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10 Attorneys for Plaintiff  
11 MATEEL ENVIRONMENTAL JUSTICE  
12 FOUNDATION

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
14 CITY AND COUNTY OF SAN FRANCISCO

16 MATEEL ENVIRONMENTAL JUSTICE  
17 FOUNDATION,

17 Plaintiff,

18 v.

19 TAPRITE-FASSCO MFG., INC. (F.K.A.  
20 NORTH AMERICAN DISPENSE SYSTEM,  
21 INC.); CNA INTERNATIONAL; HAIER  
22 AMERICA TRADING, LLC; LELAND  
23 LIMITED, INC.; PERLICK CORPORATION;  
24 and PACIFIC MERCHANTS (Krome  
25 Dispense),

24 Defendants.

Case No. CGC-11-512718

**[PROPOSED] CONSENT JUDGMENT  
AS TO DEFENDANT MIDEA  
AMERICA CORPORATION**

1       **1. INTRODUCTION**

2           **1.1.** On or about December 15, 2011, plaintiff Mateel Environmental Justice  
3 Foundation (“Mateel”), provided a 60-Day Notice of Violation to the California Attorney  
4 General, the District Attorneys of each county in California, and the City Attorneys of each  
5 California city with a population exceeding 750,000, and defendant Midea America Corporation  
6 (“Midea America”), claiming that Midea America, through its sales in California of beer taps,  
7 faucets and dispensing equipment that utilize valves, nozzles, spigots and stopcocks (“Covered  
8 Products”) allegedly containing lead and/or lead compounds, was in violation of California  
9 Health and Safety Code §§ 25249, et seq. (“Proposition 65”) by knowingly and intentionally  
10 exposing persons to lead and/ or lead compounds, chemicals known to the State of California to  
11 cause cancer and/or birth defects or other reproductive harm, without first providing a clear and  
12 reasonable warning. On or about May 19, 2011, Mateel issued a 60-Day Notice of Violation to  
13 CNA International, Inc. (“CNA International”). On or about September 22, 2011, Mateel issued a  
14 60-Day Notice of Violation to Vinotemp International Corporation (“Vinotemp International”),  
15 Maytag Corporation and Whirlpool Corporation. Together, the 60-Day Notice of Violation  
16 issued to Midea America, the 60-Day Notice of Violation issued to CNA International, and the  
17 60-Day Notice of Violation issued to Vinotemp International, Maytag Corporation and Whirlpool  
18 Corporation are referred to as “60-Day Notice Letters.”

19           **1.2.** On or about August 5, 2011, Mateel by its attorneys, the Klamath Environmental  
20 Law Center (“KELC”), acting on behalf of the public interest, filed a First Amended Complaint  
21 for civil penalties and injunctive relief in the Superior Court for the City and County of San  
22 Francisco in the action entitled *Mateel Environmental Justice Foundation v. Taprite-Fassco Mfg.,*  
23 *Inc. et al.*, Case No. CGC 11-512718 against CNA International and other defendants. The First  
24 Amended Complaint in the action alleges, among other things, that defendants violated provisions  
25 of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code  
26 §§ 25249.5, et seq. (“Proposition 65”). In particular, Mateel alleges that defendants knowingly  
27 and intentionally exposed persons to lead or lead compounds, which under Proposition 65 are  
28 chemicals known to the State of California to cause cancer and birth defects of other reproductive

1 harm. More than 70 days have passed since Mateel sent the 60-Day Notice Letter, dated  
2 December 15, 2011, to Midea America and, for purposes of this Consent Judgment, the Court  
3 may deem that Midea America has been named as a defendant in the pending action, subject to  
4 the provisions of Paragraph 1.5 of this Consent Judgment.

5 **1.3.** Midea America is a business that employs ten or more persons and markets  
6 manufactures, sells and/or distributes and/or causes or allows the sale and distribution of Covered  
7 Products to or within the State of California, which are alleged to contain lead and/or lead  
8 compounds.

9 **1.4.** Lead and lead compounds are chemicals known to the State of California to cause  
10 cancer, and lead is a chemical known to the State of California to cause reproductive toxicity  
11 pursuant to Health and Safety Code Section 25249.9. Under certain circumstances, products  
12 containing lead and/or lead compounds that are sold or distributed in the State of California are  
13 subject to Proposition 65's warning requirement. Mateel alleges that the Covered Products  
14 manufactured, distributed, sold and/or marketed by Midea America and its downstream customers  
15 for use in California require Proposition 65 warnings.

16 **1.5.** For purposes of this Consent Judgment only, and without waiving any arguments  
17 to the contrary that it might assert in any other matter, Midea America agrees not to contest the  
18 Court's jurisdiction over the allegations of violations contained in the 60-Day Notice Letter and  
19 the First Amended Complaint and over Midea America and to enter and enforce the provisions of  
20 this Consent Judgment as a full and final settlement and resolution of the allegations made against  
21 Midea America contained in the 60-Day Notice Letters and First Amended Complaint and of all  
22 claims that were or could have been raised against Midea America based on the facts alleged  
23 therein or arising there from, and that venue is proper in the City and County of San Francisco.  
24 Mateel stipulates to the Court's jurisdiction over the allegations of violations contained in the 60-  
25 Day Notice Letters and the First Amended Complaint and over it and to enter and enforce the  
26 provisions of this Consent Judgment as a full and final settlement and resolution of the allegations  
27 made against Midea America contained in the 60-Day Notice Letter and First Amended  
28 Complaint and of all claims that were or could have been raised against Midea America based on

1 the facts alleged therein or arising there from, and that venue is proper in the City and County of  
2 San Francisco.

3 **1.6.** This Consent Judgment resolves all claims in the 60-Day Notice Letters, which are  
4 all denied and disputed by Midea America. The Parties enter into this Consent Judgment as a full  
5 and final settlement of any and all claims between the Parties for the purpose of avoiding  
6 prolonged litigation. This Consent Judgment shall not constitute an admission with respect to any  
7 allegation made in the 60-Day Notice Letters or the First Amended Complaint, nor may this  
8 Consent Judgment or compliance with it be used as an admission or evidence of any fact,  
9 wrongdoing, misconduct, culpability, violation of law or liability on the part of Midea America or  
10 any person or entity released herein.

11 **1.7.** Upon Mateel's receipt of this Consent Judgment executed by Midea America,  
12 Mateel will promptly dismiss the pending action identified in Paragraph 1.2 against CNA  
13 International without prejudice. Mateel will not file an action against Vinotemp International,  
14 Maytag Corporation or Whirlpool Corporation arising out of the allegations made in the 60-Day  
15 Notice Letters issued on September 22, 2011.

16 **2. SETTLEMENT PAYMENT**

17 **2.1.** In settlement of all of the claims that are alleged, or could have been alleged, in the  
18 60-Day Notice Letters and First Amended Complaint concerning Covered Products, Midea  
19 America shall pay a total amount of \$60,000 to be allocated as follows: \$5,000 in civil penalties;  
20 \$40,000 to the Klamath Environmental Law Center ("KELC") to cover a portion of Plaintiff's  
21 attorneys' fees and litigation costs; \$7,500 to the Ecological Rights Foundation, and \$7,500 to  
22 Californians for Alternatives to Toxics for use toward reducing exposures to toxic chemicals and  
23 other pollutants, and toward increasing consumer, worker and community awareness of health  
24 hazards posed by lead and other toxic chemicals. Mateel waives its entitlement to 25% of the  
25 civil penalties, and thus the entire amount of civil penalties shall be made payable, pursuant to the  
26 statute, to the Office of Environmental Health Hazard Assessment (OEHHA). The above  
27 described payments shall be forwarded by Midea America to its counsel so that they are received  
28 at least five days prior to the hearing date scheduled for approval of this Consent Judgment.

1 Midea America's counsel shall notify via email Klamath Environmental Law Center upon receipt  
2 of the funds. If the Consent Judgment is not approved within 120 days of the date scheduled for  
3 approval, the above described payments shall be returned to Midea America and the provisions of  
4 this Consent Judgment shall become null and void. If the Consent Judgment is approved and  
5 entered by the Court, within five days of that date, Midea America's counsel shall ensure the  
6 above described payments are delivered, via UPS or FedEx for next business day delivery, to  
7 Klamath Environmental Law Center.

8 **3. ENTRY OF CONSENT JUDGMENT**

9 **3.1.** The Parties hereby request that the Court promptly enter this Consent Judgment.  
10 Upon entry of this Consent Judgment, the Parties waive their respective rights to a hearing or trial  
11 on the allegations of the Complaint.

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

13 **4.1. Mateel's Release On Behalf of the Public Interest.** As to alleged exposures to  
14 lead or lead compounds from Covered Products, this Consent Judgment provides a full release of  
15 liability on behalf of the Public Interest for all claims that were or could have been brought up  
16 through the Effective Date (which shall be the date this Consent Judgment is entered by the  
17 Court) and as to Covered Products in the stream of commerce as of the Effective Date to Midea  
18 America, as well as any and all entities related to or otherwise involved with Midea America  
19 including, but not limited to, its past, present and future parents, holding companies, controlling  
20 entities, joint ventures or other investment vehicles, related or affiliated companies, subsidiaries,  
21 predecessors, successors, and assigns to any of them, and its officers, directors, employees, and  
22 all customers including, but not limited to, CNA International, Vinotemp International, Maytag  
23 Corporation and Whirlpool Corporation, as well as their past, present, and future parents,  
24 subsidiaries, affiliates, predecessors, successors, assigns to any of them, and their officers,  
25 directors, employees, and to their retail customers including, but not limited to Wal-Mart Stores,  
26 Inc. and its affiliates and subsidiaries or any other person in the course of business involving the  
27 Covered Products and the successors and assigns of any of them, as to all claims and matters  
28 raised in the 60-Day Notice Letters. The intent of this provision is to release any and all persons

1 and or entities in the course of business involving the Covered Products and the successors and  
2 assigns of any of them as to all claims and matters raised in the 60-Day Notice Letters.

3 Notwithstanding any other provision of this Consent Judgment, no claim or matter is released on  
4 behalf of the Public Interest unless that claim or matter was raised in the 60-Day Notice Letters.

5 **4.2. Mateel's Release on Behalf of Itself.** As to exposures to lead and lead  
6 compounds alleged to be caused by the Covered Products as set forth in the 60-Day Notice  
7 Letters, Mateel, acting in its individual capacity only and *not* in its representative capacity, waives  
8 all rights to institute any form of legal action and releases all claims which were or could have  
9 been brought up through the Effective Date and as to Covered Products in the stream of  
10 commerce as of the Effective Date against Midea America as well as any and all entities related  
11 to or otherwise involved with Midea America including, but not limited to, its past, present and  
12 future parents; holding companies, controlling entities, joint ventures or other investment  
13 vehicles, related or affiliated companies, subsidiaries, predecessors, successors, and assigns to  
14 any of them, and its officers, directors, employees, and all customers including, but not limited to,  
15 CNA International, Vinotemp International Corporation, Maytag Corporation and Whirlpool  
16 Corporation, as well as their past, present, and future parents, subsidiaries, affiliates,  
17 predecessors, successors, assigns to any of them, and their officers, directors, employees, and to  
18 their retail customers including, but not limited to Wal-Mart Stores, Inc. and its affiliates and  
19 subsidiaries or any other person in the course of doing business involving the Covered Products  
20 and the successors and assigns of any of them. The intent of this provision is to release any and  
21 all persons and or entities in the course of business involving the Covered Products and the  
22 successors and assigns of any of them as to all claims and matters raised in the 60-Day Notice  
23 Letters. In furtherance of the foregoing, Mateel, acting on behalf of itself, hereby waives any and  
24 all rights and benefits which it now has, or in the future may have, conferred upon it with respect  
25 to lead exposures alleged to be caused by the Covered Products by virtue of the provisions of  
26 Section 1542 of the California Civil Code, which provides as follows:

27 "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS  
28 WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO  
EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE

1                   RELEASE, WHICH IF KNOWN BY HIM MUST HAVE  
2                   MATERIALLY AFFECTED HIS SETTLEMENT WITH THE  
3                   DEBTOR.”

4       Mateel understands and acknowledges that the significance and consequence of this waiver of  
5       California Civil Code Section 1542 is that even if Mateel has future claims arising out of or  
6       resulting from, or related directly or indirectly to, in whole or in part, the Covered Products, it  
7       will not be able to pursue that claim against as Midea America as well as any and all entities  
8       related to or otherwise involved with Midea America including, but not limited to, its past,  
9       present and future parents, holding companies, controlling entities, related or affiliated  
10      companies, subsidiaries, predecessors, successors, and assigns to any of them, and its officers,  
11      directors, employees, and all customers including, but not limited to, CNA International,  
12      Vinotemp International Corporation, Maytag Corporation and Whirlpool Corporation, as well as  
13      their past, present, and future parents, subsidiaries, affiliates, predecessors, successors, assigns to  
14      any of them, and their officers, directors, employees, and to their retail customers including, but  
15      not limited to Wal-Mart Stores, Inc. and its affiliates and subsidiaries, or any other person in the  
16      course of business involving the Covered Products. Furthermore, Mateel acknowledges that it  
17      intends these consequences for any such claims which may exist as of the date of this release but  
18      which Mateel does not know exist, and which, if known, would materially affect its decision to  
19      enter into this Consent Judgment, regardless of whether its lack of knowledge is the result of  
20      ignorance, oversight, error, negligence, or any other cause.

21           **4.3.    Entities Not Released From Liability.** Notwithstanding any other provision of  
22      this Consent Judgment, including the releases provided for in sections 4.1 and 4.2 above, no claim  
23      or matter is released by Mateel, or on behalf of the Public Interest, against the corporate entities  
24      listed on Exhibit A, including, but not limited to, their past, present and future parents, holding  
25      companies, controlling entities, related or affiliated companies, subsidiaries, predecessors,  
26      successors, and assigns to any of them, and their officers, directors, employees, suppliers and  
27      customers.  
28

1     **5. ENFORCEMENT OF JUDGMENT**

2           **5.1.**    The terms of this Consent Judgment shall be enforced exclusively by the Parties  
3 hereto.

4     **6. MODIFICATION OF JUDGMENT**

5           **6.1.**    This Consent Judgment may be modified only upon written agreement of the  
6 Parties and upon entry of a modified Consent Judgment by the Court, or upon motion of any  
7 Party as provided by law and upon entry of a modified Consent Judgment by the Court.

8           **6.2.**    If the Attorney General of the State of California or Mateel permit any  
9 reformulation standard and/ or test protocol for lead in products similar to the Covered Products  
10 by way of settlement or compromise with any person in the course of doing business, or any other  
11 entity, or if a reformulation standard and/or test protocol for lead in Covered Products is  
12 incorporated by Mateel in any final judgment as to any other person in the course of doing  
13 business, or any other entity, Midea America shall be entitled to apply the reformulation standard  
14 and/or test protocol to Covered Products.

15           **6.3.**    Midea America shall be entitled to a modification to this Consent Judgment to  
16 establish a reformulation standard and/or test protocol for lead content in Covered Products  
17 consistent with any “safe use determination” regarding lead content in Covered Products issued  
18 by the OEHHA, pursuant to 27 Cal. Code Regs. Section 25204 or any successor regulation.

19     **7. INJUNCTIVE RELIEF**

20           Midea America may comply with the provisions of either 7.1 or 7.2, either of which shall  
21 be deemed to be in compliance with Proposition 65:

22           **7.1. Discontinuance of Sale**

23           **7.1.1.** Midea America agrees that it will discontinue and no longer offer for sale  
24 into California any Covered Products that use leaded brass spigots, including those items  
25 specifically identified in the 60-Day Notice Letters, except those that have already been  
26 manufactured and are already within the stream of commerce prior to the date of entry of this  
27 Consent Judgment. Covered Products already in the stream of commerce prior to the date of  
28 entry of this Consent Judgment may be sold into California by third parties not under the control



1 of Midea America. Midea America represents that it is not aware of any other beverage dispenser  
2 that it continues to sell to California consumers, except those that have already been  
3 manufactured and are already within the stream of commerce prior to the date of entry of this  
4 Consent Judgment, that also use a leaded brass spigot for dispensing drinking liquids.

5           **7.1.2.** After the date of entry of this Consent Judgment, Midea America shall not  
6 sell any Covered Products that utilize any material that contains lead if in the normal intended use  
7 of the Covered Product that material contacts any food or beverage dispensed from the Covered  
8 Product.

9           **7.2. Use of a Testing Protocol**

10           **7.2.1.** Using the testing protocol identified in **7.2.2**, or other protocol agreed upon  
11 by the Parties, any Covered Product for which the Lead Concentration Level (outcome of test  
12 protocol **7.2.2**) is less than 1.5 micrograms per liter shall be deemed in compliance with  
13 Proposition 65 and may be shipped for sale in California with no warnings.

14           **7.2.2. Testing Protocol**

15           **(a)** For each product line or manufacturing specifications of a Covered  
16 Product, 3 units of the Covered Product shall be selected to be tested. The Covered Products  
17 which will be tested shall be randomly selected using any generally accepted random sampling  
18 method such as International Standards Organization 2589-1 (1989).

19           **(b)** The Exposure Solution referred to below shall be a laboratory  
20 standard 4 percent acetic acid solution.

21           **(c)** Prior to use in any test of a Covered Product, the Exposure Solution  
22 shall be analyzed for lead, using the method of analysis (with detection limit of 0.05 micrograms  
23 of lead per liter of solution) used in the test of the Covered Product under paragraph 7.2.g. The  
24 analysis shall be conducted using a sample of the size set forth in paragraph 7.2.e and by  
25 dispensing the Exposure Solution into a container of the type set forth in such paragraph. The  
26 result shall be the Sample Blank Level.

27           **(d)** The Covered Product to be tested will be washed in potable water  
28 containing dishwashing detergent, rinsed and dried and will be sanitized before use with a

1 commercial sanitizing solution per the manufacturer's instructions. If the Covered Product is an  
2 unattached faucet, the Covered Product will be attached to a test vessel designed to accept a  
3 Covered Product in a manner similar to a retail version of a vessel that incorporates the Covered  
4 product and which has also been washed and sanitized. The test vessel shall have a lid that will  
5 reduce evaporation of the Exposure Solution during subsequent steps, shall be of a size to contain  
6 a minimum of 3 liters of Exposure Solution, and manufactured from a material (such as 300 series  
7 stainless steel) that will not leach lead into the Exposure Solution during the testing.

8 Notwithstanding the foregoing, any lead that does leach from the test vessel shall be added to any  
9 lead in the Sample Blank Level and considered to be a part thereof. If the Covered Product  
10 includes a vessel, which contains an external spigot, the vessel it shall be filled to a minimum of 3  
11 liters or its full capacity, whichever is less.

12 **(e)** The Covered Product, or if the Covered Product is an unattached  
13 faucet, the test vessel with the Covered Product faucet attached shall be filled with the 3 liters of  
14 Exposure Solution. Approximately 250 milliliters of the Exposure Solution shall be dispensed by  
15 opening the valve of the faucet and then closing the valve, and discarded. The Exposure Solution  
16 shall be held in the test vessel or Covered Product for a period of 4 hours, during which time no  
17 Exposure Solution is to be dispensed and no ingredients or contaminants or other Exposure  
18 Solution are to be added. After the 4 hours, 355 milliliters (12 ounces) are to be dispensed  
19 (drawn) through the faucet by opening the valve. The sample is to be dispensed into a clean  
20 PTFE, polyethylene or HDPE container with an air-tight lid containing an appropriate  
21 preservative, if any.

22 **(f)** An additional sample of 355 milliliters (12 ounces) is to be  
23 dispensed after 1/2 hour and a third is to be dispensed after an additional 1/2 hour.

24 **(g)** Each Exposure Solution sample shall be analyzed for lead using a  
25 method of analysis which has a detection limit of 0.05 micrograms per liter (0.05 *ug/L*) or less  
26 The concentration level for the unit of the Covered Product shall be the level of lead that results  
27 from the analysis of the sample, minus the Sample Blank Level.  
28

1 (h) A total of 3 units of the Covered Products shall be tested, unless the  
2 mean concentration for any single tested unit of a Covered Product is more than 2 times greater or  
3 less than the mean of the other two units of the Covered Product, in which case, a fourth unit shall  
4 be tested.

5 (i) The average concentration level of lead in the samples dispensed  
6 and analyzed shall be calculated. The result shall be the Lead Concentration Level for the  
7 Covered Product. This level shall apply to all Covered Products which are manufactured to the  
8 same specifications using the same materials as those tested.

9 (j) Midea America and any person or entity released herein may rely  
10 upon the representations from its suppliers that these test standards have been met to the extent  
11 such reliance is in good faith.

12 **8. NOTICE**

13 **8.1.** When any Party is entitled to receive any notice or report under this Consent  
14 Judgment, the notice or report shall be made in writing and sent via U.S. Mail or other manner of  
15 overnight delivery to the following:

16 **8.1.1.** for Mateel: William Verick, Esq., Klamath Environmental Justice  
17 Foundation, 424 First Street, Eureka, CA 95501;

18 **8.1.2.** for Midea America: Mr. Qu Yiping, Midea America Corporation,  
19 4 Campus Drive, Parsippany, NJ 07054, with a copy to Kathryn H. Edwards, Orrick, Herrington  
20 & Sutcliffe LLP, 405 Howard Street, San Francisco, CA 94105; and

21 **8.1.3.** with a courtesy copy to Malcolm Weiss, Hunton & Williams LLP,  
22 550 South Hope Street, 20th Floor, Los Angeles, CA 90071.

23 **9. AUTHORITY TO STIPULATE**

24 **9.1.** Each signatory to this Consent Judgment certifies that he or she is fully authorized  
25 by the Party he or she represents to enter into this Consent Judgment and to execute it on behalf  
26 of the Party represented and legally to bind that Party.

27 **10. RETENTION OF JURISDICTION**

28 **10.1.** This Court shall retain jurisdiction to implement the Consent Judgment.

1 **11. ENTIRE AGREEMENT**

2 **11.1.** This Consent Judgment contains the sole and entire agreement and understanding  
3 of the Parties with respect to the entire subject matter hereof, and any and all prior discussions,  
4 negotiations, commitments and understandings related hereto. No representations, oral or  
5 otherwise, express or implied, other than those contained herein have been made by any Party  
6 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be  
7 deemed to exist or to bind any of the Parties.

8 **12. GOVERNING LAW**

9 **12.1.** The validity, construction and performance of this Consent Judgment shall be  
10 governed by the laws of the State of California, without reference to any conflicts of law  
11 provisions of California law.

12 **13. COMPLIANCE WITH HEALTH & SAFETY CODE SECTION 25249.7(f)**

13 **13.1.** Mateel agrees to comply with Health & Safety Code § 25249.7(f)'s reporting form  
14 and approval requirements and as implemented by various regulations.

15 **14. EXECUTION IN COUNTERPART**

16 **14.1.** This Consent Judgment may be executed in counterparts and/or by facsimile,  
17 which taken together shall be deemed to constitute one original document.

18 **15. COURT APPROVAL**

19 **15.1.** If this Consent Judgment is not approved by the Court, it shall be of no force or  
20 effect, and cannot be used in any proceeding for any purpose.

21 **IT IS SO STIPULATED.**

22 Dated: March \_\_\_\_, 2012

MATEEL ENVIRONMENTAL JUSTICE  
FOUNDATION

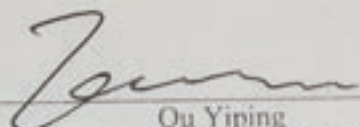
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William Verick  
CEO of Mateel Environmental Justice  
Foundation, Klamath Environmental Law Center

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Dated: March 25, 2012

MIDEA AMERICA CORPORATION

By:   
Qu Yiping  
General Manager of Midea America Corporation

**IT IS SO ORDERED, ADJUDGED AND DECREED.**

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
JUDGE OF THE SUPERIOR COURT

**EXHIBIT A**

**ENTITIES NOT RELEASED**

1. Wasserstrom
2. The Middleby Corporation
3. Haier America Trading LLC
4. Danby Products, Ltd.
5. Leland Limited, Inc.
6. Perlick Corporation
7. Wilbur Curtis Company
8. Bunn-O-Matic Corp.
9. Felix Storch, Inc.
10. Grandmaster Cecilware Corp.
11. Whole Foods Market, Inc.
12. Target Corporation
13. Wells Bloomfield, LLC
14. Polar Wear Company