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12 UNITED STATES DISTRICT COURT

13 EASTERN DISTRICT OF CALIFORNIA

14 BASALITE CONCRETE PRODUCTS, LLC, a
15 Nevada Limited Liability Company,

16 Plaintiff,

17 v.

18 KEYSTONE RETAINING WALL SYSTEMS,
19 INC, a Minnesota Corporation,

20 Defendant.

COMPLAINT FOR VIOLATION OF
STATUTE: CALIFORNIA
FRANCHISE LAW, VIOLATION OF
FEDERAL PATENT LAW, ETC.;
DECLARATORY JUDGMENT;
RESTRAINING ORDERS;
INJUNCTIVE RELIEF; BREACH OF
CONTRACT, INTERFERENCE, AND
DECLARATORY RELIEF

Demand for Jury Trial

22 The Plaintiff, BASALITE CONCRETE PRODUCTS, LLC., ("Basalite") by and through
23 its attorneys, for its complaint against the defendant, KEYSTONE RETAINING WALL
24 SYSTEMS, INC., ("Keystone") alleges:

25 Introduction

26 1. Franchisee/Licensee Basalite brings this action against franchisor/licensor
27 Keystone for damages, injunctive and declaratory relief based on breach of contract, tortious
28 interference, and violation of state and federal law causes of action. Basalite manufactures

1 building products, including retaining wall system blocks. Keystone franchises/licenses patents
2 for the purpose of manufacturing retaining wall system blocks.

3 Overview

4 2. For over twenty years prior to this action, Keystone and Basalite (or its
5 predecessors) enjoyed a symbiotic licensor-licensee/franchisor-franchisee relationship borne out
6 of various formal written agreements which have expired. When the last formal written contract
7 expired on or about January 31, 2006, the parties' relationship continued pursuant to an informal
8 license/franchise arrangement, parts of which were oral and parts of which were implemented by
9 the parties' conduct.

10 3. In 2008, Basalite demanded a decrease of the royalty rates (the "Original Royalty
11 Rates") Keystone imposed for two reasons: (i) Basalite's logical belief in the appropriateness of
12 reduced royalties due to the expiration of certain Keystone patents; and (ii) in order for Basalite
13 to remain competitive in a depressed marketplace.

14 4. Initially Keystone agreed to Basalite's demand to decrease the royalty rates by
15 offering a sliding scale royalty rate to be applied on a project-by-project basis. Ultimately,
16 Basalite refused such offer due to the nightmares related to administering such a program. After
17 some discussion, Basalite proposed a new rate schedule in a letter dated December 3, 2008 (the
18 "New Royalty Rates"), to take effect commencing January 1, 2009. Pursuant to a verbal
19 agreement, after failing to produce significant per-block savings for Basalite with new patented
20 products, Keystone agreed to the New Royalty Rates.

21 5. Due to Keystone's failure to achieve the targeted per-block savings, Basalite
22 commenced payment of, and Keystone accepted without objection, royalty payments which
23 conformed to the New Royalty Rates. By accepting royalty payments pursuant to the New
24 Royalty Rates without protest for over a year, Basalite logically concluded that Keystone had
25 accepted the New Royalty Rates. In addition, Keystone reaffirmed its acceptance of the New
26 Royalty Rates several times throughout the 2009 calendar year during meetings among Basalite
27 and Keystone management.

28 6. Then, in a letter dated March 2, 2010, Keystone repudiated that new arrangement

1 by falsely claiming that it never agreed to the New Royalty Rates, and demanded “arrearages”
2 based on a shortfall calculated using the Original Royalty Rates. Thereafter, Basalite believed
3 the parties engaged in negotiations targeting, first and foremost, a continuation of their
4 license/franchise relationship. Basalite further believed that in the event the parties could not
5 agree to continue their license/franchise relationship, the parties intended to design an orderly
6 wind-down of the relationship.

7 7. Basalite claims that an orderly wind-down requires good faith cooperation
8 between the parties and a notice period which allows both sides sufficient time to arrange for
9 new license/franchise arrangements. Basalite claims that given the length of the pre-existing
10 relationship and industry practice, and the difficulty for both sides to obtain and implement new
11 license/franchise relationships, twelve months from the resolution of this claim is the minimum
12 amount of notice that is reasonable under the circumstances.

13 8. This wind-down period is necessary for Basalite because a) Basalite continues to
14 vigorously promote Keystone’s products to its customers though the present date; b) many of
15 these customers have, as a result of Basalite’s efforts, specified Keystone products for their
16 contracts; c) many of these contracts will not be completed for another twelve months or more;
17 and d) it will take Basalite many months to secure a new license/franchise arrangement with
18 another retaining wall product licensor/franchisor, to begin manufacturing that product, and to be
19 in a position to begin filling orders using that new product. But for Keystone’s clandestine
20 conduct in hiding its intentions to terminate Basalite, as detailed hereafter, a similar wind-down
21 period should be necessary to Keystone for many of the same reasons.

22 9. Despite the time required for an orderly wind-down of such a long-standing
23 relationship, on or about September 29, 2010, Keystone abruptly attempted to terminate its
24 license/franchise arrangement with Basalite on only thirty days’ notice. Such attempt was in
25 reckless disregard of the fact that Keystone misled Basalite by stating on several occasions,
26 including as recently as June 23, 2010, in writing, that if Keystone’s proposal was unacceptable
27 to Basalite, it would work with Basalite to agree upon an orderly wind-down of the business
28 relationship.

1 10. The arrangement between Basalite and Keystone constitutes a "franchise"
2 arrangement under the California statutory scheme. Among other things, this scheme provides
3 that no franchisor may fail to renew a franchise unless it provides its franchisee at least 180 days'
4 prior written notice of its intention not to renew, and good cause or other specified grounds exist
5 (which Basalite denies that good cause or other specified grounds exist). In the alternative, the
6 scheme also provides that should the parties be unable to agree to the terms of a new agreement,
7 which terms are "customary," and should the franchisor give the franchisee 30 days' written
8 notice to accept the new proposed written agreement or be terminated, then such notice will start
9 the running of the 180 day period. Because no qualifying notice was provided, and because no
10 good cause or other specified grounds for termination ever existed, Keystone's purported thirty
11 (30) day notice of its intention to terminate the arrangement is void and ineffective.

12 11. Basalite now believes and alleges that throughout the period of time Keystone
13 misled Basalite to believe that Keystone had agreed to the New Royalty Rates, and for all
14 periods following March of 2010 when Basalite, in good faith, negotiated toward a continuation
15 of the parties' relationship, Keystone had no actual intention of continuing the relationship.
16 Rather, Keystone negotiated in bad faith simply buying the time necessary to recruit a substitute
17 licensee/franchisee or manufacturer who would build the product on a "toll" basis, permitting
18 Keystone to abruptly terminate Basalite as a licensee/franchisee thereby preventing Basalite from
19 filling its customers' needs who had specified Keystone products for their construction contracts
20 and providing Keystone an opening to capture that business for itself.

21 12. Basalite further alleges that, for quite some time, Keystone inappropriately
22 charged, and continues to inappropriately charge, Basalite royalty payments on certain products
23 for which Keystone's patent rights expired, and that Keystone's activities in this regard violates
24 long-standing federal patent law which has been established by the United States Supreme Court,
25 but of which Basalite was unaware until recently.

26 13. Basalite further alleges that Keystone inappropriately charged, and continues to
27 inappropriately charge, Basalite royalty payments on products and/or manufacturing techniques
28 to which Basalite enjoyed joint inventorship status, and that Keystone's activities in this regard

1 violates applicable federal patent law, but of which Basalite was previously unaware until
2 recently.

3 14. Basalite contends that it is entitled to appropriate relief enjoining Keystone from
4 abruptly terminating or refusing to renew its franchise agreements with Basalite; that it is entitled
5 to an order requiring Keystone to disgorge the illegal royalties it has been charging, and that it is
6 entitled to an award of compensatory and punitive damages, according to proof.

7 The Parties

8 15. Plaintiff Basalite is a Nevada limited liability company with its principal place of
9 business at 605 Industrial Way, Dixon, California 95620. Basalite is in the business of
10 manufacturing building products, including such items as pavers, concrete blocks, and blocks for
11 retaining wall systems such as those which are the subject of the license agreement with
12 Keystone. Basalite manufactures the products which are the subject of the instant
13 license/franchise arrangements out of its plants, which are located in Dixon, California, and
14 Tracy, California; Carson City, Nevada; Boise, Idaho; and Dupont, Washington. Plaintiff is a
15 major supplier of building materials to large retail outlets who resell the products to the general
16 public and to retaining wall contractors or to dealers who resell to them.

17 16. Defendant Keystone is a Minnesota corporation with its principal place of
18 business at 4444 West 78th Street, Minneapolis, Minnesota 55435.

19 The Formal License/Franchise Agreements

20 17. The parties entered into various formal written license-franchise agreements
21 whereby Keystone granted Basalite, or its predecessor-in-interest, rights to utilize Keystone's
22 patents and trademarks, to manufacture, market, and sell concrete blocks for retaining wall
23 systems in various portions of California, including areas within this court's jurisdiction, as well
24 as portions of Idaho, Nevada, and Washington. The written agreements between the parties
25 expired on December 31, 2005 and January 31, 2006, respectively.

26 Informal Agreements

27 18. Thereafter the franchisor continued allowing Basalite to manufacture and market
28 Keystone products pursuant to express and implied oral agreements and conduct whereby

1 Basalite continued manufacturing Keystone-licensed products and paying royalty payments in
2 accordance with the Original Royalty Rates that Keystone accepted.

3 Modification of Royalty Schedule

4 19. By mid-2008, certain previously expired Keystone patents, the deteriorating
5 economy and fierce competition from other retaining wall product manufacturers, made it
6 necessary and appropriate for Basalite to demand a modification of the Original Royalty Rates.
7 In August, 2008, Keystone acknowledged the expired patents and the challenging market
8 conditions and proposed a sliding royalty scale to be applied on a project-by-project basis.
9 While Basalite initially agreed to consider such proposal, its Chief Financial Officer quickly
10 recognized the administrative nightmare caused by such sliding royalty scale. As a result,
11 Basalite rejected the sliding royalty scale less than two weeks after it was proposed.

12 20. After protracted discussions, Basalite issued a letter dated December 3, 2008 to
13 Keystone which proposed future "Recommended Royalty" rates (previously defined as the "New
14 Royalty Rates") which were specified in the letter in lieu of the existing "Current Royalty" rates
15 (previously defined as the "Original Royalty Rates"). A copy of this letter is attached as Exhibit
16 A. This letter stated that Basalite required a final agreement in place by January 1, 2009.

17 21. At an early January 2009 meeting, in an attempt to salvage the Old Royalty Rates,
18 Keystone posited that Basalite would enjoy per product cost savings by using a certain new
19 Keystone patented product configuration. In such verbal proposal, Keystone agreed that if it was
20 unable to save Basalite an agreed upon amount in manufacturing costs per block, then Keystone
21 would accept the New Royalty Rates effective January 1, 2009. The parties subsequently
22 determined that Keystone's new patented product configuration would not save Basalite the
23 requisite amount in manufacturing costs, therefore the new patented product configuration was
24 not used and the New Royalty Rates would remain in effect.

25 22. Thereafter, until June of 2009, Basalite paid, and Keystone accepted, without
26 protest, the royalty payments calculated at the New Royalty Rates. Then, in June of 2009,
27 certain Keystone representatives communicated to Basalite that Keystone believed that Basalite
28 reneged on its agreement to purchase the new molds which would implement Keystone's new

1 patented product configuration. This caused Basalite management to request a meeting with
2 Keystone management to clarify any and all misunderstandings. At a June 26, 2009 meeting
3 among Basalite and Keystone management, Keystone reconfirmed that because the threshold
4 savings never materialized, the New Royalty Rate schedule would remain in place.

5 23. In reliance on Keystone's representations, apparent agreement, and conduct,
6 Basalite continued manufacturing and promoting Keystone products to its customers, it
7 continued paying royalties to Keystone in accordance with the New Royalty Rates and Keystone
8 continued accepting such royalty payments without protest. Keystone's aforementioned conduct
9 reconfirmed that Basalite's proposal set forth in its December 3, 2008 letter had been accepted by
10 Keystone.

11 24. In October of 2009, Keystone's accounting department notified Basalite that
12 Basalite had short-paid its royalty payments. Basalite was in fact current based on the New
13 Royalty Rates. When Basalite management contacted Keystone management about this
14 assertion by Keystone's accounting department, Keystone's management stated that he would
15 look into the matter and get back to Basalite. Keystone never responded to this event, but rather,
16 continued accepting Basalite's payments of royalty payments in accordance with the New
17 Royalty Rates. During this sequence of events, Keystone management never indicated to
18 Basalite management that the New Royalty Rates were unacceptable.

19 25. Then, on or about March 2, 2010, Keystone sent Basalite a letter wherein
20 Keystone repudiated the existing modified royalty payment agreement by falsely claiming that it
21 never accepted the New Royalty Rates. Keystone claimed rather that it never accepted any rates
22 which differed from the Original Royalty Rates, and demanded that Basalite pay arrearages
23 dating back to January 1, 2009 based on the difference between the Original Royalty Rates and
24 the New Royalty Rates.

25 26. During the period on or about January 2010 to August 2010, Basalite negotiated
26 with Keystone to, first and foremost, salvage their long-standing relationship, or in the
27 alternative, if the parties were unsuccessful on agreeing to a new arrangement, to come to terms
28 allowing for an orderly wind-down of the arrangement which would allow both sides to find and

1 establish satisfactory arrangements with alternative licensors/franchisors or licensees/franchisees.
2 During the entire period between January 2010 until the present, Basalite vigorously promoted,
3 and continues to vigorously promote, Keystone's products and to negotiate in good faith with
4 Keystone.

5 27. In August of 2010, Basalite management and Keystone management met and
6 preliminarily agreed to wind-down the relationship in a fashion which would give all parties
7 adequate time to make new arrangements. At that time, Keystone requested a written proposal
8 from Basalite on an orderly wind-down. Ultimately, Basalite delivered such proposal but
9 received no response.

10 28. Instead, on or about September 29, 2010 Keystone forwarded its letter of that date
11 in which it announced that it was abruptly terminating all of the license agreements between the
12 companies effective in thirty days, or October 29, 2010. The letter further directed Basalite to
13 cease and desist from using any of Keystone's Know-How, Molds, Patent Rights, and
14 Trademarks to manufacture, market or sell any of its products as of the termination date. This
15 letter further demanded that Basalite return all materials and documents upon which the
16 trademarks appear, and that Basalite must dispose of all molds, within thirty days.

17 29. While Basalite is in agreement that the relationship with Keystone should
18 eventually be terminated, Basalite asserts that for the reasons specified hereafter, it is entitled to
19 reasonable time and conditions for the winding-down period, and that Keystone should not be
20 allowed to terminate or refuse to renew the agreement upon less than twelve months notice.

21 Jurisdiction and Venue

22 30. The United States District Court, Eastern District of California is a court of
23 competent jurisdiction located in Sacramento, California.

24 31. Defendant Keystone does business in the State of California.

25 32. This Court has subject matter jurisdiction based on diversity of citizenship
26 pursuant to 28 U.S.C. Section 1332 (a). The Plaintiff Basalite is a citizen of the state of Nevada.
27 The Defendant Keystone is a citizen of the state of Minnesota. The amount in controversy
28 exceeds Seventy Five Thousand Dollars (\$75,000.00).

1 33. Venue is proper in this district pursuant to 28 U.S.C. Section 1391(a).
2 Jurisdiction is founded on diversity of citizenship, a substantial part of the events or omissions
3 giving rise to the claim occurred in this district, as Plaintiff's plant where it manufactures the
4 licensed product is located within this jurisdiction and Defendant is subject to personal
5 jurisdiction in this district based on the fact that it is doing business in this state.

6 Plaintiff's Need for Reasonable Time to Wind Down

7 34. Basalite maintained a licensor-licensee/franchisor-franchisee relationship with
8 Keystone for over twenty years. Basalite faithfully performed its duties under the various
9 agreements with Keystone over the years. This includes but is not limited to the fact that
10 Basalite vigorously promoted the Keystone products over the years; it consistently ranked as one
11 of Keystone's top franchisees/licensees; it paid Keystone many millions in royalties over the last
12 several years; and despite facing problems with many Keystone products or designs, Basalite
13 operated in good faith and worked through most of the problems encountered. However, the
14 recent downturn in the economy made it difficult for Basalite to continue to compete with
15 Keystone's competitors in the industry at the Original Royalty Rates. Keystone surreptitiously
16 led Basalite to believe that Keystone accepted Basalite's December 3, 2008 proposal for a
17 modified fee structure, then waited more than a year to reveal its assertion that it never accepted
18 the New Royalty Rates. Thereafter, Keystone falsely projected as if it were attempting to
19 negotiate a continuing relationship or orderly wind-down.

20 35. Now, Keystone wants to abruptly terminate the relationship, and is attempting to
21 require Basalite to refrain from manufacturing any additional product. Such an abrupt
22 termination of Basalite's rights to continue manufacturing sufficient product to fill its
23 commitments to its customers, or its customers' commitments to their customers wherein they
24 have specified Keystone products will cause Basalite irreparable harm. Basalite has a large
25 group of customers which it carefully cultivated over twenty years of its existence. These are
26 Basalite customers developed solely by Basalite without any assistance from Keystone. It will
27 take a transition period of at least twelve months for Basalite to obtain a license/franchise
28 arrangement with another retaining wall product licensor, and then to begin offering its

1 customers an alternative.

2 First Claim for Relief

3 Violation of Statute: California State Franchise Law

4 36. Basalite incorporates by reference paragraphs 1- 35 of this complaint.

5 37. The arrangement between Keystone and Basalite whereby Keystone granted
6 licenses to Basalite to manufacture, market and sell Keystone-licensed products within California
7 constituted franchise agreements as that term is defined under California law, including but not
8 limited to California Business and Professions Code section 20001. This section states that a
9 franchise means a contract or agreement, either express or implied, whether oral or written,
10 between two or more persons by which (a) a franchisee is granted the right to engage in the
11 business of offering, selling or distributing goods or services under a marketing plan or system
12 prescribed in substantial part by a franchisor and (b) the operation of the franchisee's business
13 pursuant to that plan or system is substantially associated with the franchisor's trademark,
14 service mark, trade name, logotype, advertising or other commercial symbol designating the
15 franchisor or its affiliate and (c) the franchisee is required to pay, directly or indirectly, a
16 franchise fee.

17 38. The California statutory scheme provides that no franchisor may terminate a
18 franchise prior to the expiration of its term except for good cause, which never existed in this
19 case. Basalite alleges that in the absence of good cause for termination, the arrangement
20 between the parties is subject to California Business and Professions Code section 20025, which
21 provides that no franchisor may fail to renew a franchise unless such franchisor provides the
22 franchisee with at least 180 days prior written notice of its intention not to renew, and providing
23 that it meets certain additional criteria specified in Section 20025. While Keystone will claim
24 that it was entitled to refuse to renew because Basalite failed to pay royalties in accordance with
25 the Original Royalty Rates, this claim is denied by Basalite, who asserts, as detailed above, that
26 the Original Royalty Rates were modified when Keystone by its conduct and words accepted the
27 New Royalty Rates as outlined in Basalite's December 3, 2008 letter.

28 39. Basalite alleges that Keystone violated the California statutory scheme by

1 providing only 30 days' notice of its intent to terminate and to not renew Basalite's license to
 2 manufacture, market and sell Keystone-licensed product. As a result, Basalite has been
 3 damaged in a sum in excess of the jurisdictional minimum of this Court, according to proof.

4 40. Basalite alleges that in the course of committing the aforementioned acts
 5 Keystone acted in bad faith and with a conscious disregard for the rights of its franchisee, and
 6 that Basalite is therefore entitled to an award of exemplary and punitive damages.

7 Second Claim for Relief

8 Violation of Federal Patent Law Prohibiting Royalty Charges After Expiration of Patent

9 41. Plaintiff incorporates by reference paragraphs 1-40 of this complaint.

10 42. Defendant Keystone claims patent rights under various patents based upon
 11 assignments or licenses to Keystone (the "Keystone Patents"). As discussed above, Keystone
 12 and Basalite entered into various agreements under which Basalite licensed rights to the
 13 Keystone Patents and paid patent royalties to Keystone.

14 43. The laws of the United States as interpreted by the United States Supreme Court
 15 make it unlawful per se for a holder of a patent to attempt to continue charging patent royalties
 16 beyond the date of the expiration of the patent. Plaintiff became aware of this fact only recently.

17 44. Defendant Keystone continued charging Basalite royalties, and has continued to
 18 demand patent royalties, for products previously covered by certain of the Keystone Patents, but
 19 which patents have expired. Plaintiff is informed and believes and on that basis herein alleges
 20 that such include, but are not limited to, royalties for the products commonly known as Standard
 21 Unit, Compac Unit, Intermediate, Legacy, Gardenwall, Sedona, and all products designated as
 22 Softsplit. Royalties have been charged and/or demanded by Keystone after the expiration dates
 23 of the following patents:

24 Patent No. D380,560, expired November 8, 2002;

25 Patent No. 4,802,230 reissued as No. RE37,278, expired September 15, 2006;

26 Patent No. 4,825,619 reissued as No. RE34,314, expired September 15, 2006;

27 Patent No. 5,827,015, expired September 27, 2009;

28 Patent No. 5,078,940, expired June 8, 2010; and

1 Patent No. 5,217,630, expired June 8, 2010.

2 45. Accordingly, Plaintiff Basalite is entitled to disgorgement of overcharged
3 royalties in an amount which has not yet been definitely ascertained, according to proof.

4 Third Claim for Relief

5 Violation of Federal Patent Law Prohibiting Royalty Charges Against Co-Inventor

6 46. Plaintiff incorporates by reference paragraphs 1-45 of this complaint.

7 47. At numerous times during the period Basalite has functioned as Keystone's
8 franchisee/licensee, Basalite or its predecessor has contributed to the conception of certain
9 inventions involving products, processes, molds, relating to the design, manufacture, and/or
10 installation of the product such that Basalite or its employees qualified as co-inventors of the
11 products, processes, molds, designs, manufacturing techniques, or installation techniques.
12 Nevertheless, Keystone charged or continued charging Basalite or its predecessor royalties for
13 the exploitation of such products, processes, molds, designs, and the like to which Basalite had
14 and has a valid and rightful claim to patent rights therein.

15 48. The patents laws provide that each owner of a patent has the right to make, use,
16 and sell the patented invention without the consent of and without accounting to any other owner
17 of the patent. Accordingly, the laws of the United States make it unlawful for Keystone as the
18 holder of a patent to charge Basalite a patent royalty where Basalite or its employees were a co-
19 inventor of a patented product, apparatus, process or design. Plaintiff became aware of this fact
20 only recently.

21 49. While further investigation is required for Plaintiff to be able to plead specifics,
22 Plaintiff is informed and believes and on that basis herein alleges that defendant Keystone has
23 charged or continued charging Plaintiff royalties when it should not have because Basalite is a
24 rightful owner of certain of Keystone's patented or to be patented products or processes.
25 Basalite will amend this complaint to list these products or processes when ascertained.

26 50. Accordingly, Plaintiff Basalite is entitled to disgorgement of overcharged
27 royalties in an amount which has not been definitely ascertained, according to proof.

28 / / /

1 Fourth Claim for Relief

2 Declaratory Judgment That Certain Of Keystone's Patents Are Invalid

3 And/Or Require Correction To Name Omitted Joint Inventor

4 51. Plaintiff incorporates by reference paragraphs 1-50 of this complaint.

5 52. As indicated above, Defendant Keystone is the owner of several patents which
6 Defendant claims covered the products made by Plaintiff Basalite as Keystone's licensee.
7 Keystone has demanded that Basalite cease and desist from using the Keystone Patents as of
8 October 29, 2010. Keystone's cease and desist demand implies a threat to institute an action
9 against Plaintiff for patent infringement.

10 53. Further, Keystone continues to demand patent royalties, which Keystone claims
11 are unpaid, respecting products manufactured and sold by Basalite. Basalite avers that it is not
12 liable for past or future patent royalty payments on products and processes covered by certain of
13 the Keystone Patents as such patents are invalid.

14 54. Plaintiff is informed and believes that certain of Keystone Patents are invalid and
15 void for one or more of the following reasons: invalidity of the patent under 35 United States
16 Code sections 102, 103, and/or 112; the applicant for the patent did not himself invent the subject
17 matter sought to be patented; and/or applicant committed fraud on the Patent Office in
18 connection with the patent application, by failing to properly name the inventors of the subject
19 matter sought to be patented.

20 55. As set forth above, Basalite or its predecessors have contributed to the conception
21 of certain inventions involving products, processes, molds, relating to the design, manufacture,
22 and/or installation of the product such that Basalite or its employees qualified as co-inventors of
23 the products, processes, molds, designs, manufacturing techniques, or installation techniques.
24 Plaintiff is informed and believes and thereon alleges that Keystone applied for patents of the
25 products, process, or component thereof without naming the Basalite employees as joint
26 inventors in violation of 35 United States Code section 116 which states in applicable part:
27 "When and invention is made by two or more persons jointly, they shall apply for patent
28 jointly...."

1 hundred twenty days from the date a mold is ordered to be in a position to produce sufficient
2 quantities of product to fill orders.

3 62. Basalite is informed and believes and thereon alleges that Keystone deliberately
4 provided Basalite with only thirty days' notice of its intent not to renew, and of its demand that
5 Basalite destroy its Keystone-franchised molds no later than thirty days from notice, and that
6 Basalite abruptly cease manufacturing Keystone-franchised products, even those which Basalite
7 has already manufactured, within thirty days so that Keystone could prevent Basalite from filling
8 the needs of its customers who were locked into using Keystone-franchised products because of
9 commitments they had made to their own customers, so that Keystone would then be in a
10 position to appropriate Basalite's customer base for its own account.

11 63. Basalite alleges that it is virtually impossible for Keystone to so quickly fill the
12 customers' needs located within Basalite's exclusive franchise territory unless Keystone has
13 already lined up another licensee/franchisee to manufacture the Keystone-franchised product;
14 that Keystone's conduct demonstrates that it has already lined up another licensee/franchisee to
15 begin manufacturing Keystone-franchised product in Basalite's exclusive territory; that it did so
16 while it was still involved in a franchise arrangement with Basalite; that its actions in lining up
17 other licensees/franchisees while still involved in a franchise arrangement with Basalite
18 constituted a severe breach of its duties under that arrangement; that while pretending to
19 negotiate with Basalite for a continuation of its franchise relationship, Keystone was actually
20 failing to disclose its true intent, namely that it already decided to terminate the relationship, and
21 that it was already pursuing a substitute licensee/franchisee.

22 64. Basalite requests that the Court issue temporary restraining orders and preliminary
23 injunctions which restrain Keystone from terminating or refusing to renew its license
24 arrangement with Basalite in less than 180 days from the date of the Court's order.

25 Fifth Claim for Relief

26 Breach of Contract

27 65. Basalite incorporates by reference paragraphs 1-64 of this complaint.

28 66. Basalite alleges that by Keystone's conduct in accepting the royalty payments

1 calculated pursuant to the New Royalty Rates without protest, and that by Keystone's subsequent
2 actions in confirming that Keystone was in agreement with the New Royalty Rates, a contract for
3 the payment of royalties in accordance with the new schedule was formed. This contract was a
4 franchise agreement as defined under the California statutory scheme. While the contract did not
5 specify a term, it ran for a reasonable period and because it was subject to the California
6 statutory scheme, it could not be terminated without notice except for good cause, which did not
7 exist, and Keystone could not refuse to renew the contract except by giving at least 180 days'
8 notice, subject to further requirements dictated by the statute, which have not been met.

9 67. By issuing its September 29, 2010 letter attempting to terminate the franchise
10 agreement and demanding that Basalite cease and desist manufacturing, marketing or selling, or
11 using any of Keystone's products, processes, knowledge or marks and that Basalite destroy all
12 molds in Basalite's possession, Keystone breached its agreement with Basalite, all to Basalite's
13 damages according to proof.

14 68. As licensor/franchisor Keystone has at all times during the license/franchise
15 arrangements owed its licensee/franchisee an obligation to provide rights to use Keystone's so-
16 called Know-How, Molds, Patent Rights, and Trademarks for product lines which had been tried
17 and tested by Keystone so that its franchisee could expect to commence manufacturing
18 Keystone-franchised products without having to experience untoward difficulty in commencing
19 the manufacturing process. "Know-How" as used by the parties in their expired written and
20 informal agreements and in the industry generally means technical data, trade secrets, designs,
21 plans, specifications, methods, processes, systems, manufacturing and installation procedures,
22 marketing strategies relating to the molds or product owned or controlled by the licensor.
23 "Molds" mean the form or molds designed by the licensor for using in the manufacturing of the
24 product. "Patent Rights" generally refer to United States patents owned or controlled by the
25 licensor.

26 69. On many occasions over the past several years, Keystone has provided Basalite
27 with additional licenses/franchises to use Know-How, Molds, or Patent Rights to new products
28 which Keystone purportedly developed and, pursuant to Basalite's exclusive territorial marketing

1 agreements, Keystone was obligated to offer to Basalite. However, rather than providing
2 Basalite with thoroughly tested new products or Know-How, Molds, or Patent Rights related to
3 those products, Keystone has asked Basalite to begin manufacturing new products which were
4 apparently improperly or inadequately tested or engineered, all to Basalite's substantial
5 detriment, as more particularly stated hereafter.

6 70. Basalite experienced great difficulty attempting to get Keystone's new product
7 called "1.33 Elite" into production. Basalite received Keystone's mold for this product in July of
8 2006 after inordinate delays. On attempting to place the mold into production, Basalite
9 discovered that the mold was defectively designed, including face plate heaters which
10 continually broke down, problems with the design of the embossing face plates which left an
11 unsightly ridge of material along the bottom of the block, as well as other problems. While these
12 problems were solved with great effort and expense on Basalite's part, other problems developed.
13 It was eventually determined that a new corner mold product was required because Keystone's
14 recommended 45 degree field cut method was proving unworkable for installers. Ultimately,
15 Keystone eventually recalled its 1.33 Elite block due to excessive cracking. Keystone advised
16 that a new mold was required, and delivery of that mold was promised for no later than the
17 spring of 2007. Keystone promised delivery of the new corner mold by November of 2006.
18 The corner mold was not made available until January of 2008, and the base mold was not made
19 available until thereafter at an additional cost of One Hundred Thousand Dollars (\$100,000) to
20 Basalite. The failure of Keystone to properly design and test this product has caused Basalite
21 substantial damages in an amount which has not been precisely ascertained, according to proof.

22 71. During the period August to December of 2009, Basalite attempted to begin
23 manufacturing yet another new Keystone retaining wall product called "Insignia." In reliance on
24 representations by Keystone to Basalite (i) concerning this product; and (ii) the ability of Basalite
25 to manufacture the product using its existing machinery, Basalite incurred substantial costs
26 ordering the mold for the product, and Basalite made commitments to several of its important
27 customers in respect to the availability of this product. In the meantime, the parties were
28 attempting to work out their differences and see whether they could come to a new licensing

1 agreement. On or about February 23, 2010 Basalite received the new mold for the new Insignia
2 product. This mold was manufactured according to drawings and specifications provided by
3 Keystone to the mold manufacturer. During the period February 23, 2010 to the end of the
4 month, Basalite struggled to make the mold function properly, and repeatedly requested
5 assistance from Keystone. However, Keystone failed to provide proper support, and even with
6 the assistance of Basalite's Besser machine manufacturer's best expert who traveled to Basalite's
7 manufacturing plant in Dixon, California, Basalite could not produce acceptable product from
8 the mold. It was eventually determined that this mold could not be made to function on
9 Basalite's machinery, because the mold did not meet the specifications of the machine it was
10 made for, and that Keystone's representations that it had been tested with the same machine
11 elsewhere turned out to be false. This entire episode caused damage to Basalite and its
12 reputation which is that it has great expertise in the area, and can fill its contracts to its suppliers
13 on time. This episode was a source of great embarrassment to Basalite and its reputation because
14 one of its major customers had placed newspaper ads offering this product for sale by certain
15 dates which Basalite was unable to fill.

16 72. As a result Basalite has been greatly damaged. Basalite has been forced to use a
17 mold which manufactures only three blocks at a time rather than five. The machine which can
18 operate a three-at-a-time block mold is located in Selma, California, which is a great distance
19 from the market area (and the Dixon manufacturing facility) where the blocks are distributed,
20 and the material costs are greater with a three-at-a-time block machine rather than a five-at-a-
21 time block machine. As a result, Basalite is currently manufacturing this product at a loss.
22 Basalite has suffered damages in an amount that will be proved at trial.

23 Sixth Claim for Relief

24 Interference

25 73. Basalite incorporates by reference paragraph 1-72 of this complaint.

26 74. Basalite has a large base of customers in both retail and commercial markets,
27 "retail" meaning building supply stores which sell building products to the public at large, and
28 "commercial" meaning contractors who order building supplies directly from Basalite to use in

1 performing construction contacts which they have negotiated, and to dealers who require the
2 product in order to meet their customers' expectations. For many years, throughout the life of the
3 franchise arrangements which Basalite has had with Keystone, including right up until the
4 present, Basalite has faithfully and vigorously promoted the Keystone product to its entire
5 customer base. As a result of Basalite's efforts, most of Basalite's customer base is accustomed
6 to using Keystone product and a great many of Basalite's commercial customers have already
7 specified Keystone products for their jobs which will not be completed for many months into the
8 future.

9 75. Basalite is informed and believes and thereon alleges that Keystone formed an
10 intention to terminate its franchise relationship with Basalite many months ago, but that it did not
11 disclose its true intent to Basalite. Instead it misled Basalite to believe that Keystone was
12 negotiating in good faith in an effort to resolve its differences with Basalite, and that if the
13 parties were unable to come to a new arrangement which was satisfactory to both parties that
14 they would agree to an orderly wind-down procedure which would give both sides adequate
15 opportunity to gear up with a new licensor/franchisor or licensee/franchisee so that neither side
16 would be damaged. Instead, Basalite alleges, Keystone formed the intent to terminate the
17 relationship many months ago, and it secured a new licensee/franchisee who could immediately
18 upon termination of Basalite's franchise agreement begin supplying Basalite's customers with
19 Keystone product. Basalite alleges that Keystone did this specifically so that it could capture a
20 large share of Basalite's customer base who would be locked into supplying Keystone product to
21 fill its customers' needs.

22 76. By these actions Keystone is knowingly and intentionally attempting to interfere
23 with Basalite's current and prospective advantageous business relationships with its customers.
24 These actions have caused and will cause Basalite extensive damages according to proof.

25 77. By these actions Keystone has acted with intent to harm Basalite or at least it has
26 acted in conscious disregard for the rights of Basalite. Therefore Basalite is entitled to
27 exemplary and punitive damages against Keystone.

28 / / /

Seventh Claim for ReliefDeclaratory Relief

78. Basalite incorporates by reference paragraphs 1-77 of this complaint.

79. Basalite asserts that it is entitled to a declaration that California franchise law applies to the instant arrangement; that Keystone violated the California statutory scheme by attempting to terminate the franchise arrangement on 30 days' notice without cause; that Basalite was entitled to no less than 180 days under the statute; that Keystone's September 29, 2010 notice is void and of no effect; that under the circumstances given the length of time the franchise relationship has existed, and given that the parties always contemplated that Keystone would be required to allow Basalite the opportunity to renew the agreement and that such agreement would not be unreasonably withheld, that Basalite is entitled to no less than 12 months' notice of intent not to renew.

WHEREFORE, Plaintiff Basalite prays for judgment as follows:

1. For compensatory damages according to proof;
2. For punitive damages where appropriate;
3. For declaratory relief which the Court deems appropriate, including but not limited to the Court's declaration that: the arrangement between the parties is a franchise arrangement which is subject to the State of California franchise statutory scheme; that the purported 30 days notice of termination issued by Keystone is void and of no effect under that scheme; that under the California statute Basalite is entitled to no less than 180 days notice of Keystone's intent not to renew the franchise agreement; that under the circumstances Basalite is entitled to no less than 12 months notice of termination;
4. For a finding that defendant Keystone has illegally charged Basalite royalties for patents or patent rights after the patent rights expired, and an order requiring Keystone to disgorge and pay over to Basalite all such illegally charged royalties;
5. For a finding that Basalite is a co-inventor of certain products, procedures, designs or other claims for which Keystone illegally charged Basalite, and for an order requiring Keystone to disgorge and pay over to Basalite all such illegally charged royalties;

6. For a finding that certain of Keystone's patents or claims are invalid and or require correction to name omitted joint inventors, and for an order requiring Keystone to disgorge and pay over to Basalite any royalties for which Keystone has illegally charged Basalite for this reason;

7. For injunctive relief including appropriate temporary restraining orders, if applied for, and for preliminary and permanent injunctions enjoining Keystone from attempting to terminate its franchise arrangement with Basalite on insufficient notice which does not comply with the California statutory scheme, or from refusing to renew the franchise arrangement without providing the notice required under the California statutory scheme.

8. For costs of suit and attorney fees where appropriate;

9. For such other and further relief as the Court deems appropriate.

DATED: October 18, 2010

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