settlement and resolution of the allegations contained in Mateel v. The Neiman Marcus Group, Inc., et al., Case Nos. 486678 and 488624

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the Complaint and of all claims that were or could have been raised by Mateel or, as to those matters included in the 60 Day Notice Letters, raised by a member of the general public.

1.9 This Consent Judgment resolves claims that are denied and disputed. The parties enter into this Consent Judgment pursuant to a full and final settlement of any and all claims between the parties for the purpose of avoiding prolonged litigation. This Consent Judgment shall not constitute an admission with respect to any material allegation of the Complaint, each and every allegation of which Settling Defendants deny; nor may this Consent Judgment or compliance with it be used as evidence of any wrongdoing. misconduct, culpability or liability on the part of either of the Settling Defendants.

2. SETTLEMENT PAYMENTS

- 2.1 Within 30 days of the entry of this Consent Judgment, America Retold shall make a payment of \$4,500, Go Home shall make a payment of \$11,500, and Neiman Marcus shall make a payment of \$11,500 in lieu of civil penalties to be allocated by Mateel within 30 additional days as follows: half shall be donated by Mateel to the Ecological Rights Foundation, and the other half shall be donated by Mateel to Californians for Alternatives to Toxics. In both instances, the donations shall be carmarked by Mateel for the recipients' work informing California consumers about the hazards of and exposures to toxic chemicals and for work to reduce exposures to and pollution from toxic chemicals. (Both of the above recipient organizations are California non-profit environmental organizations that advocate for workers' and consumers' safety, and for awareness and reduction of toxic exposures.)
- 2.2 One week or more prior to the date scheduled for the motion to approve this Consent Judgment, America Retold shall pay \$5,500, Go Home shall pay \$18,500, and Neiman Marcus shall pay \$18,500 to the Klamath Environmental Law Center ("KELC") as reimbursement for a portion of Mateel's attorneys' fees and costs incurred in the prosecution and settlement of this matter, including fees and costs incurred in the investigation of the Covered Products. If payment has not been received as provided in Mateel v. The Neiman Marcus Group, Inc., et al.,

Case Nos. 486678 and 488624

this paragraph, Plaintiff may withdraw any motion to approve and enter the Consent Judgment as to the defaulting party and this agreement shall become null and void as to that party.

- 2.3 If this Consent Judgment has not been approved and entered by the Court within 120 days of the execution of the document by the parties, the payments described above shall be promptly returned by Mateel to America Retold, Go Home, and Neiman Marcus respectively within 30 days, and the terms of this agreement shall be null and void unless otherwise agreed upon by the parties at that time.
- 2.4 All payments required by this Section shall be made by check, payable to the above specified recipient and mailed, or sent by other overnight delivery, to William Verick, Klamath Environmental Justice Foundation, 424 First Street, Eureka, CA 95501, to be distributed by Mr. Verick to the ultimate recipients as specified above.

3. ENTRY OF CONSENT JUDGMENT

3.1 The parties hereby request that the Court promptly enter this Consent Judgment. Upon entry of the Consent Judgment, Settling Defendants and Mateel waive their respective rights to a hearing or trial on the allegations of the Complaint filed in either of the cases deemed consolidated herein.

4. MATTERS COVERED BY THIS CONSENT JUDGMENT

4.1 This Consent Judgment is a final and binding resolution and release between Mateel, acting on behalf of itself and, as to the claims made in the 60 Day Notice Letters on behalf of the public interest, and Settling Defendants of any violation of Proposition 65 with respect to lead exposures allegedly arising from the Covered Products whether based on actions committed by Settling Defendants, or by any other person or entity to whom Settling Defendants' have sold Covered Products, including, but not limited to, wholesale or retail sellers. This Consent Judgment is also a final and binding resolution and release between Mateel, acting on behalf of itself and, as to the claims made in the 60 Day Notice Letter on behalf of the public interest, and Neiman Marcus (and Neiman Marcus only and specifically not to The Gerson Company) of any violation of Proposition 65 with respect Mateel v. The Neiman Marcus Group, Inc., et al..

Mateel v. The Neiman Marcus Group, Inc., et al., Case Nos. 486678 and 488624

to lead exposures allegedly arising from beverage dispensing jars and vessels supplied to Neiman Marcus by The Gerson Company prior to January 16, 2010.

- 4.2 As to lead exposures allegedly arising from the Covered Products (and, with respect to Neiman Marcus only, any beverage dispensing jars and vessels with valves or spigots supplied to it on or after January 16, 2010 by The Gerson Company), compliance with the terms of this Consent Judgment resolves any issue, now and in the future, concerning compliance by America Retold, Go Home, or Neiman Marcus and their parents, subsidiaries or affiliates, predecessors, officers, directors, employees, and all of their customers, and the successors and assigns of any of these with the requirements of Proposition 65.
- 4.3 Except as provided for above, this Consent Judgment shall not release any manufacturer, distributor, wholesaler, retail seller, or any other person in the course of doing business, including The Gerson Company, who has shipped or offered for sale into California any valved or spigotted beverage dispensing jars or vessels that do not comply with the injunctive relief provisions of this Consent Judgment.
- 4.4 As to lead exposures allegedly arising from the Covered Products, and provided that the terms of this Consent Judgment are complied with, Mateel, acting on behalf of itself and its agents, successors and assigns, waives and releases all rights to institute any form of legal action, and releases all claims against Settling Defendants and their parents, subsidiaries or affiliates, predecessors, officers, directors, employees, and all of their customers, and the successors and assigns of any of them, whether under Proposition 65 or otherwise. As to Neiman Marcus (and Neiman Marcus only) the foregoing waiver and release from Mateel shall also apply as to beverage dispenser jars and vessels supplied to Neiman Marcus by The Gerson Company prior to January 16, 2010. With respect to the foregoing waivers and releases in this paragraph, Mateel, acting on behalf of itself, hereby specifically waives any and all rights and benefits which it now has, or in the future may have, conferred upon it by virtue of the provisions of Section 1542 of the California Civil Code, which provides as follows:

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

Mateel understands and acknowledges that the significance and consequence of this waiver of California Civil Code Section 1542 is that, as to lead exposures allegedly arising from the Covered Products (and, as to Neiman Marcus only, beverage dispensing jars and vessels supplied to Neiman Marcus by The Gerson Company prior to January 16. 2010), and provided that the terms of this Consent Judgment are complied with, then even if Mateel suffers future damages arising out of or resulting from, or related directly or indirectly to, in whole or in part, the Covered Products (and, as to Neiman Marcus only, beverage dispensing jars and vessels supplied to Neiman Marcus by The Gerson Company prior to January 16, 2010), it will not be able to make any claim for those damages against the Settling Defendants, their parents, subsidiaries or affiliates, predecessors, officers, directors, employees, and all of their customers, and the successors and assigns of any of them. Furthermore, Mateel acknowledges that it intends these consequences for any such claims which may exist as of the date of this release but which Mateel does not know exist, and which, if known, would materially affect its decision to enter into this Consent Judgment, regardless of whether its lack of knowledge is the result of ignorance, oversight, error, negligence, or any other cause.

5. <u>ENFORCEMENT OF JUDGMENT</u>

5.1 The parties may, by noticed motion or order to show cause before the Superior Court of San Francisco County, giving the notice required by law, enforce the terms and conditions contained herein. The rights and obligations of America Retold, Go Home, and Neiman Marcus arising from this Consent Judgment shall be several and not joint except as set forth specifically otherwise herein.

Mateel v. The Neiman Marcus Group, Inc., et al.,

6. MODIFICATION OF JUDGMENT

This Consent Judgment may be modified only upon written agreement of the parties and upon entry of a modified Consent Judgment by the Court thereon, or upon motion of any party as provided by law and upon entry of a modified Consent Judgment by the Court.

7. INJUNCTIVE RELIEF – CESSATION OF SALES OF OFFENDING PRODUCTS – NOTIFICATION TO PRIOR PURCHASERS

- 7.1 Settling Defendants represent that they have previously ceased and will hereafter permanently desist from sourcing or importing beverage dispensing jars and vessels containing leaded brass valves or spigots. Settling Defendants agree that they will no longer offer for sale in or into California any Covered Products, including those specifically identified in the 60 Day Notice Letters referenced herein. Neiman Marcus further agrees that it will no longer offer for sale in or into California any beverage dispensing jars or vessels containing brass valves or spigots which were obtained from The Gerson Company prior to January 16, 2010.
- 7.2 In addition to the foregoing forward-looking obligations, America Retold. Go Home, and/or Neiman Marcus shall, as applicable, make the following efforts to contact past California purchasers of Covered Products:
 - (a) Neiman Marcus. For those prior purchasers which can be specifically identified from its records as having bought Covered Products from Neiman Marcus on or after December 23, 2008 in the case of Covered Products supplied to Neiman Marcus by America Retold, and on or after April 28, 2009 in the case of Covered Products supplied to Neiman Marcus by other vendors, Neiman Marcus shall within 30 days of the entry of this Consent Judgment attempt to contact each prior purchaser via U.S. Mail to the prior purchaser's last known postal address or via email to their last known email address. In each such communication, Neiman Marcus shall 1) provide a Proposition 65 warning to the prior purchaser of the Covered Product as to exposure to lead from using the Covered Product and 2) advise the customer

Mateel v. The Neiman Marcus Group, Inc., et al., Case Nos, 486678 and 488624

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that the product may be returned for a full refund or credit. The Proposition 65 warning to be provided to such prior purchasers shall state: "The valve or spigot on the beverage dispenser you previously purchased was made from brass which contained lead; lead is a chemical known to the State of California to cause birth defects or other reproductive harm." Neiman Marcus shall provide a copy of any such letter to Mateel prior to sending it to prior customers, and if Mateel objects that the proposed letter does not meet the criteria of this section, the parties shall meet and confer in good faith to resolve the disagreement.

(b) America Retold. Within 90 days of the date of entry of this Consent Judgment, America Retold shall provide a notice substantially in the same form and content as Exhibit A by electronic mail or U.S. Mail to all consumers in California who purchased a Covered Product on or after March 28, 2008 for whom America Retold is in possession of the consumer's email or U.S. Mail address, except as to any California consumers who purchased the Covered Product from Neiman Marcus. In order to help perform its obligations under the preceding sentence, America Retold shall request, within 30 days of entry of this Consent Judgment, that each retailer to whom it offered a Covered Product for sale in California on or after March 28, 2008, other than Neiman Marcus, provide America Retold with the names and postal and/or email addresses of any such California consumers to the extent they maintain such information. America Retold shall not be required to send a letter pursuant to this subsection to a California consumer of one of its Covered Products for whom it does not possess a postal or email address unless the retailer provides that information to America Retold within 30 days of America Retold requesting it. Except as to Neiman Marcus, the releases set forth in this Consent Judgment shall only apply to those retailers that have agreed in

Mateel v. The Neiman Marcus Group, Inc., et al.,

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good faith to provide America Retold with the California consumer information they possess.

Go Home. Within 90 days of the date of entry of this Consent Judgment, (c) Go Home shall provide a notice substantially in the same form and content as Exhibit B by electronic mail or U.S. Mail to all consumers in California who purchased a Covered Product on or after May 22, 2008 for whom Go Home is in possession of the consumer's email or U.S. Mail address, except as to any California consumers who purchased the Covered Product from Neiman Marcus. In order to help perform its obligations under the preceding sentence, Go Home shall request, within 30 days of entry of this Consent Judgment, that each retailer to whom it offered a Covered Product for sale in California on or after May 22, 2008, other than Neiman Marcus, provide Go Home with the names and postal and/or email addresses of any such California consumers to the extent they maintain such information. Go Home shall not be required to send a letter pursuant to this subsection to a California consumer of one of its Covered Products for whom it does not possess a postal or email address unless the retailer provides that information to Go Home within 30 days of Go Home requesting it. Except as to Neiman Marcus, the releases set forth in this Consent Judgment shall only apply to those retailers that have agreed in good faith to provide Go Home with the California consumer information they possess.

8. <u>AUTHORITY TO STIPULATE</u>

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

9. <u>RETENTION OF JURISDICTION</u>

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

Mateel v. The Neiman Marcus Group, Inc., et al., Case Nos. 486678 and 488624

10. ENTIRE AGREEMENT

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This Consent Judgment contains the sole and entire agreement and understanding of the parties with respect to the entire subject matter hereof, and any and all prior discussions, negotiations, commitments and understandings related hereto. No representations, oral or otherwise, express or implied, other than those contained herein have been made by any party hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be deemed to exist or to bind any of the parties. Notwithstanding the foregoing, Neiman Marcus, Go Home, and America Retold hereby waive and release any claims they may have against each other with respect to the Covered Products or this action, or with respect to fees, costs, or expenses incurred in relation to this Consent Judgment.

11. GOVERNING LAW

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

12. FEES AND EXPENSES

The parties acknowledge and agree that, except as provided in Section 2 of this Consent Judgment, each party shall bear its own costs, expenses, consultant and expert fees, and attorneys' fees arising out of and/or in connection with the litigation.

13. COMPLIANCE WITH HEALTH & SAFETY CODE SECTION 25249.7(F)

Mateel agrees to comply with the reporting form and approval requirements referenced in Health & Safety Code Section 25249.7(f) and as implemented by various regulations.

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Mateel v. The Neiman Marcus Group, Inc., et al.,

14. 1 COURT APPROVAL If this Consent Judgment is not approved by the Court, it shall be of no force or 2 3 effect, and cannot be used in any proceeding for any purpose. IT IS SO STIPULATED: 4 5 Dated: MATEEL ENVIRONMENTAL JUSTICE FOUNDATION 6 7 8 William Verick CEO Mateel Environmental Justice Foundation, Klamath Environmental Law Center 9 10 Dated: THE NEIMAN MARCUS GROUP, INC., 11 12 13 By: Its: 14 Dated: 5/21/10 AMERICA RETOLD, INC., 15 16 17 18 19 Dated: GO HOME LTD., 20 21 22 By: Its: 23 24 IT IS SO ORDERED, ADJUDGED AND DECREED: 25 Dated: CHARLOTTE WALTER WOOLARD JUL 1 9 2010 26 JUDGE OF THE SUPERIOR COURT 27 28 Matcel v. The Neiman Marcus Group, Inc., et al., - 12 -

CONSENT JUDGMENT

COURT APPROVAL 1 14. 2 If this Consent Judgment is not approved by the Court, it shall be of no force or 3 effect, and cannot be used in any proceeding for any purpose. IT IS SO STIPULATED: 4 5 Dated: MATEEL ENVIRONMENTAL JUSTICE **FOUNDATION** 6 7 8 William Verick CEO Mateel Environmental Justice Foundation, 9 Klamath Environmental Law Center 10 Dated: May 21, 2010 THE NEIMAN MARCUS GROUP, INC., 11 12 13 14 AMERICA RETOLD, INC., Dated: 15 16 17 By: Its: 18 19 Dated: GO HOME LTD., 20 21 22 By: Its: 23 24 IT IS SO ORDERED, ADJUDGED AND DECREED: 25 Dated: 26 JUDGE OF THE SUPERIOR COURT 27 28 Mateel v. The Neiman Marcus Group, Inc., et al., - 12 -Case Nos. 486678 and 488624

CONSENT JUDGMENT

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CONSENT JUDGMENT

EXHIBIT A – NOTICE TO AMERICA RETOLD CUSTOMERS

Dear America Retold Customer:

Our records show that you may have purchased a America Retold beverage dispenser with a brass spigot. Pictures of these dispensers are below.

America Retold has been advised that the brass spigots on these beverage dispensers leach lead into liquids dispensed through the spigots. Lead is a chemical known to the State of California to cause birth defects. Under the terms of a settlement of a lawsuit that was brought under California's Proposition 65 law, we've stopped selling these items. If you have concerns about your America Retold dispenser, you may return it to us for a full refund.

If you have further questions, please call at 800-XXX-XXXX

America Retold is committed to providing our customers with quality products, and we apologize for any concerns this may cause.

[INSERT PICTURES]

EXHIBIT B – NOTICE TO GO HOME CUSTOMERS

Dear Go Home Customer:

Our records show that you may have purchased a Go Home beverage dispenser with a brass spigot. Pictures of these dispensers are below.

Go Home has been advised that the brass spigots on these beverage dispensers leach lead into liquids dispensed through the spigots. Lead is a chemical known to the State of California to cause birth defects. Under the terms of a settlement of a lawsuit that was brought under California's Proposition 65 law, we've stopped selling these items. If you have concerns about your Go Home dispenser, you may return it to us for a full refund.

If you have further questions, please call at 800-XXX-XXXX

Go Home is committed to providing our customers with quality products, and we apologize for any concerns this may cause.

[INSERT PICTURES]

Mateel v. The Neiman Marcus Group, Inc., et al.,