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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, Ph.D., P.E.,
13 Plaintiff,
14
15 vs.
16 FAROUK SYSTEMS, INC.;
and DOES 1-150, inclusive,
17 Defendants.

Case No. CIV-501694

CONSENT JUDGMENT

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

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between plaintiff, Anthony E. Held, Ph.D.,
4 P.E. ("Held"), and defendant, Farouk Systems, Inc. ("Farouk" or "Defendant"), with Held and
5 Farouk collectively referred to as the "Parties."

6 **1.2 Held**

7 Held is an individual residing in California who seeks to promote awareness of exposures
8 to toxic chemicals and to improve human health by reducing or eliminating hazardous substances
9 contained in consumer products. Held is an individual acting in the public interest pursuant to
10 Health and Safety Code § 25249.7(d).

11 **1.3 Defendant**

12 Farouk employs ten or more persons and is a person in the course of doing business for
13 purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health &
14 Safety Code § 25249.6 *et seq.* ("Proposition 65").

15 **1.4 General Allegations**

16 Held alleges that Farouk manufactured, distributed and/or sold, in the State of California,
17 clutches containing di(2-ethylhexyl)phthalate ("DEHP") without first providing the clear and
18 reasonable warning required by Proposition 65. DEHP is listed pursuant to Proposition 65 as a
19 chemical known to the State of California to cause birth defects or other reproductive harm.

20 **1.5 Product Description**

21 The products covered by this Consent Judgment are: (1) clutches, pouches, and/or
22 handbags manufactured, distributed, sold or offered for sale in California including, but not
23 limited to, the Ultra CHI Sleek Yellow Iron with Croc Clutch SKU#GF1311, Ultra CHI Sleek
24 Green Iron with Croc Clutch SKU#GF1306, Ultra CHI Sleek Orange Iron with Croc Clutch
25 SKU#GF1308, Ultra CHI Sleek Blue Iron with Croc Clutch SKU #GF1309, and Ultra CHI Sleek
26 Pink Iron with Croc Clutch SKU #GF1310, as well as other clutches, pouches, and/or handbags
27 containing the same and/or identical components, and (2) toiletry bags manufactured, distributed,
28 sold or offered for sale in California including, but not limited to, the Biosilk Silk & Spray,

1 SKU#PM7654. All such clutches, pouches, handbags and toiletry bags shall be referred to
2 collectively hereinafter as “Products.”

3 **1.6 Notices of Violation**

4 On or about September 1, 2010, Held served Farouk and various public enforcement
5 agencies with a “60-Day Notice of Violation” (“Notice”) alleging that Farouk was in violation of
6 Proposition 65 for failing to warn its customers and consumers in California that clutches it sold
7 exposed users to DEHP. On or about September 28, 2012, Held served Farouk and various public
8 enforcement agencies with a “Supplemental 60-Day Notice of Violation” (“Supplemental
9 Notice”) alleging that Farouk was in violation of Proposition 65 for failing to warn its customers
10 in California that the Products it sold exposed users to DEHP. The Notice and Supplemental
11 Notice are referred to collectively herein as the “Notices.” To the best of the Parties’ knowledge,
12 no public enforcer has commenced and is diligently prosecuting the allegations set forth in the
13 Notices.

14 **1.7 Complaint**

15 On December 20, 2010, Held filed the instant action (hereinafter “Action”) against Farouk
16 (“Complaint”) for the violations of Proposition 65 alleged in the Notice. The Complaint shall be
17 deemed amended, *nunc pro tunc*, to include the violations of Proposition 65 alleged in the
18 Supplemental Notice after the requisite notice period has run and only upon the condition that no
19 public enforcer has commenced an action with respect to the Supplemental Notice.

20 **1.8 No Admission**

21 Farouk denies the material, factual and legal allegations contained in the Notices, the
22 Complaint, and the Complaint as deemed amended, and maintains that all of the products that it
23 has sold in California, including the Products, have been, and are, in compliance with all laws.
24 Nothing in this Consent Judgment shall be construed as an admission of any fact, finding,
25 conclusion of law, issue of law, or violation of law; nor shall compliance with this Consent
26 Judgment constitute or be construed as an admission of any fact, finding, conclusion of law, issue
27 of law, or violation of law, the same being specifically denied by Farouk. The Parties enter into
28 this Consent Judgment pursuant to a full and final settlement of any and all claims arising out this

1 Action between the Parties for the purpose of avoiding prolonged litigation. This section shall
2 not, however, diminish or otherwise affect Farouk's obligations, responsibilities, and duties under
3 this Consent Judgment.

4 **1.9 Consent to Jurisdiction**

5 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
6 jurisdiction over Farouk as to the allegations in the Complaint, that venue is proper in the County
7 of San Mateo, and that this Court has jurisdiction to enter and enforce the provisions of this
8 Consent Judgment.

9 **1.10 Effective Date**

10 For purposes of this Consent Judgment, the term "Effective Date" shall mean the date on
11 which the Consent Judgment is approved by the Court.

12 **1.11 Duties Limited to California.**

13 This Consent Judgment shall have no effect on products sold by Farouk that are not for use
14 inside of California.

15 **2. INJUNCTIVE RELIEF: REFORMULATION**

16 Beginning on the Effective Date and continuing thereafter, Farouk shall not import, ship,
17 sell, or offer to ship for sale in California, any Product that contains more than 1,000 parts per
18 million of DEHP in any accessible component (i.e., any component that may be touched or
19 handled by a user during reasonably foreseeable use) analyzed pursuant to U.S. Environmental
20 Protection Agency testing methodologies 3580A and 8270C or equivalent methodologies used by
21 federal or state agencies for the purpose of determining DEHP content in a solid substance.

22 **3. MONETARY PAYMENTS**

23 **3.1 Civil Penalty Payment Pursuant to Health & Safety Code § 25249.7(b)**

24 Farouk shall pay a total civil penalty of \$20,000, as follows:

25 **3.1.1 Initial Civil Penalty.** Farouk shall pay an initial civil penalty of \$3,000 in
26 the manner provided in Section 3.3.1. The initial civil penalty shall be allocated according to
27 Health & Safety Code § 25249.12 (c)(1) & (d), with seventy-five percent (75%) of the penalty
28 payment earmarked for the California Office of Environmental Health Hazard Assessment

1 (“OEHHA”) and the remaining twenty-five percent (25%) of the penalty payment earmarked for
2 Held. Payment shall be delivered to Held’s counsel within five days of the Effective Date at the
3 Payment Address provided in Section 3.3.4.

4 **3.1.2 Final Civil Penalty.** Farouk shall pay a final civil penalty of \$17,000 on
5 the date provided in Section 3.3.2. The final civil penalty shall be waived in its entirety, however,
6 if an officer of Farouk provides Held with written certification that, as of the Effective Date and
7 continuing into the future, Farouk has met the reformulation standard specified in Section 2 above
8 such that all Products manufactured, produced, assembled, imported, distributed, shipped, sold or
9 offered for sale in California by Farouk are Reformulated Products. Held must receive any such
10 certification on or before April 15, 2013, and time is of the essence. The final civil penalty shall
11 be apportioned in accordance with California Health & Safety Code § 25249.12 (c)(1) & (d), with
12 75% of these funds remitted to OEHHA and the remaining 25% of the penalty remitted to Held.

13 **3.2 Reimbursement of Held’s Fees and Costs**

14 The Parties reached an accord on the compensation due Held and his counsel under
15 general contract principles and the private attorney general doctrine codified at California Code of
16 Civil Procedure § 1021.5 for all work performed in this matter exclusive of fees and costs that
17 may be incurred on appeal, if any. Under these legal principles, Farouk shall pay \$50,000 for fees
18 and costs incurred investigating, litigating and enforcing this matter, including the fees and costs
19 incurred (and to be incurred) negotiating a settlement, drafting the motion and moving the Court
20 for, and obtaining its approval of, this Consent Judgment in the public interest; as follows:

21 **3.2.1 Initial Payment of Fees.** Within five days of the Effective Date Farouk
22 shall pay \$30,000 towards plaintiff’s fees and costs as set forth in Section 3.3.1.

23 **3.2.2 Final Payment of Fees.** Farouk shall make a final payment of \$20,000
24 towards plaintiff’s fees and costs on the date provided in Section 3.3.2. The final attorney fee
25 payment shall be waived in its entirety, however, if an officer of Farouk provides Held with
26 written certification that, as of the Effective Date and continuing into the future, Farouk has met
27 the reformulation standard specified in Section 2 above such that all Products manufactured,
28 produced, assembled, imported, distributed, shipped, sold or offered for sale in California by

1 Farouk are Reformulated Products. Held must receive any such certification on or before April
2 15, 2013, and time is of the essence.

3 **3.3 Payment Procedures**

4 **3.3.1 Initial Payments.** All payments required by Sections 3.1.1 and 3.2 of this
5 Consent Judgment shall be delivered to The Chanler Group within five days of the Effective Date
6 in the form of three checks for the following amounts and made payable as follows:

- 7 (a) One check to "The Chanler Group in Trust for OEHHA" in the
8 amount of \$2,250;
- 9 (b) One check to "The Chanler Group in Trust for Anthony Held" in the
10 amount of \$750; and
- 11 (c) One check to "The Chanler Group" in the amount of \$30,000.

12 **3.3.2 Final Civil Penalty and Fee Payments.** If the final civil penalty and final
13 attorney fee payment referenced in sections 3.1.2 and 3.2.2 are not waived, payment required by
14 Sections 3.1.2 and 3.2.2 of this Consent Judgment shall be delivered on or before April 15, 2013,
15 in the form of three checks, made payable as follows:

- 16 (a) One check to "The Chanler Group in Trust for OEHHA" in the
17 amount of \$12,750;
- 18 (b) One check to "The Chanler Group in Trust for Anthony Held" in the
19 amount of \$4,250; and
- 20 (c) One check to "The Chanler Group" in the amount of \$20,000.

21 **3.3.3 Issuance of 1099 Forms.** After the Consent Judgment has been approved,
22 Farouk shall issue 1099 forms for the payments made pursuant Sections 3.1 and 3.2, as follows:

- 23 (a) one 1099 form to "Office of Environmental Health Hazard
24 Assessment," P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-
25 0284486) for civil penalties paid in the amount of \$2,250
- 26 (b) a second 1099 form to "Anthony Held", whose address and tax
27 identification number shall be furnished upon request, for civil
28 penalties paid in the amount of \$750;

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- (c) a third 1099 form to “The Chanler Group” (EIN: 94-3171522) for the reimbursement of Held’s fees and costs in the amount of \$30,000;
- (d) If the penalty referenced in Section 3.1.2 above is paid, a fourth 1099 shall be issued to the “Office of Environmental Health Hazard Assessment”, P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-0284486), in the amount of \$12,750;
- (e) If the penalty referenced in Section 3.1.2 above is paid, a fifth 1099 shall be issued to “Anthony Held”, whose address and tax identification number shall be furnished upon request, in the amount of \$4,250; and
- (f) If the fees referenced in Section 3.2.2 above is paid, a sixth 1099 shall be issued to “The Chanler Group” (EIN: 94-3171522) for the reimbursement of Held’s fees and costs in the amount of \$20,000.

3.3.4 Payment Address. All payments and tax forms required by Section 3 of this Consent Judgment shall be delivered to Held’s counsel at the following address:

The Chanler Group

Attn: Proposition 65 Controller
2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710

4. CLAIMS COVERED AND RELEASED

4.1 Held’s Release of Farouk

Held, acting on his own behalf and in the public interest releases Farouk, and Farouk’s owners, parents, subsidiaries, affiliates, sister and related companies, suppliers (including those overseas entities which manufactured or supplied the Products to Farouk), directors, officers, employees, attorneys, and each entity to whom Farouk directly or indirectly distributes or sells the Products including, but not limited to, downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees (“Releasees”) from all claims for violations of

1 Proposition 65 that have been or could have been asserted against Farouk and Releasees regarding
2 the failure to warn about exposure to DEHP arising in connection with the Products manufactured,
3 sourced, distributed or sold by Farouk and Releases prior to the Effective Date. For purposes of
4 this Settlement Agreement, compliance with the terms of this Consent Judgment constitutes
5 compliance with Proposition 65 with respect to exposures to DEHP for the Products as set forth in
6 the Notices.

7 Held, in his individual capacity only and not in his representative capacity, also provides a
8 release herein which shall be effective as a full and final accord and satisfaction, as a bar to all
9 actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims,
10 liabilities and demands of Held of any nature, character or kind, whether known or unknown,
11 suspected or unsuspected, limited to and arising out of alleged or actual exposures to DEHP in the
12 Products manufactured, distributed or sold by Farouk and its Releasees, including but not limited
13 to, Farouk.

14 Held also, in his individual capacity only and *not* in his representative capacity, provides a
15 general release herein which shall be effective as a full and final accord and satisfaction, as a bar
16 to all actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses,
17 claims, liabilities and demands of Held of any nature, character or kind, known or unknown,
18 suspected or unsuspected, arising out of the subject matter of the Complaint as to Products
19 manufactured, distributed or sold by Farouk or Releasees. Held acknowledges that he is familiar
20 with Section 1542 of the California Civil Code, which provides as follows:

21 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
22 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER
23 FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN
24 BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER
25 SETTLEMENT WITH THE DEBTOR.

25 Held, in his individual capacity only and not in his representative capacity, expressly
26 waives and relinquishes any and all rights and benefits which he may have under, or which may
27 be conferred on him by the provisions of Section 1542 of the California Civil Code as well as
28 under any other state or federal statute or common law principle of similar effect, to the fullest

1 extent that he may lawfully waive such rights or benefits pertaining to the released matters. In
2 furtherance of such intention, the release hereby given shall be and remain in effect as a full and
3 complete release notwithstanding the discovery or existence of any such additional or different
4 claims or facts arising out of the released matters.

5 **4.2 Farouk's Release of Held**

6 Farouk on behalf of itself, its past and current agents, representatives, attorneys,
7 successors, and/or assignees, hereby waives any and all claims against Held, his attorneys and
8 other representatives, for any and all actions taken or statements made (or those that could have
9 been taken or made) by Held and his attorneys and other representatives, whether in the course of
10 investigating claims, otherwise seeking to enforce Proposition 65 against it in this matter, or with
11 respect to the Products.

12 Farouk acknowledges that it is familiar with Section 1542 of the California Civil Code,
13 which provides as follows:

14 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
15 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER
16 FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN
17 BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER
SETTLEMENT WITH THE DEBTOR.

18 Farouk expressly waives and relinquishes any and all rights and benefits which it may
19 have under, or which may be conferred on it by the provisions of Section 1542 of the California
20 Civil Code as well as under any other state or federal statute or common law principle of similar
21 effect, to the fullest extent that it may lawfully waive such rights or benefits pertaining to the
22 released matters. In furtherance of such intention, the release hereby given shall be and remain in
23 effect as a full and complete release notwithstanding the discovery or existence of any such
24 additional or different claims or facts arising out of the released matters.

1 **5. COURT APPROVAL**

2 This Consent Judgment is not effective until it is approved and entered by the Court and
3 shall be null and void if, for any reason, it is not approved and entered by the Court within nine
4 months after it has been fully executed by all Parties.

5 **6. SEVERABILITY**

6 If, subsequent to the entry of this Consent Judgment, any provision is held by a court to be
7 unenforceable, the validity of the remaining provisions shall not be adversely affected.

8 **7. GOVERNING LAW**

9 The terms of this Consent Judgment shall be governed by the laws of the State of
10 California and apply within the State of California. In the event that Proposition 65 is repealed,
11 preempted, or is otherwise rendered inapplicable by reason of law generally, or as to the Products,
12 then Farouk may provide written notice to Held of any asserted change in the law, and shall have
13 no further obligations pursuant to this Consent Judgment with respect to, and to the extent that, the
14 Products are so affected. Nothing in this Consent Judgment shall be interpreted to relieve Farouk
15 from any obligation to comply with any pertinent state or federal toxics control laws.

16 **8. NOTICES**

17 Unless specified herein, all correspondence and notices required to be provided pursuant to
18 this Consent Judgment shall be in writing and sent by: (i) personal delivery; (ii) first-class,
19 registered or certified mail, return receipt requested; or (iii) a recognized overnight courier to one
20 party by the other at the following addresses:

21 For Farouk:

22 Farouk Shami, President
23 Farouk Systems, Inc.
24 250 Pennbright Drive, Suite 150
Houston, TX 77090

25 with copies to:

26 Sean Simpson, Esq.
27 Simpson Moore, LLP
121 Broadway, Sixth Floor
28 San Diego, CA 92101

For Held:

Proposition 65 Coordinator
The Chanler Group
2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710

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2 Scott A. Sommer, Esq.
3 Pillsbury Winthrop Shaw Pittman LLP
4 Four Embarcadero Center, 22nd Floor
5 San Francisco, CA 94111

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

8
9 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

10 This Consent Judgment may be executed in counterparts and by facsimile or portable
11 document format (PDF) signature, each of which shall be deemed an original, and all of which,
12 when taken together, shall constitute one and the same document.

13 **10. POST EXECUTION ACTIVITIES**

14 Held agrees to comply with the reporting form requirements referenced in California
15 Health & Safety Code § 25249.7(f). The Parties further acknowledge that, pursuant to California
16 Health & Safety Code § 25249.7(f)(4), a noticed motion is required to obtain judicial approval of
17 this Consent Judgment. In furtherance of obtaining such approval, Held and Farouk and their
18 respective counsel agree to mutually employ their best efforts to support the entry of this
19 agreement as a Consent Judgment and to obtain judicial approval of the same in a timely manner.
20 For purposes of this section, "best efforts" shall include, at a minimum, cooperating on the
21 drafting and filing of any papers in support of the required motion for judicial approval.

22 **11. MODIFICATION**

23 This Consent Judgment may be modified only by: (i) the written agreement of the Parties
24 and upon entry of a modified consent judgment by the Court thereon; or (ii) upon a successful
25 motion or application of any Party and entry of a modified consent judgment by the Court.

26 **12. ENTIRE AGREEMENT**

27 This Consent Judgment contains the sole and entire agreement and understanding of the
28 Parties with respect to the entire subject matter hereof, and any and all prior discussions,
negotiations, commitments, and understandings related hereto. No representations, oral or
otherwise, express or implied, other than those contained herein have been made by any party

1 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be deemed
2 to exist or to bind any of the Parties.

3 **13. AUTHORIZATION**

4 The undersigned are authorized to execute this Consent Judgment and have read,
5 understood, and agree to all of the terms and conditions contained herein.

6 **AGREED TO:**

AGREED TO:

7
8 Date: December 28, 2012

Date: 12-28-12

9 By: Anthony E. Held
10 Anthony E. Held, Ph.D., P.E.

By: Basim Shami
Basim Shami, CEO
Farouk Systems, Inc.

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