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9
10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF ALAMEDA

12 KAREN CALACIN,
13 Plaintiff,

14 v.

15 STAEDTLER-MARS LIMITED,
16 Defendant.

Case No.: RG17868408

CONSENT JUDGMENT

Judge: Frank Roesch

Dept.: 24

Hearing Date: November 14, 2017

Hearing Time: 3:45 PM

Reservation #: R-1891806

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CONSENT JUDGMENT

1 **1. INTRODUCTION**

2 1.1 On March 30, 2017, Karen Calacin (“Calacin”) served Staedtler-Mars Limited
3 (“Staedtler”), Staples, Inc. (“Staples”), and various public enforcement agencies with a document
4 entitled “Notice of Violation of California Health & Safety Code § 25249.6, *et seq.*” (the
5 “Notice”). The Notice provided Staedtler and such others, including public enforcers, with notice
6 that alleged that Staedtler was in violation of California Health & Safety Code § 25249.6
7 (“Proposition 65”), for failing to warn consumers and customers that Staedtler Math Essentials
8 Kits manufactured, sold and/or distributed by Staedtler in California, exposed users in California
9 to the chemicals Di(2-ethylhexyl) phthalate (DEHP). No public enforcement agency has brought
10 and is diligently prosecuting the claims alleged in the Notice.

11 1.2 On July 12, 2017, Calacin filed a Complaint for Civil Penalties and Injunctive
12 Relief (“Complaint”) in Alameda County Superior Court, Case No. RG17868408, against
13 Staedtler alleging violations of Proposition 65.

14 1.3 Staedtler is a person in the course of doing business under California Health and
15 Safety Code §25249.6 and, through its distributors and retailers, offered the Products for sale
16 within the State of California.

17 1.4 Staedtler and Calacin are collectively referred to herein as, the “Parties”.

18 1.5 The term “Products” means Staedtler Math Essentials Kits, UPC No. 0 31901
19 94476 6 that are manufactured, imported, distributed, sold, and/or offered for sale in California by
20 Staedtler and that contain DEHP.

21 1.6 Calacin’s Complaint alleges, among other things, that Staedtler sold the Products
22 in California and/or to California citizens, that the Products contain DEHP, and that the resulting
23 exposure violated provisions of Proposition 65, by exposing persons to a chemical known to the
24 State of California to cause both cancer and reproductive toxicity without first providing a clear
25 and reasonable warning to such individuals.

26 1.7 For purposes of this Consent Judgment only, the Parties stipulate that this Court
27 has jurisdiction over Defendant as to the allegations contained in the Complaint and the Notice,
28 that venue is proper in the County of Alameda, and that this Court has jurisdiction to approve,

1 enter, and oversee the enforcement of this Consent Judgment as a full and final binding resolution
2 of all claims which were or could have been raised in the Complaint based on the facts alleged
3 therein and/or in the Notice.

4 1.8 The Parties enter into this Consent Judgment pursuant to a full settlement of
5 disputed claims between the Parties as alleged in the Complaint for the purpose of avoiding
6 prolonged litigation. By execution of this Consent Judgment, Staedtler does not admit any
7 violation of Proposition 65 and specifically denies the material factual and legal allegations
8 contained in Calacin's Notice and Complaint and maintains that it has not violated Proposition
9 65. Nothing in this Consent Judgment shall be construed as an admission by Defendant of any
10 fact, finding, conclusion, issue of law, or violation of law; nor shall compliance with this Consent
11 Judgment constitute or be construed as an admission by Defendant of any fact, finding,
12 conclusion, issue of law, or violation of law, such being specifically denied by Defendant.
13 However, this Section shall not diminish or otherwise affect the obligations, responsibilities, and
14 duties of Defendant under this Consent Judgment.

15 1.9 For purposes of this Consent Judgment, the term "Effective Date" shall mean the
16 date that the Consent Judgment is entered by the Court.

17 **2. INJUNCTIVE RELIEF**

18 2.1 Commencing ninety (90) days after the Effective Date, and continuing thereafter,
19 Staedtler shall only ship, sell, or offer for sale in California, Reformulated Product pursuant to
20 Section 2.2 or Product that is labeled with a clear and reasonable warning pursuant to Section 2.3.
21 Staedtler and its downstream retailers shall have no obligation to label Products that entered the
22 stream of commerce prior to the Effective Date or within ninety (90) days after the Effective
23 Date. For purposes of this Settlement Agreement, a "Reformulated Product" is Product that is in
24 compliance with the standard set forth below in section 2.2.

25 2.2 For purposes of this Consent Judgment, "Reformulated Products" are defined as
26 Products that contain no more than 1,000 parts per million (0.1%) each of any of the following
27 chemicals: DEHP, Di-isodecyl phthalate (DIDP); Diisononyl Phthalate (DINP); Butyl benzyl
28 phthalate (BBP), Di-n-hexyl Phthalate (DnHP) and Di-n-butyl Phthalate (DBP) ("Listed

1 Phthalates”). For purposes of determining compliance with this Consent Judgment, the content of
2 Listed Phthalates shall be analyzed pursuant to EPA testing methodologies 3580A and 8270C or
3 equivalent methodologies utilized by state or federal agencies for the purpose of determining
4 Listed Phthalate content in a solid substance.

5 2.3 Commencing ninety (90) days after the Effective Date, Staedtler shall, for all
6 Products it sells or distributes and/or that is intended for sale in California and that is not a
7 Reformulated Product, provide clear and reasonable warnings as set forth in subsections 2.3(a)
8 below. The warning shall be prominently placed with such conspicuousness as compared with
9 other words, statements, designs, as to render it likely to be read and understood by an ordinary
10 individual under customary conditions before purchase or use. A warning may be contained in
11 the same section of the packaging, labeling, or instruction booklet that states other safety
12 warnings, if any, concerning the use of the product and shall be at least the same size as those
13 other safety warnings.

14 (a) **Retail Store Sales**

15 (i) **Product Labeling.** Staedtler shall affix a warning to the
16 packaging, labeling or directly on each Product they sell or distribute and that are intended
17 for sale in California and that is not a Reformulated Product that states:

18 **[PROPOSITION 65] WARNING:**

19 This product can expose you to chemicals including Di(2-ethylhexyl) phthalate,
20 which is known to the State of California to cause cancer and birth defects or other
reproductive harm. For more information go to www.P65Warnings.ca.gov.

21 The bracketed text may, but is not required to, be used.

22 **3. ENTRY OF CONSENT JUDGMENT**

23 3.1 The Parties hereby request that the Court promptly enter this Consent Judgment.
24 Upon entry of this Consent Judgment, Calacin and Staedtler waive their respective rights to a
25 hearing or trial on the allegations of the Complaint and 60-Day Notice.

26 3.2 In the event that the Attorney General objects or otherwise comments on one or
27 more provisions of this Consent Judgment, Staedtler agrees not to oppose, object to, or otherwise
28 impede any reasonable steps taken by Calacin to satisfy such concerns or objections.

1 **4. RELEASE OF ALL CLAIMS**

2 4.1 This Consent Judgment is a full, final, and binding resolution of all claims which
3 were or could have been raised in the Complaint based on the facts alleged therein and/or in the
4 Notice. Calacin, acting in the public interest, hereby fully and finally releases and forever
5 discharges Staedtler, its parents, subsidiaries, affiliates, sister companies, divisions, and
6 subdivisions, and their respective past and current directors, officers, principals, partners,
7 managers, members, shareholders, attorneys, agents, representatives, successors, and assigns
8 (collectively, “Defendant Releasees”), and all entities from whom they obtain and to whom they
9 directly or indirectly distribute or sell Products, including but not limited to Staples, Inc.
10 (“Staples”), its parents, subsidiaries, affiliates, sister companies, divisions, and subdivisions, and
11 their respective past and current directors, officers, principals, partners, managers, members,
12 shareholders, attorneys, agents, representatives, successors, and assigns, and other manufacturers,
13 suppliers, distributors, wholesalers, customers, licensors, licensees, retailers, franchisees, and
14 cooperative members (collectively, “Downstream Defendant Releasees”), of all claims for
15 violations of Proposition 65 based on exposure to DEHP from Products as set forth in the
16 Complaint and/or the Notice, with respect to any Products manufactured, imported, distributed,
17 offered for sale, or sold by Staedtler, Defendant Releasees, or Downstream Defendant Releasees
18 prior to ninety (90) days after the Effective Date. Compliance with the terms of this Consent
19 Judgment constitutes compliance with Proposition 65 with regard to the Products.

20 4.2 In addition to the foregoing, Calacin, on behalf of herself, and her past and current
21 agents, representatives, attorneys, successors, and assigns, and *not* in her representative capacity,
22 hereby waives all rights to institute or participate in, directly or indirectly, any form of legal
23 action and releases Staedtler, Defendant Releasees, and Downstream Defendant Releasees from
24 any and all manner of actions, causes of action, claims, demands, rights, suits, obligations, debts,
25 contracts, agreements, promises, liabilities, damages, charges, losses, costs, expenses, and fees
26 (including attorneys’ fees), of any nature whatsoever, known or unknown, in law or equity, fixed
27 or contingent, now or in the future, with respect to any alleged violations of Proposition 65
28 related to or arising from Covered Products manufactured, imported, distributed, offered for sale,

1 or sold by Staedtler, Defendant Releasees, or Downstream Defendant Releasees prior to ninety
2 (90) days after the Effective Date. With respect to the foregoing waivers and releases in this
3 Section, Calacin hereby specifically waives any and all rights and benefits which she now has, or
4 in the future may have, conferred by virtue of the provisions of Section 1542 of the California
5 Civil Code, which provides as follows:

6 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
7 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER
8 FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF
9 KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS
10 OR HER SETTLEMENT WITH THE DEBTOR.

11 4.3 Staedtler waives any and all claims against Calacin, her attorneys and other
12 representatives, for any and all actions taken or statements made (or those that could have been
13 taken or made) by Calacin and her attorneys and other representatives, whether in the course of
14 investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter,
15 and/or with respect to Products.

14 **5. ATTORNEY'S FEES AND COSTS**

15 5.1 A Party who unsuccessfully brings or contests an action arising out of this Consent
16 Judgment shall be required to pay the prevailing Party's reasonable attorney's fees and costs
17 unless the unsuccessful Party has acted with substantial justification. For purposes of this
18 Consent Judgment, the term substantial justification shall carry the same meaning as used in the
19 Civil Discovery Act of 1986, California Code of Civil Procedure Section 2016, et seq.

20 5.2 Nothing in this Section shall preclude a Party from seeking an award of sanctions
21 pursuant to law.

22 **6. MODIFICATION OF JUDGMENT**

23 6.1 This Consent Judgment may be modified only by written agreement of the Parties
24 upon entry of a modified Consent Judgment by the Court thereon, or upon motion of any party as
25 provided by law and upon an entry of a modified Consent Judgment by the Court.

26 6.2 Should any court enter final judgment in a case brought by Calacin or the People
27 involving the Products that sets forth standards defining when Proposition 65 warnings will or
28 will not be required ("Alternative Standards"), or if the California Attorney General's office

1 otherwise provides written endorsement (i.e., a writing that is circulated by the Attorney General
2 that is not intended for the purpose of soliciting further input or comments) of Alternative
3 Standards applicable to products that are of the same general type and function as the Products
4 and constructed from the same materials, Staedtler shall be entitled to seek a modification of this
5 Consent Judgment on sixty (60) days' notice to Calacin so as to be able to utilize and rely on such
6 Alternative Standards in lieu of those set forth in Section 2 of this Consent Judgment. Calacin
7 shall not unreasonably contest any proposed application to effectuate such a modification
8 provided that the Products for which such a modification is sought are of the same general type
9 and function as those to which the Alternative Standards apply.

10 **7. SETTLEMENT PAYMENT**

11 7.1 **Civil Penalty.** Staedtler shall pay a Civil Penalty of \$3,000.00 pursuant to
12 California Health and Safety Code section 25249.7(b), to be apportioned in accordance with
13 California Health & Safety Code § 25192, with 75% of these funds remitted to the State of
14 California's Office of Environmental Health Hazard Assessment and the remaining 25% of the
15 funds remitted to Calacin, as provided by California Health & Safety Code § 25249.12(d).

16 7.1.1 Within ten (10) business days of the Effective Date, Staedtler shall issue
17 two separate checks for the Civil Penalty payment, as follows: (a) one check payable to
18 "OEHHA" in the amount of \$2,250.00; and (b) the other check payable to "Brodsky & Smith,
19 LLC in Trust for Karen Calacin" in the amount of \$750.00. The payment owed to Calacin
20 pursuant to this Section shall be delivered to the following payment address:

21 Evan J. Smith, Esquire
22 Brodsky & Smith, LLC
23 Two Bala Plaza, Suite 510
Bala Cynwyd, PA 19004

24 The payment owed to OEHHA (EIN: 68-0284486) pursuant to this Section shall be delivered
25 directly to OEHHA (Memo Line "Prop 65 Penalties") at one of the following address(es):

26 For United States Postal Service Delivery:

27 Mike Gyurics
28 Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment

1 P.O. Box 4010
2 Sacramento, CA 95812-4010

3 For Non-United States Postal Service Delivery:

4 Mike Gyurics
5 Fiscal Operations Branch Chief
6 Office of Environmental Health Hazard Assessment
7 1001 I Street
8 Sacramento, CA 95814

9 A copy of the check payable to OEHHA shall be mailed to Brodsky & Smith, LLC at the
10 address set forth above as proof of payment to OEHHA.

11 7.1.2 **Conditional Civil Penalty.** On or before January 10, 2018, Staedtler
12 shall make a Conditional Civil Penalty payment of \$3,000.00. Pursuant to Title 11 California
13 Code of Regulations, Section 3203(c), Calacin agrees that the Conditional Civil Penalty payment
14 shall be waived in its entirety if, no later than December 1, 2017, an officer of Staedtler provides
15 Calacin with a signed declaration certifying that all Products it ships for sale or distributes for sale
16 in California as of the date of its certification are Reformulated Products or are marked with the
17 warnings required by this Consent Judgment (hereinafter "Labeled Products") and that Staedtler
18 will continue to offer only Reformulated Products or Labeled Products in California in the future.
19 The option to provide a declaration certifying its completed early reformulation or labeling of the
20 Products in lieu of making the Conditional Civil Penalty payment otherwise required by this
21 Section is a material term, and time is of the essence.

22 7.1.3 **Attorney Fees and Costs.** In addition to the payment above, Staedtler
23 shall pay \$29,000.00 to Brodsky & Smith, LLC ("Brodsky & Smith") as complete reimbursement
24 for Calacin's attorneys' fees and costs, including any investigation and laboratory costs or expert
25 fees, incurred in the course of bringing the Complaint and in enforcing Proposition 65, including
26 without limitation, preparation of the 60-Day Notice letter and discussions with the office of the
27 Attorney General. Payment shall be made within ten (10) business days of the entry of this
28 Consent Judgment by the Court and sent to the address for Brodsky & Smith set forth in Section
7.1.1, above.

1 **8. NOTICES**

2 8.1 Unless specified herein, all correspondence and notices required to be provided
3 pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i)
4 registered or certified mail, return receipt requested; or (ii) a nationally recognized overnight
5 courier, with delivery confirmation, on any Party by the other Party at the following addresses:

6 For Staedtler:

7 Doug Cash
8 c/o Staedtler-Mars Ltd
850 Matheson Blvd West, Unit 4
9 Mississauga, Ontario,
Canada L5V 0B4

10 For Calacin:

11 Evan J. Smith
12 BRODSKY & SMITH, LLC
9595 Wilshire Blvd., Suite 900
13 Beverly Hills, CA 90212

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

16 **9. AUTHORIZATION**

17 9.1 The undersigned are authorized to execute this Consent Judgment on behalf of
18 their respective Parties and have read, understood and agree to all of the terms and conditions of
19 this document and each of the undersigned certifies that he or she is fully authorized by the Party
20 he or she represents to execute the Consent Judgment on behalf of the Party represented and
21 legally bind that Party. Except as explicitly provided herein each Party is to bear its own fees and
22 costs.

23 **10. COUNTERPARTS; FACSIMILE OR PDF SIGNATURES**

24 10.1 This Consent Judgment may be executed in counterparts and by facsimile or PDF,
25 each of which shall be deemed an original, and all of which, when taken together, shall constitute
26 one and the same document.

27 **11. RETENTION OF JURISDICTION**

28 11.1 This Court shall retain jurisdiction of this matter to oversee the implementation or

1 modification of the Consent Judgment.

2 **12. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)/COURT**

3 **APPROVAL**

4 12.1 Calacin agrees to comply with the requirements set forth in California Health &
5 Safety Code §25249.7(f) and to promptly bring a Motion for Approval of this Consent Judgment
6 and Defendant agrees it shall support approval of such Motion.

7 12.2 This Consent Judgment shall not be effective until it is approved and entered by
8 the Court and shall be null and void if, for any reason, it is not approved by the Court. In such
9 case, the Parties agree to meet and confer on how to proceed and if such agreement is not reached
10 within 30 days, the case shall proceed on its normal course.

11 12.3 If the Court approves this Consent Judgment and is reversed or vacated by an
12 appellate court, the Parties shall meet and confer as to whether to modify the terms of this
13 Consent Judgment. If the Parties do not jointly agree on a course of action to take, the case shall
14 proceed on its normal course on the trial court's calendar.

15 **13. ENTIRE AGREEMENT**

16 13.1 This Consent Judgment contains the sole and entire agreement and understanding
17 of the Parties with respect to the entire subject matter hereof, and any and all discussions,
18 negotiations, commitment and understandings related thereto. No representations, oral or
19 otherwise, express or implied, other than those contained herein have been made by any party
20 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be deemed
21 to exist or to bind any of the Parties.

22 **14. GOVERNING LAW**

23 14.1 The terms of this Consent Judgment shall be governed by the laws of the State of
24 California and apply within the State of California. In the event that Proposition 65 is repealed or
25 is otherwise rendered inapplicable by reason of law generally, or as to Covered Products, then
26 Defendant shall have no further obligations pursuant to this Consent Judgment with respect to,
27 and to the extent that, Covered Products are so affected.

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1 **15. COURT APPROVAL**

2 15.1 If this Consent Judgment is not approved by the Court, it shall be of no force or
3 effect, and cannot be used in any proceeding for any purpose.

4 **IT IS SO STIPULATED:**

5
6 Dated: 9/9/17

Dated: _____

7
8 By: 
9 Karen Calacin

By: _____
Staedtler-Mars Limited

10 **IT IS SO ORDERED, ADJUDGED AND DECREED:**

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12 Dated: _____

Judge of Superior Court

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15. COURT APPROVAL

15.1 If this Consent Judgment is not approved by the Court, it shall be of no force or effect, and cannot be used in any proceeding for any purpose.

IT IS SO STIPULATED:

Dated: _____

Dated: SEPT 14, 2017

By: _____
Karen Calacin

By: 
Staedtler-Mars Limited

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: _____

Judge of Superior Court