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

14 AUDREY KALLANDER,

15 Plaintiff,

16 v.

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

19 Defendants.
20
21

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 directly to
18 consumers located in California, the warning requirements of this section shall be satisfied if the
19 foregoing warning is provided by including either the warning or a clearly marked hyperlink using
20 the word “WARNING” on the product display page, or by otherwise prominently displaying the
21 warning to the purchaser prior to completing the purchase.

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

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1 **3. MONETARY SETTLEMENT TERMS**

2 **3.1 Civil Penalty Payment**

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

12 **3.2 Attorney’s Fees and Costs**

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

25 **3.3 Payment Address**

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

27 Voorhees & Bailey, LLP
28 990 Amarillo Avenue
Palo Alto, CA 94303

1 **4. CLAIMS COVERED AND RELEASED**

2 **4.1 Kallander’s Release of Proposition 65 Claims**

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

15 **4.2 Kallander’s Individual Release of Claims**

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

23 **4.3 Fourstar’s Release of Kallander**

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

3 **4.4 California Civil Code § 1542**

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

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

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

19 **5. COURT APPROVAL**

20 This Consent Judgment is not effective until it is approved and entered by the Court and shall
21 be null and void if, for any reason, it is not approved and entered by the Court within one year after
22 it has been fully executed by all Parties. Kallander and Fourstar agree to support the entry of this
23 agreement as a judgment, and to obtain the Court's approval of their settlement in a timely
24 manner. The Parties acknowledge that, pursuant to California Health and Safety Code section
25 25249.7(f), a noticed motion is required for judicial approval of this Consent Judgment, which motion
26 Kallander shall draft and file and Fourstar shall support, appearing at the hearing if so requested. If
27 any third-party objection to the motion is filed, Kallander and Fourstar agree to work together to file
28

1 a reply and appear at any hearing. This provision is a material component of the Consent Judgment
2 and shall be treated as such in the event of a breach.

3 **6. SEVERABILITY**

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

7 **7. GOVERNING LAW**

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

14 **8. NOTICE**

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

19 For Fourstar:

20 Ted Conlon
21 Fourstar Group USA, Inc.
22 189 Main Street, Suite 31
23 Milford, MA 01757 USA
24 ted.c@fsgroup-inc.com

For Kallander:

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

25 with copy to:

26 Ann G. Grimaldi
27 Grimaldi Law Offices
28 1160 Battery Street East, Suite 100
San Francisco, CA 94111
ann.grimaldi@grimaldialawoffices.com

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

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

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

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

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

10 **11. INTEGRATION AND MODIFICATION**

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

18 **12. AUTHORIZATION**

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

22 **AGREED TO:**

AGREED TO:

23 Date:

Date:

24
25
26 By:  _____
27 **AUDREY KALLANDER**

By: _____
FOURSTAR GROUP INC.

28

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2 notices and other communications shall be sent.

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22 **AGREED TO:**

23
24 Date:

25
26
27 By: _____
AUDREY KALLANDER

AGREED TO:

Date:

28
By: _____
FOURSTAR GROUP INC.

Fourstar Group Inc.



AUTHORIZED SIGNATURE