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

14 ANTHONY E. HELD, Ph.D., P.E.,  
15 Plaintiff,  
16 v.  
17 STAPLES, INC.; and DOES 1–150, inclusive,  
18 Defendants.

Case No. 34-2009-00066444

**[PROPOSED] SUPPLEMENTAL  
CONSENT JUDGMENT**

Health & Safety Code § 25249.6

28

1 **1. INTRODUCTION**

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

3 This Supplemental Consent Judgment (“Consent Judgment”) is entered into by and between  
4 Anthony E. Held, Ph.D., P.E. (hereinafter “Dr. Held”) and Staples, Inc. (hereinafter “Staples”), with  
5 Dr. Held and Staples collectively referred to as the “Parties.” The Parties seek to supplement the  
6 prior consent judgment entered by the Court on November 18, 2010 to include Staples pencil  
7 pouches/cases not covered in the original consent judgment.

8 **1.2 Plaintiff**

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

12 **1.3 Defendant**

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

16 **1.4 General Allegations**

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

21 **1.5 Product Description**

22 The products that are covered by this Consent Judgment are defined as follows: Staples  
23 pencil pouches/cases (in addition to *Staples Clear Pencil Case, SKU #206193*). All such items shall  
24 be referred to herein as the “Products.”

25 **1.6 Notice of Violation**

26 On August 14, 2009 and November 12, 2010, Dr. Held served Staples and various public  
27 enforcement agencies with a document entitled “60-Day Notice of Violation” and “Supplemental 60-  
28 Day Notice of Violation” respectively, that provided Staples and such public enforcers with notice

1 that alleged that Staples was in violation of Proposition 65 for failing to warn consumers and  
2 customers that the Products exposed users in California to DEHP.

3 **1.7 Complaint**

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

9 **1.8 No Admission**

10 Staples denies the material factual and legal allegations contained in Dr. Held's Notice and in  
11 the Complaint and maintains that all products that it has sold in California, including the Products,  
12 have been, and are, in compliance with all laws. Nothing in this Consent Judgment shall be  
13 construed as an admission by Staples of any fact, finding, conclusion, issue of law, or violation of  
14 law; nor shall compliance with this Consent Judgment constitute or be construed as an admission by  
15 Staples of any fact, finding, conclusion, issue of law, or violation of law, such being specifically  
16 denied by Staples. However, this section shall not diminish or otherwise affect the obligations,  
17 responsibilities and duties of Staples under this Consent Judgment.

18 **1.9 Consent to Jurisdiction**

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

23 **1.10 Effective Date**

24 For purposes of this Consent Judgment, the term "Effective Date" shall mean January 24,  
25 2011.

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

2 **2.1 Product Warnings**

3 Commencing on the Effective Date, Staples shall not sell, ship, or offer to be shipped for sale  
4 in California any Products containing excessive levels of the Listed Chemical unless such Products  
5 are sold or shipped with one of the clear and reasonable warnings set forth in subsections 2.1(a) and  
6 (b), are otherwise exempt pursuant to Section 2.2, or comply with the reformulation standards set  
7 forth in Sections 2.3 and 2.4.

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

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

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

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

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

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

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

27 <sup>1</sup>For purposes of this Consent Judgment, “sold in proximity” shall mean that the Product and another product  
28 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                   **WARNING:** The following product(s) contain DEHP, a  
2   phthalate chemical known to the State of  
3   California to cause birth defects and other  
   reproductive harm:

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

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

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

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

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

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

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

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

3 (ii) **Internet Website Warning.** A warning may be given in conjunction  
4 with the sale of the Products via the Internet, provided it appears either: (a) on the same web page on  
5 which a Product is displayed; (b) on the same web page as the order form for a Product; (c) on the  
6 same page as the price for any Product; or (d) on one or more web pages displayed to a purchaser  
7 during the checkout process. The following warning statement shall be used and shall appear in any  
8 of the above instances adjacent to or immediately following the display, description, or price of the  
9 Product for which it is given in the same type size or larger than the Product description text:

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

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

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

## 18 **2.2 Exceptions To Warning Requirements**

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

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

## 22 **2.3 Reformulation Standards**

23 Reformulated Products are defined as those Products containing less than or equal to 1,000  
24 parts per million (“ppm”) of the Listed Chemical. In addition to the representations, warranties, and  
25 undertakings set forth in Section 2.3 of the original consent judgment, Staples shall continue ordering  
26 only Reformulated Products in the future. The warnings required pursuant to Section 2.1 above shall  
27 not be required for Reformulated Products.

28

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 paid \$25,000 on or about September 9, 2010, pursuant to the prior consent judgment.

6 Payments pursuant to Health & Safety Code §25249.7(b) were 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 **4. REIMBURSEMENT OF FEES AND COSTS**

11 **4.1 Attorney Fees and Costs**

12 The Parties acknowledge that Dr. Held and his counsel offered to resolve this dispute without  
13 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee  
14 issue to be resolved after the material terms of the agreement had been settled. Staples then  
15 expressed a desire to resolve the fee and cost issue, with respect to both the original consent judgment  
16 and this Consent Judgment, shortly after the other settlement terms had been finalized. The Parties  
17 then attempted to (and did) reach an accord on the compensation due to Dr. Held and his counsel  
18 under general contract principles and the private attorney general doctrine codified at California Code  
19 of Civil Procedure (C.C.P.) § 1021.5, for all work performed through the mutual execution of this  
20 Consent Judgment, with respect to both the original consent judgment and this Consent Judgment.  
21 Staples, on behalf of itself and those in its chain of distribution, shall reimburse Dr. Held and his  
22 counsel a total of \$66,000 for fees and costs incurred as a result of investigating, bringing this matter  
23 to Staples's attention, and litigating and negotiating a settlement in the public interest. Staples shall  
24 issue a separate 1099 for fees and costs (EIN: 94-3171522) and shall make the check payable to  
25 "The Chanler Group" and shall be delivered on or before Effective Date to the following address:

26 The Chanler Group  
27 Attn: Proposition 65 Controller  
28 2560 Ninth Street  
Parker Plaza, Suite 214  
Berkeley, CA 94710

1     **5.     RELEASE OF ALL CLAIMS**

2             **5.1     Dr. Held's Release of Staples**

3             In further consideration of the promises and agreements herein contained, and for the  
4     payments ~~to be~~ <sup>AEH</sup> made and/or to be made pursuant to Sections 3.1 and 4.1 above, Dr. Held, on behalf  
5     of himself, his past and current agents, representatives, attorneys, successors and/or assignees, and in  
6     the interest of the general public, hereby waives all rights to institute or participate in, directly or  
7     indirectly, any form of legal action and releases all claims, including, without limitation, all actions,  
8     causes of action, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses or  
9     expenses (including, but not limited to, investigation fees, expert fees and attorneys' fees) of any  
10    nature whatsoever, whether known or unknown, fixed or contingent, at law or in equity (collectively  
11    "Claims"), against Staples and each of its past and current downstream distributors, wholesalers,  
12    licensors, licensees, auctioneers, retailers, franchisees, dealers, customers, owners, purchasers, users,  
13    parent companies, corporate affiliates, and subsidiaries, and their respective past and current officers,  
14    directors, principals, partners, members, attorneys, representatives, shareholders, agents, and  
15    employees, and sister and parent entities (collectively "Releasees"). This release is limited to those  
16    claims that arise under Proposition 65, as such claims relate to Staples's alleged failure to warn about  
17    exposures to or identification of DEHP contained in the Products.

18             **5.2     Staples Release of Dr. Held**

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

24     **6.     COURT APPROVAL**

25             This Consent Judgment is not effective until it is approved and entered by the Court and shall  
26    be null and void if, for any reason, it is not approved and entered by the Court within one year after it  
27    has been fully executed by all Parties, in which event any monies that have been provided to Dr. Held  
28



1 or his counsel pursuant to Section 3 and/or Section 4 above shall be refunded within fifteen (15) days  
2 after receiving written notice from Staples that the one-year period has expired.

3 **7. SEVERABILITY**

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

7 **8. GOVERNING LAW**

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

15 **9. NOTICES**

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

20 For Staples:

21 David C. Phillips, Esq.  
22 Phillips, Erlewine & Given LLP  
23 50 California Street, 35<sup>th</sup> Floor  
San Francisco, CA 94111

24 For Dr. Held:

25 Proposition 65 Coordinator  
26 The Chanler Group  
27 2560 Ninth Street  
Berkeley, CA 94710

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

1     **10.     COUNTERPARTS; FACSIMILE SIGNATURES**

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

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

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

8     **12.     ADDITIONAL POST EXECUTION ACTIVITIES**

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

16     **13.     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  
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1 **14. AUTHORIZATION**

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

4  
5 **AGREED TO:**

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

7 *Anthony E. Held*  
8 \_\_\_\_\_

9 Date: January 11, 2011  
10

11 **AGREED TO:**

12 STAPLES, INC.

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

14 Its: SVP, Staples Brands

15 Date: 1/17/11  
16



17 **IT IS SO ORDERED.**

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

19 \_\_\_\_\_  
20 JUDGE OF THE SUPERIOR COURT  
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