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10 Attorneys for Plaintiff

11 KIM EMBRY

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

13 **IN AND FOR THE COUNTY OF ALAMEDA**

14 KIM EMBRY, an individual

15 Plaintiff,

16 v.

17 HAMPTON PRODUCTS INTERNATIONAL
18 CORPORATION and DOES 1 through 100,
inclusive

19 Defendants.

Case No. _____

[PROPOSED] CONSENT JUDGMENT

(Health & Safety Code § 25249.6 *et seq.* and
Code Civ. Proc. § 664.6)

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between Kim Embry (“Embry”) on one hand,
4 and Hampton Products International Corporation (“Defendant”) on the other hand (collectively the
5 “Parties”). Defendant manufactures products under the brand name Keeper, among others.

6 **1.2 Plaintiff**

7 Embry is an individual residing in California and acting in the interest of the general public.
8 She seeks to promote awareness of exposures to toxic chemicals and to improve human health by
9 reducing or eliminating hazardous substances contained in consumer products.

10 **1.3 Defendant**

11 Defendant employs ten or more individuals and is a “person in the course of doing business”
12 for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code
13 section 25249.6 *et seq.* (“Proposition 65”).

14 **1.4 General Allegations**

15 Embry alleges that Defendant manufactures, imports, sells, and distributes for sale in California
16 vinyl-coated hooks that contain di(2-ethylhexyl) phthalate (“DEHP”). Embry further alleges that
17 Defendant does so without providing a sufficient health hazard warning as required by Proposition 65
18 and related regulations. Pursuant to Proposition 65, DEHP is listed as a chemical known to cause
19 cancer and reproductive harm.

20 **1.5 Product Description**

21 For purposes of this Consent Judgment, the “Product” or “Products” are defined as vinyl-coated
22 hooks that contain DEHP that are manufactured, imported, sold, or distributed for sale in California by
23 Defendant and Releasees, defined *infra*. Such Products include but are not limited to hooks attached
24 to bungee cords or sold separately for use with bungee cords, and utility hooks.

25 **1.6 Notices of Violation**

26 On October 30, 2017, Embry served Defendant, Orchard Supply Hardware, the California
27 Attorney General, and all other required public enforcement agencies with a 60-Day Notice of
28 Violation of California Health and Safety Code section 25249.6 *et seq.* (“Notice”). The Notice alleged

1 that Defendant violated Proposition 65 by failing to sufficiently warn consumers in California of the
2 health hazards associated with exposures to DEHP contained in the Products. Embry sent an amended
3 notice to the same individuals on November 9, 2017.

4 No public enforcer has commenced or is otherwise prosecuting an action to enforce the
5 violations alleged in the Notice.

6 **1.7 Complaint**

7 On _____, Embry filed a Complaint against Defendant for the alleged violations
8 of Health and Safety Code section 25249.6 that are the subject of the Notice (“Complaint”).

9 **1.8 No Admission**

10 Defendant denies the material, factual, and legal allegations in the Notices and Complaint, and
11 maintains that all of the products it has manufactured, imported, sold, and/or distributed for sale in
12 California, including the Products, have been, and are, in compliance with all laws. Nothing in this
13 Consent Judgment shall be construed as an admission of any fact, finding, conclusion of law, issue of
14 law, or violation of law, nor shall compliance with this Consent Judgment be construed as an admission
15 of any fact, finding, conclusion of law, issue of law, or violation of law. This Section shall not,
16 however, diminish or otherwise affect Defendant’s obligations, responsibilities, and duties under this
17 Consent Judgment.

18 **1.9 Jurisdiction**

19 For purposes of this Consent Judgment and the Complaint only, the Parties stipulate that this
20 Court has jurisdiction over Defendant as to the allegations in the Complaint, that venue is proper in the
21 County of Alameda, and that the Court has jurisdiction to enter and enforce the provisions of this
22 Consent Judgment pursuant to Proposition 65 and Code of Civil Procedure section 664.6.

23 **1.10 Effective Date**

24 For purposes of this Consent Judgment, the term “Effective Date” means the date on which the
25 Court grants the motion for approval of this Consent Judgment, as discussed in Section 5.

26 **2. INJUNCTIVE RELIEF**

27 **2.1 Reformulation and Warnings**

1 Commencing ninety (90) days after the Effective Date, and continuing thereafter, Defendant
2 agrees to manufacture or distribute for sale in California only (a) “Reformulated Products” pursuant to
3 Section 2.2, or (b) Products that are labeled with a clear and reasonable warning pursuant to Section
4 2.3. Defendant and its downstream retailers shall have no obligation to reformulate or label Product
5 that has been manufactured, distributed, offered for sale, or has otherwise entered the stream of
6 commerce prior to the Effective Date.

7 **2.2 Reformulation Standard**

8 “Reformulated Product” shall mean Product that contains less than one thousand (1,000) parts
9 per million of DEHP.

10 **2.3 Clear and Reasonable Warnings**

11 Except as set forth in Section 2.1, commencing ninety (90) days after the Effective Date,
12 Defendant shall provide a clear and reasonable warning for any Product that it manufactures,
13 distributes, or offers for sale in California that is not a Reformulated Product. Defendant shall provide
14 the warning affixed to the packaging or labeling using language similar to the warning(s) below:

15 (a) **WARNING:** This product contains a chemical known to the State of
16 California to cause cancer, birth defects or other reproductive harm.

17 Or

18 (b) the text, “**WARNING** Cancer and Reproductive Harm -
19 www.P65Warnings.ca.gov” accompanied by and placed to the right of a symbol
20 consisting of a black exclamation point in a yellow equilateral triangle with a bold
21 black outline sized to be no smaller than the word, “**WARNING**” as provided by
22 regulations adopted on or about August 30, 2016.

23 The warning shall be prominently placed with such conspicuousness as compared with other
24 words, statements, designs, or devices as to render it likely to be read and understood by an ordinary
25 individual under customary conditions before purchase or use. Each warning shall be provided in a
26 manner such that the consumer or user is reasonably likely to understand to which specific Product the
27 warning applies, so as to minimize the risk of consumer confusion.

28 In the event that the Office of Environmental Health Hazard Assessment promulgates one or
more regulations requiring or permitting warning text and/or methods of transmission different than
those set forth above, Defendant shall be entitled to use, at its discretion, such other warning text and/or
method of transmission without being deemed in breach of this Agreement.

1 **3. MONETARY SETTLEMENT TERMS**

2 **3.1 Settlement Amount**

3 Defendant shall pay forty six thousand dollars (\$46,000) in settlement and total satisfaction of
4 all the claims referred to in the Notice, the Complaint, and this Consent Judgment. This includes civil
5 penalties in the amount of five thousand dollars (\$5,000) pursuant to Health and Safety Code section
6 25249.7(b) and attorney's fees and costs in the amount of forty one thousand dollars (\$41,000) pursuant
7 to Code of Civil Procedure section 1021.5 and Health and Safety Code section 25249 et seq.

8 **3.2 Civil Penalty**

9 The portion of the settlement attributable to civil penalties shall be allocated according to Health
10 and Safety Code section 25249.12(c)(1) and (d), with seventy-five percent (75%) of the penalty paid
11 to the California Office of Environmental Health Hazard Assessment ("OEHHA"), and the remaining
12 twenty-five percent (25%) of the penalty paid to Embry.

13 All payments owed to Embry, shall be delivered to the following payment address:

14 Noam Glick
15 Glick Law Group
16 225 Broadway, Suite 2100
17 San Diego, CA 92101

18 All payments owed to OEHHA (EIN: 68-0284486) shall be delivered directly to OEHHA
19 (Memo Line "Prop 65 Penalties") at the following addresses:

20 For United States Postal Service Delivery:

21 Mike Gyurics
22 Fiscal Operations Branch Chief
23 Office of Environmental Health Hazard Assessment
24 P.O. Box 4010
25 Sacramento, CA 95812-4010

26 For Non-United States Postal Service Delivery:

27 Mike Gyurics
28 Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
1001 I Street
Sacramento, CA 95814

Defendant agrees to provide Embry's counsel with a copy of the check payable to OEHHA,
simultaneous with its penalty payments to Embry.

1 The Parties, including Embry, will exchange completed IRS 1099, W-9, or other forms as
2 required. Relevant information for Glick Law Group, N&T, and Embry are set out below:

- 3 • “Kim Embry” whose address and tax identification number shall be provided within five
4 (5) days after this Settlement Agreement is fully executed by the Parties;
- 5 • “Glick Law Group” (EIN: 47-1838518) at the address provided in Section 3.2(a)(i);
- 6 • “Nicholas & Tomasevic” (EIN: 46-3474065) at the address provided in Section 3.2(a)(i);
7 and
- 8 • “Office of Environmental Health Hazard Assessment” 1001 I Street, Sacramento, CA
9 95814.

10 **3.3 Attorney’s Fees and Costs**

11 The portion of the settlement attributable to attorney’s fees and costs shall be paid to Embry’s
12 counsel, who are entitled to attorney’s fees and costs incurred by her in this action, including but not
13 limited to investigating potential violations, bringing this matter to Defendant’s attention, as well as
14 litigating and negotiating a settlement in the public interest.

15 Defendant shall provide its payment to Embry’s counsel in two checks, divided equally, payable
16 to Glick Law Group, PC (\$20,500) and Nicholas & Tomasevic, LLP (\$20,500) respectively. The
17 addresses for these two entities are:

18 Noam Glick
19 Glick Law Group
20 225 Broadway, Suite 2100
21 San Diego, CA 92101

22 Craig Nicholas
23 Nicholas & Tomasevic, LLP
24 225 Broadway, 19th Floor
25 San Diego, CA 92101

26 **3.4 Timing**

27 The above mentioned checks will be issued within fourteen (14) days of the Effective Date.

28 **4. CLAIMS COVERED AND RELEASED**

4.1 Embry’s Public Release of Proposition 65 Claims

For any claim or violation arising under Proposition 65 alleging a failure to warn about
exposures to DEHP from Products manufactured, imported, sold, or distributed by Defendant prior

1 to the Effective Date, Embry, acting on her own behalf and in the public interest, releases Defendant
2 of any and all liability. This includes Defendant's parents, subsidiaries, affiliated entities under
3 common ownership, its directors, officers, agents, employees, attorneys, and each entity to whom
4 Defendant directly or indirectly distributes or sells the Products, including but not limited to,
5 downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members and
6 licensees (collectively, the "Releasees"). Releasees include Orchard Supply Hardware, which sells
7 Defendant's Products. Compliance with the terms of this Consent Judgment constitutes compliance
8 with Proposition 65 with respect to the alleged or actual failure to warn about exposures to DEHP
9 from Products manufactured, imported, sold, or distributed by Defendant after the Effective Date.
10 This Consent Judgment is a full, final and binding resolution of all claims that were or could have
11 been asserted against Defendant and/or Releasees for failure to provide warnings for alleged
12 exposures to DEHP contained in Products.

13 **4.2 Embry's Individual Release of Claims**

14 Embry, in her individual capacity, also provides a release to Defendant and/or Releasees, which
15 shall be a full and final accord and satisfaction of as well as a bar to all actions, causes of action,
16 obligations, costs, expenses, attorney's fees, damages, losses, claims, liabilities, and demands by
17 Embry of any nature, character, or kind, whether known or unknown, suspected or unsuspected, arising
18 out of alleged or actual exposures to DEHP in Products manufactured, imported, sold, or distributed
19 by Defendant before the Effective Date.

20 **4.3 Defendant's Release of Embry**

21 Defendant, on its own behalf, and on behalf of Releasees as well as its past and current agents,
22 representatives, attorneys, successors, and assignees, hereby waives any and all claims against Embry
23 and her attorneys and other representatives, for any and all actions taken or statements made by Embry
24 and her attorneys and other representatives, whether in the course of investigating claims, otherwise
25 seeking to enforce Proposition 65 against it, in this matter or with respect to the Products.
26
27
28

1 **5. COURT APPROVAL**

2 This Consent Judgment is not effective until it is approved and entered by the Court and shall
3 be null and void if it is not approved and entered by the Court within one year after it has been fully
4 executed by the Parties, or by such additional time as the Parties may agree to in writing.

5 **6. SEVERABILITY**

6 Subsequent to the Court's approval and entry of this Consent Judgment, if any provision is held
7 by a court to be 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 California and
10 apply within the state of California. In the event that Proposition 65 is repealed, or is otherwise
11 rendered inapplicable for reasons, including but not limited to changes in the law, then Defendant may
12 provide written notice to Embry of any asserted change, and shall have no further injunctive obligations
13 pursuant to this Consent Judgment with respect to, and to the extent that, the Products are so affected.

14 **8. NOTICE**

15 Unless specified herein, all correspondence and notice required by this Consent Judgment shall
16 be in writing and sent by: (i) personal delivery; (ii) first-class, registered, or certified mail, return receipt
17 requested; or (iii) a recognized overnight courier to the following addresses:

18 For Defendant:

19 Robert S. Nicksin
20 O'Melveny & Myers LLP
21 400 South Hope Street, 18th Floor
Los Angeles, CA 90071

For Embry:

Noam Glick
Glick Law Group, PC
225 Broadway, 21st Floor
San Diego, CA 92101

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

24 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

25 This Consent Judgment may be executed in counterparts and by facsimile signature, each of
26 which shall be deemed an original, and all of which, when taken together, shall constitute one and the
27 same document.
28

1 **10. POST EXECUTION ACTIVITIES**

2 Embry agrees to comply with the reporting form requirements referenced in Health and Safety
3 Code section 25249.7(f). The Parties further acknowledge that, pursuant to Health and Safety Code
4 section 25249.7(f), a noticed motion is required to obtain judicial approval of the settlement, which
5 motion Embry shall draft and file. In furtherance of obtaining such approval, the Parties agree to
6 mutually employ their best efforts, including those of their counsel, to support the entry of this
7 agreement as judgment, and to obtain judicial approval of their settlement in a timely manner. For
8 purposes of this Section, "best efforts" shall include, at a minimum, supporting the motion for approval,
9 responding to any objection that any third-party may make, and appearing at the hearing before the
10 Court if so requested.

11 **11. MODIFICATION**

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

15 **12. AUTHORIZATION**

16 The undersigned are authorized to execute this Consent Judgment and acknowledge that they
17 have read, understand, and agree to all of the terms and conditions contained herein.

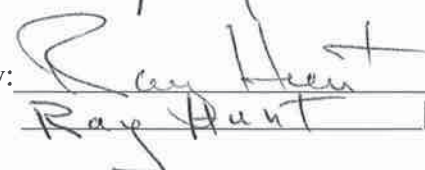
18 **AGREED TO:**

19 Date: February 1, 2018

20
21 By: 
22 KIM EMBRY

18 **AGREED TO BY HAMPTON PRODUCTS
19 INTERNATIONAL CORPORATION:**

20 Date: 1/30/2018

21 By: 
22 Ray Hunt [print name]
23
24
25
26
27
28