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6
7 SUPERIOR COURT OF THE STATE OF CALIFORNIA

8 COUNTY OF LOS ANGELES

9 (Unlimited Jurisdiction)

10 ECOLOGICAL ALLIANCE, LLC, a California
limited liability company,

Case No.: 21STCV37891

11
12 Plaintiff,

**[PROPOSED] STIPULATED
CONSENT JUDGMENT**

13 v.

14 STAPLES, INC., a Delaware corporation,

15 Defendant.
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[PROPOSED] STIPULATED CONSENT JUDGMENT

1 Plaintiff Ecological Alliance, LLC ("Plaintiff"), and Defendant Staples, Inc.
2 ("Defendant") hereby enter into this Stipulated Consent Judgment ("Consent Judgment") as
3 follows:

4 WHEREAS: On or about October 19, 2020, Plaintiff, through Plaintiff's counsel, served a
5 60 Day Notice (the "Notice") to Defendant, the California Attorney General, the District
6 Attorneys of every County in the State of California, and the City Attorneys for every City in the
7 State of California with a population greater than 750,000 (collectively, "Public Prosecutor(s)")
8 alleging that Defendant violated California's Safe Drinking Water and Toxic Enforcement Act of
9 1986, California Health and Safety Code § 25249.6, et seq., and its implementing regulations
10 (collectively, "Proposition 65") and that Plaintiff intended to file an enforcement action in the
11 public interest; and

12 WHEREAS: Plaintiff alleges that Defendant manufactured and/or distributed Pep Rally™
13 brand ice packs, SKU#24429997, containing Di(2-ethylhexy)phthalate ("DEHP") (the "Covered
14 Products") that were sold or distributed for sale in California and further alleges that those
15 Covered Products expose consumers in the State of California to chemicals including DEHP,
16 which are listed by the State of California pursuant to California Health and Safety Code §
17 25249.8; and

18 WHEREAS: Plaintiff further alleges that persons in the State of California were exposed
19 to DEHP in Covered Products without being provided the Proposition 65 warning set out at
20 California Health and Safety Code § 25249.6 and its implementing regulations ("Proposition 65
21 Warning");

22 WHEREAS: Defendant denies the allegations of the 60 Day Notice, and denies that it has
23 violated Proposition 65 and expressly denies that it has engaged in any wrongdoing whatsoever,

24 WHEREAS: Plaintiff seeks to provide the public with Proposition 65 warnings and
25 believes that this objective is achieved by the actions described in this Consent Judgment; and

26 WHEREAS: Plaintiff and Defendant wish to resolve their differences without the delay
27 and expense of litigation.
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1 NOW THEREFORE BE IT RESOLVED AND AGREED UPON AS BETWEEN
2 PLAINTIFF ACTING IN THE PUBLIC INTEREST AND DEFENDANT AS FOLLOWS:

3 **INTRODUCTION**

4 1.1. On October 19, 2020, Plaintiff served the Notice upon Defendant and on Public
5 Prosecutors. No Public Prosecutors commenced an enforcement action. No Public
6 Prosecutor having commenced an enforcement action, Plaintiff proceeded to file its
7 Complaint against Defendant in the present action.

8 1.2. For purposes of this Consent Judgment only, Defendant agrees that it is a “person
9 in the course of doing business” within the meaning of Cal. Health & Safety Code §
10 25249.13.

11 1.3. For purposes of this Consent Judgment only, Plaintiff and Defendant (the
12 “Parties”) stipulate that: 1) this Court has jurisdiction over the allegations of violation
13 contained in the Complaint, and personal jurisdiction over Defendant as to the acts
14 alleged in the Complaint; 2) venue is proper in the County of Los Angeles; and 3) this
15 Court has jurisdiction to enter this Consent Judgment as a full, final and binding
16 resolution of all claims which were or could have been raised in the Complaint based on
17 the facts alleged therein and/or in the Notice with respect to the Covered Products, and of
18 all claims which were or could have been raised by any person or entity based in whole
19 or in part, directly or indirectly, on the facts alleged in the Notice, in the present action, or
20 arising therefrom or related thereto, with respect to Covered Products, including any
21 Proposition 65 claim arising out of an exposure to Covered Products (collectively,
22 “Proposition 65 Claims”).

23 1.4. The Parties enter into this Consent Judgment as a full and final settlement of the
24 Proposition 65 Claims, for the purpose of avoiding prolonged and costly litigation and of
25 resolving the issues raised therein both as to past and future conduct. By execution of
26 this Consent Judgment and agreeing to comply with its terms, the Parties do not admit
27 any fact, conclusion of law, or violation of law, nor shall Defendant’s compliance with
28 the Consent Judgment constitute or be construed as an admission by Defendant of any

1 fact, conclusion of law, or violation of law. Defendant denies the material, factual, and
2 legal allegations in the 60-Day Notice and the Complaint and expressly denies any
3 wrongdoing whatsoever.

4 **2. DEFINITIONS**

- 5 2.1. "Effective Date" shall mean, with respect to this Consent Judgment, the date the
6 Consent Judgment has been approved and entered by the Court.

7 **3. INJUNCTIVE RELIEF**

- 8 3.1. For each Covered Product sold or distributed by Staples in California, Defendant
9 agrees to undertake, or cause to be undertaken on its behalf, either (a) reformulation of
10 the Covered Product to bring it within the Proposition 65 exemption identified in Section
11 3.2 below, or (b) provide a warning as prescribed in Sections 3.3-3.4 below. Compliance
12 with this Section 3.1 will constitute compliance by Defendant with all requirements of
13 Proposition 65 relating to DEHP exposure in the Covered Products.

14 3.2. Proposition 65 Exemption for the Covered Products

15 Any Covered Product manufactured after ninety (90) days after the Effective Date shall be
16 deemed to comply with Proposition 65, and be exempt from any Proposition 65 warning
17 requirements with respect to DEHP, if no "Accessible Component Part" of such Covered
18 Product contains more than 0.1 percent (1,000 parts per million) of DEHP. For purposes
19 of this Consent Judgment, "Accessible Component Part" shall mean components of the
20 Covered Products to which a person would be exposed to DEHP by direct contact during
21 normal use of the Covered Product.

22 3.3. Warning Option

23 Covered Products manufactured after ninety (90) days after the Effective Date that do not
24 meet the warning exemption standard set forth in Section 3.2 above, shall be accompanied
25 by a warning as described in Section 3.4 below. No Proposition 65 warning shall be
26 required as to any Covered Products that are already manufactured as of the date that is
27 ninety (90) days after the Effective Date, and all such Covered Products are hereby
28 deemed to be exempt from Proposition 65 with respect to DEHP.

1 3.4. Warning Language

2 Where required to meet the criteria set forth in Section 3.3, Defendant shall provide one of
3 the following warning statements (or a substantially equivalent warning statement) using a
4 method authorized under Proposition 65's regulations, and displayed in a reasonably
5 conspicuous manner:

- 6 (1) **WARNING:** This product can expose you to di(2-ethyhexyl)
7 phthalate (DEHP), which is known to the State of California to
8 cause cancer and birth defects or other reproductive harm. For more
9 information go to www.P65Warnings.ca.gov.
10 (2) **WARNING:** Cancer and Reproductive Harm –
11 www.P65Warnings.ca.gov.

12 The warnings set forth above shall also include a symbol consisting of a black
13 exclamation point in a yellow equilateral triangle with a bold black outline. Where
14 the sign, label or shelf tag for the product is not printed using the color yellow, the
15 symbol may be printed in black and white. The symbol shall be placed to the left
16 of the text of the warning, in a size no smaller than the height of the word
17 "WARNING".

18 **4. MONETARY RELIEF**

19 4.1. Within thirty (30) days of the Effective Date and receipt by Defendant of a valid
20 Form W-9 for Custodio & Dubey LLP, Defendant shall pay the total sum of \$29,000
21 which includes \$7,000 in civil penalties and \$22,000 in payment of Plaintiff's costs and
22 reasonable attorney's fees. The \$7,000 civil penalty shall be apportioned pursuant to
23 Health and Safety Code section 25249.12 (d), with 75%, or \$5,250, paid to the State of
24 California's Office of Environmental Health Hazard Assessment and 25%, or \$1,750,
25 payable to Plaintiff.

26 4.2. The payments specified in Section 4.1. shall be made by wire transfer to Plaintiff's
27 counsel Custodio & Dubey LLP as set forth below. Plaintiffs' counsel will remit the
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1 portions due to the State of California Office of Environmental Health Hazard
2 Assessment and to Plaintiff.
3 Bank: Bank of America, N.A.
4 Routing Transit No.: 026009593
5 Account No.: 325132729125
6 Beneficiary: Custodio & Dubey LLP

7 5. CLAIMS COVERED AND RELEASE

8 5.1. This Consent Judgment is a full, final, and binding resolution between Plaintiff, on
9 behalf of itself, and acting on behalf of the public interest, and Defendant, and all of
10 Defendant's parent companies, subsidiaries, divisions, affiliates, and each of its and their
11 respective officers, directors, members, shareholders, employees, representatives,
12 insurers, attorneys, agents, predecessors, successors, and assigns (collectively the
13 "Defendant Releasees"), as well as all other upstream and downstream entities in the
14 distribution chain for the Covered Products, including but not limited to manufacturers,
15 retailers, suppliers, distributors, marketplace hosts, wholesalers, customers, private label
16 customers, franchisees, licensees, licensors, and cooperative members (collectively, the
17 "Released Parties"), for any alleged violation of Proposition 65, and its implementing
18 regulations, for failure to provide Proposition 65 warnings for any exposure to DEHP
19 from the Covered Products as alleged in the notice and complaint, and fully resolves all
20 such claims. Plaintiff on behalf of itself, and in the public interest, hereby discharges the
21 Defendant Releasees and Released Parties from any and all claims, actions, causes of
22 action, suits, demands, liabilities, damages, penalties, obligations, debts, losses, fees,
23 costs and expenses asserted with respect to any alleged violation of Proposition 65 arising
24 from the failure to provide Proposition 65 warnings for exposure to DEHP as alleged in
25 the notice and complaint from any or all of the Covered Products sold through ninety (90)
26 days after the Effective Date of the Consent Judgment. Compliance with the terms of this
27 Consent Judgment constitutes compliance with Proposition 65 by Defendant with respect
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1 to any alleged failure to warn about DEHP in Covered Products sold or distributed by
2 Defendant after the Effective Date.

3 5.2. It is possible that other claims not known to the Parties arising out of the facts contained
4 in the Notice, or alleged in the Complaint, relating to the Covered Products, will hereafter
5 be discovered or developed. Plaintiff, on behalf of itself only, on the one hand, and
6 Defendant, on the other hand, acknowledge that this Consent Judgment is expressly
7 intended to cover and include all such claims through and including the Effective Date,
8 including all rights of action thereon. Plaintiff and Defendant acknowledge that the
9 claims released in Sections 5.1 may include unknown claims, and nevertheless intend to
10 release such claims, and in doing so waive California Civil Code § 1542 which reads as
11 follows:

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

18 5.3. Plaintiff understands and acknowledges that the significance and consequence of
19 this waiver of California Civil Code § 1542 is that even if Plaintiff suffers future damages
20 arising out of or resulting from, or related directly or indirectly to, in whole or in part, the
21 Covered Products, including but not limited to any exposure to, or failure to warn with
22 respect to exposure to, chemicals in or from the Covered Products, Plaintiff will not be
23 able to make any claim for those damages against any of the Defendant Releasees or the
24 Released Parties.

25 5.4. Compliance by Defendant with the terms of this Consent Judgment shall constitute
26 compliance with Proposition 65 with respect to exposure to DEHP in the Covered
27 Products as set forth in the Notice and/or the Complaint. If the California Office of
28 Environmental Health Hazard Assessment promulgates regulations affecting the warning

provisions set forth in Section 3 herein, Defendant may comply with those regulations without being deemed in breach of this Consent Judgment.

6. COMPLIANCE WITH HEALTH AND SAFETY CODE SECTION 25249.7(F)

6.1. Plaintiff and its attorneys agree to comply with the reporting form requirements referenced in California Health and Safety Code § 25249.7(f).

7. PROVISION OF NOTICE

7.1. When any Party is entitled to receive any notice or writing under this Consent Judgment, the notice or writing shall be sent by first class certified mail with return receipt requested, or by electronic mail, as follows:

To Defendant:

Joseph Orzano, Esq.
Seyfarth Shaw LLP
Seaport East, Two Seaport Lane, Suite 1200
Boston, MA 02210-2028
jorzano@seyfarth.com

To Plaintiff:

Vineet Dubey, Esq.
Custodio & Dubey LLP
445 S. Figueroa St., Ste 2520
Los Angeles, CA 90071
dubey@cd-lawyers.com

7.2. Any party may modify the person and address to whom the notice is to be sent by sending the other Party notice that is transmitted in the manner set forth in section 7.1.

8. COURT APPROVAL

8.1. Upon execution of his Consent Judgment by all Parties, Plaintiff shall prepare and file, at its sole cost and expense, a Motion for Approval of this Consent Judgment that Defendant shall not oppose. This Consent Judgment shall not become effective until approved and entered by the Court. If this Consent Judgment is not entered by the Court, it shall be of no force or effect, and shall not be introduced into evidence or otherwise used in any proceeding for any purpose.

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1 shall such waiver constitute a continuing waiver.

2 **11. RETENTION OF JURISDICTION**

3 11.1. This Court shall retain jurisdiction of this matter to implement or modify the
4 Consent Judgment.

5 **12. NO EFFECT ON OTHER SETTLEMENTS**

6 12.1. Nothing in this Consent Judgment shall preclude Plaintiff from resolving any
7 claim against another entity on terms that are different from those contained in this
8 Consent Judgment.

9 **13. EXECUTION IN COUNTERPARTS**

10 13.1. This Consent Judgment may be executed in counterparts, each of which shall be
11 deemed to be an original, and all of which, taken together, shall constitute the same
12 document. Execution of the Consent Judgment by e-mail, facsimile, or other electronic
13 means, shall constitute legal and binding execution and delivery. Any photocopy of the
14 executed Consent Judgment shall have the same force and effect as the original.

15 **14. AUTHORIZATION**

16 14.1. The undersigned are authorized to stipulate to, enter into, and execute this Consent
17 Judgment on behalf of their respective parties, and have read, understood, and agree to all
18 of the terms and conditions of this Consent Judgment.

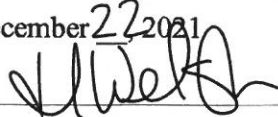
19 **15. SEVERABILITY**

20 15.1. If subsequent to Court approval of this Consent Judgment, any part or provision is
21 declared by a Court to be invalid, void, or unenforceable, the remaining portions or
22 provisions shall continue in full force and effect to the extent they implement the Parties'
23 intent.

24 **AGREED TO:**

25 **Ecological Alliance LLC**

26 Date: December 22, 2021

27 By: 

28 Harmony Welsh, Managing Member

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AGREED TO:

Staples, Inc.

Date: December 30, 2021

By: _____

Kevin V. Jones
Kevin V. Jones
Sr. Company Counsel

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that, pursuant to Health & Safety Code § 25249.7(f)(4) and Code of Civil Procedure § 664.6, judgment is hereby entered.

Dated: _____

JUDGE OF THE SUPERIOR COURT