

MAR 08 2011

CLERK OF THE COURT
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Deputy Clerk

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6 CENTER FOR ENVIRONMENTAL HEALTH

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9 SUPERIOR COURT OF CALIFORNIA
10 COUNTY OF SAN FRANCISCO

11
12 CENTER FOR ENVIRONMENTAL,)
HEALTH, a non-profit corporation,)

CASE NO. CGC-09-493397

13 Plaintiff,)

~~[PROPOSED]~~ CONSENT JUDGMENT

14 v.)

15 STAPLES, INC.; STAPLES THE OFFICE)
16 SUPERSTORE, LLC; and DOES 1)
through 200, inclusive;)

17 Defendants.)
18

1 **1. INTRODUCTION**

2 **1.1** On October 13, 2009, plaintiff Center for Environmental Health ("CEH"), a non-
3 profit corporation acting in the public interest, filed a complaint (the "Complaint") in an action
4 entitled *Center for Environmental Health v. Staples, Inc., et al.*, San Francisco County Superior
5 Court Case Number CGC-09-493397 (this "Action"), for civil penalties and injunctive relief
6 pursuant to the provisions of California Health & Safety Code §§25249.5 *et seq.* ("Proposition
7 65").

8 **1.2** Defendants Staples, Inc. and Staples The Office Superstore, LLC (collectively
9 "Staples") are each a "person in the course of doing business" under Proposition 65 and
10 manufacture, distribute and/or sell vinyl pencil pouches (including but not limited to SKU #
11 600857) (the "Products") in the State of California. Staples and CEH are referred to collectively
12 herein as the Parties.

13 **1.3** On or about August 4, 2009, CEH served Staples and the appropriate public
14 enforcement agencies with a 60-day "Notice of Violation" with respect to Proposition 65 (the
15 "Notice"). The Notice and the Complaint in this Action allege that Staples exposes individuals
16 who use or otherwise handle the Products to lead and/or lead compounds (referred to
17 interchangeably herein as "Lead"), chemicals known to the State of California to cause cancer,
18 birth defects and other reproductive harm, without first providing clear and reasonable warning
19 to such persons regarding the carcinogenicity and reproductive toxicity of Lead. The Notice and
20 the Complaint allege that Staples' conduct violates Health & Safety Code §25249.6, the warning
21 provision of Proposition 65.

22 **1.4** For purposes of this Consent Judgment only, the Parties stipulate that this Court
23 has jurisdiction over the subject matter of the violations alleged in the Complaint and personal
24 jurisdiction over Staples as to the acts alleged in the Complaint, that venue is proper in the
25 County of San Francisco, and that this Court has jurisdiction to enter this Consent Judgment as a
26 full and final resolution of all claims which were or could have been raised in the Complaint and
27 this Action based on the facts alleged therein.

28 **1.5** The Parties enter into this Consent Judgment pursuant to a settlement of certain

1 disputed claims between the Parties as alleged in the Complaint. Staples denies the material
2 factual and legal allegations contained in the Notice and the Complaint and denies that any of the
3 Products that it has sold and distributed in California do not comply with Proposition 65 or any
4 other law. By executing this Consent Judgment, the Parties do not admit any facts or
5 conclusions of law. Nothing in this Consent Judgment shall be construed as an admission by the
6 Parties of any fact, finding, conclusion of law, issue of law, or violation of law, nor shall
7 compliance with this Consent Judgment constitute or be construed as an admission by the Parties
8 of any fact, finding, conclusion of law, issue of law, or violation of law. Nothing in this Consent
9 Judgment shall prejudice, waive or impair any right, remedy, argument or defense the Parties
10 may have in this or any other or future legal proceedings. This Consent Judgment is the product
11 of negotiation and compromise and is accepted by the Parties for purposes of avoiding prolonged
12 and costly litigation and settling, compromising and resolving issues disputed in this Action,
13 including future compliance by Staples with Section 2 of this Consent Judgment. This Consent
14 Judgment shall not be used for any other purpose, or in any other matter.

15 **1.6** Upon entry of this Consent Judgment, the Parties waive their respective rights to a
16 hearing or trial on the allegations of the Complaint and this Action.

17 **2. COMPLIANCE - REFORMULATION**

18 **2.1 Lead Reformulation.** As of the date this Consent Judgment is entered by the
19 Court (the "Compliance Date"), Staples shall not manufacture, ship, sell or offer for sale, or
20 cause to be manufactured, distributed, shipped, or sold, any Products that contain any
21 component, or are made of any material, that contains more than 0.03 percent Lead by weight
22 (300 parts per million ("ppm")). As of August 14, 2011, Staples shall not manufacture, ship, sell
23 or offer for sale, or cause to be manufactured, distributed, shipped, or sold, any Products that
24 contain any component, or are made of any material, that contains more than 0.01 percent Lead
25 by weight (100 ppm), provided that, if the Consumer Product Safety Commission ("CPSC")
26 determines prior to August 14, 2011 that it is not technically feasible for manufacturers of
27 Products to meet a 100 ppm limit, the reformulation level shall remain at 300 ppm.

28 **2.2 Supplier Specifications, Certification, and Testing.** Staples shall include in its

1 specifications a requirement that its suppliers of the Products comply with the Lead content
2 requirements of Section 2.1 of this Consent Judgment. Staples shall obtain test results from its
3 suppliers of the Products or an independent laboratory certifying that the Products meet the Lead
4 content requirements of Section 2.1.

5 **2.3 Confirmatory Testing by CEH.** CEH intends to conduct periodic testing of the
6 Products. Such testing shall be conducted by an independent laboratory using a total acid digest
7 test protocol such as the most recent version of United States Environmental Protection Agency
8 Method 3050B. In the event that CEH's testing demonstrates Lead levels in excess of the Lead
9 content requirements of Section 2.1 for one or more of the Products, CEH shall inform Staples of
10 the alleged violation(s), including information sufficient to permit Staples to identify the
11 Product(s) and the results of all Lead testing on the Product(s) at issue. Staples shall, within
12 twenty (20) days following such notice, provide CEH, at the address listed in Section 11, with:
13 (a) information demonstrating its compliance with Section 2.2 of this Consent Judgment; and (b)
14 a detailed description of corrective action that it has undertaken or proposes to undertake to
15 address the alleged violation. If there is a dispute over the sufficiency of the proposed corrective
16 action or its implementation, CEH shall promptly notify Staples and the Parties shall meet and
17 confer before CEH seeks the intervention of the Court to resolve the dispute. This remedy is in
18 addition to any other remedies available to enforce the terms of this Consent Judgment.

19 **2.4 Documentation.** The certifications and results of all testing performed pursuant
20 to this Consent Judgment shall be retained by Staples for a period of three years from the date of
21 the certification or testing and shall be made available to CEH upon request.

22 **3. SETTLEMENT PAYMENTS**

23 **3.1** Within fifteen (15) days of entry of this Consent Judgment, Staples shall pay a
24 total of \$55,000 as a settlement payment. This total shall be paid in three separate checks
25 delivered to the offices of the Lexington Law Group at the address set forth in Section 11 below
26 and made payable and allocated as follows.

27 **3.1.1 Payment Pursuant to Health & Safety Code § 25249.7(b):** The sum of
28 \$2,000 shall be paid pursuant to Health & Safety Code § 25249.7(b). This payment shall be

1 made by check payable to Center for Environmental Health. CEH shall provide \$1,500 (i.e.,
2 75%) of this amount to the Safe Drinking Water and Toxic Enforcement Fund in accordance
3 with Health & Safety Code § 25249.12.

4 **3.1.2 Monetary Payment in Lieu of Penalty:** The sum of \$17,500 shall be
5 paid to CEH in lieu of any penalty pursuant to Health & Safety Code § 25249.7(b) and California
6 Code of Regulations, Title 11, § 3202(b). This payment shall be made by check payable to
7 Center for Environmental Health. CEH shall use such funds to continue its work protecting
8 people from exposures to toxic chemicals. As part of this work, CEH intends to conduct periodic
9 testing of the Products as set forth in Section 2.3. In addition, as part of its Community
10 Environmental Action and Justice Fund work, CEH will use four percent of such funds to award
11 grants to grassroots environmental justice groups working to educate and protect people from
12 exposures to toxic chemicals. The method of selection of such groups can be found at the CEH
13 web site at www.ceh.org/justicefund.

14 **3.1.3 Attorneys' Fees and Costs:** The sum of \$35,500 shall be paid to CEH
15 and its attorneys in reimbursement of a portion of their reasonable investigation fees and costs,
16 attorneys' fees, and any other costs incurred as a result of investigating, bringing this matter to
17 Staples' attention, litigating and negotiating a settlement in the public interest. This payment
18 shall be made by check payable to Lexington Law Group.

19 **4. MODIFICATION OF CONSENT JUDGMENT**

20 **4.1** This Consent Judgment may be modified by written agreement of CEH and
21 Staples, or upon motion of CEH or Staples as provided by law.

22 **5. ENFORCEMENT OF CONSENT JUDGMENT**

23 **5.1** Either Party may, by motion or application for an order to show cause
24 before the Superior Court of the County of San Francisco, enforce the terms and conditions
25 contained in this Consent Judgment. Should the moving party prevail on any motion,
26 application for an order to show cause or other proceeding to enforce this Consent Judgment, the
27 moving party shall be entitled to its reasonable attorneys' fees and costs incurred as a result of
28 such motion or application.

1 **6. APPLICATION OF CONSENT JUDGMENT**

2 **6.1** This Consent Judgment shall apply to and be binding upon the Parties hereto,
3 their divisions, subdivisions, subsidiaries, and affiliates, and the successors or assigns of any of
4 them.

5 **7. RELEASE**

6 **7.1** This Consent Judgment is a full, final and binding resolution between CEH and
7 Staples of any violation of Proposition 65 that was or could have been asserted in the Complaint
8 or brought in this Action against Staples, its parents, subsidiaries, or affiliates, or their respective
9 partners, directors, officers, shareholders, employees, representatives, agents, attorneys,
10 customers, successors, or assigns (collectively, the "Releasees") based on any alleged failure to
11 warn about alleged exposure to Lead contained in the Products, with respect to any Products
12 manufactured, distributed, shipped, sold, or offered for sale by Staples on or prior to the date of
13 entry of this Consent Judgment (the "Released Claims"). CEH hereby forever waives and
14 releases all rights to institute or participate in, directly or indirectly, any form of legal action
15 against the Releasees based upon the Released Claims, and releases all claims, liabilities,
16 obligations, losses, costs, expenses, fines and damages against the Releasees based upon the
17 Released Claims, whether at law or in equity. Compliance with the terms of this Consent
18 Judgment by Staples shall constitute compliance with Proposition 65 by Staples with respect to
19 any alleged failure to warn about alleged exposure to Lead contained in the Products. This
20 release does not limit or affect the obligations of any Party created under this Consent Judgment.

21 **8. SEVERABILITY**

22 **8.1** In the event that any of the provisions of this Consent Judgment are held by a
23 court to be unenforceable, the validity of the enforceable provisions shall not be adversely
24 affected.

25 **9. GOVERNING LAW**

26 **9.1** The terms of this Consent Judgment shall be governed by the laws of the State of
27 California. In the event that Proposition 65 is repealed, preempted, or otherwise rendered
28 inapplicable by reason of law generally, or as to the Products, then Staples may provide written

1 notice to CEH of any asserted change in the law, and shall have no further obligations pursuant
2 to this Consent Judgment with respect to, and to the extent that, the Products are so affected..

3 **10. RETENTION OF JURISDICTION**

4 **10.1** This Court shall retain jurisdiction of this matter to implement and enforce the
5 terms of this Consent Judgment.

6 **11. PROVISION OF NOTICE**

7 **11.1** All notices required pursuant to this Consent Judgment and correspondence shall
8 be sent to the following:

9
10 For CEH: Howard Hirsch
11 Lexington Law Group, LLP
12 1627 Irving Street
13 San Francisco, CA 94122

14 For Staples: David C. Phillips
15 Phillips, Erlewine & Given LLP
16 50 California Street, 35th Floor
17 San Francisco, CA 94111

18 **12. COURT APPROVAL**

19 **12.1** If this Consent Judgment is not approved by the Court, it shall be of no further
20 force or effect.

21 **12.2** The Parties acknowledge that, pursuant to Health & Safety Code § 25249.7, a
22 noticed motion is required to obtain judicial approval of this Consent Judgment. The Parties
23 agree to mutually employ their best efforts to support the entry of this agreement as a Consent
24 Judgment by the trial court and defend the agreement against any appellate review. Accordingly,
25 CEH agrees to file a motion to approve this Consent Judgment, and Staples agrees to support it.

26 **13. EXECUTION AND COUNTERPARTS**

27 **13.1** The stipulations to this Consent Judgment may be executed in counterparts and by
28 means of facsimile, which taken together shall be deemed to constitute one original document.

14. AUTHORIZATION

14.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized

1 by the party he or she represents to stipulate to this Consent Judgment and to enter into and
2 execute this Consent Judgment on behalf of the party represented and legally bind that party.
3 The undersigned have read, understand and agree to all of the terms and conditions of this
4 Consent Judgment. Except as provided herein, each party is to bear its own fees and costs.

5 **15. NO OTHER PRODUCTS KNOWN TO VIOLATE PROPOSITION 65**

6 **15.1** CEH represents and warrants that, as of the date of its execution of this Consent
7 Judgment, it has no current knowledge or information based upon any investigation or otherwise
8 that the Releasees are currently manufacturing, distributing, shipping, selling, or offering for sale
9 in California any product(s) containing Lead, other than the Products, which CEH believes are
10 causing a violation of Proposition 65.

11 **AGREED TO:**

12
13 CENTER FOR ENVIRONMENTAL HEALTH

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16 Signature

17 CHARLIE PIZARRO

18 Printed Name

19 ASSOCIATE DIRECTOR

20 Title

21 STAPLES, INC. and STAPLES THE OFFICE SUPERSTORE, LLC

22
23 Signature

24
25 Printed Name

26
27 Title

28

1 by the party he or she represents to stipulate to this Consent Judgment and to enter into and
2 execute this Consent Judgment on behalf of the party represented and legally bind that party.

3 The undersigned have read, understand and agree to all of the terms and conditions of this
4 Consent Judgment. Except as provided herein, each party is to bear its own fees and costs.

5 **15. NO OTHER PRODUCTS KNOWN TO VIOLATE PROPOSITION 65**

6 **15.1** CEH represents and warrants that, as of the date of its execution of this Consent
7 Judgment, it has no current knowledge or information based upon any investigation or otherwise
8 that the Releasees are currently manufacturing, distributing, shipping, selling, or offering for sale
9 in California any product(s) containing Lead, other than the Products, which CEH believes are
10 causing a violation of Proposition 65.

11 **AGREED TO:**

12
13 **CENTER FOR ENVIRONMENTAL HEALTH**

14
15
16 _____
Signature

17 _____
Printed Name

18
19 _____
Title

20
21 **STAPLES, INC. and STAPLES THE OFFICE SUPERSTORE, LLC**

22
23 *David D'Angelo*
Signature

24 *David D'Angelo*
Printed Name

25 *SVP Staples Brands*
Title



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ORDER AND JUDGMENT

Based upon the stipulated Consent Judgment between the Parties, the settlement is approved and judgment is hereby entered according to the terms herein.

DATED: MAR 08 2011

PETER J. BUSCH

Judge, Superior Court of the State of California

PETER J. BUSCH