

ENDORSED
FILED
San Francisco County Superior Court

MAY - 9 2011
CLERK OF THE COURT
BY: MARTA VALLEJO
Deputy Clerk

1 Stephen S. Sayad, State Bar No. 104866
Laurence D. Haveson, State Bar No. 152631
2 THE CHANLER GROUP
81 Throckmorton Ave, Suite 203
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5 Attorneys for Plaintiff
RUSSELL BRIMER

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE CITY AND COUNTY OF SAN FRANCISCO
10 UNLIMITED CIVIL JURISDICTION

12 RUSSELL BRIMER,
13 Plaintiff,
14 v.
15 HAMPTON PRODUCTS INTERNATIONAL
CORPORATION; et al,
16 Defendants.

Case No. CGC-10-504985
[PROPOSED] JUDGMENT PURSUANT
TO TERMS OF CONSENT JUDGMENT
Date: April 21, 2011
Time: 9:00 A.M.
Dept.: 301
Judge: Hon. Peter Busch
Action Filed: October 29, 2010

1 In the above-entitled action, Plaintiff RUSSELL BRIMER and Defendant HAMPTON
2 PRODUCTS INTERNATIONAL CORPORATION, having agreed through their respective counsel
3 that judgment be entered pursuant to the terms of the Proposition 65 settlement agreement in the form
4 of a Consent Judgment entered into by the parties, and following issuance of an order approving this
5 Proposition 65 settlement agreement and entering the Consent Judgment on April 21, 2011,

6 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that pursuant to Code of Civil
7 Procedure § 664.6, judgment is entered in accordance with the terms of the Consent Judgment
8 attached hereto as Exhibit 1.

9
10 **IT IS SO ORDERED.**

11 **MAY 06 2011**
12 Dated: _____

PETER J. BUSCH

JUDGE OF THE SUPERIOR COURT
PETER J. BUSCH

Exhibit 1

1 Stephen S. Sayad, State Bar No. 104866
Clifford A. Chanler, State Bar No. 135534
2 THE CHANLER GROUP
81 Throckmorton Ave, Suite 203
3 Mill Valley, CA 94941
Telephone: (415) 388-1132
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5 Attorneys for Plaintiff
RUSSELL BRIMER

6 Robert S. Nicksin, State Bar No. 158430
7 O'MELVENY & MYERS LLP
400 South Hope Street, Suite 1961
8 Los Angeles, CA 90071-2899
Telephone: (213) 430-6273
9 Facsimile: (213) 430-6407

10 Attorneys for Defendant
HAMPTON PRODUCTS
11 INTERNATIONAL CORPORATION
and KEEPER CORPORATION
12

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 FOR THE CITY AND COUNTY OF SAN FRANCISCO
15 UNLIMITED CIVIL JURISDICTION
16

17 RUSSELL BRIMER,

18 Plaintiff,

19 v.

20 HAMPTON PRODUCTS INTERNATIONAL
21 CORPORATION, *et al.*,

22 Defendants.
23

Case No. CGC-10-504985

[PROPOSED] CONSENT JUDGMENT

1 **1. INTRODUCTION**

2 **1.1 Russell Brimer, Hampton Products International Corporation, and Keeper**
3 **Corporation**

4 This Consent Judgment is entered into by and between Plaintiff Russell Brimer (hereinafter
5 “Brimer” or “Plaintiff”) and Defendants Hampton Products International Corporation and Keeper
6 Corporation (an affiliate of Hampton; hereinafter “Hampton” or “Defendant”), with Brimer and
7 Hampton collectively referred to as the “Parties”.

8 **1.2 Plaintiff**

9 Plaintiff is an individual residing in California who seeks to promote awareness of exposures
10 to toxic chemicals and improve human health by reducing or eliminating hazardous substances
11 contained in consumer products.

12 **1.3 Defendant**

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

16 **1.4 General Allegations**

17 Brimer alleges that Hampton has manufactured, distributed, and/or sold in the State of
18 California ratchet tie-downs with handles containing lead on the exterior surface. Lead is listed
19 pursuant to Proposition 65 as a chemical known to the State of California to cause birth defects and
20 other reproductive harm. Lead is hereinafter referred to as the “Listed Chemical”.

21 **1.5 Product Description**

22 The products that are covered by this Consent Judgment are defined as follows: ratchet tie-
23 downs with handles containing the Listed Chemical on the exterior surface including, but not limited
24 to, *Keeper Ratchet Tie-Down 16 FT Industrial Extreme/Nickel, Part No. 05544 (#0 51643 05544 5)*.
25 All such items shall hereinafter be referred to as the “Products”.

26 **1.6 Notice of Violation**

27 On August 5, 2010, Brimer served Hampton and various public enforcement agencies with a
28 document entitled “60-Day Notice of Violation” that provided Hampton and such public enforcers

1 with notice alleging that Hampton was in violation of California Health & Safety Code
2 Section 25249.6 for failing to warn consumers and customers that the Products exposed users in
3 California to the Listed Chemical. To the best of the Parties' knowledge, no public enforcer has
4 diligently prosecuted any action involving the allegations set forth in the 60-Day Notice of Violation
5 ("Notice").

6 **1.7 Complaint**

7 On or about October 29, 2010, Brimer, who alleges that he was and is acting in the interest of
8 the general public in California, filed a complaint in the Superior Court in and for the County of San
9 Francisco, naming Hampton as a defendant and alleging violations of Proposition 65 by Hampton,
10 based on the alleged exposures to the Listed Chemical contained in the Products manufactured,
11 distributed, and/or offered for sale in California by Hampton ("Complaint").

12 **1.8 No Admission**

13 Hampton denies the material, factual, and legal allegations contained in Brimer's Notice and
14 Complaint, and expressly denies any wrongdoing. Hampton further maintains that all products
15 manufactured, distributed, and/or sold by it in California, including the Products, have been, and are,
16 in compliance with all laws. Nothing in this Consent Judgment shall be construed as an admission by
17 Hampton of any fact, finding, issue of law, or violation of law; nor shall compliance with this Consent
18 Judgment constitute or be construed as an admission by Hampton of any fact, finding, conclusion,
19 issue of law, or violation of law, such being specifically denied by Hampton. However, this Section
20 shall not diminish or otherwise affect the obligations, responsibilities, and duties of Hampton under
21 this Consent Judgment.

22 **1.9 Consent to Jurisdiction/Enforcement**

23 For purposes of this Consent Judgment, the parties stipulate that this Court has jurisdiction
24 over Hampton as to the allegations contained in the Complaint, that venue is proper in the
25 County of San Francisco, and that this Court has jurisdiction to enter and enforce the provisions of
26 this Consent Judgment pursuant to Code of Civil Procedure Section 664.6.

27 Brimer or Hampton may, after meeting and conferring, by motion or application for an order
28 to show cause before this Court, enforce the terms and conditions contained in this Consent Judgment.

1 **1.10 Effective Date**

2 For purposes of this Consent Judgment, the term “Effective Date” shall mean January 28,
3 2011.

4 **2. INJUNCTIVE RELIEF: REFORMULATION AND WARNINGS**

5 **2.1 Reformulation Commitment:** Commencing on January 28, 2011, Hampton shall not
6 ship, sell or offer for sale in California any Products that do not provide a clear and reasonable
7 warning pursuant to Proposition 65 unless such Products are “Lead Free”. For purposes of this
8 Consent Judgment, “Lead Free” Products shall mean Products containing components that may be
9 handled, touched, or mouthed by a consumer, and which components yield less than 1.0 microgram of
10 lead when using a wipe test pursuant to NIOSH Test Method 9100 or contain less than 90 parts per
11 million of the Listed Chemical when analyzed pursuant to EPA testing methodologies 3050B and
12 6010B or equivalent methodologies utilized by federal or state agencies for the purpose of
13 determining the amount of the Listed Chemical in a solid substance. Products that are Lead Free are
14 referred to hereinafter as “Reformulated Products”.

15 **2.2 Warning Commitment:**

16 As of January 28, 2011, Hampton shall provide clear and reasonable warnings for all Products,
17 shipped, sold, or offered for sale in California pursuant to the requirements of Proposition 65 unless
18 the Products are Lead Free. The method and message shall be as follows:

19 (a) **Retail Store Sales.**

20 (i) **Product Labeling.** Hampton (or its agents) shall affix a clear and
21 conspicuous warning to the packaging, labeling, or directly on each Product sold in retail outlets in
22 California. The clear and conspicuous warning shall contain the following language:

23 **WARNING:** This product contains one or more chemicals
24 known to the State of California to cause
25 cancer, birth defects and other reproductive
26 harm. Wash hands after handling.

26 (ii) **Point-of-Sale Warnings.** Alternatively, Hampton may provide clear
27 and conspicuous warning signs in the form below to its customers in California with instructions to
28 post the warnings in close proximity to the point of display of the Products.

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WARNING: This product contains one or more chemicals known to the State of California to cause cancer, birth defects and other reproductive harm. Wash hands after handling.

Where more than one Product is sold in proximity to other like items or to those that do not require a warning (e.g., Reformulated Products as defined in Section 2.1 or Products distributed prior to the Effective Date), the following statement must be used:¹

WARNING: This product contains one or more chemicals known to the State of California to cause cancer, birth defects and other reproductive harm. Wash hands after handling.

[list products for which warning is required]

(b) **Hampton-Controlled Mail Order Catalog and Internet Sales.** In the event that Hampton makes direct sales of Products via a Hampton-published mail order catalog or a Hampton-sponsored internet site to customers located in California after the Effective Date that are not Reformulated Products, Hampton shall provide a clear and conspicuous warning for Products: (1) in any Hampton-published mail order catalog; or (2) on any Hampton-sponsored internet site the website. Warnings given in the mail order catalog or on the website shall identify the specific Product to which the warning applies as further specified in Sections 2.2(b)(i) and (ii).

(i) **Mail Order Catalog Warning.** Any warning provided in any Hampton-published mail order catalog must be in the same type size or larger than the Product description text within the catalog. The following warning shall be provided on the same page and in the same location as the display and/or description of the Product:

WARNING: This product contains one or more chemicals known to the State of California to cause cancer, birth defects and other reproductive harm. Wash hands after handling.

Where it is impracticable to provide the warning on the same page and in the same location as the display and/or description of the Product, Hampton may utilize a designated symbol to cross

¹ For purposes of the consent judgment, "sold in proximity" shall mean that the Product and another product are offered for retail sale close enough to each other that the consumer, under customary conditions of purchase, could not reasonably determine which of the two products are subject to the warning sign.

1 reference the applicable warning and shall define the term “designated symbol” with the following
2 language on the inside of the front cover of the catalog or on the same page as any order form for the
3 Product(s):

4 **WARNING:** Certain products identified with this symbol ▼
5 and offered for sale in this catalog contain one
6 or more chemicals known to the State of
7 California to cause cancer, birth defects and
8 other reproductive harm. Wash hands after
9 handling.

10 The designated symbol must appear on the same page and in close proximity to the display
11 and/or description of the Product. On each page where the designated symbol appears, Hampton must
12 provide a header or footer directing the consumer to the warning language and definition of the
13 designated symbol.

14 If Hampton elects to provide warnings in the Hampton-published mail order catalog, then the
15 warnings must be included in all Hampton-published mail order catalogs offering to sell one or more
16 Products printed after the Effective Date.

17 (ii) **Internet Website Warning.** A clear and conspicuous warning may be
18 given in conjunction with the sale of the Product via any Hampton-sponsored Internet website,
19 provided it appears either: (a) on the same web page on which the Product is displayed; (b) on the
20 same web page as the order form for the Product; (c) on the same page as the price for any Product; or
21 (d) on one or more web pages displayed to a purchaser during the checkout process. The following
22 warning statement shall be used and shall appear in any of the above instances adjacent to or
23 immediately following the display, description, or price of the Product for which it is given in the
24 same type size or larger than the Product description text:

25 **WARNING:** This product contains one or more chemicals
26 known to the State of California to cause cancer,
27 birth defects and other reproductive harm. Wash
28 hands after handling.

29 Alternatively, the designated symbol may appear adjacent to or immediately following the
30 display, description, or price of the Product for which a warning is being given, provided that the
31 following warning statement also appears elsewhere on the same web page, as follows:

1 **WARNING:** Products identified on this page with this
2 symbol ▼ contain one or more chemicals
3 known to the State of California to cause
 cancer, birth defects and other reproductive
 harm. Wash hands after handling.

4 (c) **Non-Hampton-Controlled Mail Order Catalog and Internet Sales.**

5 Hampton will use its best efforts to notify its direct customers that sell its products to customers in
6 California via mail order catalog or internet sales of the notice requirements described in section
7 2.2(b), and of the requirement under Proposition 65 that mail order catalogs and internet sites selling
8 to customers in California post Proposition 65 warnings for any Product that is not a Reformulated
9 Product. Hampton recognizes that failure to provide warnings in catalogs and on internet sites for
10 Products sold in California that are not Reformulated Products may expose the retail seller to liability
11 under Proposition 65.

12 **3. MONETARY PAYMENTS**

13 **3.1 Payments Pursuant to Health & Safety Code Section 25249.7(b)**

14 **3.1.1.** In settlement of all claims related to the Products and Listed Chemical referred
15 to in the 60-Day Notice of Violation, the Complaint, and this Consent Judgment, pursuant to Health &
16 Safety Code Section 25249.7(b), Hampton shall pay civil penalties as follows:

17 **3.1.1.1 Initial Civil Penalty:** Hampton shall pay an initial civil penalty of
18 \$8,000 no later than January 21, 2011. Hampton shall issue two separate checks for the Initial Civil
19 Penalty payment pursuant to Health & Safety Code Section 25249.12(c) and (d): (a) one check
20 made payable to The Chanler Group in Trust for the State of California's Office of Environmental
21 Health Hazard Assessment ("OEHHA") in the amount of \$6,000, representing 75% of the total; and
22 (b) one check to The Chanler Group in Trust for Russell Brimer in the amount of \$2,000,
23 representing 25% of the total. Two separate Forms 1099 shall be issued for the above payments:
24 (a) OEHHA, P.O. Box 4010, Sacramento, CA, 95814 (EIN: 68-0284486); and (b) Russell Brimer,
25 whose information shall be provided upon execution of this Consent Judgment. The payments shall
26 be delivered to the following address:

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1 The Chanler Group
2 Attn: Proposition 65 Controller
2560 Ninth Street
3 Parker Plaza, Suite 214
Berkeley, CA 94710-2565

4 **3.1.1.2 Final Civil Penalty:** Hampton shall pay a Final Civil Penalty of
5 \$16,000. The payment shall be delivered to the address above on or before January 31, 2012.
6 However, as an incentive for achieving reformulation of the Products, the Final Civil Penalty shall be
7 waived in its entirety if an Officer of Hampton certifies in writing that, as of January 1, 2012,
8 Hampton sells, ships, and offers for sale in California only Reformulated Products and that Hampton
9 will continue to sell, ship, and offer for sale in California only Reformulated Products. Such
10 certification may be reasonably based on Hampton's design and ordering specifications and
11 laboratory testing of production samples, and must be received by The Chanler Group on or before
12 January 15, 2012.

13 This Final Civil Penalty is to be apportioned in accordance with California Health & Safety
14 Code Section 25249.12(c)1 and (d), with 75% of these funds remitted to OEHHA and the remaining
15 25% of the penalty remitted to Russell Brimer. The Final Civil Penalty of \$16,000 shall be
16 apportioned accordingly: (a) one check made payable to "The Chanler Group in Trust for the State
17 of California's Office of Environmental Health Hazard Assessment ("OEHHA")" in the amount of
18 \$12,000, representing 75% of the total; and (b) one check to "The Chanler Group in Trust for
19 Russell Brimer" in the amount of \$4,000, representing 25% of the penalty. Two separate Forms
20 1099 shall be issued for the above payments: (a) OEHHA, P.O. Box 4010, Sacramento, CA, 95814
21 (EIN: 68-0284486); and (b) Russell Brimer, whose information shall be provided upon execution of
22 this Consent Judgment.

23 **4. REIMBURSEMENT OF FEES AND COSTS**

24 **4.1 Attorney Fees and Costs**

25 The parties acknowledge that Plaintiff and his counsel offered to resolve this dispute without
26 reaching terms on the amount of attorneys' fees and costs to be reimbursed to them, thereby leaving
27 the fee issue to be resolved after the material terms of the agreement had been settled. Hampton then
28 expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had been

1 finalized. The parties then attempted to (and did) reach an accord on the compensation due to
2 Plaintiff and his counsel under general contract principles and the private attorney general doctrine
3 codified at California Code of Civil Procedure Section 1021.5, for all work performed through the
4 mutual execution of this agreement. Hampton shall reimburse Brimer and his counsel the total of
5 \$36,000 for fees and costs incurred as a result of investigating, bringing this matter to Hampton's
6 attention, and litigating and negotiating a settlement in the public interest. Hampton shall issue a
7 separate Forms 1099 for fees and costs (EIN: 94-3171522) and shall make the check payable to "The
8 Chanler Group". The check shall be delivered on or before January 21, 2011, to the following
9 address:

10 The Chanler Group
11 Attn: Proposition 65 Controller
12 2560 Ninth Street
13 Parker Plaza, Suite 214
14 Berkeley, CA 94710-2565

13 **5. RELEASE OF ALL CLAIMS**

14 **5.1 Brimer's Release of Hampton**

15 In further consideration of the promises and agreements herein contained, and for the
16 payments to be made pursuant to Sections 3 and 4 above, Brimer, on behalf of himself, his past and
17 current agents, representatives, attorneys, successors and/or assignees, and in the interest of the
18 general public, hereby waives all rights to institute or participate in, directly or indirectly, any form of
19 legal action and releases all claims, including, without limitation, all actions, and causes of action, in
20 law or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses or
21 expenses (including, but not limited to, investigation fees, expert fees and attorney fees) of any nature
22 whatsoever, whether known or unknown, fixed or contingent (collectively "Claims"), against
23 Hampton and each of its downstream distributors, wholesalers, licensors, licensees, auctioneers,
24 retailers, franchisees, dealers, customers, owners, purchasers, users, parent companies, corporate
25 affiliates, subsidiaries, and their respective officers, directors, attorneys, representatives, shareholders,
26 agents, and employees, and sister and parent entities (collectively "Releasees"). This release is
27 limited to those claims that arise under Proposition 65, as such claims relate to Hampton's alleged
28 failure to warn about exposures to or identification of the Listed Chemical contained in the Products.

1 **5.2 Hampton’s Release of Brimer**

2 Hampton waives any and all claims against Brimer, his attorneys, and other representatives for
3 any and all actions taken or statements made (or those alleged to have been taken or made) by Brimer
4 and his attorneys and other representatives in the course of investigating claims or otherwise seeking
5 enforcement of Proposition 65 against them in this matter with respect to the Products.

6 **5.3 Compliance with Proposition 65**

7 For the purposes of this Consent Judgment and only as to the Products, Hampton’s compliance
8 with this Consent Judgment by Hampton shall be deemed by the Parties to constitute compliance with
9 Proposition 65.

10 **6. COURT APPROVAL**

11 This Consent Judgment is not effective until it is approved and entered by the Court and shall
12 be null and void if, for any reason, it is not approved and entered by the Court within one year after it
13 has been fully executed by all parties, in which event any monies that have been provided to Brimer,
14 or his counsel pursuant to Section 3 and/or Section 4 above, shall be refunded within fifteen (15) days
15 after receiving written notice from Hampton that the one-year period has expired.

16 **7. SEVERABILITY**

17 If, subsequent to the execution of this Consent Judgment, any of the provisions of this Consent
18 Judgment are held by a court to be unenforceable, the validity of the enforceable provisions remaining
19 shall not be adversely affected.

20 **8. GOVERNING LAW**

21 The terms of this Consent Judgment shall be governed by the laws of the State of California
22 and apply within the State of California. In the event that Proposition 65 is repealed or is otherwise
23 rendered inapplicable by reason of law generally, or as to the Products, then Hampton shall provide
24 written notice to Brimer of any asserted change in the law, and shall have no further obligations
25 pursuant to this Consent Judgment with respect to, and to the extent that, the Products are so affected.

26 **9. NOTICES**

27 Unless specified herein, all correspondence and notices required to be provided pursuant to
28 this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-class,

1 registered or certified mail, return receipt requested; or (ii) overnight courier on any party by the other
2 party at the following addresses:

3 For Hampton:

4 Hayward Kendall Kelley III, President
5 Hampton Products International Corporation
6 50 Icon
7 Foothill Ranch, CA 92610

8 For Brimer:

9 Proposition 65 Coordinator
10 The Chanler Group
11 2560 Ninth Street
12 Parker Plaza, Suite 214
13 Berkeley, CA 94710

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

16 **10. COUNTERPARTS; FACSIMILE SIGNATURES**

17 This Consent Judgment may be executed in counterparts and by facsimile, each of which shall
18 be deemed an original, and all of which, when taken together, shall constitute one and the same
19 document.

20 **11. COMPLIANCE WITH HEALTH & SAFETY CODE SECTION 25249.7(f)**

21 Brimer agrees to comply with the reporting form requirements referenced in California Health
22 & Safety Code Section 25249.7(f).

23 **12. ADDITIONAL POST EXECUTION ACTIVITIES**

24 The parties acknowledge that, pursuant to Health & Safety Code § 25249.7, a noticed motion
25 is required to obtain judicial approval of this Consent Judgment. In furtherance of obtaining such
26 approval, Brimer and Hampton and their respective counsel agree to mutually employ their best
27 efforts to support the entry of this agreement as a Consent Judgment and obtain approval of the
28 Consent Judgment by the Court in a timely manner.

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1 **13. MODIFICATION**

2 This Consent Judgment may be modified only: (1) by written agreement of the parties and
3 upon entry of a modified consent judgment by the Court thereon; or (2) upon a successful motion of
4 any party and entry of a modified consent judgment by the Court.

5 Any party seeking to modify this Consent Judgment shall attempt in good faith to meet and
6 confer with the other party prior to filing a motion to modify the Consent Judgment.

7 **14. AUTHORIZATION**

8 The undersigned are authorized to execute this Consent Judgment on behalf of their respective
9 parties and have read, understood, and agree to all of the terms and conditions hereof.

10 **AGREED TO:**

AGREED TO:

11 Date: 1-11-11

Date: _____

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13 By:  _____
14 RUSSELL BRIMER

By: _____
Hayward Kendall Kelley III, President
HAMPTON PRODUCTS
INTERNATIONAL CORPORATION

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7 **14. AUTHORIZATION**

8 The undersigned are authorized to execute this Consent Judgment on behalf of their respective
9 parties and have read, understood, and agree to all of the terms and conditions hereof.

10 **AGREED TO:**

AGREED TO:

11 Date: _____

Date: Jan. 11, 2011

13 By: _____
14 RUSSELL BRIMER

By: 
Hayward Kendall Kelley III, President
HAMPTON PRODUCTS
INTERNATIONAL CORPORATION

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