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ENDORSED FILED
SAN MATEO COUNTY

DEC - 5 2012

Clerk of the Superior Court
By Rebecca Krill
DEPUTY CLERK

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN MATEO

UNLIMITED CIVIL JURISDICTION

CIV 518862

ANTHONY E. HELD, PhD., P.E.,

Plaintiff,

v.

FAROUK SYSTEMS INC.; ULTA SALON,
COSMETICS & FRAGRANCE, INC. and
DOES I-150, inclusive,

Defendants.

Case No. _____

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

(Health & Safety Code, § 25249.6 *et seq.*)

1 NATURE OF THE ACTION

2 1. This Complaint is a representative action brought by plaintiff ANTHONY E. HELD,
3 PhD., P.E. in the public interest of the citizens of the State of California to enforce the People’s right
4 to be informed of the presence of di(2-ethylhexyl)phthalate (“DEHP”), a toxic chemical found in
5 toiletry bags, clutches and other PVC pouches and cases sold in California.

6 2. By this Complaint, plaintiff seeks to remedy defendants’ continuing failure to warn
7 California citizens about the risk of exposure to DEHP present in and on the toiletry bags, clutches
8 and other PVC pouches and cases manufactured, distributed, and offered for sale or use to
9 consumers throughout the State of California.

10 3. Detectable levels of DEHP are commonly found in and on the toiletry bags, clutches
11 and other PVC pouches and cases that defendants manufacture, distribute, and offer for sale to
12 consumers throughout the State of California.

13 4. Under the Safe Drinking Water and Toxic Enforcement Act of 1986, codified at
14 Health and Safety Code section 25249.6 *et seq.* (“Proposition 65”), “[n]o person in the course of
15 doing business shall knowingly and intentionally expose any individual to a chemical known to the
16 state to cause cancer or reproductive toxicity without first giving clear and reasonable warning to
17 such individual” Health & Safety Code § 25249.6.

18 5. Pursuant to Proposition 65, on October 24, 2003, California identified and listed
19 DEHP as a chemical known to cause birth defects and other reproductive harm. DEHP became
20 subject to the “clear and reasonable warning” requirements of the act one year later on October 24,
21 2004. Cal. Code Regs. tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b). DEHP
22 is referred to hereinafter as the “LISTED CHEMICAL.”

23 6. Defendants manufacture, distribute, import, sell, and/or offer for sale toiletry bags,
24 clutches and other PVC pouches and cases containing DEHP without a warning, including, but not
25 limited to:

26 a. *Biosilk Silk & Spray, SKU #PM7654 (#6 33911 70578 0);*
27
28

1 12. Defendant FAROUK SYSTEMS, INC. ("FAROUK") is a person in the course of
2 doing business within the meaning of Health and Safety Code section 25249.11.

3 13. FAROUK manufactures, imports, distributes, sells, and/or offers the PRODUCTS for
4 sale or use in the State of California, or implies by its conduct that it manufactures, imports,
5 distributes, sells, and/or offers the PRODUCTS for sale or use in the State of California.

6 14. Defendant ULTA SALON, COSMETICS & FRAGRANCE, INC. ("ULTA") is a
7 person in the course of doing business within the meaning of Health and Safety Code section
8 25249.11.

9 15. ULTA manufactures, imports, distributes, sells, and/or offers the PRODUCTS for sale
10 or use in the State of California, or implies by its conduct that it manufactures, imports, distributes,
11 sells, and/or offers the PRODUCTS for sale or use in the State of California.

12 16. Defendants DOES 1-50 ("MANUFACTURER DEFENDANTS") are each persons in
13 the course of doing business within the meaning of Health and Safety Code section 25249.11.

14 17. MANUFACTURER DEFENDANTS research, test, design, assemble, fabricate, and
15 manufacture, or imply by their conduct that they research, test, design, assemble, fabricate, and
16 manufacture one or more of the PRODUCTS offered for sale or use in the State of California.

17 18. Defendants DOES 51-100 ("DISTRIBUTOR DEFENDANTS") are each a person in
18 the course of doing business within the meaning of Health and Safety Code section 25249.11.

19 19. DISTRIBUTOR DEFENDANTS distribute, exchange, transfer, process, and/or
20 transport one or more of the PRODUCTS to individuals, businesses, or retailers for sale or use in the
21 State of California.

22 20. Defendants DOES 101-150 ("RETAILER DEFENDANTS") are each a person in the
23 course of doing business within the meaning of Health and Safety Code section 25249.11.

24 21. RETAILER DEFENDANTS offer the PRODUCTS for sale to individuals in the State
25 of California.

26 22. At this time, the true names of defendants DOES 1 through 150, inclusive, are
27 unknown to plaintiff, who, therefore, sues said defendants by their fictitious names pursuant to Code
28

1 of Civil Procedure section 474. Plaintiff is informed and believes, and on that basis alleges, that
2 each of the fictitiously named defendants is responsible for the acts and occurrences alleged herein.
3 When ascertained, their true names shall be reflected in an amended complaint.

4 23. FAROUK, ULTA, MANUFACTURER DEFENDANTS, DISTRIBUTOR
5 DEFENDANTS, and RETAILER DEFENDANTS shall, where appropriate, collectively be referred
6 to as “DEFENDANTS.”

7 **VENUE AND JURISDICTION**

8 24. Venue is proper in the San Mateo County Superior Court, pursuant to Code of Civil
9 Procedure sections 393, 395, and 395.5, because this Court is a court of competent jurisdiction,
10 because plaintiff seeks civil penalties against DEFENDANTS, because one or more instances of
11 wrongful conduct occurred, and continue to occur, in San Mateo County, and/or because
12 DEFENDANTS conducted, and continue to conduct, business in this county with respect to the
13 PRODUCTS.

14 25. The California Superior Court has jurisdiction over this action pursuant to California
15 Constitution Article VI, section 10, which grants the Superior Court “original jurisdiction in all
16 causes except those given by statute to other trial courts.” The statute under which this action is
17 brought does not specify any other basis of subject matter jurisdiction.

18 26. The California Superior Court has jurisdiction over DEFENDANTS based on
19 plaintiff’s information and good faith belief that each defendant is a person, firm, corporation or
20 association that is a citizen of the State of California, has sufficient minimum contacts in the State of
21 California, and/or otherwise purposefully avails itself of the California market. DEFENDANTS’
22 purposeful availment renders the exercise of personal jurisdiction by California courts consistent
23 with traditional notions of fair play and substantial justice.

24 **FIRST CAUSE OF ACTION**

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

26 27. Plaintiff realleges and incorporates by reference, as if fully set forth herein, Paragraphs
27 1 through 26, inclusive.

1 28. In enacting Proposition 65, in the preamble to the Safe Drinking Water and Toxic
2 Enforcement Act of 1986, the People of California expressly declared their right “[t]o be informed
3 about exposures to chemicals that cause cancer, birth defects, or other reproductive harm.”

4 29. Proposition 65 states, “[n]o person in the course of doing business shall knowingly and
5 intentionally expose any individual to a chemical known to the state to cause cancer or reproductive
6 toxicity without first giving clear and reasonable warning to such individual” Health & Safety
7 Code § 25249.6.

8 30. On or about September 25, 2012, plaintiff’s supplemental sixty-day notice of
9 violation, together with the requisite certificate of merit, was provided to FAROUK, ULTA and
10 certain public enforcement agencies stating that, as a result of DEFENDANTS’ sales of the
11 PRODUCTS containing the LISTED CHEMICAL, purchasers and users in the State of California
12 were being exposed to the LISTED CHEMICAL resulting from their reasonably foreseeable use of
13 the PRODUCTS, without the individual purchasers and users first having been provided with a
14 “clear and reasonable warning” regarding such toxic exposures, as required by Proposition 65.

15 31. DEFENDANTS have engaged in the manufacture, importation, distribution, sale, and
16 offering of the PRODUCTS for sale or use in violation of Health and Safety Code section 25249.6,
17 and DEFENDANTS’ violations have continued to occur beyond their receipt of plaintiff’s sixty-day
18 notice of violation. As such, DEFENDANTS’ violations are ongoing and continuous in nature, and
19 will continue to occur in the future.

20 32. After receiving plaintiff’s sixty-day notice of violation, the appropriate public
21 enforcement agencies have failed to commence and diligently prosecute a cause of action against
22 DEFENDANTS under Proposition 65.

23 33. The PRODUCTS manufactured, imported, distributed, sold, and offered for sale or use
24 in California by DEFENDANTS contain the LISTED CHEMICAL such that they require a “clear
25 and reasonable” warning under Proposition 65.

26 34. DEFENDANTS knew or should have known that the PRODUCTS they manufacture,
27 import, distribute, sell, and offer for sale or use in California contain the LISTED CHEMICAL.
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1 35. The LISTED CHEMICAL is present in or on the PRODUCTS in such a way as to
2 expose individuals to the LISTED CHEMICAL through dermal contact and/or ingestion during
3 reasonably foreseeable use.

4 36. The normal and reasonably foreseeable uses of the PRODUCTS have caused, and
5 continue to cause, consumer exposures to the LISTED CHEMICAL, as such exposures are defined
6 by title 27 of the California Code of Regulations, section 25602(b).

7 37. DEFENDANTS had knowledge that the normal and reasonably foreseeable uses of the
8 PRODUCTS expose individuals to the LISTED CHEMICAL through dermal contact and/or
9 ingestion.

10 38. DEFENDANTS intended that such exposures to the LISTED CHEMICAL from the
11 reasonably foreseeable uses of the PRODUCTS would occur by their deliberate, non-accidental
12 participation in the manufacture, importation, distribution, sale, and offering of the PRODUCTS for
13 sale or use to individuals in the State of California.

14 39. DEFENDANTS failed to provide a “clear and reasonable warning” to those consumers
15 and other individuals in the State of California who were or who would become exposed to the
16 LISTED CHEMICAL through dermal contact and/or ingestion during the reasonably foreseeable
17 uses of the PRODUCTS.

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

23 41. Pursuant to Health and Safety Code section 25249.7(b), as a consequence of the
24 above-described acts, DEFENDANTS are liable for a maximum civil penalty of \$2,500 per day for
25 each violation.

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