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Endorsed
FILED
SAN MATEO COUNTY
DEC 20 2010
Clerk of the Superior Court
by T. JUBB
DEPUTY CLERK

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN MATEO
UNLIMITED CIVIL JURISDICTION

CIV 501694

ANTHONY E. HELD, Ph.D., P.E.,

Plaintiff,

v.

FAROUK SYSTEMS, INC.;
and DOES 1-150, inclusive,

Defendants.

Case No. _____

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

(Cal. Health & Safety Code § 25249.6 et seq.)

BY FAX

1 **NATURE OF THE ACTION**

2 1. This Complaint is a representative action brought by plaintiff ANTHONY E.
3 HELD, Ph.D., P.E., in the public interest of the citizens of the State of California, to enforce the
4 People’s right to be informed of the presence of Di(2-ethylhexyl)phthalate, a toxic chemical
5 found in fashion accessories such as Clutches sold in California.

6 2. By this Complaint, plaintiff seeks to remedy defendants’ continuing failures to
7 warn California citizens about their exposure to Di(2-ethylhexyl)phthalate, present in or on
8 certain Clutches that defendants manufacture, distribute, and/or offer for sale to consumers
9 throughout the State of California.

10 3. High levels of Di(2-ethylhexyl)phthalate are commonly found in and on Clutches
11 that defendants manufacture, distribute, and/or offer for sale to consumers throughout the State
12 of California.

13 4. Under California’s Safe Drinking Water and Toxic Enforcement Act of 1986,
14 California Health & Safety Code Section 25249.6 *et seq.* (“Proposition 65”), “No person in the
15 course of doing business shall knowingly and intentionally expose any individual to a chemical
16 known to the state to cause cancer or reproductive toxicity without first giving clear and
17 reasonable warning to such individual. . . .” (*Cal. Health & Safety Code § 25249.6.*)

18 5. On October 24, 2003, the State of California identified and listed Di(2-
19 ethylhexyl)phthalate as a chemical known to cause birth defects and other reproductive harm.
20 Di(2-ethylhexyl)phthalate became subject to the warning requirement one year later and was
21 therefore subject to the “clear and reasonable warning” requirements of Proposition 65,
22 beginning on October 24, 2004. (*27 CCR § 27001(c); Cal. Health & Safety Code § 25249.8.*)

23 6. Di(2-ethylhexyl)phthalate shall hereinafter be collectively referred to as the
24 “LISTED CHEMICAL”.

25 7. Defendants manufacture, distribute, and/or sell Clutches containing excessive
26 levels of the LISTED CHEMICAL including, but not limited to, the *Ultra CHI Sleek Collection*
27 *Ultra Exclusive Ceramic Hairstyling Iron with Free Thermal Case (SKU #GF1311) (#6 33911*
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1 69479 4). All such Clutches containing the LISTED CHEMICAL shall hereinafter be referred to
2 as the "PRODUCTS".

3 8. Defendants' failures to warn consumers and/or other individuals in the State of
4 California about their exposures to the LISTED CHEMICAL in conjunction with defendants'
5 sales of the PRODUCTS is a violation of Proposition 65 and subjects defendants to enjoinder
6 of such conduct as well as civil penalties for each such violation.

7 9. As a result of defendants' violations of Proposition 65, plaintiff seeks preliminary
8 injunctive and permanent injunctive relief to compel defendants to provide purchasers or users of
9 the PRODUCTS with the required warning regarding the health hazards of the LISTED
10 CHEMICAL. (*Cal. Health & Safety Code § 25249.7(a).*)

11 10. Plaintiff also seeks civil penalties against defendants for their violations of
12 Proposition 65, as provided for by California Health & Safety Code Section 25249.7(b).

13 PARTIES

14 11. Plaintiff ANTHONY E. HELD, Ph.D., P.E., is a citizen of the City and County of
15 Sacramento in the State of California who is dedicated to protecting the health of California
16 citizens through the elimination or reduction of toxic exposures from consumer products, and
17 brings this action in the public interest pursuant to California Health & Safety Code Section
18 25249.7.

19 12. Defendant FAROUK SYSTEMS, INC. ("FAROUK") is a person doing business
20 within the meaning of California Health & Safety Code Section 25249.11.

21 13. Defendant FAROUK manufactures, distributes, and/or offers the PRODUCTS for
22 sale or use in the State of California, or implies by its conduct that it manufactures, distributes
23 and/or offers the PRODUCTS for sale or use in the State of California.

24 14. Defendants DOES 1-50 ("MANUFACTURER DEFENDANTS") are each
25 persons doing business within the meaning of California Health & Safety Code Section
26 25249.11.

27 15. MANUFACTURER DEFENDANTS engage in the process of research, testing,
28 designing, assembling, fabricating and/or manufacturing, or imply by their conduct that they

1 engage in the process of research, testing, designing, assembling, fabricating and/or
2 manufacturing one or more of the PRODUCTS for sale or use in the State of California.

3 16. Defendants DOES 51-100 (“DISTRIBUTOR DEFENDANTS”) are each persons
4 doing business within the meaning of California Health & Safety Code Section 25249.11.

5 17. DISTRIBUTOR DEFENDANTS distribute, exchange, transfer, process and/or
6 transport one or more of the PRODUCTS to individuals, businesses or retailers for sale or use in
7 the State of California.

8 18. Defendants DOES 101-150 (“RETAILER DEFENDANTS”) are each persons
9 doing business within the meaning of California Health & Safety Code Section 25249.11.

10 19. RETAILER DEFENDANTS offer the PRODUCTS for sale to individuals in the
11 State of California.

12 20. At this time, the true names of Defendants DOES 1-150, inclusive, are unknown
13 to plaintiff, who therefore sues said defendants by their fictitious name pursuant to Code of Civil
14 Procedure Section 474. Plaintiff is informed and believes, and on that basis alleges, that each of
15 the fictitiously named defendants is responsible for the acts and occurrences herein alleged.
16 When ascertained, their true names shall be reflected in an amended complaint.

17 21. FAROUK, MANUFACTURER DEFENDANTS, DISTRIBUTOR
18 DEFENDANTS, and RETAILER DEFENDANTS shall, where appropriate, collectively be
19 referred to hereinafter as “DEFENDANTS”.

20 **VENUE AND JURISDICTION**

21 22. Venue is proper in the County of San Mateo, pursuant to Code of Civil Procedure
22 Sections 394, 395, and 395.5, because this Court is a court of competent jurisdiction, because
23 one or more instances of wrongful conduct occurred, and continues to occur, in the County of
24 San Mateo and/or because DEFENDANTS conducted, and continue to conduct, business in this
25 County with respect to the PRODUCTS.

26 23. The California Superior Court has jurisdiction over this action pursuant to
27 California Constitution Article VI, Section 10, which grants the Superior Court “original
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1 jurisdiction in all causes except those given by statute to other trial courts.” The statute under
2 which this action is brought does not specify any other basis of subject matter jurisdiction.

3 24. The California Superior Court has jurisdiction over DEFENDANTS based on
4 plaintiff’s information and good faith belief that each defendant is a person, firm, corporation or
5 association that either are citizens of the State of California, have sufficient minimum contacts in
6 the State of California, or otherwise purposefully avail themselves of the California market.
7 DEFENDANTS’ purposeful availment renders the exercise of personal jurisdiction by California
8 courts consistent with traditional notions of fair play and substantial justice.

9 **FIRST CAUSE OF ACTION**

10 **(Violation of Proposition 65 - Against All Defendants)**

11 25. Plaintiff realleges and incorporates by reference, as if fully set forth herein,
12 Paragraphs 1 through 24, inclusive.

13 26. The citizens of the State of California have expressly stated in Proposition 65 that
14 they must be informed “about exposures to chemicals that cause cancer, birth defects and other
15 reproductive harm.” (*Cal. Health & Safety Code § 25249.6.*)

16 27. Proposition 65 states, “No person in the course of doing business shall knowingly
17 and intentionally expose any individual to a chemical known to the state to cause cancer or
18 reproductive toxicity without first giving clear and reasonable warning to such individual....”
19 (*Id.*)

20 28. On September 1, 2010, a sixty-day notice of violation, together with the requisite
21 certificate of merit, was provided to FAROUK and various public enforcement agencies stating
22 that as a result of the DEFENDANTS’ sales of the PRODUCTS, purchasers and users in the
23 State of California were being exposed to the LISTED CHEMICAL resulting from the
24 reasonably foreseeable uses of the PRODUCTS, without the individual purchasers and users first
25 having been provided with a “clear and reasonable warning” regarding such toxic exposures.

26 29. DEFENDANTS have engaged in the manufacture, distribution, and/or offering of
27 the PRODUCTS for sale or use in violation of California Health & Safety Code Section 25249.6
28 and DEFENDANTS’ manufacture, distribution and/or offering of the PRODUCTS for sale or

1 use in violation of California Health & Safety Code Section 25249.6 has continued to occur
2 beyond DEFENDANTS' receipt of plaintiff's sixty-day notices of violation. Plaintiff further
3 alleges and believes that such violations will continue to occur into the future.

4 30. After receipt of the claims asserted in the sixty-day notices of violation, the
5 appropriate public enforcement agencies have failed to commence and diligently prosecute a
6 cause of action against DEFENDANTS under Proposition 65.

7 31. The PRODUCTS manufactured, distributed, and/or offered for sale or use in
8 California by DEFENDANTS contained the LISTED CHEMICAL above the allowable State
9 limits.

10 32. DEFENDANTS knew or should have known that the PRODUCTS manufactured,
11 distributed, and/or offered for sale or use by DEFENDANTS in California contained the
12 LISTED CHEMICAL.

13 33. The LISTED CHEMICAL was present in or on the PRODUCTS in such a way as
14 to expose individuals to the LISTED CHEMICAL through dermal contact and/or ingestion
15 during the reasonably foreseeable use of the PRODUCTS.

16 34. The normal and reasonably foreseeable use of the PRODUCTS has caused and
17 continues to cause consumer exposures to the LISTED CHEMICAL, as such exposure is defined
18 by 27 CCR Section 25602(b).

19 35. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of
20 the PRODUCTS would expose individuals to the LISTED CHEMICAL through dermal contact
21 and/or ingestion.

22 36. DEFENDANTS intended that such exposures to the LISTED CHEMICAL from
23 the reasonably foreseeable use of the PRODUCTS would occur by their deliberate, non-
24 accidental participation in the manufacture, distribution and/or offer for sale or use of
25 PRODUCTS to individuals in the State of California.

26 37. DEFENDANTS failed to provide a "clear and reasonable warning" to those
27 consumers and/or other individuals in the State of California who were or who could become
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1 exposed to the LISTED CHEMICAL through dermal contact and/or ingestion during the
2 reasonably foreseeable use of the PRODUCTS.

3 38. Contrary to the express policy and statutory prohibition of Proposition 65, enacted
4 directly by California voters, individuals exposed to the LISTED CHEMICAL through dermal
5 contact and/or ingestion resulting from the reasonably foreseeable use of the PRODUCTS sold
6 by DEFENDANTS without a “clear and reasonable warning”, have suffered, and continue to
7 suffer, irreparable harm, for which harm they have no plain, speedy or adequate remedy at law.

8 39. As a consequence of the above-described acts, DEFENDANTS are liable for a
9 maximum civil penalty of \$2,500 per day for each violation pursuant to California Health &
10 Safety Code Section 25249.7(b).

11 40. As a consequence of the above-described acts, California Health & Safety Code
12 Section 25249.7(a) also specifically authorizes the Court to grant injunctive relief against
13 DEFENDANTS.

14 **PRAYER FOR RELIEF**

15 Wherefore, plaintiff prays for judgment against DEFENDANTS as follows:

16 1. That the Court, pursuant to California Health & Safety Code Section 25249.7(b),
17 assess civil penalties against DEFENDANTS in the amount of \$2,500 per day for each violation
18 alleged herein;

19 2. That the Court, pursuant to California Health & Safety Code Section 25249.7(a),
20 preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, and/or
21 offering the PRODUCTS for sale or use in California, without providing “clear and reasonable
22 warnings” as defined by 27 CCR Section 25601, as to the harms associated with exposures to
23 the LISTED CHEMICAL;

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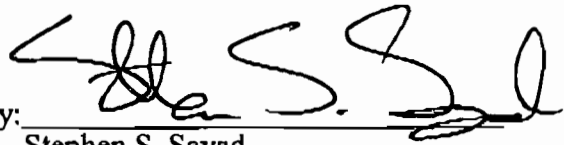
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- 3. That the Court grant plaintiff his reasonable attorneys' fees and costs of suit; and
- 4. That the Court grant such other and further relief as may be just and proper.

Dated: December 20, 2010

Respectfully submitted,

THE CHANLER GROUP

By: 

Stephen S. Sayad
Attorneys for Plaintiff
ANTHONY E. HELD, Ph.D., P.E.