

## SETTLEMENT AGREEMENT

### 1. INTRODUCTION

**1.1 The Parties.** This Settlement Agreement is entered into by and between Anthony Ferreiro (“Ferreiro”) and Staples, Inc. (“Staples”) with Ferreiro and Staples each individually referred to as a “Party” and collectively referred to as the “Parties.” Ferreiro alleges that he is a resident of California, who seeks to promote awareness of exposures to toxic chemicals and to improve human health by reducing or eliminating hazardous substances contained in consumer products. Ferreiro alleges that Staples is a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health & Safety Code § 25249.6, et seq. (“Proposition 65”).

**1.2 General Allegations.** Ferreiro alleges that Staples has exposed consumers to the chemical di(2-ethylhexyl) phthalate (DEHP) from its sales of the Extreme Clear Backpack without providing a clear and reasonable warning required by Proposition 65. DEHP is listed pursuant to Proposition 65 as a chemical known to the State of California to cause cancer and reproductive toxicity.

**1.3 Product Description.** The product covered by this Settlement Agreement is the Extreme Clear Backpack, UPC# 7 35221 32460 2, Item # 674708, Model # 32460 (the “Product”) that Ferreiro alleges has been imported, distributed, offered for sale and/or sold into California by Staples.

**1.4 Notice of Violation.** Ferreiro alleges that he served Access Bag Bag N’ Pack, Inc. and Staples, and various public enforcement agencies on April 25, 2018, with a document entitled “Notice of Violation of California Health & Safety Code § 25249.6, et seq.” (the “Notice”). Ferreiro alleges that the Notice provided Staples and such others, including public enforcers, with notice that alleged that Staples was in violation of California Health & Safety Code § 25249.6, for failing to warn California consumers that use of the Product will expose them to DEHP. No public enforcer has diligently prosecuted the allegations set forth in the Notice.

**1.5 No Admission.** Staples denies the material factual and legal allegations contained in the Notice and maintains that, to the best of its knowledge, all products that are or have been sold and

distributed in California, including the Products, have been and are in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission by Staples of any fact, finding, issue of law, or violation of law; nor shall compliance with this Settlement Agreement 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 1.5 shall not diminish or otherwise affect the obligations, responsibilities and duties under this Settlement Agreement. Notwithstanding the allegations in the Notice, Staples maintains that it has not knowingly manufactured, distributed and/or sold, or caused to be manufactured, distributed or and/or sold, the Products for sale in California in violation of Proposition 65.

**1.6 Effective Date.** For purposes of this Settlement Agreement, the term “Effective Date” shall mean the date this Agreement is last executed by the Parties.

**2. CESSATION OF SALES OF THE PRODUCT TO CALIFORNIA CONSUMERS.**

Staples represents that the Notice prompted it to investigate Ferreiro’s claim that California consumers could be exposed to DEHP from the acquisition, purchase, storage, consumption, or reasonably foreseeable use of the Product. As part of that investigation, Staples attempted to contact the manufacturer of the Product, Access Bag N’ Pack, Inc., to evaluate Ferreiro’s claim. Staples stopped purchasing the Product from Access Bag N’ Pack, Inc. and, as a result of its investigation, stopped selling the Product to consumers in California.

**3. MONETARY PAYMENTS PURSUANT TO HEALTH & SAFETY CODE § 25249.7(b)**

In settlement of all the claims referred to in this Settlement Agreement, Staples shall pay \$500.00 in accordance with this Section. The payment shall be allocated in accordance with California Health & Safety Code § 25249.12(c)(1) and (d), with 75% of the funds remitted to OEHHA and the remaining 25% of the funds remitted to Ferreiro. The payment(s) shall be delivered to the addresses identified in § 3.2, below. For all amounts due and owing that are not received within the payment times set forth below, Staples shall pay a late payment fee equal to \$100/day to be allocated in accordance with California Health & Safety Code § 25249.12(c)(1) and (d).

**3.1 Payment Allocation.** Within fifteen (15) business days of the Effective Date, Staples shall issue two separate checks for the payment described in the preceding paragraph to (a) “OEHHA” in the amount of \$375.00; and to (b) “Brodsky & Smith, LLC in Trust for Ferreiro” in the amount of \$125.00. The payment(s) shall be delivered to the addresses identified in § 3.2, below.

**3.2 Payment Procedures.**

(a) **Issuance of Payments.** Payments shall be delivered as follows:

(i) All payments owed to Ferreiro, pursuant to § 3.1 shall be delivered to the following payment address:

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

(ii) All payments owed to OEHHA (EIN: 68-0284486), pursuant to § 3.1 shall be delivered directly to OEHHA (Memo Line “Prop 65 Penalties”) at the following addresses:

For United States Postal Service Delivery:

Mike Gyurics  
Fiscal Operations Branch Chief  
Office of Environmental Health Hazard Assessment  
P.O. Box 4010  
Sacramento, CA 95812-4010

For Non-United States Postal Service Delivery:

Mike Gyurics  
Fiscal Operations Branch Chief  
Office of Environmental Health Hazard Assessment  
1001 I Street  
Sacramento, CA 95814

(b) **Copy of Payments to OEHHA.** Staples agrees to provide Ferreiro’s counsel with a copy of the checks payable to OEHHA, simultaneous with its payments to Ferreiro, to be delivered to the address provided in Section 3.2(a)(i), as proof of payment to OEHHA.

(C) **Tax Documentation.** STAPLES agrees to provide a completed IRS 1099 for its payments to, and Ferreiro agrees to provide IRS W-9 forms for, each of the following payees under this Settlement Agreement:

(i) “Anthony Ferreiro” whose address and tax identification number shall be provided within five (5) days after this Settlement Agreement is fully executed by the Parties;

(ii) “Brodsky & Smith, LLC” (EIN: 23-2971061) at the address provided in Section 3.2(a)(i); and

(iii) “Office of Environmental Health Hazard Assessment” 1001 I Street, Sacramento, CA 95814.

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

The Parties acknowledge that Ferreiro and his counsel offered to reach preliminary agreement on the material terms of this dispute before reaching terms on the amount of fees and costs to be reimbursed to them. The Parties thereafter reached an accord on the compensation due to Ferreiro and his counsel under general contract principles and the private attorney general doctrine and principles codified at California Code of Civil Procedure § 1021.5, for all work performed through the mutual execution of this agreement. Under these legal principles, Staples shall reimburse Ferreiro’s counsel for fees and costs incurred as a result of investigating and bringing this matter to Staples’ attention, and negotiating a settlement in the public interest. Within fifteen (15) business days of the Effective Date, Staples shall issue a check payable to “Brodsky & Smith, LLC” in the amount of \$9,500.00 for delivery to the address identified in § 3.2(a)(i), above.

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

**5.1 Release of Staples.** This Settlement Agreement is a full, final and binding resolution between Ferreiro, acting on his own behalf, and on behalf of his past and current agents, representatives, attorneys, successors, and/or assigns (“Releasers”), and Staples, and its parents, shareholders, divisions, subdivisions, subsidiaries, partners, sister companies, and affiliates, and their successors and assigns, of any alleged violation of Proposition 65 that was or could have been asserted

by Releasors for failure to provide warnings for alleged exposures to DEHP contained in the Product, and Releasors hereby release any such claims against Staples and its parents, subsidiaries, affiliated entities under common ownership, and their respective past and current shareholders, marketplaces, directors, officers, agents, employees, representatives, attorneys, successors and assignees, and any entity to whom Staples directly or indirectly distributes or sells the Product, including but not limited to, downstream distributors, wholesalers, customers and retailers, (collectively, the "Releasees"), from all claims for violations of Proposition 65 through the Effective Date based on unwarned exposures to DEHP in the Product or in any way resulting from their acquisition, purchase, storage, consumption or any reasonably foreseeable use of the Product.

In further consideration of the promises and agreements herein contained, and for the payments to be made pursuant to Sections 3 and 4 above, Ferreiro, on behalf of himself, his past and current agents, representatives, attorneys, successors and/or assignees, hereby covenants not to sue and waives any right to institute, participate in, directly or indirectly, any form of legal action and releases all claims that she may have, including without limitation, all actions and causes of action in law and in equity, all obligations, expenses (including without limitation all attorneys' fees, expert fees, and investigation fees, and costs), damages, losses, liabilities and demands against any of the Releasees of any nature, character, or kind, whether known or unknown, suspected or unsuspected, limited to and arising out of the alleged or actual exposure to the chemical DEHP in the Product.

**5.2 Staples' Release of Ferreiro.** Staples, on behalf of itself, its past and current agents, representatives, attorneys, successors and/or assignees, hereby waives any and all claims against Ferreiro, his attorneys and other representatives, for any and all actions taken or statements made (or those that could have been taken or made) by Ferreiro and/or his attorneys and other representatives, whether in the course of investigating claims or otherwise seeking to enforce Proposition 65 against it in this matter or with respect to the Product.

**5.3 California Civil Code § 1542.** It is possible that other claims not known to the Parties arising out of the facts alleged in the Notice and relating to the Product will develop or be discovered. Ferreiro on behalf of himself and his past and current agents, representatives, attorneys, and successors

and/or assignees, on one hand, and Staples, on the other hand, acknowledge that this Agreement is expressly intended to cover and include all such claims up through the Effective Date, including all rights of action therefor. The Parties acknowledge that the claims released in §§ 5.1 and 5.2, above, may include unknown claims, and nevertheless waive California Civil Code § 1542 as to any such unknown claims. California Civil Code § 1542 reads as follows:

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

Ferreiro and Staples each acknowledge and understand the significance and consequences of this specific waiver of California Civil Code § 1542.

**5.4. Public Benefit.** It is Staples' understanding that the actions taken by Staples in response to the Notice as described in Section 2 of this Settlement Agreement, conferred a significant benefit to the general public, as set forth in Code of Civil Procedure § 1021.5 and Cal. Admin. Code tit. 11, § 3201. As such, it is the intent of Staples that to the extent any other private party initiates an action alleging a violation of Proposition 65 with respect to Staples' alleged failure to provide a warning concerning exposure to DEHP prior to use of the Product it has manufactured, distributed, sold, or offered for sale in California, or will manufacture, distribute, sell, or offer for sale in California, such private party action would not confer a significant benefit on the general public as to the Product addressed in this Settlement Agreement, provided that Staples representations in Section 2 of this Settlement Agreement are true and accurate.

**6. SEVERABILITY**

If, subsequent to the execution of this Settlement Agreement, any of the provisions of this Settlement Agreement are deemed by a court to be unenforceable, the validity of the enforceable provisions remaining shall not be adversely affected but only to the extent the deletion of the provision deemed unenforceable does not materially affect, or otherwise result in the effect of the Settlement Agreement being contrary to the intent of the Parties in entering into this Settlement Agreement.

**7. GOVERNING LAW**

The terms of this Settlement Agreement shall be governed by the law of the State of California and apply within the State of California. In the event that Proposition 65 is repealed or is otherwise rendered inapplicable or limited by reason of law generally, or as to the Products, Staples shall provide written notice to Ferreiro of any asserted change in the law, and shall have no further obligations pursuant to this Settlement Agreement with respect to, and to the extent that, a Product is so affected.

**8. NOTICES**

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

For STAPLES:

Jay Connolly  
Seyfarth Shaw, LLP  
560 Mission Street, Suite 3100  
San Francisco, CA 94105

For Ferreiro:

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

Either 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.

**9. NEUTRAL CONSTRUCTION**

Both Parties and their counsel have participated in the preparation of this Settlement Agreement and this Settlement Agreement is the result of the joint efforts of the Parties. This Settlement Agreement was subject to revision and modification by the Parties and has been accepted and approved as to its final form by both Parties and their counsel. Accordingly, any uncertainty or ambiguity existing in this Settlement Agreement shall not be interpreted against any Party by virtue of its participation in the preparation of this Settlement Agreement. Each Party to this Settlement

Agreement agrees that any statute or rule of construction providing that ambiguities are to be resolved against the drafting party should not be employed in the interpretation of this Settlement Agreement and, in this regard, the Parties hereby waive California Civil Code Section 1654.

**10. COUNTERPARTS: SIGNATURES**

This Settlement Agreement may be executed in counterparts and by facsimile or .pdf signature, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

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

Ferreiro agrees to comply with the reporting requirements referenced in Health & Safety Code § 25249.7(f).

**12. MODIFICATION**

This Settlement Agreement may be modified only by a written agreement of the Parties.

**13. ENTIRE AGREEMENT**

This Settlement Agreement contains the sole and entire agreement of the Parties and any and all prior negotiations and understandings related hereto shall be deemed to have been merged within it. No representations or terms of agreement other than those contained herein exist or have been made by any Party with respect to the other Party or the subject matter hereof.

**14. AUTHORIZATION**

The undersigned are authorized to execute this Settlement Agreement and have read, understood and agree to all of the terms and conditions contained of this Settlement Agreement.

**AGREED TO:**

**AGREED TO:**

Date: 5/20/19

Date: May 1, 2019

By: Anthony Ferreiro  
Anthony Ferreiro

By: [Signature]  
STAPLES, INC.