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

Attorneys for Plaintiff  
RUSSELL BRIMER

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

RUSSELL BRIMER,  
Plaintiff,  
v.  
STAPLES, INC.; and DOES 1-150, inclusive,  
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,  
losses, or expenses of any nature, whether at law or in equity, including, without limitation,  
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

29    For Brimer:

30            Proposition 65 Coordinator  
31            The Chanler Group  
32            2560 Ninth Street  
33            Parker Plaza, Suite 214  
34            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.

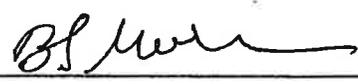
23 **AGREED TO:**

24  
25 Date: 2-14-12

26  
27 By:   
Russell Brimer.

**AGREED TO:**

24  
25 Date: 2/14/12

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



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