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SUPERIOR COURT OF CALIFORNIA

COUNTY OF LOS ANGELES

RICHARD BOOTH, individually and on
behalf of all others similarly situated,

Plaintiffs,

v.

STAPLES, INC. and STAPLES
CONTRACT & COMMERCIAL LLC,

Defendants.

**CONFORMED COPY
ORIGINAL FILED**
Superior Court of California
County of Los Angeles

DEC 11 2020

Sherri K. Carter, Executive Officer/Clerk of Court

By *[Signature]*, Deputy
Steven Drew

CASE NO. 20STCV47390

**CLASS AND REPRESENTATIVE ACTION
COMPLAINT:**

- (1) Public Nuisance (Cal. Civ. Code §§ 3294, 3479, 3480, 3491, 3493)
- (2) Unfair Competition (Cal. Labor Code §§ 17200, *et seq.*)
- (3) Failure to Reimburse Necessary Business Expenses (Cal. Labor Code §§ 2800, 2801, 2804)
- (4) Declaratory Judgment (Cal. Civ. Proc. Code § 1060, *et seq.*)
- (5) PAGA Civil Penalties (Cal. Labor Code §§ 2698, *et seq.*)

JURY TRIAL DEMANDED

By Fax

1 Plaintiff Richard Booth, by and through his undersigned attorneys, hereby brings this
2 Class and Representative Action Complaint against Defendants Staples, Inc. and Staples Contract
3 & Commercial LLC (hereinafter referred to as “Defendants” or “Staples”) and alleges as follows:

4 **I. NATURE OF THE CASE**

5 1. This is a putative class and Private Attorneys General Act (“PAGA”) enforcement
6 action under the California Labor Code, California Civil Code, and California Business and
7 Professions Code, arising from Defendants’ pattern and practice of maintaining unsafe working
8 conditions that expose their California employees to a high risk of contracting COVID-19, a
9 highly contagious virus that has infected at least 26.4 million people worldwide, and killed
10 870,000 in a matter of months.

11 2. Defendants are an American office retail company, primarily involved in the sale
12 of office supplies and related products, via retail channels and business-to-business oriented
13 delivery operations. Plaintiff is informed and believes that Defendants employ numerous
14 workers throughout California, including warehouse workers such as Plaintiff, to sustain their
15 business. Defendants’ workers risk their own health and safety to ensure items are prepared for
16 deliveries during a time in which many can rarely leave their homes.

17 3. It is critical for a company like Staples to implement proper procedures to stop the
18 spread of COVID-19 amongst their employees and the public. Defendants employ numerous
19 individuals who must work at close distances in their warehouses. Defendants’ failure to take
20 measures to stop the spread of this virulent disease has serious implications and potentially
21 catastrophic consequences.

22 4. Defendants have not only an ethical, but also a legal obligation under the
23 California Labor Code to take appropriate measures to ensure a safe and healthful workplace for
24 their employees. Cal. Labor Code § 6400(a).

25 5. However, amidst this pandemic, Defendants have, as a matter of policy and/or
26 practice, systematically endangered their employees’ health and safety daily. Among other issues
27 and as described in further detail in Section IV *infra*, Defendants have failed to provide sufficient
28 personal protective equipment (“PPE”), implement social distancing protocols, or adopt other

1 programs and procedures necessary to reduce their employees' risk of contracting the virus, in
2 violation of the California Labor Code. Defendants' behavior has been slow and insufficient to
3 comply with applicable laws and to protect their employees.

4 6. Defendants' disregard for their employees' health and safety has already had
5 severe consequences. For example, at least two employees at a Staples facility in La Miranda,
6 CA, where Plaintiff worked, contracted COVID-19. Nothing was done in response in order to
7 protect the health and safety of the employees. Defendants continue to put their employees,
8 customers, and the public at risk by maintaining policies that prioritize profit over the safety of
9 their workforce.

10 **II. JURISDICTION AND VENUE**

11 7. The Court has jurisdiction over this action pursuant to Article 6, § 10 of the
12 California Constitution and California Code of Civil Procedure § 410.10.

13 8. The Court has jurisdiction over Defendants because they are a corporation and
14 limited liability company authorized to do business in the State of California and are registered
15 with the California Secretary of State. Defendants do sufficient business with sufficient
16 minimum contacts in California, and/or otherwise intentionally avails themselves of the
17 California market through the advertising, marketing and sale of goods and services, to render
18 the exercise of jurisdiction over Defendants by the California court consistent with traditional
19 notions of fair play and substantial justice.

20 9. Venue is proper in this judicial district pursuant to Code of Civil Procedure §
21 395.5. Defendants employed Plaintiff and other employees in this County, transacts business in
22 this County, and events alleged in this Complaint occurred in this County.

23 **III. THE PARTIES**

24 10. Plaintiff and Class Members are current and former non-exempt employees who
25 worked for Defendants in California within four years prior to the filing of this Complaint,
26 through the resolution of this action.

27 11. Plaintiff Richard Booth is a resident of the County of Los Angeles. Plaintiff
28 worked as a warehouse worker for Defendants from approximately August 6, 2017 until June 3,

2020. He worked at Defendants' fulfillment center in La Mirada, CA.

12. Defendant Staples, Inc. is an American office retail company, primarily involved in the sale of office supplies and related products, via retail channels and business-to-business oriented delivery operations. It is a Delaware corporation, registered to do business in California. It may be served with process to its registered agent Corporation Services Company which will do business in California as CSC-Lawyers Incorporating Service, at 2710 Gateway Oaks Drive, Suite 150N, Sacramento, CA 95833.

13. Defendant Staples Contract & Commerce LLC is a subsidiary of Defendant Staples, Inc. It is a Delaware limited liability company registered to do business in California. It may be served with process to its registered agent Corporation Services Company which will do business in California as CSC-Lawyers Incorporating Service, at 2710 Gateway Oaks Drive, Suite 150N, Sacramento, CA 95833.

IV. FACTUAL ALLEGATIONS

14. Plaintiff incorporates herein by reference the allegations set forth above.

15. Plaintiff worked as a warehouse worker at Defendants' fulfillment center in La Mirada, California from approximately August 6, 2017 until June 3, 2020. His job duties included, but were not limited to, loading trucks, packaging products, conducting physical inventory, and operating material handling equipment to move products within the warehouse.

16. Defendants are an office retail company involved in the sale of office supplies and related products. Plaintiff is informed and believes that during the relevant time period of this action, Defendants have employed, and continue to employ, numerous warehouse workers and other non-exempt employees, including Plaintiff, in California.

A. COVID-19 Pandemic

17. On December 31, 2019, the Wuhan Municipal Commission reported a cluster of pneumonia cases in Wuhan, Hubei Province, China. This led to the identification of a novel coronavirus called SARS COV-2. SARS CoV-2 has caused a worldwide pandemic of the respiratory illness known as COVID-19.

18. COVID-19 symptoms can be severe and life-threatening. Even asymptomatic

1 individuals – whom Centers for Disease Control (“CDC”) research estimates account for
2 approximately 40% of cases – are 75% as infectious as symptomatic individuals and therefore
3 likely to spread the virus.¹ For this reason, the CDC and other health experts have recommended
4 that every individual should take significant efforts to avoid close contact with others, whether
5 those others appear to be infected or not. Similarly, experts agree that contact tracing is
6 extremely important to contain the virus’ spread. Expert research showed as early as March
7 2020 that social distancing and extended shutdowns were necessary to “flatten the curve” and
8 slow the spread of the virus. Natl’l Pub. Radio, *U.S. Coronavirus Cases Surpass Summer Peak
9 And Are Climbing Higher Fast* (Oct. 27, 2020) available at [https://www.npr.org/sections/health-
10 shots/2020/10/27/928062773/u-s-cases-surpass-summer-peak-and-are-climbing-higher-fast](https://www.npr.org/sections/health-shots/2020/10/27/928062773/u-s-cases-surpass-summer-peak-and-are-climbing-higher-fast)
11 (last visited Oct. 29, 2020).

12 19. As early as April 2020, the CDC published research suggesting that a single person
13 with COVID-19 is likely to infect five or six other individuals absent aggressive physical
14 distancing practices.² The CDC also reported that superspreading events, where one individual
15 alone may infect dozens of others, are likely in crowded environments.³ Symptoms may appear
16 as early as two, or as late as 14, days after initial exposure. A person with COVID-19 may be
17 contagious for 48 to 72 hours before experiencing symptoms. Research suggests that people
18 may be most likely to spread the virus to others during the 48 hours before they begin
19 experiencing symptoms.

20 20. COVID-19 is known to cause severe respiratory problems and viral pneumonia.
21 Patients with severe symptoms often need ventilators to have any chance of survival. COVID-
22 19 patients may at first seem stable, but then rapidly go into complete respiratory arrest, meaning
23 they are unable to breathe at all. This is known as acute respiratory distress syndrome, and
24 means, essentially, that the lungs are filled with fluid. One respiratory therapist described
25

26 ¹ <https://www.cdc.gov/coronavirus/2019-ncov/hcp/planning-scenarios.html>.

27 ² See “High Contagiousness and Rapid Spread of Severe Acute Respiratory Syndrome
28 Coronavirus 2,” Steven Sanche, Yen Ting Lin, Chonggang Xu, Ethan Romero-Severson, Nick
Hengartner, and Ruian Ke, [https://wwwnc.cdc.gov/eid/article/26/7/20-
0282_article?deliveryName=USCDC_333-DM25287](https://wwwnc.cdc.gov/eid/article/26/7/20-0282_article?deliveryName=USCDC_333-DM25287).

³ https://wwwnc.cdc.gov/eid/article/26/6/20-0495_article

1 witnessing even relatively young, otherwise healthy COVID-19 patients “essentially drowning
2 in their own blood and fluids because their lungs [we]re so full.”⁴ For those fortunate enough to
3 survive this experience, COVID-19 often causes long-term lung damage.

4 21. COVID-19 may also cause, *inter alia*, acute kidney damage, blood clots, multi-
5 system organ failure, swollen toes, loss of taste and smell, strokes, cardiac injuries and arrest,
6 nervous system damage, and death. COVID-19 survivors may experience long-term health
7 complications beyond just lung damage, including limb amputation in the case of severe blood
8 clots, heart damage, and neurocognitive and mental health effects.

9 22. The pandemic has severely burdened mental health as well, with nearly half of
10 adults in the United States reporting high levels of stress due to COVID-19. Essential workers
11 and their families, who are at heightened risk of contracting the virus, experience significant
12 anxiety and trauma from potential exposure to the life-threatening condition. Panic attacks are
13 common among those who are infected and those who fear becoming infected.⁵

14 23. The World Health Organization (“WHO”) writes that “ALL workplaces”
15 (emphasis in original) should implement “physical distancing of at least 1 metre or more
16 according to the national recommendations.” World Health Org., *What Key Measures To Protect*
17 *Against COVID-19 In ALL Workplaces?*, available at [https://www.who.int/news-room/q-a-](https://www.who.int/news-room/q-a-detail/coronavirus-disease-covid-19-health-and-safety-in-the-workplace)
18 [detail/coronavirus-disease-covid-19-health-and-safety-in-the-workplace](https://www.who.int/news-room/q-a-detail/coronavirus-disease-covid-19-health-and-safety-in-the-workplace) (last visited Oct. 29,
19 2020). The best ways to do that are by limiting human-to-human contact (including through
20 physical distancing) and by taking other preventative measures, such as the use of PPE and
21 frequent handwashing and sanitization of physical objects. The CDC and Cal/OSHA in
22 conjunction with the CDPH have provided additional workplace-specific guidelines, which are
23 discussed in detail *infra* in paragraphs 36-46.

24 24. On January 30, 2020, the WHO declared COVID-19 a “public health emergency
25 of international concern.”

26
27 ⁴ [https://www.propublica.org/article/a-medical-worker-describes--terrifying-lung-failure-from-](https://www.propublica.org/article/a-medical-worker-describes--terrifying-lung-failure-from-covid19-even-in-his-young-patients)
28 [covid19-even-in-his-young-patients](https://www.propublica.org/article/a-medical-worker-describes--terrifying-lung-failure-from-covid19-even-in-his-young-patients)

⁵ See <https://www.nytimes.com/article/coronavirus-symptoms.html>;
<https://www.sacbee.com/news/coronavirus/article241363476.html>.

1 25. By February 24, 2020, severe outbreaks had already occurred in China, Europe,
2 and Iran. The next day, the CDC reported that, in their view, COVID-19 was headed towards
3 pandemic status. By February 27, 2020, California Governor Gavin Newsom reported that the
4 California case count was rapidly rising, with the state monitoring at least 8,400 people. By
5 March 3, 2020, the number of confirmed infections worldwide surpassed 90,000.

6 26. On March 4, 2020, Governor Newsom declared a state of emergency as a result of
7 COVID-19.

8 27. On March 11, 2020, the WHO declared COVID-19 a pandemic. The White House
9 declared a national emergency within days of that announcement.

10 28. On March 19, 2020, Governor Newsom issued a statewide shelter-in-place order
11 requiring California residents to stay home. Governor Newsom's order does not apply to
12 "essential workers" who provide necessary services to millions of Californians. Days later, the
13 federal government declared COVID-19 a major disaster in California at Governor Newsom's
14 request. By the end of the month, the United States was reported as leading the world in COVID-
15 19 cases, and at least 265 million United States residents were being asked or required to stay
16 home.

17 29. On May 28, 2020, the COVID-19 death toll in the United States surpassed
18 100,000. Within approximately two months, the death toll surpassed 150,000. As of September
19 4, 2020, there are 727,000 confirmed COVID-19 cases in California and 13,497 deaths.

20 30. There is no vaccine for COVID-19, which is highly contagious and easily
21 transmitted from person to person through respiratory droplets and other, smaller particles that
22 can remain in the air for hours and be inhaled, or that can land in other individuals' eyes, noses,
23 or mouths when in close contact with infected individuals. Research shows the virus may also
24 spread through contact with contaminated objects or surfaces. Recent news reports also suggest
25 individuals who recover from COVID-19 can later become re-infected.⁶

26 31. On July 6, 2020, two scientists, with the explicit support of 237 colleagues,
27

28 ⁶ See, e.g., <https://www.nbcnews.com/health/health-news/covid-19-reinfection-reported-nevada-patient-researchers-say-n1238679>; <https://www.nytimes.com/2020/08/24/health/coronavirus-reinfection.html>.

published an article emphasizing the risks of airborne spread, noting in particular that “the problem is especially acute in indoor enclosed environments, particularly those that are crowded and have inadequate ventilation”⁷ – in other words, environments like Defendants’ warehouses and other, similar facilities. They further noted the apparent role of airborne transmission in recent superspreading events.⁸ The authors noted that in addition to physical distancing and sanitization, attention must be paid to “provid[ing] sufficient and effective ventilation . . . supplement[ing] general ventilation with airborne infection controls . . . and avoiding overcrowding.”⁹

32. Amidst this pandemic, Defendants have, as a matter of policy and/or practice, systematically endangered their employees’ health and safety daily, in violation of the law. Among other issues and as described *infra* in further detail, Defendants have failed to provide sufficient PPE, implement social distancing protocols, or adopt other programs and procedures necessary to reduce their employees’ risk of contracting the virus. They have failed to respect clear health and safety guidelines, or the California Labor Code. Defendants’ behavior has been slow and insufficient to comply with applicable laws and appropriately protect their employees. Defendants continue to put their employees, customers, and the public at risk by maintaining policies that prioritize profit over the safety of their workforce.

B. Defendants Must Protect Their Employees’ Health and Safety

33. The California Labor Code requires employers to take steps to protect workers from any safety hazard, including diseases like COVID-19, which is widespread in the community. Applicable provisions with which Defendants have not complied, as described in further detail *infra*, include:

- i. Section 6400, which requires that every employer shall furnish employment and a place of employment that is safe and healthful for the employees therein;
- ii. Section 6401, which requires that every employer shall furnish and use safety devices and safeguards, and shall adopt and use practices, means, methods,

⁷ <https://academic.oup.com/cid/advance-article/doi/10.1093/cid/ciaa939/5867798>.

⁸ *Id.*

⁹ *Id.*

- 1 operations, and processes which are reasonably adequate to render such
2 employment and place of employment safe and healthful and shall do every other
3 thing reasonably necessary to protect the life, safety, and health of employees;
- 4 iii. Section 6402, which requires that no employer shall require or permit an employee
5 to go or be in any employment or place of employment which is not safe and
6 healthful;
- 7 iv. Section 6403, which requires that no employer shall fail or neglect to provide and
8 use reasonably adequate safety devices and safeguards, adopt or use reasonably
9 adequate methods and process, or to do every other thing reasonably necessary to
10 protect the life, safety, and health of employees;
- 11 v. Section 6404, which requires that no employer shall occupy or maintain any place
12 of employment that is not safe and healthful; and
- 13 vi. Section 6407, which requires that every employer must comply with the
14 occupational safety and health standards, within section 25910 of the Health and
15 Safety Code, and with all rules, regulations, and orders pursuant to this division,
16 which are applicable to his own actions and conduct.
- 17 34. General Industry Safety Orders propagated by Cal/OSHA establish minimum
18 standards and apply to all employments and places of employment as defined by California
19 Labor Code section 6303. Cal. Code Regs. Tit. 8, § 3202 (1974).
- 20 35. Defendants' policies and practices regarding COVID-19, described in further
21 detail *infra*, violate the following Safety and Health Standards set forth by Cal/OSHA in the
22 California Code of Regulations, title 8:
- 23 i. Section 3203, which requires that all employers have a written Illness Prevention
24 Program (IPP) to protect employees from workplace hazards and to implement
25 measures to prevent or reduce infection hazards and provide training thereon;
- 26 ii. Section 3366, which requires that employers provide washing facilities for
27 maintaining cleanliness;
- 28 iii. Section 3380, which requires that employers conduct a hazard assessment to

- 1 determine if COVID-19 is a hazard in the workplace necessitating the use of PPE
2 and, given that it was and is, provide exposed employees with properly fitting PPE;
- 3 iv. Section 5144, which requires that employers take minimum steps to ensure safe
4 and effective use of respirators required in the workplace due to the hazard caused
5 by COVID-19; and
- 6 v. Section 8414, requiring employers to provide employees who are exposed to
7 hazards in the workplace, which cannot be eliminated through engineering and
8 administrative controls are not effective in eliminating the hazards, with PPE
9 including head protection, hand protection, and body protection.

10 36. Cal/OSHA has provided guidance setting forth necessary measures to comply with
11 the California Labor Code regarding health and safety, and COVID-19 specifically.¹⁰ At
12 minimum, per these guidelines, employers must (1) create and implement injury and illness
13 prevention programs to protect employees from workplace hazards, including infectious
14 diseases; (2) establish infection prevention measures, such as encouraging sick employees to stay
15 home, implementing social distancing protocols, establishing procedures to routinely clean and
16 disinfect commonly touched surfaces and objects using EPA-approved disinfectants, and
17 providing EPA-registered disposable wipes for employees to wipe down commonly used
18 surfaces before use; (3) provide employee training; (4) provide washing facilities that have an
19 adequate supply of suitable cleansing agents, water, and single-use towels or blowers; (5) require
20 employees to wear cloth face coverings, as mandated by the State of California; and (6) conduct
21 a hazard assessment and then provide any necessary PPE to employees.

22 37. Cal/OSHA incorporates into these directives the CDC guidelines, which include
23 (1) creating a COVID-19 preparedness, response, and control plan; (2) conducting daily health
24 checks; (3) conducting a hazard assessment of the workplace; (4) determining which PPE is
25 needed for workers, and providing it; (5) encouraging employees to wear cloth face coverings in

26 _____
27 ¹⁰ See <https://www.dir.ca.gov/dosh/coronavirus/Health-Care-General-Industry.html> (“Workplace
28 safety and health regulations in California require employers to take steps to protect workers
exposed to infectious diseases like the Novel Coronavirus (COVID-19), which is widespread in
the community. Cal/OSHA has posted guidance to help employers comply with these
requirements . . .”)

the workplace; (6) implementing social distancing policies and practices in the workplace; (7) improving building ventilation systems; (8) actively encouraging sick employees to stay home; (9) regularly cleaning and disinfecting frequently touched surfaces using products that meet Environmental Protection Agency criteria for use against SARS-Cov-2; (10) training employees on infection prevention strategies; (11) implementing flexible sick leave and supportive policies and practices; and (12) providing employees with disinfecting wipes.

38. Cal/OSHA has issued additional guidelines specific to the logistics/warehousing and delivery industries. These guidelines fall into five broad categories: (1) creating a written, workplace-specific COVID-19 prevention plan; (2) providing COVID-19-specific worker training; (3) implementing individual control measures and screening; (4) implementing cleaning and disinfecting protocols; and (5) implementing physical distancing protocols.

a. Cal/OSHA Guidelines: Workplace-Specific Plans

39. Under the broader workplace-specific prevention plan guideline, Cal/OSHA directs employers to: (1) perform a comprehensive risk assessment of all work areas and work tasks; (2) designate a person at each establishment to implement the plan; (3) incorporate the CDPH Face Covering Guidance into the plan and including a policy for handling exemptions to the general requirement to wear facial coverings; (4) identify contact information for local health departments (“LHD”) where workplaces are located for communicating information about COVID-19 outbreaks among workers or customers; (5) train and communicate with workers and worker representatives about the plan; (6) make the plan available to workers and their representatives; (7) regularly evaluate workplaces for compliance with the plan and document and correct deficiencies identified; (8) investigate any COVID-19 illness and determine if any work-related factors could have contributed to the risk of infection, then update the plan as needed to prevent further cases; (9) implement the necessary processes and protocols when a workplace has an outbreak, following CDPH guidelines; and (10) identify close contacts (within six feet for 15 minutes or more) of an infected worker and take steps to isolate COVID-19 positive worker(s) and close contacts.

40. Per CDPH guidelines, when a workplace has an outbreak of COVID-19, it is

necessary to: (1) designate a workplace infection coordinator to implement COVID-19 infection prevention procedures and to manage COVID-19-related issues among employees; (2) instruct employees to stay home and report to the employer if they are having COVID-19 symptoms, were diagnosed with COVID-19, or are awaiting test results for COVID-19; (3) identify contact information for the LHD in the jurisdiction where the workplace is located; (4) notify the applicable LHD if there is a known or suspected outbreak in the workplace or if there are laboratory confirmed cases of COVID-19 at the workplace; (5) communicate with the LHD on how frequently the LHD expects updates from the employer on newly identified cases and symptomatic employees in the workplace; (6) share a roster of all employees with the applicable LHD; (7) identify additional employee cases and close contacts of cases to control further spread in the workplace; (8) notify all employees who were potentially exposed to individuals with COVID-19; and (9) determine when it is appropriate for cases and contacts of cases to return to work.

b. Cal/OSHA Guidelines: Illness Prevention Training

41. For COVID-19-related worker training in the logistics/warehousing and delivery industries, Cal/OSHA directs employers to cover (1) information on COVID-19, how to prevent it from spreading, and which underlying health conditions may make individuals more susceptible to contracting the virus; (2) self-screening at home, including temperature and/or symptom checks using CDC guidelines; (3) when it is safe to return to work after receiving a COVID-19 diagnosis; (4) when to seek medical attention; (5) the importance of frequent handwashing with soap and water, including scrubbing with soap for 20 seconds (or using hand sanitizer with at least 60% ethanol (preferred) or 70% isopropanol) when workers cannot get to a sink or handwashing station; (6) the importance of physical distancing, both at home and at work; (7) proper use of face coverings; and (8) information on paid leave benefits workers may be entitled to receive that would make it financially easier to stay home.

c. Cal/OSHA Guidelines: Individual Control Measures and Screening

42. Regarding individual control measures and screening, Cal/OSHA directs employers to provide temperature and/or symptom screenings for all workers in the

logistics/warehousing and delivery industries who report to a facility at the beginning of their shift or who must work their shift at a facility. Additionally, Cal/OSHA recommends providing disposable gloves where they may be helpful to supplement frequent handwashing or hand sanitizer use, for example, for workers who are screening others for symptoms or handling commonly touched items. Cal/OSHA's guidelines further state that employers must provide and ensure workers use all required protective equipment, including eye protection and gloves where necessary.

d. Cal/OSHA Guidelines: Cleaning and Disinfecting Protocols

43. Cal/OSHA directs delivery and logistics/warehousing employers to perform thorough cleaning in high traffic areas such as break rooms, lunch areas, and areas of ingress and egress, and disinfect commonly used surfaces with EPA-approved products for use against COVID-19. Cal/OSHA further directs employers to stagger breaks to enable physical distancing as well as frequent sanitization of restrooms.

44. Within a facility or warehouse, Cal/OSHA directs employers to have touchable surfaces cleaned between shifts or between users, whichever is more frequent, including but not limited to working surfaces, machinery, tools, equipment, shelves, storage rooms, handles, latches and locks, and controls on stationary and mobile equipment.

e. Cal/OSHA Guidelines: Physical Distancing Protocols

45. Cal/OSHA directs employers to implement measures to ensure physical distancing of at least six feet between workers, including transportation personnel and workers who are loading and unloading goods at delivery facilities. Such measures may include physical partitions or visual cues such as floor markings, colored tape, or signs to indicate where workers should stand. Cal/OSHA guidelines further recommend adjusting meetings (e.g., safety, pre-shift, or post-shift meetings) to ensure physical distance, or even cancelling such meetings or making them remote. Similarly, Cal/OSHA guidelines direct employers to implement policies and procedures to enable delivery workers to physically distance from customers ("contactless delivery").

46. Within warehouses and at employers' physical facilities, Cal/OSHA directs

employers to stagger or adjust shifts and breaks and use other work practices to limit the number of workers on the jobsite. Similarly, Cal/OSHA guidelines direct employers to place additional limitations on the number of workers in an enclosed area at a given time. In enclosed spaces where physical distancing is difficult to maintain, Cal/OSHA guidelines direct that employers should consider and implement the following hierarchy of strategies: (1) engineering controls including creating physical or spatial barriers between workers, such as Plexiglass or other sturdy and impermeable partitions; (2) administrative controls including increasing the number of shifts to reduce the number of personnel present at one time and ensure adequate physical distancing; and (3) the use of PPE, such as face shields, certain types of masks, and impermeable gloves. Cal/OSHA further recommends closing breakrooms, using barriers, or increasing distance between tables and chairs to separate workers and discourage congregating during breaks, as well as closing common areas where personnel are likely to congregate and interact.

C. Defendants' Policies and Practices Endanger their Employees and Violate the Law

47. From the beginning of the pandemic, Defendants have repeatedly ignored and/or failed to take the necessary steps to protect their employees from COVID-19. For example, Plaintiff and other warehouse workers discharged their duties on the warehouse floor with the general employee population, where employees come into contact with other employees, and Defendants took no measures to prevent contagion between these employees. Defendants fail to stagger work shifts or take other, similar measures to reduce employees' exposure to one another and to third parties. Employees must regularly work side by side in the warehouse, with no social distancing protocols implemented. Employees are afraid to be punished for not showing up to work, and therefore go to work even if they do not feel well.

48. Defendants have also not implemented any illness prevention program or provided employees with any illness prevention training, nor have they made changes to any ventilation system or other systems affecting the airflow.

49. Sanitation in Defendants' facilities is also inadequate. In Defendants' La Mirada fulfillment center, there are only two bathrooms with hand-washing facilities that must be shared between approximately 100 employees. Common areas and bathrooms in the warehouse are not

1 cleaned adequately enough to create a healthful environment. Defendants do not sanitize the
2 workplace, but instead leaves it to the employees to do so.

3 50. Defendants do not provide Plaintiff, Class members, and Aggrieved Employees
4 with a sufficient supply of cleaning fluid and hand sanitizer. When in supply, hand sanitizer is
5 available at only one location in the La Mirada fulfillment center. Oftentimes, there is no hand
6 sanitizer available to employees at all.

7 51. Defendants also do not provide their employees with sufficient PPE. While
8 Defendants provide masks to employees, they do so only approximately once per month.
9 Likewise, gloves are provided at the supervisors' discretion, and only after the supervisor has
10 made a determination that the gloves previously provided have been worn out. As such, Plaintiff,
11 Class members, and Aggrieved Employees must reuse PPE, undermining its protective function,
12 and oftentimes purchase their own. This PPE is insufficient to keep them safe, especially given
13 that Defendants have failed to establish protocols to enable warehouse employees to socially
14 distance in the workplace and have failed to make adequate hand-sanitizing and handwashing
15 facilities available to them.

16 52. The risk of contracting COVID-19 during the pandemic is serious, and
17 Defendants should have taken appropriate measures as a result. For reference, by April 2, 2020,
18 the virus had already sickened more than one million people and killed approximately 51,000
19 worldwide, reaching 171 countries across six continents. The virus' danger and highly
20 contagious nature, as well as public health guidance on preventing infection, were clear by that
21 point. The danger to Defendants' employees was equally clear.

22 53. Based on information and belief, Plaintiff alleges that Defendants have similarly
23 failed to implement adequate safety protocols and failed to provide a safe work environment
24 throughout their facilities in California.

25 54. Defendants' policies and practices throughout the pandemic have already causes
26 illness. Two of the employees at the La Mirada fulfillment center, where Plaintiff worked for
27 Defendants, contracted COVID-19. Management failed to take any action to prevent others from
28 becoming infected. Management has failed to respond to concerns employees raised about the

1 pandemic, their exposure to COVID-19, and infections among other staff members.

2 55. Upon information and belief, in response to the confirmed cases of COVID-19,
3 Defendants did not conduct contact tracing, did not identify and notify employees who had been
4 in close contact with those who were infected so they could quarantine or get tested, and expected
5 employees to continue business as usual. While Human Resources personnel eventually
6 confirmed the cases, a facility manager indicated that the cases were not yet confirmed.

7 56. Defendants, as a matter of policy and practice, *inter alia*: (1) have failed to
8 implement a workplace-specific plan; (2) have not provided employees with training on COVID-
9 19 prevention; (3) are not providing temperature checks or symptom screening services; (4) have
10 failed to implement physical distancing protocols or to structure the workday and worksite in a
11 way that makes it possible; (5) fail to sanitize common areas and bathrooms with sufficient
12 regularity; (6) have failed to update their ventilation systems; and (7) have failed to provide
13 sufficient PPE. Many of Defendants' employees, forced to fend for themselves, have had to
14 purchase their own supplies, such as masks, hand sanitizer, gloves, and the like. In sum,
15 Defendants have failed to follow public health guidelines or comply with the law.

16 57. Defendants were aware of life-threatening dangers posed by exposure to COVID-
17 19 by March 2020 if not earlier, including the risk that this deadly, highly contagious, easily
18 transmitted virus could spread among workers in confined indoor environments, especially if
19 potentially infected individuals—including non-symptomatic individuals—did not have
20 adequate PPE and were not properly trained and required to perform physical distancing and to
21 stay home if symptomatic or believed to have been exposed, and if equipment and common areas
22 were not regularly sanitized.

23 58. Defendants did not provide adequate PPE, training, or sanitization, nor did they
24 institute other policies or practices that public health experts in early 2020 were urging employers
25 of essential workers to implement to protect works and customers from exposure to this virulent
26 disease.

27 59. Defendants operate multiple facilities throughout California. Plaintiff is informed
28 and believes, and thereon alleges, that the unreasonably dangerous practices and conditions

described herein also exist at other facilities throughout the state of California and thus threaten the health and safety of the public at or near Defendants' facilities and the surrounding communities throughout the state of California.

D. Administrative Remedies

60. On or about June 9, 2020, Plaintiff gave written notice to the Labor and Workforce Development Agency ("LWDA") and to Defendant Staples, Inc. of his intent to bring claims against Defendant Staples, Inc. under California Labor Code 2699(b) and (c), 6423-6436, and 6427-6428. The letter also implicated Defendant's violations of, *inter alia*, Labor Code sections 6400, 6403, and 6306.

61. On or around July 8, 2020, Plaintiff filed a complaint with Cal/OSHA, with a copy to the LWDA and Defendant Staples, Inc., per California Labor Code section 2699.3(b).

62. On or around July 23, 2020, Plaintiff amended his letter to the LWDA to include additional facts and Labor Code violations, as well as information about Plaintiff's Cal/OSHA complaint.

63. On or about August 21, 2020, the Department of Industrial Relations ("DIR"), which oversees Cal/OSHA and the LWDA, issued a notice of intent to investigate.

64. On or about November 20, 2020, Plaintiff supplemented his previous letters to the LWDA to include an additional defendant: Defendant Staples Contract & Commercial LLC. The supplemental notice was also provided the Defendants. Plaintiff has satisfied the administrative pre-requisites to commence a PAGA action.

65. Plaintiff will update the Court regarding the progress of the investigation and reserves the right to amend the PAGA claims alleged herein, depending on the results of the investigation.

V. CLASS ACTION ALLEGATIONS

66. Plaintiff brings Causes of Action One through Four as a class action on behalf of himself and all others similarly situated pursuant to Code of Civil Procedure section 382. This action satisfies that provision's ascertainability, numerosity, commonality, typicality, adequacy, predominance, and superiority requirements. Plaintiff brings Cause of Action Five as a

representative action under the PAGA.

67. Class Definition: The Class that Plaintiff seeks to represent is defined as, and comprises, the following:

“All current and former non-exempt workers employed by Staples, Inc. and/or Staples Contract & Commercial LLC throughout California any time starting four years prior to the filing of this Complaint until resolution of this action.”

68. Ascertainability: The putative Class is ascertainable because it comprises a discreet, well-defined, and objectively identifiable group, as defined above. The Class members are easily identifiable from Defendants’ business records.

69. Numerosity: The potential members of the class are so numerous that joinder of all the members of the Class is impracticable. Plaintiff is informed and believes that the number of California Class members exceeds 100. This volume makes bringing the claims of each individual member of the class before this Court impracticable. Likewise, joining each individual member of the Class as a plaintiff in this action is impracticable. Furthermore, the identities of the Class will be determined from Defendants’ records, as will the compensation paid to each of them. As such, a class action is a reasonable and practical means of resolving these claims. To require individual actions would prejudice the Class and Defendants.

70. Existence and Predominance of Common Questions of Law and/or Fact: Common questions of law and/or fact exist as to the members of the proposed Class and, in addition, common questions of law and/or fact predominate over questions affecting only individual members of the proposed Class. The common questions include the following:

- i. Whether Defendants had sufficient policies and procedures to create COVID-19 preparedness, response, and control plans/worksite-specific plans for their California facilities;
- ii. Whether Defendants had sufficient policies and procedures to conduct hazard assessments of their California worksites;
- iii. Whether Defendants failed to implement proper face covering protocols;

- 1 iv. Whether Defendants failed to implement appropriate (or any) social/physical
2 distancing policies and practices at their California worksites;
- 3 v. Whether Defendants had sufficient policies and procedures to actively encourage
4 sick employees to stay home;
- 5 vi. Whether Defendants had sufficient policies and procedures to regularly clean and
6 disinfect frequently touched surfaces at their California worksites using products
7 that meet Environmental Protection Agency criteria for use against SARS-Cov-2;
- 8 vii. Whether Defendants had sufficient policies and procedures to enable employees
9 to regularly clean and disinfect frequently touched surfaces at their California
10 worksites using products that meet Environmental Protection Agency criteria for
11 use against SARS-Cov-2;
- 12 viii. Whether Defendants had sufficient training protocols and programs for the
13 employees at their California worksites related to COVID-19;
- 14 ix. Whether Defendants had sufficient policies and procedures to provide sanitizing
15 products to employees at their California worksites;
- 16 x. Whether Defendants had sufficient policies and procedures to stagger shifts to
17 enable social distancing at their California worksites;
- 18 xi. Whether Defendants failed to use engineering controls, as physical barriers or
19 ventilation upgrades, to make their California worksites safer during the pandemic;
- 20 xii. Whether Defendants had sufficient policies and procedures to provide, and did in
21 fact provide, sufficient PPE to their California employees;
- 22 xiii. Whether Defendants failed to implement proper quarantining guidelines for their
23 California employees;
- 24 xiv. Whether Defendants failed to implement or provide symptom screening or
25 temperature testing for their California employees;
- 26 xv. Whether Defendants had sufficient policies and procedures to report COVID-19
27 infections in their California workplaces to local health authorities;
- 28

- xvi. Whether Defendants had sufficient policies and procedures to notify employees who may have been exposed to COVID-19 in the workplace;
- xvii. Whether Defendants had sufficient policies and procedures to respond to and contain outbreaks in their workplaces;
- xviii. Whether Defendants' acts, or omissions, caused their California employees to bear a heightened risk of contracting COVID-19;
- xix. Whether Defendants' acts, or omissions, caused a heightened risk of COVID-19 contraction in their California employees' communities;
- xx. Whether Defendants' acts, or omissions, pose a public health risk to employees, customers, and members of the community;
- xxi. Whether Defendants failed to follow CDC guidelines in their California workplaces;
- xxii. Whether Defendants failed to follow CDPH guidelines in their California workplaces;
- xxiii. Whether Defendants' acts, or omissions, constitute a public nuisance;
- xxiv. Whether Defendants' policies and practices have resulted in violation of one or more of the Labor Code Provisions cited herein;
- xxv. Whether Defendants' policies and practices are unlawful, unfair and/or fraudulent business practices in violation of California Business & Professions Code §§17200 *et seq.*;
- xxvi. The injunctive and/or monetary relief to which Plaintiff and the proposed Class may be entitled as a result of the violations alleged herein.

71. Typicality: Plaintiff's claims are typical of the claims of the proposed Class. Defendants' common course of conduct in failing to follow public health guidelines, failing to guard against COVID-19 outbreaks in their workplaces, and failing to implement proper COVID-19 protocols and plans in their workplaces, have caused Plaintiff and the proposed Class to sustain the same or similar injuries and damages. Plaintiff's claims are thereby representative of and co-extensive with the claims of the proposed Class.

72. Adequacy: Plaintiff seeks relief for state law violations perpetrated by Defendants. In that sense, Plaintiff does not have any conflicts of interest with other Class members and will prosecute the case vigorously on behalf of the Class. Counsel representing Plaintiff is competent and experienced in litigating complex cases and large class actions, including wage and hour cases. Plaintiff will fairly and adequately represent and protect the interests of the Class members.

73. Superiority of Class Action: The class action is superior to other available means for the fair and efficient adjudication of this dispute. The injury suffered by each member of the proposed Class, while meaningful on an individual basis, is not of such magnitude as to make the prosecution of individual actions against Defendants economically feasible. Furthermore, individualized litigation increases the delay and expense to all parties and the court system presented by the legal and factual issues of the case. In contrast, the class action device presents far fewer management difficulties and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court, and avoids the problem of inconsistent judgments.

74. Appropriateness of Injunctive or Declaratory Relief: Final injunctive relief or corresponding declaratory relief is appropriate respecting the proposed Class as a whole. Defendants have acted or refused to act on grounds that apply generally to the proposed Class, such that final injunctive relief or corresponding declaratory relief may be properly applied to the proposed Class as a whole.

VI. CAUSES OF ACTION

FIRST CAUSE OF ACTION

Public Nuisance – Assisting in the Creation of Substantial and Unreasonable Harm to Public Health and Safety that Affects an Entire Community or Considerable Number of Persons

California Civil Code §§ 3294, 3479, 3480, 3491, 3493

California Code of Civil Procedure § 731

(By the Class and Against Defendants)

75. Plaintiff hereby realleges and reincorporates by reference the allegations set forth above as if fully set forth herein.

76. California Civil Code § 3479 defines “nuisance” as “[a]nything which is injurious

1 to health, . . . or is indecent or offensive to the senses, . . . so as to interfere with the comfortable
2 enjoyment of life or property.”

3 77. California Civil Code § 3480 defines “public nuisance” as any nuisance that
4 “affects at the same time an entire community or neighborhood, or any considerable number of
5 persons, although the extent of the annoyance or damage inflicted upon individuals may be
6 unequal.”

7 78. To constitute a “public nuisance,” the offense against, or interference with the
8 exercise of rights common to the public must be “substantial and unreasonable.” *People ex rel.*
9 *Gallo v. Acuna*, 14 Cal. 4th 1090, 1103, 1105 (1997).

10 79. The acts and omissions of Defendants alleged herein caused a considerable
11 number of persons to suffer increased exposures and risks of exposure to the COVID-19 virus,
12 including but not limited to employees at Defendants’ facilities, as well as customers, those
13 employees’ and customers’ family members, the persons with whom employees and customers
14 resided, and the persons with whom those employees and customers came into contact. These
15 acts and omissions substantially and unreasonably created and substantially assisted in the
16 creation of a grave risk to public health and safety, and wrongfully and unduly interfered with
17 Plaintiff’s and the Class members’ comfortable enjoyment of their lives and property. *See Cnty.*
18 *of Santa Clara v. Atlantic Richfield Co.*, 137 Cal. App. 4th 292, 305-06 (2006).

19 80. The acts and omissions of Defendants alleged herein substantially and
20 unreasonably created or assisted in the creation of the spread and transmission of grave, life-
21 threatening disease and infection, the risk of spread and transmission of grave, life-threatening
22 disease and infection, and the actual and real fear and anxiety of the spread and transmission of
23 grave, life-threatening disease and infection, all of which constitutes an actionable public
24 nuisance. *See, e.g.*, Restatement (Second) of Torts § 821B & cmt. g (“[T]he threat of
25 communication of smallpox to a single person may be enough to constitute a public nuisance
26 because of the possibility of an epidemic; and a fire hazard to one adjoining landowner may be
27 a public nuisance because of the danger of a conflagration.”); *Birke v. Oakwood Worldwide*, 169
28 Cal. App. 4th 1540, 1546 (2009) (secondhand smoke in condominium complex); *Atlantic*

1 *Richfield Co.*, 137 Cal. App. 4th at 306.

2 81. Pursuant to California Civil Code § 3493, Plaintiff and the Class have standing to
3 maintain an action for public nuisance because the nuisance is especially injurious to Plaintiff
4 and the other essential workers Staples employs in California. Plaintiff and the Class are directly
5 and personally exposed to dangerous working conditions at Defendants' facilities. The
6 dangerous working conditions are particularly harmful to Class members who are especially
7 vulnerable due to age and/or underlying health conditions. The Class members' potential
8 exposure also puts their loved ones and dependents at risk, some of whom may be especially at
9 risk of severe symptoms and/or death. The injuries of Plaintiff and the Class are different from
10 the nonetheless serious threat and injury this public nuisance inflicts on the community, due to
11 the nature of their work and the consequences of Defendants' actions to them, their loved ones,
12 and their communities.

13 82. California Code of Civil Procedure § 731 and California Civil Code §§ 3491, 3493,
14 and 3495 authorize Plaintiff to bring this action for injunctive relief, equitable abatement, and
15 damages from Defendants.

16 83. Defendants' failure to comply with minimum health and safety standards in their
17 facilities has caused, and is reasonably certain to cause, community spread of the COVID-19
18 infection. Such community spread has not been, and will not be, limited to the physical location
19 of Defendants' facilities or to the customers or employees receiving packages originating from
20 those facilities, as infected workers have gone home and will go home to interact with their
21 family members, co-residents, neighbors, and others with whom they must necessarily interact
22 as they undertake essential daily activities such as shopping, doctor's visits, and childcare.

23 84. This community spread has resulted in increased disease and will continue to result
24 in increased disease.

25 85. Defendants' conduct as alleged herein unreasonably interferes with the common
26 public right to public health and safety.

27 86. Defendants' decision to conduct business as usual without ensuring minimum
28 health and safety standards at their facilities, including meeting the CDC and CDPH guidelines

1 and other minimum public health standards necessary to stop or substantially reduce the spread
2 of COVID-19, is reasonably certain to cause further spread of COVID-19 infection and the
3 reasonable and severe fear of the further spread of COVID-19 to Plaintiff, the Class, and other
4 community members.

5 87. If immediate injunctive relief is not granted, Plaintiff and the Class face a
6 significant risk of irreparable harm in the form of physical and emotional injuries and death from
7 Defendants' continuing creation and perpetuation a public nuisance. Plaintiff and other Class
8 members employed at Defendants' California facilities are vulnerable to severe bodily injury or
9 death because of their workplace exposures. Many Class members are also vulnerable to severe
10 bodily injury or death because of age and/or underlying health conditions. Others have family
11 members or other loved ones who face special vulnerability because of medical conditions and/or
12 age. Such injuries cannot be adequately compensated through an award of damages or otherwise
13 remedied at law.

14 88. The risk of injury Plaintiff and the Class face outweighs the cost of reasonable
15 measures included in Plaintiff's proposed injunction.

16 89. Defendants are substantial contributors to the public nuisance alleged herein.

17 90. Defendants' past and ongoing conduct is a direct and proximate cause of Plaintiff's
18 and the Class' injuries and threatened injuries.

19 91. Defendants should have known that their conduct as alleged herein would be the
20 direct and proximate cause of the injuries alleged herein to Plaintiff and the Class.

21 92. Defendants' conduct as alleged herein constitutes a substantial and unreasonable
22 interference with and obstruction of public rights and property, including the public rights to
23 health, safety and welfare of Plaintiff and Class members, and those who come into contact with
24 them, whose safety and lives are at risk due to Defendants' failure to adopt and implement proper
25 procedures for protecting workers, customers, and others from exposure to the COVID-19 virus.

26 93. As a proximate result of Defendants' unlawful actions and omissions, Plaintiff and
27 the Class have been damaged in an amount according to proof at trial.

28 94. Cal/OSHA's decision to investigate Defendants corroborates the claims herein.

1 However, that investigation only scratches the surface of the far-reaching violations occurring
2 systematically throughout Defendants' California facilities.

3 95. In addition to declaratory relief, injunctive relief, and damages as alleged herein,
4 Plaintiff and Class members are entitled to interest, penalties, attorneys' fees and expenses
5 pursuant to Code of Civil Procedure § 1021.5, and costs of suit.

6 **SECOND CAUSE OF ACTION**
7 **Violations of California's Unfair Competition Law**
8 **California Labor Code §§ 17200, *et seq.***
9 **(By the Class and Against Defendants)**

10 96. Plaintiff hereby realleges and reincorporates by reference the allegations set forth
11 above as if fully set forth herein.

12 97. Defendants' acts and omissions constituting a public nuisance, as well as their
13 violations of the California Labor Code and Cal/OSHA regulations as alleged herein, also
14 constitute unfair and unlawful business practices under California Business and Professions
15 Code §§ 17200 *et seq.*

16 98. Defendants' aforementioned acts and omissions constitute business practices in
17 that Defendants have engaged in them repeatedly over a significant period of time and in a
18 systematic manner, to the detriment of Plaintiff and the Class, and to Defendants' economic
19 benefit.

20 99. Defendants' aforementioned acts and omissions have caused economic injury to
21 Plaintiff and the Class, including but not limited to lost wages after being precluded from coming
22 to work by the unsafe conditions, medical expenses, cost of healthcare supplies and PPE, and
23 child and family care expenses. Plaintiff Booth, for example, has incurred expenses during the
24 pandemic when he had no choice but to purchase supplies including masks, gloves, and hand
25 sanitizer.

26 100. Defendants' acts and omissions have been unlawful because they have violated
27 the requirements of the California Labor Code, Cal/OSHA regulations, and CDPH directives.
28 Defendants have operated their facilities, equipment, and vehicles without providing adequate
and appropriate PPE, handwashing supplies, and cleaning supplies to employees; ensuring that

1 employees properly use face coverings at all times; requiring or adopting a plan that allows
2 maintenance of a minimum six-foot distance between individuals at all times where possible;
3 regularly disinfecting high-touch surfaces; conducting temperature or symptom screenings at the
4 beginning of each work shift; directing or allowing employees who have been in close contact
5 with others who are sick or symptomatic to remain home and follow appropriate guidelines for
6 quarantining; regularly cleaning and disinfecting commonly used surfaces and areas; cleaning
7 and sanitizing all shared equipment and touchable surfaces between uses; providing training to
8 employees; conducting contact tracing; creating a worksite-specific plan to prevention
9 infections; and implementing engineering controls that would help reduce infection.

10 101. Defendants' actions also constitute "unfair" business practices because they have
11 foregone the necessary protective measures required by applicable law that could have prevented
12 the unsafe conditions. Defendants did so to gain an unfair competitive advantage against law-
13 abiding employers by foregoing the costs of such protective measures and requiring that business
14 go on unabated, despite the unsafe conditions and documented infections in the workplace.

15 102. Because of Defendants' unfair and unlawful business practices, Defendants have
16 gained an unfair competitive advantage over other logistics, warehousing, and delivery service
17 providers that adequately protect the health and safety of their employees, customers, and the
18 public, and have reaped and continue to reap unfair and illegal profits at the expense of Plaintiff,
19 the Class, and members of the public.

20 103. Because of Defendants' unfair and unlawful business practices, Plaintiff and the
21 Class have lost money or property, including in the form of lost wages and unreimbursed
22 expenses.

23 104. Defendants' unfair and unlawful business practices entitle Plaintiff to seek
24 preliminary and permanent injunctive relief, restitution, interest, penalties, attorneys' fees,
25 expenses pursuant to Code of Civil Procedure § 1021.5, and costs of suit.

26 105. Wherefore, Plaintiff requests relief as hereinafter provided.

27 ///

28 ///

THIRD CAUSE OF ACTION
Reimbursement of Business Expenses
California Labor Code §§ 2800, 2801, 2804
(By the Class and Against Defendants)

106. Plaintiff hereby realleges and incorporates by reference the allegations set forth above as if fully set forth herein.

107. At all relevant times, Plaintiff and Class members were employees covered by Labor Code §§ 2800, 2802, and 2804.

108. California Labor Code § 2800 provides: “An employer shall in all cases indemnify his employee for losses caused by the employer’s want of ordinary care.”

109. California Labor Code § 2802 provides: “An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.”

110. During the applicable statutory period, Plaintiff and Class members have incurred necessary expenditures and losses in direct consequence of the discharge of their employment duties and in obedience to the directions of Defendants, for which Defendants did not reimburse Plaintiff and Class members, including but not limited to: (1) masks, (2) gloves, and (3) hand sanitizer.

111. Labor Code § 2804 provides: “Any contract or agreement, express or implied, made by any employee to waive the benefits of this article or any part thereof, is null and void, and this article shall not deprive any employee or his personal representative of any right or remedy to which he is entitled under the laws of this State.”

112. Thus, regardless of any agreement signed by Class members, Defendants have engaged in illegal expense-shifting practices by failing to fully reimburse Plaintiff and members of the Class for necessary business-related expenses and costs.

113. Under California Labor Code §§ 2800, 2802, and 2804, Plaintiff and Class members are entitled to recover their unreimbursed expenditures and losses, interest thereon,

attorneys' fees, and costs of suit, in an amount to be proven at trial.

114. Wherefore, Plaintiff requests relief as hereinafter provided.

FOURTH CAUSE OF ACTION

Declaratory Judgment

California Code of Civil Procedure § 1060, *et seq.*

(By the Class and Against Defendants)

115. Plaintiff hereby incorporates and realleges each and every paragraph of this Complaint as if the same were set forth herein.

116. A declaratory judgment is necessary and proper in that Plaintiff contends that Defendants have committed and continue to commit the violations set forth above and Defendants, on information and belief, will deny that they have done so and/or that they will continue to do so.

117. Wherefore, Plaintiff requests relief as hereinafter provided.

FIFTH CAUSE OF ACTION

Statutory Penalties Pursuant to PAGA (Labor Code §§ 2698, *et seq.*)

(By the Aggrieved Employees and Against Defendants)

118. Plaintiff hereby incorporates and realleges each and every paragraph of this Complaint as if the same were set forth herein.

119. Plaintiff asserts claims for civil penalties as a representative of the State of California, as authorized by the PAGA, California Labor Code sections 2698, *et seq.*, and to the extent permitted by law, on behalf of the Aggrieved Employees who have worked out of Defendants' California facilities and suffered one or more of the violations alleged.

120. Plaintiff is an "aggrieved employee" within the meaning of Labor Code section 2699(c) and is a proper representative to bring a civil action on behalf of himself and other current and former Staples employees pursuant to the procedures specified in Labor Code section 2699.3(b) and (c) because Plaintiff was employed by Defendants and one or more of the Labor Code violations alleged herein was against him.

121. Plaintiff seeks to represent all current and former employees of Defendants in California ("Aggrieved Employees") who suffered one or more of the violations alleged, within the statutory period.

122. Under Labor Code section 6309, Division of Occupational Safety and Health

1 (“DOSH”) is required to investigate a complaint from an employee no later than three working
2 days after an allegation of a serious violation or fourteen calendar days after an allegation of a
3 non-serious violation.

4 123. DOSH must “inform the complainant, whenever his or her identity is known, of
5 any action taken by the division in regard to the subject matter of the complaint, and the reasons
6 for the action, within 14 calendar days of taking any action.”

7 124. If no investigation or inspection occurs, the Aggrieved Employee may commence
8 a private right of action under Labor Code section 2699.3(b)(2)(B).

9 125. On or about June 9, 2020, Plaintiff gave written notice to the LWDA and to
10 Defendant Staples, Inc. of his intent to bring claims against it under California Labor Code
11 2699(b) and (c), 6423-6436, and 6427-6428. The letter also implicated Defendant Staples, Inc.’s
12 violations of, *inter alia*, Labor Code sections 6400, 6403, and 6306.

13 126. On or around July 8, 2020, Plaintiff filed a complaint with Cal/OSHA, with a copy
14 to the LWDA and Defendant Staples, Inc., per California Labor Code section 2699.3(b).

15 127. On or around July 23, 2020, Plaintiff amended his letter to the LWDA to include
16 additional facts and Labor Code violations, as well as information about Plaintiff’s Cal/OSHA
17 complaint.

18 128. On or about August 21, 2020, the DIR which oversees Cal/OSHA and the LWDA,
19 issued a notice of intent to investigate.

20 129. On or about November 20, 2020 Plaintiff supplemented his letter to the LWDA to
21 reflect that he would be pursuing the causes of action indicated in the prior letters against an
22 additional defendant: Staples Contract & Commercial LLC. A copy of this supplemental notice
23 was sent to Defendants.

24 130. The DIR has not provided further information to Plaintiff at this point.

25 131. More than 33 calendar days have passed since the postmark date of Plaintiff’s
26 letter, and as of the date of filing this Complaint, Defendants have not provided any notice of
27 cure. Out of an abundance of caution, to preserve his rights, Plaintiff is including this Fifth Cause
28 of Action.

1 132. Labor Code sections 2698 *et seq.* grant California employees the right to bring a
2 civil action for violation of any provision of the Labor Code on behalf of themselves and other
3 current or former employees to recover civil penalties. In passing the PAGA, the California
4 Legislature “declared that adequate financing of labor law enforcement was necessary to achieve
5 maximum compliance with state labor laws, that staffing levels for labor law enforcement
6 agencies had declined and were unlikely to keep pace with future growth of the labor market,
7 and that it was therefore in the public interest to allow aggrieved employees, acting as private
8 attorneys general, to recover civil penalties for Labor Code violations.” *Arias v. Super. Ct.*, 46
9 Cal. 4th 969, 980 (2009).

10 133. PAGA permits aggrieved employees to collect the civil penalties authorized by
11 law and normally collectible by the LWDA or any of its departments or divisions. *See* Lab. Code
12 § 2699(a). However, because the action is brought on behalf of the state, 75% of the fees
13 collected are distributed to the LWDA for the enforcement of labor laws and for the education
14 of employers and employees. The remaining 25% is shared between aggrieved employees. *See*
15 Lab. Code. § 2699(i).

16 134. Plaintiff hereby seeks to collect civil penalties for the Labor Code violations
17 described herein.

18 135. Labor Code sections 6300 *et seq.* authorize the enforcement of effective standards
19 to maintain safe and healthy work environments.

20 136. Labor Code section 6417 requires DOSH to issue a citation with reasonable
21 promptness against an employer who has violated any standard, rule, order, or regulation, where
22 the violation is serious, repeated, willful or arises from a failure to abate and to prepare and
23 maintain records capable of supplying an inspector with previous citations and notices issued to
24 an employer.

25 137. Labor Code sections 6428-6430 require DOSH to impose civil penalties for
26 serious, willful, or repeat violations or where an employer fails to correct violations in a timely
27 manner.

28 138. Labor Code section 2699(g) further provides that any employee who prevails in

an action for civil penalties is entitled to an award of reasonable attorneys' fees and costs. Plaintiff also seeks to recover attorneys' fees and costs.

139. Wherefore, Plaintiff requests relief as hereinafter provided.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of himself, Class members, the State of California, and Aggrieved Employees, requests the following relief:

- a. That the Court determine that this action may be maintained as a class action under Code of Civil Procedure section 382;
- b. For an order appointing Plaintiff as representative of the Class;
- c. For an order appointing Plaintiff's attorneys as Class Counsel;
- d. For preliminary and permanent injunctive relief enjoining Defendants from continuing to engage in, and from refraining from engaging in, the wrongful acts, omissions, and practices alleged herein whose commission and omission constitute a public nuisance, unfair business practice, and/or violation of the California Labor Code;
- e. For a declaration that Defendants have committed a public nuisance and unfair business practices by the wrongful acts, omissions, and practices alleged herein;
- f. That the Court find that Defendants have been in violation of Labor Code sections 2800, 2802, 6400, 6401, 6401.7, 6402, 6403, and 6404;
- g. For compensatory damages in an amount to be ascertained at trial;
- h. For restitution of all monies due to Plaintiff and the Class;
- i. For civil and statutory penalties available under the law;
- j. For punitive damages pursuant to Civil Code section 3294, due to, *inter alia*, Defendants' failure to be forthcoming about infections in the workplace, failure to comply with the law and public safety standards, and disregard for the health and safety of their employees and the public;
- k. For reasonable attorneys' fees and costs pursuant to Code of Civil Procedure section 1021.5, Labor Code section 2802(c), and/or any other applicable

provisions providing for attorneys' fees and costs;

l. For prejudgment interest pursuant to Labor Code section 2802 and Civil Code sections 3287, 3288, and/or any other applicable provision providing for prejudgment interest; and

m. For such other and further relief as this Court deems just and proper.

Respectfully submitted,

Date: December 7, 2020



Carolyn H. Cottrell
David Leimbach
Kristabel Sandoval
SCHNEIDER WALLACE
COTTRELL KONECKY LLP

*Attorneys for Plaintiff, Class Members, and the
Aggrieved Employees*

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Respectfully submitted,

Cady Cottrell

*Attorneys for Plaintiff, Class Members, and the
Aggrieved Employees*