

1 Troy C. Bailey, State Bar No. 277424
2 David Joshua Voorhees, State Bar No. 241436
3 VOORHEES & BAILEY, LLP
4 839 Emerson Street
5 Palo Alto, CA 94301
6 Telephone: (650) 313-2154
7 Facsimile: (650) 618-1606
8 troy@voorheesbailey.com
9 josh@voorheesbailey.com

FILED
JAN 23 2024
Clerk of the Court
Superior Court of CA County of Santa Clara
BY D. CRISWELL DEPUTY

6 Attorneys for Plaintiff
7 AUDREY KALLANDER

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SANTA CLARA
10 UNLIMITED CIVIL JURISDICTION

12 AUDREY KALLANDER,
13 Plaintiff,
14 v.
15 FOURSTAR GROUP INC.; and DOES 1-150,
16 inclusive,
17 Defendants.

Case No.: 23CV422217
~~PROPOSED~~ JUDGMENT PURSUANT
TO TERMS OF PROPOSITION 65
SETTLEMENT AND CONSENT
JUDGMENT
Date: January 23, 2024
Time: 9:00 a.m.
Dept.: 6
Judge: Hon. Evette Pennypacker

28


1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Plaintiff, Audrey Kallander, and defendant, Fourstar Group Inc., have agreed through their respective counsel that Judgment be entered pursuant to the terms of their settlement agreement in the form of a stipulated judgment (“Consent Judgment”), and following this Court’s issuance of an order approving their Proposition 65 settlement and Consent Judgment, and for good cause being shown,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that, pursuant to Health and Safety Code section 25249.7(f)(4) and Code of Civil Procedure section 664.6, judgment is hereby entered in accordance with the terms of the Consent Judgment attached hereto as Exhibit 1. By stipulation of the parties, the Court will retain jurisdiction to enforce the terms of the settlement under Code of Civil Procedure section 664.6.

IT IS SO ORDERED.

Dated: January 23, 2024



JUDGE OF THE SUPERIOR COURT
JUDGE EVETTE D. PENNYPACKER

EXHIBIT 1

1 Troy C. Bailey, State Bar No. 277424
2 David Joshua Voorhees, State Bar No. 241436
3 VOORHEES & BAILEY, LLP
4 839 Emerson Street
5 Palo Alto, CA 94301
6 Telephone: (650) 313-2154
7 Facsimile: (650) 618-1606
8 troy@voorheesbailey.com
9 josh@voorheesbailey.com

10 Attorneys for Plaintiff
11 AUDREY KALLANDER

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

15 AUDREY KALLANDER,
16 Plaintiff,

17 v.

18 FOURSTAR GROUP INC., and DOES 1-150,
19 inclusive,

20 Defendants.

Case No.

[PROPOSED] CONSENT JUDGMENT

(Health & Safety Code § 25249.6 *et seq.* and
Code of Civil Procedure § 664.6)

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between plaintiff Audrey Kallander
4 (“Kallander” or “Plaintiff”), individually and acting in the public interest, on the one hand, and
5 defendant Fourstar Group Inc. (“Fourstar” or “Defendant”), on the other hand, with Kallander and
6 Fourstar referred to individually as a “Party” and collectively as the “Parties.”

7 **1.2 Plaintiff**

8 Kallander is a resident of the State of California who seeks to promote awareness of
9 exposures to toxic chemicals, and to improve human health by reducing or eliminating harmful
10 substances contained in consumer and commercial products.

11 **1.3 Defendant**

12 Fourstar employs ten or more persons and is a person in the course of doing business for
13 purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health and
14 Safety Code section 25249.6 *et seq.* (“Proposition 65”).

15 **1.4 General Allegations**

16 In its Complaint, Kallander alleges that Fourstar manufactures, sells, and distributes ceramic
17 fragrance warmers with exterior designs containing lead that are sold in California. Lead is listed
18 pursuant to Proposition 65 as a chemical known to cause cancer and birth defects or other
19 reproductive harm. Kallander alleges that Fourstar failed to provide a warning required by
20 Proposition 65 for exposures to lead.

21 **1.5 Product Description**

22 The products covered by this Consent Judgment are ceramic fragrance warmers with
23 exterior designs including but not limited to the “*Mainstays Ceramic Fragrance Warmer*” UPC: 0
24 49696 73896 5, that are manufactured, sold, or distributed for sale in California by Fourstar
25 (hereinafter “Covered Products”).

26 **1.6 Notices of Violation**

27 On September 16, 2022, Kallander served Walmart Inc., and the requisite public
28 enforcement agencies with a 60-Day Notice of Violation, alleging that the notice recipient violated

1 Proposition 65 by failing to warn customers and consumers in California of the health hazards
2 associated with exposures to lead from the Products. Fourstar was subsequently identified as the
3 supplier/manufacturer of the Products.

4 On March 10, 2023, Kallander served Fourstar and the requisite public enforcement
5 agencies with a 60-Day Notice of Violation, alleging that the notice recipient violated Proposition
6 65 by failing to warn customers and consumers in California of the health hazards associated with
7 exposures to lead from the Products.

8 No public enforcer has commenced and is diligently prosecuting the allegations set forth in
9 the Notices.

10 1.7 Complaint

11 On September 1, 2023, Kallander initiated this action by filing a complaint against Fourstar
12 (the "Complaint").

13 1.8 No Admission

14 The Parties enter into this Consent Judgment as a full, final and binding settlement of the
15 claims asserted in the Notice and Complaint, for the purpose of avoiding prolonged and costly
16 litigation and of resolving the issues raised therein both as to past and future conduct. Fourstar
17 denies the material, factual, and legal allegations contained in the Notices and Complaint and
18 maintains that they have not violated Proposition 65, including with regard to the Covered Products.
19 Nothing in this Consent Judgment shall be construed as an admission by Fourstar of any fact,
20 finding, conclusion, issue of law, or violation of law, nor shall compliance with this Consent
21 Judgment constitute or be construed as an admission by Fourstar of any fact, finding, conclusion,
22 issue of law, or violation of law, such being specifically denied by each of them. This Section shall
23 not, however, diminish or otherwise affect the obligations, responsibilities, and duties of Fourstar
24 under this Consent Judgment.

25 1.9 Jurisdiction

26 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
27 jurisdiction over Fourstar as to the allegations contained in the Notices and the Complaint, that
28 venue is proper in the County of Santa Clara, and that the Court has jurisdiction to approve, enter

1 and enforce the provisions of this Consent Judgment pursuant to Proposition 65 and Code of Civil
2 Procedure section 664.6.

3 **1.10 Effective Date**

4 For purposes of this Consent Judgment, the term "Effective Date" shall mean the date that
5 the Court grants the motion for approval of this Consent Judgment contemplated by Section 5,
6 including the date of any unopposed tentative ruling approving this Consent Judgment that becomes
7 the order of the Court.

8 **2. INJUNCTIVE RELIEF: REFORMULATION/WARNINGS**

9 **2.1 Reformulation Standard**

10 "Reformulated Products" are defined as those Covered Products that contain no more than
11 90 parts per million ("ppm") lead in any decoration, colored artwork, designs and/or marking on the
12 surface of the Covered Products when analyzed pursuant to U.S. Environmental Protection Agency
13 testing methodologies 3050B or equivalent methodologies utilized by federal or state agencies for
14 the purpose of determining lead content in a solid substance.

15 If the decoration is tested after it is affixed to the Covered Product, the percentage of the
16 lead by weight must relate only to the decorating materials and must not include any quantity
17 attributable to non-decorating material (e.g., ceramic substrate).

18 **2.2 Reformulation/Warning Commitment**

19 As of the Effective Date, Fourstar shall not manufacture, import, distribute, sell or offer the
20 Products for sale in the State of California unless they are Reformulated Products pursuant to
21 Section 2.1 or contain appropriate health hazard warnings pursuant to Section 2.3 below. The
22 Parties agree and intend that compliance with the terms of this Settlement Agreement shall
23 constitute compliance with Proposition 65 with respect to exposures to Lead from the Products.


24 **2.3 Product Warnings**

25 As of the Effective Date, all Products Fourstar sells and/or distributes for sale in California
26 that do not qualify as Reformulated Products, shall bear a clear and reasonable warning pursuant to
27 this Section. Fourstar further agrees that the warning shall be prominently placed with such
28 conspicuousness when compared with other words, statements, designs or devices as to render it

1 likely to be read and understood by an ordinary individual under customary conditions of use. For
2 purposes of this Consent Judgment, a clear and reasonable warning for the Products shall consist of
3 a warning affixed directly to the product or product packaging, label, or tag, for Products sold in
4 California, and contain one of the following statements:

5  **WARNING:** Cancer and Reproductive Harm- www.P65Warnings.ca.gov

6 OR

7  **WARNING:** This product can expose you to chemicals including lead, which
8 are known to the State of California to cause cancer and birth defects or other
reproductive harm. For more information go to www.P65Warnings.ca.gov.

9 The above warning statements shall also include a symbol consisting of a black exclamation
10 point in a yellow equilateral triangle with a bold black outline. Where the label is not printed using
11 the color yellow, the symbol may be printed in black and white. The symbol shall be placed to the
12 left of the text of the warning, in a size no smaller than the height of the word "WARNING."

13 Where a sign or label used to provide a warning includes "consumer information," as that
14 term is defined in Title 27, California Code of Regulations, Section 25600.1(c) as it may be
15 amended from time to time, about a Covered Product in a language other than English, the warning
16 must also be provided in that language in addition to English.

17 If Fourstar sells the Covered Products via its own proprietary internet website or a third-
18 party website over which it controls content, directly to consumers located in California, in addition
19 to the on product warning, the foregoing warning shall be provided by including either the warning
20 or a clearly marked hyperlink using the word "WARNING" on the product display page, or by
21 otherwise prominently displaying the warning to the purchaser prior to completing the purchase.

22 Where Fourstar does not have control over the content of third-party internet sellers, Fourstar shall
23 provide such sellers with written notice in accordance with Title 27, California Code of Regulation,
24 Section 25600.2 of their warning obligations. Third-party internet sellers who receive notice
25 pursuant to 25600.2 and fail to provide a clear and reasonable Proposition 65 warning pursuant to
26 this section shall not be deemed in compliance with this Consent Judgment and shall not receive
27 any benefit, release or protection afforded hereunder.

28

1 The parties acknowledge that the warnings required by this section are not the exclusive
2 methods of providing Proposition 65 warnings and agree that Fourstar may utilize "safe harbor"
3 warning language and methods of transmission in effect on or after the Effective Date, applicable to
4 lead and the Covered Products, without being deemed in breach of this Consent Judgment.

5 **3. MONETARY SETTLEMENT TERMS**

6 **3.1 Civil Penalty Payment**

7 Pursuant to Health and Safety Code section 25249.7(b)(2), and in full and final settlement of
8 all claims alleged in the Notice or Complaint or referred to in this Consent Judgment, Fourstar shall
9 pay \$2,500 in civil penalties within five (5) business days of the Effective Date. The penalty
10 payment will be allocated in accordance with California Health and Safety Code section
11 25249.12(c)(1) & (d), with 75% of the penalty amount remitted to the California Office of
12 Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% of the penalty
13 amount paid to Kallander and delivered to the address in Section 3.3 herein. Fourstar shall provide
14 its payment in two checks as follows: (1) "OEHHA" in the amount of \$1,875; and (2) "Audrey
15 Kallander" in the amount of \$625.

16 **3.2 Attorney's Fees and Costs**

17 The Parties acknowledge that Kallander and her counsel offered to resolve this dispute
18 without reaching terms on the amount of fees and costs to be reimbursed to Kallander's counsel,
19 thereby leaving the issue to be resolved after the material terms of the agreement had been settled.
20 Shortly after the other settlement terms had been reached, Fourstar expressed a desire to resolve
21 Kallander's fees and costs. The Parties reached an accord on the compensation due to Kallander's
22 counsel under general contract principles and the private attorney general doctrine codified at Code
23 of Civil Procedure section 1021.5 for all work performed in this matter. Under these legal
24 principles, within five (5) business days of the Effective Date, Fourstar shall pay \$24,500 in the
25 form of a check made payable to "Voorhees & Bailey, LLP," for all fees and costs incurred by
26 Kallander in investigating, bringing this matter to the attention of Fourstar's management, litigating
27 and negotiating, and obtaining judicial approval of the settlement. Except as expressly provided
28 herein, each Party shall bear its own fees and costs.

1 **3.3 Payment Address**

2 All payments under this Consent Judgment shall be delivered to the following address:

3 Voorhees & Bailey, LLP
4 990 Amarillo Avenue
5 Palo Alto, CA 94303

6 **4. CLAIMS COVERED AND RELEASED**

7 **4.1 Kallander's Release of Proposition 65 Claims**

8 Kallander, acting on her own behalf and in the public interest, releases Fourstar and its
9 parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees,
10 and attorneys ("Releasees") and each entity to whom Fourstar directly or indirectly distributes or
11 sells the Covered Products including, but not limited to, its downstream distributors, wholesalers,
12 customers, retailers (including Walmart Inc., Wal-Mart Stores, Inc., Wal-Mart Stores East, Inc., Wal-
13 Mart Stores East, LP, Walmart Apollo, LLC, Wal-Mart.com, Inc., Wal-Mart.com USA, LLC, and each
14 of their respective parents, direct and indirect subsidiaries, affiliates, affiliated entities under common
15 ownership, past and current agents, directors, members, managers, officers, employees, representatives,
16 shareholders, insurers, beneficiaries, attorneys, successors, and assignees), franchisers, cooperative
17 members, licensors and licensees, ("Downstream Releasees") for any violations arising under
18 Proposition 65 for unwarned exposures to lead in the Covered Products manufactured, imported,
19 distributed or sold by Fourstar prior to the Effective Date, as set forth in the Notice and Complaint.

20 **4.2 Kallander's Individual Release of Claims**

21 Kallander, in her individual capacity only and not in her representative capacity, also
22 provides a release to Fourstar, Releasees, and Downstream Releasees which shall be effective as a
23 full and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs,
24 expenses, attorneys' fees, damages, losses, claims, liabilities and demands of Kallander, of any
25 nature, character or kind, whether known or unknown, suspected or unsuspected, arising out of
26 alleged or actual exposures to lead in the Covered Products, manufactured, imported, distributed or
27 sold by Fourstar before the Effective Date.
28

1 **4.3 Fourstar's Release of Kallander**

2 Fourstar, on its own behalf and on behalf of its past and current agents, representatives,
3 attorneys, successors and/or assignees, hereby waives any and all claims against Kallander and her
4 attorneys and other representatives, for any and all actions taken or statements made (or those that
5 could have been taken or made) by Kallander and her attorneys and other representatives, whether
6 in the course of investigating claims, seeking to enforce Proposition 65 against them in this matter,
7 or with respect to the Covered Products.

8 **4.4 California Civil Code § 1542**

9 It is possible that other claims not known to the Parties arising out of the facts alleged in the
10 Notice and/or Complaint and relating to the Products will develop or be discovered. Kallander, on
11 behalf of herself only, on one hand, and Fourstar, on the other hand, acknowledge that this Consent
12 Judgment is expressly intended to cover and include all such claims up through the Effective Date,
13 including all rights of action therefor. The Parties acknowledge that the claims released in §§ 4.1
14 through 4.3, may include unknown claims, and nevertheless waive California Civil Code § 1542 as
15 to any such unknown claims. California Civil Code § 1542 reads as follows:

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

22 Kallander and Fourstar each acknowledge and understand the significance and consequences of this
23 specific waiver of California Civil Code § 1542.

24 **5. COURT APPROVAL**

25 This Consent Judgment is not effective until it is approved and entered by the Court and shall
26 be null and void if, for any reason, it is not approved and entered by the Court within one year after
27 it has been fully executed by all Parties. Kallander and Fourstar agree to support the entry of this
28 agreement as a judgment, and to obtain the Court's approval of their settlement in a timely

1 manner. The Parties acknowledge that, pursuant to California Health and Safety Code section
2 25249.7(f), a noticed motion is required for judicial approval of this Consent Judgment, which motion
3 Kallander shall draft and file and Fourstar shall support, appearing at the hearing if so requested. If
4 any third-party objection to the motion is filed, Kallander and Fourstar agree to work together to file
5 a reply and appear at any hearing. This provision is a material component of the Consent Judgment
6 and shall be treated as such in the event of a breach.

7 **6. SEVERABILITY**

8 If, subsequent to the execution of this Consent Judgment, any provision of this Consent
9 Judgment is deemed by a court to be unenforceable, the validity of the remaining provisions shall
10 not be adversely affected.

11 **7. GOVERNING LAW**

12 The terms of this Consent Judgment shall be governed by the laws of the State of California
13 and apply within the State of California. In the event that Proposition 65 is repealed or is otherwise
14 rendered inapplicable by reason of law generally, or as to the Covered Products, then Fourstar may
15 provide written notice to Kallander of any asserted change in the law and shall have no further
16 injunctive obligations pursuant to this Consent Judgment with respect to, and to the extent that, the
17 Covered Products are so affected.

18 **8. NOTICE**

19 Unless specified herein, all correspondence and notice required to be provided pursuant to
20 this Consent Judgment shall be in writing and sent by e-mail: (a) personal delivery; (b) first-class,
21 registered or certified mail, return receipt requested; or (c) a recognized overnight courier, on any
22 Party by the other at the following addresses:

23 For Fourstar:

24 Ted Conlon
25 Fourstar Group USA, Inc.
26 189 Main Street, Suite 31
Milford, MA 01757 USA
ted.c@fsgroup-inc.com

For Kallander:

Voorhees & Bailey, LLP
Proposition 65 Coordinator
990 Amarillo Avenue
Palo Alto, CA 94303
troy@voorheesbailey.com

27
28

1 with copy to:

2 Ann G. Grimaldi
3 Grimaldi Law Offices
4 1160 Battery Street East; Suite 100
5 San Francisco, CA 94111
6 ann.grimaldi@grimaldialawoffices.com

7 Any Party may, from time to time, specify in writing to the other a change of address to which all
8 notices and other communications shall be sent.

9 **9. COUNTERPARTS; FACSIMILE AND PDF SIGNATURES**

10 This Consent Judgment may be executed in counterparts and by facsimile or portable
11 document format (PDF) signature, each of which shall be deemed an original, and all of which,
12 when taken together, shall constitute one and the same document.

13 **10. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

14 Kallander and her attorneys agree to comply with the reporting form requirements
15 referenced in California Health and Safety Code section 25249.7(f).

16 **11. INTEGRATION AND MODIFICATION**

17 This Consent Judgment contains the sole and entire agreement of the Parties and all prior
18 negotiations and understandings related hereto shall be deemed to have been merged within it. No
19 representations or terms of agreement other than those contained herein exist or have been made by
20 any Party with respect to the other Party or the subject matter hereof. This Consent Judgment may
21 be modified only by: (i) a written agreement of the Parties and the entry of a modified Consent
22 Judgment by the Court thereon; or (ii) upon a successful motion of any Party and the entry of a
23 modified Consent Judgment by the Court thereon.

24 ///

25 ///

26

27

28

1 **12. AUTHORIZATION**

2 The undersigned are authorized to execute this Consent Judgment on behalf of their
3 respective Parties, to legally bind their respective Parties to this Consent Judgment, and have read,
4 understand, and agree to all of the terms and conditions of this Consent Judgment.

5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

AGREED TO:

AGREED TO:

Date: 11/29/2023

Date: Fourstar Group Inc.


By: 
AUDREY KALLANDER

AUTHORIZED SIGNATURE
By: _____
FOURSTAR GROUP INC.



**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA**
DOWNTOWN COURTHOUSE
191 NORTH FIRST STREET
SAN JOSÉ, CALIFORNIA 95113
CIVIL DIVISION

FILED
JAN 23 2024
Clerk of the Court
Superior Court of CA County of Santa Clara
BY D. CRISWELL DEPUTY

RE: **Audrey Kallander vs Fourstar Group Inc.**
Case Number: **23CV422217**

PROOF OF SERVICE

ORDER APPROVING PROPOSITION 65 SETTLEMENT AND CONSENT JUDGMENT;

and JUDGMENT PURSUANT TO TERMS OF PROPOSITION 65 SETTLEMENT AND CONSENT JUDGMENT
was delivered to the parties listed below the above entitled case as set forth in the sworn declaration below.

If you, a party represented by you, or a witness to be called on behalf of that party need an accommodation under the American with Disabilities Act, please contact the Court Administrator's office at (408) 882-2700, or use the Court's TDD line (408) 882-2690 or the Voice/TDD California Relay Service (800) 735-2922.

DECLARATION OF SERVICE BY MAIL: I declare that I served this notice by enclosing a true copy in a sealed envelope, addressed to each person whose name is shown below, and by depositing the envelope with postage fully prepaid, in the United States Mail at San Jose, CA on . CLERK OF THE COURT, by Criswell, David, Deputy.

cc: Troy C Bailey
Voorhees & Bailley, LLP
839 Emerson St
Palo Alto, CA 94301-1724

Ann Gilda Grimaldi
GRIMALDI LAW OFFICES
1160 Battery St. East, Suite 100
SAN FRANCISCO, CA 94111