

# SETTLEMENT AGREEMENT

## 1. INTRODUCTION

### 1.1 John Moore and Staples, Inc.

This Settlement Agreement (“Settlement Agreement”) is entered into by and between John Moore (“Moore”) and Staples, Inc. (“Staples”) with Moore and Staples each individually referred to as a “Party” and collectively referred to as the “Parties.” Moore states that he is an individual residing in 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. Staples employs ten or more persons. Moore 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 & Safety Code section 25249.5 *et seq.* (“Proposition 65”).

### 1.2 General Allegations

Moore alleges that Staples manufactures, imports, sells and/or distributes for sale in California, a product containing di(2-ethylhexyl)phthalate (“DEHP”), and that it does so without providing the health hazard warning that Moore alleges is required by Proposition 65. DEHP is listed pursuant to Proposition 65 as a chemical known to the state of California to cause birth defects and other reproductive harm.

### 1.3 Product Description

The product that is covered by this Settlement Agreement is the *Staples Cutting Mat Self-Healing, Item #226456, #10640-US/CC, UPC #7 18103 01114 3*, that is manufactured, imported, distributed, sold and/or offered for sale in the state of California under a Staples private label, hereinafter the “Product.”

### 1.4 Notice of Violation

On or about May 26, 2016, Moore served Staples, and various 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 that the Product exposes users to DEHP. To the best of the Parties' knowledge, no public enforcer or enforcement agency 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 products that it has sold and distributed in California, including the Product, 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. This Section shall not, however, diminish or otherwise affect the obligations, responsibilities and duties under this Settlement Agreement.

**1.6 Effective Date**

For purposes of this Settlement Agreement, the term "Effective Date" shall mean the date upon which this Settlement Agreement has been fully executed by the Parties.

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**2. CLEAR AND REASONABLE WARNINGS**

In entering into this Settlement Agreement, Moore is relying on Staples' reporting of the actions it took and the findings it made in response to the Notice. Specifically, Staples represents that, several years ago, it instituted a Proposition 65 warning procedure for all shipments into California of the Product. The Notice, however, prompted Staples to investigate Moore's claim that the Product was available for sale in California without a Proposition 65 warning, notwithstanding the existing warning procedure. Staples' investigation indicated that, to the extent Moore purchased a unit of the Product in California without a warning, such unit was most likely shipped into California prior to the implementation of the warning program and inadvertently left in inventory for several years, and that it was highly unlikely any additional units were available for sale in California without a Proposition 65 warning. As a result of



receiving the Notice, Staples conducted in-person inspections of units of the Product that were available in a sampling of stores in Northern and Southern California, and those inspections supported this conclusion. Furthermore, Staples' investigation confirmed that its procedure for providing a Proposition 65 warning for all shipments into California of the Product remains in place and active.

Moreover, in response to the Notice, Staples has implemented a new warning for all California shipments of the Product that is compliant with the amendments to Article 6, Clear and Reasonable Warnings, of the California Code of Regulations, approved by the Office of Administrative Law on August 30, 2016. Staples' new warning, set forth below, provides additional information on the Product's packaging or labeling, or on the Product itself, to consumers and has been implemented by Staples more than a year before the amended regulations would otherwise apply to the Product, i.e., to units manufactured on or after August 30, 2018. The new warning states:

**⚠ WARNING:** This product can expose you to chemicals including DEHP, 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](http://www.P65Warnings.ca.gov).

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### **3. MONETARY PAYMENTS**

#### **3.1 Payment Pursuant to Health & Safety Code § 25249.7(b)**

As a condition of settlement of all the claims referred to in the Notice and this Settlement Agreement, pursuant to Health & Safety Code section 25249.7(b), Staples shall pay the amount of \$1,000.00. The payment shall be allocated according to Health & Safety Code sections 25249.12(c)(1) and (d), with 75% of the amount paid to the California Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% of the amount paid to Moore. Within ten (10) business days of the Effective Date, Staples shall issue two separate checks, the first check payable to "The Chanler Group, John Moore Client Trust Account" in the amount of \$250.00, and the second check payable to "OEHHA" in the amount of \$750.00, and deliver such

checks to the address provided in Section 3.4 below. Moore's counsel shall be responsible for remitting the latter check to OEHHA.

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

The Parties acknowledge that Moore and his counsel offered to resolve this dispute without reaching terms on the amount of attorneys' 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 finalized, Staples expressed a desire to resolve Moore's attorneys' fees and costs. The Parties then negotiated a resolution of the reimbursement due to Moore and his counsel under general contract principles and the private attorney general doctrine codified at California Code of Civil Procedure section 1021.5. For all work performed through the mutual execution of this Settlement Agreement, Staples shall reimburse Moore and his counsel for attorneys' fees and costs in the amount of \$12,000. Staples' payment of such attorneys' fees and costs shall be delivered to the address in Section 3.3 in the form of a check payable to "The Chanler Group" within ten (10) business days of the Effective Date.

### **3.3. Payment Address**

All check payments required by this Settlement Agreement shall be delivered to the following address:

The Chanler Group  
Attn: Proposition 65 Controller  
2560 Ninth Street  
Parker Plaza, Suite 214  
Berkeley, CA 94710

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

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

Moore, acting on his own behalf and on behalf of his heirs, executors, administrators, attorneys, agents, representatives, successors, and assigns (collectively, the "Moore Releasers"), and *not* on behalf of the public, hereby fully and finally releases and forever discharges Staples,



its parents, subsidiaries, and affiliated entities under common ownership, and their respective past and current directors, officers, principals, partners, managers, members, shareholders, employees, attorneys, agents, representatives, successors, and assigns, and each entity or individual to whom Staples directly or indirectly has distributed or sold the Product, including, but not limited, to downstream distributors, wholesalers, dealers, customers, purchasers, users, retailers, franchisees, cooperative members, and licensees (collectively, together with the upstream manufacturers, distributors, suppliers, and other entities referred to in this and the following Section, "Releasees"), from all claims for violations of Proposition 65 through the Effective Date based on unwarned exposures to DEHP in the Product, as set forth in the Notice, including, without limitation, all actions, causes of action, suits, liabilities, demands, obligations, damages, fines, penalties, fees, expenses, costs, and losses of every kind, nature, and description whatsoever, whether known or unknown, anticipated or unanticipated, suspected or unsuspected, fixed or contingent, at law or in equity, including, without limitation, investigation fees, expert fees, and attorneys' fees and costs arising under Proposition 65 (collectively, "Claims"), that were or could have been asserted by the Moore Releasors against Releasees through the Effective Date based on unwarned exposures to DEHP in the Product, as set forth in the Notice;

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provided, however, that any obligations created by or set forth in this Settlement Agreement shall not be released. The Parties further understand and agree that this Section 4.1 release shall extend upstream to any entities that manufactured the Product or any component parts thereof, or any distributors or suppliers that sold the Product or any component parts thereof to Staples, since the Product covered by this Settlement Agreement is a Staples private label product, and that all such upstream manufacturers, distributors, suppliers, and other entities are likewise Releasees within the meaning of this Settlement Agreement.

#### **4.2 Moore's Individual Releases of Claims**

The Moore Releasors, in their individual capacities only and *not* in their representative capacities, also provide a general release herein which shall be effective as a full and final accord and satisfaction, and as a bar to all Claims of the Moore Releasors arising out of alleged or actual



exposures to DEHP in the Product manufactured, imported, distributed, sold, and/or offered for sale by the Releasees through the Effective Date; provided, however, that any obligations created by or set forth in this Settlement Agreement shall not be released. The Parties further understand and agree that this Section 4.2 release shall extend upstream to any entities that manufactured the Product, or any component parts thereof, or any distributors or suppliers that sold the Product, or any component parts thereof to Staples, since the Product covered by this Settlement Agreement is a Staples private label product, and that all such upstream manufacturers, distributors, suppliers, and other entities are likewise Releasees within the meaning of this Settlement Agreement. Nothing in this Section affects Moore's right to commence or prosecute an action under Proposition 65 against a Releasee that does not involve the Product. In further consideration of the promises and agreements herein contained, the Moore Releasers hereby waive all rights that they may have to file, institute or participate in, directly or indirectly, any form of legal action or proceeding, at law or in equity, arising under Proposition 65 with respect to DEHP contained in the Product that was manufactured, imported, distributed, sold and/or offered for sale by Staples through the Effective Date.

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#### **4.3 Staples' Release of Moore**

Staples, on behalf of itself, parents, subsidiaries, and affiliated entities under common ownership, and their respective past and current directors, officers, principals, partners, managers, members, shareholders, employees, agents, representatives, attorneys, successors, and assigns (collectively "Releasers"), hereby fully and finally releases and forever discharges Moore and his heirs, executors, administrators, attorneys, agents, representatives, successors, and assigns (collectively, the "Moore Releasees") from any and all Claims relating to actions taken or statements made (or those that could have been taken or made) by the Moore Releasees through the Effective Date, whether in the course of investigating claims or otherwise seeking to enforce Proposition 65 against Releasers in this matter with respect to the Product; provided, however, that any obligations created by or set forth in this Settlement Agreement shall not be released.



#### **4.4 Mutual Waiver of California Civil Code Section 1542**

The Parties each acknowledge that he/it is familiar with Section 1542 of the California Civil Code, which provides 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.

The Parties, each on his/its own behalf (and Moore in his individual capacity only and *not* in any representative capacity), and on behalf of his/its past and current agents, representatives, attorneys, successors, and/or assigns, expressly waive and relinquish any and all rights and benefits which they may have under, or which may be conferred upon them by, the provisions of Civil Code section 1542 as well as under any other state or federal statute or common law principle of similar effect, to the fullest extent they may lawfully waive such rights or benefits pertaining to the released matters, as defined by Sections 4.1 through 4.3.

#### **5. 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.

#### **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 preempted, or is otherwise rendered inapplicable by reason of law generally, or as to the Product, or if any of the provisions of this Settlement Agreement are rendered inapplicable or no longer required as a result of any such repeal or preemption or rendered inapplicable by reason of law generally or as to the Product, then Staples may provide written notice to Moore of any asserted change in the law and upon provision of such notice shall have no further obligations pursuant to this Settlement Agreement with respect to, and to the extent that, the Product is so

affected. Nothing in this Settlement Agreement shall be interpreted to relieve Staples from any obligation to comply with any pertinent state or federal toxics control law.

**7. NOTICE**

Unless specified herein, all correspondence and notices required to be provided pursuant to this Settlement Agreement shall be in writing and: (i) personally delivered; (ii) sent by registered or certified mail, return receipt requested; or (iii) sent by overnight courier, to one Party by the other Party at the following addresses:

For Staples:

Jay W. Connolly  
Seyfarth Shaw LLP  
560 Mission Street, 31<sup>st</sup> Floor  
San Francisco, CA 94105

For Moore:

Proposition 65 Coordinator  
The Chanler Group  
2560 Ninth Street  
Parker Plaza, Suite 214  
Berkeley, CA 94710-2565

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Any 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.

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

Moore agrees to comply with the reporting form requirements referenced in Health & Safety Code section 25249.7(f).

**9. MODIFICATION**

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

**10. ENTIRE AGREEMENT**

This Settlement Agreement contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and supersedes any and all prior discussions, negotiations, commitments, and understandings relating to such subject matter. No



representations, oral or otherwise, express or implied, other than those contained herein have been made by any Party hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties. No supplementation, modification, waiver, or termination of this Settlement Agreement shall be binding unless executed in writing by the Party to be bound. No waiver of any of the provisions of this Settlement Agreement shall be deemed to be or shall constitute a waiver of any of the other provisions whether or not similar, nor shall such waiver constitute a continuing waiver.

**11. ATTORNEYS' FEES AND COSTS**

Should any Party prevail on any motion, application for order to show cause or other proceeding to enforce a violation of this Settlement Agreement, the prevailing Party shall be entitled to its reasonable attorneys' fees and costs incurred as a result of such motion, order or application, consistent with C.C.P. § 1021.5.

Except as otherwise specifically provided herein, each Party shall bear its own attorneys' fees and costs in connection with the Notice.

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

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**12. 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.

**13. COUNTERPARTS, FACSIMILE AND .PDF SIGNATURES**

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

**14. AUTHORIZATION**

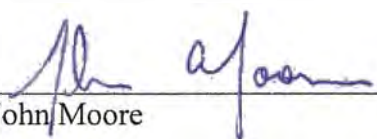
Each of the signatories to this Settlement Agreement represents that he or she is duly authorized to execute this Settlement Agreement for the Party on whose behalf he or she signs this Settlement Agreement and that, for and on behalf of such Party, he or she has read, understands, and agrees to all of the terms and conditions contained herein.

AGREED TO:

AGREED TO:

Date: 4/25/2017

Date: 14-APR-17

By:   
John Moore

By:   
Staples, Inc.

Div. Product Mgmt

