

1 Stephen S. Sayad, State Bar No. 104866
Laralei S. Paras, State Bar No. 203319
2 THE CHANLER GROUP
2560 Ninth Street
3 Parker Plaza, Suite 214
Berkeley, CA 94710-2565
4 Telephone: (510) 848-8880
Facsimile: (510) 848-8118

5 Attorneys for Plaintiff
6 ANTHONY E. HELD, PhD., P.E.

ENDORSED FILED
SAN MATEO COUNTY

DEC 10 2012

Clerk of the Superior Court
By E. Boffl
DEPUTY CLERK

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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SAN MATEO
10 UNLIMITED CIVIL JURISDICTION

11
12 ANTHONY E. HELD, PhD., P.E.,

13 Plaintiff,

14 v.

15 FAROUK SYSTEMS INC.; ULTA SALON,
COSMETICS & FRAGRANCE, INC. and
16 DOES 1-150, inclusive,

17 Defendants.

Case No. CIV518362

**FIRST AMENDED 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 § 25249.6 *et seq.* (“Proposition 65”), “[n]o person in the course of doing
15 business shall knowingly and intentionally expose any individual to a chemical known to the state to
16 cause cancer or reproductive toxicity without first giving clear and reasonable warning to such
17 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 other PVC pouches and cases, and/or clutches containing DEHP without a warning, including, but
25 not limited to:

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

27 b. *Ultra CHI Sleek Collection Ultra Exclusive Ceramic Hairstyling Iron with Free*
28 *Thermal Case, SKU #GF1311 (#6 33911 69479 4);*

1 c. *Ultra CHI Sleek Collection Ulta Exclusive Ceramic Hairstyling Iron with Free*
2 *Thermal Case, SKU #GF1306 (#6 33911 69469 5);*

3 d. *Ultra CHI Sleek Collection Ulta Exclusive Ceramic Hairstyling Iron with Free*
4 *Thermal Case, SKU #GF1308 (#6 33911 69473 2);*

5 e. *Ultra CHI Sleek Collection Ulta Exclusive Ceramic Hairstyling Iron with Free*
6 *Thermal Case, SKU #GF1309; and*

7 f. *Ultra CHI Sleek Collection Ulta Exclusive Ceramic Hairstyling Iron with Free*
8 *Thermal Case, SKU #GF1310.*

9 7. All such toiletry bags and other PVC pouches and cases identified in paragraph 6
10 containing DEHP are referred to collectively hereinafter as “PVC PRODUCTS.”

11 8. All such clutches identified in paragraph 6 containing DEHP are referred to
12 collectively hereinafter as “CLUTCHES.”

13 9. CLUTCHES and PVC PRODUCTS are referred to collectively hereinafter as the
14 “PRODUCTS.”

15 10. Defendants’ failure to warn consumers and other individuals in the State of California
16 about their exposure to the LISTED CHEMICAL in conjunction with defendants’ sales of the
17 PRODUCTS is a violation of Proposition 65, and subjects defendants to enjoinder of such conduct
18 as well as civil penalties for each violation. Health & Safety Code § 25249.7(a) & (b)(1).

19 11. For defendants’ violations of Proposition 65, plaintiff seeks preliminary and
20 permanent injunctive relief to compel defendants to provide purchasers or users of the PRODUCTS
21 with the required warning regarding the health hazards of the LISTED CHEMICAL. Health &
22 Safety Code § 25249.7(a).

23 12. Pursuant to Health and Safety Code § 25249.7(b), plaintiff also seeks civil penalties
24 against defendants for their violations of Proposition 65.

25 **PARTIES**

26 13. Plaintiff ANTHONY E. HELD, PhD., P.E. is a citizen of the State of California who
27 is dedicated to protecting the health of California citizens through the elimination or reduction of

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1 toxic exposures from consumer products; and he brings this action in the public interest pursuant to
2 Health and Safety Code § 25249.7(d).

3 14. Defendant FAROUK SYSTEMS, INC. (“FAROUK”) is a person in the course of
4 doing business within the meaning of Health and Safety Code § 25249.11.

5 15. FAROUK manufactures, imports, distributes, sells, and/or offers the PVC
6 PRODUCTS for sale or use in the State of California, or implies by its conduct that it manufactures,
7 imports, distributes, sells, and/or offers the PVC PRODUCTS for sale or use in the State of
8 California.

9 16. Defendant ULTA SALON, COSMETICS & FRAGRANCE, INC. (“ULTA”) is a
10 person in the course of doing business within the meaning of Health and Safety Code § 25249.11.

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

14 18. Defendants DOES 1-50 (“MANUFACTURER DEFENDANTS”) are each persons in
15 the course of doing business within the meaning of Health and Safety Code § 25249.11.

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

19 20. Defendants DOES 51-100 (“DISTRIBUTOR DEFENDANTS”) are each a person in
20 the course of doing business within the meaning of Health and Safety Code § 25249.11.

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

24 22. Defendants DOES 101-150 (“RETAILER DEFENDANTS”) are each a person in the
25 course of doing business within the meaning of Health and Safety Code § 25249.11.

26 23. RETAILER DEFENDANTS offer the PRODUCTS for sale to individuals in the State
27 of California.

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1 30. 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 31. 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 32. 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 PVC
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 PVC 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 33. DEFENDANTS have engaged in the manufacture, importation, distribution, sale, and
16 offering of the PVC PRODUCTS for sale or use in violation of Health and Safety Code § 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 34. 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 35. The PVC PRODUCTS manufactured, imported, distributed, sold, and offered for sale
24 or use in California by DEFENDANTS contain the LISTED CHEMICAL such that they require a
25 “clear and reasonable” warning under Proposition 65.

26 36. DEFENDANTS knew or should have known that the PVC PRODUCTS they
27 manufacture, import, distribute, sell, and offer for sale or use in California contain the LISTED
28 CHEMICAL.

1 37. The LISTED CHEMICAL is present in or on the PVC PRODUCTS in such a way as
2 to expose individuals to the LISTED CHEMICAL through dermal contact and/or ingestion during
3 reasonably foreseeable use.

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

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

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

14 41. 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 PVC PRODUCTS.

18 42. 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 PVC PRODUCTS sold
21 by 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 43. Pursuant to Health and Safety Code § 25249.7(b), as a consequence of the above-
24 described acts, DEFENDANTS are liable for a maximum civil penalty of \$2,500 per day for each
25 violation.

26 44. As a consequence of the above-described acts, Health and Safety Code § 25249.7(a)
27 also specifically authorizes the Court to grant injunctive relief against DEFENDANTS.

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1 **SECOND CAUSE OF ACTION**

2 **(Violation of Proposition 65 - Against ULTA)**

3 45. Plaintiff realleges and incorporates by reference, as if fully set forth herein, Paragraphs
4 1 through 44, inclusive.

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

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

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

19 49. ULTA has engaged in the manufacture, importation, distribution, sale, and offering of
20 the CLUTCHES for sale or use in violation of Health and Safety Code § 25249.6, and ULTA’s
21 violations have continued to occur beyond their receipt of plaintiff’s sixty-day notice of violation.
22 As such, ULTA’s violations are ongoing and continuous in nature, and will continue to occur in the
23 future.

24 50. After receiving plaintiff’s sixty-day notice of violation, the appropriate public
25 enforcement agencies have failed to commence and diligently prosecute a cause of action against
26 ULTA under Proposition 65.

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1 51. The CLUTCHES manufactured, imported, distributed, sold, and offered for sale or use
2 in California by ULTA contain the LISTED CHEMICAL such that they require a “clear and
3 reasonable” warning under Proposition 65.

4 52. ULTA knew or should have known that the CLUTCHES they manufacture, import,
5 distribute, sell, and offer for sale or use in California contain the LISTED CHEMICAL.

6 53. The LISTED CHEMICAL is present in or on the CLUTCHES in such a way as to
7 expose individuals to the LISTED CHEMICAL through dermal contact and/or ingestion during
8 reasonably foreseeable use.

9 54. The normal and reasonably foreseeable uses of the CLUTCHES have caused, and
10 continue to cause, consumer exposures to the LISTED CHEMICAL, as such exposures are defined
11 by title 27 of the California Code of Regulations, section 25602(b).

12 55. ULTA had knowledge that the normal and reasonably foreseeable uses of the
13 CLUTCHES expose individuals to the LISTED CHEMICAL through dermal contact and/or
14 ingestion.

15 56. ULTA intended that such exposures to the LISTED CHEMICAL from the reasonably
16 foreseeable uses of the CLUTCHES would occur by their deliberate, non-accidental participation in
17 the manufacture, importation, distribution, sale, and offering of the CLUTCHES for sale or use to
18 individuals in the State of California.

19 57. ULTA failed to provide a “clear and reasonable warning” to those consumers and
20 other individuals in the State of California who were or who would become exposed to the LISTED
21 CHEMICAL through dermal contact and/or ingestion during the reasonably foreseeable uses of the
22 CLUTCHES.

23 58. Contrary to the express policy and statutory prohibition of Proposition 65 enacted
24 directly by California voters, individuals exposed to the LISTED CHEMICAL through dermal
25 contact and/or ingestion resulting from the reasonably foreseeable use of the CLUTCHES sold by
26 ULTA without a “clear and reasonable warning,” have suffered, and continue to suffer, irreparable
27 harm for which they have no plain, speedy, or adequate remedy at law.

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