



CALIFORNIA DEPARTMENT OF
FOOD & AGRICULTURE

Karen Ross, Secretary

August 23, 2012

DMS NOTICE
QC - 12 - 11
DISCARD: RETAIN

TO: WEIGHTS AND MEASURES OFFICIALS

SUBJECT: Staples the Office Superstore, LLC Settlement

Enclosed is a final judgment pursuant to stipulation issued by the District Attorney's Office of Marin County in conjunction with the District Attorneys of Contra Costa, Napa, and Sonoma Counties filed against Staples the Office Superstore, LLC on August 13, 2012 for overcharging customers pursuant to California Business and Professions Code section 12024.2.

The investigation was led by the California Department of Food and Agriculture, Division of Measurement Standards with special assistance from Contra Costa County and data submitted from at least 26 additional county jurisdictions. Staples the Office Superstore, LLC was ordered to pay a settlement of \$968,157 which included \$841,909 in civil penalties, \$101,248 for agency costs, and \$25,000 in cy pres to fund the Division of Measurement Standards' price and quantity verification efforts. Additionally, Staples was ordered to implement a compliance program for a period of five years starting from the date of entry of the present judgment that includes special training for cashiers, price audits, and a four dollar (\$4.00) incentive program for the consumer if they notify Staples of an overcharge.

Marin County should be sure to report these penalties on the County Monthly Report. All participating counties should separately record their individual investigative cost reimbursements in the appropriate columns on the report.

We appreciate the fine work done by the District Attorney's Offices along with the State and county investigators that documented and caused to be prosecuted these violations. If you have any questions, please contact Kathy de Contreras, Supervising Special Investigator, Quantity and Weighmaster Programs, Enforcement Branch at (916) 229-3047, or katherine.decontreras@cdfa.ca.gov.

Sincerely,

Kristin J. Macey
Director

Enclosure

cc: Edmund Williams, County/State Liaison, CDFA



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FILED

AUG 13 2012

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF MARIN

THE PEOPLE OF THE STATE OF CALIFORNIA,)

Plaintiff,)

v.)

STAPLES THE OFFICE SUPERSTORE, LLC,)

Defendant.)

Case No. CIV 1203671

FINAL JUDGMENT
PURSUANT TO STIPULATION

COPY

Plaintiff, the People of the State of California (“the People”), appears through its attorneys, Edward S. Berberian, District Attorney for the County of Marin by Andres H. Perez, Deputy District Attorney; Mark A. Peterson, District Attorney for the County of Contra Costa by Steven Bolen, Deputy District Attorney; Gary Lieberstein, District Attorney for the County of Napa by Daryl A. Roberts, Deputy District Attorney; Jill Ravitch, District Attorney for the County of Sonoma by Matthew T. Cheever, Deputy District Attorney. Defendant, Staples the Office Superstore, LLC (formerly Staples the Office Superstore, Inc.), a Delaware Limited Liability Company with its principal place of business at 500 Staples Drive, Framingham, MA 01702 (“Staples”), appears through its counsel, O’Melveny & Myers LLP, by Sharon M. Bunzel.

The People and Staples having stipulated to the entry of this Final Judgment prior to the taking of any proof without trial or adjudication of any issue of fact or law, and the Court having considered the pleadings,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

JURISDICTION

1. This action is brought under California law, and this Court has jurisdiction of the subject matter hereof and the parties hereto.

APPLICABILITY

2. This Final Judgment, including the permanent injunction it contains, is applicable to Staples, its managers, members, servants, employees, representatives, successors, assignees and all persons, partnerships, limited liability companies, corporations, and other entities acting under, by, through, on behalf of, or in concert with Staples, with actual or constructive knowledge of this Final Judgment, and to the subsidiaries of Staples and their respective officers, directors, managers, members, servants, employees, representatives, successors, assignees and all persons, partnerships, limited liability companies, corporations, and other entities acting under, by, through, on behalf of, or in concert with any such subsidiary, with actual or constructive knowledge of this Final Judgment (hereinafter collectively referred to as “Defendants”).

3. This Final Judgment supersedes the Final Judgment and Permanent Injunction Pursuant to Stipulation entered into by the People and Staples and filed on March 26, 2002, in Marin County Superior Court Case No. 021499 (hereinafter "Superseded Final Judgment").

INJUNCTION

4. Pursuant to Business and Professions Code §§ 17203 and 17535, Defendants, and each of them, are permanently enjoined and restrained from directly or indirectly engaging in any or all of the following acts or practices:

A. Making or causing to be made to the public any statement representing a price for an item offered for sale, including but not limited to, statements made on a store shelf, a sign near the item, or an advertisement, and charging a greater price at the time the item is purchased;

B. Charging an amount greater than the price, or computing an amount greater than a true extension of a price per unit, that is then advertised, posted, marked, displayed, or quoted for that commodity, in violation of Business and Professions Code § 12024.2(a)(1);

C. Charging an amount greater than the lowest price posted on the commodity itself or on a shelf tag that corresponds to the commodity, notwithstanding any limitation of the time period for which the posted price is in effect, in violation of Business and Professions Code § 12024.2.

D. Making or causing to be made in a store any false or misleading statement to the public with respect to the price of items offered for sale.

COMPLIANCE PROGRAM

5. Defendants shall be and are hereby ordered and mandated, pursuant to Business and Professions Code §§ 17203 and 17535, to put into place for a period of five (5) years from the date of entry of this Final Judgment, in every existing Staples retail store in California, and in every new Staples retail store opened in California during the five (5) year period (hereinafter

“California Staples Stores”), a program to enhance pricing accuracy and correct pricing errors.

This program shall include, but is not limited to, the following:

A. **Policies and Procedures.** Staples shall forthwith revise and consolidate its written policies relating to pricing accuracy, and adopt one comprehensive written policy that fully incorporates the provisions of this Final Judgment and governs pricing accuracy in California (hereinafter the “Revised Policy”). Within sixty (60) days of entry of this Final Judgment, Staples shall begin implementing all of the policies set forth in the Revised Policy, and it shall submit the Revised Policy to the captioned District Attorneys in this action. Upon implementation of the Revised Policy and in connection with the training set forth below, applicable District Managers shall ensure that all California Staples Store General Managers, Price Auditors and Cashiers receive, read and understand the Revised Policy which, along with all associated procedures, shall be reasonably accessible to all California Staples Store personnel via an online or hard copy format.

B. **Service of Papers, Distribution and Acknowledgment.**

1. Within thirty (30) days of the filing of this Final Judgment, Staples shall serve a copy of this Final Judgment on individuals responsible for the implementation and supervision of pricing policies in California Staples Stores in leadership of its retail operations, retail sales and legal/compliance divisions.

2. Staples shall require all of its California Staples Store General Managers, Price Auditors and Cashiers to read the Revised Policy and acknowledge that they have read and understand it.

C. **California Staples Store General Manager and Price Auditor Training.**

Within a reasonable time of implementation of the Revised Policy, Staples shall ensure that all current California Staples Store General Managers and Price Auditors undergo comprehensive pricing accuracy training. Similarly, Staples shall ensure that all future California Staples Store General Managers and Price Auditors undergo comprehensive pricing accuracy training before assuming their regular duties. Staples shall keep legible

written or electronic records of such training provided, including attendance records and acknowledgments that each person received such training, for two (2) years from the date of their creation. The training shall be updated periodically as needed and shall include at least the following topics to improve pricing accuracy:

1. Pricing accuracy awareness and duties under the Revised Policy;
2. How to ensure that the correct prices are consistently displayed and charged; and
3. How to respond to pricing accuracy issues raised by customers.

Staples shall conduct periodic refresher sessions regarding the Revised Policy for California Staples Store General Managers and Price Auditors.

D. **Store Cashier Training.** Within a reasonable time of implementation of the Revised Policy, Staples shall ensure that all current California Staples Store Cashiers undergo comprehensive pricing accuracy training. Similarly, Staples shall ensure that all future California Staples Store Cashiers undergo comprehensive pricing accuracy training before assuming their regular duties. Staples shall keep legible written or electronic records of such training provided, including attendance records and acknowledgments that each person received such training, for two (2) years from the date of their creation. The training shall be updated periodically as needed and shall include at least the following topics to improve pricing accuracy:

1. Pricing accuracy awareness and duties under the Revised Policy;
2. Proper implementation of the Incentive Program (as set forth in subparagraph J, below), price overrides, and related cash register operations; and
3. How to respond to pricing accuracy issues raised by customers.

Staples shall conduct periodic refresher sessions regarding the Revised Policy for California Staples Stores Cashiers.

E. **Price Auditor.** Each California Staples Store shall designate for all hours it is open to the public an employee or employees whose duties shall include those of Price Auditor (“PA”). The PA shall be responsible for maintaining in-store pricing accuracy, including, but not limited to, price scanner accuracy, and ensuring compliance with the Revised Policy. The duties of the PA shall include, but not be limited to, conducting price audits, promptly correcting pricing errors, promptly communicating pricing errors to appropriate management personnel, and recording the results of the price audits.

F. **PA Supervision:** The General Manager in each California Staples Store shall be responsible for supervision of the PA and of the applicable California Staples Store's compliance with the Revised Policy. California Staples Store General Managers shall be responsible for ensuring that compliance issues are communicated to the District Manager or their designees, as appropriate. District Managers, in turn, shall be responsible for ensuring that California Staples Stores employees in the applicable district are properly trained to comply with the Revised Policy, and that compliance issues are addressed appropriately and elevated as necessary to the applicable Regional Vice President.

G. **Weekly Audits.** Each California Staples Store PA shall conduct a minimum of one audit per week of at least eighty (80) randomly selected items offered for sale in that store. Of those eighty (80) items, at least forty (40) must be items that have undergone price changes within the previous seven (7) days. The PA shall record the results of each audit, which shall be maintained as provided in the “Retention of Records” provision herein. Pricing errors discovered during such audits shall be recorded in sufficient detail, promptly corrected in the store and communicated to the General Manager. In the event that two (2) or more errors are found within a weekly audit, the errors shall promptly be communicated to the District Manager’s office, which shall take appropriate action as necessary. The General Manager shall endeavor in good faith to take prompt action to determine the cause of the pricing errors, undertake corrective action, and communicate regarding compliance issues to the applicable District Manager. The District Manager

shall be responsible for taking any further corrective action(s) and/or reporting the pricing accuracy issues to the Regional Vice President, as appropriate.

H. **Price Discrepancy Reports.** Staples shall establish a computer code at checkout registers identifying the reason for any override of a scanner price reflecting a pricing error. Each store shall maintain a daily Price Discrepancy Report reflecting all scanner and pricing errors detected at the cashier. These reports shall be maintained as provided in the "Retention of Records" provision herein. The scanner and shelf prices for all items that were the subject of a customer complaint resulting in a price override shall be checked and, if found erroneous, corrected within one (1) hour of the customer complaint.

I. **Incentive Program.**

1. Whenever Staples is notified by a customer and verifies that an item has scanned at a price that is higher than the lowest Advertised price, the customer shall receive a Four Dollar (\$4.00) reduction from the lowest Advertised price for one of the items or, if the item's lowest Advertised price is Four Dollars (\$4.00) or less, the customer shall receive the item for free. If the consumer is purchasing more than one of the same item which results in a pricing error, the incentive shall apply only to one of those items. If the consumer is purchasing two different items both of which result in pricing errors, the incentive shall apply to each different item subject to the limit above. As used herein, "Advertised" means advertised, posted, marked, quoted or otherwise disseminated in any manner whatsoever, including through price tags, shelf signs, circulars, newspapers or any other form of media. Nothing herein will be construed to mean that a consumer will be eligible for an Advertised price if he or she fails to qualify under any limitations or terms disclosed in conjunction with the Advertised price, so long as such terms are clearly and conspicuously disclosed.

2. Staples shall inform customers of all material terms and conditions of the policy described in sub-paragraph (1), above, by posting a sign in a clear,

conspicuous and unobstructed location visible to customers waiting in the check-out line at every checkout stand in every California Staples Store, as well as upon store entry and at the customer service desk. The signs shall be at least eight and one-half inches by eleven inches (8 ½ x 11”) in size. The phrase “Scanner Price Guarantee” shall be printed at the top of the sign in 40-point bold type, and the material terms and conditions of the policy shall be printed below it in 30-point bold type.

3. The customer will not be entitled to this award if a Staples employee corrects the price prior to the customer complaint or notification; if the merchandise has been inadvertently moved to an incorrect shelf or display; if the error cannot be verified; or if a clear and conspicuous pricing error notice was posted at each POS terminal at the time the purchase was commenced. Staples employees shall not make any statements or take any actions which directly or indirectly prevent or discourage Staples’s incentive program from being followed, complied with or adhered to by other Staples employees or consumers.

4. Staples’ employees are not eligible for the incentive program.

J. **Retention of Records.** Staples shall establish procedures to retain all acknowledgments, records and reports required by the provisions of this paragraph 5 for at least two (2) years from the date each acknowledgment, record or report was created. Such documents shall be retained electronically or in hard copy and shall be made available for inspection upon reasonable request of any authorized Weights and Measures Official within a reasonable time of the request. (As used in this Final Judgment, the term “Weights and Measures Official” shall mean any representative of the State of California Division of Measurement Standards, Department of Food and Agriculture, or any representative of a County Sealer or Director of a County Department of Agriculture, or any representative of the California Attorney General, a district attorney, or a city attorney.) Staples shall, within fifteen (15) days of receipt of a written request to Staples

Legal Department at 500 Staples Drive, Framingham, MA 01702 or other reasonable time period under the circumstances provide to representatives of the People for inspection and copying, each or all documents required to be maintained by this paragraph 5, as set forth in any request.

K. Staples' obligations described above in subparagraphs (A)-(J) are continuing obligations as to all future Staples employees or individuals where applicable, within the five-year period set forth in paragraph 5 above.

L. Neither this Final Judgment, nor any provision hereof, shall be a defense, or be admissible in support of a defense, to an action by the People for a violation of any consumer protection law including, but not limited to, violations of the Business and Professions Code.

M. The records of the in-house procedures and audits required by this Final Judgment are not admissible in any subsequent proceeding against or relating to Staples by Plaintiff herein. Except, such records shall be admissible in subsequent proceedings to establish compliance or failure of compliance with the provisions of paragraph 5 of this Final Judgment.

N. Nothing in this Final Judgment shall in any way prevent Staples from developing, testing or implementing new or different systems or measures regarding the subjects covered by this Final Judgment.

MONETARY RELIEF

6. **Costs.** On or before the filing of this Final Judgment, Staples shall pay to Plaintiff, as and for costs, the sum of One Hundred One Thousand Two Hundred Forty-Eight Dollars and Forty-Nine Cents (\$101,248.49), by check made payable to the Marin County District Attorney's Office. Said costs shall be distributed to the below listed entities as follows:

California Department of Food and Agriculture	
Division of Measurement Standards	\$15,002.40
County of Alameda, Weights and Measures	\$1,393.70

County of Amador, Weights and Measures	\$283.56
County of Contra Costa, Weights and Measures	\$10,192.50
County of Imperial, Weights and Measures	\$1,759.13
County of Kings, Weights and Measures	\$112.82
County of Los Angeles, Weights and Measures	\$42,245.60
County of Marin, Weights and Measures	\$1,827.09
County of Mendocino, Weights and Measures	\$924.98
County of Merced, Weights and Measures	\$119.50
County of Napa, Weights and Measures	\$440.00
County of Nevada, Weights and Measures	\$365.35
County of Orange, Weights and Measures	\$1,890.00
County of Placer, Weights and Measures	\$975.00
County of Sacramento, Weights and Measures	\$1,970.00
County of San Benito, Weights and Measures	\$724.96
County of San Bernardino, Weights and Measures	\$5,544.00
County of San Diego, Weights and Measures	\$4,224.91
County of San Francisco, Weights and Measures	\$706.00
County of San Joaquin, Weights and Measures	\$1,419.62
County of San Mateo, Weights and Measures	\$1,509.12
County of Santa Clara, Weights and Measures	\$3,222.65
County of Santa Cruz, Weights and Measures	\$260.00
County of Solano, Weights and Measures	\$834.14
County of Sonoma, Weights and Measures	\$2,222.00
County of Stanislaus, Weights and Measures	\$628.50
County of Sutter, Weights and Measures	\$450.96

7. **Restitution.** The parties having stipulated, and the Court hereby finds, that it would be impractical, infeasible, too costly and would far exceed any benefit to attempt to

identify individual consumers that have suffered an actual loss from having purchased products from Staples at the incorrect price. Thus, on or before the filing of this Final Judgment, Staples shall pay restitution, under the doctrine of *cy pres*, pursuant to Business and Professions Code §§ 17203 and 17535, by paying Twenty-Five Thousand Dollars (\$25,000.00), in a check made payable to the California Department of Food and Agriculture, Division of Measurement Standards, to be used for quantity control and/or price verification.

8. **Civil Penalties.** On or before the filing of this Final Judgment, Staples is hereby ordered, pursuant to Business and Professions Code §§ 17206, 17207 and 17536, to pay a civil penalty of Eight Hundred Forty-One Thousand Nine Hundred Nine Dollars (\$841,909.00) by check made payable to the Marin County District Attorney's Office which shall be distributed equally to the prosecuting agencies bringing this action pursuant to Government Code § 26506.

9. **Delivery of Settlement Funds.** All settlement funds including those set forth above in paragraphs 6, 7, and 8, above, shall be due at the time of the filing of this Final Judgment and shall be delivered to Andres H. Perez at the Marin County District Attorney's Office, 3501 Civic Center Drive, Room 130, San Rafael, California 94903.

10. Defendant shall bear its own attorney's fees and costs.

FULL AND FINAL RESOLUTION

11. All parties to this action agree not to seek any further relief relating to the matters alleged in the Complaint filed contemporaneously with this Final Judgment or relating to any alleged violations of the Superseded Final Judgment. This Final Judgment represents the complete and final settlement of all claims that have been or could have been brought by Plaintiff against Defendant arising from or relating to the Superseded Final Judgment and/or relating to the subject matter of the Complaint herein.

RETENTION OF JURISDICTION

12. Jurisdiction is retained for the purpose of enabling any party to this Final Judgment to apply to the Court at any time for such further orders and directions as may be necessary and

appropriate for the construction and carrying out of this Final Judgment, for the modification of any of the injunctive provisions of this Final Judgment, and for the enforcement of, compliance with, and punishment of violations of this Final Judgment.

13. The failure of the People to enforce any provision of this Final Judgment shall neither be deemed a waiver of such provision nor shall it in any way affect the validity of this Final Judgment. The failure of the People to enforce any provision shall not preclude it from later enforcing the same or other provisions of this Final Judgment

14. The clerk is ordered to immediately enter this Final Judgment.

15. This Final Judgment shall take effect immediately upon entry hereof.

DATED: AUG 13 2012

 ROY CIERNUS
JUDGE OF THE SUPERIOR COURT