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5 Attorneys for Plaintiff  
6 ANTHONY E. HELD, Ph.D., P.E.

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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 THE COUNTY OF SACRAMENTO  
11 UNLIMITED CIVIL JURISDICTION  
12

13 ANTHONY E. HELD, Ph.D., P.E.,

14 Plaintiff,

15 v.

16 STAPLES, INC.; and DOES 1-150, inclusive,

17 Defendants.

Case No. 34-2009-00066444

**[PROPOSED] CONSENT  
JUDGMENT**

Health & Safety Code § 25249.6

1       **1. INTRODUCTION**

2               **1.1 Anthony E. Held, Ph.D., P.E., and Staples, Inc.**

3               This Consent Judgment is entered into by and between Anthony E. Held, Ph.D., P.E.  
4 (hereinafter “Dr. Held”) and Staples, Inc. (hereinafter “Staples”), with Dr. Held and Staples  
5 collectively referred to as the “Parties.”

6               **1.2 Plaintiff**

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

10              **1.3 Defendant**

11              Staples 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              Dr. Held alleges that Staples has sold in the State of California pencil pouches/cases  
16 containing di(2-ethylhexyl)phthalate (“DEHP”). DEHP is listed pursuant to Proposition 65 as a  
17 chemical known to the State of California to cause birth defects and other reproductive harm. DEHP  
18 is also referred to herein as the “Listed Chemical.”

19              **1.5 Product Description**

20              The products that are covered by this Consent Judgment are defined as follows: *Staples Clear*  
21 *Pencil Case, SKU #206193*. All such items shall be referred to herein as the “Products.”

22              **1.6 Notice of Violation**

23              On August 14, 2009, Dr. Held served Staples and various public enforcement agencies with a  
24 document entitled “60-Day Notice of Violation” that provided Staples and such public enforcers with  
25 notice that alleged that Staples was in violation of Proposition 65 for failing to warn consumers and  
26 customers that the Products exposed users in California to DEHP.

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**1.7 Complaint**

On December 11, 2009, Dr. Held, who alleges that he was and is acting in the interest of the general public in California, filed a complaint in the Sacramento Superior Court (the "Complaint"), naming Staples as a defendant and alleging violations of Proposition 65 by Staples based on the alleged exposures to DEHP contained in the Products manufactured, distributed, and/or offered for sale in California by Staples.

**1.8 No Admission**

Staples denies the material factual and legal allegations contained in Dr. Held's Notice and in the Complaint and maintains that all products that it has sold in California, including the Products, 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, 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, issue of law, or violation of law, such being specifically denied by Staples. However, this section shall not 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 this Court has jurisdiction over Staples as to the allegations contained in the Complaint, that venue is proper in the County of Sacramento, and that this 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 August 23, 2010.

**2. INJUNCTIVE RELIEF: WARNINGS AND REFORMULATION**

**2.1 Product Warnings**

Commencing on the Effective Date, Staples shall not sell, ship, or offer to be shipped for sale in California any Products containing excessive levels of the Listed Chemical unless such Products are sold or shipped with one of the clear and reasonable warnings set forth in subsections 2.1(a) and

1 (b), are otherwise exempt pursuant to Section 2.2, or comply with the reformulation standards set  
2 forth in Sections 2.3 and 2.4.

3 Each warning shall be prominently placed with such conspicuousness as compared with other  
4 words, statements, designs, or devices as to render it likely to be read and understood by an ordinary  
5 individual under customary conditions before purchase or use. Each warning shall be provided in a  
6 manner such that the consumer or user understands to which *specific* Product the warning applies, so  
7 as to minimize the risk of consumer confusion.

8 (a) **Retail Store Sales.**

9 (i) **Product Labeling.** Staples may affix a warning to the packaging,  
10 labeling, or directly on any Products that are not Reformulated Products sold in retail outlets in  
11 California after the Effective Date by Staples or its agents that states:

12 **WARNING:** This product contains DEHP, a phthalate  
13 chemical known to the State of California to  
14 cause birth defects and other reproductive harm.

15 (ii) **Point-of-Sale Warnings.** Alternatively, Staples may provide  
16 warning signs in the form below to its retail outlets in California with instructions to post the signs  
17 in close proximity to the point of display of any such Products for the benefit of its customers.

18 **WARNING:** This product contains DEHP, a phthalate  
19 chemical known to the State of California to  
20 cause birth defects and other reproductive harm.

21 Where any such Products are sold in proximity to other like items or to those that do not  
22 require a warning (*e.g.*, Reformulated Products as defined in Section 2.3), the following statement  
23 must be used:<sup>1</sup>

24 **WARNING:** The following product(s) contain DEHP, a  
25 phthalate chemical known to the State of  
26 California to cause birth defects and other  
27 reproductive harm:

28 [*list product(s) for which warning is required*]

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<sup>1</sup>For purposes of this Consent Judgment, "sold in proximity" shall mean that the Product and another product are offered for sale close enough to each other that the consumer, under customary conditions of purchase, could not reasonably determine which of the two products is subject to the warning sign.

1           **(b) Mail Order Catalog and Internet Sales.** In the event that Staples sells any  
2 Products that are not Reformulated Products via mail order catalog or the Internet to customers  
3 located in California after the Effective Date, Staples shall provide a warning for such Products sold  
4 via mail order catalog or the Internet to California residents: (1) in the mail order catalog; or (2) on  
5 the website. Warnings given in the mail order catalog or on the website shall identify the specific  
6 Product to which the warning applies as further specified in Sections 2.1(b)(i) and (ii).

7           **(i) Mail Order Catalog Warning.** Any warning provided in a mail order  
8 catalog must be in the same type size or larger than the Product description text within the catalog.  
9 The following warning shall be provided on the same page and in the same location as the display  
10 and/or description of the Product:

11                   **WARNING:** This product contains DEHP, a phthalate  
12                                   chemical known to the State of California to  
  cause birth defects and other reproductive harm.

13           Where it is impracticable to provide the warning on the same page and in the same location as  
14 the display and/or description of the Product, Staples may utilize a designated symbol to cross  
15 reference the applicable warning and shall define the term “designated symbol” with the following  
16 language on the inside of the front or back cover of the catalog or on the same page as any order form  
17 for the Product(s):

18                   **WARNING:** Certain products identified with this symbol  
19                                   ▼ and offered for sale in this catalog contain  
20                                   DEHP, a phthalate chemical known to the  
  State of California to cause birth defects and  
  other reproductive harm.

21           The designated symbol must appear on the same page and in close proximity to the display  
22 and/or description of the Product. On each page where the designated symbol appears, Staples must  
23 provide a header or footer directing the consumer to the warning language and definition of the  
24 designated symbol.

25           If Staples elects to provide warnings in the mail order catalog, then the warnings must be  
26 included in all catalogs offering to sell one or more Products printed after the Effective Date.

27           **(ii) Internet Website Warning.** A warning may be given in conjunction  
28 with the sale of the Products via the Internet, provided it appears either: (a) on the same web page on

1 which a Product is displayed; (b) on the same web page as the order form for a Product; (c) on the  
2 same page as the price for any Product; or (d) on one or more web pages displayed to a purchaser  
3 during the checkout process. The following warning statement shall be used and shall appear in any  
4 of the above instances adjacent to or immediately following the display, description, or price of the  
5 Product for which it is given in the same type size or larger than the Product description text:

6 **WARNING:** This product contains DEHP, a phthalate  
7 chemical known to the State of California to  
8 cause birth defects and other reproductive harm.

9 Alternatively, the designated symbol may appear adjacent to or immediately following the  
10 display, description, or price of the Product for which a warning is being given, provided that the  
11 following warning statement also appears elsewhere on the same web page, as follows:

12 **WARNING:** Products identified on this page with the  
13 following symbol ▼ contain DEHP, a  
14 phthalate chemical known to the State of  
15 California to cause birth defects and other  
16 reproductive harm.

## 17 **2.2 Exceptions To Warning Requirements**

18 The warning requirements set forth in Section 2.1 shall not apply to:

- 19 (i) Any Product sold by Staples prior to the Effective Date; or
- 20 (ii) Reformulated Products (as defined in Section 2.3 below).

## 21 **2.3 Reformulation Standards**

22 Reformulated Products are defined as those Products containing less than or equal to 1,000  
23 parts per million (“ppm”) of the Listed Chemical. Staples represents and warrants that the sample of  
24 the Staples Clear Pencil Case, SKU #206193, that was apparently purchased by or on behalf of Dr.  
25 Held on December 4, 2008 at the Staples retail store in Citrus Heights, California, and tested on  
26 behalf of Dr. Held in January 2009 was obtained by Staples from a vendor that has not provided SKU  
27 #206193 to Staples since on or before April 2008. Staples further represents and warrants that it has  
28 been ordering Reformulated Products from a different vendor since November 2008. Staples shall  
continue ordering only Reformulated Products in the future. The warnings required pursuant to  
Section 2.1 above shall not be required for Reformulated Products.

1     **3.     MONETARY PAYMENTS**

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

3             In settlement of all claims related to the Products and the Listed Chemical referred to in the  
4     Complaint and this Consent Judgment pursuant to California Health & Safety Code § 25249.7(b),  
5     Staples shall pay \$25,000.

6             Payments pursuant to Health & Safety Code §25249.7(b) are to be apportioned in accordance  
7     with California Health & Safety Code § 25192, with 75% of these funds remitted to the State of  
8     California's Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining 25%  
9     of the funds remitted to Dr. Held as provided by California Health & Safety Code § 25249.12(d).  
10     Staples shall issue two separate checks as follows: (a) one check made payable to "The Chanler  
11     Group in Trust for OEHHA" in the amount of \$18,750, representing 75% of the total payment; and  
12     (b) one check to "The Chanler Group in Trust for Anthony Held" in the amount of \$6,250,  
13     representing 25% of the total payment. Two separate 1099s shall be issued for the above payments:  
14     (a) OEHHA, P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-0284486); and (b) Anthony Held,  
15     whose information shall be provided five calendar days before the payment is due.

16             Payment shall be delivered to Dr. Held's counsel on or before September 3, 2010, at the  
17     following address:

18             The Chanler Group  
19             Attn: Proposition 65 Controller  
20             2560 Ninth Street  
21             Parker Plaza, Suite 214  
22             Berkeley, CA 94710

21     **4.     REIMBURSEMENT OF FEES AND COSTS**

22             **4.1     Attorney Fees and Costs**

23             The Parties acknowledge that Dr. Held and his counsel offered to resolve this dispute without  
24     reaching terms on the amount of attorney fees and costs to be reimbursed to them, thereby leaving the  
25     fee issue to be resolved after the material terms of the agreement had been settled. The Parties then  
26     attempted, but were unable, to reach an accord on the compensation due to Dr. Held and his counsel  
27     under the private attorney general doctrine codified at Code of Civil Procedure § 1021.5 for all work  
28     performed through the Effective Date of the Consent Judgment and reasonably to be performed in

1 connection with the terms set forth in this Consent Judgment after the Effective Date, such as the  
2 approval process set forth in Section 6 below. The Parties do agree, however, that Dr. Held and his  
3 counsel are entitled to their reasonable attorneys' fees and costs under the prerequisites set forth by  
4 CCP § 1021.5.

#### 5 **4.2 Adjudication of Dr. Held's Attorney Fees and Costs**

6 The Parties have agreed to have the outstanding fee and cost issue adjudicated by the Court  
7 pursuant to CCP § 1021.5; or, if Staples so elects, and notifies Dr. Held in writing within ten days of  
8 the Effective Date, the Parties agree to have Plaintiff's outstanding fee and cost claim adjudicated by  
9 binding arbitration ("ADR Process"). Dr. Held and Staples further agree that the arbitrator's  
10 determination shall be final and binding upon the Parties.

11 If Staples elects to utilize the ADR Process, the arbitration shall take at either the American  
12 Arbitration Association ("AAA") or Judicial Arbitration and Mediation Services ("JAMS") offices in  
13 San Francisco, California within thirty days of the Effective Date, with payment to occur within ten  
14 days of the date of the arbitrator's award. The arbitration shall be conducted by a single arbitrator;  
15 and Dr. Held and his counsel's entitlement to their fees and costs for this ancillary process shall be  
16 consistent with California Law. The payment of the awarded fees shall be made payable to The  
17 Chanler Group at the following address:

18 The Chanler Group  
19 Attn: Proposition 65 Controller  
20 2560 Ninth Street  
21 Parker Plaza, Suite 214  
22 Berkeley, CA 94710

### 23 **5. RELEASE OF ALL CLAIMS**

#### 24 **5.1 Dr. Held's Release of Staples**

25 In further consideration of the promises and agreements herein contained, and for the  
26 payments to be made pursuant to Sections 3 and 4 above, Dr. Held, on behalf of himself, his past and  
27 current agents, representatives, attorneys, successors and/or assignees, and in the interest of the  
28 general public, hereby waives all rights to institute or participate in, directly or indirectly, any form of  
legal action and releases all claims, including, without limitation, all actions, causes of action, suits,  
liabilities, demands, obligations, damages, costs, fines, penalties, losses or expenses (including, but

1 not limited to, investigation fees, expert fees and attorneys' fees) of any nature whatsoever, whether  
2 known or unknown, fixed or contingent, at law or in equity (collectively "Claims"), against Staples  
3 and each of its past and current downstream distributors, wholesalers, licensors, licensees,  
4 auctioneers, retailers, franchisees, dealers, customers, owners, purchasers, users, parent companies,  
5 corporate affiliates, and subsidiaries, and their respective past and current officers, directors,  
6 principals, partners, members, attorneys, representatives, shareholders, agents, and employees, and  
7 sister and parent entities (collectively "Releasees"). This release is limited to those claims that arise  
8 under Proposition 65, as such claims relate to Staples's alleged failure to warn about exposures to or  
9 identification of DEHP contained in the Products.

#### 10 **5.2 Staples Release of Dr. Held**

11 Staples waives any and all claims against Dr. Held, his attorneys and other representatives, for  
12 any and all actions taken or statements made (or those that could have been taken or made) by Dr.  
13 Held and his attorneys and other representatives, whether in the course of investigating claims or  
14 otherwise seeking enforcement of Proposition 65 against it in this matter, and/or with respect to the  
15 Products.

#### 16 **6. COURT APPROVAL**

17 This Consent Judgment is not effective until it is approved and entered by the Court and shall  
18 be null and void if, for any reason, it is not approved and entered by the Court within one year after it  
19 has been fully executed by all Parties, in which event any monies that have been provided to Dr. Held  
20 or his counsel pursuant to Section 3 and/or Section 4 above shall be refunded within fifteen (15) days  
21 after receiving written notice from Staples that the one-year period has expired.

#### 22 **7. SEVERABILITY**

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

#### 26 **8. GOVERNING LAW**

27 The terms of this Consent Judgment shall be governed by the laws of the State of California  
28 and apply within the State of California. In the event that Proposition 65 is repealed, preempted, or is

1 otherwise rendered inapplicable by reason of law generally, or as to the Products, then Staples may  
2 provide written notice to Dr. Held of any asserted change in the law, and shall have no further  
3 obligations pursuant to this Consent Judgment with respect to, and to the extent that, the Products are  
4 so affected. Nothing in this Consent Judgment shall be interpreted to relieve Staples from any  
5 obligation to comply with any pertinent state or federal toxics control laws.

6 **9. NOTICES**

7 Unless specified herein, all correspondence and notices required to be provided pursuant to  
8 this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-class,  
9 registered or certified mail, return receipt requested; or (ii) overnight courier on any party by the  
10 other party at the following addresses:

11 For Staples:

12 David C. Phillips, Esq.  
13 Phillips, Erlewine & Given LLP  
14 50 California Street, 35<sup>th</sup> Floor  
San Francisco, CA 94111

15 For Dr. Held:

16 Proposition 65 Coordinator  
17 The Chanler Group  
18 2560 Ninth Street  
19 Parker Plaza, Suite 214  
20 Berkeley, CA 94710

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

23 **10. COUNTERPARTS; FACSIMILE SIGNATURES**

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

27 **11. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

28 Dr. Held agrees to comply with the reporting form requirements referenced in California  
Health & Safety Code § 25249.7(f).

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**12. ADDITIONAL POST EXECUTION ACTIVITIES**

The Parties acknowledge that, pursuant to California Health & Safety Code § 25249.7, a noticed motion is required to obtain judicial approval of this Consent Judgment. In furtherance of obtaining such approval, Dr. Held and Staples and their respective counsel agree to mutually employ their best efforts to support the entry of this agreement as a Consent Judgment and obtain approval of the Consent Judgment by the Court in a timely manner. For purposes of this section, best efforts shall include, at a minimum, cooperating on the drafting and filing of any papers in support of the required motion for judicial approval.

**13. MODIFICATION**

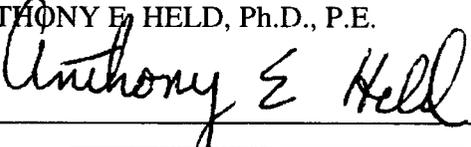
This Consent Judgment may be modified only: (1) by written agreement of the Parties and upon entry of a modified consent judgment by the Court thereon; or (2) upon a successful motion of any party and entry of a modified consent judgment by the Court

**14. AUTHORIZATION**

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

**AGREED TO:**

ANTHONY E. HELD, Ph.D., P.E.



**APPROVED**  
By Tony Held at 8:38 am, Aug 20, 2010

Date: \_\_\_\_\_

**AGREED TO:**

STAPLES, INC.

By: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

**IT IS SO ORDERED.**

Date: \_\_\_\_\_

\_\_\_\_\_  
JUDGE OF THE SUPERIOR COURT

12. ADDITIONAL POST EXECUTION ACTIVITIES

The Parties acknowledge that, pursuant to California Health & Safety Code § 25249.7, a noticed motion is required to obtain judicial approval of this Consent Judgment. In furtherance of obtaining such approval, Dr. Held and Staples and their respective counsel agree to mutually employ their best efforts to support the entry of this agreement as a Consent Judgment and obtain approval of the Consent Judgment by the Court in a timely manner. For purposes of this section, best efforts shall include, at a minimum, cooperating on the drafting and filing of any papers in support of the required motion for judicial approval.

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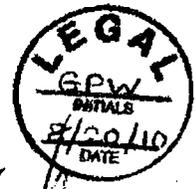
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14. AUTHORIZATION

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

AGREED TO:  
ANTHONY E. HELD, D.D. DE  
\_\_\_\_\_  
Date: \_\_\_\_\_

AGREED TO:  
STAPLES  
By: *David D'Angelo*  
\_\_\_\_\_  
Its: *SVP*  
Date: *8/23/10*



IT IS SO ORDERED.

Date: \_\_\_\_\_ JUDGE OF THE SUPERIOR COURT