

**ENDORSED
FILED**
San Francisco County Superior Court

OCT 29 2010

CLERK OF THE COURT
BY: PARAM NATT
Deputy Clerk

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CASE MANAGEMENT CONFERENCE SET

APR - 1 2011 9⁰⁰ AM

DEPARTMENT 212

6 Attorneys for Plaintiff
7 RUSSELL BRIMER

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 FOR THE COUNTY OF SAN FRANCISCO

10 UNLIMITED CIVIL JURISDICTION

11 CGC - 10 - 504985

12 RUSSELL BRIMER,

Case No. _____

13 Plaintiff,

14 **COMPLAINT FOR CIVIL PENALTIES
15 AND INJUNCTIVE RELIEF**

16 v.

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

17 HAMPTON PRODUCTS INTERNATIONAL
18 CORPORATION; KEEPER
19 CORPORATION; and DOES 1-150,
20 inclusive,

21 Defendants.

1 NATURE OF THE ACTION

2 1. This Complaint is a representative action brought by plaintiff RUSSELL
3 BRIMER, in the public interest of the citizens of the State of California, to enforce the People’s
4 right to be informed of the presence of lead, a toxic chemical found in ratchet tie-downs with
5 handles sold in California.

6 2. By this Complaint, plaintiff seeks to remedy defendants’ continuing failures to
7 warn California citizens about their exposures to lead, present in or on certain ratchet tie-downs
8 with handles that defendants import, manufacture, distribute, and/or offer for sale to consumers
9 throughout the State of California.

10 3. High levels of lead are commonly found in and on ratchet tie-downs with handles
11 that defendants import, manufacture, distribute, and/or offer for sale to consumers throughout
12 the State 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 February 27, 1987, the State of California identified and listed lead as a
19 chemical known to cause birth defects and other reproductive harm. Lead became subject to the
20 warning requirement one year later and was therefore subject to the “clear and reasonable
21 warning” requirements of Proposition 65, beginning on February 27, 1988. (*27 CCR § 27001*
22 *(c); Cal. Health & Safety Code § 25249.8.*) Lead shall hereinafter be referred to as the
23 “LISTED CHEMICAL”.

24 6. Defendants import, manufacture, distribute, and/or sell ratchet tie-downs with
25 handles containing excessive levels of the LISTED CHEMICAL including, but not limited to,
26 the *Keeper Ratchet Tie-Down 16 FT Industrial Extreme/Nickel, Part No. 05544 (#0 51643*
27 *05544 5)*. All such ratchet tie-downs with handles containing the LISTED CHEMICAL shall
28 hereinafter be referred to as the “PRODUCTS”.

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

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

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

11 **PARTIES**

12 10. Plaintiff RUSSELL BRIMER is a citizen of the County of Alameda in the State of
13 California who is dedicated to protecting the health of California citizens through the
14 elimination or reduction of toxic exposures from consumer products, and brings this action in
15 the public interest pursuant to California Health & Safety Code Section 25249.7.

16 11. Defendants HAMPTON PRODUCTS INTERNATIONAL CORPORATION
17 ("HAMPTON") and KEEPER CORPORATION ("KEEPER") are persons doing business
18 within the meaning of California Health & Safety Code Section 25249.11.

19 12. Defendants HAMPTON and KEEPER import, manufacture, distribute, and/or
20 offer the PRODUCTS for sale or use in the State of California or imply by their conduct that
21 they import, manufacture, distribute, and/or offer the PRODUCTS for sale or use in the State of
22 California.

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

26 14. MANUFACTURER DEFENDANTS engage in the process of research, testing,
27 designing, assembling, fabricating and/or manufacturing, or imply by their conduct that they
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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 15. Defendants DOES 51-100 (“DISTRIBUTOR DEFENDANTS”) are each persons
4 doing business within the meaning of California Health & Safety Code Section 25249.11.

5 16. 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 17. Defendants DOES 101-150 (RETAILER DEFENDANTS) are each persons doing
9 business within the meaning of California Health & Safety Code Section 25249.11.

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

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

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

20 **VENUE AND JURISDICTION**

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

26 22. 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 23. 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
6 in the State of California, or otherwise purposefully avail themselves of the California market.
7 DEFENDANTS’ purposeful availment renders the exercise of personal jurisdiction by
8 California 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 24. Plaintiff realleges and incorporates by reference, as if fully set forth herein,
12 Paragraphs 1 through 23, inclusive.

13 25. The citizens of the State of California have expressly stated in the Safe Drinking
14 Water and Toxic Enforcement Act of 1986, California Health & Safety Code Section 25249.5,
15 *et seq.*, that they must be informed “about exposures to chemicals that cause cancer, birth
16 defects and other reproductive harm.” (*Cal. Health & Safety Code § 25249.6.*)

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

21 27. On August 5, 2010, a sixty-day notice of violation, together with the requisite
22 certificate of merit, was provided to HAMPTON, KEEPER, and various public enforcement
23 agencies stating that as a result of the DEFENDANTS’ sales of the PRODUCTS, purchasers
24 and users in the State of California were being exposed to lead resulting from the reasonably
25 foreseeable uses of the PRODUCTS, without the individual purchasers and users first having
26 been provided with a “clear and reasonable warning” regarding such toxic exposures.

27 28. DEFENDANTS have engaged in the importation, manufacture, distribution,
28 and/or offering of the PRODUCTS for sale or use in violation of California Health & Safety

1 Code Section 25249.6, and DEFENDANTS' importation, manufacture, distribution, and/or
2 offering of the PRODUCTS for sale or use in violation of California Health & Safety Code
3 Section 25249.6 has continued to occur beyond DEFENDANTS' receipt of plaintiff's sixty-day
4 notices of violation. Plaintiff further alleges and believes that such violations will continue to
5 occur into the future.

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

9 30. The PRODUCTS imported, manufactured, distributed, and/or offered for sale or
10 use in California by DEFENDANTS contained the LISTED CHEMICAL above the allowable
11 State limits.

12 31. DEFENDANTS knew or should have known that the PRODUCTS imported,
13 manufactured, distributed, and/or offered for sale or use by DEFENDANTS in California
14 contained the LISTED CHEMICAL.

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

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

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

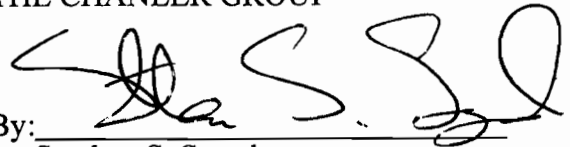
24 35. DEFENDANTS intended that such exposures to the LISTED CHEMICAL from
25 the reasonably foreseeable use of the PRODUCTS would occur by their deliberate, non-
26 accidental participation in the importation, manufacture, distribution, and/or offer for sale or use
27 of PRODUCTS to individuals in the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

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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.

Respectfully submitted,

THE CHANLER GROUP



By: Stephen S. Sayad
Attorneys for Plaintiff
RUSSELL BRIMER