

## **SETTLEMENT AGREEMENT**

### **1. INTRODUCTION**

#### **1.1 Parties**

This Settlement Agreement is entered into by and between Audrey Donaldson (“Donaldson”) and Staples, Inc. (“Staples”), with Donaldson and Staples each individually referred to as a “Party” and collectively as the “Parties.” Donaldson alleges that she is an individual residing in the State of California who seeks to promote awareness of exposures to toxic chemicals and to improve human health by reducing or eliminating hazardous substances used in consumer products. Donaldson further 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, California Health and Safety Code section 25249.6 *et seq.* (“Proposition 65”).

#### **1.2 General Allegations**

Donaldson alleges that Staples manufactures, sells, and distributes for sale in California, badge reels with PVC components containing the phthalate chemical di(2-ethylhexyl) phthalate (“DEHP”). DEHP is listed pursuant to Proposition 65 as a chemical known to cause birth defects and other reproductive harm. Donaldson alleges that Staples failed to provide the health hazard warning required by Proposition 65 for exposures to DEHP.

#### **1.3 Product Description**

The products covered by this Settlement Agreement are CPP International, LLC badge reels with PVC components containing DEHP that are manufactured, sold, or distributed for sale in California by Staples including, but not limited to, the “*Studio C Badge Reel*”; UPC 0 79784 46115 4 (hereinafter referred to as the “Products”).

#### **1.4 Notice of Violation**

Donaldson alleges that on June 25, 2019 she served Staples and the requisite public enforcement agencies with a 60-Day Notice of Violation ("Notice"), alleging that Staples violated Proposition 65 when it failed to warn its customers and consumers in California of the health hazards associated with exposures to DEHP from its Products. No public enforcer has commenced and is diligently prosecuting 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 all of the products that it has 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, conclusion, 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. This Section shall not, however, diminish or otherwise affect Staples' 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 January 31, 2020.

### **2. INJUNCTIVE RELIEF: REFORMULATION**

#### **2.1 Reformulation Standards**

"Reformulated Products" are defined as those Products containing DEHP in concentrations less than 0.1 percent (1,000 parts per million) when analyzed pursuant to

U.S. Environmental Protection Agency testing methodologies 3580A and 8270C, or any other methodologies utilized by federal or state agencies for the purpose of determining the DEHP content in a solid substance.

## **2.2 Reformulation Commitment**

Within sixty (60) days of the Effective Date, other than Products that are already in the stream of commerce, or in existing inventory intended for distribution or sale in California, (which have been taken into account in the assessment of the civil penalty in Section 3.1 below), Staples shall not import, distribute, sell or offer the Products for sale in the State of California unless they are Reformulated Products pursuant to Section 2.1. The Parties agree and intend for compliance with the terms of this Settlement Agreement to constitute compliance with Proposition 65 with respect to exposures to DEHP from the Products, as set forth in the Notice.

## **3. MONETARY SETTLEMENT TERMS**

### **3.1 Civil Penalty Payment**

Pursuant to Health and Safety Code section 25249.7(b)(2), and in settlement of all claims alleged in the Notice or referred to in this Settlement Agreement, Staples agrees to pay, no later than fifteen (15) business days after the Effective Date, \$2,000 in civil penalties. The penalty payment will be allocated in accordance with California Health and Safety Code section 25249.12(c)(1) & (d), with 75% of the penalty amount remitted to the California Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% of the penalty amount paid to Donaldson, and delivered to the address in Section 3.3 herein. Staples will provide its payment, on or before the Effective Date, in two checks as follows: (1) "OEHHA" in the amount of \$1,500; and (2) "Audrey Donaldson" in the amount of \$500.

### **3.2 Attorneys' Fees and Costs**

The Parties acknowledge that Donaldson and her counsel offered to resolve this dispute without reaching terms on the amount of fees and costs to be reimbursed to them,

thereby leaving the issue to be resolved after the material terms of the agreement had been settled. Shortly after the other settlement terms had been reached, Staples expressed a desire to resolve Donaldson's fees and costs. The Parties reached an accord on the compensation due to Donaldson's counsel under general contract principles and the private attorney general doctrine codified at Code of Civil Procedure section 1021.5 for all work performed in this matter. Under these legal principles, no later than fifteen (15) days after the Effective Date, Staples shall cause to be paid attorneys' fees and costs in the amount of \$13,000, in the form of a check made payable to "Voorhees & Bailey, LLP," for all fees and costs incurred investigating, bringing this matter to the attention of Staples' management, and negotiating a settlement.

### **3.3 Payment Address**

All payments under this Settlement Agreement shall be delivered to the following address:

Voorhees & Bailey, LLP  
990 Amarillo Avenue  
Palo Alto, CA 94303

**3.4 Tax Documentation.** Staples agrees to provide a completed IRS 1099 for its payments to, and Donaldson agrees to provide Staples within five (5) days of the Effective Date IRS W-9 forms for, each of the following payees under this Settlement Agreement:

- (i) "Audrey Donaldson" at the address provided on her completed W-9 to be provided to Staples pursuant to this Settlement Agreement;
- (ii) "Voorhees & Bailey, LLP" at the address provided in Section 3.3; and
- (iii) "Office of Environmental Health Hazard Assessment" 1001 I Street, Sacramento, CA 95814.

## **4. CLAIMS COVERED AND RELEASED**

### **4.1 Donaldson's Release of Proposition 65 Claims**

This Settlement Agreement is a full, final, and binding resolution between

Donaldson, in her individual capacity, and *not* on behalf of the public, and on behalf of her past and current agents, representatives, attorneys, successors, and/or assigns (“Releasors”) 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 from the Products, and Releasors hereby release any such claims against Staples its parents, subsidiaries, affiliated entities under common ownership, and their respective past and current shareholders, marketplaces, directors, officers, agents, employees, representatives, attorneys, successors and assigns and any entity to whom Staples directly or indirectly distributes or sells Products, including, but not limited, to downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, importers, and licensees (collectively, “Releasees”), from all claims for violations of Proposition 65 through the Effective Date relating to unwarned exposures to DEHP from the Products. The Parties further understand and agree that this Section 4.1 release shall not extend upstream to any entities that manufactured the Products or any component parts thereof, or any upstream distributors or suppliers who sold the Products or any component parts thereof to Staples.

#### **4.2 Donaldson’s Individual Release of Claims**

Donaldson, in her individual capacity only and *not* in her representative capacity, and on behalf of her past and current agents, representatives, attorneys, successors, and/or assigns provides a release herein to Releasees which shall be effective as a full and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys’ fees, damages, losses, claims, liabilities, and demands of Donaldson of any nature, character, or kind, whether known or unknown, suspected or unsuspected, arising out of alleged or actual exposures to DEHP from the Products manufactured, imported, distributed, or sold by Staples prior to the Effective

Date. The Parties further understand and agree that this Section 4.2 release shall not extend upstream to any entities that manufactured the Products, or any component parts thereof, or any upstream distributors or suppliers who sold the Products, or any component parts thereof to Staples.

#### **4.3 Staples' Release of Donaldson**

Staples, on its own behalf, and on behalf of its past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives any and all claims against Donaldson and her attorneys and other representatives, for any and all actions taken or statements made by Donaldson and her attorneys and other representatives, whether in the course of investigating claims, seeking to enforce Proposition 65 against it in this matter, or with respect to the Products.

**4.4 California Civil Code § 1542.** It is possible that other claims not known to Donaldson arising out of the facts alleged in the Notice and relating to the Products will develop or be discovered. Donaldson on behalf of herself and her past and current agents, representatives, attorneys, and successors and/or assignees acknowledges that this Settlement Agreement is expressly intended to cover and include all such claims up through the Effective Date, including all rights of action therefor. Donaldson acknowledges that the claims released in §§ 4.1 and 4.2, above, may include unknown claims, and nevertheless waives 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.

Donaldson acknowledges and understands the significance and consequences of this specific waiver of California Civil Code § 1542.

**5. SEVERABILITY**

If, subsequent to the execution of this Settlement Agreement, any provision of this Settlement Agreement is deemed by a court to be unenforceable, the validity of the remaining provisions 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..

**6. GOVERNING LAW**

The terms of this Settlement Agreement shall be governed by the laws 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 by reason of law generally, or as to the Products, then Staples may provide written notice to Donaldson of any asserted change in the law and shall have no further injunctive obligations pursuant to this Settlement Agreement with respect to, and to the extent that, the Products are so affected.

**7. NOTICE**

Unless specified herein, all correspondence and notice required to be provided pursuant to this Settlement Agreement shall be in writing and sent by: (a) personal delivery; (b) first-class, registered or certified mail, return receipt requested; or (c) a recognized overnight courier on any Party by the other at the following addresses:

For Staples:

Jay Connolly, Esq.  
Seyfarth Shaw LLP  
560 Mission Street; Suite 3100  
San Francisco, California 94105-2930

For Donaldson:

Voorhees & Bailey, LLP  
Proposition 65 Coordinator  
990 Amarillo Avenue  
Palo Alto, CA 94303

*with a copy to:*

Staples Legal Department  
Staples, Inc.  
500 Staples Drive  
Framingham, MA 01702

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

**8. COUNTERPARTS; FACSIMILE SIGNATURES**

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

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

Donaldson and her attorneys agree to comply with the reporting form requirements referenced in California Health and Safety Code section 25249.7(f).

**10. MODIFICATION**

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

**11. 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.

**12. 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.

**13. AUTHORIZATION**

The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understand, and agreed to all of the terms and conditions of this Settlement Agreement.

**AGREED TO:**

Date: 1/22, 2020

By: [Signature]  
AUDREY DONALDSON

**AGREED TO:**

Date: 1/21, 2020

By: [Signature], Robyn Ryan  
STAPLES, INC.

