

11-5

1 Evan Smith (Bar No. SBN 242352)
2 BRODSKY SMITH
3 9595 Wilshire Blvd., Ste. 900
4 Beverly Hills, CA 90212
5 Tel: (877) 534-2590
6 Fax: (310) 247-0160

7 *Attorneys for Plaintiff*

FILED
San Francisco County Superior Court

JAN 24 2024

CLERK OF THE COURT
BY: 
Deputy Clerk

8
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF SAN FRANCISCO

11 PRECILA BALABBO,

12 Plaintiff,

13 v.

14 FOURSTAR GROUP, A WHOLLY OWNED
15 SUBSIDIARY OF JANERA CO. LTD.,

16 Defendant.

Case No.: CGC-23-610211

CONSENT JUDGMENT

Judge: Richard B. Ulmer
Dept.: 302
Hearing Date: January 24, 2024
Hearing Time: 9:30 AM
Complaint Filed: November 6, 2023

28

1 **1. INTRODUCTION**

2 1.1 **The Parties.** This Consent Judgment is entered into by and between Precila Balabbo
3 acting on behalf of the public interest (hereinafter “Balabbo”) and Fourstar Group, a wholly owned
4 subsidiary of Janera Co. Ltd. (“Fourstar” or “Defendant”) with Balabbo and Defendant collectively
5 referred to as the “Parties” and each of them as a “Party.” Balabbo is an individual residing in
6 California that seeks to promote awareness of exposures to toxic chemicals and improve human
7 health by reducing or eliminating hazardous substances contained in consumer products. Fourstar
8 is alleged to be a person in the course of doing business for purposes of Proposition 65, Cal. Health
9 & Safety Code §§ 25249.6 et seq.

10 1.2 **Allegations and Representations.** Balabbo alleges that Defendant has exposed
11 individuals to lead from its sales of noodle bowls, including but not limited to *Room 2 Room®*
12 noodle bowls, UPC # 1922342701102, without providing a clear and reasonable exposure warning
13 pursuant to Proposition 65. Lead is listed pursuant to Proposition 65 as a chemical known to the
14 State of California to cause cancer and birth defects or other reproductive harm.

15 1.3 **Notice of Violation/Action.** On or about August 3, 2023, Balabbo served Fourstar
16 and various public enforcement agencies with documents entitled “60-Day Notice of Violation”
17 pursuant to Health & Safety Code §25249.7(d) (the “Notice”), alleging that Defendant violated
18 Proposition 65 for failing to warn consumers and customers that use of noodle bowls, including
19 *Room 2 Room®* noodle bowls, UPC # 1922342701102, expose users in California to lead. No
20 public enforcer has brought and is diligently prosecuting the claims alleged in the Notice. On
21 November 6, 2023, Balabbo filed a complaint (the “Complaint”).

22 1.4 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
23 jurisdiction over Defendant as to the allegations contained in the Action filed in this matter, that
24 venue is proper in the County of San Francisco, and that this Court has jurisdiction to approve,
25 enter, and oversee the enforcement of this Consent Judgment as a full and final binding resolution
26 of all claims which were or could have been raised in the Action based on the facts alleged therein
27 and in the Notice.

1 1.5 Defendant denies the material allegations contained in Balabbo's Notice and
2 Complaint and maintains that it has not violated Proposition 65. Nothing in this Consent Judgment
3 shall be construed as an admission by Defendant of any fact, finding, issue of law, or violation of
4 law; nor shall compliance with this Consent Judgment constitute or be construed as an admission
5 by Defendant of any fact, finding, conclusion, issue of law, or violation of law, such being
6 specifically denied by Defendant. However, this section shall not diminish or otherwise affect the
7 obligations, responsibilities, and duties of Defendant under this Consent Judgment.

8 **2. DEFINITIONS**

9 2.1 **Covered Products.** The term "Covered Products" means noodle bowls, including
10 *Room 2 Room*® noodle bowls, UPC # 1922342701102, that are manufactured, distributed, shipped
11 into California and offered for sale in California by Fourstar.

12 2.2 **Effective Date.** The term "Effective Date" means the date this Consent Judgment is
13 entered as a Judgment of the Court.

14 **3. INJUNCTIVE RELIEF: REFORMULATION AND/OR WARNINGS**

15 3.1 **Reformulation of Covered Products.** As of the Effective Date, and continuing
16 thereafter, Covered Products that Fourstar directly manufactures, imports, distributes, sells, or
17 offers for sale in California shall either be: (a) reformulated Products pursuant to § 3.2, below; or
18 (b) labeled with a clear and reasonable exposure warning pursuant to §§ 3.3 and 3.4, below. For
19 purposes of this Consent Judgment, a "Reformulated Product" is a Covered Product that is in
20 compliance with the standard set forth in § 3.2 below. The warning requirement set forth in §§ 3.3
21 and 3.4 shall not apply to any Reformulated Product.

22 3.2 **Reformulation Standard.** "Reformulated Products" shall mean Products that
23 produce a wipe test result no higher than 1 microgram (µg) of lead when analyzed pursuant to
24 NIOSH method no. 9100.

25 3.3 **Clear and Reasonable Warning.** As of the Effective Date, and continuing
26 thereafter, a clear and reasonable exposure warning as set forth in this §§ 3.3 and 3.4 must be
27 provided for all Covered Products that Defendant manufactures, imports, distributes, sells, or offers
28

1 for sale in California that is not a Reformulated Product. There shall be no obligation for Defendant
2 to provide a warning for Covered Products that enter the stream of commerce prior to the Effective
3 Date. The warning shall consist of either the **Warning** or **Alternative Warning** described in §§
4 3.3(a) or (b), respectively:

5 (a) **Warning.** The “Warning” shall consist of the statement:

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

9 (b) **Alternative Warning:** Fourstar may, but is not required to, use the alternative short-
form warning as set forth in this § 3.3(b) (“**Alternative Warning**”) as follows:

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

11 3.4 A **Warning** or **Alternative Warning** provided pursuant to § 3.3 must print the word
12 “**WARNING:**” in all capital letters and in bold font, followed by a colon. The warning symbol to
13 the left of the word “**WARNING:**” must be a black exclamation point in a yellow equilateral
14 triangle with a black outline, except that if the sign or label for the Covered Product does not use
15 the color yellow, the symbol may be in black and white. The symbol must be in a size no smaller
16 than the height of the word “**WARNING:**”. The **Warning** or **Alternative Warning** shall be affixed
17 to or printed on the Covered Product’s packaging or labeling, or on a placard, shelf tag, sign or
18 electronic device or automatic process, providing that the **Warning** or **Alternative Warning** is
19 displayed with such conspicuousness, as compared with other words, statements, or designs as to
20 render it likely to be read and understood by an ordinary individual under customary conditions of
21 purchase or use. The **Warning** or **Alternative Warning** may be contained in the same section of
22 the packaging, labeling, or instruction booklet that states other safety warnings, if any, concerning
23 the use of the Covered Product and shall be at least the same size as those other safety warnings.

24 In addition to affixing the **Warning** or **Alternative Warning** to the Covered Product’s
25 packaging or labeling, the **Warning** or **Alternative Warning** shall be posted on websites where
26 Fourstar offers Products for sale to consumers in California. The requirements of this Section shall
27 be satisfied if the **Warning** or **Alternative Warning**, or a clearly marked hyperlink using the word
28 “**WARNING,**” appears on the product display page, or by otherwise prominently displaying the

1 warning to the purchaser prior to completing the purchase. To comply with this Section, Fourstar
2 shall (a) post the **Warning** or **Alternative Warning** on its own website if it offers Covered
3 Products for sale to California consumers and, if it has the ability to do so, on the websites of its
4 third-party internet sellers offering Covered Products for sale to California consumers; and (b) if it
5 does not have the ability to post the **Warning** or **Alternative Warning** on the websites of its third-
6 party internet sellers, provide such sellers with written notice in accordance with Title 27, California
7 Code of Regulations, § 25600.2. Third-party internet sellers of the Covered Product that have been
8 provided with written notice in accordance with Title 27, California Code of Regulations, § 25600.2
9 are not released in Section 5 of this Agreement if they fail to meet the warning requirements herein.

10 **3.5 Compliance with Warning Regulations.** Defendant shall be deemed to be in
11 compliance with the warning provisions of this Consent Judgment by either adhering to §§ 3.3 and
12 3.4 of this Consent Judgment or by complying with warning requirements adopted by OEHHA
13 applicable to the Covered Product and exposures at issue after the Effective Date. If “consumer
14 information,” as that term is defined in Title 27, California Code of Regulations, Section 25600.1(c)
15 as it may be amended from time to time, is provided in a foreign language, Fourstar shall provide
16 the **Warning** in the foreign language in accordance with applicable warning regulations adopted
17 by OEHHA.

18 **4. MONETARY TERMS**

19 **4.1 Civil Penalty.** Fourstar shall pay \$2,000.00 as a Civil Penalty pursuant to Health
20 and Safety Code section 25249.7(b), to be apportioned in accordance with California Health &
21 Safety Code § 25192, with 75% of these funds remitted to OEHHA and the remaining 25% of the
22 Civil Penalty remitted to Balabbo, as provided by California Health & Safety Code § 25249.12(d).

23 **4.1.1** Within ten (10) days of the Effective Date, Fourstar shall issue two
24 separate checks for the Civil Penalty payment to (a) “OEHHA” in the amount of \$1,500.00; and
25 to (b) “Brodsky Smith in Trust for Balabbo” in the amount of \$500.00. Payment owed to Balabbo
26 pursuant to this Section shall be delivered to the following payment address:

27 Evan J. Smith, Esquire
28 Brodsky Smith

1 Two Bala Plaza, Suite 805
2 Bala Cynwyd, PA 19004

3 Payment owed to OEHHA (EIN: 68-0284486) pursuant to this Section shall be delivered directly
4 to OEHHA (Memo Line "Prop 65 Penalties") at one of the following address(es):

5 For United States Postal Service Delivery:

6 Mike Gyurics
7 Fiscal Operations Branch Chief
8 Office of Environmental Health Hazard Assessment
9 P.O. Box 4010
10 Sacramento, CA 95812-4010

11 For Non-United States Postal Service Delivery:

12 Mike Gyurics
13 Fiscal Operations Branch Chief
14 Office of Environmental Health Hazard Assessment
15 1001 I Street
16 Sacramento, CA 95814

17 A copy of the check payable to OEHHA shall be mailed to Brodsky Smith at the address set forth
18 above as proof of payment to OEHHA.

19 4.2 **Attorneys' Fees.** Within ten (10) days of the Effective Date, Fourstar shall pay
20 \$21,000.00 to Brodsky Smith as complete reimbursement for Balabbo's attorneys' fees and costs
21 incurred as a result of investigating, bringing this matter to the attention of Fourstar, litigating and
22 negotiating and obtaining judicial approval of a settlement in the public interest, pursuant to Code
23 of Civil Procedure § 1021.5.

24 **5. RELEASE OF ALL CLAIMS**

25 5.1 This Consent Judgment is a full, final, and binding resolution between Balabbo
26 acting on her own behalf, and on behalf of the public interest, and Fourstar, and its parents,
27 shareholders, members, directors, officers, managers, employees, representatives, agents,
28 attorneys, divisions, subdivisions, subsidiaries, partners, sister companies, and affiliates, and their
predecessors, successors and assigns ("Defendant Releasees"), and all entities from whom they
obtain and to whom they directly or indirectly distribute or sell Covered Products, including but
not limited to manufacturers, suppliers, distributors, wholesalers, customers, licensors, licensees,
retailers (including Five Below, Inc. and 1616 Holdings, Inc.), including but not limited to its

1 parents, subsidiaries, and affiliates, franchisees, and cooperative members ("Downstream
2 Releasees"), of all claims for violations of Proposition 65 based on exposure to lead from use of
3 the Covered Products manufactured, distributed, or sold by Fourstar prior to the Effective Date as
4 set forth in the Notice and Complaint. It is the Parties' intention that this Consent Judgment shall
5 have preclusive effect such that no other actions by private enforcers, whether purporting to act in
6 his, her, or its interests or the public interest shall be permitted to pursue and take any action with
7 respect to any violation of Proposition 65 based on exposure to lead from use of the Covered
8 Products that was alleged in the Complaint, or that could have been brought pursuant to the Notice
9 against Fourstar and the Downstream Releasees ("Proposition 65 Claims"). Fourstar's compliance
10 with the terms of this Consent Judgment constitutes compliance with Proposition 65 by Fourstar
11 with regard to exposure to lead from use of the Covered Products.

12 5.2 In addition to the foregoing, Balabbo, on behalf of herself, her past and current
13 agents, representatives, attorneys, and successors and assignees, and not in her representative
14 capacity, hereby waives all rights to institute or participate in, directly or indirectly, any form of
15 legal action and releases Fourstar, Defendant Releasees, and Downstream Releasees from any and
16 all manner of actions, causes of action, claims, demands, rights, suits, obligations, debts, contracts,
17 agreements, promises, liabilities, damages, charges, losses, costs, expenses, and attorneys' fees, of
18 any nature whatsoever, known or unknown, in law or equity, fixed or contingent, now or in the
19 future, with respect to any alleged violations of Proposition 65 related to or arising from Covered
20 Products manufactured, distributed, or sold by Fourstar, Defendant Releasees or Downstream
21 Releasees. With respect to the foregoing waivers and releases in this paragraph, Balabbo hereby
22 specifically waives any and all rights and benefits which she now has, or in the future may have,
23 conferred by virtue of the provisions of § 1542 of the California Civil Code, which provides as
24 follows:

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

1 5.3 Fourstar waives any and all claims against Balabbo, her attorneys and other
2 representatives, for any and all actions taken, or statements made (or those that could have been
3 taken or made) by Balabbo and her attorneys and other representatives, whether in the course of
4 investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter,
5 and with respect to Covered Products.

6 **6. INTEGRATION**

7 6.1 This Consent Judgment contains the sole and entire agreement of the Parties and
8 any and all prior negotiations and understandings related hereto shall be deemed to have been
9 merged within it. No representations or terms of agreement other than those contained herein exist
10 or have been made by any Party with respect to the other Party or the subject matter hereof.

11 **7. GOVERNING LAW**

12 7.1 The terms of this Consent Judgment shall be governed by the laws of the State of
13 California and apply within the State of California. In the event that Proposition 65 is repealed or
14 is otherwise rendered inapplicable by reason of law generally, or as to Covered Products, then
15 Defendant shall have no further obligations pursuant to this Consent Judgment with respect to, and
16 to the extent that, Covered Products are so affected.

17 **8. NOTICES**

18 8.1 Unless specified herein, all correspondence and notices required to be provided
19 pursuant to this Consent Judgment shall be in writing and personally delivered or sent by email
20 and: (i) first-class, (registered or certified mail) return receipt requested; or (ii) overnight courier
21 on any party by the other party at the following addresses:

22 For Defendant:

23 Ann G. Grimaldi
24 Grimaldi Law Offices
25 1160 Battery St. East, Ste. 100
26 San Francisco, CA 94111
27 ann.grimaldi@grimaldilawoffices.com

28 And

For Balabbo:

Evan Smith

1 Brodsky Smith
2 9595 Wilshire Blvd., Ste. 900
3 Beverly Hills, CA 90212
4 esmith@brodskysmith.com

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

7 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

8 9.1 This Consent Judgment may be executed in counterparts and by facsimile, each of
9 which shall be deemed an original, and all of which, when taken together, shall constitute one and
10 the same document.

11 **10. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)/COURT**
12 **APPROVAL**

13 10.1 Balabbo agrees to comply with the requirements set forth in California Health &
14 Safety Code § 25249.7(f) and to promptly bring a Motion for Approval of this Consent Judgment.
15 Defendant agrees it shall support approval of such Motion.

16 10.2 This Consent Judgment shall not be effective until it is approved and entered by the
17 Court and shall be null and void if, for any reason, it is not approved by the Court. In such case, the
18 Parties agree to meet and confer on how to proceed and if such agreement is not reached within 30
19 days, the case shall proceed on its normal course.

20 10.3 If the Court approves this Consent Judgment and is reversed or vacated by an
21 appellate court, the Parties shall meet and confer as to whether to modify the terms of this Consent
22 Judgment. If the Parties do not jointly agree on a course of action to take, the case shall proceed on
23 its normal course on the trial court's calendar.

24 **11. MODIFICATION**

25 11.1 This Consent Judgment may be modified only by further stipulation of the Parties
26 and the approval of the Court or upon the granting of a motion brought to the Court by either Party.

27 **12. ATTORNEY'S FEES**

28 12.1 A Party who unsuccessfully brings or contests an action arising out of this Consent
Judgment shall be required to pay the prevailing party's reasonable attorney's fees and costs.

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

12.2 Nothing in this Section shall preclude a Party from seeking an award of sanctions pursuant to law.

13. RETENTION OF JURISDICTION

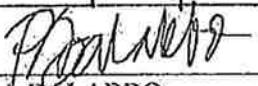
13.1 This Court shall retain jurisdiction of this matter to implement or modify the Consent Judgment.

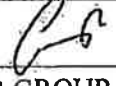
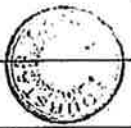
14. AUTHORIZATION

14.1 The undersigned are authorized to execute this Consent Judgment on behalf of their respective Parties and have read, understood, and agree to all of the terms and conditions of this document and certify that he or she is fully authorized by the Party he or she represents to execute the Consent Judgment on behalf of the Party represented and legally bind that Party. Except as explicitly provided herein each Party is to bear its own fees and costs.

AGREED TO:

AGREED TO:

Date: 12 / 6 / 23
By: 
PRECILA BALABBO

Date: Nov 29, 2023
By:  
FOURSTAR GROUP, A WHOLLY OWNED
SUBSIDIARY OF JANERA CO. LTD.

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: 1/24/24

UCA
Judge of Superior Court

RICHARD ULMER