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16 Attorneys for Plaintiff
17 MATEEL ENVIRONMENTAL JUSTICE
18 FOUNDATION

19 SUPERIOR COURT OF THE STATE OF CALIFORNIA
20 COUNTY OF SAN FRANCISCO

21 MATEEL ENVIRONMENTAL JUSTICE
22 FOUNDATION,

23 Plaintiff,

24 v.

25 MACY’S, RETAIL HOLDINGS, LLC, et al.,

26 Defendants.

No. CGC-23-605530

CONSENT JUDGMENT

27 **1. INTRODUCTION**

28 1.1 This Consent Judgment is entered into to resolve plaintiff Mateel Environmental Justice Foundation’s (“MEJF” or “Plaintiff”) allegations that defendant Macy’s Retail Holdings, LLC (“Macy’s” or “Defendant”) violated Proposition 65 (Health & Saf. Code § 25249.6, *et seq.* or “the Act”) by marketing in California, lead-containing crystal glass drinkware and serveware without providing clear and reasonable warnings to its customers that this drink and serveware would expose them to lead, a chemical known to cause birth defects. Plaintiff and Macy’s are hereafter sometimes

1 referred to collectively as the “Parties.” Plaintiff and Macy’s entered into this stipulation for consent
2 judgment (“Consent Judgment”) to resolve the above-referenced allegations that Macy’s violated
3 Proposition 65.

4 1.2 On May 8, 2001, the Court entered a consent judgment in *Mateel Environmental Justice*
5 *Foundation v. T.J. Maxx of California, LLC, et al.*, San Francisco Super. Court no. 313596 (the “*TJ*
6 *Maxx Consent Judgment*”), to which Macy’s West, Inc., Macy’s Department Stores, Inc., and Federated
7 Department Stores were parties. The *TJ Maxx Consent Judgment* required the settling defendants to
8 provide Proposition 65 warnings for leaded crystal products, as defined therein.

9 1.3 On May 8, 2001, the Court entered a consent judgment in *Mateel Environmental Justice*
10 *Foundation v. Bloomingdale’s Inc., et al.*, San Francisco Super. Court no. 317604 (the “*Bloomingdale’s*
11 *Consent Judgment*”), to which Bloomingdale’s, Inc. was a party. The *Bloomingdale’s Consent*
12 *Judgment* required the settling defendants to provide Proposition 65 warnings for leaded crystal
13 products, as defined therein.

14 1.4 As of the date of entry of this Consent Judgment (the “Effective Date”), defendant
15 Macy’s Retail Holdings, LLC, operates Macy’s and Bloomingdale’s stores and online retail sales in
16 California and is the successor to Macy’s West, Inc., Macy’s Department Stores, Inc., and Federated
17 Department Stores for purposes of the *TJ Maxx Consent Judgment* and to Bloomingdales, Inc., for
18 purposes of the *Bloomingdale’s Consent Judgment*. It is the intent of the Parties that this Consent
19 Judgment shall supersede the *TJ Maxx Consent Judgment* as to Macy’s West, Inc., Macy’s Department
20 Stores, Inc., and Federated Department Stores and the *Bloomingdale’s Consent Judgments* as to
21 Bloomingdale’s, Inc.

22 1.5 On or about March 16, 2022, MEJF served a 60-day notice of violation (“Notice”) on
23 the California Attorney General, the District Attorneys of every county in California, the City Attorneys
24 of every California city with a population greater than 750,000, and defendant Macy’s. The Notice
25 alleged that Macy’s through sales in Macy’s and Bloomingdale’s stores in California of leaded crystal
26 drinking vessels, including, but not limited to, leaded crystal tumblers, decanters, wine glasses,
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1 champagne flutes, and cocktail glasses (“Covered Products”), violated Proposition 65 by knowingly
2 and intentionally exposing persons to lead without first providing a clear and reasonable warning.

3 1.6 On or about March 30, 2023, MEJF, acting in the public interest pursuant to Health and
4 Safety Code § 25249.7(d), filed a Complaint for Civil Penalties and Injunctive Relief in San Francisco
5 County Superior Court, Case No. CGC-23-605530 against Macy’s (the “Complaint”) based on the
6 allegations contained in the Notice.

7 1.7 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
8 jurisdiction over the allegations of violations contained in the Notice and Complaint, personal
9 jurisdiction over Macy’s as to the acts alleged in the Notice and Complaint, that venue is proper in the
10 County of San Francisco, and that this Court has jurisdiction to enter this Consent Judgment as a full
11 and final settlement and resolution of the allegations contained in the Notice and Complaint, and of all
12 claims which were or could have been raised based on the facts alleged therein or arising therefrom.

13 1.8 The Parties enter into this Consent Judgment pursuant to a full and final settlement of
14 disputed claims between the Parties for the purpose of avoiding prolonged litigation. This Consent
15 Judgment and compliance with its terms shall not constitute an admission by Macy’s with respect to
16 any allegation made in the Notice or the Complaint, each and every allegation of which Macy’s denies.
17 Nor may this Consent Judgment or compliance with it be used in any proceeding as an admission or
18 evidence of any fact, wrongdoing, misconduct, culpability or liability on the part of Macy’s. Macy’s
19 expressly contends that all products it sells and/or has sold comply with all laws and are completely
20 safe for their intended use.

21 **2. INJUNCTIVE RELIEF-CLEAR AND REASONABLE WARNINGS**


22 2.1 The date notice of entry of this Consent Judgment by the court is filed and served upon
23 Macy’s shall be deemed the “Effective Date.” Except as set forth below, within thirty (30) business
24 days of the Effective Date, Macy’s shall provide Proposition 65 warnings by one of the methods
25 described in Sections 2.2 through 2.6 for all Leaded Crystal Products. “Leaded Crystal Products” for
26 purposes of this Consent Judgment shall be defined as Covered Products that are intended for use in
27 storing or serving food or drink sold in California, except for Covered Products that are made from
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1 crystal glass as defined by categories 3 and/or 4 of Annex I of the European Union's Council Directive
2 69/493 EEC and that contains no intentionally added lead as any ingredient in the product. Such no
3 intentionally added lead Covered Product shall be referred to in this Consent Judgment as Crystalline.¹


4 No warning shall be required for Crystalline

5 2.2 Leaded Crystal Products sold in California Retail Stores. Unless the manufacturer or
6 supplier of a Leaded Crystal Product has provided a Proposition 65 warning on the product or its
7 packaging, Macy's shall provide either an on-product warning pursuant to Section 2.2.1 or a point-of-
8 sale warning under Paragraph 2.2.2.

9 2.2.1 On-Product Warnings. A warning may be affixed to the Leaded Crystal Product
10 or its packaging (if the product is sold in packaging). The product or package warning shall consist of
11 the following: a symbol consisting of a black exclamation point in a yellow equilateral triangle with a
12 bold black outline. Where the product or its packaging is not printed using the color yellow, the symbol
13 may be printed in black and white. The symbol shall be placed to the left of the text of the warning, in
14 a size no smaller than the height of the word "WARNING." The language of the warning shall be one
15 of the two alternatives below:

16  [California Proposition 65] **WARNING:** This product can expose you to
17 chemicals including lead, which are known to the State of California to cause
18 [cancer, and] birth defects or other reproductive harm. For more information go to
19 www.P65Warnings.ca.gov.

20 Or:

21  [California Proposition 65] **WARNING:** Consuming foods or beverages that
22 have been kept or served in leaded crystal products will expose you to lead, a
23 chemical known to the State of California to cause birth defects or other reproductive
24 harm. For more information go to www.P65Warnings.ca.gov.

25 Language in brackets is optional.
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28 ¹ Crystalline is intended to have the same meaning and definition as provided in the consent judgments in San Francisco Superior Court Case Nos and CGC 21-592209 and CGC 22-599086.

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2.2.2 Point-of-Sale Warnings: Macy’s may provide a warning by posting signs at each retail outlet it owns or operates in California at which Leaded Crystal Products are sold. Warning signs shall be provided in such a way that an ordinary consumer will understand the individual product or products to which the warning pertains. The warning sign shall contain the warning language required in Section 2.2.1 and shall be displayed in a sufficiently conspicuous manner to be seen and read by ordinary consumers before completing the purchase.

2.2.3 Alternate In-Store Warnings. In lieu of on-product warnings pursuant to Section 2.2.1 or point-of-sale warnings pursuant to Section 2.2.2, Macy’s may provide a warning to consumers through a consumer-facing electronic display or process that automatically provides the warning to the purchaser prior to or during the purchase of the Leaded Crystal Product, without requiring the consumer to seek out the warning. The warning shall be displayed in a sufficiently conspicuous manner, and for a sufficient period of time, such that it can be seen and read by ordinary consumers before completing the purchase. Any such alternative in-store warning must also be provided in such a way that the ordinary consumer will understand the individual product or products to which the warning pertains.

2.3 Internet Warnings. Warnings for internet sales of Leaded Crystal Products to California customers can be provided by utilizing the same warning language above in Section 2.2.1. The warning or a clearly marked hyperlink using the word “WARNING” shall be displayed on the product details page or shall otherwise be prominently displayed to the purchaser prior to completing the purchase. If used, the hyperlink shall state “[California Proposition 65] Warning.” Language in brackets is optional. Clicking on the hyperlink shall link to a page that provides one of the warnings set forth in Section 2.2.1 above.

2.4 Macy’s compliance with the requirements of this Section 2 shall be deemed compliance with the warning requirements of Proposition 65 as to Covered Products sold to California customers at: (1) the stores owned or operated by Macy’s and its affiliates or (2) through Macy’s websites.

2.5 Other than adding or deleting brands and/or styles based on the Leaded Crystal Products offered for sale by Macy’s, any changes to the language, format, size, or posting location of the warnings required by this Consent Judgment shall only be made following receipt of written approval

1 from either MEJF or the California Attorney General’s office. Notwithstanding the foregoing, Macy’s
2 may revise warnings consistent with any amendments to the Proposition 65 safe harbor warning
3 regulations (currently codified at Cal. Code Regs., tit. 27, §§ 25600 *et. seq.*) adopted after the Effective
4 Date, without seeking approval from MEJF, the Attorney General, or the Court, provided that Macy’s
5 first provides MEJF with notice of its intent to do so.

6 2.6 The warning requirements contained in this Consent Judgment shall have no application
7 to Covered Products sold to or shipped by Macy’s to customers outside the State of California.

8 **3. MONETARY RELIEF**

9 3.1 In settlement of all the claims referred to in the Notice, the Complaint, and this Consent
10 Judgment, Macy’s shall pay a total of \$90,000 in complete resolution of any claim for civil penalties,
11 payments in lieu of penalties, or other monetary relief of any kind except for MEJF’s attorney’s fees as
12 set forth in Section 3.1 below.

13 3.2 Macy’s shall take reasonable commercial efforts to cease selling Leaded Crystal
14 Products in Macy’s stores in California and to California customers from macys.com by the Effective
15 Date.

16 3.3 Macy’s shall make an initial civil penalty payment of \$40,000. This initial civil penalty
17 payment will be allocated in accordance with California Health and Safety Code section 25249.12(c)(1)
18 & (d), with \$30,000 paid to the California Office of Environmental Health Hazard Assessment
19 (“OEHHA”) and \$10,000 paid to MEJF. Macy’s will deliver the initial penalty payment to MEJF no
20 later than 5 business days after the Effective Date. MEJF’s counsel shall be solely responsible for
21 delivering to OEHHA its portion of the penalties paid under this Consent Judgment.

22 3.4 \$50,000 of the civil penalty shall be held in abeyance by Macy’s. If within nine (9)
23 months after this Consent Judgment is approved and entered by the Court, Macy’s certifies to Plaintiff
24 in writing that it has completely stopped selling Leaded Crystal Products in Bloomingdale’s stores in
25 California and to California customers from bloomingdales.com, then the remaining \$50,000 of the
26 amount above held in abeyance shall no longer be due or payable. If Macy’s does not so certify within
27 the nine (9) month period as to Leaded Crystal Products sold at Bloomingdales, then the retained
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1 \$50,000 shall be paid within 5 days of the end of the nine (9) month period. This payment shall be
2 divided as follows: 75% of any payment shall be paid to the Office of Environmental Health Hazard
3 Assessment as the State of California's share of the civil penalties assessed in this case; and 25% shall
4 be paid to plaintiff, Mateel Environmental Justice Foundation as Mateel's share of the civil penalties
5 assessed in this case.

6 3.5 The penalty payment(s) above shall be mailed to the attention of William Verick,
7 Klamath Environmental Law Center, 799 H Street, P.O. Box 1128, Arcata, CA 95518.

8 **4. ATTORNEYS' FEES**

9 No later than five (5) business days after the Effective Date, for all work performed through
10 the Court's entry of this Consent Judgment, Macy's shall pay the sum of \$190,000 to the "Klamath
11 Environmental Law Center" as reimbursement for any and all expenses and attorneys' fees incurred
12 by MEJF in this matter. The reimbursement shall cover all attorney's fees, investigative fees, and all
13 other fees and expenses of any kind incurred by MEJF investigating, bringing this matter to Macy's
14 attention, litigating and negotiating a settlement of the matter in the public interest, and obtaining
15 court approval of this Consent Judgment. Macy's shall deliver the payment required hereunder to the
16 attention of William Verick, Klamath Environmental Law Center, 799 H Street, P.O. Box 1128,
17 Arcata, CA 95518.

18 **5. ENFORCEMENT OF JUDGMENT/STIPULATED REMEDIES**

19 The terms of this Consent Judgment are enforceable only by and among the Parties hereto.
20 Plaintiff agrees that before initiating any enforcement action under this Consent Judgment, it will
21 provide written notice of the alleged violation to Settling Defendant. The notice of alleged violation
22 shall include an identification of all Settling Defendant's California stores that sold or are selling
23 Leaded Crystal Products without a compliant warning under this Consent Judgment, and all other
24 alleged sales of Leaded Crystal Products without a warning as of the date of such notice, including
25 any alleged brands or styles and SKU numbers or Web IDs of such Covered Products sold without a
26 warning and the alleged dates of such sales. Provided that after the first notice of alleged violation
27 of this Consent Judgment Settling Defendant corrects such alleged violation and provides evidence
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1 to MEJF within 30 days of that first notice, Settling Defendant shall have no monetary liability of
2 any kind for such alleged violation. All previous notices of alleged violation of the Consent
3 Judgment shall be deemed resolved by this Consent Judgment and any new notice of alleged
4 violation served after June 1, 2024 shall be deemed the first. Thereafter, for any subsequent notices
5 of violation, the Parties shall meet and confer in good faith to determine if an appropriate resolution
6 can be reached. If no resolution can be reached concerning any subsequent notice of violation,
7 MEJF may bring a motion to enforce the terms of this Consent Judgment. No party shall bring a
8 motion to enforce the terms of this Consent Judgment without first providing written notice to the
9 other party and meeting and conferring about the alleged violation for a period of at least 30 days.
10 MEJF shall be entitled to its reasonable attorneys' fees and costs in connection with any successful
11 motion to enforce the terms of this Consent Judgment.

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

13 As to Covered Products, this Consent Judgment is a full, final and binding resolution between
14 Plaintiff, acting on behalf of the public interest pursuant to Health and Safety Code § 25249.7(d), on
15 the one hand, and Macy's, on the other hand, of any actual or alleged violation of Proposition 65, up
16 through the Effective Date based on exposure to lead from the Covered Products as set forth in the
17 Complaint and Notices, as well as all claims made or which could have been made in the Notice
18 and/or the Complaint, of any claim that Macy's or its predecessors failed to comply with the terms of
19 the *TJ Maxx* Consent Judgment and/or *Bloomingtondale's* Consent Judgment. Compliance with the
20 terms of this Consent Judgment resolves any issue, now and in the future, concerning compliance by
21 Macy's and/or its affiliates, subsidiaries, divisions, successors, assigns, suppliers, distributors,
22 licensors, licensees, retailers, and/or customers (collectively "Releasees") with the requirements of
23 Proposition 65 with respect to lead exposures alleged to have been caused by Covered Products. The
24 releases provided by this Consent Judgment pertain only to causes action that arose or may have
25 arisen or that are alleged to have arisen up to and including the Effective Date of this Consent
26 Judgment.

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7. **COMPREHENSIVE AND GLOBAL RELEASE**

7.1 As to Covered Products, MEJF, for itself, and its agents and attorneys (but not on behalf of the Public Interest) releases and forever discharges any and all claims against Macy's and Releasees arising from any actual or alleged violation of Proposition 65 any claim that Macy's or its predecessors failed to comply with the terms of the *TJ Maxx* Consent Judgment and/or *Bloomingtondale's* Consent Judgment, or any other statutory, common law or other claim, that was or could have been asserted against Macy's or Releasees based on the facts alleged in the Notice and Complaint, or facts similar to those alleged. As to Covered Products, MEJF, for itself, and its agents and attorneys, releases and forever discharges any and all claims against Macy's and Releasees arising from any actual or alleged violation of Proposition 65 or any other statutory, common law or other claim, that was or could have been asserted against such entities based on the facts alleged in the Notice and Complaint, or facts similar to those alleged.

7.2 In furtherance of the Parties' intention that this Consent Judgment shall be effective as a full and final accord, satisfaction and release as to Macy's and Releasees 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 WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

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 that, subsequent to the execution of this Consent Judgment, it 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 releases Macy's and Releasees from any and all such claims whether known or unknown, suspected or

1 unsuspected, at the time of the execution of this Consent Judgment.

2 7.3 The releases provided in this Consent Judgment pertain only to causes action that arose
3 or may have arisen or that are alleged to have arisen up to and including the Effective Date of this
4 Consent Judgment.

5 7.4 Within 30 days of receipt of the initial penalty payment and attorney's fees payment by
6 Macy's pursuant to Sections 3 and 3.1, MEJF shall file an application or motion to terminate the (i)
7 injunctive provisions of the *TJ Maxx* Consent Judgment as to defendants Macy's West, Inc., Macy's
8 Department Stores, Inc., and Federated Department Stores, Inc.; and (ii) the injunctive provisions of
9 the *Bloomingtondale's* Consent Judgment as to defendant Bloomingtondale's, Inc. Macy's shall provide
10 reasonable cooperation to effectuate the termination of injunctive relief, including but not limited to
11 stipulating to such termination as successors-in-interest to Macy's in those prior matters, if required.

12 7.5 Notwithstanding any other provision in this Consent Judgment, no release is given to
13 Baccarat, Inc. or Hermes USA.

14 **8. APPLICATION OF JUDGMENT**

15 The terms of this Consent Judgment shall apply to and be binding upon MEJF and all
16 plaintiffs acting in the public interest pursuant to Health and Safety Code § 25249.7 and Macy's, and
17 its successors or assigns. The terms of this Consent Judgment were submitted to the California
18 Attorney General's office prior to the entry of this Consent Judgment by the Court.

19 **9. MODIFICATION OF JUDGMENT**

20 This Consent Judgment may be modified only by written agreement of the Parties and upon
21 entry of a modified Consent Judgment by the Court thereon, or upon motion of any Party as provided
22 by law and upon entry of a modified Consent Judgment by the Court. Notwithstanding any other
23 provision of law, or the refusal to consent thereto by MEJF, the warning provisions of Section 2 may
24 be modified upon a showing that the Attorney General's office consents in writing to such
25 modification. Any request to the Attorney General to modify this Consent Judgment must be
26 simultaneously served on MEJF with an opportunity for MEJF to provide its views on any proposed
27 modification to the Attorney General and to Macy's.
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10. TERMINATION OF JUDGMENT

Commencing on the fifth anniversary of the Effective Date, Macy's may terminate the injunctive relief in Section 2 of this Consent Judgment by filing a notice of voluntary termination and serving the notice on Plaintiff and the Attorney General.

11. NOTICE

11.1 When any Party is entitled to receive any notice or report under this Consent Judgment, the notice or report shall be sent by certified mail or overnight courier service and email to the following persons:

For MEJF:

William Verick
Klamath Environmental Law Center
1125 Sixteenth Street, Suite 204,
Arcata, CA 95521
wverick@igc.org

For Macy's:

Chief Legal Officer
Macy's Retail Holdings, LLC
151 W. 34th Street
New York, NY 10001
serviceofprocess@macy's.com

Jeffrey Margulies
Norton Rose Fulbright US LLP
555 South Flower Street, 41st Floor
Los Angeles, CA 90071
jeff.margulies@nortonrosefulbright.com

11.2 Any Party to this Consent Judgment may modify the person and address to whom notice is to be sent by sending each other Party notice in accordance with this Section.

12. 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.

13. RETENTION OF JURISDICTION

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

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14. 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.

15. ENTIRE AGREEMENT

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.

16. GOVERNING LAW

The laws of the State of California shall govern the validity, construction and performance of this Consent Judgment.

17. 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.

18. COURT APPROVAL

If the Court does not approve 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:

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DATED: _____

KLAMATH ENVIRONMENTAL LAW CENTER

By: _____
William Verick
Attorneys for Plaintiff
MATEEL ENVIRONMENTAL
JUSTICE FOUNDATION

MACY'S RETAIL HOLDINGS, LLC

DATED: _____

By: _____

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: _____

JUDGE OF THE SUPERIOR COURT

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EXHIBIT A
[POINT OF SALE SIGN – LEAD CRYSTAL ONLY]

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EXHIBIT b

[POINT OF SALE SIGN – LEAD CRYSTAL AND TABLEWARE]