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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.
27
28

(b) **Alternative Warning:** Fourstar Group may, but is not required to, use the alternative short-form warning¹ as set forth in this § 3.1(b) (“**Alternative Warning**”) as follows:

 **WARNING:** Cancer - www.P65Warnings.ca.gov.

3.2 A **Warning** or **Alternative Warning** provided pursuant to § 3.1 must print the word “**WARNING:**” in all capital letters and in bold font, followed by a colon. The warning symbol to the left of the word “**WARNING:**” must be a black exclamation point in a yellow equilateral triangle with a black outline, except that if the sign or label for the Covered Product does not use the color yellow, the symbol may be in black and white. The symbol must be in a size no smaller than the height of the word “**WARNING:**”. The **Warning** or **Alternative Warning** shall be affixed to or printed on the Covered Product’s packaging or labeling, or on a placard, shelf tag, sign, or electronic device or automatic process only if such electronic device or automatic process provides the **Warning** or **Alternative Warning** without the purchaser having to seek it out, providing that the **Warning** or **Alternative Warning** is displayed with such conspicuousness, as compared with other words, statements, or designs as to render it likely to be read and understood by an ordinary individual under customary conditions of purchase or use. The **Warning** or **Alternative Warning** may be contained in the same section of the packaging, labeling, or instruction booklet that states other safety warnings, if any, concerning the use of the Covered Product and shall be at least the same size as those other safety warnings. If “consumer information,” as that term is defined in Title 27, California Code of Regulations, Section 25600.1(c) as it may be amended from time to time, is provided in a foreign language, Fourstar Group shall provide the **Warning** or **Alternative Warning** in the foreign language in accordance with applicable warning regulations adopted by OEHHA.

In addition to affixing the **Warning** or **Alternative Warning** to the Covered Product’s packaging or labeling, the **Warning** or **Alternative Warning** shall be posted on websites where Fourstar Group offers Products for sale to consumers in California. The requirements of this Section

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

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

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

16 **4. MONETARY TERMS**

17 4.1 **Civil Penalty.** Fourstar Group shall pay \$3,000.00 as a Civil Penalty pursuant to
18 Health and Safety Code section 25249.7(b), to be apportioned in accordance with California Health
19 & Safety Code § 25192, with 75% of these funds remitted to OEHHA and the remaining 25% of
20 the Civil Penalty remitted to Espinoza, as provided by California Health & Safety Code
21 § 25249.12(d).

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

26 Evan J. Smith, Esquire
27 Brodsky Smith
28 Two Bala Plaza, Suite 805
 Bala Cynwyd, PA 19004

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 OEHHA (EIN: 68-0284486) pursuant to this Section shall be delivered directly
5 to OEHHA (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 OEHHA shall be mailed to Brodsky Smith at the address set forth
15 above as proof of payment to OEHHA. Alternatively, Fourstar Group may make such payment by
16 bank wire directly to OEHHA, 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: _____
GABRIEL ESPINOZA

By: [Signature]
FOURSTAR GROUP INC.

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: _____

Judge of Superior Court

1 **13. AUTHORIZATION**

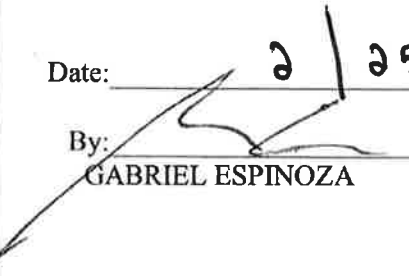
2 13.1 The undersigned are authorized to execute this Consent Judgment on behalf of their
3 respective Parties and have read, understood, and agree to all of the terms and conditions of this
4 document and certify that he or she is fully authorized by the Party he or she represents to execute
5 the Consent Judgment on behalf of the Party represented and legally bind that Party. Except as
6 explicitly provided herein each Party is to bear its own fees and costs.

7
8 **AGREED TO:**

AGREED TO:

9 Date: 2 / 25 / 25

Date: _____

10 By: 

By: _____

11 GABRIEL ESPINOZA

FOURSTAR GROUP INC.

12
13 **IT IS SO ORDERED, ADJUDGED AND DECREED:**

14
15 Dated: _____

16 Judge of Superior Court