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13 Counsel for Plaintiff
14 ECOLOGICAL RIGHTS FOUNDATION

15 SUPERIOR COURT OF THE STATE OF CALIFORNIA
16 COUNTY OF SAN FRANCISCO

17 ECOLOGICAL RIGHTS FOUNDATION,

18 Plaintiff,

19 v.

20 STAPLES, INC., et al.,

21 Defendants.

22 Case No. CGC-20-584232

23 **[PROPOSED] CONSENT JUDGMENT**
24 **AS TO STAPLES, INC.**

25 **1. INTRODUCTION**

26 1.1 On April 24, 2020, the Ecological Rights Foundation (“ERF”) acting on behalf of
27 itself and in the public interest, filed a Complaint for civil penalties and injunctive relief in San
28 Francisco Superior Court, Case No. CGC-20-584232 against *inter alia* defendant STAPLES,
INC. (also referred to herein as “STAPLES” or “Defendant”) and a First Amended Complaint
 (“Complaint”) on June 29, 2020. ERF alleges, among other things, that Defendant violated
 provisions of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety
 Code Sections 25249.5, *et seq.* (“Proposition 65”) by failing to give clear and reasonable
 warnings to those residents of California who use filaments incorporating a styrene monomer
 and 3D printers STAPLES has distributed, marketed, and/or sold.

1 1.2 ERF alleges that STAPLES has distributed, marketed, and/or sold in the State of
2 California filaments incorporating a styrene monomer, including acrylonitrile-butadiene-styrene
3 (ABS) filaments, polycarbonate ABS (PC-ABS) filaments, and high impact polystyrene (HIPS)
4 filaments. ERF contends that when California residents use these filaments in the operation of 3d
5 printers or 3d pens, they are exposed to styrene, a chemical known to the State of California to
6 cause cancer. ERF further alleges that STAPLES has distributed, marketed, and/or sold in the
7 State of California 3D printers utilizing filaments incorporating a styrene monomer. ERF
8 contends that when California residents use these 3D printers and the above identified filaments,
9 they are exposed to styrene, a chemical known to the State of California to cause cancer.

10 1.3 For purposes of this Consent Judgment, “Covered Products” means (1) filaments
11 incorporating a styrene monomer and (2) 3D printers utilizing such styrene-based filaments,
12 solely where such filaments and 3D printers are or will be distributed, marketed, or sold by
13 STAPLES in California.

14 1.4 The Complaint is based upon two separate 60-Day Notice letters that ERF alleges it
15 sent on April 24, 2019 and April 21, 2020 to STAPLES, the California Attorney General, all
16 District Attorneys, and all City Attorneys with populations exceeding 750,000 that STAPLES
17 was in violation of California Health & Safety Code § 25249.6 for failing to warn California
18 consumers and customers that the Covered Products expose users to styrene (collectively, the
19 “Notices.”) No public enforcer has diligently prosecuted the allegations set forth in the Notices.

20 1.5 Defendant is a business that employs more than ten persons. ERF alleges that
21 Covered Products distributed, marketed or sold by Defendant release Styrene into the air. ERF
22 further alleges that people using the Covered Products in the operation of 3d printers or 3d pens,
23 and others standing in the same room, inhale styrene in the normal course of use. Pursuant to
24 Health and Safety Code Section 25249.8, Styrene is a chemical known to the State of California
25 to cause cancer. ERF alleges that Covered Products manufactured, distributed or sold by
26 Defendant for use in California require a warning under Proposition 65, pursuant to Health and
27 Safety Code Section 25249.6. Solely for purposes of this Consent Judgment, the parties stipulate
28 that this Court has personal jurisdiction over STAPLES as to the allegations of violations

1 contained in the Complaint, that venue is proper in the County of San Francisco, and that this
2 Court has jurisdiction to enter this Consent Judgment as a full settlement and resolution of the
3 allegations contained in the Complaint.

4 1.6 This Consent Judgment resolves claims that are denied and disputed. ERF and
5 Defendant enter into this Consent Judgment pursuant to a full and final settlement of any and all
6 claims that were raised in the Complaint, or which could have been raised in the Complaint,
7 arising out of the facts or conduct related to Defendant alleged therein, for the purpose of
8 avoiding prolonged litigation. STAPLES denies the material factual and legal allegations
9 contained in the Notices. Nothing in this Consent Judgment shall be construed as an admission
10 by STAPLES or any Releasee (defined *infra*) of any fact, finding, issue of law, or violation of
11 law; nor shall compliance with this Consent Judgment constitute or be construed as an admission
12 by STAPLES or any Releasee of any fact, finding, conclusion, issue of law, or violation of law,
13 such being specifically denied by STAPLES and the Releasees. However, this section shall not
14 diminish or otherwise affect the obligations, responsibilities, and duties of any party or Releasee
15 under this Consent Judgment. Notwithstanding the allegations in the Notices, STAPLES and the
16 Releasees maintain that they have not violated Proposition 65, knowingly, intentionally, or
17 otherwise.

18 1.7 The term “Effective Date” means the date that this Consent Judgment is entered by
19 the Court.

20 **2. INJUNCTIVE RELIEF**

21 2.1 Warning Statements for Covered Products

22 (a) No later than sixty (60) days after the Effective Date, STAPLES shall ensure that any
23 Covered Products it distributes, markets or offers for sale in California shall include the
24 following warning statements with the Covered Product as set forth below:

25 For 3D Printers

26  **WARNING:** This 3D Printer - when used with a styrene filament (ABS / HIPS / PC-
27 ABS) - can expose you and others in the same room to styrene, a chemical known to the
28 State of California to cause cancer. www.P65Warnings.ca.gov

1 **ALWAYS OPERATE THIS PRODUCT IN A WELL-VENTILATED AREA.**

2 For Filaments

3 **⚠ WARNING:** This Filament (ABS / HIPS / PC-ABS) - when used in the operation of
4 3D Printers or 3D Pens - can expose you and others in the same room to styrene, a
5 chemical known to the State of California to cause cancer. www.P65Warnings.ca.gov

6 **ALWAYS USE THIS PRODUCT IN A WELL-VENTILATED AREA.**

7 The warning statements shall be affixed to or printed on packaging for Covered Products.

8 (b) For any Covered Product that is sold by STAPLES on the internet to persons
9 located in California, within 14 days of the Effective Date, STAPLES shall include the
10 applicable above warning statement, either on each Covered Product's display page or by
11 otherwise prominently displaying the warning statement to the purchaser prior to completing the
12 purchase.

13 (c) The warnings shall be displayed with such conspicuousness, as compared with
14 other words, statements, designs, or devices as to render them likely to be read and understood
15 by an ordinary individual under customary conditions of purchase or use. The type size of the
16 warning must be legible, and no smaller than any other warning provided with the Covered
17 Products and in no case less than twelve (12) point font. The words "WARNING" and
18 "ALWAYS USE THIS PRODUCT IN A WELL-VENTILATED AREA" shall be in upper case
19 letters and bold as in the above warnings in this paragraph. The warning symbol to the left of the
20 word "WARNING" must be a black exclamation point in a yellow equilateral triangle with a
21 black outline, except that if the sign, label, or booklet for the Products does not use the color
22 yellow, the symbol may be in black and white.

23 (d) The Parties agree that STAPLES and Releasees shall be deemed to be in
24 compliance with Section 2.1(a) of this Consent Judgment by either adhering to Section 2.1(a) of
25 this Consent Judgment, or by providing warnings consistent with any consent judgment entered
26 into by an upstream entity in the distribution chain applicable to the Covered Products, or by
27 displaying the applicable warning statement set forth in Section 2.1(a) above on a label, labeling,
28

1 or sign¹ displayed with such conspicuousness as compared to other words, statements, designs or
2 devices on the label, labeling, or sign, as to render the warning likely to be seen, read, and
3 understood by an ordinary individual under customer conditions of purchase or use. The Parties
4 further agree that STAPLES and Releasees shall be deemed to be in compliance with Section
5 2.1(a), (b) and (c) of this Consent Judgment by complying with the warning requirements
6 adopted by the State of California’s Office of Environmental Health Hazard Assessment
7 (“OEHHA”) for styrene in 3D printing products after the Effective Date.

8 2.2. Sell-Through for Existing Inventory

9 The injunctive requirements of Section 2 shall not apply to any Covered Products in
10 STAPLES’ inventory on or before the Effective Date, which Covered Products are subject to the
11 releases provided in Section 4.1.

12 3. REIMBURSEMENT OF FEES AND COSTS

13 3.1 Attorneys Fees and Litigation Costs

14 Pursuant to Health and Safety Code section 25249.7(b)(2), STAPLES shall reimburse
15 ERF’s counsel for \$9,750.00 in ERF’s fees and costs incurred as a result of investigating and
16 bringing this matter to STAPLES attention, and negotiating a settlement in the public interest.
17 The payment shall be made payable to Brian Gaffney Attorney Client Trust Account and sent no
18 later than fourteen (14) days after the Effective Date via USPS certified mail, return receipt
19 requested, to the following address:

20 LAW OFFICES OF BRIAN GAFFNEY, A Professional Corporation
21 446 Old County Road, Suite 100-310
22 Pacifica, California 94044

23 3.2 Civil Penalties and Payments In Lieu of Penalties

24 Pursuant to Health and Safety Code section 25249.7(b)(2), STAPLES shall pay
25 \$1,000.00 in civil penalties. The penalty payment will be allocated in accordance with California

26 _____
27 ¹ Sign means a physical presentation of written, printed, graphic, or electronically provided communication,
28 including shelf sign, other than a label or labeling, posed in a conspicuous manner that is associated with the
exposure for which the warning is being provide under the Act and is clearly visible under all lighting conditions
normally encountered during business hours and under such conditions as to make it likely to be seen, read, and
understood by the ordinary person.

1 Health and Safety Code section 25249.12(c)(1) & (d), with 75% of the penalty amount remitted
2 to the California Office of Environmental Health Hazard Assessment (“OEHHA”) and the
3 remaining 25% of the penalty amount paid to Ecological Rights Foundation. Defendant will
4 provide these payments in two checks for the following amounts made payable to: 1) “OEHHA”
5 in the amount of \$750.00 and 2) “Ecological Rights Foundation” in the amount of \$250.00.

6 The payments to OEHHA and Ecological Rights Foundation shall be sent no later than
7 fourteen (14) days after the Effective Date. All payments shall be sent via USPS certified mail,
8 return receipt requested, to the following addresses: The payment to Ecological Rights
9 Foundation shall be delivered to:

10 Fredric Evenson
11 Ecology Law Center
12 P.O. Box 1000
13 Santa Cruz, CA 95061

14 The payment to OEHHA shall be delivered to:

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

20 The Parties will exchange completed IRS 1099, W-9, or other forms as required.
21 Relevant information for ERF and its counsel are set forth below in Section 9 infra.

22 4. **RELEASE OF ALL CLAIMS**

23 4.1 **Release of STAPLES and STAPLES RELEASEES**

24 ERF acting on its own behalf and in the public interest releases STAPLES and its
25 respective parents, subsidiaries, assigns, predecessors, successors, affiliated entities,
26 members, marketplaces, directors, officers, agents, employees, insurers, and attorneys,
27 and each entity to whom STAPLES directly or indirectly distributes or sells the Covered
28 Products, including, but not limited to, downstream distributors, wholesalers, customers,
retailers, franchisees, cooperative members and licensees, all other downstream entities in
the distribution chain, and, solely as to the units of COVERED PRODUCTS sold through

1 STAPLES in California, all upstream entities in the chain of distribution including but
2 not limited to Print-Rite N.A, Inc. and Print-Rite Imaging Technology, Inc., and the
3 predecessors, successors, affiliates, and assigns of any of the foregoing in this paragraph
4 (collectively, the “Releasees”), from all claims raised in the Notices and in the Complaint
5 through the Effective Date based on alleged failure to provide Proposition 65 warnings
6 for alleged exposures to styrene from use of the Covered Products. This settlement is a
7 full, final, and binding resolution of all claims that were asserted or could have been
8 asserted against STAPLES and/or the Releasees for the failure to provide Proposition 65
9 warnings for alleged exposures to styrene from use of the Covered Products.

10 In further consideration of the promises and agreements herein contained, and for
11 the payment to be made pursuant to Section 3, above, ERF acting on its own behalf, and
12 on behalf of its past and current agents, representatives, attorneys, successors, and/or
13 assignees (all of whom, collectively, are defined as the “ERF Releasers”) provide a
14 release herein which shall be effective as a full and final accord and satisfaction, as a bar
15 to all actions, causes of action, obligations, costs, expenses, attorneys’ fees, damages,
16 losses, claims, liabilities, and demands against STAPLES and/or any of the Releasees of
17 any nature, character, or kind, limited to and arising out of claims that were or could have
18 been asserted against STAPLES and/or the Releasees based on the Notices for failure to
19 provide warnings for the alleged exposure to styrene from use of the Covered Products.

20 **4.2 STAPLES’ Release of ERF and ERF Releasers**

21 STAPLES, on behalf of itself, and its Releasees hereby waives any and all claims
22 against ERF and the ERF Releasers, for any and all actions taken or statements made by
23 ERF and/or the ERF Releasers, whether in the course of investigating claims or otherwise
24 seeking to enforce Proposition 65, against STAPLES in this matter with respect to the
25 Covered Products.

26 **4.3 California Civil Code Section 1542**

27 It is possible that other claims not known to the Parties arising out of the facts alleged in
28 the Notice and relating to the Covered Products will develop or be discovered. ERF on behalf of

1 itself only, on one hand, and STAPLES, on the other hand, acknowledge that this Agreement is
2 expressly intended to cover and include all such claims up through the Effective Date, including
3 all rights of action therefor. The Parties acknowledge that the claims released in Sections 4.1 and
4 4.2 above may include unknown claims, and nevertheless waive California Civil Code section
5 1542 as to any such unknown claims. California Civil Code section 1542 reads as follows:

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

10 ERF and STAPLES each acknowledge and understand the significance and consequences
11 of this specific waiver of California Civil Code section 1542.

12 **4.4 Deemed Compliance with Proposition 65.** The Parties agree that
13 compliance by STAPLES and/or the Releasees with this Consent Judgment constitutes
14 compliance with Proposition 65 with respect to exposure to styrene from use of the
15 Covered Products.

16 **4.5 Public Benefit.** It is the understanding of STAPLES and Releasees that the
17 commitments they have agreed to herein, and actions to be taken under this Consent
18 Judgment, will confer a significant benefit to the general public, as set forth in Code of
19 Civil Procedure § 1021.5 and Cal. Admin. Code tit. 11, § 3201. As such, it is the intent of
20 STAPLES and the Releasees that to the extent any other private party initiates an action
21 alleging a violation of Proposition 65 with respect to their alleged failure to provide a
22 warning concerning exposure to styrene from use of the Covered Products manufactured,
23 distributed, sold, or offered for sale in California, or will manufacture, distribute, sell, or
24 offer for sale in California, such private party action would not confer a significant
25 benefit on the general public as to those Covered Products addressed in this Consent
26 Judgment, provided that STAPLES and the Releasees are in compliance with this
27 Consent Judgment.

1 **5. ENFORCEMENT OF JUDGMENT**

2 5.1 The terms of this Consent Judgment shall be enforced exclusively by the parties
3 hereto. The parties may, by noticed motion or order to show cause before the Superior Court of
4 San Francisco County, giving the notice required by law, enforce the terms and conditions
5 contained herein. In the event that a dispute arises with respect to any of the provisions of this
6 Consent Judgment, the Parties shall meet and confer within 10 days after either Party receives
7 written notice of an alleged violation of this Agreement. In any proceeding brought by either
8 party to enforce this Consent Judgment, such party may seek whatever fines, costs, penalties or
9 remedies as may be provided by law for any violation of Proposition 65 or this Consent
10 Judgment.

11 5.2 This Court shall retain jurisdiction of this matter to implement and enforce the
12 terms this Consent Judgment.

13 **6. SERVICE ON THE ATTORNEY GENERAL**

14 ERF shall serve a copy of this Consent Judgment, signed by both parties, on the
15 California Attorney General on behalf of the parties so that the Attorney General may review this
16 Consent Judgment prior to its submittal to the Court for approval. No sooner than forty five (45)
17 days after the Attorney General has received the aforementioned copy of this Consent Judgment,
18 and in the absence of any written objection by the Attorney General to the terms of this Consent
19 Judgment, the parties may then submit it to the Court for approval.

20 **7. SEVERABILITY**

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

24 **8. GOVERNING LAW**

25 The terms of this Consent Judgment shall be governed by the law of the State of
26 California and apply within the State of California. In the event that Proposition 65 is
27 repealed or is otherwise rendered inapplicable by reason of law generally, or as to the
28 Covered Products, or in the event there is a Safe Use Determination or other

1 demonstrated or recognized exemption to/from the Proposition 65 warning requirements
2 for styrene as to the Covered Products, and STAPLES and/or the Releasees cease to
3 provide a Proposition 65 warning statement or equivalent on a Covered Product as a
4 result of this change in the law, STAPLES or the Releasees shall provide written notice to
5 ERF of any asserted change in the law or their warning obligation, and shall have no
6 further obligations pursuant to this Consent Judgment with respect to, and to the extent
7 that, a Covered Product is so affected.

8 **9. NOTICES**

9 **9.1 Notice of Alleged Violation of this Agreement**

10 In the event that a dispute arises with respect to any of the provisions of this
11 Agreement, the Parties shall meet and confer within 14 days after either Party receives
12 written notice of an alleged violation of this Agreement.

13 **9.2 Notices Provided Pursuant to this Agreement**

14 Unless specified herein, all correspondence and notices required to be provided
15 pursuant to this Consent Judgment shall be in writing and personally delivered or sent by:
16 (i) USPS Priority Mail; or (ii) overnight or two-day courier on any party by the other
17 party to the following addresses:

18
19 For STAPLES:

20 Stephanie Molina
21 STAPLES Legal Department
22 500 STAPLES Dr.
23 Framingham, MA 01702

24 and

25 Joseph Orzano
26 SEYFARTH SHAW LLP
27 Seaport East
28 Two Seaport Lane, Suite 300
Boston, MA 02210

1 For Ecological Rights Foundation:

2
3 Fredric Evenson
4 Ecology Law Center
5 P.O. Box 1000
6 Santa Cruz, CA 95061

7 With a copy to:

8 LAW OFFICES OF BRIAN GAFFNEY, A Professional Corporation
9 446 Old County Road, Suite 100-310
10 Pacifica, California 94044

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

13 **10. COUNTERPARTS: SIGNATURES**

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

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

18 ERF agrees to comply with the reporting requirements referenced in Health &
19 Safety Code section 25249.7(f).

20 **12. MODIFICATION**

21 This Consent Judgment may be modified only by a written agreement of the
22 Parties.

23 **13. AUTHORIZATION**

24 Each signatory to this Consent Judgment certifies that he or she is fully authorized
25 by the party he or she represents to enter into this Consent Judgment, have read,
26 understood and agree to all the terms and conditions contained in this Consent Judgment,
27 and are authorized to execute it on behalf of the party represented and legally to bind that
28 party.

1 AGREED TO:

2 Date: 4/23/21

3 By: *Mary Stevens* Mary Stevens, Sr. Category Merchant
4 ~~Richard DiStefano, Associate Category Manager~~ MS Staples Inc
5 STAPLES, Inc.

6 AGREED TO:

7 ECOLOGICAL RIGHTS FOUNDATION

8 *Ecological Rights Foundation*

9 BY: *James Lampton*, EXEC. DIR.
10 JAMES LAMPORT, EXECUTIVE DIRECTOR

11 DATED: March 30, 2021

12
13
14 IT IS SO ORDERED, ADJUDGED AND DECREED:

15 DATED: _____

16
17 JUDGE OF THE SUPERIOR COURT