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MATEEL ENVIRONMENTAL JUSTICE
FOUNDATION

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO

MATEEL ENVIRONMENTAL JUSTICE
FOUNDATION,

Plaintiff,

v.

NEIMAN MARCUS GROUP, LLC,

Defendant.

No. CGC-22-603724

[PROPOSED] CONSENT JUDGMENT

1. INTRODUCTION

1.1 This Consent Judgment (“Consent Judgment” or “Amendment”), only as to Neiman Marcus Group LLC (hereinafter, “Neiman Marcus” or “Settling Defendant”), amends the May 8, 2001 Consent Judgment between MEJF and TJ Maxx of California, LLC in which Settling Defendant was a party (the “TJ Maxx CJ”) and is entered into to resolve plaintiff MATEEL ENVIRONMENTAL JUSTICE FOUNDATION’s (“MEJF” or “Plaintiff”) allegations that Neiman Marcus violated Proposition 65 (Health & Saf. Code § 25249.6, et seq. or the “Act”) by marketing in California, crystal drinking vessels, including, but not limited to tumblers

decanters, wine glasses, champagne flutes, and cocktail glasses with intentionally added lead (“Covered Products”) without providing clear and reasonable Proposition 65 warnings to consumers in California. Plaintiff and Neiman Marcus are hereafter sometimes referred to collectively as the “Parties.” Plaintiff and Neiman Marcus entered into this stipulation for Consent Judgment to resolve all past and current allegations that Neiman Marcus violated Proposition 65.

1.2 Neiman Marcus maintains that it has at all times complied with the warning requirements of Proposition 65 and/or the TJ Maxx CJ. MEJF, however, has alleged that it has identified certain violations of the TJ Maxx CJ’s and/or Proposition 65’s warning provisions. Subsequent discussions and negotiations between the Parties have resulted in an agreement to stipulate to this Consent Judgment and to ask that the Court approve it to avoid protracted litigation.

1.3 A substantial portion of the crystal glassware that Neiman Marcus markets in California contains no intentionally added lead. Covered Products made from crystal glass as defined by categories 3 and/or 4 of Annex I of the European Union’s Council Directive 69/493 EEC, dated December 15, 1969, and that contains no intentionally added lead as any ingredient in the product shall be referred to herein as “Crystalline.” Crystalline may sometimes contain occasional and inadvertent trace amounts of lead.

1.4 MEJF has tested dozens of examples of Crystalline. The analytical results of these tests reveal that Crystalline does not leach lead into food or beverages stored in or served from it in amounts that would cause lead exposures that require a Proposition 65 warning. Ten identical samples of crystalline wine glasses were subjected to a leach test using 4% (pH 2.1, which is the pH of common cola drinks) acetic acid as a leaching solution. Ten additional identical samples of Crystalline were subjected to a leach test using an acetic acid solution with a pH of 3.1, the approximate pH of white wine. The analytical method’s detection limit for the analysis on both sets of samples was 0.6 micrograms per liter. Test results for all twenty samples of Crystalline were uniformly non-detect for lead. These results demonstrate that, even assuming lead was present in the leaching solution just below the 0.6 microgram per liter

detection limit, a person would have to drink more than a full bottle of wine per day, to result in a potential exposure of 0.5 micrograms of lead per day.

1.5 For purposes of this Consent Judgment, "Covered Products" does not include Crystalline.

1.6 The Effective Date of this Consent Judgment shall be the date Neiman Marcus receives notice from MEJF that it has been entered by the Court.

1.7 "Notice of violation", "NOV" or "NOVs" mean the Proposition 65 notices of violation issued by Klamath Environmental Law Center on behalf of MEJF dated February 16, 2022, April 28, 2022 (withdrawn) and September 6, 2022, all notices issued by MEJF to Neiman Marcus pursuant to the TJ Maxx CJ and any and all notices issued by MEJF prior to the entry of this Consent Judgment.

2. CLEAR AND REASONABLE WARNINGS

2.1 Leaded Crystal

2.1.2 Clear and reasonable warnings that use of Covered Products exposes persons to lead, a chemical known to the State of California to cause cancer and birth defects or other reproductive harm, shall be provided by Settling Defendant in the manner provided in Paragraph 2.1.3 below.

2.1.3 No later than one hundred eighty (180) days after the Effective Date of this Consent Judgment, Settling Defendant shall ensure that Covered Products that Settling Defendant offers for sale in California bear a warning ^{WLV} *as to cancer and reproductive toxicity* that meets the content requirements described in 27 Cal. Code Regs. § 25603 and the type size requirements described in 27 Cal. Code Regs. § 25601(c) ("On Product Warnings"). On Product Warnings must be printed in 6-point or larger type. On Product Warnings must either be provided on the packaging of each Covered Product that a customer would take off the shelf to purchase, or, if Covered Products are offered for sale or displayed as individual unpackaged items, a warning shall be affixed to each

such unpackaged Covered Product. On Product Warnings may be provided by use of a sticker that meets the content and type size requirements described above in this Paragraph.

2.2 **Crystalline**

2.2.1 Proposition 65 warnings are not required for Crystalline serve ware and drinkware.

3. **MONETARY TERMS**

3.1 A total sum of \$330,000 is due from Settling Defendant to resolve MEJF's claims.

3.2 **Attorneys' Fees:** No later than thirty (30) business days after the Effective Date of this Consent Judgment, Neiman Marcus shall pay the sum of \$180,000 to the "Klamath Environmental Law Center" as complete reimbursement for any and all expenses and attorneys' fees incurred by MEJF in this matter relating to allegations of violations of the Consent Judgment. The reimbursement shall cover all attorneys' fees, investigative fees, testing and expert fees, and all other fees and expenses of any kind incurred by MEJF investigating, bringing this matter to Settling Defendant's attention, negotiating the settlement of the matter, and obtaining court approval of this Amendment.

3.3 **Civil Penalty:** No later than thirty (30) business days after the Effective Date of this Consent Judgment, the sum of \$150,000 in civil penalties shall become due. Neiman Marcus shall make an initial civil penalty payment of \$30,000. This initial civil penalty payment shall be divided as follows: \$22,500 shall be paid to the Office of Environmental Health Hazard Assessment as the State of California's share of the civil penalties assessed in this case; and \$7,500 shall be paid to plaintiff, Mateel Environmental Justice Foundation as Mateel's share of the civil penalties assessed in this case. The payments required by this Section 3 shall be made by separate checks and shall be delivered to the attention of William Verick, Klamath Environmental Law Center, 1125 Sixteenth Street, Suite 204, Arcata, California 95521.

4. **FURTHER MITIGATION**

4.1 \$120,000 of the civil penalty shall be held in abeyance by Neiman. If within nine (9) months after this Consent Judgment is approved and entered by the Court, Neiman certifies to

Plaintiff in writing that it has completely stopped selling Covered Products from its six (6) current California stores and any new stores, if any, then the amounts above held in abeyance shall no longer be due or payable. If Neiman does not so certify within the nine (9) month period, then the retained \$120,000 shall be paid within 5 days of the end of the nine (9) month period. This payment shall be divided as follows: \$90,000 shall be paid to the Office of Environmental Health Hazard Assessment as the State of California's share of the civil penalties assessed in this case; and \$30,000 shall be paid to plaintiff, Mateel Environmental Justice Foundation as Mateel's share of the civil penalties assessed in this case. The payments required by this Section 3 shall be made by separate checks and shall be delivered to the attention of William Verick, Klamath Environmental Law Center, 1125 Sixteenth Street, Suite 204, Arcata, California 95521.

4.2 Neiman Marcus is committed to a culture of social concern and in FY21 established a dedicated team to lead its Environmental, Social, and Governance (ESG) strategy and periodically publishes an ESG report. At Plaintiff's election, Neiman will work with Plaintiff on including a mutually agreed upon statement referencing Neiman's commitment to comply with the Act in its next ESG report.

5. ENFORCEMENT

5.1 The terms of this Amendment are enforceable only by and among the Parties hereto. Plaintiff agrees that before initiating any enforcement action under this Amendment or the TJ Maxx CJ, it will provide written notice of the alleged violation to Settling Defendant. The notice of alleged violation shall include an identification of each of Settling Defendant's California store that allegedly sold or are selling Covered Products without a compliant warning under this Amendment and shall include specific information (such as the product number or UPC Code) that specifically identifies Covered Products allegedly being sold without warning. Provided that after the first notice of alleged violation of this Amendment or the TJ Maxx CJ, Settling Defendant corrects such alleged violation and provides evidence to MEJF within 30 days of receipt of that first notice, Settling Defendant shall have no monetary liability of any kind for such alleged violation. Any subsequent alleged violation of this Consent Judgment ("Subsequent Alleged Violations") shall provide information that specifically identifies (such as the product number or UPC Code) the Covered Products that are the subject of the Subsequent Alleged Violation. Within 14 days of the Settling Defendant's receipt of any notice of

Subsequent Alleged Violation, the Parties shall meet and confer in good faith for a period of up to 45 days to determine if an appropriate resolution can be reached. If no resolution can be reached concerning any subsequent notice of violation, MEJF may bring a motion to enforce the terms of this Amendment and/or the TJ Maxx CJ. If as part of a motion to enforce the terms of this Consent Judgment, Mateel establishes that the Settling Defendant was in violation of this Consent Judgment at the time the notice of Subsequent Alleged Violation was served on Settling Defendant, then Mateel may file a motion under Civil Procedure Code section ~~170.6~~ ^{1021.5 WLW} for an award of attorneys fees and costs to compensate Mateel for the attorneys time and costs of investigating and prosecuting the Subsequent Alleged Violation. No Party shall bring a motion to enforce, the terms of this Amendment or of the TJ Maxx CJ without first providing written notice to the other Party and substantively meeting and conferring about the alleged violation for a period of at least 45 days.

6. MATTERS COVERED BY THIS AMENDMENT/PUBLIC RELEASE

6.1 Mateel acting on its own behalf and, with regard to those matters raised in any NOV and/or Complaint in this matter, in the public interest, releases Neiman Marcus, as well as its affiliates, subsidiaries, divisions, successors, assigns, suppliers, distributors, licensors, licensees, retailers, and/or customers, from any and all claims for violations of Proposition 65 up through the Effective Date based on actual sales and alleged exposure to lead and lead compounds from Covered Products. As to Covered Products, this Consent Judgment is a full, final and binding resolution between Plaintiff, acting on ~~behalf of the public interest~~ ^{its own WLW}, on the one hand, and Neiman Marcus on the other hand, of any actual or alleged violation of the TJ Maxx CJ, Proposition 65 and of any other statutory, regulatory or common law claim that could have been asserted against Neiman Marcus, including those alleged in the NOVs and/or the Complaint (as may be amended) in this matter, and/or its failure to provide clear, reasonable, and lawful warnings of alleged or actual exposure to lead in Covered Products manufactured, sold, offered for sale or distributed by, for, or on behalf of Settling Defendant. As to Covered Products and Crystalline products, compliance with the terms of this Amendment resolves any issue, now and in the future, concerning compliance by Settling Defendant and/or its affiliates, subsidiaries, divisions, successors, assigns, suppliers, distributors, licensors, licensees, retailers, and/or customers with the requirements of Proposition 65 and the Unfair Competition Act with respect to Covered Products.

7. **COMPREHENSIVE AND GLOBAL RELEASE**

7.1 As to Covered Products, MEJF, for itself, and its agents and attorneys, releases and forever discharges any and all claims against Settling Defendant and its past, present, and future parents, subsidiaries, affiliates, divisions, successors, assigns, suppliers, distributors, licensors, licensees, retailers, and/or customers from all claims for violations of Proposition 65 up and through the Effective Date based on exposure to lead and lead compounds from Covered Products as set forth in the Notices of Violation and complaint issued to Neiman Marcus related to the Covered Products. Compliance with the terms of this Consent Judgment constitutes compliance with Proposition 65 with respect to exposures to lead and lead compounds from Covered Products as set forth in the Notices of Violations.

7.2 As to Covered Products, this Consent Judgment shall be effective as a full and final accord, satisfaction and release by MEJF on its own behalf (and not on behalf of the public interest) as to Neiman Marcus and its past, present, and future parents, subsidiaries, divisions, successors, assigns, suppliers, distributors, licensors, licensees, retailers, and/or customers of and from any and all matters hereby released, MEJF, on its own, and on behalf of its agents and attorneys, acknowledges familiarity with and understanding of California Civil Code § 1542, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

To the extent that Section 1542 or any similar law or statute may otherwise apply to this Consent Judgment, or the claims released, MEJF hereby waives and relinquishes as to all matters released hereunder all rights and benefits it has, or may have, under Section 1542 or under the laws or common law of any other jurisdiction to the same or similar effect. MEJF further acknowledges on its own behalf (and not on behalf of the public interest) that subsequent to the execution of this Consent Judgment, MEJF may discover claims that were unsuspected at the time this Consent Judgment was executed, and which might have materially affected its decision to execute this Consent Judgment, but nevertheless MEJF on its own behalf (and not on behalf of

the public interest) releases Neiman Marcus and its past, present, and future parents, subsidiaries, divisions, successors, assigns, suppliers, distributors, licensors, licensees, retailers, and/or customers from any and all such claims whether known or unknown, suspected or unsuspected, at the time of the execution of this Consent Judgment.

8. **NOTICES**

8.1 Any notices under this Consent Judgment shall be by First-Class Mail *and* E-mail.

If to MEJF:

William Verick
Klamath Environmental Law Center
1125 Sixteenth Street
Arcata, CA 95521
Email: wverick@igc.org

If to Neiman Marcus:

Chief Legal Officer (Hannah Kim)
The Neiman Marcus Group
1618 Main Street
Dallas, TX 75201
Email: Hannah_Kim@neimanmarcus.com

And

Malcolm Weiss & Jennifer MikoLevine
Hunton Andrews Kurth LLP
550 S. Hope Street
Suite 2000
Los Angeles, CA 90071
Emails: mweiss@hunton.com *and* JmikoLevine@hunton.com

9. **MISCELLANEOUS**

9.1 This Consent Judgment is entered into to resolve disputed claims concerning Neiman Marcus's compliance with Proposition 65, the NOVs and the TJ Maxx CJ. Nothing in this Consent Judgment shall be construed as an admission of any fact, conclusion of law, issue of law, or violation of law or the Consent Judgment, nor shall compliance with the TJ Maxx CJ or this Consent Judgment constitute or be construed as an admission of any fact, conclusion of law, issue of law, or violation of law. This Consent Judgment and/or compliance with its terms may not be used in any proceeding as an admission or evidence of any fact, wrongdoing, violation, misconduct, culpability, or liability on the part of Neiman Marcus or MEJF. Neiman Marcus

expressly contends that it has at all times complied with the Consent Judgment and Proposition 65, and that all products it sells and/or has sold, including but not limited to the Covered Products, comply with all laws and are completely safe for their intended use.

9.2 To the extent there is any conflict between this Consent Judgment and the TJ Maxx CJ, the terms of this Consent Judgment shall control. Nothing in this Consent Judgment shall modify the TJ Maxx CJ as to any other terms or obligations not modified herein, including those which have already been fulfilled by Neiman Marcus.

9.3 Joint Preparation. The Parties have jointly participated in the preparation of this Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties. Accordingly, any uncertainty or ambiguity existing in this Consent Judgment shall not be interpreted against any Party as a result of the manner of the preparation of this Consent Judgment. Each Party to this Consent Judgment agrees that any statute or rule of construction providing that ambiguities are to be resolved against the drafting Party should not be employed in the interpretation of this Consent Judgment and, in this regard, the Parties hereby waive California Civil Code § 1654.

9.4 Sole and Entire Agreement. Except as stated above, 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 are merged herein. No representations, oral or otherwise, express or implied, other than those contained herein have been made by any Party hereto with respect to the subject matter hereof. No other agreements not specifically referred to herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties with respect to the subject matter hereof.

9.5. Authority to Stipulate: 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.

9.6 Execution in Counterparts: This Consent Judgment may be executed in counterparts and/or by facsimile or pdf, which taken together shall be deemed to constitute one original document.

9.7 Governing Law: The terms of this Consent Judgment shall be governed by the laws of the State of California and apply within the State of California. In the event that Proposition 65 is repealed, preempted, or is otherwise rendered inapplicable or limited by reason of law generally, or as to lead, then Neiman Marcus may provide written notice to MEJF of any asserted change in the law, and shall have no further obligations pursuant to this Consent Judgment with respect to, and to the extent that, the Covered Products are so affected.

9.8 Severability: If, subsequent to the execution of this Consent Judgment, any of the provisions of this Consent Judgment are deemed by a court to be unenforceable, the validity of the enforceable provisions remaining shall not be adversely affected, but only to the extent the deletion of the provision deemed unenforceable does not materially affect, or otherwise result in the effect of the Consent Judgment being contrary to, the intent of the Parties in entering into this Consent Judgment.

9.9 Public Benefit: It is the Parties' understanding that the commitments Neiman Marcus has agreed to herein, and actions to be taken by Neiman Marcus under this Consent Judgment, confer a significant benefit to the general public, as set forth in California Code of Civil Procedure § 1021.5 and California Code of Regulations tit. 11, § 3201. As such, it is the Parties' intent that to the extent any other party initiates an action alleging a violation of Proposition 65 with respect to Neiman Marcus' alleged failure to provide Proposition 65 warnings, such private party action would not confer a significant benefit on the general public as to the Covered Products addressed in this Consent Judgment, provided that Neiman Marcus is in material compliance with this Consent Judgment.

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9.10 Court Approval: Unless and until the court enters this Consent Judgment, it shall be of no force or effect and cannot be used in any proceeding for any purpose.

IT IS SO STIPULATED:

DATED: 6/13/2023

KLAMATH ENVIRONMENTAL LAW CENTER

By: 

William Verick
Attorneys for Plaintiff
MATEEL ENVIRONMENTAL
JUSTICE FOUNDATION

NEIMAN MARCUS GROUP, LLC,

DATED: _____

By: _____

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: _____

JUDGE OF THE SUPERIOR COURT

9.10 Court Approval: Unless and until the court enters this Consent Judgment, it shall be of no force or effect and cannot be used in any proceeding for any purpose.

IT IS SO STIPULATED:

DATED: _____

KLAMATH ENVIRONMENTAL LAW CENTER

By: _____

William Verick
Attorneys for Plaintiff
MATEEL ENVIRONMENTAL
JUSTICE FOUNDATION

NEIMAN MARCUS GROUP, LLC,

DATED: 7/11/2023

By: **Russ Patrick** _____

Russ Patrick

SVP, GMM

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: _____

JUDGE OF THE SUPERIOR COURT