

1 Evan J. Smith, Esquire (SBN 242352)  
2 Ryan P. Cardona, Esquire (SBN 302113)  
3 BRODSKY SMITH  
4 9465 Wilshire Blvd., Ste. 300  
5 Beverly Hills, CA 90212  
6 Telephone: (877) 534-2590  
7 Facsimile: (310) 247-0160

8 *Attorneys for Plaintiff*

ELECTRONICALLY  
**FILED**  
Superior Court of California,  
County of San Francisco

**02/13/2025**  
Clerk of the Court  
BY: SAHAR ENAYATI  
Deputy Clerk

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 COUNTY OF SAN FRANCISCO

11 GABRIEL ESPINOZA,  
12 Plaintiff,

13 vs.

14 FOURSTAR GROUP INC.,  
15 Defendant.

Case No.:

**COMPLAINT FOR CIVIL PENALTIES AND  
INJUNCTIVE RELIEF**

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

**CGC-25-622367**

16 Plaintiff Gabriel Espinoza (“Plaintiff”), by and through his attorneys, alleges the following  
17 cause of action in the public interest of the citizens of the State of California.

18 **BACKGROUND OF THE CASE**

19 1. Plaintiff brings this representative action on behalf of all California citizens to  
20 enforce relevant portions of Safe Drinking Water and Toxic Enforcement Act of 1986, codified at  
21 the Health and Safety Code § 25249.5 et seq (“Proposition 65”), which reads, in relevant part,  
22 “[n]o person in the course of doing business shall knowingly and intentionally expose any  
23 individual to a chemical known to the state to cause cancer without first giving clear and reasonable  
24 warning to such individual ...”. Health & Safety Code § 25249.6.

25 2. This complaint is a representative action brought by Plaintiff in the public interest  
26 of the citizens of the State of California to enforce the People’s right to be informed of the health  
27 hazards caused by exposure to diethanolamine (DEA), a toxic chemical found in *Thera Plus*® cold  
28 therapy roll-on gels, e.g., UPC # 049696186865, sold and/or distributed by defendant Fourstar  
Group Inc. (“Fourstar” or “Defendant”) in California.

1           3.       DEA is a harmful chemical known to the State of California to cause cancer. On  
2 June 22, 2012, the State of California listed DEA as a chemical known to the State to cause cancer  
3 and it has come under the purview of Proposition 65 regulations since that time. Cal. Code Regs.  
4 Tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b).

5           4.       Proposition 65 requires all businesses with ten (10) or more employees that operate  
6 within California or sell products therein to comply with Proposition 65 regulations. Included in  
7 such regulations is the requirement that businesses must label any product containing a Proposition  
8 65-listed chemical that will create an exposure above safe harbor levels with a “clear and  
9 reasonable” warning before “knowingly and intentionally” exposing any person to any such listed  
10 chemical.

11          5.       Proposition 65 allows for civil penalties of up to \$2,500.00 per day per violation  
12 for up to 365 days (up to a maximum civil penalty amount per violation of \$912,000.00) to be  
13 imposed upon defendants in a civil action for violations of Proposition 65. Health & Safety Code  
14 § 25249.7(b). Proposition 65 also allows for any court of competent jurisdiction to enjoin the  
15 actions of a defendant which “violate or threaten to violate” the statute. Health & Safety Code §  
16 25249.7.

17          6.       Plaintiff alleges that Defendant distributes and/or offers for sale in California,  
18 without a requisite exposure warning, *Thera Plus*® cold therapy roll-on gels, e.g., UPC #  
19 049696186865, (the “Products”) that expose persons to DEA when used for their intended purpose.

20          7.       Defendant’s failure to warn consumers and other individuals in California of the  
21 health hazards associated with exposure to DEA in conjunction with the sale and/or distribution  
22 of the Products is a violation of Proposition 65 and subjects Defendant to the enjoinder and civil  
23 penalties described herein.

24          8.       Plaintiff seeks civil penalties against Defendant for its violations of Proposition 65  
25 in accordance with Health and Safety Code § 25249.7(b).

26          9.       Plaintiff also seeks injunctive relief, preliminarily and permanently, requiring  
27 Defendant to provide purchasers or users of the Products with required warnings related to the  
28

1 dangers and health hazards associated with exposure to DEA pursuant to Health and Safety Code  
2 § 25249.7(a).

3 10. Plaintiff further seeks a reasonable award of attorney’s fees and costs.

4 **PARTIES**

5 11. Plaintiff is a citizen of the State of California acting in the interest of the general  
6 public to promote awareness of exposures to toxic chemicals in products sold in California and to  
7 improve human health by reducing hazardous substances contained in such items. He brings this  
8 action in the public interest pursuant to Health and Safety Code § 25249.7(d).

9 12. Defendant Fourstar Group Inc., through its business, effectively imports,  
10 distributes, sells, and/or offers the Products for sale or use in the State of California, or it implies  
11 by its conduct that it imports, distributes, sells, and/or offers the Products for sale or use in the  
12 State of California. Plaintiff alleges that defendant Fourstar Group Inc. is a “person” in the course  
13 of doing business within the meaning of Health & Safety Code sections 25249.6 and 25249.11.

14 **VENUE AND JURISDICTION**

15 13. Venue is proper in the County of San Francisco because one or more of the  
16 instances of wrongful conduct occurred, and continue to occur in this county and/or because  
17 Defendant conducted, and continues to conduct, business in the County of San Francisco with  
18 respect to the Products.

19 14. This Court has jurisdiction over this action pursuant to California Constitution  
20 Article VI, § 10, which grants the Superior Court original jurisdiction in all causes except those  
21 given by statute to other trial courts. Health and Safety Code § 25249.7 allows for the enforcement  
22 of violations of Proposition 65 in any Court of competent jurisdiction; therefore, this Court has  
23 jurisdiction over this lawsuit.

24 15. This Court has jurisdiction over Defendant because Defendant is either a citizen of  
25 the State of California, has sufficient minimum contacts with the State of California, is registered  
26 with the California Secretary of State as foreign corporations authorized to do business in the State  
27 of California, and/or has otherwise purposefully availed itself of the California market. Such  
28

1 purposeful availment has rendered the exercise of jurisdiction by California courts consistent and  
2 permissible with traditional notions of fair play and substantial justice.

### 3 STATUTORY BACKGROUND

4 16. The people of the State of California declared in Proposition 65 their right “[t]o be  
5 informed about exposures to chemicals that cause cancer, birth defects, or other reproductive  
6 harm.” (Section 1(b) of Initiative Measure, Proposition 65.)

7 17. To effect this goal, Proposition 65 requires that individuals be provided with a  
8 “clear and reasonable warning” before being exposed to substances listed by the State of California  
9 as causing cancer and birth defects or other reproductive harm. H&S Code § 25249.6 states, in  
10 pertinent part:

11 No person in the course of doing business shall knowingly and intentionally expose any  
12 individual to a chemical known to the state to cause cancer or reproductive toxicity without  
13 first giving clear and reasonable warning to such individual...

14 18. An exposure to a chemical in a consumer product is one “which results from a  
15 person’s acquisition, purchase, storage, consumption or other reasonably foreseeable use of a  
16 consumer good, or any exposure that results from receiving a consumer service.” (27 CCR §  
17 25602, para (b).) H&S Code § 25603(c) states that “a person in the course of doing business ...  
18 shall provide a warning to any person to whom the product is sold or transferred unless the product  
19 is packaged or labeled with a clear and reasonable warning.”

20 19. Pursuant to H&S Code § 25603.1, the warning may be provided by using one or  
21 more of the following methods individually or in combination:<sup>1</sup>

- 22 a. A warning that appears on a product’s label or other labeling.
- 23 b. Identification of the product at the retail outlet in a manner which provides  
24 a warning. Identification may be through shelf labeling, signs, menus, or a combination  
25 thereof.

---

26  
27 <sup>1</sup> Alternatively, a person in the course of doing business may elect to comply with the warning  
28 requirements set out in the amended version of 27 CCR 25601, *et seq.* as amended on August 30,  
2016, and operative on August 30, 2018.

1 c. The warnings provided pursuant to subparagraphs (a) and (b) shall be  
2 prominently placed upon a product's labels or other labeling or displayed at the retail outlet  
3 with such conspicuousness, as compared with other words, statements, designs, or devices  
4 in the label, labeling or display as to render it likely to be read and understood by an  
5 ordinary individual under customary conditions of purchase or use.

6 d. A system of signs, public advertising identifying the system and toll-free  
7 information services, or any other system that provides clear and reasonable warnings.

8 20. Proposition 65 provides that any "person who violates or threatens to violate" the  
9 statute may be enjoined in a court of competent jurisdiction. (H&S Code § 25249.7.) The phrase  
10 "threaten to violate" is defined to mean creating "a condition in which there is a substantial  
11 probability that a violation will occur." (H&S Code § 25249.11(e).) Violators are liable for civil  
12 penalties of up to \$2,500.00 per day for each violation of the Act (H&S Code § 25249.7) for up to  
13 365 days (up to a maximum civil penalty amount per violation of \$912,000.00).

14 **FACTUAL BACKGROUND**

15 21. On June 22, 2012, the State of California listed DEA as a chemical known to the  
16 State to cause cancer and it has come under the purview of Proposition 65 regulations since that  
17 time. Cal. Code Regs. Tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b).

18 22. The exposures that are the subject of the Notice result from the purchase,  
19 acquisition, handling and recommended use of the Product. The primary route of exposure to DEA  
20 is through dermal exposure. Some amount of exposure through ingestion can occur by touching  
21 the Product with subsequent touching of the user's hand to mouth. No clear and reasonable warning  
22 is provided with the Products regarding the health hazards of exposure to DEA.

23 23. Defendant has manufactured, processed, marketed, distributed, offered to sell  
24 and/or sold the Products in California since at least May 17, 2024. The Products continue to be  
25 distributed and sold in California without the requisite warning information.

26 24. At all times relevant to this action, Defendant has knowingly and intentionally  
27 exposed users of the Products to DEA without first giving a clear and reasonable exposure warning  
28 to such individuals.

1           25.     As a proximate result of acts by Defendant, as a person in the course of doing  
2 business within the meaning of H&S Code § 25249.11, individuals throughout the State of  
3 California, including in San Francisco County, have been exposed to DEA without a clear and  
4 reasonable warning on the Products. The individuals subject to the violative exposures include  
5 normal and foreseeable users and consumers that use the Products, as well as all others exposed to  
6 the Products.

7   **SATISFACTION OF NOTICE REQUIREMENTS**

8           26.     On April 10, 2024, Plaintiff purchased the Product from Dollar Tree in California.  
9 At the time of purchase, Defendant did not provide a Proposition 65 exposure warning for DEA  
10 or any other Proposition 65 listed chemical in a manner consistent with H&S Code § 25603.1 as  
11 described *supra*.

12          27.     On April 26, 2024, the Product was sent to a testing laboratory for diethanolamine  
13 to determine the DEA content of the Product.

14          28.     On April 30, 2024, the laboratory provided the results of its analysis. Results of this  
15 test determined the Product exposes users to DEA (the “Chemical Test Report”).

16          29.     Plaintiff provided the Chemical Test Report and Product to an analytical chemist  
17 to determine if, based on the findings of the Chemical Test Report and the reasonable and  
18 foreseeable use of the Product, exposure to DEA will occur at levels that require Proposition 65  
19 warnings under the Clear and Reasonable Warnings section 25601 of Title 27 of the California  
20 Code of Regulations.

21          30.     On May 17, 2024, Plaintiff received from the analytical chemist an exposure  
22 assessment report which concluded that persons in California who use the Products will be exposed  
23 to levels of DEA that require a Proposition 65 exposure warning.

24          31.     On May 17, 2024, Plaintiff gave notice of alleged violation of Health and Safety  
25 Code § 25249.6 (the “Notice”) to Defendants concerning the exposure of California citizens to  
26 DEA from use of the Products without proper warning, subject to a private action to Defendant  
27 and to the California Attorney General’s office and the offices of the County District attorneys and  
28

1 City Attorneys for each city with a population greater than 750,000 persons wherein the herein  
2 violations allegedly occurred.

3 32. The Notice complied with all procedural requirements of Proposition 65 including  
4 the attachment of a Certificate of Merit affirming that Plaintiff's counsel had consulted with at  
5 least one person with relevant and appropriate expertise who reviewed relevant data regarding  
6 DEA exposure, and that counsel believed there was meritorious and reasonable cause for a private  
7 action.

8 33. After receiving the Notice, and to Plaintiff's best information and belief, none of  
9 the noticed appropriate public enforcement agencies have commenced and diligently prosecuted a  
10 cause of action against Defendant under Proposition 65 to enforce the alleged violations which are  
11 the subject of the Notice.

12 34. Plaintiff is commencing this action more than sixty (60) days from the date of the  
13 Notice to Defendant, as required by law.

14 **FIRST CAUSE OF ACTION**

15 **(By Plaintiff against Defendant for the Violation of Proposition 65)**

16 35. Plaintiff hereby repeats and incorporates by reference paragraphs 1 through 34 of  
17 this Complaint as though fully set forth herein.

18 36. Defendant has, at all times mentioned herein, acted as distributor, and/or retailer of  
19 the Products.

20 37. Use of the Products will expose users and consumers thereof to DEA, a hazardous  
21 chemical found on the Proposition 65 list of chemicals known to be hazardous to human health.

22 38. The Products do not comply with the Proposition 65 warning requirements.

23 39. Plaintiff, based on his best information and belief, avers that at all relevant times  
24 herein, and at least since May 17, 2024, continuing until the present, that Defendant has continued  
25 to knowingly and intentionally expose California users and consumers of the Products to DEA  
26 without providing required warnings under Proposition 65.

27 40. The exposures that are the subject of the Notice result from the purchase,  
28 acquisition, handling and recommended use of the Product. The primary route of exposure to DEA

1 is through dermal exposure. Some amount of exposure through ingestion can occur by touching  
2 the Product with subsequent touching of the user's hand to mouth. No clear and reasonable warning  
3 is provided with the Products regarding the health hazards of exposure to DEA.

4 41. Plaintiff, based on his best information and belief, avers that such exposures will  
5 continue every day until clear and reasonable warnings are provided to purchasers and users or  
6 until this known toxic chemical is removed from the Products.

7 42. Defendant has knowledge that the normal and reasonably foreseeable use of the  
8 Products exposes individuals to DEA, and Defendant intends that exposures to DEA will occur by  
9 its deliberate, non-accidental participation in the importation, distribution, sale and offering of the  
10 Products to consumers in California

11 43. Plaintiff has engaged in good faith efforts to resolve the herein claims prior to this  
12 Complaint.

13 44. Pursuant to Health and Safety Code § 25249.7(b), as a consequence of the above  
14 described acts, Defendant is liable for a maximum civil penalty of \$2,500 per day per violation.

15 45. Pursuant to Health and Safety Code § 25249.7(a), this Court is specifically  
16 authorized to grant injunctive relief in favor of Plaintiff and against Defendant.



1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiff demands judgment against Defendant and requests the following  
3 relief:

4 A. That the court assess civil penalties against Defendant in the amount of \$2,500 per  
5 day for each violation for up to 365 days (up to a maximum civil penalty amount per  
6 violation of \$912,000.00) in accordance with Health and Safety Code § 25249.7(b);

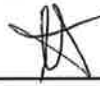
7 B. That the court preliminarily and permanently enjoin Defendant mandating  
8 Proposition 65 compliant warnings on the Products;

9 C. That the court grant Plaintiff reasonable attorney’s fees and costs of suit, in the  
10 amount of \$50,000.00.

11 D. That the court grant any further relief as may be just and proper.

12 Dated: February 13, 2025

BRODSKY SMITH

13 By:  \_\_\_\_\_

14 Evan J. Smith (SBN242352)  
15 Ryan P. Cardona (SBN302113)  
16 9465 Wilshire Boulevard, Suite 300  
17 Beverly Hills, CA 90212  
18 Telephone: (877) 534-2590  
19 Facsimile: (310) 247-0160

*Attorneys for Plaintiff*