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KIM TURNER
Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: E. Turner, Deputy

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF MARIN

CENTER FOR ENVIRONMENTAL HEALTH,)
Plaintiff,)
vs.)
BARNES & NOBLE, INC., *et al.*,)
Defendants.)

Case No. CIV-1103790

**~~PROPOSED~~ CONSENT JUDGMENT
AS TO STAPLES, INC. AND STAPLES
THE OFFICE SUPERSTORE, LLC**

1. DEFINITIONS

1.1 "Accessible Component" means a component of a Covered Product that could be touched by a person during normal or reasonably foreseeable use.

1.2 "Covered Products" means pad folios (an example of which is identified with respect to Staples, Inc. and with respect to Staples the Office Superstore, LLC (collectively, "Settling Defendants") in Exhibit 1 of the applicable "Notice of Violation," and which are further described as portfolios, with or without a fastener or zipper, that contain a replaceable pad of paper and that may have pen- or business card-holding features) that are (a) manufactured by or on behalf of a Settling Defendant, or (b) sold or offered for retail sale bearing a private label by a

1 Settling Defendant that is (i) the Private Labeler or (ii) a sister, parent, subsidiary, or affiliated
2 entity that is under common ownership with the Private Labeler. The Parties hereto agree that the
3 term "Products" in the operative Complaint against Settling Defendants is deemed amended so as
4 to be identical to the term "Covered Products" as defined herein.

5 1.3 "Effective Date" means the date on which this Consent Judgment is entered by
6 the Court.

7 1.4 "Private Labeler" means an owner or licensee of a brand or trademark on the
8 label of a consumer product (or its container) which bears a private label, which owner or licensee
9 has authorized or caused such consumer product (or its container) to be so labeled.

10 2. INTRODUCTION

11 2.1 This Consent Judgment is entered into by the Center for Environmental
12 Health, a California non-profit corporation ("CEH") on the one hand, and Settling Defendants on
13 the other hand, to settle certain claims asserted by CEH against Settling Defendants as set forth in
14 the operative Complaint in the matter entitled *Center for Environmental Health v. Barnes &*
15 *Noble, Inc., et al.*, Marin County Superior Court Case No. CIV-1103790 (the "Action").

16 2.2 On May 9, 2011, CEH provided a "Notice of Violation, California Safe
17 Drinking Water and Toxic Enforcement Act" ("Proposition 65") to the California Attorney
18 General, the District Attorneys of every county in California, the City Attorneys of every
19 California city with a population greater than 750,000, and to Settling Defendants regarding the
20 alleged presence of lead and lead compounds (collectively referred to herein as "Lead") in
21 Settling Defendants' Covered Products.

22 2.3 On July 29, 2011, CEH filed the Complaint against Settling Defendants in the
23 Action.

24 2.4 Each Defendant is a corporation that employs 10 or more persons, and which
25 manufactures, distributes and/or sells Covered Products in the State of California.

26 2.5 For purposes of this Consent Judgment only, CEH and Settling Defendants
27 (the "Parties") stipulate that this Court has jurisdiction over the allegations of violations contained
28 in the Complaint and personal jurisdiction over Settling Defendants as to the acts alleged in the

1 Complaint, that venue is proper in the County of Marin, and that this Court has jurisdiction to
2 enter this Consent Judgment as a full and final resolution of all claims which were or could have
3 been raised in the Complaint based on the facts alleged therein with respect to Covered Products
4 manufactured, distributed, and/or sold by Settling Defendants.

5 2.6 CEH and Settling Defendants enter into this Consent Judgment as a full and
6 final settlement of all claims that were raised in the Action, or which could have been raised in
7 the Action, arising out of the facts or conduct related to Settling Defendants alleged therein. By
8 execution of this Consent Judgment and agreeing to comply with its terms, the Parties do not
9 admit any facts or conclusions of law including, but not limited to, any facts or conclusions of law
10 suggesting or demonstrating any violations of Proposition 65 or any other statutory, common law
11 or equitable requirements. Nothing in this Consent Judgment is or shall be construed as an
12 admission by the Parties of any fact, conclusion of law, issue of law or violation of law, nor shall
13 compliance with the Consent Judgment constitute or be construed as an admission by the Parties
14 of any fact, conclusion of law, issue of law, or violation of law. Settling Defendants deny the
15 material, factual and legal allegations in CEH's Complaint and expressly deny any wrongdoing
16 whatsoever. Nothing in this Consent Judgment shall prejudice, waive or impair any right,
17 remedy, argument or defense the Parties may have in this or any other pending or future legal
18 proceedings. This Consent Judgment is the product of negotiation and compromise and is
19 accepted by the Parties solely for purposes of settling, compromising, and resolving issues
20 disputed in the Action. This Consent Judgment shall not be used for any other purpose or in any
21 other manner.

22 **3. INJUNCTIVE RELIEF**

23 3.1 **Reformulation of Covered Products.** As of the Effective Date, Settling
24 Defendants shall not sell or offer for sale in the United States Covered Products unless the
25 Accessible Components of such Covered Products comply with the following Lead Limits:

26 3.1.1 "Paint or other Surface Coatings" as that term is defined in 16 C.F.R.
27 § 1303.2(b): no more than 0.009 percent Lead by weight (90 parts per million or "ppm"), as
28 measured by CPSC-CH-E1002-08.

1 3.1.2 Paper: no more than .03 percent Lead by weight (300 ppm), as measured
2 by CPSC-CH-E1002-08.

3 3.1.3 Any other Accessible Component: no more than .01 percent Lead by
4 weight (100 ppm), as measured by CPSC-CH-E1002-08.

5 3.2 **Products in the Stream of Commerce.** Covered Products that have been
6 manufactured, distributed, shipped or sold, or that are otherwise in the stream of commerce, prior
7 to the Effective Date shall be released from any and all claims that were brought or that could
8 have been brought by CEH in the Action, as though they were covered claims within the meaning
9 of sections 7.1, 7.2, and 7.3 of this Consent Judgment.

10 **4. ENFORCEMENT**

11 4.1 **Enforcement and Cure Procedures.** Prior to bringing any motion or order to
12 show cause to enforce the terms of this Consent Judgment, a Party seeking to enforce shall
13 provide the non-complying party forty-five (45) days advanced written notice of the alleged
14 noncompliance. The Parties shall meet and confer during such forty-five (45) day period in an
15 effort to try to reach agreement on an appropriate cure for the alleged noncompliance. After such
16 forty-five (45) day period, the Party seeking to enforce may, by new action, motion or order to
17 show cause before the Superior Court of Marin County, seek to enforce the terms and conditions
18 contained in this Consent Judgment. Any enforcement by CEH of Paragraph 3.1 will be limited
19 to Covered Products purchased by CEH in California.

20 **5. PAYMENTS**

21 5.1 **Payments From Settling Defendants.** Within ten (10) days of the entry of
22 this Consent Judgment, Settling Defendants shall pay the total sum of \$44,750 as a settlement
23 payment.

24 5.2 **Allocation of Payments.** The total settlement amount for Settling Defendants
25 shall be paid in three separate checks delivered to the offices of the Lexington Law Group (Attn:
26 Howard Hirsch), 503 Divisadero Street, San Francisco, California 94117, and made payable and
27 allocated as follows:

28 5.2.1 Settling Defendants shall pay the sum of \$5,900 as a penalty pursuant to

1 Health & Safety Code § 25249.7(b), such money to be apportioned by CEH in accordance with
2 Health & Safety Code § 25249.12. The penalty check shall be made payable to the Center for
3 Environmental Health.

4 5.2.2 Settling Defendants shall pay the sum of \$8,850 as payment to CEH in lieu
5 of penalty pursuant to Health & Safety Code § 25249.7(b), and California Code of Regulations,
6 Title 11, § 3202(b). CEH will use such funds to continue its work educating and protecting
7 people from exposures to toxic chemicals, including heavy metals. CEH may also use a portion
8 of such funds to monitor compliance with the reformulation requirements of this and other similar
9 Consent Judgments and to purchase and test Covered Products to confirm compliance with such
10 reformulation requirements. In addition, as part of its *Community Environmental Action and*
11 *Justice Fund*, CEH will use four percent of such funds to award grants to grassroots
12 environmental justice groups working to educate and protect people from exposures to toxic
13 chemicals. The method of selection of such groups can be found at the CEH web site at
14 www.ceh.org/justicefund. The payment in lieu of penalty check shall be made payable to the
15 Center for Environmental Health.

16 5.2.3 Settling Defendants shall pay the sum of \$30,000 as reimbursement of
17 reasonable attorneys' fees and costs. The attorneys' fees and costs reimbursement check shall be
18 made payable to the Lexington Law Group.

19 **6. MODIFICATION AND DISPUTE RESOLUTION**

20 6.1 **Modification.** This Consent Judgment may be modified from time to time by
21 express written agreement of the Parties, with the approval of the Court.

22 6.2 **Notice; Meet and Confer.** Any Party seeking to modify this Consent
23 Judgment shall attempt in good faith to meet and confer with the other Party prior to filing a
24 motion to modify the Consent Judgment.

25 **7. CLAIMS COVERED AND RELEASE**

26 7.1 This Consent Judgment is a full, final, and binding resolution between CEH
27 and Settling Defendants and Settling Defendants' parents, shareholders, divisions, subdivisions,
28 subsidiaries, partners, sister companies, and affiliates, and their respective successors and assigns

1 (“Defendant Releasees”), and all to whom they distribute or sell Covered Products including, but
2 not limited to, distributors, wholesalers, customers, retailers, franchisees, cooperative members,
3 and licensees (“Downstream Defendant Releasees”), of any violations of Proposition 65 that have
4 been or could have been asserted in the public interest against Settling Defendants, Defendant
5 Releasees, and Downstream Defendant Releasees, regarding the failure to warn about exposure to
6 Lead arising in connection with Covered Products manufactured, distributed, or sold by Settling
7 Defendants prior to the Effective Date.

8 7.2 CEH, for itself and acting on behalf of the public interest pursuant to Health &
9 Safety Code § 25249.7(d), releases, waives, and forever discharges any and all claims against
10 Settling Defendants, Defendant Releasees, and Downstream Defendant Releasees arising from
11 any violations of Proposition 65 that have been or could have been asserted in the public interest
12 regarding the failure to warn about exposure to Lead arising in connection with Covered Products
13 manufactured, distributed or sold by Settling Defendants prior to the Effective Date.

14 7.3 CEH, acting on its own behalf, further releases, waives, and forever discharges
15 any and all claims, and all rights to institute or participate in, directly or indirectly, any form of
16 legal action against Settling Defendants, Defendant Releasees, and Downstream Defendant
17 Releasees arising from any violations of any other statutory, common law, or equitable claims
18 that have been or could have been asserted by CEH regarding exposure to Lead arising in
19 connection with Covered Products manufactured, distributed or sold by Settling Defendants prior
20 to the Effective Date.

21 7.4 Compliance with the terms of this Consent Judgment by Settling Defendants
22 shall constitute compliance with Proposition 65 by Settling Defendants, Defendant Releasees and
23 Downstream Defendant Releasees with respect to any alleged failure to warn about Lead in
24 Covered Products manufactured, distributed or sold by Settling Defendants after the Effective
25 Date.

26 **8. PROVISION OF NOTICE**

27 8.1 When any Party is entitled to receive any notice under this Consent Judgment,
28 the notice shall be sent by first class and electronic mail as follows:

1 8.1.1 **Notices to Settling Defendants.** The person for Settling Defendants to
2 receive Notices pursuant to this Consent Judgment shall be:

3 Robert S. Nicksin
4 O'Melveny & Myers LLP
5 400 South Hope Street, Suite 1961
6 Los Angeles, CA 90071
7 bnicksin@omm.com

8 G. Perry Wu/Legal Department
9 Staples, Inc.
10 500 Staples Drive
11 Framingham, MA 01702
12 perry.wu@staples.com

13 8.1.2 **Notices to Plaintiff.** The person for CEH to receive Notices pursuant to
14 this Consent Judgment shall be:

15 Howard Hirsch
16 Lexington Law Group
17 503 Divisadero Street
18 San Francisco, CA 94117
19 hhirsch@lexlawgroup.com

20 8.2 Any Party may modify the person and address to whom the notice is to be sent
21 by sending the other Party notice by first class and electronic mail.

22 **9. COURT APPROVAL**

23 9.1 This Consent Judgment shall become effective on the Effective Date, provided
24 however, that CEH shall prepare and file a Motion for Approval of this Consent Judgment and
25 Settling Defendants shall support approval of such Motion.

26 9.2 If this Consent Judgment is not entered by the Court, it shall be of no force or
27 effect and shall not be introduced into evidence or otherwise used in any proceeding for any
28 purpose.

10. GOVERNING LAW AND CONSTRUCTION

11 10.1 The terms of this Consent Judgment shall be governed by the laws of the State
12 of California. In the event that Proposition 65 is repealed, preempted, or otherwise rendered
13 inapplicable by reason of law generally, or as to the Covered Products, then Settling Defendants
14 may provide written notice to CEH of any asserted change in the law, and shall have no further
15 obligations pursuant to this Consent Judgment with respect to, and to the extent that, the Covered

1 Products are so affected. Nothing in this Consent Judgment shall be interpreted to relieve Settling
2 Defendants from any obligation to comply with any pertinent state or federal toxics control laws.

3 **11. ENTIRE AGREEMENT**

4 11.1 This Consent Judgment contains the sole and entire agreement and
5 understanding of the Parties with respect to the entire subject matter hereof, and any and all prior
6 discussions, negotiations, commitments, or understandings related thereto, if any, are hereby
7 merged herein and therein. There are no warranties, representations, or other agreements between
8 the Parties regarding the subject matter thereof except as expressly set forth herein. No
9 representations, oral or otherwise, express or implied, other than those specifically referred to in
10 this Consent Judgment have been made by any Party hereto. No other agreements not
11 specifically contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind
12 any of the Parties hereto. Any agreements specifically contained or referenced herein, oral or
13 otherwise, shall be deemed to exist or to bind any of the Parties hereto only to the extent that they
14 are expressly incorporated herein. No supplementation, modification, waiver, or termination of
15 this Consent Judgment shall be binding unless executed in writing by the Party to be bound
16 thereby. No waiver of any of the provisions of this Consent Judgment shall be deemed or shall
17 constitute a waiver of any of the other provisions hereof whether or not similar, nor shall such
18 waiver constitute a continuing waiver.

19 **12. AUTHORITY TO STIPULATE TO CONSENT JUDGMENT**

20 12.1 Each signatory to this Consent Judgment certifies that he or she is fully
21 authorized by the Party he or she represents to stipulate to this Consent Judgment and to enter into
22 and execute the Consent Judgment on behalf of the Party represented and legally to bind that
23 Party.

24 **13. NO EFFECT ON OTHER SETTLEMENTS**

25 13.1 Nothing in this Consent Judgment shall preclude CEH from resolving any
26 claim against another entity on terms that are different than those contained in this Consent
27 Judgment.

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1 **14. EXECUTION IN COUNTERPARTS**

2 14.1 The stipulations to this Consent Judgment may be executed in counterparts
3 and by means of facsimile, which taken together shall be deemed to constitute one document.


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

5 15.1 CEH represents and warrants that, as of the date of its execution of this
6 Consent Judgment, it has no current knowledge or information based upon any investigation or
7 otherwise that the Defendants and Defendant Releasees are currently manufacturing, distributing,
8 shipping, selling or offering for sale in California any product(s) containing Lead, and that CEH
9 believes is causing a violation of Proposition 65, other than the Covered Products and Staples
10 SKU # 865874 (a C.R. Gibson portfolio product CEH allegedly purchased at a Staples store). For
11 the avoidance of doubt, any and all claims of CEH, acting for itself and acting on behalf of the
12 public interest pursuant to Health & Safety Code § 25249.7(d), with respect to such Staples SKU
13 # 865874 are being released and resolved in connection with the [Proposed] Consent Judgment
14 between CEH and C.R. Gibson, LLC a/k/a The C.R. Gibson Company, which is presently
15 awaiting approval by this Court.

16 **IT IS SO STIPULATED:**

17 Dated: <u>MAY 23</u> , 2012	18 CENTER FOR ENVIRONMENTAL HEALTH 19  20 <u>CHARLES P. PETERS</u> 21 Printed Name 22 <u>ASSOCIATE DIRECTOR</u> 23 Title 24
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<p>Dated: <u>May 23</u>, 2012</p> 	<p>STAPLES, INC. and STAPLES THE OFFICE SUPERSTORE, LLC</p> <p><i>[Signature]</i> <u>David D'Angelo</u> Printed Name</p> <p><u>SUP - Staples INC</u> Title</p>
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IT IS SO ORDERED, ADJUDGED,
AND DECREED

FAYE D'OPAL

Dated: 9/28/12

JUDGE OF THE SUPERIOR COURT OF THE
STATE OF CALIFORNIA