

1 Brian C. Johnson, State Bar No. 235965
2 Josh Voorhees, State Bar No. 241436
3 THE CHANLER GROUP
4 2560 Ninth Street
5 Parker Plaza, Suite 214
6 Berkeley, CA 94710-2565
7 Telephone: (510) 848-8880
8 Facsimile: (510) 848-8118

9 Attorneys for Plaintiff
10 RUSSELL BRIMER

ENDORSED
FILED
San Francisco County Superior Court
JUN 08 2012
CLERK OF THE COURT
BY: ERICKA LARNAUTI
Deputy Clerk

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 COUNTY OF SAN FRANCISCO
13 UNLIMITED CIVIL JURISDICTION

14 RUSSELL BRIMER,

15 Plaintiff,

16 v.

17 STAPLES, INC.; and DOES 1 through 150,

18 Defendants.

Case No. CGC-11-510604

**[PROPOSED] JUDGMENT PURSUANT
TO TERMS OF PROPOSITION 65
SETTLEMENT AND CONSENT
JUDGMENT**

Date: April 17, 2012

Time: 9:30 a.m.

Dept. 302

Judge: Hon. Harold E. Kahn

1 Plaintiff, Russell Brimer, and defendant, Staples, Inc., having agreed through their
2 respective counsel that Judgment be entered pursuant to the terms of their settlement agreement in
3 the form of a Consent Judgment, and following this Court's issuance of an Order approving this
4 Proposition 65 settlement and Consent Judgment,

5 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that, pursuant to Health &
6 Safety Code § 25249.7(f)(4) and Code of Civil Procedure § 664.6, Judgment is entered in
7 accordance with the terms of the Consent Judgment attached hereto as Exhibit 1. By stipulation
8 of the parties, the Court will retain jurisdiction to enforce the settlement under Code of Civil
9 Procedure § 664.6.

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11 **IT IS SO ORDERED.**

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13 Dated: 6-8-12

HAROLD KAHN
JUDGE OF THE SUPERIOR COURT

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EXHIBIT 1

1 Brian C. Johnson, State Bar No. 235965
2 Josh Voorhees, State Bar No. 241436
3 THE CHANLER GROUP
4 2560 Ninth Street
5 Parker Plaza, Suite 214
6 Berkeley, CA 94710-2565
7 Telephone: (510) 848-8880
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9 Attorneys for Plaintiff
10 RUSSELL BRIMER

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12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF SAN FRANCISCO
14 UNLIMITED CIVIL JURISDICTION
15

16 RUSSELL BRIMER,
17 Plaintiff,

18 v.

19 STAPLES, INC.; and DOES 1-150, inclusive,
20 Defendant.

Case No. CGC-11-510604

[PROPOSED] CONSENT JUDGMENT

(Health & Safety Code § 25249.6 *et seq.*)

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between Russell Brimer (“Brimer” or
4 “Plaintiff”) and Staples, Inc. (“Staples” or “Defendant”), with Brimer and Staples collectively
5 referred to as the “Parties.”

6 **1.2 Plaintiff**

7 Brimer represents that he is an individual residing in California who seeks to promote
8 awareness of exposures to toxic chemicals and to improve human health by reducing or eliminating
9 hazardous substances contained in consumer products.

10 **1.3 Defendant**

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

14 **1.4 General Allegations**

15 Brimer alleges that Staples sold laptop computer bags containing lead in the state of
16 California without first providing the “clear and reasonable warning” required by Health & Safety
17 Code § 25249.6. Lead is listed pursuant to Proposition 65 as a chemical known to the state of
18 California to cause birth defects or other reproductive harm. Lead is referred to hereinafter as the
19 “Listed Chemical.”

20 **1.5 Product Description**

21 The product covered by this Consent Judgment is the *Dickies Laptop Bag manufactured by*
22 *Yak Pak, Inc., Staples SKU #724639 (#6 19374 16998 7)* (the “Product”).

23 **1.6 Notice of Violation**

24 On or about February 1, 2011, Brimer served Defendant and various public enforcement
25 agencies with a document titled 60-Day Notice of Violation of Proposition 65 (“Notice”) that
26 provided the recipients with notice that Staples was allegedly in violation of Health & Safety Code §
27 25249.6 for having offered the Product for sale without warning its customers and consumers in
28 California that the Product exposes users to the Listed Chemical.

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1.7 Complaint

On April 29, 2011, Brimer filed the instant action (“Complaint”) against Defendant for the violations of Health & Safety Code § 25249.6 alleged in the Notice.

1.8 No Admission

Staples denies the material factual and legal allegations contained in the Notice and Complaint and maintains that all of the products that it has sold in California, including the Product, have been, and are, in compliance with all laws. Nothing in this Consent Judgment shall be construed as an admission by Staples of any fact, finding, conclusion of law, issue of law, or violation of law; nor shall compliance with this Consent Judgment constitute or be construed as an admission by Staples of any fact, finding, conclusion of law, issue of law, or violation of law, the same being specifically denied by Staples. This section shall not, however, diminish or otherwise affect the obligations, responsibilities, and duties of Staples under this Consent Judgment.

1.9 Consent to Jurisdiction

For purposes of this Consent Judgment only, the Parties stipulate that the Court has jurisdiction over Staples as to the allegations contained in the Complaint, that venue is proper in the County of San Francisco, and that the Court has jurisdiction to enter and enforce the provisions of this Consent Judgment.

1.10 Effective Date

For purposes of this Consent Judgment, the term “Effective Date” shall mean February 24, 2012.

2. INJUNCTIVE RELIEF: REFORMULATION

As of the Effective Date, Defendant shall not ship, sell, or offer to ship for sale in California, any Product that contains more than 100 parts per million of the Listed Chemical when analyzed pursuant to Environmental Protection Agency testing methodologies 3050B and/or 6010B, and that yields a result of more than 1.0 microgram of the Listed Chemical when analyzed pursuant to the NIOSH 9100 testing protocol.

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1 **3. MONETARY PAYMENTS**

2 **3.1 Payment Pursuant to Health & Safety Code § 25249.7(b)**

3 Staples shall make a payment of \$4,000 to be apportioned in accordance with Health &
4 Safety Code § 25249.12 (c)(1) & (d), with seventy-five percent (75%) of the payment amount
5 earmarked for the California Office of Environmental Health Hazard Assessment (“OEHHA”) and
6 the remaining twenty-five percent (25%) of the payment amount earmarked for Brimer.

7 **3.2 Reimbursement of Plaintiff’s Fees and Costs**

8 The Parties acknowledge that Brimer and his counsel offered to resolve this dispute without
9 reaching terms on the amount of attorney fees and costs to be reimbursed to them, thereby leaving
10 this fee and cost issue to be resolved after the material terms of the agreement had been settled.
11 Staples then expressed a desire to resolve the fee and cost issue shortly after the other settlement
12 terms had been finalized. The Parties then attempted to (and did) reach an accord on the
13 compensation due to Brimer and his counsel under general contract principles and the private
14 attorney general doctrine codified at California Code of Civil Procedure § 1021.5 for all work
15 performed in this matter, exclusive of fees that may be incurred on appeal. Under these legal
16 principles, Staples, on behalf of itself and those in its chain of distribution, shall pay \$27,500 for fees
17 and costs incurred investigating, litigating and enforcing this matter, including the fees and costs
18 incurred (and yet to be incurred) negotiating, drafting, and obtaining the Court’s approval of this
19 Consent Judgment in the public interest.

20 **3.3 Payment Procedures**

21 **3.3.1 Funds Held in Trust**

22 All payments required by Sections 3.1 and 3.2 shall be delivered within ten days of the
23 Effective Date to either The Chanler Group or the attorney of record for Staples, and shall be held in
24 trust pending the Court’s approval of this Consent Judgment.

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1 Payments delivered to The Chanler Group shall be in the form of three checks made payable
2 as follows:

- 3 (a) one check to "The Chanler Group in Trust for OEHHA" in the amount of
4 \$3,000;
- 5 (b) a second check to "The Chanler Group in Trust for Russell Brimer" in the
6 amount of \$1,000; and
- 7 (c) a third check to "The Chanler Group in Trust" in the amount of \$27,500.

8 Payments delivered to Staples' attorney of record shall be in the form of three checks made
9 payable as follows:

- 10 (a) one check to "Seyfarth Shaw LLP in Trust for OEHHA" in the amount of
11 \$3,000;
- 12 (b) a second check to "Seyfarth Shaw LLP in Trust for Russell Brimer" in the
13 amount of \$1,000; and
- 14 (c) a third check to "Seyfarth Shaw LLP in Trust for The Chanler Group" in the
15 amount of \$27,500.

16 If Staples elects to deliver payments to its attorney of record, its attorney of record shall
17 confirm in writing, within five days of the deposit, that the funds have been deposited into the law
18 firm's trust account.

19 Within five days of the date of the hearing on which the Court approves the Consent
20 Judgment, the payments being held in trust by Staples' attorney of record shall be delivered to The
21 Chanler Group in three separate checks payable as follows:

- 22 (a) one check to "The Chanler Group in Trust for OEHHA" in the amount of
23 \$3,000;
- 24 (b) a second check to "The Chanler Group in Trust for Russell Brimer" in the
25 amount of \$1,000; and
- 26 (c) a third check to "The Chanler Group" in the amount of \$27,500.

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1 **3.3.2 Issuance of 1099 Forms**

2 After the Consent Judgment has been approved and the settlement funds have been
3 transmitted to Brimer’s counsel, Staples shall issue three separate 1099 forms, as follows:

- 4 (a) one 1099 form to the Office of Environmental Health Hazard Assessment,
5 P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-0284486) in the amount of
6 \$3,000;
- 7 (b) a second 1099 form to Russell Brimer, whose address and tax identification
8 number shall be provided within five days of the date this Consent Judgment
9 is fully executed by the Parties, in the amount of \$1,000; and
- 10 (c) a third 1099 form to The Chanler Group (EIN: 94-3171522) for payment of
11 fees and costs in the amount of \$27,500.

12 **3.3.3 Payment Address**

13 All payments and tax forms required by Sections 3.1, 3.2, and 3.3.2 shall be delivered to
14 Brimer’s counsel at the following address:

15 The Chanler Group
16 Attn: Proposition 65 Controller
17 2560 Ninth Street
18 Parker Plaza, Suite 214
19 Berkeley, CA 94710

20 **4. CLAIMS COVERED AND RELEASED**

21 **4.1 Brimer’s Public Release of Proposition 65 Claims**

22 Brimer, acting on his own behalf and in the public interest, releases Staples, its parents,
23 subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys,
24 and each entity to whom Staples directly or indirectly distributed or sold the Product, including,
25 without limitation, downstream distributors, wholesalers, dealers, customers, owners, purchasers,
26 users, auctioneers, retailers, franchisees, cooperative members, licensors, and licensees
27 (“Releasees”) from all claims for violations of Proposition 65, including, without limitation, all
28 actions, causes of action, suits, liabilities, demands, obligations, damages, costs, fines, penalties,
investigation fees, expert fees, and attorneys’ fees arising under Proposition 65 (collectively,

1 "Claims"), that were brought or could have been brought against Staples and the Releasees up
2 through the Effective Date based on exposures to the Listed Chemical from the Product as set forth
3 in the Notice. Compliance with the terms of this Consent Judgment constitutes compliance with
4 Proposition 65 with respect to exposures to the Listed Chemical from the Product, as set forth in the
5 Notice.

6 **4.2 Brimer's Individual Release of Claims**

7 Brimer, in his individual capacity only and *not* in his representative capacity, also provides a
8 release to Staples and the Releasees which shall be effective as a full and final accord and
9 satisfaction, as a bar to all Claims, actions and causes of action in law or in equity, obligations,
10 costs, expenses, attorneys' fees, damages, losses, claims, liabilities, and demands of Brimer of any
11 nature, character, or kind, whether known or unknown, suspected or unsuspected, limited to and
12 arising out of alleged or actual exposures to the Listed Chemical in the Product manufactured,
13 distributed, or sold by Staples.

14 **4.3 Staples' Release of Brimer**

15 Staples on behalf of itself, its past and current agents, representatives, attorneys, successors,
16 and/or assignees, hereby waives any and all claims against Brimer and his attorneys and other
17 representatives for any and all actions taken or statements made (or those that could have been
18 taken or made) by Brimer and his attorneys and other representatives, in the course of investigating
19 claims, otherwise seeking to enforce Proposition 65 against it in this matter, or with respect to the
20 Product.

21 **5. COURT APPROVAL**

22 This Consent Judgment is not effective until it is approved and entered by the Court and shall
23 be null and void if, for any reason, it is not approved and entered by the Court within one year after it
24 has been fully executed by the Parties, in which event any monies that have been provided to Brimer
25 or his counsel pursuant to Section 3 above shall be refunded within fifteen days after receiving
26 written notice from Defendant that the one-year period has expired and the Consent Judgment has not
27 been approved and entered by the Court.

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1 **6. SEVERABILITY**

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

5 **7. GOVERNING LAW**

6 The terms of this Consent Judgment shall be governed by the laws of the state of California
7 and apply within the state of California. In the event that Proposition 65 is repealed, preempted, or is
8 otherwise rendered inapplicable by reason of law generally, or as to the Product, then Defendant may
9 provide written notice to Brimer of any asserted change in the law, and shall have no further
10 obligations pursuant to this Consent Judgment with respect to, and to the extent that, the Product is so
11 affected. Nothing in this Consent Judgment shall be interpreted to relieve Defendant from any
12 obligation to comply with any pertinent state or federal toxics control laws.

13 **8. NOTICES**

14 Unless specified herein, all correspondence and notices required to be provided pursuant to
15 this Consent Judgment shall be in writing and sent by: (i) personal delivery; (ii) first-class, registered
16 or certified mail, return receipt requested; or (iii) overnight courier on any party by the other party at
17 the following addresses:

18 For Defendant:

19 G. Perry Wu
20 Managing Counsel - Litigation
21 Staples, Inc.
22 500 Staples Drive
23 Framingham, MA 01702

24 with a copy to:

25 Jay W. Connolly, Esq.
26 Robin M. Cleary, Esq.
27 Seyfarth Shaw LLP
28 560 Mission Street, Suite 3100
 San Francisco, California 94105

 For Brimer:

 Proposition 65 Coordinator
 The Chanler Group
 2560 Ninth Street
 Parker Plaza, Suite 214
 Berkeley, CA 94710

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

3 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

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

7 **10. POST EXECUTION ACTIVITIES**

8 Brimer agrees to comply with the reporting form requirements referenced in Health & Safety
9 Code § 25249.7(f). The Parties acknowledge that, pursuant to Health & Safety Code § 25249.7(f)(4),
10 a noticed motion is required to obtain judicial approval of this Consent Judgment. In furtherance of
11 obtaining such approval, Brimer and Defendant and their respective counsel agree to mutually
12 employ their "best efforts" to support the entry of this agreement as a Consent Judgment and obtain
13 approval of the Consent Judgment by the Court in a timely manner. For purposes of this section,
14 "best efforts" shall include, at a minimum, cooperating on the drafting and filing of any papers in
15 support of the required motion for judicial approval.

16 **11. MODIFICATION**


17 This Consent Judgment may be modified only: (1) by written agreement of the Parties and
18 upon entry of a modified consent judgment by the Court thereon; or (2) upon a successful motion of
19 any Party and entry of a modified consent judgment by the Court.

20 **12. AUTHORIZATION**

21 The undersigned are authorized to execute this Consent Judgment and have read, understood,
22 and agree to all of the terms and conditions hereof.

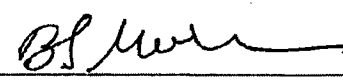
23 **AGREED TO:**

24 Date: 2.14.12

25 By: 
26 Russell Brimer.

23 **AGREED TO:**

24 Date: 2/14/12

25 By: 
26 Name: Robert Muldoon
27 Title: VP / DMM
28 Staples, Inc.

