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10 Attorneys for Plaintiff  
11 AUDREY KALLANDER

12  
13 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
14 CITY AND COUNTY OF SANTA CLARA  
15 UNLIMITED CIVIL JURISDICTION  
16

17 AUDREY KALLANDER,  
18  
19 Plaintiff,  
20  
21 v.  
22  
23 FOURSTAR GROUP INC.; and DOES 1-150,  
24 inclusive,  
25  
26 Defendants.  
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Case No. 23CV422217

**COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF**

(Health & Safety Code § 25249.5 *et seq.*)

1 **NATURE OF THE ACTION**

2 1. This Complaint is a representative action brought by Plaintiff Audrey Kallander in the  
3 public interest of the citizens of the State of California to enforce the People's right to be informed  
4 of the health hazards caused by exposures to lead, a toxic chemical found on ceramic fragrance  
5 warmers with exterior designs sold by defendants in California.

6 2. By this Complaint, Plaintiff seeks to remedy defendants' continuing failure to warn  
7 individuals not covered by California's Occupational Safety Health Act, Labor Code § 6300 et seq.,  
8 who purchase, use or handle defendants' products, about the risks of exposure to lead present on the  
9 surface of ceramic fragrance warmers with exterior designs that defendants manufacture, distribute  
10 and offer for sale or use throughout the State of California. Individuals not covered by California's  
11 Occupational Safety Health Act, Labor Code § 6300 et seq., who purchase, use or handle  
12 defendants' products, are referred to hereinafter as "consumers."

13 3. Detectable levels of lead are found on the surface of ceramic fragrance warmers with  
14 exterior designs that defendants manufacture, distribute, and offer for sale to consumers throughout  
15 the State of California.

16 4. Under the Safe Drinking Water and Toxic Enforcement Act of 1986, codified at  
17 Health and Safety Code § 25249.6 *et seq.* ("Proposition 65"), "[n]o person in the course of doing  
18 business shall knowingly and intentionally expose any individual to a chemical known to the state to  
19 cause cancer or reproductive toxicity without first giving clear and reasonable warning to such  
20 individual..." Health & Safety Code § 25249.6.

21 5. Pursuant to Proposition 65, on February 27, 1987, California listed lead as a chemical  
22 known to cause birth defects and other reproductive harm. Lead became subject to the "clear and  
23 reasonable warning" requirements of the act one year later, on February 27, 1988. Cal. Code Regs.  
24 tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b).

25 6. Defendants manufacture, distribute, import, sell, and/or offer for sale without health  
26 hazard warnings in California, ceramic fragrance warmers with exterior designs containing lead  
27 including, but not limited to, the "*Mainstays Ceramic Fragrance Warmer*" UPC: 0 49696 73896 5.  
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1 All such ceramic fragrance warmers with exterior designs are referred to collectively hereinafter as  
2 “PRODUCTS.”

3 7. Defendants’ failure to warn consumers in the State of California of the health hazards  
4 associated with exposures to lead in conjunction with defendants’ sales of the PRODUCTS are  
5 violations of Proposition 65, and subject defendants, and each of them, to enjoinder of such  
6 conduct as well as civil penalties for each violation. Health & Safety Code § 25249.7(a) & (b)(1).

7 8. For defendants’ violations of Proposition 65, Plaintiff seeks preliminary and  
8 permanent injunctive relief to compel defendants to provide consumers of the PRODUCTS with the  
9 required warning regarding the health hazards associated with exposures to lead. Health & Safety  
10 Code § 25249.7(a).

11 9. Pursuant to Health and Safety Code § 25249.7(b), Plaintiff also seeks civil penalties  
12 against defendants for their violations of Proposition 65.

### 13 **PARTIES**

14 10. Plaintiff Audrey Kallander is a citizen of the State of California who is dedicated to  
15 protecting the health of California citizens through the elimination or reduction of toxic exposures  
16 from consumer products; and she brings this action in the public interest pursuant to Health and  
17 Safety Code § 25249.7(d).

18 11. Defendant FOURSTAR GROUP INC. (“FOURSTAR”) is a person in the course of  
19 doing business within the meaning of Health and Safety Code §§ 25249.6 and 25249.11.

20 12. FOURSTAR manufactures, imports, distributes, sells, and/or offers the PRODUCTS  
21 for sale or use in the State of California, or implies by its conduct that it imports, distributes, sells,  
22 and/or offers the PRODUCTS for sale or use in the State of California.

23 13. Defendants DOES 1-50 (“MANUFACTURER DEFENDANTS”) are each a person in  
24 the course of doing business within the meaning of Health and Safety Code §§ 25249.6 and  
25 25249.11.

1           14.     MANUFACTURER DEFENDANTS, and each of them, research, test, design,  
2 assemble, fabricate, and manufacture, or each implies by its conduct that it researches, tests, designs,  
3 assembles, fabricates, and manufactures one or more of the PRODUCTS offered for sale or use in  
4 California.

5           15.     Defendants DOES 51-100 (“DISTRIBUTOR DEFENDANTS”) are each a person in  
6 the course of doing business within the meaning of Health and Safety Code §§ 25249.6 and  
7 25249.11.

8           16.     DISTRIBUTOR DEFENDANTS, and each of them, distribute, exchange, transfer,  
9 process, and transport one or more of the PRODUCTS to individuals, businesses, or retailers for sale  
10 or use in the State of California, or each implies by its conduct that it distributes, exchanges,  
11 transfers, processes, and transports one or more of the PRODUCTS to individuals, businesses, or  
12 retailers for sale or use in the State of California.

13           17.     Defendants DOES 101-150 (“RETAILER DEFENDANTS”) are each a person in the  
14 course of doing business within the meaning of Health and Safety Code §§ 25249.6 and 25249.11.

15           18.     RETAILER DEFENDANTS, and each of them, offer the PRODUCTS for sale to  
16 individuals in the State of California.

17           19.     At this time, the true names of defendants DOES 1 through 150, inclusive, are  
18 unknown to Plaintiff, who, therefore, sues said defendants by their fictitious names pursuant to Code  
19 of Civil Procedure § 474. Plaintiff is informed and believes, and on that basis alleges, that each of  
20 the fictitiously named defendants is responsible for the acts and occurrences alleged herein. When  
21 ascertained, their true names shall be reflected in an amended complaint.

22           20.     FOURSTAR, MANUFACTURER DEFENDANTS, DISTRIBUTOR  
23 DEFENDANTS, and RETAILER DEFENDANTS shall hereinafter, where appropriate, be referred  
24 to collectively as the “DEFENDANTS.”  
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1 **VENUE AND JURISDICTION**

2 21. Venue is proper in the Superior Court for the County of Santa Clara, pursuant to Code  
3 of Civil Procedure §§ 393, 395, and 395.5, because this Court is a court of competent jurisdiction,  
4 because Plaintiff seeks civil penalties against DEFENDANTS, because one or more instances of  
5 wrongful conduct occurred, and continue to occur, in this county, and/or because DEFENDANTS  
6 conducted, and continue to conduct, business in Santa Clara county with respect to the PRODUCTS.

7 22. The California Superior Court has jurisdiction over this action pursuant to California  
8 Constitution Article VI, section 10, which grants the Superior Court “original jurisdiction in all  
9 causes except those given by statute to other trial courts.” The statute under which this action is  
10 brought does not specify any other basis of subject matter jurisdiction.

11 23. The California Superior Court has jurisdiction over DEFENDANTS based on  
12 Plaintiff’s information and good faith belief that each of the DEFENDANTS are a person, firm,  
13 corporation or association that is a citizen of the State of California, has sufficient minimum contacts  
14 in the State of California, and/or otherwise purposefully avails itself of the California market.  
15 DEFENDANTS’ purposeful availment renders the exercise of personal jurisdiction by California  
16 courts consistent with traditional notions of fair play and substantial justice.

17 **FIRST CAUSE OF ACTION**

18 **(Violation of Proposition 65 - Against All Defendants)**

19 24. Plaintiff realleges and incorporates by reference, as if fully set forth herein, Paragraphs  
20 1 through 23, inclusive.

21 25. In enacting Proposition 65, in the preamble to the Safe Drinking Water and Toxic  
22 Enforcement Act of 1986, the People of California expressly declared their right “[t]o be informed  
23 about exposures to chemicals that cause cancer, birth defects, or other reproductive harm.”

24 26. Proposition 65 states, “[n]o person in the course of doing business shall knowingly and  
25 intentionally expose any individual to a chemical known to the state to cause cancer or reproductive  
26 toxicity without first giving clear and reasonable warning to such individual...” Health & Safety  
27 Code § 25249.6.  
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1           27. On March 10, 2023, Plaintiff served a sixty-day notice of violation, together with the  
2 accompanying certificate of merit, on, among others, FOURSTAR, the California Attorney General,  
3 and all other requisite public enforcers alleging that, as a result of DEFENDANTS' sales of the  
4 PRODUCTS, consumers in the State of California are being exposed to lead resulting from their  
5 reasonably foreseeable use of the PRODUCTS, without the consumers first receiving a "clear and  
6 reasonable warning" regarding the harms associated with exposures to lead as required by  
7 Proposition 65.

8           28. DEFENDANTS manufacture, import, distribute, sell, and offer the PRODUCTS for  
9 sale or use in violation of Health and Safety Code § 25249.6, and DEFENDANTS' violations have  
10 continued beyond their receipt of Plaintiff's sixty-day notice of violation. As such, DEFENDANTS'  
11 violations are ongoing and continuous and, unless enjoined, will continue in the future.

12           29. After receiving Plaintiff's sixty-day notice of violation, no public enforcement agency  
13 has commenced and diligently prosecuted a cause of action against DEFENDANTS under  
14 Proposition 65 to enforce the alleged violations that are the subject of Plaintiff's notice of violation.

15           30. The PRODUCTS that DEFENDANTS manufacture, import, distribute, sell, and offer  
16 for sale or use in California cause exposures to lead as a result of the reasonably foreseeable use of  
17 the PRODUCTS. Such exposures caused by DEFENDANTS and endured by consumers in  
18 California are not exempt from the "clear and reasonable" warning requirements of Proposition 65.

19           31. DEFENDANTS know or should know that the PRODUCTS they manufacture, import,  
20 distribute, sell, and offer for sale in California contain lead.

21           32. Lead is present on the PRODUCTS in such a way as to expose consumers through  
22 dermal contact and/or ingestion during reasonably foreseeable use.

23           33. The normal and reasonably foreseeable use of the PRODUCTS has caused, and  
24 continues to cause, consumer exposures to lead, as defined by title 27 of the California Code of  
25 Regulations, section 25602(b).

26           34. DEFENDANTS know that the normal and reasonably foreseeable use of the  
27 PRODUCTS expose individuals to lead through dermal contact and/or ingestion.  
28

35. DEFENDANTS intend that exposures to lead from the reasonably foreseeable use of the PRODUCTS will occur by their deliberate, non-accidental participation in the manufacture, importation, distribution, sale, and offering of the PRODUCTS for sale or use to consumers in California.

36. DEFENDANTS failed to provide a “clear and reasonable warning” to those consumers in California who have been, or will be, exposed to lead through dermal contact and/or ingestion resulting from their use of the PRODUCTS.

37. Contrary to the express policy and statutory prohibition of Proposition 65 enacted directly by California voters, consumers exposed to lead through dermal contact and/or ingestion as a result of their use of the PRODUCTS that DEFENDANTS sell without a “clear and reasonable” health hazard warning, have suffered, and continue to suffer, irreparable harm for which they have no plain, speedy, or adequate remedy at law.

38. Pursuant to Health and Safety Code § 25249.7(b), as a consequence of the above-described acts, DEFENDANTS, and each of them, are liable for a maximum civil penalty of \$2,500 per day for each violation.

39. As a consequence of the above-described acts, Health and Safety Code § 25249.7(a) also specifically authorizes the Court to grant injunctive relief against DEFENDANTS.

## PRAYER FOR RELIEF

Wherefore, Plaintiff prays for judgment against DEFENDANTS as follows:

1. That the Court, pursuant to Health and Safety Code § 25249.7(b), assess civil penalties against DEFENDANTS, and each of them, in the amount of \$2,500 per day for each violation;

2. That the Court, pursuant to Health and Safety Code § 25249.7(a), preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, or offering the PRODUCTS for sale or use in California without a “clear and reasonable warning” in accordance with title 27 of the California Code of Regulations, section 25601 *et seq.*, regarding the harms associated with exposures to lead;

3. That the Court, Pursuant to Health and Safety Code § 25249.7(a), issue preliminary and permanent injunctions mandating that DEFENDANTS recall all PRODUCTS currently in the

1 chain of commerce in California without a “clear and reasonable warning” as defined by California  
2 Code of Regulations title 27, section 25601 et seq.;


3 4. That the Court grant Plaintiff her reasonable attorneys’ fees and costs of suit; and

4 5. That the Court grant such other and further relief as may be just and proper.

5  
6 Dated: September 1, 2023

Respectfully submitted,

7 VOORHEES & BAILEY, LLP

8  
9 By: \_\_\_\_\_  
10 Troy Bailey  
11 Attorneys for Plaintiff  
12 AUDREY KALLANDER  
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