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COMMERCIAL LLC

17 SUPERIOR COURT OF THE STATE OF CALIFORNIA

18 COUNTY OF SAN DIEGO

19  
20 LUIS A. M. AVILA, an individual, for the real  
party in interest, the State of California,

21 Plaintiff,

22 v.

23 STAPLES CONTRACT & COMMERCIAL  
INC.; STAPLES INC.; and DOES 1 through  
24 50,

25 Defendants.

Case No. 37-2020-00026210-CU-OE-CTL  
(Lead Case)

Consolidated with Case No. 37-2022-  
00001040-CU-OE-CTL

(Assigned for All Purposes to the Honorable  
Eddie C. Sturgeon, Dept. 67)

**CLASS AND PAGA SETTLEMENT  
AGREEMENT AND RELEASE**

Date Action Filed: July 27, 2020  
Trial Date: Not Yet Set

1 This Class and PAGA Settlement Agreement and Release (“Agreement”) is entered into  
2 by and between Luis A. M. Avila (“Plaintiff”), on the one hand, individually and on behalf of all  
3 persons who are members of the class to be certified for settlement purposes only as provided for  
4 herein, the PAGA Group, and the State of California, and Staples, Inc. and Staples Contract &  
5 Commercial LLC (named Staples Contract & Commercial Inc. until approximately February 28,  
6 2018) (together, “Defendants”), on the other hand, subject to the approval of the Court. Plaintiff  
7 and Defendants collectively are referred to herein as the “Parties.” In consideration of the  
8 promises and mutual covenants and agreements herein contained, the Parties hereby covenant and  
9 agree as follows:

10 **1. RECITALS**

11 1.1 On July 27, 2020, Plaintiff filed a complaint against Defendants (the “PAGA  
12 Complaint”) for enforcement under the Labor Code Private Attorneys General Act of 2004 (Lab.  
13 Code, § 2698, et seq.; “PAGA”) in the Superior Court of the State of California, County of  
14 San Diego, entitled *Luis A. M. Avila v. Staples Contract & Commercial Inc., et al.*, Case No. 37-  
15 2020-00026210-CU-OE-CTL (the “Earlier-Filed Action”). The PAGA Complaint asserted ten  
16 causes of action seeking civil penalties under PAGA premised on alleged violation of (1) Labor  
17 Code section 246; (2) Labor Code section 226, subdivision (a)(1); (3) Labor Code section 226,  
18 subdivision (a)(5); (4) Labor Code section 226, subdivision (a)(9); (5) Labor Code section 246,  
19 subdivision (i); (6) Labor Code section 226, subdivision (a); (7) Labor Code section 204;  
20 (8) Labor Code sections 201-203; (9) Labor Code section 925; and (10) Labor Code  
21 section 432.5. The First through Eighth Causes of Action were premised on alleged  
22 underpayment of sick pay paid pursuant to the Healthy Workplace Healthy Family Act of 2014  
23 (Lab. Code, § 245 et seq.; “HWHFA”) and alleged underpayment of overtime wages. The Ninth  
24 and Tenth Causes of Action were premised on alleged agreements certain employees purportedly  
25 signed in connection with their employment allegedly in violation of the Labor Code. The PAGA  
26 Complaint alleged that Plaintiff brought the Earlier-Filed Action on behalf of the State of  
27 California and other current and former California employees, in addition to himself.  
28

1           1.2     On September 29, 2020, Staples, Inc. (the only Defendant that had been served)  
2 demurred to the First, Second, Third, Fourth, Fifth, Sixth, Ninth, and Tenth Causes of Action in  
3 the PAGA Complaint and moved to strike various other allegations from the PAGA Complaint.  
4 On March 8, 2021, Plaintiff requested dismissal of the Fifth Cause of Action from the PAGA  
5 Complaint, thereby mooting the demurrer as to it. On March 30, 2021, the Court sustained  
6 Staples, Inc.’s demurrer and granted its motion to strike, with leave to amend.

7           1.3     On April 5, 2021, Plaintiff filed an amended complaint against Defendants (“First  
8 Amended PAGA Complaint”) in the Earlier-Filed Action. The First Amended PAGA Complaint  
9 asserts nine causes of action seeking civil penalties under PAGA premised on alleged violation of  
10 (1) Labor Code section 246; (2) Labor Code section 226, subdivision (a)(1); (3) Labor Code  
11 section 226, subdivision (a)(5); (4) Labor Code section 226, subdivision (a)(9); (5) Labor Code  
12 section 226, subdivision (a); (7) Labor Code section 204; (8) Labor Code sections 201-203;  
13 (9) Labor Code section 925; and (10) Labor Code section 432.5. The First through Seventh  
14 Causes of Action are premised on alleged underpayment of sick pay paid pursuant to the  
15 HWHFA and alleged underpayment of overtime wages. The Eighth and Ninth Causes of Action  
16 are premised on alleged agreements certain employees purportedly signed in connection with  
17 their employment allegedly in violation of the Labor Code. Like the PAGA Complaint, the First  
18 Amended PAGA Complaint alleges that Plaintiff has brought the Earlier-Filed Action on behalf  
19 of the State of California and other current and former California employees, in addition to  
20 himself.

21           1.4     On May 7, 2021, Defendants demurred to the First, Second, Third, Fourth, Fifth,  
22 and Ninth Causes of Action in the First Amended PAGA Complaint and moved to strike various  
23 other allegations from the First Amended PAGA Complaint. On December 17, 2021, the Court  
24 sustained Defendants’ demurrer to the Ninth Cause of Action and overruled the demurrer to the  
25 First, Second, Third, Fourth, and Fifth Causes of Action.

26           1.5     Defendants answered the First Amended PAGA Complaint on January 3, 2022,  
27 generally denying all of the allegations contained in it and asserting a number of affirmative  
28

1 defenses. On April 6, 2022, Defendants amended their answer to the First Amended PAGA  
2 Complaint.

3 1.6 On January 10, 2022, Plaintiff filed a class action complaint against Defendants  
4 (the “Class Complaint”) for restitution, damages, and injunctive relief in the Superior Court of the  
5 State of California, County of San Diego, entitled *Luis A. M. Avila v. Staples Contract &*  
6 *Commercial LLC, et al.*, Case No. 37-2022-00001040-CU-OE-CTL (the “Later-Filed Action”).  
7 The Class Complaint asserts two causes of action alleging violation of (1) Business and  
8 Professions Code section 17200 and (2) Labor Code section 925. The First Cause of Action is  
9 premised on alleged underpayment of sick pay paid pursuant to the HWHFA. The Second Cause  
10 of Action is premised on alleged agreements certain employees purportedly signed in connection  
11 with their employment allegedly in violation of the Labor Code. With respect to the First Cause  
12 of Action, Plaintiff seeks to represent all individuals who worked as non-exempt employees for  
13 Defendants in California and received both incentive wages, bonuses, and/or commissions as well  
14 as sick pay during the same pay period. With respect to the Second Cause of Action, Plaintiff  
15 seeks to represent all individuals who worked as non-exempt employees for Defendants in  
16 California who signed an agreement containing a foreign forum-selection and/or choice-of-law  
17 provision.

18 1.7 Defendants answered the Class Complaint on March 7, 2022, generally denying all  
19 of the allegations contained in it and asserting a number of affirmative defenses.

20 1.8 On March 28, 2022, the Court in the Earlier-Filed Action deemed the Actions  
21 related. On April 11, 2022, the Court ordered the Actions consolidated, with the Earlier-Filed  
22 Action as the lead case. The Actions are now both pending in the same department of this Court.

23 1.9 Plaintiff is represented by the same lawyers, Mashiri Law Firm, APC and The  
24 Jami Law Firm P.C., in both the Earlier-Filed Action and the Later-Filed Action. Defendants are  
25 also represented by the same lawyers, Morrison & Foerster LLP, in both the Earlier-Filed Action  
26 and the Later-Filed Action.

27 1.10 The Parties have conducted the following formal discovery in the Earlier-Filed  
28 Action: Plaintiff served and each of the Defendants responded to one set of requests for

1 production of documents, one set of requests for admissions, one set of general form  
2 interrogatories, one set of employment form interrogatories, and one set of special interrogatories.  
3 Staples Contract & Commercial LLC served and Plaintiff responded to one set of requests for  
4 production of documents.

5 1.11 Plaintiff also asked for and Defendants provided substantial informal discovery,  
6 including the production of records maintained by Staples Contract & Commercial LLC  
7 containing payroll and paid sick leave information pertaining to individuals employed in  
8 California as non-exempt associates.

9 1.12 In these and other ways, the Parties investigated the facts and analyzed the relevant  
10 legal issues with regard to the claims in the Actions and Defendants' defenses to them. Based on  
11 this investigation and analysis, Plaintiff believes the Actions have merit, while Defendants  
12 believe the Actions have no merit.

13 1.13 The Parties have each considered the uncertainties of continued litigation and the  
14 benefits to be obtained under the proposed settlement, and have considered the costs, risks, and  
15 delays associated with the continued prosecution of these Actions and the likely appeals of any  
16 rulings in favor of Plaintiff or any of the Defendants.

17 1.14 In light of the discovery described in Sections 1.10 and 1.11 above, the Parties  
18 initiated settlement discussions through their counsel, engaging in extended, arm's-length  
19 negotiations concerning a potential resolution of the Actions. On or about May 18, 2022, the  
20 Parties agreed in principal to a settlement of the Actions.

21 1.15 It is the Parties' intention and the objective of this Agreement to avoid the costs of  
22 further litigation and trial, and to settle and dispose of, fully and completely and forever, the  
23 claims released herein and described below.

## 24 **2. DEFINITIONS**

25 As used in this Agreement, the terms set forth in this Section 2 shall have the meanings  
26 ascribed to them below.

27 2.1 **Actions.** "Actions" means the Earlier-Filed Action and the Later-Filed Action.  
28

1           2.2    **Agreement.** “Agreement” means this Class and PAGA Settlement Agreement and  
2 Release, including all Exhibits referred to herein and attached hereto.

3           2.3    **Allocations.** “Allocations” means the amounts to be paid from the Net Settlement  
4 Sum to the Settlement Class Members and from the PAGA Fund to the PAGA Group Members,  
5 as provided in Section 4.5 of this Agreement.

6           2.4    **Claims.** “Claims” means the PAGA Claims and the Class Claims.

7           2.5    **Class Claims.** “Class Claims” means the putative class claims in the Class  
8 Complaint alleging (1) violation of the Unfair Competition Law (Bus. & Prof. Code § 17200,  
9 et seq.) and (2) violation of Labor Code section 925.

10          2.6    **Class Complaint.** “Class Complaint” means the complaint filed in the Later-Filed  
11 Action, on January 10, 2022.

12          2.7    **Class Counsel.** “Class Counsel” means Mashiri Law Firm, APC and The Jami  
13 Law Firm P.C.

14          2.8    **Class Members or Class.** “Class Members” or “Class” means all individuals  
15 employed by Staples Contract & Commercial LLC (named Staples Contract & Commercial Inc.  
16 until approximately February 28, 2018) as non-exempt associates in California at any time during  
17 the Settlement Period who fall within the scope of the claims alleged in the Complaints.

18          2.9    **Class Notice.** “Class Notice” means the Notice of Settlement of Class Action to  
19 be mailed to Class Members. The Class Notice shall be substantially in the form of **Exhibit B**  
20 hereto.

21          2.10   **Class Settlement Award.** “Class Settlement Award” means the amount that the  
22 Settlement Administrator determines is owed to a Settlement Class Member pursuant to the Plan  
23 of Allocation described in Section 4.5, below.

24          2.11   **Complaints.** “Complaints” means the PAGA Complaint, the First Amended  
25 PAGA Complaint, the Class Complaint, and the Consolidated Complaint.

26          2.12   **Consolidated Complaint.** “Consolidated Complaint” means the second amended  
27 complaint attached as **Exhibit A** to be filed by Plaintiff in the Earlier-Filed Action for settlement  
28 purposes only.

1           2.13   **Counsel for Defendants.** “Counsel for Defendants” means Morrison & Foerster  
2 LLP.

3           2.14   **Court.** “Court” means the Superior Court of the State of California, County of  
4 San Diego.

5           2.15   **Defendants.** “Defendants” mean Staples, Inc. and Staples Contract &  
6 Commercial LLC.

7           2.16   **Earlier-Filed Action.** “Earlier-Filed Action” means the action entitled *Luis A. M.*  
8 *Avila v. Staples Contract & Commercial Inc., et al.*, filed on July 27, 2020 in the Superior Court  
9 of the State of California, County of San Diego, Case No. 37-2020-00026210-CU-OE-CTL.

10          2.17   **Effective Date.** “Effective Date” means either (a) the date sixty (60) calendar  
11 days after the entry of the Final Judgment and Order Approving Settlement, if no motions for  
12 reconsideration and no appeals or other efforts to obtain review have been filed, or (b) in the  
13 event that a motion for reconsideration, an appeal or other effort to obtain review of the Final  
14 Judgment and Order Approving Settlement, the date sixty (60) calendar days after such  
15 reconsideration, appeal or review has been finally concluded and is no longer subject to review,  
16 whether by appeal, petition for rehearing, petition for review or otherwise.

17          2.18   **Fee and Expense Award.** “Fee and Expense Award” means such award of  
18 attorneys’ fees and costs/expenses as the Court may authorize to be paid to Class Counsel for the  
19 services they have rendered to Plaintiff, the Settlement Class, and the PAGA Group.

20          2.19   **Fairness Hearing or Final Approval Hearing.** “Fairness Hearing” or “Final  
21 Approval Hearing” means the hearing at or after which the Court will make a final decision on  
22 whether to grant Final Approval of the Settlement as fair, reasonable, and adequate, implement  
23 the terms of the Agreement, and enter Judgment. The Fairness Hearing shall be scheduled for a  
24 date approximately ninety (90) calendar days after the Preliminary Approval Date, or as soon as  
25 thereafter as the Court is available.

26          2.20   **Final Approval or Judgment.** “Final Approval” or “Judgment” means the Final  
27 Judgment and Order Approving Settlement finally certifying the Settlement Class and approving  
28 the Settlement and this Agreement, as contemplated in Section 4.7 of this Agreement.

1           2.21   **First Amended PAGA Complaint.** “First Amended PAGA Complaint” means  
2 the first amended complaint filed in the Earlier-Filed Action on April 5, 2021.

3           2.22   **General Release Payment.** “General Release Payment” means the compensation  
4 paid to Plaintiff in consideration for his general release of his individual claims as set forth in  
5 Section 5.6, below, separate and apart from any Overall Settlement Award, to be paid to him from  
6 the Gross Settlement Amount.

7           2.23   **Gross Settlement Amount.** “Gross Settlement Amount” means the maximum  
8 total amount that Defendants shall be required to pay, for any and all purposes under this  
9 Agreement. The Gross Settlement Amount shall be Three Hundred Thousand Dollars and No  
10 Cents (\$300,000.00). The following shall be paid from the Gross Settlement Amount pursuant to  
11 the Plan of Allocation set forth in Section 4.5, below: (a) all Class Settlement Awards, (b) the  
12 PAGA Settlement Amount, (c) the Fee and Expense Award, (d) the General Release Payment,  
13 (e) Settlement Administration Costs, and (f) Defendants’ share of Withholdings and Taxes arising  
14 from the Overall Settlement Awards. Under no circumstances shall Defendants pay any sum in  
15 excess of the Gross Settlement Amount in connection with the Settlement.

16           2.24   **Later-Filed Action.** “Later-Filed Action” means the action entitled *Luis A. M.*  
17 *Avila v. Staples Contract & Commercial LLC, et al.*, filed on January 10, 2022 in the Superior  
18 Court of the State of California, County of San Diego, Case No. 37-2022-00001040-CU-OE-  
19 CTL.

20           2.25   **Net Settlement Sum.** “Net Settlement Sum” means the Gross Settlement Amount  
21 less the following: (a) the PAGA Settlement Amount, (b) the Fee and Expense Award, (c) the  
22 General Release Payment, (d) Settlement Administration Costs, and (e) Defendants’ share of  
23 Withholdings and Taxes arising from the Overall Settlement Awards.

24           2.26   **Notice Response Deadline.** “Notice Response Deadline” is forty-five (45)  
25 calendar days from the date of initial mailing of the Class Notice, or such other date set by the  
26 Court in the Preliminary Approval Order.

27           2.27   **Overall Settlement Award.** “Overall Settlement Award” means the sum of the  
28 Class Settlement Award, if any, and the PAGA Settlement Award to be paid to a Settlement Class

1 Member and/or PAGA Group Member pursuant to the Plan of Allocation described in  
2 Section 4.5, below.

3       **2.28 PAGA Claims.** “PAGA Claims” means the representative PAGA claims in the  
4 First Amended PAGA Complaint alleging violations of Labor Code sections 201, 202, 203, 204,  
5 226, 226(a)(1) to (a)(9), 226.3, 246, 432.5, 510, 925, and 2699 et seq.

6       **2.29 PAGA Complaint.** “PAGA Complaint” means the complaint filed in the Earlier-  
7 Filed Action on July 27, 2020.

8       **2.30 PAGA Fund.** “PAGA Fund” means 25% of the PAGA Settlement Amount,  
9 which is the portion to be paid to PAGA Group Members.

10       **2.31 PAGA Group.** “PAGA Group” means all PAGA Group Members.

11       **2.32 PAGA Group Members.** “PAGA Group Members” means all individuals  
12 employed by Staples Contract & Commercial LLC (named Staples Contract & Commercial Inc.  
13 until approximately February 28, 2018) as non-exempt associates in California at any time during  
14 the Settlement Period who fall within the scope of the claims alleged in the Complaints. PAGA  
15 Group Members are coterminous with Class Members.

16       **2.33 PAGA Notice.** “PAGA Notice” means the PAGA notice filed by Plaintiff with  
17 the California Labor & Workforce Development Agency (LWDA) regarding Defendants on or  
18 about May 21, 2020.

19       **2.34 PAGA Settlement Amount.** “PAGA Settlement Amount” means Thirty  
20 Thousand Dollars and No Cents (\$30,000.00) or such other amount approved by the Court, 75%  
21 of which (\$22,500.00) is to be paid to the LWDA and 25% of which (\$7,500.00) is to form the  
22 PAGA Fund to be paid to PAGA Group Members. The PAGA Settlement Amount is to be paid  
23 for resolution of the PAGA claims alleged in the Complaints, or any of them, and which are  
24 included in the Released PAGA Claims.

25       **2.35 PAGA Settlement Award.** “PAGA Settlement Award” means the amount that  
26 the Settlement Administrator determines is owed to a PAGA Group Member pursuant to the Plan  
27 of Allocation described in Section 4.5, below.

28       **2.36 Plaintiff.** “Plaintiff” means Luis A. M. Avila.

1           2.37   **Plan of Allocation.** “Plan of Allocation” means the manner in which the Net  
2 Settlement Sum shall be allocated to Settlement Class Members and the PAGA Fund shall be  
3 allocated to PAGA Group Members, as specified in Section 4.5, below.

4           2.38   **Preliminary Approval or Preliminary Approval Order.** “Preliminary  
5 Approval” or “Preliminary Approval Order” means the order preliminarily approving this  
6 Settlement, which shall, among other things, provisionally certify the Settlement Class for  
7 purposes of this Settlement only; determine that Plaintiff adequately represents the Settlement  
8 Class and shall be its class representative; appoint Class Counsel as counsel for the Settlement  
9 Class; approve Phoenix Class Action Administration Solutions as the Settlement Administrator;  
10 approve the content and distribution of the Class Notice to the Class Members; set the Request for  
11 Exclusion Deadline and the deadline for objecting to the Settlement; and set the date for the  
12 Fairness Hearing, as contemplated in Section 4.1, below.

13           2.39   **Preliminary Approval Date.** “Preliminary Approval Date” means the date upon  
14 which the Court enters the Preliminary Approval Order.

15           2.40   **Released Claims.** “Released Claims” means all claims, debts, liabilities,  
16 demands, obligations, damages, and actions or causes of action of any kind that arise before or on  
17 the Preliminary Approval Date and were alleged in any of the Complaints or the PAGA Notice or  
18 could have reasonably been alleged against any of the Released Parties based on the facts alleged  
19 in any of the Complaints or the PAGA Notice and including (without limitation) claims under  
20 Labor Code sections 201, 202, 203, 204, 210, 218.5, 226, 226(a)(1)-(9), 226.3, 227.3, 233, 234,  
21 245 et seq. (the Healthy Workplace Healthy Family Act of 2014), 256, 432.5, 510, 558, 558.1,  
22 925, 1194, 1198, and 2698 et seq. (PAGA); Business and Professions Code section 17200 et seq.  
23 (the Unfair Competition Law), and Code of Civil Procedure section 1021.5. Expressly excluded  
24 from the Released Claims are claims for wages in Workers’ Compensation and Unemployment  
25 Insurance benefit cases, and claims for benefits under the Employee Retirement Income Security  
26 Act of 1974 (ERISA).

1           2.41    **Released PAGA Claims.** “Released PAGA Claims” means all claims asserted  
2 pursuant to Labor Code section 2698 et seq. that arise out of or are related to the Released Claims  
3 during the Settlement Period.

4           2.42    **Released Parties.** “Released Parties” means Staples Contract & Commercial LLC  
5 (named Staples Contract & Commercial Inc. until approximately February 28, 2018), Staples,  
6 Inc., each of their present, former, and future parents, each of their subsidiaries, affiliates,  
7 divisions, corporations in common control, predecessors, successors, and assigns, and each of  
8 their respective present, past, and future officers, directors, employees, partners (both general and  
9 limited), shareholders, agents, attorneys, insurers, and any other successors, assigns, or legal  
10 representatives, and any other individual or entity which could be liable for any of the Released  
11 Claims.

12           2.43    **Relevant Weeks.** “Relevant Weeks” means the greater of (a) one and (b) the  
13 number of weeks in the Settlement Period during which a Class Member was employed by  
14 Staples Contract & Commercial LLC for at least one day and received both (i) sick pay and (ii) a  
15 non-discretionary bonus, incentive, or other like payment. Relevant Weeks shall be calculated  
16 according to Staples Contract & Commercial LLC’s records. Settlement Class Members may  
17 dispute the number of Relevant Weeks they had during the Settlement Period by completing and  
18 returning the Notice of Relevant Weeks included with the Class Notice, which shall be  
19 substantially in the form of **Exhibit C** hereto.

20           2.44    **Request for Exclusion.** “Request for Exclusion” means a written request made by  
21 a Class Member to the Settlement Administrator seeking to be excluded from the Settlement  
22 Class.

23           2.45    **Request for Exclusion Deadline.** “Request for Exclusion Deadline” means forty-  
24 five (45) calendar days from the date of initial mailing of the Class Notice, or such other date set  
25 by the Court in the Preliminary Approval Order for submitting a Request for Exclusion to the  
26 Settlement Administrator.

27           2.46    **Settlement.** “Settlement” means this Agreement and all actions taken pursuant to  
28 and in furtherance of this Agreement.

1           2.47   **Settlement Administration Costs.** “Settlement Administration Costs” means the  
2 amounts approved by the Court to be paid for the services of the Settlement Administrator to  
3 perform the Settlement Administrator Duties, as specified in Section 4.2.2, below. It is estimated  
4 that the Settlement Administration Costs will not exceed \$20,000.

5           2.48   **Settlement Administrator.** “Settlement Administrator” means Phoenix Class  
6 Action Administration Solutions, or such other administrator as may be approved by the Court,  
7 which shall be responsible for administering the Settlement pursuant to the terms of the  
8 Agreement, the Class Notice, the Preliminary Approval Order, and the Judgment. The Settlement  
9 Administrator shall agree to confidentiality terms as may be required by Defendants regarding  
10 personnel and payroll data provided to the Settlement Administrator and shall work with Class  
11 Counsel and Counsel for Defendants to implement and administer appropriate fraud-prevention  
12 policies. The Settlement Administration Costs shall be paid out of the Settlement Fund Amount.

13           2.49   **Settlement Class.** “Settlement Class” means Plaintiff and all Settlement Class  
14 Members.

15           2.50   **Settlement Class Members.** “Settlement Class Members” means each Class  
16 Member who does not submit a valid and timely Request for Exclusion.

17           2.51   **Settlement Fund.** “Settlement Fund” means the fund established and  
18 administered by the Settlement Administrator for the purpose of receiving and disbursing  
19 amounts to be paid to Settlement Class Members, PAGA Group Members, the LWDA, Plaintiff,  
20 Class Counsel, and the Settlement Administrator pursuant to this Agreement. The Settlement  
21 Fund shall be funded by Defendants following the Effective Date in accordance with  
22 Section 4.10.1, below.

23           2.52   **Settlement Fund Amount.** “Settlement Fund Amount” means the total amount  
24 that Defendants shall remit to the Settlement Administrator in accordance with Section 4.10.1,  
25 below, which shall consist of the following amounts, the aggregate of which shall not exceed the  
26 Gross Settlement Amount: (a) the Net Settlement Amount, (b) the Fee and Expense Award,  
27 (c) the PAGA Settlement Amount, (d) the General Release Payment, (e) Settlement  
28

1 Administration Costs, and (f) Defendants' share of Withholdings and Taxes arising from the  
2 Overall Settlement Awards.

3 2.53 **Settlement Period.** "Settlement Period" means from January 1, 2018 to and  
4 including the Preliminary Approval Date.

5 2.54 **Withholdings and Taxes.** "Withholdings and Taxes" means all withholdings  
6 from the Overall Settlement Awards required by law plus all federal, state, and local employment  
7 payroll taxes due in regard to the Overall Settlement Awards, whether owed by a Settlement  
8 Class Member or by Defendants.

9 **3. SETTLEMENT TERMS**

10 3.1 **Filing of Consolidated Complaint for Settlement Purposes.** Plaintiff shall file  
11 the Consolidated Complaint attached as **Exhibit A** hereto in the Earlier-Filed Action, for  
12 settlement purposes only. The Consolidated Complaint consolidates into the Earlier-Filed Action  
13 all of the claims in both of the Actions. It contains two causes of action brought on a putative  
14 class basis, alleging (1) the Unfair Competition Law (Bus. & Prof. Code, § 17200, et seq.) and  
15 (2) Labor Code section 925, and nine causes of action seeking civil penalties under PAGA for  
16 alleged violations of Labor Code sections 201-203, 204, 226(a) (on four different theories), 246,  
17 432.5, and 925. In the Consolidated Complaint, Plaintiff seeks to represent all Class Members in  
18 the putative class causes of action and purports to represent the State of California and all PAGA  
19 Group Members in the PAGA causes of action. The Consolidated Complaint is intended to be  
20 nothing more and nothing less than a consolidation of all claims alleged in the Earlier-Filed  
21 Action and the Later-Filed Action into the Earlier-Filed Action, for settlement purposes only.  
22 The Consolidated Complaint shall not, and shall not be construed to, assert any new claims or  
23 theories of liability not previously asserted in the Earlier-Filed Action or the Later-Filed Action.  
24 The Consolidated Complaint shall be deemed filed as of the Preliminary Approval Date, and  
25 Defendants concurrently shall be deemed to deny all of the allegations contained in it and to raise  
26 all of the defenses Defendants raised in their April 6, 2022 amended answer to the First Amended  
27 PAGA Complaint in the Earlier-Filed Action and their March 7, 2022 answer to the Class  
28

1 Complaint in the Later-Filed Action, without the need to file an answer to the Consolidated  
2 Complaint.

3           **3.2 Consolidated Complaint Withdrawn If Settlement Not Effectuated.** The  
4 Parties understand and agree that the Consolidated Complaint was filed solely for the purpose of  
5 facilitating the administration of settlement of the Actions, and its filing is not and shall not be  
6 deemed an agreement to consolidate the claims in the Actions into one action except for the  
7 purpose of settlement only, nor an admission as to the propriety of consolidation for any purpose  
8 other than settlement nor as to the merits of any of the allegations contained in the Consolidated  
9 Complaint, all of which Defendants express and generally deny and have asserted various  
10 defenses thereto. All rights and defenses that may be asserted with respect to the Consolidated  
11 Complaint are expressly reserved, and in the event that the settlement is not preliminarily or  
12 finally approved or is not effectuated for whatever reason, the Consolidated Complaint shall be  
13 withdrawn and shall no longer have any force or effect, and the Parties will be returned to their  
14 status quo ante positions, meaning without limitation that the First Amended PAGA Complaint  
15 will once again become the operative complaint in the Earlier-Filed Action, with the Ninth Cause  
16 of Action therein dismissed by virtue of the Court's December 17, 2021 order sustaining  
17 Defendants' demurrer as to it.

18           **3.3 Certification of the Settlement Class.** For purposes of settlement and the  
19 proceedings contemplated by this Agreement only, the Settlement Class shall be provisionally  
20 certified and consist of Plaintiff and all Settlement Class Members.

21           **3.4 Decertification of the Settlement Class If Settlement Not Approved.**  
22 Defendants do not consent to certification of the Settlement Class or any settlement class for any  
23 purpose other than to effectuate the Settlement of the Actions. If, for any reason, the Settlement  
24 does not become final, any certification of any Settlement Class will be vacated and the Parties  
25 will be returned to their positions with respect to the Actions as if the Agreement had not been  
26 entered into. In the event that Final Approval is not achieved: (a) any Court order preliminarily  
27 approving the certification of any class contemplated by this Agreement shall be null, void, and  
28 vacated, and shall not be used or cited thereafter by any person or entity; and (b) the fact of the

1 Settlement reflected in this Agreement, that Defendants did not oppose the certification of the  
2 Settlement Class under this Agreement, or that the Court preliminarily approved the certification  
3 of the Settlement Class, shall not be used or cited thereafter by any person or entity in any manner  
4 whatsoever, including without limitation any contested proceeding relating to the certification of  
5 any class. In the event the terms and conditions of this Agreement are substantially modified by  
6 the Court, Defendants and Plaintiff reserve the right to declare this Agreement null and void, in  
7 its or their sole discretion, within fourteen (14) calendar days after such modification; *provided,*  
8 *however,* the Party exercising this right shall be solely responsible for the Settlement  
9 Administrator's expenses incurred through the date of that Party's exercise, not to exceed the  
10 amount approved by the Court in the Preliminary Approval Order.

11 **3.5 Settlement Payment by Defendants.** In full settlement of the Released Claims  
12 and Released PAGA Claims and following the Effective Date, Defendants shall deliver the  
13 Settlement Fund Amount to the Settlement Administrator for establishment of the Settlement  
14 Fund, in accordance with Section 4.10.1, below.

15 **3.6 Attorneys' Fees and Costs.** Defendants agree not to oppose Plaintiff's  
16 application for attorneys' fees up to \$100,000.00 (33.33% of the Gross Settlement Amount) and  
17 costs up to \$10,000.00, subject to the Court's approval. Plaintiff agrees not to petition the Court  
18 for more than \$100,000.00 for attorneys' fees or more than \$10,000.00 for costs, and in no event  
19 shall Defendants be liable for any attorneys' fees or costs in excess of these amounts. The Fee  
20 and Expense Award shall represent payment for all claims for Class Counsel's attorneys' fees and  
21 costs, past and future, incurred in either of the Actions. The Fee and Expense Award shall be  
22 paid from the Settlement Fund Amount, and Defendants shall not otherwise be required to pay for  
23 any portion of Class Counsel's attorneys' fees, costs, or expenses. The Fee and Expense Award  
24 shall be paid to Class Counsel following the Effective Date, in accordance with Section 4.10.2,  
25 below. An award by the Court of attorneys' fees or costs that is less than the amounts applied for  
26 will not be grounds for Plaintiff or Class Counsel to challenge or withdraw from the Settlement,  
27 and any amounts not awarded in costs or fees will be included in the Net Settlement Sum,  
28

1 however, that Plaintiff and Class Counsel reserve the right to appeal any such determination by  
2 the Court.

3           **3.7 General Release Payment.** In consideration of his general release of his  
4 individual claims as set forth in Section 5.6, below, Plaintiff shall receive compensation in the  
5 sum of Twenty-Five Thousand Dollars and No Cents (\$25,000), to be paid from the Gross  
6 Settlement Amount. The General Release Payment shall be paid by two checks. The Settlement  
7 Administrator shall issue the first check in the amount of \$5,000, less all applicable deductions  
8 and withholdings, and report such gross amount on IRS Form W-2 as wages. The Settlement  
9 Administrator shall issue the second check in the amount of \$20,000 and report such amount on  
10 IRS Form 1099-MISC as penalties and interest. The General Release Payment is separate from  
11 and in addition to any Overall Settlement Award to be paid to Plaintiff as a Settlement Class  
12 Member or PAGA Group Member. It will not be grounds for Plaintiff or Class Counsel to  
13 challenge or withdraw from the Settlement if the Court denies Plaintiff's application for the  
14 General Release Payment or awards a lesser amount than that for which Plaintiff applies, and any  
15 amounts not awarded in the General Release Payment will be included in the Net Settlement  
16 Sum.

17           **3.8 PAGA Settlement Amount.** Plaintiff shall seek approval from the Court for a  
18 total payment of Thirty Thousand Dollars and No Cents (\$30,000.00) for resolution of the PAGA  
19 claims alleged in the Complaints, or any of them. 75% of the PAGA Settlement Amount shall be  
20 paid to the LWDA, and 25% of the PAGA Settlement Amount shall form the PAGA Fund to be  
21 paid to PAGA Group Members in accordance with the Plan of Allocation set forth in Section 4.5,  
22 below.

23           **3.9 Interim Stay of Proceedings.** The Parties agree to the entry of a formal stay of all  
24 proceedings in both of the Actions, except such proceedings as may be necessary to implement  
25 and complete the Settlement, pending the Fairness Hearing to be conducted by the Court.  
26  
27  
28

1       **4. CLASS SETTLEMENT PROCEDURES**

2           **4.1 Preliminary Approval.** As soon as practicable, Plaintiff shall move for  
3 Preliminary Approval of the Settlement, in the Earlier-Filed Action only. Plaintiff’s motion shall  
4 request the Court to:

5                   4.1.1 Preliminarily approve this Agreement as fair, reasonable, and adequate;

6                   4.1.2 Preliminarily approve the form, manner and content of the Class Notice  
7 described in Section 4.2 and attached as **Exhibit B**, the form, manner and content of the Notice of  
8 Relevant Weeks described in Section 2.43 and attached as **Exhibit C**;

9                   4.1.3 Set deadlines for the Settlement Administrator to provide the Class Notice,  
10 and for Class Members to opt out of or object to the Settlement;

11                   4.1.4 Set the date and time for the Fairness Hearing;

12                   4.1.5 Provisionally certify the Settlement Class;

13                   4.1.6 Stay all proceedings in the Earlier-Filed Action and the Later-Filed Action  
14 until Final Approval;

15                   4.1.7 Appoint Plaintiff as class representative for the Settlement Class for  
16 settlement purposes only;

17                   4.1.8 Appoint Class Counsel as class counsel for settlement purposes only; and

18                   4.1.9 Approve Phoenix Class Action Administration Solutions as the Settlement  
19 Administrator.

20           The Preliminary Approval Order shall be substantially the same as the proposed order  
21 attached as **Exhibit D**. Class Counsel shall draft the preliminary approval papers and give  
22 Counsel for Defendants a draft of the papers to review at least three (3) court days before they are  
23 filed.

24           **4.2 Class Notice.** Subject to Court approval, the Parties agree that as soon as  
25 practicable after entry of the Preliminary Approval Order, the Settlement Administrator shall  
26 provide notice to the Settlement Class pursuant to the following procedures:

27                   **4.2.1 Information Regarding Class Members.** Within fifteen (15) business  
28 days following entry of the Preliminary Approval Order, Defendants will provide the Settlement

1 Administrator the following information with respect to each Class Member: (i) name, (ii) last  
2 known residence address, (iii) last known telephone number, (iv) Social Security number,  
3 (v) dates of employment with Staples Contract & Commercial LLC, and (vi) the number of weeks  
4 in the Settlement Period during which the Class Member received both (a) sick pay and (b) a non-  
5 discretionary bonus, incentive, or other like payment. The information Defendants provide to the  
6 Settlement Administrator, along with any updated contact information identified by the  
7 Settlement Administrator as set forth in Sections 4.2.2 and 4.2.3, below, shall be used solely to  
8 administer the Class Notice and Plan of Allocation process described herein, shall remain  
9 confidential, and shall not be disclosed to anyone, except pursuant to the express written  
10 authorization of Defendants or the individual in question, by order of the Court, or to the extent  
11 necessary to fulfill the Settlement Administrator's reporting obligations hereunder.

12           **4.2.2 Settlement Administrator Duties.** The Settlement Administrator's duties  
13 shall include, without limitation: (i) printing the Class Notice (including exhibits thereto) and  
14 mailing it to the Class Members as directed by the Court; (ii) taking all steps reasonably  
15 necessary to ensure Class Members timely receive the Class Notice; (iii) calculating the number  
16 of Relevant Weeks for each Class Member, including resolving any disputes by Settlement Class  
17 Members about the number of Relevant Weeks they had during the Settlement Period; (iv) taking  
18 receipt of and safeguarding the Settlement Fund Amount; (v) calculating and distributing Class  
19 Settlement Awards, PAGA Settlement Awards, Overall Settlement Awards, the portion of the  
20 PAGA Settlement Amount payable to the LWDA, and the Fee and Expense Award, provided  
21 such amounts are approved by the Court; (vi) calculating and paying all Withholdings and Taxes;  
22 (vii) issuing IRS Forms W-2 and 1099-MISC, as applicable; and (viii) filing such other reports  
23 with the taxing authorities as required by law, together with such other tasks as the Parties may  
24 mutually agree or the Court may order the Settlement Administrator to perform. The Settlement  
25 Administrator shall take all reasonable steps to ensure that (a) the highest percentage of Class  
26 Members receive the Class Notice; (b) Class Members who wish to participate in the Settlement  
27 are permitted to do so consistent with this Agreement; and (c) it has the most current and accurate  
28 addresses for Class Members, including, but not limited to performing an initial National Change

1 of Address database search on all Class Members who are former employees. In addition, the  
2 Settlement Administrator shall perform a standard search, also known as “batch,” “skip trace,” or  
3 “credit header” searches, on all addresses returned as undeliverable. The Settlement  
4 Administrator shall immediately re-mail the Class Notice to all updated addresses obtained  
5 through its efforts to locate the most current and accurate addresses for Class Members. The  
6 Settlement Administrator shall also provide toll-free telephone support to Class Members;  
7 maintain appropriate databases to fulfill its duties; receive, control, and account for all returned  
8 Class Notices, disputes, requests for exclusion/opt-outs, and objections; and prepare and deliver  
9 reports to Class Counsel and Counsel for Defendants on a weekly basis that communicate the  
10 status of the notice process, including the number of Class Notices mailed, returned, searched,  
11 and re-mailed as well as disputes, requests for exclusion, and objections. In addition to the duties  
12 identified above, the Settlement Administrator shall prepare final declarations, reports, and  
13 invoices that accurately describe the notice process, the level of participation, and actions taken to  
14 ensure the best possible notice of the Settlement was provided to Class Members.

15 **4.2.3 Mailing of Class Notice to Class Members.** No later than ten (10)  
16 business days following receipt of the information to be provided under Section 4.2.1, above, the  
17 Settlement Administrator shall mail the Class Notice to all Class Members. The Settlement  
18 Administrator shall send a copy of the Class Notice in the form approved by the Court in its  
19 Preliminary Approval Order to Class Members, via first class United States mail, using the most  
20 current mailing address. Any Class Notices returned to the Settlement Administrator with a  
21 forwarding address shall be immediately re-mailed by the Settlement Administrator. The  
22 Settlement Administrator shall conduct one address search for any Class Member’s Class Notice  
23 that is returned without a forwarding address and shall, upon obtaining a new or different address,  
24 immediately re-mail the Class Member’s Class Notice. Plaintiff, Defendants, and their respective  
25 counsel each agree that, other than as provided in this Agreement, they will not distribute or make  
26 available any documents, notices, or information regarding this Action or the Settlement to any  
27 Class Member, unless a specific request is first made by the Class Member.  
28

1           **4.3 Requests for Exclusion/Opt Outs.** Class Members who wish to be excluded  
2 from or opt out of the Settlement must submit a written, signed Request for Exclusion to the  
3 Settlement Administrator, within the Request for Exclusion Deadline.

4           **4.3.1 Contents of Request.** The Request for Exclusion must contain (i) the full  
5 name, address, telephone number and last four digits of the Social Security number of the person  
6 requesting to be excluded; (ii) the words “Request for Exclusion” at the top of the document; and  
7 (iii) the following statement:

8                           “I wish to be excluded from the Settlement of this case, *Luis A. M.*  
9                           *Avila v. Staples Contract & Commercial Inc., et al.*, San Diego  
10                           Superior Court Case No. 37-2020-00026210-CU-OE-CTL.”

11           **4.3.2 Personal Signatures.** The Request for Exclusion must be personally  
12 signed by the Class Member who seeks to opt out. No Class Member may opt out by having a  
13 request to opt out submitted by an actual or purported agent or attorney acting on behalf of the  
14 Class Member unless such request to opt out includes the Class Member’s personal signature. No  
15 opt out request may be made on behalf of a group of Class Members.

16           **4.3.3 Timeliness.** For purposes of determining timeliness, Requests for  
17 Exclusion shall be deemed to have been submitted on the date postmarked by the U.S. Postal  
18 Service or other delivery service. The Settlement Administrator shall stamp the date received on  
19 the original of any Request for Exclusion it receives. Not later than fifteen (15) calendar days  
20 after the Request for Exclusion Deadline set by the Court, the Settlement Administrator will  
21 inform Class Counsel and Counsel for Defendants of the total number of Settlement Class  
22 Members who timely submitted valid Requests for Exclusion. Not later than sixteen (16) court  
23 days before the date set for the Fairness Hearing, the Settlement Administrator shall serve copies  
24 of all date-stamped Requests for Exclusion on Class Counsel and Counsel for Defendants as well  
25 as a declaration describing the Class Notice procedures. The Settlement Administrator shall  
26 retain the originals of all Requests for Exclusion in its files. Counsel for the Parties shall not use  
27 or disclose the information thus received for any purpose other than the effectuation of the  
28 Settlement.

1                   4.3.4 **Non-Opt Outs Bound.** Each Class Member who does not submit a  
2 Request for Exclusion substantially in compliance with this Section 4.3 within the deadline set by  
3 the Court, and who also fails to appear at the final Fairness Hearing to request exclusion, shall be  
4 bound by the terms of this Agreement and any Court order approving the terms of the Settlement,  
5 unless the Court deems such Class Member excluded at the time of the final Fairness Hearing.

6                   4.3.5 **Resolution of Disputes.** In the event of any issue over the completeness,  
7 accuracy, timeliness, or validity of a Request for Exclusion, the Parties shall meet and confer in  
8 good faith for the purpose of resolving the issue and, if the issue cannot be resolved, shall submit  
9 the dispute to the Settlement Administrator for a final and binding determination that shall not be  
10 appealable.

11                   4.3.6 **Defendants' Right to Rescind.** If more than ten percent (10%) of the  
12 Class Members opt out of the Settlement, then Defendants shall have the option, in their sole  
13 discretion, to rescind this Agreement, in which case all of Defendants' obligations under this  
14 Agreement shall cease to be of any force or effect, and this Agreement shall be null and void. If  
15 Defendants exercise this option, they shall provide Plaintiff with written notice of their election  
16 within thirty (30) calendar days of the Request for Exclusion Deadline set by the Court, with a  
17 copy to the Settlement Administrator, at which point the Parties shall return to their respective  
18 positions that existed before the execution of this Agreement, and no term of this Agreement or  
19 any draft thereof, or the negotiation, documentation or other part or aspect of the Parties'  
20 settlement discussions, shall have any effect or be admissible as evidence for any purpose in the  
21 Action, or in any other proceeding. Notwithstanding the foregoing, the Parties agree that in the  
22 event this Agreement is rescinded by Defendants pursuant to this Section 4.3.6, Defendants shall  
23 pay the expenses incurred by the Settlement Administrator through the date of Defendants'  
24 election to rescind, not to exceed the amount approved by the Court in the Preliminary Approval  
25 Order.

26                   4.3.7 **No Right to Exclusion by PAGA Group Members.** Because this  
27 Settlement resolves claims and action brought pursuant to PAGA by Plaintiff acting as a proxy  
28 and as a Private Attorney General of, and for, the State of California and the LWDA, the Parties

1 agree that no PAGA Group Member has the right to exclude himself or herself from the  
2 Settlement. PAGA Group Members shall be bound by the terms of the Settlement, upon its  
3 approval by the Court, regardless of whether he or she requested exclusion as a Class Member,  
4 and thus is not a Settlement Class Member, and regardless of whether he or she cashes the  
5 Overall Settlement Award issued to him or her.

6       **4.4 Objections.** Only Settlement Class Members (i.e., those Class Members who  
7 have not excluded themselves from the Settlement) may object to the Settlement.

8               **4.4.1 Manner of Objecting.** Settlement Class Members who wish to object to  
9 the Settlement should submit to the Settlement Administrator a signed, written statement  
10 objecting to the Settlement. Such written statement and all supporting briefs or other materials  
11 should be submitted to the Settlement Administrator no later than the Notice Response Deadline.  
12 Settlement Class Members may but are not required to appear at the Fairness Hearing.

13               **4.4.2 Response to Objections.** At the same time Plaintiff moves for Final  
14 Approval pursuant to Section 4.7 of this Agreement, Plaintiff shall also file a response to any  
15 objections submitted by Settlement Class Members. Class Counsel must draft the response to the  
16 objections and give Counsel for Defendants a draft of the response to review at least three (3)  
17 court days before it is filed or as soon as practical under the circumstances. Defendants shall be  
18 permitted, but not required, to file their own response to any objections.

19               **4.4.3 No Right to Objections by PAGA Group Members.** Because this  
20 Settlement resolves claims and action brought pursuant to PAGA by Plaintiff acting as a proxy  
21 and as a Private Attorney General of, and for, the State of California and the LWDA, the Parties  
22 agree that no PAGA Group Member has the right to object to the Settlement, whether or not he or  
23 she has objected thereto as a Settlement Class Member.

24       **4.5 Plan of Allocation: Calculation of All Settlement Awards.** The Settlement  
25 Administrator shall be responsible for the Allocations of the Net Settlement Sum to Settlement  
26 Class Members and of the PAGA Fund to PAGA Group Members and, thereby, for determining  
27 the Class Settlement Awards, the PAGA Settlement Awards, and the Overall Settlement Awards,  
28 all to be paid on a pro rata basis as follows:

1           4.5.1 Before computing the amounts of any Class Settlement Awards to be paid  
2 to Settlement Class Members, the Settlement Administrator shall determine the amount of the Net  
3 Settlement Sum by determining and deducting from the Gross Settlement Amount the following:  
4 (a) the PAGA Settlement Amount, (b) the Fee and Expense Award, (c) the General Release  
5 Payment, (d) the Settlement Administration Costs, and (e) Defendants' share of Withholdings and  
6 Taxes arising from the Overall Settlement Awards.

7           4.5.2 The Class Settlement Award for each Settlement Class Member shall be  
8 the Settlement Class Member's pro-rata share of the Net Settlement Sum, calculated as follows:  
9 The Settlement Administrator shall calculate the total number of Relevant Weeks for all  
10 Settlement Class Members during the Settlement Period. The Settlement Administrator shall then  
11 divide the Net Settlement Sum by the total Settlement Class Member Relevant Weeks, resulting  
12 in a per Relevant Week value for each Settlement Class Member. The Settlement Administrator  
13 shall then take the Relevant Week value and multiply it by the number of Relevant Weeks for  
14 each Settlement Class Member.

15           4.5.3 The Settlement Administrator shall pay Class Settlement Awards from the  
16 Net Settlement Sum and shall pay only those Class Settlement Awards payable to Settlement  
17 Class Members. It is anticipated that the Settlement Class Members will be a subset of the Class  
18 Members because some number of Class Members may opt out of the Settlement.

19           4.5.4 The PAGA Settlement Award for each PAGA Group Member shall be the  
20 PAGA Group Member's pro-rata share of the PAGA Fund, calculated as follows: The Settlement  
21 Administrator shall calculate the total number of Relevant Weeks for all PAGA Group Members  
22 during the Settlement Period. The Settlement Administrator shall then divide the PAGA Fund by  
23 the total PAGA Group Member Relevant Weeks, resulting in a per Relevant Week value for each  
24 PAGA Group Member. The Settlement Administrator shall then take the per Relevant Week  
25 value and multiply it by the number of Relevant Weeks for each PAGA Group Member.

26           4.5.5 The Overall Settlement Award for a given Settlement Class Member and/or  
27 PAGA Group Member shall be calculated by the Settlement Administrator by adding that  
28 person's Class Settlement Award (if any) and PAGA Settlement Amount. The Parties understand

1 and acknowledge that a given person may be both a Settlement Class Member and a PAGA  
2 Group Member or may be a PAGA Group Member but not a Settlement Class Member (to the  
3 extent such person requested to be excluded from the Settlement pursuant to Section 4.3, above).  
4 The Settlement Administrator shall deduct each Settlement Class Member's and/or PAGA Group  
5 Member's share of the Withholdings and Taxes from his or her Overall Settlement Award and  
6 shall pay only the net amount thereof to him or her.

7           4.5.6 In order to determine the individual Class Settlement Awards, PAGA  
8 Settlement Awards, and Overall Settlement Awards, the Settlement Administrator shall use the  
9 information provided by Defendants pursuant to Section 4.2.1, above. In the event that any  
10 dispute arises with respect to a Settlement Award amount, the Settlement Administrator shall  
11 make the final determination after consultation with Class Counsel and Counsel for Defendants.

12           **4.6 Taxes.**

13           4.6.1 **Withholdings and Taxes.** The Parties agree that, for purposes of this  
14 Settlement, Class Settlement Awards shall be allocated one third (1/3) to wages subject to  
15 Withholdings and Taxes and two thirds (2/3) to interest and penalties under the Labor Code.

16           4.6.2 **Tax Reporting.** When reporting Overall Settlement Awards for tax  
17 purposes, the amount of each Class Settlement Award allocated to wages under Section 4.6.1  
18 shall be reported by the Settlement Administrator on IRS Form W-2 as wages, and the remainder  
19 of any Class Settlement Award, together with any PAGA Settlement Award, shall be reported by  
20 the Settlement Administrator on IRS Form 1099-MISC as interest and penalties.

21           4.6.3 **Settlement Class Member Obligations.** Each Settlement Class Member  
22 and/or PAGA Group Member receiving an Overall Settlement Award shall be responsible for  
23 paying his or her share of applicable federal, state, and local income taxes on all amounts such  
24 person receives pursuant to this Agreement.

25           4.6.4 **Settlement Administrator Responsibilities Regarding Taxes.** It shall be  
26 the responsibility of the Settlement Administrator or its designee to timely and properly withhold  
27 all applicable Withholdings and Taxes from Overall Settlement Award amounts and to prepare  
28 and deliver the necessary tax documentation for signature by all necessary parties and, thereafter,

1 to pay Withholdings and Taxes to the appropriate authorities, and to file all necessary information  
2 and other tax returns. Payments to Settlement Class Members, PAGA Group Members, Plaintiff,  
3 and Class Counsel pursuant to this Agreement shall be reported on IRS Forms W-2 or  
4 1099-MISC as applicable, and shall be provided to the respective Settlement Class Members,  
5 Plaintiff, Class Counsel, and all applicable governmental entities as required by law. All  
6 Withholdings and Taxes deposited with the applicable governmental entities in accordance with  
7 this Agreement shall be part of, and paid out of, the Overall Settlement Award to each Settlement  
8 Class Member and/or PAGA Group Member.

9           **4.6.5 Tax Expenses Resulting from Settlement Administration.** All  
10 reasonable and direct expenses and costs incurred by or at the direction of the Settlement  
11 Administrator in connection with the administration of the Settlement (including, without  
12 limitation, expenses of tax attorneys and/or accountants incurred in providing advice to the  
13 Settlement Administrator, and mailing and distribution costs and expenses relating to the filing, or  
14 failure to file, the informational and other tax returns described above) shall be considered a cost  
15 of administration of the Settlement and shall be part of the Settlement Administration Costs, to be  
16 paid out of the Settlement Fund Amount.

17           **4.6.6 No Claims.** No person shall have any claim against Defendants (or either  
18 of them), Counsel for Defendants, Plaintiff, the Class Members, Class Counsel, or the Settlement  
19 Administrator based on mailings, distributions, and payments made in accordance with or  
20 pursuant to this Agreement.

21           **4.7 Final Approval and Entry of Judgment in the Earlier-Filed Action.** Following  
22 the Request for Exclusion Deadline and before the Fairness Hearing, on or before the date set by  
23 the Court, Plaintiff shall move for Final Approval of the Settlement, in the Earlier-Filed Action.  
24 The Final Judgment and Order Approving Settlement shall be substantially the same as the  
25 proposed order attached as **Exhibit E**. Class Counsel shall draft the final approval papers and  
26 give Counsel for Defendants a draft of the papers to review at least three (3) court days before  
27 they are filed.  
28

1           4.8     **Dismissal with Prejudice of the Later-Filed Action.** Within five (5) court days  
2 of the date of Final Approval of the Settlement, Plaintiff shall take the steps necessary to secure  
3 the dismissal of the Later-Filed Action in its entirety, with prejudice.

4           4.9     **Calculation of Settlement Fund Amount.** Within twenty (20) business days  
5 from the date of Final Approval of the Settlement, the Settlement Administrator shall calculate  
6 and advise Counsel for Defendants of the Settlement Fund Amount as set forth in Section 2.52,  
7 above.

8           4.10    **Distribution of Overall Settlement Awards.** After the Effective Date, the  
9 Overall Settlement Awards shall be distributed to Settlement Class Members and PAGA Group  
10 Members in accordance with the procedures set forth below:

11                   4.10.1 **Remittance of Settlement Fund Amount.** Within fifteen (15) business  
12 days from the Effective Date, Defendants will remit the Settlement Fund Amount to the  
13 Settlement Administrator for the establishment of the Settlement Fund.

14                   4.10.2 **Delivery of Payments.** Within ten (10) business days from Defendants'  
15 remittance to the Settlement Administrator of the Settlement Fund Amount, the Settlement  
16 Administrator shall establish the Settlement Fund and distribute (a) the Fee and Expense Award  
17 to Class Counsel, (b) the Overall Settlement Award checks to Settlement Class Members and  
18 PAGA Group Members, (c) the portion of the PAGA Settlement Amount payable to the LWDA,  
19 (d) the General Release Payment to Plaintiff, and (e) the Withholdings and Taxes arising from the  
20 Overall Settlement Awards to the appropriate government entities. Also, within ten (10) business  
21 days from Defendants' remittance of the Settlement Fund Amount, the Settlement Administrator  
22 shall provide Class Counsel and Counsel for Defendants a written report listing each Settlement  
23 Class Member and PAGA Group Member, the amount of the Overall Settlement Award to be  
24 paid to each such person, and the amount of Withholdings and Taxes for each such payment.  
25 Class Counsel shall hold the information contained in this report in strictest confidence and not  
26 use or disclose it for any purpose, except on the written authorization of Counsel for Defendants  
27 or by order of the Court. No payments shall be made or distributed unless and until the orders  
28 and Judgment described in this Agreement are final (meaning that the right to appeal or otherwise

1 seek review of such orders or the Judgment has expired) and on the condition that no appeals  
2 from the orders and the Judgment have been filed. Additionally, by no later than the date set by  
3 the Court in its Final Approval order, the Settlement Administrator shall file a report with the  
4 Court setting forth (1) the total amount of money paid to the Settlement Class Members and  
5 PAGA Group Members who received Overall Settlement Awards, (2) the portion of the PAGA  
6 Settlement Amount paid to the LWDA, and (3) the Fee and Expense Award paid to Class  
7 Counsel.

8           **4.10.3 Negotiation of Settlement Checks.** Any checks tendered to Settlement  
9 Class Members or PAGA Group Members shall remain valid and negotiable for one hundred and  
10 eighty (180) calendar days from the date of their issuance and shall thereafter be automatically  
11 cancelled if not cashed by the Settlement Class Member or PAGA Group Member within that  
12 time, after which the Settlement Class Member's and/or PAGA Group Member's right to  
13 participate in the Settlement shall be extinguished, although the individual shall remain a  
14 Settlement Class Member and/or PAGA Group Member bound by the Judgment entered in the  
15 Action. After one hundred and eighty (180) calendar days, any amounts from uncashed checks  
16 shall be transmitted to the California Controller's Office Unclaimed Property Division, with an  
17 identification of the person to whom the funds belong, in accordance with Code of Civil  
18 Procedure section 384, to be held in trust for those persons who did not timely cash their  
19 settlement checks. The Parties agree that this disposition results in no "unpaid residue" under  
20 Code of Civil Procedure section 384, as the entire Net Settlement Amount will be paid out to  
21 Settlement Class Members and PAGA Group Members, whether or not they all cash their  
22 settlement checks. Therefore, Defendants will not be required to pay any interest on such  
23 amounts. Administration of the Settlement shall be completed no later than two hundred and  
24 seventy (270) calendar days from the Effective Date.

25           **4.10.4 Discharge of Obligations.** Defendants shall fully discharge their  
26 obligations to Plaintiff, the Settlement Class Members, the PAGA Group Members, and the State  
27 of California through the remittance of the Settlement Fund Amount to the Settlement  
28 Administrator as set forth in Section 4.10.1, above, regardless of whether checks representing

1 individual Overall Settlement Awards are actually received and/or negotiated by the payee. Once  
2 Defendants have complied with their obligation set forth in Section 4.10.1, above, they will be  
3 deemed to have satisfied all terms and conditions under this Agreement, shall be entitled to all  
4 protections afforded to them under this Agreement, and shall have no further obligations under  
5 the terms of the Agreement, regardless of what occurs with respect to the further administration  
6 of the Settlement. Without prejudice to any other remedies, the Settlement Administrator shall  
7 hold Defendants harmless from and against all liabilities, claims, causes of action, costs, and  
8 expenses (including legal fees and expenses) arising out of any failure to timely or properly  
9 compensate Class Members and PAGA Group Members as provided for in this Agreement.

10       **4.11 Questions and Disputes.** In the event that questions or disputes arise regarding  
11 the entitlement of any Class Member or PAGA Group Member under this Agreement, counsel for  
12 each Party shall cooperate to provide to counsel for the other Party and the Settlement  
13 Administrator all available information reasonably necessary to resolve them. Such information  
14 shall be provided in either electronic form or hard copy, as the Settlement Administrator may  
15 reasonably request. If the Parties cannot resolve any dispute concerning the entitlement of any  
16 Class Member or PAGA Group Member under this Agreement, the dispute(s) shall be submitted  
17 to the Settlement Administrator, who shall resolve the dispute(s) and whose decision shall be final  
18 and binding. In such a dispute, the information provided by Defendants will be presumed  
19 accurate.

20       **4.12 Notification and Certification by Settlement Administrator.** The Settlement  
21 Administrator shall keep Counsel for Defendants and Class Counsel apprised of the status of the  
22 claims administration process and its distribution of all sums pursuant to this Agreement. Upon  
23 completion of administration of the Settlement, the Settlement Administrator shall provide a  
24 detailed, written certification of such completion to the Court and counsel for the Parties.

25       **4.13 Nullification of Settlement Agreement if Settlement Not Approved.** In the  
26 event: (a) the Court does not preliminarily approve the Settlement as provided herein; (b) the  
27 Court does not finally approve the Settlement as provided herein; (c) the Court does not enter the  
28 Judgment in the Earlier-Filed Action as provided herein; (d) the Court does not dismiss the Later-

1 Filed Action as provided herein; or (e) the Settlement does not become final for any other reason,  
2 including the exercise of Defendants' right to rescind the Settlement under Section 4.3.6, above,  
3 this Agreement shall be null and void *ab initio* (with the exception of this Section, Section 3.2,  
4 Section 3.4, and Section 4.3.6) and any order or Judgment entered by the Court in furtherance of  
5 this Settlement shall be treated as withdrawn or vacated by stipulation of the Parties. In such  
6 case, the Parties shall be returned to their respective statuses as of May 18, 2022. In the event an  
7 appeal is filed from the Judgment, or any other appellate review is sought before the Effective  
8 Date, administration of the Settlement shall be stayed pending final resolution of the appeal or  
9 other appellate review.

## 10 **5. ENTRY OF JUDGMENT AND RELEASES**

11 **5.1 Obtaining Approval.** As soon as practicable after execution of this Agreement,  
12 Class Counsel shall, with the cooperation of Counsel for Defendants as reasonably requested by  
13 Class Counsel, take all necessary steps to secure Preliminary Approval and Final Approval of the  
14 Agreement by the Court, including responding to any objectors, intervenors, or other persons or  
15 entities seeking to preclude approval of this Agreement.

16 **5.2 Entry of Judgment.** The Final Judgment and Order Approving Settlement in the  
17 Earlier-Filed Action shall include a provision for entry of judgment in accordance with this  
18 Agreement, with each Party to bear all of his or its own costs and attorneys' fees, except as  
19 expressly set forth herein.

20 **5.3 Notification to the LWDA.** Plaintiff shall submit to the LWDA a copy of the  
21 Judgment within ten (10) days after its entry, in accordance with Labor Code section 2699,  
22 subdivision (I)(3).

23 **5.4 Settlement Class Release.** Upon the Effective Date, all Settlement Class  
24 Members shall be deemed to have, and by operation of the Judgment shall have, expressly  
25 released, waived, and relinquished the Released Claims. Settlement Class Members shall not sue  
26 or otherwise make a claim against any of the Released Parties for any of the Released Claims and  
27 shall be barred from filing any actions, claims, complaints, or proceedings regarding the Released  
28 Claims with the California Division of Labor Standards Enforcement, or from initiating any other

1 proceedings against the Released Parties regarding the Released Claims. Settlement Class  
2 Members' release, waiver, and relinquishment of the Released Claims shall preclude them from  
3 participating in any judgment or settlement of claims that are the subject of the Released Claims  
4 in any other class, collective, or representative action.

5         **5.5 PAGA Release.** Upon the Effective Date, all PAGA Group Members and the  
6 State of California shall be deemed to have, and by operation of the Judgment shall have,  
7 expressed released, waived, and relinquished the Released PAGA Claims. All PAGA Group  
8 Members shall be barred from bringing, joining, or otherwise participating in a PAGA  
9 representative action or otherwise making, joining, or otherwise participating in a claim against  
10 any of the Released Parties for any of the Released PAGA Claims. The State of California shall  
11 be barred from pursuing recovery of any civil penalties from any of the Released Parties for any  
12 of the Released PAGA Claims.

13         **5.6 Plaintiff's General Release.** In addition to his release of the Released Parties  
14 from the Released Claims and Released PAGA Claims as set forth in Sections 5.4 and 5.5, above,  
15 effective upon the Effective Date, Plaintiff hereby expressly releases and waives any and all  
16 claims, demands, rights, liabilities, and causes of action he has or has ever had against any of the  
17 Released Parties, whether for economic damages, noneconomic damages, exemplary damages,  
18 penalties, restitution, injunctive or declaratory relief, interest, attorneys' fees, costs, or any other  
19 forms of monetary or non-monetary relief in any way arising out of or relating to any facts,  
20 transactions, events, policies, occurrences, acts, disclosures, statements, omissions, or failures to  
21 act from the beginning of time to the date he signs this Agreement, including but not limited to  
22 any claims arising from or related to his employment with Staples Contract & Commercial LLC  
23 or the termination of that employment. This general release by Plaintiff shall become effective  
24 upon the Effective Date and include all statutory claims, common law claims (including but not  
25 limited to those sounding in contract, tort, and equity), and claims for compensation to the fullest  
26 extent permitted by law. Plaintiff further agrees not to sue or otherwise make a claim against any  
27 of the Released Parties for any of the claims that are released pursuant to this Section 5.6.  
28 Plaintiff further agrees that, except to the extent otherwise provided in this Agreement, he will

1 dismiss with prejudice any administrative or judicial proceedings he has brought against any of  
2 the Released Parties.

3           **5.7 Waiver of Civil Code Section 1542.** Plaintiff acknowledges that his general  
4 release herein includes potential claims and costs that may not be known or suspected by him to  
5 exist, and he hereby expressly and affirmatively waives and relinquishes any and all rights and  
6 benefits which may otherwise exist relating to the claims released in Section 5.6, above, pursuant  
7 to Civil Code section 1542 and any similar law of any state or territory of the United States. Civil  
8 Code section 1542 states as follows:

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

13       **6. ADDITIONAL PROVISIONS**

14           **6.1 No Admission of Liability.** Defendants contend that Staples, Inc. did not and has  
15 never employed Plaintiff, any Class Members, or any PAGA Group Members; that all of Staples  
16 Contract & Commercial LLC's employment practices comply and have complied with all  
17 applicable laws and regulations; that all Class Members and all PAGA Group Members were and  
18 are timely paid all wages during employment, were and are timely paid all final wages (when  
19 applicable), and were and are furnished accurate itemized wage statements; that all paid sick  
20 leave taken by Class Members and PAGA Group Members was and is paid accurately at the  
21 correct rate of pay and there was and is no underpayment of sick time; that all overtime worked  
22 by Class Members and PAGA Group Members was and is paid accurately at the correct rate of  
23 pay and there was and is no underpayment of overtime; that neither of the Defendants required or  
24 require anyone to agree in writing to a term or condition that is known by them, or either of them,  
25 to be prohibited by law; that neither of the Defendants engaged or engage in unfair competition,  
26 business acts, or practices; and that neither of the Defendants have engaged in any unlawful  
27 conduct, whether willful or not, and whether knowing and intentional or not, with respect to any  
28 of the Claims. Defendants deny any wrongdoing or legal liability arising out of any of the facts

1 or conduct alleged in the Actions and contend that all of Plaintiff's claims lack merit and  
2 Defendants have valid defenses to each of them. This Agreement reflects the compromise and  
3 settlement of disputed claims between the Parties, and its provisions and any and all drafts,  
4 communications, or discussions relating thereto do not constitute, are not intended to constitute,  
5 and will not under any circumstances be deemed to constitute an admission by Defendants as to  
6 the merits, validity, or accuracy of any of the allegations or claims in the Actions, nor a waiver of  
7 any defense.

8           **6.2 Parties Represented by Counsel.** The Parties hereby acknowledge that they have  
9 been represented in negotiations for and in the preparation of this Agreement by independent  
10 counsel of their own choosing, they have read this Agreement and have had it fully explained to  
11 them by such counsel, and they are fully aware of the contents of this Agreement and of its legal  
12 effect.

13           **6.3 Voluntary Agreement.** This Agreement is executed voluntarily and without  
14 duress or undue influence on the part of or on behalf of either Party, or of any other person, firm  
15 or entity. Each Party has made such investigation of the facts pertaining to this Agreement and of  
16 all other matters pertaining hereto as he or it deems necessary.

17           **6.4 Notices.** The Parties, Class Counsel, and Counsel for Defendants acknowledge  
18 and agree that for the purposes of any claims, actions or proceedings arising out of this  
19 Agreement, notice provided to Class Counsel shall be deemed notice to Plaintiff and to Class  
20 Members. All notices, requests, demands, and other communications required to be given to  
21 counsel for the Parties under this Agreement shall be in writing and shall be delivered personally,  
22 faxed, emailed or mailed, postage prepaid, by first class United States mail, addressed as follows:

23           To Class Members or to Plaintiff:

24           Alex Asil Mashiri, Esq. (alex@mashirilawfirm.com)  
25           MASHIRI LAW FIRM, APC  
26           11251 Rancho Carmel Drive #500694  
27           San Diego, CA 92150  
28           Tel: (858) 348-4938  
              Fax: (858) 348-4939

              Tamim Jami, Esq. (tamim@jamilaw.com)  
              THE JAMI LAW FIRM P.C.

1 3525 Del Mar Heights Rd #941  
2 San Diego, CA 92130  
3 Tel: (858) 284-0248  
4 Fax: (858) 284-0977

5 To Defendant:

6 Nancy R. Thomas (NThomas@mofo.com)  
7 David P. Zins (DZins@mofo.com)  
8 MORRISON & FOERSTER LLP  
9 707 Wilshire Boulevard  
10 Los Angeles, California 90017-3543  
11 Telephone: 213.892.5200  
12 Facsimile: 213.892.5454

13 6.5 **No Press Releases/Public Comment.** Unless they first obtain Defendants'  
14 express written consent, Class Counsel and Plaintiff shall not (a) discuss, reveal, disclose,  
15 publicize, or promote the terms of this Settlement, or the negotiations leading to this Settlement,  
16 to any third party (including but not limited to the media, the legal community, or the public at  
17 large), or (b) issue any press releases or initiate any contact with the media regarding the  
18 Settlement, or otherwise advertise or publicize the Settlement. Nothing in this Agreement is  
19 intended to prevent Plaintiff or Class Counsel from disclosing or discussing the terms of this  
20 Settlement (i) with the Court, (ii) with any Class Member, (iii) with the Settlement Administrator,  
21 (iv) with the LWDA, or (v) as otherwise required by law.

22 6.6 **Authorization.** The Parties hereto represent and warrant that each signatory  
23 hereto has the full right and authority to enter into this Agreement and bind the Party on whose  
24 behalf he, she or it has executed this Agreement.

25 6.7 **Agreement Binding on Successors in Interest.** This Agreement shall be binding  
26 on and inure to the benefit of the respective successors, assigns, heirs, and personal  
27 representatives of the Parties.

28 6.8 **Time Periods.** The time periods and dates set forth in this Agreement with respect  
to the giving of notices and hearings are subject to approval and modification by the Court or the  
written stipulation of counsel for the Parties.

6.9 **Mutual Full Cooperation.** The Parties agree to cooperate fully with each other to  
accomplish the terms of this Agreement, including but not limited to execution and delivery of

1 any and all additional papers, documents, and other assurances and taking such other action that  
2 may be reasonably necessary to implement the terms of this Agreement. The Parties and their  
3 counsel shall use their best efforts, including all efforts contemplated by this Agreement and any  
4 other efforts that may become necessary by order of the Court, to effectuate this Agreement and  
5 the terms set forth herein.

6       **6.10 Entire Agreement.** The Exhibits to this Agreement are integral parts of this  
7 Agreement and are hereby incorporated and made a part of the Agreement. This Agreement  
8 contains the entire agreement between the Parties and constitutes the complete, final, and  
9 exclusive embodiment of their agreement with respect to the subject matter hereof. This  
10 Agreement is executed without reliance upon any promise, representation, or warranty by either  
11 Party or any representative of a Party, other than those expressly set forth herein. Any  
12 inconsistency between this Agreement and the attached Exhibits will be resolved in favor of this  
13 Agreement.

14       **6.11 Headings.** The various headings used in this Agreement are solely for the  
15 convenience of the Parties and shall not be used to interpret this Agreement.

16       **6.12 No Construction Against Drafter.** This Agreement shall be deemed to have been  
17 drafted jointly by the Parties, and any rule that a document shall be interpreted against the drafter  
18 shall not apply to this Agreement.

19       **6.13 Amendment and Modification.** Except as expressly provided in Section 6.8,  
20 above, with respect to time periods and dates set forth herein, this Agreement may not be  
21 amended, altered, or modified except in writing and signed by the Parties hereto, their successors  
22 in interest, or their duly authorized representatives, and approved by the Court.

23       **6.14 Governing Law.** This Agreement is entered into in accordance with the laws of  
24 the State of California and shall be governed by and interpreted in accordance with those laws.

25       **6.15 Jurisdiction of the Court.** Any dispute regarding the interpretation or validity or  
26 otherwise arising out of this Agreement, or relating to the Action or the Released Claims, shall be  
27 subject to the exclusive jurisdiction of the Court, and the Plaintiff, Class Members, and  
28 Defendants agree to submit to the personal and exclusive jurisdiction of the Court for the purpose

1 of resolving any such dispute. Following the Effective Date, the Court shall retain jurisdiction  
2 solely with respect to the interpretation, implementation, and enforcement of the terms of this  
3 Agreement and all orders and judgments entered in connection therewith, and the Parties and their  
4 counsel submit to the jurisdiction of the Court for purposes of interpreting, implementing, and  
5 enforcing the Settlement embodied in this Agreement and all orders and judgments entered in  
6 connection therewith.

7       6.16 **Agreement Constitutes a Complete Defense.** To the extent permitted by law,  
8 this Agreement may be pleaded as a full and complete defense to any action, suit, or other  
9 proceeding that may be instituted, prosecuted, or attempted in breach of or contrary to this  
10 Agreement.

11       6.17 **Signatures.** Signatures by facsimile or in Portable Document Format (PDF) shall  
12 have the same force and effect as original signatures.

13       6.18 **Execution Date and Execution in Counterparts.** This Agreement shall be  
14 deemed executed upon the last date of signature of all of the undersigned. The Parties may  
15 execute this Agreement in counterparts, each of which shall constitute an original, but all of  
16 which together shall constitute one and the same instrument having the same force and effect as if  
17 all Parties had signed the same instrument.

18       IN WITNESS THEREOF, the Parties hereto have so agreed.

19 Dated: 9/16/22, 2022

**LUIS A. M. AVILA**



On behalf of himself, all Class Members, all  
PAGA Group Members, and the State of  
California

23 Dated: \_\_\_\_\_, 2022

STAPLES, INC.

25 By: \_\_\_\_\_

26 Its: \_\_\_\_\_

28

1 of resolving any such dispute. Following the Effective Date, the Court shall retain jurisdiction  
2 solely with respect to the interpretation, implementation, and enforcement of the terms of this  
3 Agreement and all orders and judgments entered in connection therewith, and the Parties and their  
4 counsel submit to the jurisdiction of the Court for purposes of interpreting, implementing, and  
5 enforcing the Settlement embodied in this Agreement and all orders and judgments entered in  
6 connection therewith.

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16 which together shall constitute one and the same instrument having the same force and effect as if  
17 all Parties had signed the same instrument.

18       IN WITNESS THEREOF, the Parties hereto have so agreed.

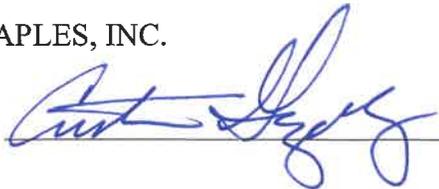
19 Dated: \_\_\_\_\_, 2022

LUIS A. M. AVILA

21 \_\_\_\_\_  
22 On behalf of himself, all Class Members, all  
23 PAGA Group Members, and the State of  
24 California

23 Dated: September 9, 2022

STAPLES, INC.

25 By:  \_\_\_\_\_

26 Its: \_\_\_\_\_

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Dated: September 9, 2022

STAPLES CONTRACT & COMMERCIAL LLC

By: 

Its: \_\_\_\_\_

**APPROVED AS TO FORM:**

Dated: \_\_\_\_\_, 2022

MASHIRI LAW FIRM  
THE JAMI LAW FIRM P.C.

By: \_\_\_\_\_  
Tamim Jami

Attorneys for Plaintiff  
LUIS A. M. AVILA

Dated: \_\_\_\_\_, 2022

MORRISON & FOERSTER LLP

By: \_\_\_\_\_  
David P. Zins

Attorneys for Defendants  
STAPLES, INC. and STAPLES CONTRACT  
& COMMERCIAL LLC

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Dated: \_\_\_\_\_, 2022

STAPLES CONTRACT & COMMERCIAL LLC

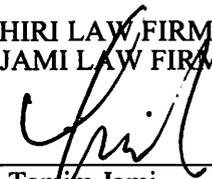
By: \_\_\_\_\_

Its: \_\_\_\_\_

**APPROVED AS TO FORM:**

Dated: September 16, 2022

MASHIRI LAW FIRM  
THE JAMI LAW FIRM P.C.

By:  \_\_\_\_\_  
Tanim Jami

Attorneys for Plaintiff  
LUIS A. M. AVILA

Dated: \_\_\_\_\_, 2022

MORRISON & FOERSTER LLP

By: \_\_\_\_\_  
David P. Zins

Attorneys for Defendants  
STAPLES, INC. and STAPLES CONTRACT  
& COMMERCIAL LLC

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Dated: \_\_\_\_\_, 2022

STAPLES CONTRACT & COMMERCIAL LLC

By: \_\_\_\_\_

Its: \_\_\_\_\_

**APPROVED AS TO FORM:**

Dated: \_\_\_\_\_, 2022

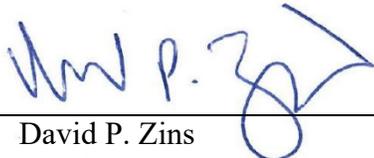
MASHIRI LAW FIRM  
THE JAMI LAW FIRM P.C.

By: \_\_\_\_\_  
Tamim Jami

Attorneys for Plaintiff  
LUIS A. M. AVILA

Dated: September 16, 2022

MORRISON & FOERSTER LLP

By:  \_\_\_\_\_  
David P. Zins

Attorneys for Defendants  
STAPLES, INC. and STAPLES CONTRACT  
& COMMERCIAL LLC

# EXHIBIT A

1 Alex Asil Mashiri, Esq. (SBN 283798)  
alex@mashirilawfirm.com

2 **MASHIRI LAW FIRM, APC**  
11251 Rancho Carmel Drive #500694  
3 San Diego, CA 92150  
Tel: (858) 348-4938  
4 Fax: (858) 348-4939

5 Tamim Jami, Esq. (SBN 311351)  
tamim@jamilaw.com

6 **THE JAMI LAW FIRM P.C.**  
7 3525 Del Mar Heights Rd #941  
8 San Diego, CA 92130  
Tel: (858) 284-0248  
9 Fax: (858) 284-0977

10 Attorneys for Plaintiff  
11 LUIS A. M. AVILA

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
13 **COUNTY OF SAN DIEGO**

14 LUIS A. M. AVILA, on behalf of himself and  
15 other current and former employees,

16 Plaintiff,

17 vs.

18 STAPLES CONTRACT & COMMERCIAL  
19 LLC; STAPLES CONTRACT &  
COMMERCIAL INC.; STAPLES INC.; and  
20 DOES 1 through 50,

21 Defendants.

Case No.: 37-2020-00026210-CU-OE-CTL

**SECOND AMENDED COMPLAINT;  
CLASS ACTION AND REPRESENTATIVE  
ACTION COMPLAINT FOR:**

1. Violation of Cal. Bus. & Prof. Code §§ 17200, *et seq*;
2. Violation of Labor Code § 925;
3. Violation of Labor Code § 246;
4. Violation of Labor Code § 226(a)(1);
5. Violation of Labor Code § 226(a)(5);
6. Violation of Labor Code § 226(a)(9);
7. Violation of Labor Code § 226(a);
8. Violation of Labor Code § 204;
9. Violation of Labor Code §§ 201, 202, 203;
10. Violation of Labor Code § 925; and
11. Violation of Labor Code § 432.5.

1 Plaintiff LUIS A. M. AVILA (“Plaintiff”), in his capacity as the State of California’s  
2 designated proxy under the Private Attorneys General Act, and on behalf of other current and former  
3 California employees and on behalf of himself and all other similarly situated individuals alleges the  
4 following:

5 **NATURE OF THE ACTION**

6 1. Plaintiff brings this action on behalf of himself and all California employees of  
7 STAPLES CONTRACT & COMMERCIAL LLC and STAPLES INC. (“Staples”) and Does 1  
8 through 50 (collectively referred to as “Defendants”) from the date four years prior to filing the  
9 initial Complaint through the date of trial. (“Class Members” and “Class Period”).

10 2. Plaintiff, on behalf of himself and all Class Members, is seeking reimbursement of  
11 wages, restitution, injunctive and other equitable relief, reasonable attorneys’ fees, and costs, based  
12 on Defendants’ failure to provide, accurately account for, and timely pay, all wages, including  
13 underpaying sick leave and final wages according to Labor Code sections 246, 246(l), 201 and 202.

14 **JURISDICTION AND VENUE**

15 3. Pursuant to Article VI, section 10 of the California Constitution, subject matter  
16 jurisdiction is proper in the Superior Court of California, County of San Diego, State of California  
17 because Plaintiff alleges claims arising under California law.

18 4. This Court has jurisdiction over Defendants because each is believed to be an  
19 association, corporation, business entity, or individual that conducts substantial business in the State  
20 of California, County of San Diego.

21 5. Pursuant to California Code of Civil Procedure section 395, venue is proper in the  
22 Superior Court of California for the County of San Diego because this is where Plaintiff was  
23 employed and where the wrongful misconduct alleged herein occurred.

24 6. There is no federal jurisdiction, because the issues are based solely on California law,  
25 including the Labor Code, Code of Civil Procedure, and Business and Professions Code.

26 7. There is no federal jurisdiction based on diversity jurisdiction because each Class  
27 Member’s claims are under the \$75,000 jurisdictional threshold.

28 8. There is no federal jurisdiction based on the Class Action Fairness Act because, upon

1 information and belief, the relief sought herein is less than the \$5,000,000 threshold.

2 **THE PARTIES**

3 9. Upon information and belief, Defendants are the owner and operator of multiple  
4 office retail stores throughout California.

5 10. Plaintiff worked for Defendants in the County of San Diego, California during which  
6 time he was paid hourly and considered non-exempt.

7 11. The true names and capacities, whether individual, corporate, associate or otherwise  
8 of the Defendant named herein as DOES 1 through 50, are unknown to Plaintiff at this time.  
9 Plaintiff therefore sues said Defendants by such fictitious names pursuant to California Code of  
10 Civil Procedure section 474. Plaintiff will seek leave to amend the operative complaint to allege the  
11 true names and capacities of DOES 1 through 50 when their names are ascertained. Plaintiff is  
12 informed and believes, and based thereon allege, that each of the DOE Defendants is in some  
13 manner liable to Plaintiff for the events and actions alleged herein.

14 12. Plaintiff is informed and believes, and based thereon allege, that at all times, each  
15 Defendant was acting as an agent, joint venturer, integrated enterprise and/or alter ego for each of  
16 the other defendants and each were co-conspirators with respect to the acts and the wrongful  
17 conduct alleged herein so that each is responsible for the acts of the other in connection with the  
18 conspiracy and in proximate connection with the other defendants.

19 13. Plaintiff is informed and believes, and based thereon alleges, that each Defendant was  
20 acting partly within and partly without the scope and course of their employment, and was acting  
21 with the knowledge, permission, consent, and ratification of every other Defendant.

22 **GENERAL ALLEGATIONS**

23 14. Plaintiff re-alleges all preceding paragraphs.

24 15. During the Class Period, Defendants conducted business and employed Plaintiff and  
25 Class Members in San Diego County and throughout the state of California.

26 16. At all times during the Class Period, Plaintiff and Class Members were covered by  
27 the protections afforded under the California Labor Code and California Business and Professions  
28 Code.



1           26.    Typicality: Plaintiff’s claims are typical of the claims of the proposed Classes.  
2 Plaintiff and Class Members sustained injuries and damages caused by Defendants’ common course  
3 of conduct in violation of laws, regulations, and statutes as alleged.

4           27.    Adequacy of Representation: Plaintiff will fairly and adequately represent and protect  
5 the interests of the members of the Classes. Proposed Class Counsel, Mashiri Law Firm, APC and  
6 The Jami Law Firm P.C., are competent and experienced in litigating employment class actions.  
7 Plaintiff is aware and understands his obligations to faithfully assist in the preparation of the case  
8 and to make decisions in the best interest of the putative class.

9           28.    Superiority of Class Action: A class action is superior to other available means for  
10 the fair and efficient adjudication of this controversy. Each Class Member has been damaged, and is  
11 entitled to recovery, by Defendants’ illegal policies and practices, and a class action allows them to  
12 litigate their claims in the most efficient and economical manner for the parties and judicial system.  
13 There are no likely difficulties managing this action that preclude its maintenance as a class action.

14           29.    Predominating common questions of law and fact include:

- 15           (a) Whether Defendants violated California law by failing to correctly calculate and  
16           pay sick leave wages;
- 17           (b) Whether Defendants violated Labor Code sections 246 and 246(l);
- 18           (c) Whether Defendants violated Labor Code section 201, 202, 203, 204, 210, 218.5,  
19           226, 226(a)(1)-(a)(9), 226.3, 227.3, 233, 234, 245 et seq., 256, 432.5, 510, 558,  
20           558.1, 925, 1194, 1198.
- 21           (d) Whether the Sick Pay Class is entitled to equitable relief and/or restitution  
22           pursuant to Business and Professions Code sections 17200, *et seq.*;
- 23           (e) Whether Defendants violated Labor Code section 925;
- 24           (f) Whether the 925 Class is entitled to injunctive relief and/or any other relief  
25           available under Labor Code section 925; and
- 26           (g) Whether a violation of fundamental public policy is established.

27 ///

28 ///

1 **PAGA ALLEGATIONS**

2 30. Defendants are the owner and operator of multiple office retail stores, delivery  
3 services, and warehouses throughout California.

4 31. Plaintiff worked for Defendants during which time he was paid hourly and  
5 considered non-exempt.

6 32. Plaintiff brings this PAGA claim as the state's designated proxy, suing on behalf  
7 of all affected employees.

8 **PAGA REPRESENTATIVE ACTION CLAIMS**

9 33. On information and belief, current and former employees of Defendants were subject  
10 to wage and hour violations by Defendants, specifically by Defendants' violations of Labor Code  
11 sections 201, 202, 203, 204, 210, 218.5, 226, 226(a)(1)-(a)(9), 226.3, 227.3, 233, 234, 245 et seq.,  
12 256, 432.5, 510, 558, 558.1, 925, 1194, 1198, 2698, and 2699 et seq.

13 34. California law provides that an aggrieved employee may file an action against an  
14 employer for penalties in connection with violations of the Labor Code and Wage Order provided  
15 the aggrieved employee file an action on behalf of himself or herself and other current and former  
16 employees.

17 35. At all material times, Defendants were and/or are Represented Employees' employers  
18 or persons acting on behalf of Represented Employees' employer, within the meaning of California  
19 Labor Code sections 558 and 558.1.

20 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

21 36. As to civil penalty claims under PAGA, on May 21, 2020, Plaintiff, via counsel, sent  
22 the statutorily required notice to the LWDA, indicating that Plaintiff intends to pursue claims  
23 against Defendants for violations of the Labor Code.

24 37. On May 21, 2020, Plaintiff, via counsel, sent a copy of the May 21, 2020, notice to  
25 Defendants SC&C and STAPLES.

26 38. The statutory period expired since Plaintiff sent the May 21, 2020, notice to the  
27 LWDA and LWDA did not serve Plaintiff with a notice of its intent to assume jurisdiction over the  
28 applicable civil penalty claims and did not provide notice as set forth in Labor Code section

1 2699.3(a)(2)(A).

2 39. Therefore, Plaintiff has exhausted the administrative requirements as required under  
3 the PAGA.

4 40. The Causes of Action alleged in this Complaint are appropriately suited for a  
5 Representative Action under the PAGA because:

- 6 a. Their action involves allegations of violations of provisions of the California  
7 Labor Code that provide for a civil penalty to be assessed and collected by the  
8 LWDA or any departments, divisions, commissions, boards, agencies or  
9 employees;
- 10 b. Plaintiff is an “aggrieved employee” because Plaintiff was employed by the  
11 alleged violator and had one or more of the alleged violations committed against  
12 them; and
- 13 c. Plaintiff has satisfied the procedural requirements of Labor Code § 2699.3, as set  
14 forth above.

15 41. As a result of the acts alleged above, Plaintiff seeks to recover PAGA penalties for  
16 violations of the following Labor Code provisions.

- 17 a. failure to provide accurate sick pay in violation of Labor Code section 246;
- 18 b. failure to provide accurate itemized wage statements in violation of Labor Code  
19 sections 226, and 226.3;
- 20 c. failure to pay earned wages in violation of Labor Code section 204;
- 21 d. failure to pay earned wages in violation of Labor Code sections 201, 202, and  
22 203.
- 23 e. failure to comply with Labor Code section 925; and
- 24 f. failure to comply with Labor Code section 432.5.

25 **FIRST CAUSE OF ACTION**

26 **(Violation of California Business & Professions Code § 17200 *et seq.* against all Defendants)**

27 42. Plaintiff re-alleges all preceding paragraphs.

28 43. Defendants, and each of them, are “persons” as defined under Business and

1 Professions Code § 17021.

2 44. Plaintiff is informed and believes and based thereon alleges that Defendants  
3 committed the unlawful and unfair business practices, as defined by Cal. Bus. & Prof. Code §  
4 17200, *et seq.*, by violating the following laws:

5 a. Labor Code §§ 246, 246(l);

6 b. Labor Code §§ 201, 202, 203, 204, 210, 218.5, 226, 226(a)(1)-(a)(9), 226.3, 227.3,  
7 233, 234, 245 *et seq.*, 256, 432.5, 510, 558, 558.1, 925, 1194, 1198.

8 45. During their employment, Plaintiff and the Sick Pay Class earned additional  
9 compensation, such as, for example, incentive pay. Upon information and belief, Defendants failed  
10 to provide Plaintiff and the Sick Pay Class with the appropriate rate of pay when paying sick pay, as  
11 required under Labor Code sections 246 and 246(l) which resulted in the underpayment of wages.

12 46. Upon information and belief, Defendants failed to provide Plaintiff and the Sick Pay  
13 Class with the appropriate compensation as required under Labor Code sections 201, 202, 203, 204,  
14 226, 226(a)(1)-(a)(9), 226.3, 233, 234, 245 *et seq.*, 256, 432.5, 510, 558, 925, 1194, 1198, which  
15 resulted in the underpayment of wages.

16 47. Upon information and belief, Plaintiff and the Sick Pay Class did not receive all  
17 wages upon termination or separation of employment in violation of Labor Code sections 201, 202  
18 and 203, and, upon information and belief, these wages are still owed.

19 48. Defendants' conduct, as alleged in the previous paragraphs and in this complaint,  
20 constitutes unlawful and unfair conduct prohibited by Cal. Bus. & Prof. Code § 17200, *et seq.*

21 49. Defendants' business practices deprived Plaintiff and the Sick Pay Class of  
22 compensation and other funds to which they are legally entitled, constitutes unlawful and unfair  
23 business practices, provides an unfair advantage to Defendants over their competitors who comply  
24 with wage and hour and employment laws, and unjustly enriches them.

25 50. The unlawful and unfair business practices conducted by Defendants are ongoing and  
26 present a threat and likelihood of continuing against Plaintiff and Sick Pay Class and, accordingly,  
27 Plaintiff and Sick Pay Class seek injunctive relief in the form of an order by the court requiring  
28 Defendants to issue Plaintiff and the Sick Pay Class accurate sick pay wages.



1 Labor Code section 925(a).

2 61. Plaintiff and the 925 Class are seeking any other remedy available for Defendants'  
3 violation of Labor Code section 925(a).

4 62. Plaintiff and the 925 Class are seeking equitable relief, including injunctive relief, to  
5 render void, Defendants' agreements that include a foreign forum-selection and choice-of-law  
6 provision in violation of Labor Code section 925.

7 63. Plaintiff and the 925 Class are also seeking reasonable attorney's fees under Labor  
8 Code section 925(c), California Code of Civil Procedure section 1021.5, or any other applicable law  
9 allowing for such

10 **THIRD CAUSE OF ACTION**

11 **(Violations of Labor Code section 246 against all Defendants)**

12 64. Plaintiff re-alleges and incorporate by reference the foregoing allegations as though  
13 set forth herein.

14 65. Under Labor Code section 246, employers in California must provide employees  
15 with paid sick leave to be paid at a specified rate of pay which must factor in additional earnings  
16 during a given pay period wherein such leave is used.

17 66. During his employment, Plaintiff earned additional nondiscretionary compensation,  
18 such as, for example, incentive pay.

19 67. Upon information and belief, Defendants failed to provide Plaintiff and Represented  
20 Employees with the appropriate rate of pay when paying sick pay, as required under Labor Code  
21 section 246.

22 68. PAGA imposes upon Defendants, and each of them, civil penalties for violating  
23 Labor Code section 246.

24 69. Civil penalties under the PAGA are equitable in nature. (*Nationwide Biweekly*  
25 *Admin., Inc. v. Superior Ct. of Alameda Cty.*, (2020) 9 Cal.5th 279.)

26 70. Labor Code section 2699(f) imposes upon Defendants, and each of them, civil  
27 penalties of one hundred dollars (\$100) per pay period, per aggrieved employee for initial violations,  
28 and two hundred dollars (\$200) per pay period, per aggrieved employee for subsequent violations

1 for all Labor Code provisions for which a civil penalty is not specifically provided.

2 71. Plaintiff is seeking equitable relief in the form of civil penalties against Defendants  
3 under Labor Code sections 2699(f), and/or 248.5, and/or any other applicable statute allowing  
4 recovery of civil penalties under PAGA on behalf of himself and the Represented Employees as  
5 alleged herein in an amount to be shown according to proof.

6 72. Pursuant to the PAGA, and/or Labor Code section 2699(g), Plaintiff seeks to recover  
7 unpaid wages, attorney's fees, costs, filing fees paid to the LWDA, and civil penalties on behalf of  
8 himself and the Represented Employees as alleged herein in an amount to be shown according to  
9 proof.

#### 10 **FOURTH CAUSE OF ACTION**

##### 11 **(Violations of Labor Code section 226(a)(1) against all Defendants)**

12 73. Plaintiff re-alleges and incorporate by reference the foregoing allegations as though  
13 set forth herein.

14 74. Labor Code section 226(a)(1) requires that an employer issue wage statements to its  
15 employees accurately itemizing the gross wages earned for the pay period.

16 75. Defendants included sick pay as part of the gross wages on the wage statements it  
17 was required to accurately issue to its employees.

#### 18 **COUNT 1**

19 76. Defendants failed to accurately state the proper gross wages on the wage statements  
20 it issued to its employees in violation of Labor Code section 226(a)(1). By way of one example, the  
21 wage statements failed to itemize the accurate amounts of gross wages because they failed to  
22 include the proper amount of sick pay wages. Other examples of such failures exist.

23 77. Sick pay is a wage under California law. (*Schachter v. Citigroup, Inc.*, (2009) 47  
24 Cal.4th 610, 618; *Murphy v. Kenneth Cole Productions, Inc.*, (2007) 40 Cal.4th 1094, 1103.)

#### 25 **COUNT 2**

26 78. In the event sick pay is not considered a wage under California law, Defendants  
27 violated Labor Code section 226(a)(1) by including sick pay earnings as part of the gross wages on  
28 its wage statements which resulted in an inaccurate gross wage itemization on the wage statements.



1 itemize the accurate amounts of net wages because they failed to include the proper amount of sick  
2 pay wages. Other examples of such failures exist.

3 88. Sick pay is a wage under California law. (*Schachter v. Citigroup, Inc.*, (2009) 47  
4 Cal.4th 610, 618; *Murphy v. Kenneth Cole Productions, Inc.*, (2007) 40 Cal.4th 1094, 1103.)

5 **COUNT 2**

6 89. In the event sick pay is not considered a wage under California law, Defendants  
7 violated Labor Code section 226(a)(5) by including sick pay earnings as part of the net wages on its  
8 wage statements which resulted in an inaccurate net wage itemization on the wage statements.

9 90. Upon information and belief, the improper inclusion of sick pay earnings as a wage  
10 resulted in an unlawful and excessive deduction of taxes, withholdings and underpayment of total  
11 earnings for the pay period.

12 91. PAGA imposes upon Defendants, and each of them, civil penalties for violating  
13 Labor Code section 226(a)(5).

14 92. Labor Code section 2699(f) imposes upon Defendants, and each of them, penalties of  
15 one hundred dollars (\$100) per pay period, per aggrieved employee for initial violations, and two  
16 hundred dollars (\$200) per pay period, per aggrieved employee for subsequent violations for all  
17 Labor Code provisions for which a civil penalty is not specifically provided.

18 93. With respect to violations of Labor Code section 226, Labor Code section 226.3  
19 imposes a civil penalty of two hundred and fifty dollars (\$250) for initial violations for each  
20 employee for each pay period, and one thousand dollars (\$1000) for each subsequent violation for  
21 each employee for each pay period.

22 94. Plaintiff is seeking civil penalties against Defendants under Labor Code sections  
23 2699(f), and/or 226.3, and/or any other applicable statute allowing recovery of penalties under  
24 PAGA on behalf of himself and the Represented Employees as alleged herein in an amount to be  
25 shown according to proof.

26 95. Pursuant to PAGA, or Labor Code section 2699(g), Plaintiff seeks to recover unpaid  
27 wages, attorney's fees, costs, filing fees paid to the LWDA, and civil penalties on behalf of himself  
28 and the Represented Employees as alleged herein in an amount to be shown according to proof.

1 **SIXTH CAUSE OF ACTION**

2 **(Violations of Labor Code section 226(a)(9) against all Defendants)**

3 96. Plaintiff re-alleges and incorporates by reference the foregoing allegations as though  
4 set forth herein.

5 97. Labor Code section 226(a)(9) requires that the employer's wage statements  
6 accurately state all applicable hourly rates in effect during the pay period and the corresponding  
7 number of hours worked at each hourly rate by the employee.

8 98. Defendants failed to provide the applicable hourly rates in effect during the pay  
9 period and the corresponding number of hours worked at each hourly rate by the employee in  
10 violation of Labor Code section 226(a)(9).

11 99. By way of one example, the rate for sick pay is not properly listed because it is  
12 inaccurate. Other examples of such failures exist.

13 100. All other claims alleged in this complaint have also resulted in a derivative claim of  
14 an inaccurate itemized wage statement.

15 101. PAGA imposes upon Defendants, and each of them, penalties for violating Labor  
16 Code section 226(a)(9).

17 102. Labor Code section 2699(f) imposes upon Defendants, and each of them, civil  
18 penalties of one hundred dollars (\$100) per pay period, per aggrieved employee for initial violations,  
19 and two hundred dollars (\$200) per pay period, per aggrieved employee for subsequent violations  
20 for all Labor Code provisions for which a civil penalty is not specifically provided.

21 103. With respect to violations of Labor Code section 226, Labor Code section 226.3  
22 imposes a civil penalty of two hundred and fifty dollars (\$250) for initial violations for each  
23 employee for each pay period, and one thousand dollars (\$1000) for each subsequent violation for  
24 each employee for each pay period.

25 104. Plaintiff is seeking civil penalties against Defendants under Labor Code sections  
26 2699(f), and/or 226.3, and/or any other applicable statute allowing recovery of penalties under  
27 PAGA on behalf of himself and the Represented Employees as alleged herein in an amount to be  
28 shown according to proof.







1 Defendants failed to compensate Plaintiff at the appropriate regular rate of pay due to its failure to  
2 incorporate all incentive compensation earned during a given pay period.

3 127. Defendants have failed to pay Plaintiff and Represented Employees all wages due  
4 and owed.

5 128. PAGA imposes upon Defendants, and each of them, civil penalties for violating  
6 Labor Code sections 201, 202, and 203.

7 129. Labor Code section 2699(f) imposes upon Defendants, and each of them, civil  
8 penalties of one hundred dollars (\$100) per pay period, per aggrieved employee for initial violations,  
9 and two hundred dollars (\$200) per pay period, per aggrieved employee for subsequent violations  
10 for all Labor Code provisions for which a civil penalty is not specifically provided.

11 130. Plaintiff is seeking civil penalties against Defendants under Labor Code section  
12 2699(f), and any other applicable statute allowing recovery of civil penalties under PAGA on behalf  
13 of himself and the Represented Employees as alleged herein in an amount to be shown according to  
14 proof.

15 131. Pursuant to PAGA, or Labor Code section 2699(g), Plaintiff seeks to recover unpaid  
16 wages, attorney's fees, costs, filing fees paid to the LWDA, and civil penalties on behalf of himself  
17 and the Represented Employees as alleged herein in an amount to be shown according to proof.

18 **TENTH CAUSE OF ACTION**

19 **(Violations of Labor Code Section 925 against all Defendants)**

20 132. Plaintiff re-alleges and incorporates by reference the foregoing allegations as though  
21 set forth herein.

22 133. Under Labor Code section 925, "An employer shall not require an employee who  
23 primarily resides and works in California, as a condition of employment, to agree to a provision that  
24 would do either of the following: (1) Require the employee to adjudicate outside of California a  
25 claim arising in California. (2) Deprive the employee of the substantive protection of California law  
26 with respect to a controversy arising in California. [...]."

27 134. As a condition of employment, Plaintiff and the Represented Employees were  
28 required to sign Defendants' PROPRIETARY INTEREST PROTECTION AGREEMENT

1 (“PIPA”) and NON-DISCLOSURE AGREEMENT (“NDA”). Upon information and belief, both  
2 the PIPA and NDA include a foreign forum-selection and choice-of-law provision which compels  
3 Plaintiff and the Represented Employees to adjudicate claims—arising in California—outside of  
4 California.

5 135. Defendants NDA and PIPA violate Labor Code section 925 because they require  
6 their employees, including Plaintiff and the Represented Employees, to agree, in writing, to a  
7 foreign forum-selection and choice-of-law provision which compels Plaintiff and the Represented  
8 Employees to adjudicate claims—arising in California—outside of California

9 136. PAGA imposes upon Defendants, and each of them, penalties for violating Labor  
10 Code section 925.

11 137. Labor Code section 2699(f) imposes upon Defendants, and each of them, civil  
12 penalties of one hundred dollars (\$100) per pay period, per aggrieved employee for initial violations,  
13 and two hundred dollars (\$200) per pay period, per aggrieved employee for subsequent violations  
14 for all Labor Code provisions for which a civil penalty is not specifically provided.

15 138. Plaintiff is seeking civil penalties against Defendants under Labor Code section  
16 2699(f) and/or any other applicable statute allowing recovery of penalties under PAGA on behalf of  
17 himself and the Represented Employees as alleged herein in an amount to be shown according to  
18 proof.

19 139. Pursuant to PAGA, Labor Code sections 2699(g) and/or 925(c), Plaintiff seeks to  
20 recover attorney’s fees, costs, filing fees paid to the LWDA and civil penalties on behalf of himself  
21 and the Represented Employees as alleged herein in an amount to be shown according to proof.

22 **ELEVENTH CAUSE OF ACTION**

23 **(Representative Claims for Penalties Under PAGA for Violation of Labor Code Section 432.5**  
24 **against all Defendants)**

25 140. Plaintiff re-alleges and incorporates by reference the foregoing allegations as though  
26 set forth herein.

27 141. Under Labor Code section 432.5, “[no] employer, or agent, manager, superintendent,  
28 or officer thereof, shall require any employee or applicant for employment to agree, in writing, to

1 any term or condition which is known by such employer, or agent, manager, superintendent, or  
2 officer thereof to be prohibited by law.”

3 **COUNT 1:**

4 142. Defendants violated Labor Code section 432.5 because they require their employees,  
5 including Plaintiff and the Represented Employees, to agree, in writing, to terms and conditions  
6 which are violative of Labor Code section 925. By way of one example, Defendants NDA and PIPA  
7 include a foreign forum-selection and choice-of-law provision which compels Plaintiff and the  
8 Represented Employees to adjudicate claims—arising in California—outside of California. This is  
9 prohibited by Labor Code section 925.

10 143. Defendants knew that foreign forum-selection and choice of law provisions which  
11 compels employees to adjudicate claims arising in California outside of California is prohibited  
12 under Labor Code section 925.

13 **COUNT 2:**

14 144. Defendants violated Labor Code section 432.5 because they require their employees,  
15 including Plaintiff and the Represented Employees, to agree, in writing, to a noncompete clause  
16 which is prohibited under California law. (*Edwards v. Arthur Andersen LLP* (2008) 44 Cal.4th 937,  
17 942 [“We conclude that section 16600 prohibits employee noncompetition agreements unless the  
18 agreement falls within a statutory exception.”].)

19 145. Defendants knew that noncompete clauses are prohibited under California law.

20 146. PAGA imposes upon Defendants, and each of them, penalties for violating Labor  
21 Code section 432.5.

22 147. Labor Code section 2699(f) imposes upon Defendants, and each of them, penalties of  
23 one hundred dollars (\$100) per pay period, per aggrieved employee for initial violations, and two  
24 hundred dollars (\$200) per pay period, per aggrieved employee for subsequent violations for all  
25 Labor Code provisions for which a civil penalty is not specifically provided.

26 148. Plaintiff is seeking penalties against Defendants under Labor Code section 2699(f)  
27 and/or any other applicable statute allowing recovery of penalties under PAGA on behalf of himself  
28 and the Represented Employees as alleged herein in an amount to be shown according to proof.

1 149. Pursuant to PAGA, or Labor Code section 2699(g), Plaintiff seeks to recover  
2 attorney's fees, costs, filing fees paid to the LWDA and civil penalties on behalf of himself and the  
3 Represented Employees as alleged herein in an amount to be shown according to proof.

4 **PRAYER FOR RELIEF**

5 WHEREFORE, Plaintiff, individually and on behalf of the proposed Class, prays for  
6 judgment against Defendants as follows:

- 7 1. For certification of this action as a class action;
- 8 2. For appointment of Plaintiff as the representatives of the Class;
- 9 3. For appointment of counsel for Plaintiff as Class Counsel;
- 10 4. For unpaid wages;
- 11 5. For compensatory damages;
- 12 6. For penalties;
- 13 7. For civil penalties, including but not limited to pursuant to Labor Code sections 2698 et  
14 seq. (PAGA);
- 15 8. For waiting time penalties;
- 16 9. For actual damages;
- 17 10. For statutory damages;
- 18 11. For equitable relief, including injunctive relief;
- 19 12. For reasonable attorney's fees and costs;
- 20 13. For special and general damages;
- 21 14. For Restitution and disgorgement of all ill-gotten profits, including unpaid wages;
- 22 15. For all interest accrued to date;
- 23 16. For post judgment interest;
- 24 17. For such other relief the Court deems just and proper.

25 Dated:

**THE JAMI LAW FIRM P.C.**

26  
27 By: \_\_\_\_\_

Tamim Jami  
Attorney for Plaintiff  
LUIS A. M. AVILA

# EXHIBIT B

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SAN DIEGO

LUIS A. M. AVILA, an individual, for the  
real party in interest, the State of California,

Plaintiff,

v.

STAPLES CONTRACT & COMMERCIAL  
INC.; STAPLES INC.; and DOES 1 through  
50,

Defendants.

Case No. 37-2020-00026210-CU-OE-CTL  
(*Lead Case*)

Consolidated with Case No. 37-2022-  
00001040-CU-OE-CTL

NOTICE OF SETTLEMENT OF CLASS  
ACTION

**ATTENTION:** You are receiving this Notice because you may have been employed by Defendant Staples Contract & Commercial LLC (formerly named Staples Contract & Commercial Inc.) (“SCC”) in a non-exempt position in California between January 1, 2018 and [Preliminary Approval Date] (“Settlement Period”) and fall within the scope of a proposed Settlement in the above-captioned lawsuit (“Action”) and, thus, you may be a Class Member eligible to receive a Class Settlement Award.

**PLEASE READ THIS NOTICE CAREFULLY.** This Notice relates to the proposed Settlement of the Action. If you are a Class Member, it contains important information affecting your rights to participate in the Settlement as further described below. This Notice advises you of the terms of the Settlement and your rights and options under it.

To be eligible for your share of the Settlement, you are not required to make a claim. However, you must update the Settlement Administrator, Phoenix Class Action Administration Solutions, with any change of address.

*What is this proposed Settlement about?*

Plaintiff Luis A. M. Avila (“Plaintiff”) filed the original complaint in this Action on July 27, 2020. The operative second amended complaint (“Complaint”) consolidates the claims filed by Plaintiff in both this Action as well as a Later-Filed Class Action alleging the same violations (together, the “Actions”). The Complaint alleges violations of Labor Code section 246, section 226 and various subdivisions thereof, section 204, and sections 201-203, all premised on alleged underpayment of sick pay paid pursuant to the Healthy Workplace Healthy Family Act of 2014 (HWHFA) and alleged underpayment of overtime wages. The Complaint also alleges violations of Labor Code sections 925 and 432.5 premised on alleged agreements certain employees purportedly signed in connection with their employment allegedly in violation of the Labor Code. The Action is both a putative class action and a representative action under the Labor Code Private Attorneys General Act of 2004 (PAGA). The Action seeks restitution,

Page 1

If you have questions, contact the Settlement Administrator at - -

**EXHIBIT B**

compensatory damages, equitable relief including injunctive relief, disgorgement, and civil penalties, as well as interest, attorneys' fees, and costs.

Under the proposed Settlement, Defendants SCC and Staples, Inc. ("Defendants") agree to make payments to Class Members who do not opt out of the Settlement ("Settlement Class Members"). These payments will be based on the number of Relevant Weeks worked by each Settlement Class Member during the Settlement Period compared to the total number of Relevant Weeks worked by all Settlement Class Members during the Settlement Period, as more fully described below.

Defendants also agree to pay the Settlement Administration Costs, a payment to settle the PAGA claims alleged in the Action, a payment to Plaintiff in exchange for his general release of all claims, and attorneys' fees and costs to Plaintiff's counsel ("Class Counsel") up to an amount described below, subject to the Court's approval. Defendants' maximum total obligation under the proposed Settlement is \$300,000.00.

The proposed Settlement is not an admission of liability by either of the Defendants. Throughout this case, Defendants have denied any liability or wrongdoing, or that any compensable injury arose out of any of the matters alleged in the Action. Defendants contend that they have not violated any laws regarding those matters.

Class Counsel believes that the proposed Settlement is in the best interests of the Class Members. Further proceedings would be very expensive and take a long time. Moreover, no one can predict the precise outcome of the disputed issues in this case. Therefore, Class Counsel believes that the proposed Settlement is fair, reasonable, and adequate for the Class Members.

The Court has determined only that there is sufficient evidence to suggest that the proposed settlement might be fair, reasonable, and adequate. Any final determination of those issues will be made at the Final Approval Hearing.

#### Summary of the proposed Settlement

Defendants have agreed to pay \$300,000.00 ("Gross Settlement Amount") to resolve all claims that were alleged in the Complaint, in the PAGA Letter filed in this Action, or in any of the Complaints filed in either of the Actions or that could have been alleged based on the facts alleged in any of these documents and for Class Members' release of claims described below. If finally approved by the Court, the proposed Settlement will distribute money as follows:

**Class Settlement Awards:** Settlement Class Members (Class Members who do not exclude themselves from the Settlement) will be paid their pro-rata share of the Net Settlement Sum, calculated as follows: The Settlement Administrator will calculate the total number of Relevant Weeks during the Settlement Period in which Settlement Class Members were employed for at least one day and received both (i) sick pay and (ii) a non-discretionary bonus, incentive, or other like payment. The Settlement Administrator will then divide the Net Settlement Sum by the total Settlement Class Member Relevant Weeks, resulting in a per

Relevant Week value for each Settlement Class Member. The Settlement Administrator will then take the per Relevant Week value and multiply it by the number of Relevant Weeks for each Settlement Class Member. Relevant Weeks will be calculated according to SCC's records.

“Net Settlement Sum” means the Gross Settlement Amount minus the payment of (a) the PAGA Settlement Amount, (b) the Fee and Expense Award, (c) the General Release Payment, (d) the Settlement Administration Costs, and (e) Defendants' share of Withholdings and Taxes, all of which are described below.

Class Settlement Awards shall be subject to applicable withholding taxes.

**PAGA Settlement Amount:** The proposed Settlement provides for a payment of \$30,000 for resolution of the PAGA claims alleged in the Action. Of that amount, 75% (or \$22,500) of the PAGA Settlement Payment shall be paid to the California Labor & Workforce Development Agency and 25% (or \$7,500) of the PAGA Settlement Payment shall be paid on a pro-rata basis to PAGA Group Members.

**Fee and Expense Award to Class Counsel:** Upon approval by the Court, Defendants will pay attorneys' fees and out-of-pocket costs/expenses to Class Counsel (Alex Mashiri of the Mashiri Law Firm, APC and Tamim Jami of The Jami Law Firm P.C.). The proposed Settlement permits Class Counsel to request up to 33.33% of the Gross Settlement Amount (\$100,000) as their fees for prosecuting this case and up to \$10,000 for reimbursement of their out-of-pocket costs/expenses incurred in the Action. You are not personally responsible for any of Class Counsel's attorneys' fees or costs/expenses.

**Other Payments:** The proposed Settlement provides for a General Release Payment to Plaintiff of \$25,000. The proposed Settlement further provides for payment estimated not to exceed \$20,000 to the Settlement Administrator, Phoenix Class Action Administration Solutions, for its services in administering the Settlement of this Action. The proposed Settlement further provides for payment of Defendant's share of Withholdings and Taxes owed in connection with the Settlement.

*What are my rights and options as a Class Member?*

1. **You can exclude yourself from the Settlement:** If you do not want a Class Settlement Award and do not want to be bound as a Settlement Class Member, you must make a timely written Request for Exclusion. Your Request for Exclusion must contain (a) your full name, address, telephone number, and the last four digits of your Social Security number, (b) the words “Request for Exclusion” at the top of the document, and (c) your request to be excluded from the Settlement of this Action, and it must be personally signed by you.

Your Request for Exclusion must be mailed to the Settlement Administrator and must be postmarked by [DATE – 45 days from mailing Class Notice]. You should not request exclusion if you wish to receive a Class Settlement Award.

2. **You can object to the Settlement:** As a Settlement Class Member, you can object to the Settlement before the Court’s final approval of the Settlement. To object, you should submit a written objection to the Settlement Administrator by [DATE – 45 days from mailing Class Notice]. You may also appear and object to the Settlement at the Final Approval Hearing currently set for [ ] : [ ] .m. on [ ] , 2022, in Department 67 of the San Diego Superior Court, located on the Fourth Floor of the Hall of Justice, 330 West Broadway, San Diego, California 92101. You are not required to appear, either personally or through counsel, at the Final Approval Hearing in order for your objection to be considered. You may object to the Settlement as a Settlement Class Member only if you do NOT submit a Request for Exclusion.

3. **You can do nothing:** You can do nothing. If you do nothing, you will be bound by the proposed Settlement terms and you will be entitled to receive a Class Settlement Award as described above.

A Notice of Relevant Weeks form is attached to this Notice. It provides the number of Relevant Weeks you had during the Settlement Period according to SCC’s records. If you wish to participate in the Settlement but you do not agree with the number of Relevant Weeks shown on the form, you must complete the Notice of Relevant Weeks form and mail it to the Settlement Administrator by [DATE – Request for Exclusion Deadline].

You should also correct your mailing address if it is not correct by calling the Settlement Administrator at [ ] - [ ] - [ ] .

What claims am I releasing by participating in the Settlement?

In exchange for the consideration given by Defendants in the proposed Settlement, all Class Members who do not opt out of the Settlement (the Settlement Class Members) will expressly release, waive, and discharge, and will be deemed to have released, waived, and discharged, all Released Claims against all Released Parties.

“Released Claims” means all claims, debts, liabilities, demands, obligations, damages, and actions or causes of action of any kind that arose before or on the Preliminary Approval Date and were alleged in any of the Complaints in either of the Actions or the PAGA Notice in the Action or could have been reasonably alleged against any of the Released Parties based on the facts alleged in any of these documents, including (without limitation) claims under Labor Code sections 201, 202, 203, 204, 210, 218.5, 226, 226(a)(1)-(9), 226.3, 227.3, 233, 234, 245 et seq. (HWHFA), 256, 432.5, 510, 558, 558.1, 925, 1194, 1198, and 2698 et seq. (PAGA); Business and Professions Code section 17200 et seq. (the Unfair Competition Law), and Code of Civil Procedure section 1021.5. Expressly excluded from the Released Claims are claims for wages in Workers’ Compensation and Unemployment Insurance benefits cases, and claims for benefits under the Employee Retirement Income Security Act of 1974 (ERISA).

“Released Parties” means Staples Contract & Commercial LLC (named Staples Contract & Commercial Inc. until approximately February 28, 2018), Staples, Inc., each of their present,

former, and future parents, each of their subsidiaries, affiliates, divisions, corporations in common control, predecessors, successors, and assigns, and each of their respective present, past and future officers, directors, employees, partners (both general and limited), shareholders, agents, attorneys, insurers, and any other successors, assigns, or legal representatives, and any other individual or entity which could be liable for any of the Released Claims.

All Settlement Class Members intend and are deemed to intend that this Settlement shall be effective as a bar to any and all Released Claims against any and all Released Parties.

The Settlement Class Members further agree not to sue or otherwise make a claim against any of the Released Parties arising out of or related to any of the Released Claims. The Settlement Class Members further agree that their release, waiver, and relinquishment of the Released Claims shall preclude them from participating in any judgment or settlement of claims that are the subject of the Released Claims in any other class, collective, or representative action.

When is the next Court hearing?

A Final Approval Hearing will be held before the Honorable Eddie C. Sturgeon in Department 67 of the San Diego Superior Court, located on the Fourth Floor of the Hall of Justice, 330 West Broadway, San Diego, California 92101, on [REDACTED], 2022 at [REDACTED]: [REDACTED].m. to determine whether the Settlement is fair, reasonable, and adequate. Judge Sturgeon will be asked to approve the plan for distributing the Class Settlement Awards, Class Counsel's Fee and Expense Award, the General Release Payment for Plaintiff, the PAGA Settlement Payment, and payment to the Settlement Administrator for its services. A motion for final approval of these items should be on file with the Court no later than [REDACTED], 2022 and will be available for review after that date. This hearing may be continued without further notice to Class Members. It is not necessary for you to appear at this hearing.

What if I need more information?

Except where otherwise defined in this Notice, capitalized terms in this Notice have the same meaning they are given in the Class Action Settlement Agreement and Release ("Agreement"), filed with the Court on [DATE] as an attachment to [FULL NAME OF PRELIMINARY APPROVAL DOCUMENT]. For the precise terms and conditions of the Settlement, you should consult the detailed Agreement and the Preliminary Approval Order, which is also on file with the Court. If you have any questions, you can contact the Settlement Administrator at [REDACTED] - [REDACTED] - [REDACTED]. You can also contact Class Counsel Alex Mashiri (alex@mashirilawfirm.com) of the Mashiri Law Firm, APC, 11251 Rancho Carmel Drive #500694, San Diego, CA 92150, (858) 348-4938, or Tamim Jami (tamim@jamilaw.com) of The Jami Law Firm P.C., 3525 Del Mar Heights Road #941, San Diego, CA 92130, (858) 284-0248.

**PLEASE DO NOT CONTACT THE COURT FOR INFORMATION  
ABOUT THIS SETTLEMENT**

# EXHIBIT C

## NOTICE OF RELEVANT WEEKS

*Luis A. M. Avila v. Staples Contract and Commercial, Inc., et al.*  
**San Diego Superior Court Case No. 37-2020-00026210-CU-OE-CTL**  
(Lead Case, Consolidated with Case No. 37-2022-00001040-CU-OE-CTL)

To: [Class Member Name]

Your potential Class Settlement Award in the Settlement of the class action lawsuit listed above is based on the number of weeks you were employed by Staples Contract & Commercial LLC (named Staples Contract & Commercial Inc. until approximately February 28, 2018) (“Staples”) during the period from January 1, 2018 through [Preliminary Approval Date] (the “Settlement Period”) in a non-exempt position in California and received both (i) sick pay and (ii) a non-discretionary bonus, incentive, or other like payment (“Relevant Weeks”). For purposes of calculating Class Settlement Awards, these Relevant Weeks are no less than one for each Class Member and are otherwise determined by Staples’ records. You had a total of \_\_\_ Relevant Weeks during the Settlement Period.

If you wish to participate in the Settlement and you agree with the number of Relevant Weeks shown above, then you do not need to take any further action. You will receive your Settlement Award once the Settlement becomes final.

If you wish to participate in the Settlement but you do not agree with the Relevant Weeks shown above, please insert in the space below the number of weeks you believe you worked during the Class Period and check the applicable box.

Number of Relevant Weeks Worked During Class Period: \_\_\_\_\_

- I am enclosing documentation to support my position that I had a different number of Relevant Weeks.
- I am not enclosing documentation to support my position that I had a different number of Relevant Weeks.

Dated: \_\_\_\_\_  
\_\_\_\_\_  
(signature)

If you wish to dispute your Relevant Weeks shown above, you must complete, sign, and date this Notice of Relevant Weeks form and mail it with any supporting documentation to the Settlement Administrator, Phoenix Class Action Administration Solutions, at [address], postmarked no later than \_\_\_\_\_, 2022 [request for exclusion deadline].

If there is a dispute about your Relevant Weeks, the Settlement Administrator will resolve the dispute, and its decision will be final and binding. In resolving the dispute, the information provided by Staples will be presumed accurate.

**EXHIBIT C**

# EXHIBIT D

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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SAN DIEGO

LUIS A. M. AVILA, an individual, for the real party in interest, the State of California,  
  
Plaintiff,  
  
v.  
  
STAPLES CONTRACT & COMMERCIAL INC.; STAPLES INC.; and DOES 1 through 50,  
  
Defendants.

Case No. 37-2020-00026210-CU-OE-CTL  
*(Lead Case)*

Consolidated with Case No. 37-2022-00001040-CU-OE-CTL

(Assigned for All Purposes to the Honorable Eddie C. Sturgeon, Dept. 67)

**[PROPOSED] ORDER GRANTING PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

Date Action Filed: July 27, 2020  
Trial Date: Not Yet Set

1 This matter has come before the Court on the motion of Plaintiff Luis A. M. Avila for  
2 preliminary approval of the Settlement of the above-captioned Action (“Motion”). A hearing on  
3 the Motion was held on \_\_\_\_\_, 2022. The Court, having duly considered the Motion,  
4 good cause appearing, hereby orders as follows:

5 1. Capitalized terms in this Order have the same meaning they are given in the Class  
6 and PAGA Action Settlement Agreement and Release (“Agreement”) filed with the Motion.

7 2. The Court grants preliminary approval of the Settlement based upon the terms set  
8 forth in the Agreement. The Settlement appears to be fair, reasonable, and adequate to the Class  
9 and presumptively valid, subject only to any objections that may be raised at or before the Final  
10 Approval Hearing.

11 3. A Final Approval Hearing on the question of whether the proposed Settlement,  
12 attorneys’ fees and costs to Class Counsel, the PAGA Settlement Amount, the General Release  
13 Payment to Plaintiff, and Settlement Administration Costs should finally be approved as fair,  
14 reasonable, and adequate as to the Class Members is scheduled for \_\_\_\_\_, 2022, at \_\_:\_\_\_\_  
15 \_\_.m. in Department 67 of this Court.

16 4. The Court approves as to form and content the Class Notice attached hereto as  
17 Exhibit 1. The Court approves the procedure for Class Members to request exclusion from or to  
18 object to the Settlement as set forth in the Class Notice. The Court approves as to form and  
19 content the Notice of Relevant Weeks attached to the Class Notice, which shall be mailed to Class  
20 Members with the Class Notice.

21 5. The Court directs the mailing of the Class Notice in accordance with the  
22 Implementation Schedule set forth below. The Court finds that the manner and mode of giving  
23 notice to Class Members meet the requirements of due process and provide the best notice  
24 practicable under the circumstances, and shall constitute due and sufficient notice to all persons  
25 entitled thereto.

26 6. The second amended complaint in this Action (“Consolidated Complaint”),  
27 attached as Exhibit A to the Agreement, is hereby deemed filed as of this date, for settlement  
28 purposes only, and Defendants are concurrently deemed to deny all of the allegations in the

1 Consolidated Complaint and to raise all of the defenses raised in their April 6, 2022 amended  
 2 answer to the First Amended PAGA Complaint in this Action and their March 7, 2022 answer to  
 3 the Class Complaint filed in the Later-Filed Action related to and consolidated with this Action,  
 4 all without the need for Defendants to file an answer to the Consolidated Complaint. If the  
 5 Settlement is not effectuated for whatever reason, the Consolidated Complaint shall be withdrawn  
 6 and shall no longer have any force or effect, and the First Amended PAGA Complaint will once  
 7 again become the operative complaint in this Action, with the Ninth Cause of Action therein  
 8 dismissed by virtue of this Court’s December 17, 2021 order sustaining Defendants’ demurrer as  
 9 to it.

10 7. The Class is preliminarily certified for settlement purposes only.

11 8. The Court preliminarily approves Alex Mashiri of the Mashiri Law Firm, APC and  
 12 Tamim Jami of The Jami Law Firm P.C. as Class Counsel.

13 9. The Court approves Phoenix Class Action Administration Solutions as the  
 14 Settlement Administrator.

15 10. The Court orders the following Implementation Schedule for further proceedings:

17 Deadline for Defendant to submit Class Member 18 information to Settlement Administrator.	_____, 202__ (15 business days from entry of this Order.)
19 Settlement Administrator mails Class Notice to Class 20 Members.	_____, 202__ (10 business days from receipt of Class Member information from Defendant.)
22 Deadline for Class Members to mail Requests for 23 Exclusion.	_____, 202__ (45 calendar days from initial mailing of Class Notice)
24 Deadline for submitting to the Settlement Administrator 25 any objections to Settlement.	_____, 202__ (45 calendar days from initial mailing of Class Notice)
26 Deadline for Class Counsel to file Motion for Final 27 Approval of Settlement and Attorneys’ Fees and Costs. 28 <i>[no sooner than three weeks after deadline for Class</i>	_____, 202__

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<i>Members to mail Requests for Exclusion and for submitting any objections to Settlement]</i>	
Fairness Hearing and Final Approval.	_____, 202__ at __:__.m.

IT IS SO ORDERED.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Honorable Eddie C. Sturgeon  
Judge of the Superior Court

# EXHIBIT E

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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SAN DIEGO

LUIS A. M. AVILA, an individual, for the real party in interest, the State of California,  
  
Plaintiff,  
  
v.  
  
STAPLES CONTRACT & COMMERCIAL INC.; STAPLES INC.; and DOES 1 through 50,  
  
Defendants.

Case No. 37-2020-00026210-CU-OE-CTL  
*(Lead Case)*  
  
Consolidated with Case No. 37-2022-00001040-CU-OE-CTL  
  
(Assigned for All Purposes to the Honorable Eddie C. Sturgeon, Dept. 67)  
  
**[PROPOSED] ORDER GRANTING PLAINTIFF'S MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND JUDGMENT THEREON**  
  
Date Action Filed: July 27, 2020  
Trial Date: Not Yet Set

1 This matter has come before the Court on the Motion of Plaintiff Luis A. M. Avila for  
2 Final Approval of Class Action Settlement (“Motion”). A Fairness Hearing was held on  
3 \_\_\_\_\_, following the Court’s order granting Plaintiff’s motion for preliminary approval  
4 of the Settlement and notice of the Settlement to the Class with an opportunity for Class Members  
5 to request exclusion or object to the Settlement. The Court, having duly considered the Motion,  
6 good cause appearing, hereby orders, adjudges, and decrees as follows:

7 1. Capitalized terms in this Order and Judgment have the same meaning they are  
8 given in the Class and PAGA Action Settlement Agreement and Release (“Agreement”) filed  
9 with the Motion.

10 2. This Court has jurisdiction over the subject matter of this Action, all claims  
11 alleged herein, and all Parties hereto, including Plaintiff, all Class Members, and Defendants  
12 Staples Contract & Commercial LLC (named Staples Contract & Commercial Inc. until  
13 approximately February 28, 2018) and Staples, Inc.

14 3. The Court finds that the Class Members have been provided proper and adequate  
15 notice, meeting the requirements of due process. The Court finds, based on the evidence  
16 submitted, that the Class Notice and related documents, as well as the methodology used to  
17 implement the Settlement, including providing notice to Class Members, (a) complied with this  
18 Court’s Preliminary Approval Order, (b) constituted the best practicable notice under the  
19 circumstances, (c) constituted notice that was reasonably calculated, under the circumstances, to  
20 apprise Class Members of the pendency of the Action and the proposed Settlement, their right to  
21 participate in the Settlement, to opt out of the Settlement, to object to the Settlement and to appear  
22 at the Fairness Hearing, and (d) met all applicable requirements of due process, the Code of Civil  
23 Procedure and other applicable authorities.

24 4. The Court finds that adequate time has been provided for Class Members to  
25 respond to the Class Notice, including by opting out of the Settlement or objecting to the  
26 Settlement or to Plaintiff’s Motion for Approval of Attorneys’ Fees and Costs.

27 5. The Court finds that the Settlement, the terms of which are set forth in the  
28 Agreement attached hereto as **Exhibit 1**, is fair, reasonable, and adequate as to the settling

1 Parties, including the Settlement Class Members, and is in the best interests of all those affected  
2 by the Settlement. The Court finds that the Settlement was the result of vigorously contested  
3 litigation and good-faith arm's-length negotiations, and is reasonable based on the risks, expense,  
4 and complexity of the Action and the likelihood of success in it. The Court hereby grants final  
5 approval of the Parties' Settlement, as set forth in the Agreement, and enters Judgment  
6 accordingly. The Parties are directed to perform the terms of the Agreement and to report to the  
7 Court when that performance has been completed.

8 6. The Court has already determined solely for purposes of this Settlement, by way of  
9 its Preliminary Approval Order, that the Settlement Class satisfies the applicable standards for  
10 certification under the Code of Civil Procedure. The Settlement Class, which will be bound by  
11 this Final Approval Order and Judgment, include all Class Members who did not submit a timely  
12 and valid Request for Exclusion. The Class Members who have opted out of the Settlement by  
13 submitting a timely and valid Request for Exclusion are listed on Exhibit 2 hereto. For purposes  
14 of the Settlement and this Final Approval Order and Judgment, the Settlement Class shall be  
15 represented by Plaintiff and shall include Plaintiff and all individuals employed by Staples  
16 Contract & Commercial LLC (named Staples Contract & Commercial Inc. until approximately  
17 February 28, 2018) as hourly employees in California between and including January 1, 2018  
18 and [Preliminary Approval Date] who fall within the scope of the claims alleged in the  
19 Complaints filed in this Action as well as the related and consolidated Later-Filed Action,  
20 excluding only those persons listed on **Exhibit 2**.

21 7. The Court appoints Plaintiff as class representative for the Settlement Class.

22 8. The Court appoints Class Counsel identified in the Agreement as class counsel for  
23 the Settlement Class, finding that Class Counsel is adequate and qualified, and has, and can  
24 continue to, fully and faithfully represent the interests of Plaintiff and the Settlement Class  
25 Members.

26 9. Settlement Class Members shall be paid their respective shares of the Net  
27 Settlement Sum as provided in the Agreement.

1           10.     The portion of the PAGA Settlement Amount to be paid to the California Labor &  
2 Workforce Development Agency (“LWDA”) and the portion of the PAGA Settlement Amount to  
3 be paid to PAGA Group Members shall be paid as provided in the Agreement. The LWDA and  
4 all PAGA Group Members will be bound by this Final Approval Order and Judgment.

5           11.     All Withholdings and Taxes owed on the Settlement Awards, as calculated by the  
6 Settlement Administrator, shall be paid and reported to the appropriate taxing authorities as set  
7 forth in the Agreement.

8           12.     The unopposed application of Class Counsel for attorneys’ fees and costs is hereby  
9 granted. The sum of \$ \_\_\_\_\_ in attorneys’ fees and costs not to exceed the sum of  
10 \$ \_\_\_\_\_ shall be paid to Class Counsel, with payment to be made as provided for in the  
11 Agreement. A General Release Payment of \$ \_\_\_\_\_ shall be paid to Plaintiff, with payment  
12 to be made as provided for in the Agreement. Phoenix Class Action Administration Solutions  
13 shall be paid Settlement Administration Costs of \$ \_\_\_\_\_, in accordance with the terms  
14 of the Agreement. Except as expressly set forth in this Final Approval Order and Judgment, the  
15 Parties shall bear their own attorneys’ fees and costs.

16           13.     Any portion of the Settlement Fund remaining after administration of the  
17 Settlement has been completed shall be transmitted to the California Controller's Office  
18 Unclaimed Property Division for further handling, as provided in the Agreement.

19           14.     The Settlement Administrator is directed to make the payments set forth herein, in  
20 accordance with the terms and conditions of the Agreement.

21           15.     By no later than \_\_\_\_\_, the Settlement Administrator shall file a  
22 report setting forth (1) the total amount of money actually paid to Settlement Class Members and  
23 PAGA Group Members, (2) the portion of the PAGA Settlement Amount paid to the LWDA, and  
24 (3) the portion of the LWDA Payment paid to the LWDA. (Code Civ. Proc., § 384, subd. (b).)

25           16.     All Class Members, except those who timely opted out of the Settlement (listed in  
26 Exhibit 2 hereto), are bound by this Final Approval Order and Judgment, and by the previously  
27 approved Agreement. Each Settlement Class Member is hereby deemed to have fully, finally,  
28

1 and forever released, relinquished, and discharged each of the Defendants and all Released  
2 Parties, as defined in the Agreement, from the Released Claims described in the Agreement.

3 17. All PAGA Group Members and the LWDA are bound by this Final Approval  
4 Order and Judgment, and by the previously approved Agreement. Each PAGA Group Member  
5 and the State of California are hereby deemed to have expressly released, waived, and  
6 relinquished the Released PAGA Claims. All PAGA Group Members are hereby barred from  
7 bringing, joining, or otherwise participating in a PAGA representative action or otherwise  
8 making, joining, or otherwise participating in a claim against any of the Released Parties for any  
9 of the Released PAGA Claims. The State of California shall be barred from pursuing recovery of  
10 any civil penalties from any of the Released Parties for any of the Released PAGA Claims.

11 18. This Final Approval Order and Judgment, the Agreement, the Settlement it  
12 reflects, and any and all acts, statements, documents or proceedings relating to the Settlement are  
13 not, and shall not be construed as, or used as an admission by Defendants, or either of them, or a  
14 finding by this Court of any fault, wrongdoing, or liability on the part of Defendants, or either of  
15 them, or of the validity of any Released Claim or of the existence or amount of any damages.

16 19. In the event the Effective Date does not occur, this Final Approval Order and  
17 Judgment shall be null and void and shall be vacated, *nunc pro tunc*, except insofar as expressly  
18 provided to the contrary in the Agreement, and without prejudice to the status quo ante rights of  
19 the Plaintiff, Settlement Class Members, and Defendants.

20 20. Judgment is hereby entered in accordance with the Agreement and the Settlement.  
21 Without affecting the finality of this Final Approval Order and Judgment in any way, the Court  
22 shall retain jurisdiction over the implementation of the Settlement, including enforcement and  
23 administration of the Agreement and the releases given in connection therewith, and any other  
24 matters related or ancillary to the foregoing.

25 IT IS SO ORDERED, ADJUDGED, AND DECREED.

26 Dated: \_\_\_\_\_  
27 \_\_\_\_\_  
28 Honorable Eddie C. Sturgeon  
Judge of the Superior Court