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**FILED**  
Superior Court of California  
County of Los Angeles  
01/26/2022

Sherri R. Carter, Executive Officer / Clerk of Court

By: R. Karapetyan Deputy

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

(Unlimited Jurisdiction)

ECOLOGICAL ALLIANCE, LLC, a California  
limited liability company,

Plaintiff,

v.

STAPLES, INC., a Delaware corporation,  
Defendant.

Case No.: 21STCV37891

~~PROPOSED~~ STIPULATED  
CONSENT JUDGMENT

~~PROPOSED~~ STIPULATED CONSENT JUDGMENT

1 Plaintiff Ecological Alliance, LLC (“Plaintiff”), and Defendant Staples, Inc.  
2 (“Defendant”) hereby enter into this Stipulated Consent Judgment (“Consent Judgment”) as  
3 follows:

4 WHEREAS: On or about October 19, 2020, Plaintiff, through Plaintiff’s counsel, served a  
5 60 Day Notice (the “Notice”) to Defendant, the California Attorney General, the District  
6 Attorneys of every County in the State of California, and the City Attorneys for every City in the  
7 State of California with a population greater than 750,000 (collectively, “Public Prosecutor(s)”)   
8 alleging that Defendant violated California’s Safe Drinking Water and Toxic Enforcement Act of  
9 1986, California Health and Safety Code § 25249.6, et seq., and its implementing regulations  
10 (collectively, “Proposition 65”) and that Plaintiff intended to file an enforcement action in the  
11 public interest; and

12 WHEREAS: Plaintiff alleges that Defendant manufactured and/or distributed Pep Rally™  
13 brand ice packs, SKU#24429997, containing Di(2-ethylhexy)phthalate (“DEHP”) (the “Covered  
14 Products”) that were sold or distributed for sale in California and further alleges that those  
15 Covered Products expose consumers in the State of California to chemicals including DEHP,  
16 which are listed by the State of California pursuant to California Health and Safety Code §  
17 25249.8; and

18 WHEREAS: Plaintiff further alleges that persons in the State of California were exposed  
19 to DEHP in Covered Products without being provided the Proposition 65 warning set out at  
20 California Health and Safety Code § 25249.6 and its implementing regulations (“Proposition 65  
21 Warning”);

22 WHEREAS: Defendant denies the allegations of the 60 Day Notice, and denies that it has  
23 violated Proposition 65 and expressly denies that it has engaged in any wrongdoing whatsoever,

24 WHEREAS: Plaintiff seeks to provide the public with Proposition 65 warnings and  
25 believes that this objective is achieved by the actions described in this Consent Judgment; and

26 WHEREAS: Plaintiff and Defendant wish to resolve their differences without the delay  
27 and expense of litigation.  
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1 NOW THEREFORE BE IT RESOLVED AND AGREED UPON AS BETWEEN  
2 PLAINTIFF ACTING IN THE PUBLIC INTEREST AND DEFENDANT AS FOLLOWS:

3 **INTRODUCTION**

4 1.1. On October 19, 2020, Plaintiff served the Notice upon Defendant and on Public  
5 Prosecutors. No Public Prosecutors commenced an enforcement action. No Public  
6 Prosecutor having commenced an enforcement action, Plaintiff proceeded to file its  
7 Complaint against Defendant in the present action.

8 1.2. For purposes of this Consent Judgment only, Defendant agrees that it is a “person  
9 in the course of doing business” within the meaning of Cal. Health & Safety Code §  
10 25249.13.

11 1.3. For purposes of this Consent Judgment only, Plaintiff and Defendant (the  
12 “Parties”) stipulate that: 1) this Court has jurisdiction over the allegations of violation  
13 contained in the Complaint, and personal jurisdiction over Defendant as to the acts  
14 alleged in the Complaint; 2) venue is proper in the County of Los Angeles; and 3) this  
15 Court has jurisdiction to enter this Consent Judgment as a full, final and binding  
16 resolution of all claims which were or could have been raised in the Complaint based on  
17 the facts alleged therein and/or in the Notice with respect to the Covered Products, and of  
18 all claims which were or could have been raised by any person or entity based in whole  
19 or in part, directly or indirectly, on the facts alleged in the Notice, in the present action, or  
20 arising therefrom or related thereto, with respect to Covered Products, including any  
21 Proposition 65 claim arising out of an exposure to Covered Products (collectively,  
22 “Proposition 65 Claims”).

23 1.4. The Parties enter into this Consent Judgment as a full and final settlement of the  
24 Proposition 65 Claims, for the purpose of avoiding prolonged and costly litigation and of  
25 resolving the issues raised therein both as to past and future conduct. By execution of  
26 this Consent Judgment and agreeing to comply with its terms, the Parties do not admit  
27 any fact, conclusion of law, or violation of law, nor shall Defendant’s compliance with  
28 the Consent Judgment constitute or be construed as an admission by Defendant of any

1 fact, conclusion of law, or violation of law. Defendant denies the material, factual, and  
2 legal allegations in the 60-Day Notice and the Complaint and expressly denies any  
3 wrongdoing whatsoever.

## 4 **2. DEFINITIONS**

- 5 2.1. “Effective Date” shall mean, with respect to this Consent Judgment, the date the  
6 Consent Judgment has been approved and entered by the Court.

## 7 **3. INJUNCTIVE RELIEF**

- 8 3.1. For each Covered Product sold or distributed by Staples in California, Defendant  
9 agrees to undertake, or cause to be undertaken on its behalf, either (a) reformulation of  
10 the Covered Product to bring it within the Proposition 65 exemption identified in Section  
11 3.2 below, or (b) provide a warning as prescribed in Sections 3.3-3.4 below. Compliance  
12 with this Section 3.1 will constitute compliance by Defendant with all requirements of  
13 Proposition 65 relating to DEHP exposure in the Covered Products.

### 14 3.2. Proposition 65 Exemption for the Covered Products

15 Any Covered Product manufactured after ninety (90) days after the Effective Date shall be  
16 deemed to comply with Proposition 65, and be exempt from any Proposition 65 warning  
17 requirements with respect to DEHP, if no “Accessible Component Part” of such Covered  
18 Product contains more than 0.1 percent (1,000 parts per million) of DEHP. For purposes  
19 of this Consent Judgment, “Accessible Component Part” shall mean components of the  
20 Covered Products to which a person would be exposed to DEHP by direct contact during  
21 normal use of the Covered Product.

### 22 3.3. Warning Option

23 Covered Products manufactured after ninety (90) days after the Effective Date that do not  
24 meet the warning exemption standard set forth in Section 3.2 above, shall be accompanied  
25 by a warning as described in Section 3.4 below. No Proposition 65 warning shall be  
26 required as to any Covered Products that are already manufactured as of the date that is  
27 ninety (90) days after the Effective Date, and all such Covered Products are hereby  
28 deemed to be exempt from Proposition 65 with respect to DEHP.

1           3.4.       Warning Language

2           Where required to meet the criteria set forth in Section 3.3, Defendant shall provide one of  
3           the following warning statements (or a substantially equivalent warning statement) using a  
4           method authorized under Proposition 65's regulations, and displayed in a reasonably  
5           conspicuous manner:

6                       (1)     **WARNING:** This product can expose you to di(2-ethyhexyl)  
7                               phthalate (DEHP), which is known to the State of California to  
8                               cause cancer and birth defects or other reproductive harm. For more  
9                               information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

10                      (2)     **WARNING:** Cancer and Reproductive Harm –  
11                               [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

12           The warnings set forth above shall also include a symbol consisting of a black  
13           exclamation point in a yellow equilateral triangle with a bold black outline. Where  
14           the sign, label or shelf tag for the product is not printed using the color yellow, the  
15           symbol may be printed in black and white. The symbol shall be placed to the left  
16           of the text of the warning, in a size no smaller than the height of the word  
17           “WARNING”.

18                               **4. MONETARY RELIEF**

19           4.1.       Within thirty (30) days of the Effective Date and receipt by Defendant of a valid  
20           Form W-9 for Custodio & Dubey LLP, Defendant shall pay the total sum of \$29,000  
21           which includes \$7,000 in civil penalties and \$22,000 in payment of Plaintiff's costs and  
22           reasonable attorney's fees. The \$7,000 civil penalty shall be apportioned pursuant to  
23           Health and Safety Code section 25249.12 (d), with 75%, or \$5,250, paid to the State of  
24           California's Office of Environmental Health Hazard Assessment and 25%, or \$1,750,  
25           payable to Plaintiff.

26           4.2.       The payments specified in Section 4.1. shall be made by wire transfer to Plaintiff's  
27           counsel Custodio & Dubey LLP as set forth below. Plaintiffs' counsel will remit the  
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portions due to the State of California Office of Environmental Health Hazard  
Assessment and to Plaintiff.  
Bank: Bank of America, N.A.  
Routing Transit No.: 026009593  
Account No.: 325132729125  
Beneficiary: Custodio & Dubey LLP

## 5. CLAIMS COVERED AND RELEASE

5.1. This Consent Judgment is a full, final, and binding resolution between Plaintiff, on behalf of itself, and acting on behalf of the public interest, and Defendant, and all of Defendant's parent companies, subsidiaries, divisions, affiliates, and each of its and their respective officers, directors, members, shareholders, employees, representatives, insurers, attorneys, agents, predecessors, successors, and assigns (collectively the "Defendant Releasees"), as well as all other upstream and downstream entities in the distribution chain for the Covered Products, including but not limited to manufacturers, retailers, suppliers, distributors, marketplace hosts, wholesalers, customers, private label customers, franchisees, licensees, licensors, and cooperative members (collectively, the "Released Parties"), for any alleged violation of Proposition 65, and its implementing regulations, for failure to provide Proposition 65 warnings for any exposure to DEHP from the Covered Products as alleged in the notice and complaint, and fully resolves all such claims. Plaintiff on behalf of itself, and in the public interest, hereby discharges the Defendant Releasees and Released Parties from any and all claims, actions, causes of action, suits, demands, liabilities, damages, penalties, obligations, debts, losses, fees, costs and expenses asserted with respect to any alleged violation of Proposition 65 arising from the failure to provide Proposition 65 warnings for exposure to DEHP as alleged in the notice and complaint from any or all of the Covered Products sold through ninety (90) days after the Effective Date of the Consent Judgment. Compliance with the terms of this Consent Judgment constitutes compliance with Proposition 65 by Defendant with respect

1 to any alleged failure to warn about DEHP in Covered Products sold or distributed by  
2 Defendant after the Effective Date.

3 5.2. It is possible that other claims not known to the Parties arising out of the facts contained  
4 in the Notice, or alleged in the Complaint, relating to the Covered Products, will hereafter  
5 be discovered or developed. Plaintiff, on behalf of itself only, on the one hand, and  
6 Defendant, on the other hand, acknowledge that this Consent Judgment is expressly  
7 intended to cover and include all such claims through and including the Effective Date,  
8 including all rights of action thereon. Plaintiff and Defendant acknowledge that the  
9 claims released in Sections 5.1 may include unknown claims, and nevertheless intend to  
10 release such claims, and in doing so waive California Civil Code § 1542 which reads as  
11 follows:

12 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE  
13 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO  
14 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE  
15 RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE  
16 MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE  
17 DEBTOR OR RELEASED PARTY.

18 5.3. Plaintiff understands and acknowledges that the significance and consequence of  
19 this waiver of California Civil Code § 1542 is that even if Plaintiff suffers future damages  
20 arising out of or resulting from, or related directly or indirectly to, in whole or in part, the  
21 Covered Products, including but not limited to any exposure to, or failure to warn with  
22 respect to exposure to, chemicals in or from the Covered Products, Plaintiff will not be  
23 able to make any claim for those damages against any of the Defendant Releasees or the  
24 Released Parties.

25 5.4. Compliance by Defendant with the terms of this Consent Judgment shall constitute  
26 compliance with Proposition 65 with respect to exposure to DEHP in the Covered  
27 Products as set forth in the Notice and/or the Complaint. If the California Office of  
28 Environmental Health Hazard Assessment promulgates regulations affecting the warning

provisions set forth in Section 3 herein, Defendant may comply with those regulations without being deemed in breach of this Consent Judgment.

**6. COMPLIANCE WITH HEALTH AND SAFETY CODE SECTION 25249.7(F)**

6.1. Plaintiff and its attorneys agree to comply with the reporting form requirements referenced in California Health and Safety Code § 25249.7(f).

**7. PROVISION OF NOTICE**

7.1. When any Party is entitled to receive any notice or writing under this Consent Judgment, the notice or writing shall be sent by first class certified mail with return receipt requested, or by electronic mail, as follows:

To Defendant:

Joseph Orzano, Esq.  
Seyfarth Shaw LLP  
Seaport East, Two Seaport Lane, Suite 1200  
Boston, MA 02210-2028  
[jorzano@seyfarth.com](mailto:jorzano@seyfarth.com)

To Plaintiff:

Vineet Dubey, Esq.  
Custodio & Dubey LLP  
445 S. Figueroa St., Ste 2520  
Los Angeles, CA 90071  
[dubey@cd-lawyers.com](mailto:dubey@cd-lawyers.com)

7.2. Any party may modify the person and address to whom the notice is to be sent by sending the other Party notice that is transmitted in the manner set forth in section 7.1.

**8. COURT APPROVAL**

8.1. Upon execution of his Consent Judgment by all Parties, Plaintiff shall prepare and file, at its sole cost and expense, a Motion for Approval of this Consent Judgment that Defendant shall not oppose. This Consent Judgment shall not become effective until approved and entered by the Court. If this Consent Judgment is not entered by the Court, it shall be of no force or effect, and shall not be introduced into evidence or otherwise used in any proceeding for any purpose.



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1 shall such waiver constitute a continuing waiver.

2 **11. RETENTION OF JURISDICTION**

3 11.1. This Court shall retain jurisdiction of this matter to implement or modify the  
4 Consent Judgment.

5 **12. NO EFFECT ON OTHER SETTLEMENTS**

6 12.1. Nothing in this Consent Judgment shall preclude Plaintiff from resolving any  
7 claim against another entity on terms that are different from those contained in this  
8 Consent Judgment.

9 **13. EXECUTION IN COUNTERPARTS**

10 13.1. This Consent Judgment may be executed in counterparts, each of which shall be  
11 deemed to be an original, and all of which, taken together, shall constitute the same  
12 document. Execution of the Consent Judgment by e-mail, facsimile, or other electronic  
13 means, shall constitute legal and binding execution and delivery. Any photocopy of the  
14 executed Consent Judgment shall have the same force and effect as the original.

15 **14. AUTHORIZATION**

16 14.1. The undersigned are authorized to stipulate to, enter into, and execute this Consent  
17 Judgment on behalf of their respective parties, and have read, understood, and agree to all  
18 of the terms and conditions of this Consent Judgment.

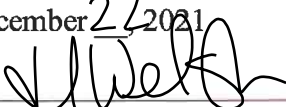
19 **15. SEVERABILITY**

20 15.1. If subsequent to Court approval of this Consent Judgment, any part or provision is  
21 declared by a Court to be invalid, void, or unenforceable, the remaining portions or  
22 provisions shall continue in full force and effect to the extent they implement the Parties'  
23 intent.

24 **AGREED TO:**

25 **Ecological Alliance LLC**

26 Date: December 22, 2021

27 By: 

28 Harmony Welsh, Managing Member

1 **AGREED TO:**

2 **Staples, Inc.**

3 Date: December 20, 2021

4 By: Kevin V. Jones

5 Sr. Company Counsel

6 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that, pursuant to Health &  
7 Safety Code § 25249.7(f)(4) and Code of Civil Procedure § 664.6, judgment is hereby entered.

8  
9 Dated: 01/26/2022



**Maureen Duffy-Lewis**

Maureen Duffy-Lewis / Judge

10 JUDGE OF THE SUPERIOR COURT  
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