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

11 GABRIEL ESPINOZA,

12 Plaintiff,

13 v.

14 FOURSTAR GROUP INC.,

15 Defendant.

Case No.: CGC-25-622367

**CONSENT JUDGMENT**

Judge: Christine Van Aken

Dept.: 301

Hearing Date: April 17, 2025

Hearing Time: 9:30 AM

Complaint Filed: February 13, 2025

1     **1.     INTRODUCTION**

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

10            **1.2     Allegations and Representations.** Espinoza alleges that Defendant has exposed  
11    individuals to diethanolamine (DEA) from its sales of *Thera Plus*® cold therapy roll-on gels, e.g.,  
12    UPC # 049696186865 without providing a clear and reasonable exposure warning pursuant to  
13    Proposition 65. DEA is listed pursuant to Proposition 65 as a chemical known to the State of  
14    California to cause cancer.

15            **1.3     Notice of Violation/Action.** On May 17, 2024, Espinoza served Dollar Tree Stores,  
16    Inc., Dollar Tree, Inc. (collectively, “Dollar Tree”), Fourstar Group, and various public  
17    enforcement agencies with documents entitled “60-Day Notice of Violation” pursuant to Health &  
18    Safety Code §25249.7(d) (the “Notice”), alleging that Defendant violated Proposition 65 for failing  
19    to warn consumers and customers that use of cold roll-on gels *Thera Plus*® cold therapy roll-on  
20    gels, e.g., UPC # 049696186865, expose users in California to DEA. No public enforcer has  
21    brought and is diligently prosecuting the claims alleged in the Notice. On February 13, 2025,  
22    Espinoza filed a complaint (the “Complaint”).

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

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

9 **2. DEFINITIONS**

10 2.1 **Covered Products.** The term "Covered Products" means *Thera Plus*® cold therapy  
11 roll-on gels, e.g., UPC # 049696186865, that are manufactured, distributed, shipped into California  
12 and offered for sale in California by Fourstar Group that expose users to DEA.

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


15 **3. INJUNCTIVE RELIEF: WARNINGS**

16 3.1 **Clear and Reasonable Warning.** Within sixty (60) days of the Effective Date, and  
17 continuing thereafter, a clear and reasonable exposure warning as set forth in this §§ 3.1 and 3.2  
18 must be provided for all Covered Products that Defendant manufacturers, imports, distributes, sells,  
19 or offers for sale in California. There shall be no obligation for Defendant to provide a warning for  
20 Covered Products that enter the stream of commerce within 60 days after the Effective Date. The  
21 warning shall consist of either the **Warning** or **Alternative Warning** described in §§ 3.1(a) or (b),  
22 respectively:

23 (a) **Warning.** The "Warning" shall consist of the statement:

24 ⚠ **WARNING:** This product can expose you to chemicals including  
25 diethanolamine (DEA), which is known to the State of California to cause cancer.  
26 For more information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

1 (b) **Alternative Warning:** Fourstar Group may, but is not required to, use the  
2 alternative short-form warning<sup>1</sup> as set forth in this § 3.1(b) (“**Alternative Warning**”) as follows:

3  **WARNING:** Cancer - [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

4 3.2 A **Warning** or **Alternative Warning** provided pursuant to § 3.1 must print the word  
5 “**WARNING:**” in all capital letters and in bold font, followed by a colon. The warning symbol to  
6 the left of the word “**WARNING:**” must be a black exclamation point in a yellow equilateral  
7 triangle with a black outline, except that if the sign or label for the Covered Product does not use  
8 the color yellow, the symbol may be in black and white. The symbol must be in a size no smaller  
9 than the height of the word “**WARNING:**”. The **Warning** or **Alternative Warning** shall be affixed  
10 to or printed on the Covered Product’s packaging or labeling, or on a placard, shelf tag, sign or  
11 electronic device or automatic process, providing that the **Warning** or **Alternative Warning** is  
12 displayed with such conspicuousness, as compared with other words, statements, or designs as to  
13 render it likely to be read and understood by an ordinary individual under customary conditions of  
14 purchase or use. The **Warning** or **Alternative Warning** may be contained in the same section of  
15 the packaging, labeling, or instruction booklet that states other safety warnings, if any, concerning  
16 the use of the Covered Product and shall be at least the same size as those other safety warnings. If  
17 “consumer information,” as that term is defined in Title 27, California Code of Regulations, Section  
18 25600.1(c) as it may be amended from time to time, is provided in a foreign language, Fourstar  
19 Group shall provide the **Warning** or **Alternative Warning** in the foreign language in accordance  
20 with applicable warning regulations adopted by OEHHA.

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

26  
27 <sup>1</sup> If an **Alternative Warning** is provided for a Covered Product manufactured and labeled after  
28 January 1, 2028, then such warning shall be provided in accordance with Title 27, California  
Code of Regulations, § 25603(b).

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

9       **3.3 Compliance with Warning Regulations.** Defendant shall be deemed to be in  
10 compliance with this Consent Judgment by either adhering to §§ 3.3 and 3.4 of this Consent  
11 Judgment or by complying with warning regulations adopted by OEHHA applicable to the Covered  
12 Product and exposures at issue after the Effective Date, or within sixty (60) days after the Effective  
13 Date.

14 **4. MONETARY TERMS**

15       **4.1 Civil Penalty.** Fourstar Group shall pay \$3,000.00 as a Civil Penalty pursuant to  
16 Health and Safety Code section 25249.7(b), to be apportioned in accordance with California Health  
17 & Safety Code § 25192, with 75% of these funds remitted to OEHHA and the remaining 25% of  
18 the Civil Penalty remitted to Espinoza, as provided by California Health & Safety Code  
19 § 25249.12(d).

20       **4.1.1** Within ten (10) days of the Effective Date, Fourstar Group shall issue two  
21 separate checks for the Civil Penalty payment to (a) "OEHHA" in the amount of \$2,250.00; and  
22 to (b) "Gabriel Espinoza" in the amount of \$750.00. Payment owed to Espinoza pursuant to this  
23 Section shall be delivered to the following payment address:

24       Evan J. Smith, Esquire  
25       Brodsky Smith  
26       Two Bala Plaza, Suite 805  
27       Bala Cynwyd, PA 19004  
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1 Alternatively, payment may be made by bank wire. No later than the Effective Date, Espinoza  
2 and/or Brodsky & Smith shall provide Fourstar Group with the necessary bank wire information  
3 to make the above-referenced payments.

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

6 For United States Postal Service Delivery:

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

10 For Non-United States Postal Service Delivery:

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

14 A copy of the check payable to OEHHHA shall be mailed to Brodsky Smith at the address set forth  
15 above as proof of payment to OEHHHA. Alternatively, Fourstar Group may make such payment by  
16 bank wire directly to OEHHHA, and Espinoza and/or Brodsky & Smith shall provide Fourstar Group  
17 with the necessary bank wire information no later than the Effective Date. Fourstar Group shall  
18 provide Brodsky & Smith with proof of such bank wire no later than five (5) business days after  
19 such bank wire payment is made.

20 4.2 **Attorneys' Fees.** Within ten (10) days of the Effective Date, Fourstar Group shall  
21 pay \$29,500.00 to Brodsky Smith as complete reimbursement for Espinoza's attorneys' fees and  
22 costs incurred as a result of investigating, bringing this matter to the attention of Fourstar Group,  
23 litigating and negotiating and obtaining judicial approval of a settlement in the public interest,  
24 pursuant to Code of Civil Procedure § 1021.5. Payment owed to Espinoza pursuant to this Section  
25 shall be delivered to the following payment address:

26  
27 Evan J. Smith, Esquire  
28 Brodsky Smith  
Two Bala Plaza, Suite 805

1 Bala Cynwyd, PA 19004

2 Alternatively, payment may be made by bank wire. No later than the Effective Date, Brodsky &  
3 Smith shall provide Fourstar Group with the necessary bank wire information to make the above-  
4 referenced payment.

5 **5. RELEASE OF ALL CLAIMS**

6 5.1 This Consent Judgment is a full, final, and binding resolution between Espinoza  
7 acting on his own behalf, and on behalf of the public interest, and Fourstar Group, and its parents,  
8 shareholders, members, directors, officers, managers, employees, representatives, agents,  
9 attorneys, divisions, subdivisions, subsidiaries, partners, sister companies, and affiliates (including  
10 but not limited to Fourstar Group USA), and their predecessors, successors and assigns ("Defendant  
11 Releasees"), and all entities to whom they directly or indirectly distribute or sell Covered Products,  
12 including but not limited to manufacturers, suppliers, distributors, wholesalers, customers,  
13 licensors, licensees, retailers, including but not limited to Dollar Tree, Inc. and Dollar Tree Stores,  
14 Inc., and their respective parents, subsidiaries, and affiliates, franchisees, and cooperative members  
15 ("Downstream Releasees"), of all claims for violations of Proposition 65 based on exposure to DEA  
16 from use of the Covered Products manufactured, distributed, or sold by Fourstar Group within 60  
17 days after the Effective Date, as set forth in the Notice. It is the Parties' intention that this Consent  
18 Judgment shall have preclusive effect such that no other actions by private enforcers, whether  
19 purporting to act in his, her, or its interests or the public interest shall be permitted to pursue and  
20 take any action with respect to any violation of Proposition 65 based on exposure to DEA from use  
21 of the Covered Products that was alleged in the Complaint, or that could have been brought pursuant  
22 to the Notice against Fourstar Group and the Downstream Releasees ("Proposition 65 Claims").  
23 Fourstar Group's compliance with the terms of this Consent Judgment constitutes compliance with  
24 Proposition 65 by Fourstar Group with regard to exposure to DEA from use of the Covered  
25 Products.

26 5.2 In addition to the foregoing, Espinoza, on behalf of himself, his past and current  
27 agents, representatives, attorneys, and successors and assignees, and not in his representative  
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1 capacity, hereby waives all rights to institute or participate in, directly or indirectly, any form of  
2 legal action and releases Fourstar Group, Defendant Releasees, and Downstream Releasees from  
3 any and all manner of actions, causes of action, claims, demands, rights, suits, obligations, debts,  
4 contracts, agreements, promises, liabilities, damages, charges, losses, costs, expenses, and  
5 attorneys' fees, of any nature whatsoever, known or unknown, in law or equity, fixed or contingent,  
6 now or in the future, with respect to any alleged violations of Proposition 65 related to or arising  
7 from Covered Products manufactured, distributed, or sold by Fourstar Group, Defendant Releasees  
8 or Downstream Releasees. With respect to the foregoing waivers and releases in this paragraph,  
9 Espinoza hereby specifically waives any and all rights and benefits which he now has, or in the  
10 future may have, conferred by virtue of the provisions of § 1542 of the California Civil Code, which  
11 provides as follows:

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

18 5.3 Fourstar Group waives any and all claims against Espinoza, his attorneys and other  
19 representatives, for any and all actions taken, or statements made (or those that could have been  
20 taken or made) by Espinoza and his attorneys and other representatives, whether in the course of  
21 investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter  
22 with respect to Covered Products.

## 23 6. INTEGRATION

24 6.1 This Consent Judgment contains the sole and entire agreement of the Parties and  
25 any and all prior negotiations and understandings related hereto shall be deemed to have been  
26 merged within it. No representations or terms of agreement other than those contained herein exist  
27 or have been made by any Party with respect to the other Party or the subject matter hereof.

## 28 7. NOTICES

7.1 Unless specified herein, all correspondence and notices required to be provided  
pursuant to this Consent Judgment shall be in writing. Such correspondence and notices shall be



(1) sent by email and (2) personally delivered or sent by: (i) first-class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any party by the other party at the following addresses:

For Defendant:

Ann G. Grimaldi  
Grimaldi Law Offices  
1160 Battery St. E., Ste. 100  
San Francisco, CA 94111  
Ann.grimaldi@grimaldilawoffices.com

And

For Espinoza:

Evan Smith  
Brodsky Smith  
9465 Wilshire Blvd., Ste. 300  
Beverly Hills, CA 90212  
esmith@brodskysmith.com

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

**8. COUNTERPARTS; FACSIMILE SIGNATURES**

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

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

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

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

1           9.3    If the Court approves this Consent Judgment and is reversed or vacated by an  
2 appellate court, the Parties shall meet and confer as to whether to modify the terms of this Consent  
3 Judgment. If the Parties do not jointly agree on a course of action to take, the case shall proceed on  
4 its normal course on the trial court's calendar.

5   **10.    MODIFICATION**

6           10.1   This Consent Judgment may be modified only by further stipulation of the Parties  
7 and the approval of the Court or upon the granting of a motion brought to the Court by either Party.

8   **11.    ATTORNEY'S FEES**

9           11.1   A Party who unsuccessfully brings or contests an action arising out of this Consent  
10 Judgment shall be required to pay the prevailing party's reasonable attorney's fees and costs.

11           11.2   Nothing in this Section shall preclude a Party from seeking an award of sanctions  
12 pursuant to law.

13   **12.    RETENTION OF JURISDICTION**

14           12.1   This Court shall retain jurisdiction of this matter to implement or modify the  
15 Consent Judgment.

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**13. AUTHORIZATION**

13.1 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: \_\_\_\_\_

Date: February 21, 2025

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

By: [Signature]

GABRIEL ESPINOZA

FOURSTAR GROUP INC.

**IT IS SO ORDERED, ADJUDGED AND DECREED:**

Dated: \_\_\_\_\_

\_\_\_\_\_  
Judge of Superior Court

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**AGREED TO:**

**AGREED TO:**

Date: 2 / 25 / 25

Date: \_\_\_\_\_

By:   
GABRIEL ESPINOZA

By: \_\_\_\_\_  
FOURSTAR GROUP INC.

**IT IS SO ORDERED, ADJUDGED AND DECREED:**

Dated: \_\_\_\_\_

\_\_\_\_\_  
Judge of Superior Court