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7 UNITED STATES DISTRICT COURT
8 FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

9 KEIRTON USA, INC., a Washington
10 Corporation,

11 Plaintiff,

12 v.

13 U.S. CUSTOMS AND BORDER
PROTECTION, a federal agency,

14 Defendant.
15

Case No.:

**COMPLAINT FOR A DECLARATORY
JUDGMENT AND INJUNCTIVE RELIEF**

16 **I. INTRODUCTION**

17 COMES NOW Plaintiffs Keirton USA, Inc., by and through its counsel in this matter,
18 Buchalter, a Professional Corporation, and brings this action for a declaratory judgment and
19 injunctive relief against Defendant U.S. Customs and Border Protection, alleging as follows:

20 **II. PARTIES**

21 1. Keirton USA, Inc. (“Keirton” or “Plaintiff”) is a Washington Corporation with
22 its principal place of business in Ferndale, Washington.

23 2. U.S. Customs and Border Protection (“CBP” or “Defendant”) is a federal
24 agency.
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III. JURISDICTION AND VENUE

3. Jurisdiction is proper as the claims arise out of federal statutes 19 U.S.C. § 1595a(c)(2)(A), 21 U.S.C. § 863(a)(3), and 21 U.S.C. § 863(d), 22 U.S.C. § 2201 and Defendant is a federal agency. This court also has original jurisdiction over the seizures pursuant to 28 U.S.C. § 1356. This court also has jurisdiction pursuant to 28 U.S.C. § 2201 and 28 U.S.C. § 1367. The United States has waived sovereign immunity pursuant to 5 U.S.C. § 702 for actions seeking other than monetary relief.

4. Venue is proper pursuant to 28 U.S.C. § 1391 as Plaintiff is a corporation located in the State of Washington, does business in the State of Washington, and the property at issue was denied entry by CBP in Blaine, Washington.

IV. FACTS

5. Keirton is a Washington company with its manufacturing base located in Ferndale, Washington. Keirton develops and builds agricultural equipment used to process hemp, kale, hops, and other farm goods. It manufactures and imports parts and components as well as finished equipment from British Columbia, Canada, China, Taiwan, and Japan to its location in Ferndale, Washington.

6. Keirton's finished equipment, parts, and components are used for agricultural purposes, including processing hemp, kale, hops, and other farm goods. Finished equipment includes a Twister Trimmer, which has two components. The first is the trimmer which separates branches from leaves and crop heads, and the second, a vacuum, vacuums up the waste generated from the agricultural processing (the "Twister Trimmer" or, collectively with the components, the "Merchandise"). The Merchandise, once assembled, is sold.

1 7. Keirton has taken appropriate steps to ensure that its Merchandise is used only
2 for lawful purposes. Keirton has agreements with its customers that they will not sell Keirton's
3 Merchandise to anyone who may seem to be engaged in or intends to engage in illegal activity.
4 The agreements also state Keirton will not put products or equipment in any materials that
5 would be construed, either by content or placement, as soliciting the business of persons
6 engaged in or intending to engage in illegal activity.
7

8 8. Keirton has been operating since 2008, importing goods into the United States
9 hundreds of times. Prior to May 2020, Keirton had only one other shipment seized by CBP for
10 a shipment to Canada from a Washington port in 2012.

11 9. In 2012, CBP unlawfully detained and subsequently seized a shipment being
12 imported by Keirton—a Twister Trimmer—on the basis that it constituted “drug
13 paraphernalia.” Through a non-confidential settlement agreement, CBP released the vacuum
14 part of the Goods but kept the trimming component, which another governmental agency sold
15 to U.S. consumers through an online auction in Florida, thereby confirming by CBP's own
16 conduct that the Merchandise was not “drug paraphernalia.”
17

18 10. CBP also verbally promised Keirton it would not seize any more like-kind
19 Merchandise (which, of course, would include discrete subparts contained in the Merchandise
20 it either returned or sold). From 2012 through 2019, CBP kept its promise and did not engage
21 in any further illegal seizures of vacuums, trimmers, and discrete subparts/components all of
22 which make up the Merchandise until 2020.
23

24 11. In the summer of 2020, CBP broke its promise and began seizing the
25 Merchandise that Keirton uses to make its vacuums and trimmers (all are discrete subparts
26

1 associated with one or the other).

2 12. Specifically, in 2020, on October 7, October 15, November 5, November 9,
3 November 11, November 25, and December 16, fourteen shipments of Keirton's Merchandise
4 were seized by CBP agents and subject to forfeiture under the provision of 19 U.S.C.
5 § 1595a(c)(2)(A), 21 U.S.C. § 863(a)(3), and 21 U.S.C. § 863(d). The Merchandise was
6 detained with CBP claiming, without evidence, that the Merchandise would be used for an
7 unlawful purpose (assuming it would once again, eight years later, mischaracterize the
8 Merchandise as "drug paraphernalia"). CBP appraised the value of the Merchandise at
9 \$1,045,472.
10

11 13. After Keirton initiated litigation against CBP, Keirton and CBP came to another
12 settlement on December 31, 2020. Neither party admitted fault or liability and all of the
13 Merchandise was released, for a payment of \$180,000. The public settlement agreement
14 ("Agreement") expressly confirmed the fact that the Merchandise would be released to Keirton
15 as quickly as possible so it could be 1) assembled and 2) sold within the United States.
16

17 14. CBP's conduct in releasing the Merchandise made it clear that introduction of
18 the Merchandise into the United States for sale did not violate the law. Or evaluated another
19 way, had the seized product been cocaine, CBP would have have given it back to the dealer for
20 a small payment so the cocaine could be sold in the United States.
21

22 15. The Settlement Agreement, attached hereto as Exhibit A, even mandated that
23 CBP **"cooperate and provide all necessary assistance to Keirton so that the third-party**
24 **storage facilities release the Subject Merchandise... so it can complete assembly and**
25 **fabrication and take the completed units to market.**" Paragraph 3 (emphasis supplied).
26

1 16. For reasons that remain unclear and contrary to the actions of CBP in releasing
2 the \$1,000,000 in Merchandise to Keirton, in early January 2021, only weeks later, the CBP
3 again seized identical imported Merchandise for Keirton's harvesting equipment that was
4 entering the United States through Blaine, Washington.

5 17. However, this time, CBP took a different and far more tricky/gaming approach.
6 CBP didn't "seize" the components. Instead, CBP denied entry to the components and informed
7 Keirton, in writing that CBP was "**unable to make an admissibility determination.**" Attached
8 hereto as Ex. B (emphasis supplied).

9 18. The Merchandise that was denied entry because CBP could not make an entry
10 admissibility determination was exactly the same Merchandise CBP has let into the United
11 States from 2012 to 2019, the exact Merchandise CBP seized in 2020 only to return to Keirton
12 after a \$180,000 payment, and is identical to another shipment that was allowed entry in 2021.
13 It is impossible for CBP to claim it could not make an admissibility determination because it
14 has made admissibility determinations for this exact merchandise hundreds of times over the
15 past 9 years.

16 19. CBP did not give a reason for this action, because by not doing so, it thought it
17 could avoid a declaratory judgment action on its decision to deny entry and this claim for
18 injunctive relief. In fact, its actions did just the opposite, however requiring Keirton to file a
19 FTCA claim for the temporal damages CBP's agents, Ms. Hickman and Ms. Wagner, have
20 caused to date.

21 20. The Merchandise that was denied entry in January of this year are the same
22 Merchandise that CBP has allowed into the United States on hundreds of occasions.
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1 21. The Merchandise that was denied entry in January of this year are also the same
2 Merchandise that CBP seized then partly released and partly sold in 2012.

3 22. The Merchandise that was denied entry in January of this year are also the same
4 Merchandise that CBP released pursuant to the Agreement entered in December 2020.

5 23. Without this shipments, and those in process, Keirton cannot manufacture its
6 harvesting equipment.

7
8 24. Keirton has over 100 employees with 50 employees at its Ferndale, Washington,
9 location. Keirton's viability as a business and employer is dependent on its ability to import
10 goods. Without the ability to import the Merchandise that CBP has allowed into the country on
11 hundreds of previous occasions, Keirton will soon have to lay off all of its employees and close
12 the business permanently.

13
14 **V. CAUSES OF ACTION**

15 **DECLARATORY RELIEF – CIVIL RULE 57**

16 **(Count One)**

17 25. Keirton re-alleges all prior allegations contained in the previous paragraphs as
18 if set forth in full herein.

19 26. A ripe and justiciable controversy exists with regard to the circumstances and
20 legality of CBP's denial of entry of Plaintiff's Merchandise in its January 2021 shipment.

21 27. Plaintiff's Merchandise is legal under applicable law. This is confirmed by (1)
22 the conduct of the CBP in 2012, when it returned and detained/seized the vacuum portion of
23 the Twister Trimmer and then auctioned off to the public the trimming portion of the Twister
24 Trimmer; (2) CBP's conduct from 2013-2019 when it granted entry to every shipment of
25
26

1 Merchandise Keirton made into the United States; and (3) CBP's conduct in the 2020 settlement
2 agreement, wherein it worked with Keirton to coordinate the release of its Merchandise that
3 CBP valued at almost \$1,500,000, so that Keirton could complete its assembly and sale into the
4 United States marketplace in return for a payment of \$180,000.

5
6 28. CBP's actions in denying entry to the Merchandise creates a judiciable
7 controversy over the legality of the Merchandise's entry, even though CBP attempts, in a clever
8 way, to avoid classifying the basis of the denial.

9 29. This Court should declare, as a matter of law, that the Keirton Merchandise is
10 legal under the applicable laws, as provided in those laws and given the conduct of CBP for the
11 past 15 years.

12 30. Keirton requires judicial intervention through a declaratory judgment, because a
13 real and judiciable controversy exists over the admissibility of its Merchandise, necessitating a
14 declaration from this Court that the denial of entry by CBP (and any future denial of entry of
15 Merchandise) is not legal under applicable laws.

17 **INJUNCTIVE RELIEF – CIVIL RULE 65**

18 31. Keirton re-alleges all prior allegations contained in the previous paragraphs as
19 if set forth in full herein.

20 32. Keirton seeks to import legal Merchandise for lawful purposes and has taken
21 appropriate steps to ensure its Merchandise is used for lawful purposes.

22 33. Keirton is likely to succeed on the merits of its claim because CBP has
23 wrongfully denied Keirton's Merchandise entry into the United States. This denial was made
24 despite CBP being informed of the Merchandise's intended lawful purposes and end users.
25
26

1 34. The Merchandise has been affirmed as legal by the acts of CBP over the past 9
2 years, including allowing hundreds of like-kind shipments into the United States, seizing and
3 then returning to Keirton almost \$1,500,000 in Merchandise in an expedited manner so it could
4 assemble and sell the same into the United State marketplace, and by declining to categorize it
5 as drug paraphernalia in its most recent denial on entry letter (Ex. B).
6

7 35. Keirton will be irreparably harmed by CBP's conduct in denying entry to its
8 Merchandise in the future if this Court does not enjoin the same. Without injunctive relief,
9 continued exclusion of Keirton's Merchandise will result in the shuttering of Keirton's business
10 and the displacement of 50 workers in Ferndale, Washington.

11 36. The balance of the equities tips strongly in Keirton's favor. Keirton will be
12 driven out of business if CBP's actions in detaining and then denying entry, without
13 explanation, stand. Conversely, the government has no interest in preventing the sale of Twister
14 Trimmers or their components, as it put the trimmer component of a Twister Trimmer up for
15 auction to the general public in 2012 after seizing it from Keirton and gave the vacuum
16 component back to Keirton. In addition, pursuant to the Agreement between CBP and Keirton
17 from December 2020, CBP returned the similar and identical components back to Keirton,
18 which CBP valued at almost \$1,500,000, in return for an \$180,000 payment, with the express
19 contractual representation that Keirton would assemble the Merchandise and sell all of it into
20 the United States marketplace. And finally, CBP is now playing games, refusing to even
21 categorize the rejected shipments, instead asserting an inability to assess what it has assessed
22 hundreds of times over the past 9 years.
23
24

25 37. The public interest will be served by the issuance of an injunction. The public
26

1 has an interest in preventing agency overreaching, prevent inconsistent agency action, in the
 2 preservation of legally operated businesses that conduct import and export businesses, and in a
 3 clear interpretation of the statute and its lawful application.

4 **VI. PRAYER FOR RELIEF**

5 WHEREFORE, having fully plead, Keirton prays for the following relief:

6 1. An Order from this Court declaring that CBP may not deny entry into the United
 7 States the Merchandise of Keirton;

8 2. An Order enjoining CBP from denying entry to, seizing, or detaining Keirton's
 9 Merchandise;

10 3. An Order maintaining the status quo pending trial of the declaratory judgment
 11 and claims for injunctive relief, permitting Keirton to import its Merchandise and not be ruined
 12 as a business as a result of the actions of CBP and its representatives, Ms. Hickman and Ms.
 13 Wagner;
 14

15 4. For an award of legal fees and costs, as permitted by statute or common law; and

16 5. For such other and further relief as this Court deems just and equitable.

17 Dated: February 23, 2021

18 BUCHALTER

19 By: /s/ Brad P. Thoreson

20 Brad P. Thoreson, WSBA #18190
 21 Harold (Hal) E. Snow, Jr., WSBA #32645
 22 1420 Fifth Avenue, Suite 3100
 23 Seattle, WA 98101-1337
 24 Telephone: 206.319.7052
 25 Email: bthoreson@buchalter.com
 26 Email: hsnov@buchalter.com

Attorneys for Plaintiff Keirton USA, Inc.

BN 44385431v1

Exhibit A

SETTLEMENT AGREEMENT

This Settlement Agreement (the “Agreement”) is entered into by the United States and United States Customs and Border Protection (“CBP”) (collectively “the Government”) on one hand, and Keirton , Inc., its subsidiaries and assigns (collectively “Keirton”), on the other. The Government and Keirton may be collectively referred to herein as the “Parties”. This Agreement shall be effective and enforceable on the date executed by both Parties (the “Effective Date”).

This dispute involves the detentions and seizures of merchandise imported by Keirton and presently being detained or under seizure in the Western District of Washington, including, but not limited to, the following:

Seizure Number	Area Port	Seizure Date	Appraised Value (per CBP)
2021300100000401	Seattle	10/7/20	\$239,574
2021300100000501	Seattle	10/7/20	\$245,727
2021300100001001	Seattle	10/15/20	\$142,552
2021300100003101	Seattle	11/11/20	\$159,396
2021300400002901	Blaine	11/5/20	\$83,425
2021300400003001	Blaine	11/5/20	\$30,312
2021300400003101	Blaine	11/5/20	\$13,735
2021300400003201	Blaine	11/5/20	\$4,000
2021300400003401	Blaine	11/9/20	\$6,938
2021300400003501	Blaine	11/9/20	\$50,000
2021300400003601	Blaine	11/9/20	\$3,500
2021300400003701	Blaine	11/9/20	\$4,853
2021300400004901	Blaine	11/25/20	\$13,460
2021300400006301	Blaine	12/16/20	\$48,000

and any additional detentions and/or seizures up and to the Effective Date made in the Western District of Washington. Keirton has sued CBP in Federal District Court for the Western District of Washington (Case No. 20-cv-1743) asserting the detentions and seizures are contrary to law and that its Subject Merchandise is legal. CBP disputes the claims of Keirton and has asserted the Subject Merchandise is illegal drug paraphernalia. (The claims and defenses of CBP are collectively referred to herein as the “Dispute”). All the detained and seized merchandise described above will be referred to herein as the “Subject Merchandise.” This Agreement does not relate to any Keirton merchandise detained or seized (i) outside the Western District of Washington or (ii) beyond the Effective Date. To avoid the uncertainty of ongoing litigation, the Parties agree to fully resolve the Dispute on the following terms and conditions.

TERMS AND CONDITIONS

The Government agrees as follows:

1. CBP agrees to authorize those holding the Subject Merchandise to release it to Keirton and its authorized representatives.
2. CBP will not require Keirton to direct export the Subject Merchandise.
3. CBP agrees to cooperate and provide all necessary assistance to Keirton so that the third-party storage facilities release the Subject Merchandise as soon as is possible after Keirton has filed entry and paid duties therefor, understanding the urgency in getting the Subject Merchandise to Keirton so it can complete assembly and fabrication and take the completed units to market.

Keirton agrees as follows:

4. Keirton shall pay to the United States \$180,000 as a remission fee, by electronic funds transfer, within 10 days of the Effective Date of the Agreement pursuant to written instructions from the United States Attorney's Office for the Western District of Washington.
5. Keirton agrees to pay all third-party storage fees and costs which are due and owing with regard to the storage of the Subject Merchandise directly to all third parties who are holding the Subject Merchandise, so that the Subject Merchandise will be released. At this time, it is estimated that those charges approximate Thirty-Five Thousand Dollars and No/100 (\$35,000).
6. Keirton agrees promptly to file entry and pay all duties for entry on the Subject Merchandise into the United States, in the manner required by law.

The Parties agree as follows:

7. Neither Party admits liability for purposes of this Agreement.
8. Keirton has not agreed with the propriety of the detentions or seizures of the Subject Merchandise for the purposes of this Agreement.
9. Keirton shall release, forever discharge, and hold harmless (i) CBP, (ii) the United States of America, (iii) its agencies and departments, and (iv) its current and former representatives, officers, agents, attorneys, contractors, and employees, from any and all actions, causes of action, suits, proceedings, debts, judgments, damages, claims or demands whatsoever in law or equity which Keirton, its heirs, successors or assignees ever had, now have or may have, whether known or unknown, relating to or arising from the inspection, detention, seizure, and/or forfeiture of the Subject Merchandise.
10. Keirton agrees to the dismissal of its legal action currently pending against CBP in the Federal District Court for the Western District of Washington, *Keirton v. CBP*, 20-CV-1734, with prejudice, and CBP agrees that it is releasing any all claims it could have brought against Keirton in that proceeding.

11. Keirton retains all rights under statute or common law to contest any future detentions and/or seizures of its merchandise, including compelling judicial foreclosure.
12. CBP makes no promises, guarantees, or other representations concerning any future detentions and/or seizures of Keirton's merchandise.
13. The Parties understand that this Agreement contains the full agreement between Keirton and CBP regarding the Subject Merchandise. The Agreement may not be modified, altered, or changed in any way except by written agreement executed by both parties. The Parties further acknowledge that there are no other written or oral agreements between the Parties as related to the Subject Merchandise.
14. The Parties shall bear their legal fees and costs incurred in this matter.
15. The Parties have been advised by legal counsel in this matter and each understand the legal consequences of this Agreement.
16. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument. Any electronic signature, or signature electronically transmitted, shall be binding on a party so confirming.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

Date: 12/31/20



JAY EVANS, CEO
On Behalf of Keirton, Inc.

Date: _____

DIANA WAGNER
Fines, Penalties, & Forfeiture Officer
U.S. Customs & Border Protection
1000 Second Ave, Suite 2100
Seattle, WA 98104
(206) 370-3739
*Representative for U.S. Customs and Border
Protection*

Date: _____

KAY HICKMAN
Fines, Penalties, & Forfeiture Officer
U.S. Customs & Border Protection
9901 Pacific Highway
Blaine, WA 98230
(360) 332-2342
*Representative for U.S. Customs and Border
Protection*

Date: _____

NICKOLAS BOHL
Assistant United States Attorney
United States Attorney's Office
700 Stewart Street, Suite 5220
Seattle, WA 98230
(206) 553-7970
Counsel for the United States of America

Date: _____

JAY EVANS, CEO
On Behalf of Keirton, Inc.

Date: 12/31/2020

DIANA L
WAGNER

Digitally signed by
DIANA L WAGNER
Date: 2020.12.31 12:59:58
-08'00'

DIANA WAGNER
Fines, Penalties, & Forfeiture Officer
U.S. Customs & Border Protection
1000 Second Ave, Suite 2100
Seattle, WA 98104
(206) 370-3739
*Representative for U.S. Customs and Border
Protection*

Date: December 31, 2020



KAY HICKMAN
Fines, Penalties, & Forfeiture Officer
U.S. Customs & Border Protection
9901 Pacific Highway
Blaine, WA 98230
(360) 332-2342
*Representative for U.S. Customs and Border
Protection*

Date: _____

NICKOLAS BOHL
Assistant United States Attorney
United States Attorney's Office
700 Stewart Street, Suite 5220
Seattle, WA 98230
(206) 553-7970
Counsel for the United States of America

Date: _____

JAY EVANS, CEO
On Behalf of Keirton, Inc.

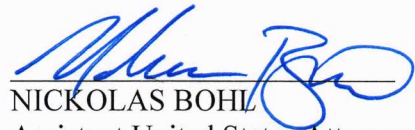
Date: _____

DIANA WAGNER
Fines, Penalties, & Forfeiture Officer
U.S. Customs & Border Protection
1000 Second Ave, Suite 2100
Seattle, WA 98104
(206) 370-3739
*Representative for U.S. Customs and Border
Protection*

Date: _____

KAY HICKMAN
Fines, Penalties, & Forfeiture Officer
U.S. Customs & Border Protection
9901 Pacific Highway
Blaine, WA 98230
(360) 332-2342
*Representative for U.S. Customs and Border
Protection*

Date: 12/31/2020



NICKOLAS BOHL
Assistant United States Attorney
United States Attorney's Office
700 Stewart Street, Suite 5220
Seattle, WA 98230
(206) 553-7970
Counsel for the United States of America

EXHIBIT B



9901 Pacific Highway
Blaine, WA 98230

**U.S. Customs and
Border Protection**

February 11, 2021

Akana K. Ma
Buchalter AterWynne
1331 NW Lovejoy Street, Ste. 900
Portland, Oregon 97209

RE: Keirton USA, Inc.; Detention 2021040

Dear Mr. Ma:

This letter is to inform you that U.S. Customs and Border Protection is releasing all merchandise detained at the Blaine, Washington Port-of-Entry, relating to the following Entry and Detention numbers.

Entry No. SQ4/03456610
CBP Detention No. 2021040

Based on the responses provided to the CBP Form 28, issued by CBP (see attached), the Agency is unable to make an admissibility determination. As such, under 19 U.S.C. § 1499(c)(5) and 19 C.F.R. § 151.16(f),(j), the above referenced merchandise is hereby **excluded** from entering the United States. In accordance with 19 U.S.C. § 1514, you have the right to protest CBP's decision to exclude.

For any questions, please contact Fines, Penalties, and Forfeitures Officer Kay Hickman at: KAY.A.HICKMAN@CBP.DHS.GOV or (360) 332-2342.

Sincerely,

A handwritten signature in blue ink that reads "Kay A. Hickman".

Kay A. Hickman
Fines, Penalties & Forfeitures Officer

Enclosure: CBP Form 28

US CBP Detention Notice No.: 2021040

Keirton USA, Inc. responses to CF-28 Supplemental Questions dated January 20, 2021

Please provide the following information to Customs and Border Protection, Attention CBP Officer Brian Segaar, within 30 days:

- i. Identify if the import is a stand-alone item/article, an item that will be used to manufacture, produce, or process a product, an article that will be assembled/combined with other articles/materials.

[Keirton: No parts are stand-alone items. All parts are used to assemble other items. All parts are identical or similar to those that were previously seized and released under the terms of the Settlement Agreement dated December 31, 2020 between CBP, Keirton, and the Office of the U.S. Attorney.]

- a. If the import is a stand-alone item/article: [Keirton: N/A]
 - i. Will the item be assembled with other materials, articles to form an ultimate end-item?
 - ii. Identify the item's primary intended use.
 - iii. Provide evidence demonstrating that the identified use listed above is the intended primary use. Evidence such as sales/manufacturing statistics and information and regulatory documents or approvals may be submitted.
- b. If the imported item will be used to manufacture, produce, or process a product:
 - i. Identify and explain the intended end product. [Keirton: Agricultural leaves separated from branches and stems]
 - ii. Identify and explain the materials the imported item will use to manufacture, produce, or process. [Keirton: Agricultural crop branches and leaves]
 - iii. Other than what was identified above, identify all other uses intended for the imported item. [Keirton: Trimming and removal of leaves from branches and stems]
- c. If the imported article will be assembled/combined with other articles/materials:
 - i. Identify the ultimate end-item. [Keirton: Ultimate end item = Twister Trimmer agricultural trimming machine]
 - ii. Identify the ultimate end-item's intended use. [Keirton: Agricultural leaves separated from branches and stems]
 - iii. Provide evidence demonstrating that the identified use listed above is the intended primary use (for the ultimate end-item). Evidence such as sales/manufacturing statistics and information and regulatory documents or approvals may be submitted. [Keirton: See, Twister Trimmer User Manual]
- ii. If the ultimate end-item will be used to manufacture, produce, or process a product:

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

KEIRTON USA, INC.

(b) County of Residence of First Listed Plaintiff Whatcom
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Brad P. Thoreson, WSBA #18190
Buchalter, 1420 Fifth Ave., Ste. 3100
Seattle, WA 98101 - 206-319-7052

DEFENDANTS

U.S. CUSTOMS AND BORDER
PROTECTION

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☐ 3 Federal Question (U.S. Government Not a Party)
- ☒ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|---------------------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input checked="" type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input checked="" type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <input type="checkbox"/> 880 Defend Trade Secrets Act of 2016 SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692) <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) ☐ 6 Multidistrict Litigation - Transfer ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

A claim for a declaratory judgment under 28 USC §2201 and for injunctive relief under FRCP 65.

Brief description of cause:

The issuance of an injunction maintaining the status quo and permitting Keirton to continue to import and sell its legal merchandise.

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

2/22/2021

SIGNATURE OF ATTORNEY OF RECORD

/s/ Brad P. Thoreson

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
 - (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
 - (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here. United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
- Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
- Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
- Original Proceedings. (1) Cases which originate in the United States district courts.
- Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.
- Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
- Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
- Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
- Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
- Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
- PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
- Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
- Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

UNITED STATES DISTRICT COURT
for the

WESTERN DISTRICT OF WASHINGTON AT SEATTLE

KEIRTON USA, INC., a Washington Corporation,

Plaintiff(s)

v.

Civil Action No.

U.S. CUSTOMS AND BORDER PROTECTION,

Defendant(s)

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

U.S. Customs and Border Protection
c/o Office of General Counsel
1000 Second Ave., Ste. 2100
Seattle, WA 98104

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Brad P. Thoreson, WSBA #18190
Buchalter
1420 Fifth Ave., Ste. 3100
Seattle, WA 98101
206-319-7052

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* _____
 was received by me on *(date)* _____ .

☐ I personally served the summons on the individual at *(place)* _____
 _____ on *(date)* _____ ; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____
 _____, a person of suitable age and discretion who resides there,
 on *(date)* _____, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____, who is
 designated by law to accept service of process on behalf of *(name of organization)* _____
 _____ on *(date)* _____ ; or

☐ I returned the summons unexecuted because _____ ; or

☐ Other *(specify)*: _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc: