EFiled: Dec 15 2006 11:12AM EST
Transaction ID 13207352

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

DONNA CONRAD, Plaintiff, v. ARTHUR M. BLANK, BASIL L. ANDERSON, BRENDA C. BARNES, JOHN B. WILSON, JOHN C. BINGLEMAN, JOHN J. MAHONEY, JOSEPH S. VASSALLUZZO, LOUIS R. PEPI, MARTIN E. HANAKA, MARTIN TRUST, MARY E. BURTON, PAUL F. WALSH, ROBERT C. NAKASONE, RONALD L. SARGENT, ROWLAND T. MORIARTY, SUSAN S. HOYT, THOMAS G. STEMBERG, JAMES E. FLAVIN, ROBERT K. MAYERSON, PATRICK A. HICKEY, JACK A. VANWOERKOM, and JEFFREY E. NACHBOR, Defendants, and STAPLES, INC., Nominal Defendant.	)	C.A. No. 2611-N

DERIVATIVE ACTION COMPLAINT

Plaintiff, Donna Conrad, for her Derivative Action Complaint, based upon the investigation of her counsel, alleges as follows on information and belief:

INTRODUCTION

1. This shareholders' derivative action is brought in the right of, and for the benefit of nominal defendant Staples, Inc. ("Staples" or the "Company") against certain members of its

current and former Board of Directors and certain of its current and former executive officers (collectively, "Defendants") to remedy Defendants' breaches of fiduciary duties and other violations of law which have caused damage to Staples. This action arises out of Defendants' conduct of authorizing, or through abdication of duty permitting, the back-dating of stock option grants to and for the benefit of Staples' officers and Directors, including defendants Management Defendants Sargent, Anderson, Mahoney, Stemberg, Hanaka, Wilson, Hoyt, Bingleman, Vassalluzzo, Pepi, Flavin, Mayerson, Hickey, VanWoerkom, and Nachbor, and at the expense of Staples and its shareholders.

2. A stock option granted to an employee of a corporation allows the employee to purchase company stock at a specified price – referred to as the "exercise price" – for a specified period of time. Stock options are granted as part of employee compensation packages as a means to create incentives to boost profitability and stock value. When the employee exercises the option, he or she purchases the stock from the company at the exercise price, regardless of the stock's price at the time the option is exercised. Exercise prices are almost universally set at the fair market value of the stock on the date of the option grant. This method ensures that employees have an incentive to increase the company's stock value, since their options are worthless unless the stock price increases.

3. In recent months, a number of companies have admitted that they back-dated their stock options. Rather than reporting options as being granted on the day that they were actually granted, these companies have disclosed that they reported that options were granted on earlier dates when the stock prices (and thus the exercise prices) were lower. Options that were back-dated in this manner are thus already valuable when they are received (they are "in the money"), even if the stock price does not go up at all. When these options are exercised, the employee

pays less than they should for company stock, and the company receives less money than it should for the stock.

4. As detailed below, the multi-year pattern of grant dates that were highly favorable to a number of past and present Directors and officers, demonstrates that the stock options were, in fact, back-dated. In many instances, grants were purportedly dated the very day that Staples stock hit its low price for the month and/or just prior to a sharp increase in the market price of the Company's stock.

5. Back-dating the date of issuance of stock options violated Staples' stock option plans, which provided that stock option grants be priced at not less than the fair market value of the common stock on the date of the grant, as measured by the publicly traded closing price for the stock on the date of the grant. Additionally, Staples filed numerous documents with the SEC, including proxy statements and 10-K Annual Reports, that falsely stated that the Company did not back-date its options. Back-dating options was a direct breach of Defendants' fiduciary duties of loyalty, care, fair dealing, and good faith to Staples.

6. Defendants' conduct has unjustly enriched many of Staples' past and present officers and Directors, including each of the Management Defendants (as defined below), to the detriment of Staples and its shareholders.

PARTIES

7. Plaintiff Donna Conrad is a resident of Massachusetts. She is currently a shareholder of Staples and has continuously been a shareholder of Staples since February 5, 1998.

8. Nominal Defendant Staples is a Delaware corporation with its corporate headquarters in Framingham, Massachusetts.

Management Defendants – Received Back-Dated Options

9. Defendant Ronald L. Sargent ("Sargent") has been CEO of Staples since 2002, Chairman of the Board since 2005, and a Director since 1999. He was President from 1998 until January of 2006, COO from 1998 until 2002, and President – North American Operations from 1997 until 1998. He previously held other positions after joining the Company in 1989. Sargent authorized, approved and personally benefited from the back-dated stock option grants described herein.

10. Defendant Basil L. Anderson ("Anderson") has served on the Board of Staples since 1997. He served on the Audit Committee from 1998 until 2001. He was also Vice-Chairman from 1997 until March of 2006. Anderson authorized, approved and personally benefited from the back-dated stock option grants described herein.

11. Defendant John J. Mahoney ("Mahoney") has been the Vice-Chairman (non-Board) and CFO of Staples since January of 2006. He was promoted to these positions after serving as Executive Vice-President, Chief Administrative Officer, and CFO beginning in October 1997. He was Executive Vice-President and CFO from 1996 until 1997. Mahoney personally benefited from the back-dated stock option grants described herein.

12. Defendant Thomas G. Stemberg ("Stemberg") was a co-Founder of Staples, Inc. and is currently Chairman Emeritus, a non-Board position. He was a Director beginning in 1986, Chairman of the Board from 1998 until 2004, and CEO from 1986 until 2002. He has also served as both Executive and Non-Executive Chairman. Stemberg authorized, approved and personally benefited from the back-dated stock option grants described herein.

13. Defendant Martin E. Hanaka ("Hanaka") was President and COO of Staples from 1994 until 1997 and a Director from 1996 until 1997. Hanaka authorized, approved and personally benefited from the back-dated stock option grants described herein.

14. Defendant John B. Wilson ("Wilson") was Executive Vice-President -- Finance and Strategy as well as CFO of Staples from 1992 until 1996. Wilson personally benefited from the back-dated stock option grants described herein.

15. Defendant Susan S. Hoyt ("Hoyt") was Executive Vice-President – Human Resources of Staples from 1996 until 2002. Hoyt personally benefited from the back-dated stock option grants described herein.

16. Defendant John C. Bingleman ("Bingleman") was President – Staples International of Staples from 1997 until 2000 and President – North American Superstores from 1994 until 1997. Bingleman personally benefited from the back-dated stock option grants described herein.

17. Defendant Joseph S. Vassalluzzo ("Vassalluzzo") was Vice-Chairman of Staples from 1999 until 2004. He was President – Realty and Development from 1997 until 1999 and President – Staples Realty from 1996 until 1997. He was an Executive Vice-President – Global Growth and Development from 1993 until 1996. Vassalluzzo personally benefited from the back-dated stock option grants described herein.

18. Defendant Louis R. Pepi ("Pepi") was Executive Vice-President – Human Resources of Staples from 1994 until 1995. He was President – Staples, the Office Superstore from 1993 until 1994 and Executive Vice-President – Operations from 1990 until 1993. Pepi personally benefited from the back-dated stock option grants described herein.

19. Defendant James E. Flavin ("Flavin") served as Senior Vice-President - Finance and Corporate Controller for Staples from 1995 until 1997. Flavin personally benefited from the back-dated stock option grants described herein.

20. Defendant Robert K. Mayerson ("Mayerson") served in various capacities at Staples, including as Senior Vice-President – Finance, Treasurer, and Corporate Controller. He has also served as the Treasurer of Quill Corporation, a Staples subsidiary. He worked at Staples from 1993 until 1999 and then again beginning in 2004. Mayerson personally benefited from the back-dated stock option grants described herein.

21. Defendant Patrick A. Hickey was Senior Vice-President and Corporate Controller for Staples from 1999 to 2002. Prior to that, he served in various capacities after joining Staples in June 1993, including Vice-President and Treasurer from 1997 to 1999, Vice-President—Financial Planning, Analysis & Reporting from 1996 to 1997 and Director of Financial Planning from 1994 to 1996. Hickey personally benefited from the back-dated stock option grants described herein.

22. Defendant Jack A. VanWoerkom ("VanWoerkom") has been Executive Vice-President, General Counsel and Corporate Secretary for Staples since 2003. Prior to that, he was Senior Vice-President, General Counsel and Secretary beginning in 1999. VanWoerkom personally benefited from the back-dated stock option grants described herein.

23. Defendant Jeffrey E. Nachbor ("Nachbor") was Senior Vice-President and Corporate Controller for Staples from 2003 until 2004. Nachbor personally benefited from the back-dated stock option grants described herein.

24. The above Defendants (other than nominal Defendant Staples) are hereinafter sometimes referred to collectively as "Management Defendants."

Director Defendants – Authorized Back-Dated Options

25. Defendant Arthur M. Blank ("Blank") has served on the Board of Staples since 2001. He has served on the Company's Compensation Committee since 2002. Blank authorized and approved the back-dated stock option grants described herein.

26. Defendant Martin Trust ("Trust") has served on the Board of Staples since 1987. He served on the Compensation Committee from at least 1995 until 2003. Trust authorized and approved the back-dated stock option grants described herein.

27. Defendant Robert C. Nakasone ("Nakasone") has served on the Board of Staples since 1986. He served on the Compensation Committee from at least 1995 until 2002. Nakasone authorized and approved the back-dated stock option grants described herein.

28. Defendant Brenda C. Barnes ("Barnes") has served on the Board of Staples since 2002. She served on the Audit Committee in 2003. Barnes authorized and approved the back-dated stock option grants described herein.

29. Defendant Mary E. Burton ("Burton") has served on the Board of Staples since 1993 and on the Audit Committee since at least 1995. Burton authorized and approved the back-dated stock option grants described herein.

30. Defendant Paul F. Walsh ("Walsh") has served on the Board of Staples since 1990 and on the Audit Committee since at least 1995. Walsh authorized and approved the back-dated stock option grants described herein.

31. Defendant Rowland T. Moriarty ("Moriarty") has served on the Board of Staples since 1986. Moriarty authorized and approved the back-dated stock option grants described herein.

32. Defendants Blank, Trust, and Nakasone are hereinafter sometimes referred to collectively as "Compensation Committee Defendants."

33. Defendants Barnes, Burton, and Walsh, along with Defendant Anderson, are hereinafter sometimes referred to collectively as "Audit Committee Defendants."

34. Defendants Blank, Trust, Nakasone, Barnes, Burton, Walsh, and Moriarty, along with Defendants Sargent and Anderson, are hereinafter sometimes referred to collectively as "Current Director Defendants."

35. Defendants Blank, Trust, Nakasone, Barnes, Burton, Walsh, and Moriarty, along with Defendants Sargent, Anderson, Stemberg, and Hanaka, are hereinafter sometimes referred to collectively as "Director Defendants."

36. All of the Defendants identified above (except for Nominal Defendant Staples) are sometimes collectively referred to as the "Defendants."

FACTS

37. Staples (a Fortune 500 company) is the world's largest supplier of office products.

38. Between 1994 and July 2003, Staples, through the actions of its Board of Directors and the Compensation Committee thereof, granted stock options for the purchase of millions of shares of the Company's common stock to past and present officers and Directors.

A. THE STOCK OPTION PLANS.

39. In shareholder approved stock option plans filed with the Securities and Exchange Commission ("SEC"), Staples contracted and represented that the exercise price of the stock options would be no less than the fair market value of the Company's common stock, measured by the publicly traded closing price for Staples stock, on the date of grant. Staples has a number of stock option plans that were in effect during the relevant period, all of which bar back-dating.

40. The 1987 Stock Option Plan (the "1987 Plan") expired in 1997. The Company has stated in its Annual Reports filed in 1996 through 2001, that, under the 1987 Stock Plan, "The exercise price of options granted . . . may not be less than 100% of the fair market value of the [Company's] stock at the date of grant." In its Annual Reports filed in 2001 through 2004, the Company stated that, under the 1987 Plan, "Options have an exercise price equal to the fair market value of the common stock on the date of grant." Thus, back-dating of options is barred by this plan. According to the Company's Annual Reports, the 1987 Plan was administered, at least in part, by the Compensation Committee.

41. The Amended and Restated 1992 Equity Incentive Plan (the "1992 Plan") prohibited the issuance of "in the money options" and required at all relevant times:

> [T]he purchase price per share of stock deliverable upon the exercise of an option shall be determined by the Board of Directors but shall in no event be less than 100% of the fair market value of such stock, as determined by the Board of Directors, at the time of grant of such option . . . .

42. The 1992 Plan further provided that it was to be administered by Board of Directors, or a committee as delegated by the Board, specifically providing as follows:

- "The Plan will be administered by the Board of Directors of the Company...."
- "The Board of Directors may ... delegate any or all of its powers under the Plan to a committee (the "Committee") appointed by the Board of Directors...."
- "Options granted pursuant to the Plan shall be authorized by action of the Board (or a committee designated by the Board of Directors)..."

According to the Company's Annual Reports and the Compensation Committee Charter, much of the administration of the Plan has been delegated to the Compensation Committee.

B. THE STOCK OPTION BACKDATING SCHEME.

43. Contrary to the foregoing contractual requirements, the multi-year pattern of grant dates that were highly favorable to the Management Defendants (discussed in greater detail below), demonstrates that the stock options were not, in fact, priced on the date of the grant but were back-dated. In many instances, the annual grants were purportedly dated the very day that Staples stock hit its low price for the month and/or just prior to a sharp increase in the market price of the Company's stock.

44. Many companies make their stock option grants at the same time each year, a policy that eliminates the potential for surreptitious back-dating. In contrast, between 1994 and July of 2003, stock options were granted to Staples executives and Directors in every month of the calendar year. Interestingly, Staples already appears to follow a better model for its Non-Employee Directors: They receive options on scheduled dates, thus avoiding the possibility of back-dating.

45. Based on public filings, it appears that between 1994 and July 1, 2003,[1] Staples granted options on 71 separate dates to Executives and Directors. Of those grants dates, 20 were scheduled in advance and thus could not be back-dated. Of the remaining 51 grants for which timing was discretionary, 12 (23.5%), representing 7,577,291 options, appear to be back-dated:

- Two of the 51 purported grant dates fell on dates that coincided with the lowest trading price of the fiscal quarter (and hence month) for Staples stock.
- Six of the 51 purported grant dates fell on dates that coincided with the lowest trading price of the month for Staples stock.

[1] After August 29, 2002, Staples was required under the Sarbanes-Oxley Act to report grants within two days. This requirement was designed to stop back-dating. Staples appears to have adopted this procedure, and stopped back-dating, after July 1, 2003.

- Four of the 51 purported grant dates fell on dates that were otherwise exceptionally favorable for recipients, such as at the bottom of a dip in prices.

Staples's stock increased substantially in price within 20 trading days (approximately one calendar month) of each of these dates. The odds of this favorable a series of grants having occurred by chance are extraordinarily low.

The following table lists Staples' back-dated option grants. (Note that due to a number of lapses in SEC reporting by Staples, this table is likely to underreport grants to Staples executives and Directors.)

Purported Grant Date	Why Grant is Exceptionally Favorable	Recipient	Title	# Shares	Total # Shares	Exercise Price	% Increase From Exercise Price After 20 Trading Days*
09/23/94	Lowest of the month	John B. Wilson	Executive Vice-President - Finance & Strategy, CFO	39,000	281,500	$29.63	12.24%
		Joseph S. Vassalluzzo	Executive Vice-President - Global Growth and Development	25,000			
		Louis R. Pepi	Executive Vice-President - Human Resources	25,000			
		Martin E. Hanaka	President, COO	50,000			
		Thomas G. Stemberg	Chairman, CEO	142,500			
08/01/96	Second lowest of the month -- preceding sharp rise in prices	Susan S. Hoyt	Executive Vice-President - Human Resources	65,000	65,000	$17.30	14.91%
11/01/96	Lowest of the month	Demos Parneros	Vice-President - Operations	5,000	5,000	$17.88	11.90%
05/01/97**	Lowest of the quarter and month	Jeanne Brown Lewis	Senior Vice-President - Marketing and Small Business			$18.63	18.10%
08/28/97	Lowest of the	Thomas G. Stemberg	Chairman, CEO	160,000	464,000	$23.13	10.81%

Purported Grant Date	Why Grant is Exceptionally Favorable	Recipient	Title	# Shares	Total # Shares	Exercise Price	% Increase From Exercise Price After 20 Trading Days*
	quarter and month	John J. Mahoney	Executive Vice-President, Chief Administrative Officer, CFO	55,000			
		Ronald L. Sargent	President - North American Operations	55,000			
		Joseph S. Vassalluzzo	President - Realty and Development	35,000			
		Evan P. Stern	President – Staples National Advantage	15,000			
		Todd J. Krasnow	Executive Vice-President – Small Business	35,000			
		James E. Flavin	Senior Vice-President – Finance, Corporate Controller	15,000			
		Jeffrey L. Levitan	Senior Vice-President - Strategic Planning and Business Development	24,000			
		Susan S. Hoyt	Executive Vice-President - Human Resources	35,000			
		Richard R. Gentry	Executive Vice-President - Merchandising	35,000			
08/29/97	At the bottom of dip in prices (second lowest of the month)	James C. Peters	Executive Vice-President - U.S. Stores	35,000	35,000	$23.50	15.40%
10/30/97	At the bottom of dip in prices (third lowest of the month)	John J. Mahoney	Executive Vice-President, Chief Administrative Officer, CFO	91,667	416,251	$25.94	8.67%
		Ronald L. Sargent	President - North American Operations	111,667			
		Joseph S. Vassalluzzo	President - Realty and Development	62,917			
10/30/97 (cont'd)		Susan S. Hoyt	Executive Vice-President - Human Resources	50,000			
		Richard R. Gentry	Executive Vice-President - Merchandising	50,000			

Purported Grant Date	Why Grant is Exceptionally Favorable	Recipient	Title	# Shares	Total # Shares	Exercise Price	% Increase From Exercise Price After 20 Trading Days*
		James C. Peters	Executive Vice-President - U.S. Stores	50,000			
07/01/98	Lowest of the month	Thomas G. Stemberg	Chairman, CEO	1,600,000	3,989,000	$30.13	12.45%
		Ronald L. Sargent	President, COO	390,000			
		John J. Mahoney	Executive Vice-President, CFO, Chief Administrative Officer	390,000			
		Joseph S. Vassalluzzo	President - Realty and Development	390,000			
		John C. Bingleman	President - Staples International	300,000			
		Jeffrey L. Levitan	Senior Vice-President - Strategic Planning and Business Development	42,000			
		Susan S. Hoyt	Executive Vice-President - Human Resources	200,000			
		Edward C. Harsant	President - The Business Depot, Ltd	55,000			
		Jeanne Brown Lewis	Senior Vice-President - Marketing	42,000			
		Robert K. Mayerson	Senior Vice-President, Corporate Controller	45,000			
		Richard R. Gentry	Executive Vice-President - Merchandising	200,000			
		Brian T. Light	Senior Vice-President, Chief Information Officer	55,000			
		James C. Peters	President - U.S. Stores	200,000			
		David B. Crosier	Executive Vice-President - Supply Chain Management	80,000			
12/01/98	At the bottom of dip in prices (second lowest of the month)	Joseph G. Doody	President - Staples Contract and Commercial	58,332	58,332	$32.25	21.80%
	Lowest of the month	Thomas G. Stemberg	Chairman, CEO	150,000	953,125	$14.06	10.67%
		Ronald L. Sargent	President, COO	187,500			

Purported Grant Date	Why Grant is Exceptionally Favorable	Recipient	Title	# Shares	Total # Shares	Exercise Price	% Increase From Exercise Price *After 20* Trading Days*
06/06/00		John J. Mahoney	Executive Vice-President, CFO, Chief Administrative Officer	105,000			
		Joseph S. Vassalluzzo	Vice-Chairman	155,000			
		Susan S. Hoyt	Executive Vice-President - Human Resources	37,500			
		Jacques Levy	President - Staples International	50,000			
		Richard R. Gentry	Executive Vice-President - Merchandising	50,000			
		Patrick A. Hickey	Senior Vice-President - Corporate Controller	13,000			
		Edward C. Harsant	President - The Business Depot, Ltd.	15,000			
		Jeffrey L. Levitan	Executive Vice-President - Strategy/Business Development for Staples.com	6,375			
		Jeanne Brown Lewis	President - Staples.com	12,750			
		Brian T. Light	Executive Vice-President, Chief Information Officer	20,000			
		Lawrence J. Morse	President - Quill Corporation	13,500			
		Jack A. Van Woerkom	General Counsel, Secretary, Senior Vice-President	15,000			
06/06/00 (cont'd)		Joseph G. Doody	President - Staples Contract and Commercial	25,000			
		Deborah G. Ellinger	Senior Vice-President - Strategic Planning and New Business Development	7,500			
		David B. Crosier	Executive Vice-President - Supply Chain Management	20,000			
		Robert J. Moore	Executive Vice-President - Marketing	20,000			

Purported Grant Date	Why Grant is Exceptionally Favorable	Recipient	Title	# Shares	Total # Shares	Exercise Price	% Increase From Exercise Price After 20 Trading Days*
		James C. Peters	President – U.S. Stores	50,000			
08/01/00	Lowest of the month	Edward C. Harsant	President - North American Stores	157,083	157,083	$13.31	17.84%
07/01/03	Lowest of the month	Ronald L. Sargent	President, CEO	350,000	1,152,000	$18.35	9.92%
		Thomas G. Stemberg	Non-Executive Chairman, Chairman of the Board	350,000			
		John J. Mahoney	Executive Vice-President, Chief Administrative Officer	100,000			
		Joseph S. Vassalluzzo	Vice-Chairman	100,000			
		Basil L. Anderson	Vice-Chairman	120,000			
		Demos Parneros	President – U.S. Stores	50,000			
		Joseph G. Doody	President-Staples North American Delivery	50,000			
		Jack A. VanWoerkom	Executive Vice-President, General Counsel, Secretary	20,000			
		Jeffrey E. Nachbor	Senior Vice-President, Controller	12,000			
Totals				**7,577,291**			

* Grants on 08/28/97 were first reported to SEC within 9 days, so at least some of them could be back-dated by at most 9 days. Thus, the 9-day return is used for this date instead of the 20-day return. The 20 day return was 21.4%. Grants on 07/01/03 were reported to SEC within 17 days, so, for the same reason, the 17-day return is used. The 20-day return was 8.7%.

** Grant was reported to SEC without listing number of options granted.

Fiscal Year 1994 Back-Dated Option Grants

46. Staples purportedly made the following option grants on September 23, 1994: a grant of 39,000 options to Wilson, a grant of 25,000 options to Vassalluzzo, a grant of 25,000 options to Pepi, a grant of 50,000 options to Hanaka, and a grant of 142,500 options to Stemberg. The exercise price of these grants was $29.63, which matched the closing stock price on that date. September 23, 1994 had the lowest closing Staples stock price of the month, and came at the bottom of a dip in prices and just before a sharp increase. The stock rose 12.24% over the following 20 trading days (approximately one trading month). If these 281,500 options were back-dated by 20 trading days, they would have been in the money to the tune of $1 million.

Fiscal Year 1996 Back-Dated Option Grants

47. Staples purportedly granted options for 65,000 shares to Hoyt on August 1, 1996. The exercise price of these grants was $17.30, which matched the closing price of the stock on that date. August 1, 1996 had the second lowest closing Staples stock price of the month, and preceded a sharp rise in stock prices. The stock rose 14.91% over the following 20 trading days (approximately one trading month). If these options were back-dated by 20 trading days, they would have been in the money to the tune of $168,000 for one executive.

48. Staples purportedly granted options for 5,000 shares to Demos Parneros on November 1, 1996. The exercise price of these grants was $17.88, which matched the closing price of the stock on that date. November 1, 1996 had the lowest closing Staples stock price of the month, and came at the bottom of a dip in prices and just before a sharp increase. The stock rose 11.90% over the following 20 trading days (approximately one trading month). If these options were back-dated by 20 trading days, they would have been in the money to the tune of $13,000 for one executive.

Fiscal Year 1997 Back-Dated Option Grants

49. Staples purportedly granted shares to Jeanne B. Lewis on May 1, 1997. The exercise price of these grants was $17.88, which matched the closing price of the stock on that date. Interestingly, the number of options granted on this date was not reported to the SEC. May 1, 1997 had the lowest closing Staples stock price of the quarter and month, and came before a sharp increase. The stock rose 18.90% over the following 20 trading days (approximately one trading month).

50. Staples purportedly made the following option grants on August 28, 1997: a grant of 160,000 options to Stemberg, a grant of 55,000 options to Mahoney, a grant of 55,000 options to Sargent, a grant of 35,000 options to Vassalluzzo, a grant of 15,000 options to Flavin, and a grant of 35,000 options to Hoyt, as well as a grant of 24,000 options to Jeffrey L. Levitan, a grant of 15,000 options to Evan P. Stern, a grant of 35,000 options to Todd J. Krasnow, and a grant of 35,000 options to Richard R. Gentry. The exercise price of these grants was $23.13, which matched the closing stock price on that date. August 28, 1997 had the lowest closing Staples stock price of the fiscal quarter and month, and came at the bottom of a sharp dip in prices and just before a sharp increase. The stock rose 10.81% over the following nine trading days. (These options were first reported to the SEC after nine trading days.) If these 464,000 options were back-dated by nine trading days, they would have been in the money to the tune of $1.2 million. Interestingly, while Stemberg and Stern did report their grants within nine days to the SEC, other recipients reported grants substantially later, with reports to the SEC trickling in until Vassalluzzo made the final report on January 14, 1998 – four and a half months later. This pattern suggests that additional recipients might have been added to this grant date as it became

clear over time how favorable it was. The fiscal quarter ended in October and $23.13 was the lowest price for Staples stock in the entire second half of its fiscal year.

51. Staples purportedly granted 35,000 options to James C. Peters on August 29, 1997. The exercise price of these grants was $23.50, which matched the closing price of the stock on that date. August 29, 1997 had the second lowest closing Staples stock price of the fiscal quarter and month, and came before a sharp increase. The stock rose 15.40% over the following 20 trading days (approximately one trading month). If these options were back-dated by 20 trading days, they would have been in the money to the tune of $127,000 for one executive.

52. Staples purportedly made the following option grants on October 30, 1997: a grant of 91,667 options to Mahoney, a grant of 111,667 options to Sargent, a grant of 62,917 options to Vassalluzzo, and a grant of 50,000 options to Hoyt, as well a grant of 50,000 options to Richard R. Gentry, and a grant of 50,000 options to James C. Peters. The exercise price of these grants was $25.94, which matched the closing stock price on that date. October 30, 1997 had the third lowest closing Staples stock price of the month, and came at the bottom of a dip in prices and just before a substantial increase. The stock rose 8.67% over the following 20 trading days (approximately one trading month). If these 416,251 options were back-dated by 20 trading days, they would have been in the money to the tune of $937,000.

Fiscal Year 1998 Back-Dated Option Grants

53. Staples purportedly made the following option grants on July 1, 1998: a grant of 1,600,000 options to Stemberg, a grant of 390,000 options to Sargent, a grant of 390,000 options to Mahoney, a grant of 390,000 options to Vassalluzzo, a grant of 300,000 options to Bingleman, a grant of 45,000 options to Mayerson, and a grant of 200,000 options to Hoyt, as well as a grant

of 42,000 options to Jeffrey L. Levitan, a grant of 55,000 options to Edward C. Harsant, a grant 42,000 options to Jeanne B. Lewis, a grant of 200,000 options to Richard R. Gentry, a grant of 55,000 options to Brian T. Light, a grant of 200,000 options to James C. Peters, and a grant of 80,000 options to David B. Crosier. The exercise price of these grants was $30.13, which matched the closing stock price on that date. July 1, 1998 had the lowest closing Staples stock price of the month, and came before a substantial increase in prices. The stock rose 12.45% over the following 20 trading days (approximately one trading month). If these 3,989,000 options were back-dated by 20 trading days, they would have been in the money to the tune of $14 million. Interestingly, while Crosier, like the other recipients, did not report this grant until August, he did report another unrelated transaction to the SEC in mid-July. He could have reported this grant on the same Form 4, but did not do so – further suggesting that this grant was not actually made on July 1st.

54. Staples purportedly granted 58,332 options to Joseph G. Doody on December 1, 1998. The exercise price of these grants was $32.25, which matched the closing price of the stock on that date. December 1, 1998 had the second lowest closing Staples stock price of the month, and came at the bottom of a dip in prices. The stock rose 21.80% over the following 20 trading days (approximately one trading month). If these options were back-dated by 20 trading days, they would have been in the money to the tune of $448,000 for one executive.

Fiscal Year 2000 Back-Dated Option Grants

55. Staples purportedly made the following option grants on June 6, 2000: a grant of 150,000 options to Stemberg, a grant of 187,500 options to Sargent, a grant of 105,000 options to Mahoney, a grant of 155,000 options to Vassalluzzo, a grant of 37,500 options to Hoyt, a grant of 13,000 options to Hickey, and a grant of 15,000 options to Van Woerkom, as well as a grant

of 50,000 options to Jacques Levy, a grant of 50,000 options to Richard R. Gentry, a grant of 15,000 options to Edward C. Harsant, a grant of 6,375 options to Jeffrey L. Levitan, a grant of 12,750 options to Jeanne B. Lewis, a grant of 20,000 options to Brian T. Light, a grant of 13,500 options to Lawrence J. Morse, a grant of 25,000 options to Joseph G. Doody, a grant of 7,500 options to Deborah G. Ellinger, a grant of 20,000 options to David B. Crosier, a grant of 20,000 options to Robert J. Moore, and a grant of 50,000 options to James C. Peters. The exercise price of these grants was $14.06, which matched the closing stock price on that date. June 6, 2000 had the lowest closing Staples stock price of the month, and came at the very bottom of a sharp dip in prices. The stock rose 10.67% over the following 20 trading days (approximately one trading month). If these 953,125 options were back-dated by 20 trading days, they would have been in the money to the tune of $1.4 million. Interestingly, while these option grants were not reported to the SEC until July, Mahoney and Vassalluzzo each reported separate transactions in mid-June. They could have reported this grant on the same Form 4, but did not do so – further suggesting that this grant was not actually made on June 6th.

56. Staples purportedly granted 157,083 options to Edward C. Harsant on August 1, 2000. The exercise price of these grants was $13.31, which matched the closing price of the stock on that date. August 1, 2000 had the lowest closing Staples stock price of the month, and came at the bottom of a steep dip in prices. The stock rose 17.84% over the following 20 trading days (approximately one trading month). If these options were back-dated by 20 trading days, they would have been in the money to the tune of $373,000 for one executive.

Fiscal Year 2003 Back-Dated Option Grants

57. Staples purportedly made the following option grants on July 1, 2003: a grant of 350,000 options to Sargent, a grant of 350,00 options to Stemberg, a grant of 100,000 options to

Mahoney, a grant of 100,000 options to Vassalluzzo, a grant of 120,000 options to Anderson, a grant of 20,000 options to Van Woerkom, and a grant of 12,000 options to Nachbor, as well as a grant of 50,000 options to Demos Parneros, and a grant of 50,000 options to Joseph G. Doody. The exercise price of these grants was $18.35, which matched the closing stock price on that date. July 1, 2003 had the lowest closing Staples stock price of the month, and came at the bottom of a dip in prices. The stock rose 9.92% over the following 17 trading days. (This grant was first reported to the SEC 17 trading days later.) If these 1,152,000 options were back-dated by 17 trading days, they would have been in the money to the tune of $2.1 million. As the Company admits in its 2004 Proxy, these option grants were not reported to the SEC until late July, in violation of the Sarbanes-Oxley Act requirement (effective August 29, 2002) that options be reported with two days of their grant date. This requirement was put in place specifically to prevent back-dating. It is noteworthy that Stemberg reported two other transactions (including one that was also on July 1st) before he reported this grant. He could have reported this transaction on the same Form 4, but did not do so – further suggesting that this grant was not actually made on July 1st.

C. <u>PUBLIC STATEMENTS DENYING BACKDATING.</u>

58. Over the course of the relevant period, Staples, through the actions of its Directors (including Director Defendants), made numerous false statements in proxies and 10-K Annual Reports representing that stock options were granted at the fair market value of Staples' stock on the date of the grant, which they knew, or absent recklessness, should have known, was not the case, because stock options were in fact back-dated.

59. Each of the annual Proxy Statements filed from 1995 through 1999, states: "The exercise price of all options granted [to executives] was the fair market value of the Common

Stock on the date of grant." This statement that options were not back-dated is false. As detailed below, a number of options were granted at prices below the fair market value on the date of the grant.

60. In each of the annual Proxy Statements filed from 1995 through 2004 (as well as the Form 10-K filed on April 30, 1997, the Form 10-K filed on March 10, 2000, the Form 10-K/A filed on April 5, 2000, and the Form 10-K/A filed on June 30, 2000), the Company included a required table showing option grants to Senior Executives during the previous fiscal year. Along with each and every one of these tables, a footnote clearly stated that the exercise price for the grants was equal to the fair market value per share of Staples Stock on the date of grant. For at least the fiscal years 1994, 1996, 1997, 1998, 2000, and 2003, this statement was false, because grants were actually made at prices below the fair market value per share of Staples stock on the date of grant.

61. The annual Proxy Statements filed with the SEC solicted shareholder action in favor of the election or re-election of the following Directors:

Year	Director
1996	Burton, Moriarty, and Hanaka
1997	Anderson, Nakasone and Stemberg
1998	Trust and Walsh
1999	Burton and Moriarty
2000	Anderson, Nakasone, Sargent, and Stemberg
2001	Blank, Trust, and Walsh
2002	Barnes, Burton, and Moriarty
2003	Anderson, Nakasone, Sargent, and Stemberg
2004	Blank, Trust, and Walsh

62. False statements were also made in the Company's Annual Reports on Form 10-K, filed with the SEC from 1996 through 2001, each of which state:

> The exercise price of options granted under the [Company's option] plans may not be less than 100% of the fair market value of the Company's common stock at the date of grant. Options generally have an exercise price equal to the fair market value of the common stock on the date of grant.

This statement that options was false because, as detailed below, a number of options were back-dated and granted at prices below the fair market value on the date of the grant.

63. Likewise, the Annual Reports on Form 10-K filed in 2002 through 2004 each state: "Options [under the Company's option plans] have an exercise price equal to the fair market value of the common stock on the date of grant." As in the previous years, this statement was false because, as detailed below, a number of options were back-dated and granted at prices below the fair market value on the date of the grant.

64. Moreover, because Staples granted options with exercise prices below the fair market value on the date of grant, it was required to record a compensation expense in its financial statements. However, the Company did not do so. As the Annual Reports on Form 10-K filed in 1997 through 2004 each state: "Under [Accounting Principles Board Opinion (APB)] No. 25, since the exercise price of Staples' employee stock options equals the market price of the underlying stock on the date of grant, no compensation expense is recognized." As discussed below, this statement is false, because the exercise price of employee stock options was not equal to the market price of the stock of the date of grant.

65. Finally, as discussed in detail below, by failing to account properly for the back-dated option grants, Defendants understated expenses, and overstated earnings from operations and net earnings. Thus, the financial statements included in the foregoing Form 10-K filings

were false because the Company, in violation of APB 25, understated compensation expenses it was required to incur when the improperly back-dated options were granted, and therefore overstated its net income.

66. The Annual Reports filed on Form 10-K (and 10-K/A) from 1996 through 2004 were signed by the following Defendants:

Year	Signatories
1996	Stemberg, Burton, Moriarty, Nakasone, Trust, Walsh, Wilson, and Flavin
1997	Stemberg, Burton, Hanaka, Moriarty, Nakasone, Trust, Walsh, Mahoney, and Flavin
1998	Stemberg, Anderson, Burton, Moriarty, Nakasone, Trust, Walsh, Mahoney, and Mayerson
1999	Stemberg, Anderson, Burton, Moriarty, Nakasone, Trust, Walsh, Mahoney, and Mayerson
2000	Stemberg, Anderson, Burton, Moriarty, Nakasone, Sargent, Trust, Walsh, Mahoney, and Hickey
2001	Stemberg, Anderson, Burton, Moriarty, Nakasone, Sargent, Trust, Walsh, Mahoney, and Hickey
2002	Stemberg, Anderson, Blank, Burton, Moriarty, Nakasone, Sargent, Trust, Walsh, Mahoney, and Hickey.
2003	Stemberg, Anderson, Barnes, Blank, Burton, Moriarty, Nakasone, Sargent, Trust, Walsh, and Mahoney*
2004	Stemberg, Anderson, Barnes, Blank, Burton, Moriarty, Nakasone, Sargent, Trust, Walsh, Mahoney, and Nachbor.**

*Additionally, Sargent (as Principal Executive Officer) and Mahoney (as Principal Financial Officer) signed further detailed certifications.
** Also signed by current Board member Gary L. Crittenden.

D. DEFENDANTS' BREACHES OF FIDUCIARY DUTY.

67. Defendants had a fiduciary duty to act with loyalty and good faith. Nonetheless, they either expressly authorized the practice of back-dating options or in conscious abrogation of their fiduciary duties, permitted it to occur repeatedly over the years. The practice only ceased in 2003 after the Company began complying with the Sarbanes-Oxley Act, which curtailed the potential for back-dating by requiring companies to disclose option grants within two days.

68. The Audit Committee has general oversight responsibilities relating to the Company's financial statements. For example, the 2003 Proxy[2] states:

> The Audit Committee provides the opportunity for direct contact between our independent auditors and the Board. The Committee assists the Board in overseeing our compliance with legal and regulatory requirements; the integrity of our financial statements; . . . and the performance of our internal audit function and the independent auditors through receipt and consideration of certain reports from the independent auditors. In addition, the Committee discusses the Company's risk management policies and reviews and discusses with management and the independent auditors the Company's annual and quarterly financial statements and related disclosures. The Committee is directly responsible for appointing, compensating, evaluating and, when necessary, terminating our independent auditors, and our independent auditors report directly to the Committee. . . . In addition, in 2002, our management, in conjunction with the Committee, created a disclosure committee, composed of members of management, to assist us in fulfilling our obligations to maintain adequate disclosure controls and procedures and to coordinate and oversee the process of preparing our periodic securities filings.

69. Defendants Walsh, Burton, Barnes, and Anderson served on the Staples Audit Committee when fraudulent financial statements were issued that contained incorrect information relating to back-dated options. Anderson himself received back-dated options. These Defendants failed in their fiduciary duties as members of the Audit Committee to ensure that the Company issued accurate and truthful financial statements.

70. The Compensation Committee administers the Company's various stock option plans under authority delegated by the Board. Specifically, the Compensation Committee Charter provides that:

> The Committee shall exercise all rights, authority and functions of the Board under all of the Company's stock option, stock incentive, employee stock purchase and other equity-based plans,

[2] Defendants Walsh, Burton, and Barnes served on the Audit Committee in 2003 when back-dated options were granted and then improperly accounted for.

> including without limitation, the authority to interpret the terms thereof, to grant option thereunder and to make stock awards thereunder; provided, however, that except as expressly authorized to to so by a plan or resolution of the Board, the Committee shall not be authorized to amend such plan. To the extent permitted by applicable law and the provisions of a given equity-based plan, the Committee may delegate to one or more executive officers of the Company the power to grant options or other stock awards pursuant to such equity-based plan to employees of the Company or any subsidiary of the Company who are not directors or executive officers of the Company.

71. Defendants Blank, Trust, and Nakasone served on the Staples Compensation Committee when back-dated options were given out. Nakasone himself received back-dated options. These Defendants failed in their fiduciary duties as members of the Compensation Committee to properly administer the Company's stock option plans in a manner that was protective of the interests of shareholders and consistent with the shareholder approved stock option plans. Instead, they administered these plans in a manner that unjustly enriched past and present officers and Directors at the expense of shareholders and that was both contrary to the Company's stock option plans and in violation of numerous laws and accounting standards.

72. All of the Defendants would have become aware that stock options to a number of past and present officers and Directors were back-dated when they either personally approved the back-dating or when they received stock option grants.

73. As of the date of the filing of this Complaint, the practice of back-dating stock options remained undisclosed to the shareholders of Staples.

74. Defendants stood in a fiduciary relationship with the company's shareholders, and had a duty to disclose their practice of back-dating stock options. In violation of their fiduciary duties of loyalty and good faith, Defendants fraudulently concealed the fact that the options granted to numerous past and present Officers and Directors were back-dated and made

affirmative misrepresentations to the contrary. Defendants misrepresented and caused the Company to misrepresent in the stock option plans, incorporated into various public SEC filings, that stock options were priced at no less than the fair market value of the stock on the date of the grant, thereby affirmatively concealing the claims set forth herein. The Defendants also misrepresented the grant dates for the stock option in various proxy filings, as discussed above, by which they solicited shareholder action, *inter alia*, in favor of the re-election of the Director Defendants. Defendants' misrepresentations about their stock option pricing practices were known to be false or were made in reckless disregard of its truth or falsity, and the concealment could not have been discovered through reasonable diligence by the typical shareholder as of the date of the filing of this Complaint.

F. MANAGEMENT DEFENDANTS HAVE BEEN UNJUSTLY ENRICHED AT THE EXPENSE OF THE COMPANY.

75. Management Defendants have been unjustly enriched at the expense of Staples and its shareholders, as a result of the secretive back-dating scheme.

76. Management Defendants received 6,071,751 of the back-dated options as described above.

77. Had Management Defendants' stock options not been back-dated, their profits and unrealized gains on exercisable stock options would have been millions of dollars less.

78. The practice of back-dating stock options not only lines the pockets of Staples' executives at the direct expense of the Company, which dollar for dollar receives money when the options are exercised, but also resulted in the overstatement of Staples' profits and an understatement of its tax liabilities.

79. The grants of secretly back-dated, in-the-money options not only disguised the fact that the Company was conferring on the Management Defendants higher, unusual and

excessive compensation without disclosure or shareholder approval of this kind of payment, but this built-in paper gain also carried with it numerous tax, accounting, and disclosure obligations. The discount from receiving in-the-money options is generally treated as a compensation expense under GAAP, specifically Accounting Principles Board Opinion No. 25, "Accounting for Stock Issued to Employees" (October 1972) ("APB 25").

80. Pursuant to APB 25, the applicable GAAP provision at the time of the option grants set forth herein, if the stock's market price on the date of grant exceeds the exercise price of the options, the corporation must recognize the difference as an expense, which directly impacts earnings. Defendants caused Staples not to expense this additional fraudulent compensation to the Management Defendants even though the back-dated stock options at issue in this action were priced below the fair market value of the Company's stock at the date of grant and issuance. Thus, Defendants caused the Company to violate GAAP.

81. As a result of the improper backdating of stock options, Staples, with the knowledge, approval, and participation of each of the Defendants, violated GAAP by failing to recognize compensation expenses incurred when the improperly back-dated options were granted; and produced and disseminated to Staples shareholders and the market false financial statements that improperly recorded and accounted for the back-dated option grants, including, *inter alia*, financial statements in each the Company's Form 10-Ks filed from 1996 through 2004.

82. The back-dating of stock options also may have resulted in the underpayment of tax liabilities and associated interest. Pursuant to Section 162(m) of the Internal Revenue Code, 26 U.S.C. § 162(m) ("Section 162(m)"), compensation in excess of $1 million per year, including gains on stock options, paid to a corporation's five most highly-compensated officers

is tax deductible only if: (i) the compensation is payable solely on account of the attainment of one or more performance goals; (ii) the performance goals are determined by a compensation committee comprised solely of two or more outside directors, (iii) the material terms under which the compensation is to be paid, including the performance goals, are disclosed to shareholders and approved by a majority of the vote in a separate shareholder vote before the payment of the compensation, and (iv) before any payment of such compensation, the compensation committee certifies that the performance goals and any other material terms were in fact satisfied.

83. Compensation "attributable to a stock option" is deemed to qualify as "performance based compensation" under the tax code:

> if the grant or award is made by the compensation committee; the plan under which the option or right is granted states the maximum number of shares with respect to which options or rights may be granted during a specified period to any employee; ***and, under the terms of the option or right, the amount of compensation the employee could receive is based solely on an increase in the value of the stock after the date of the grant or award. Conversely, if the amount of compensation the employee will receive under the grant or award is not based solely on an increase in the value of the stock after the date of grant or award (e.g., in the case of restricted stock, or an option that is granted with an exercise price that is less than the fair market value of the stock as of the date of grant), none of the compensation attributable to the grant or award is qualified performance-based compensation*** because it does not satisfy the requirement of this paragraph (e)(2)(vi)(A).... The rule that the compensation attributable to a stock option or stock appreciation right must be based solely on an increase in the value of the stock after the date of grant or award does not apply if the grant or award is made on account of, or if the vesting or exercisability of the grant or award is contingent on, the attainment of a performance goal that satisfies the requirements of this paragraph (e)(2).

84. The option backdating scheme also caused Staples to violate Section 162(m). Compensation from exercised stock options issued in connection with the backdating scheme

was not deductible under Section 162(m).

85. Defendants breached their fiduciary duties of loyalty and good faith by causing or, through complete abdication of duty, allowing Staples to engage in the illegal actions and course of conduct, alleged herein. As a result the Company has suffered millions of dollars in damages.

86. As a result of the back-dating of options, the Management Defendants have been unjustly enriched at the expense of Staples, which has received and will receive less money from the Management Defendants when they exercise their options at prices substantially lower than they would have if the options had not been back-dated.

87. Defendants' misconduct caused substantial injury to Staples, including:

a. lost payment upon the exercise of stock options whose exercise prices were manipulated downward;

b. penalties and interest to be paid due to under-reported income taxes;

c. millions of dollars of costs will be needed to carry out internal investigations and restatements of financial statements, including fees paid to outside counsel and auditors;

d. exposure to potential shareholder actions for violation of the federal securities laws; and

e. indirect expenses such as reputational injury and lost productivity as the Company will be forced to focus management efforts on addressing past fraudulent behavior instead of focusing on running and growing the business.

DERIVATIVE ACTION AND DEMAND FUTILITY ALLEGATIONS

Derivative Allegations

88. Plaintiff brings this action derivatively in the right of and for the benefit of the Company pursuant to Rule 23.1 of the Delaware Chancery Rules. Staples is named as a nominal defendant solely in a derivative capacity.

89. Plaintiff has been a continuous shareholder of Staples since February 5, 1998, and there is no collusion between the parties.

90. Plaintiff fairly and adequately represents the interests of the shareholders of Staples in enforcing the rights of the Company.

Demand Futility Allegations

91. Plaintiff did not make a demand on the Staples Board prior to instituting this action regarding any of the derivative claims because: (1) the wrongful acts complained of herein – *i.e.*, the stock option backdating scheme – were not only illegal and self-dealing, but also *ultra vires* and wasteful, and, hence, were not, nor could they have been, the product of a valid or good faith exercise of business judgment; and (2) there is not a majority of disinterested and independent Directors on Staples' board to appropriately consider a demand as ten out of eleven of Staples' Directors have disabling interests or conflicts. As such, demand should be excused.

92. <u>The wrongs complained of herein were unlawful, *ultra vires* and not a product of a valid exercise of business judgment.</u> The Company's option plans simply did not permit the granting of options at prices below the fair market value of the stock on the date of the grant. Defendants' actions are not protected by the business judgment rule because it was *ultra vires* and violated the express terms of the shareholder approved stock option plans. In addition,

Defendants' scheme to grant, obtain, approve, and/or acquiesce in the issuance of back-dated stock options to the Management Defendants was unlawful, lacked any legitimate business purpose and was not a product of a valid exercise of business judgment because they did not act honestly and in good faith to advance the best interests of Staples. As such, demand should be excused as futile.

93. Defendants could not authorize Staples to back-date the stock options in the absence of receiving consideration therefor and there was no consideration for the transactions. Hence, the transactions constituted a waste and a gift of corporate assets, and could not have been the product of the proper exercise of business judgment by the Defendants.

94. There was no basis or justification for back-dating the stock options. It was designed solely to benefit the Management Defendants in a manner that was inconsistent with the stock option plans and the Company's public disclosures, to the detriment of the Company. Hence, the transactions constituted a waste of corporate assets, and could not have been the product of the proper exercise of business judgment by the Defendants.

95. <u>A reasonable doubt exists as to whether a majority of Staples' Board of Directors is disinterested and independent.</u> Moreover, Plaintiff can show that at least 50% of the current Board is disabled from considering a demand due to their participation and approval of the backdating scheme, their interest, and their lack of independence.

96. The eleven members of Staples' board at the time of the filing of this Complaint are: the Current Director Defendants (Sargent, Barnes, Burton, Moriarty, Blank, Trust, Walsh, Anderson, and Nakasone) as well as Gary L. Crittenden ("Crittenden") and Stephen F. Schuckenbrock ("Schuckenbrock").

97. The nine Current Board Defendants were all on the Board when back-dated

options were granted. Under the Company's option plans, the Board is responsible, either directly or through delegation, for the granting of options. Thus, all nine of these Directors are responsible for the granting of back-dated options, face a substantial likelihood of liability with respect to such actions, and are incapable of considering a demand here.

98. Two of the current Directors (Sargent and Anderson) were financially self-interested in the fraudulently back-dated issue here as recipients of the grants, and demand is therefore excused as to these individuals. Not only are they conflicted from challenging their own actions, but they also stand to lose substantial amounts of money if they are forced to disgorge any profits from exercised back-dated options and rescind any unexercised back-dated options. Further, the disclosure of more information related to back-dated options here might subject these Directors to personal civil or criminal tax investigations if they did not record the receipt of back-dated options as such on their personal tax filings.

99. Three additional Directors (Defendants Blank, Trust, and Nakasone) authorized the fraudulent options to at least some of the Management Defendants as members of the Compensation Committee during the relevant time period. The Compensation Committee was directly responsible for administering and managing the Company's executive compensation program and its stock option plans. Its members during the relevant time period therefore approved, ratified, and were otherwise responsible for the back-dated or otherwise manipulated stock option grants. Such members could not have acted in good faith or with the requisite care and concern for the best interest of the Company and its shareholders, because no legitimate process could have been employed that would have allowed the backdating of stock options and the cover-up of such improprieties. Indeed, as detailed above, the actions of the Compensation Committee with respect to the option grants at issue here were in direct violation of the

Company's Stock Option Plans and therefore unlawful, unauthorized and *ultra vires*. As members of the Compensation Committee during the relevant time period who were responsible for approving the Staples stock option grants, Defendants Blank, Trust, and Nakasone knew, or recklessly disregarded, that they were approving stock option grants after the fact in a manner that was unlawful and not a valid exercise of business judgment. Accordingly, there is significant doubt that these Director Defendants are disinterested because they face a substantial likelihood of liability for their breaches of fiduciary duties, including their duties of good faith, fair dealing, care, and loyalty.

100. Four of the Current Director Defendants served on the Audit Committee (Defendants Barnes, Burton, Walsh, and Anderson). As noted above, the Audit Committee oversees the Company's compliance with legal and regulatory requirements, the integrity of the Company's financial statements, and the Company's internal controls and external audits. This oversight was clearly inadequate, as Staples' internal controls were deficient, and its financial statements were inaccurate as set forth above. Thus, as members of Staples' Audit Committee, Defendants Barnes, Burton, Walsh, and Anderson are hopelessly conflicted. They are unable to make an independent determination in response to a demand that they cause the Company to bring this action, which challenges their own conduct.

101. All of the Current Director Defendants (Sargent, Barnes, Burton, Moriarty, Blank, Trust, Walsh, Anderson, and Nakasone) authorized the filing of Proxy Statements, in support of their election as Directors, which made false and misleading statements about the Company's stock option practices and failed to disclose that stock options issued to Management Defendants had been back-dated. All of the Current Director Defendants also authorized the filing and signed Annual Reports on Form 10-K which made false and misleading statements about the

Company's stock option practices and contained false financial statements that underreported compensation expenses and overstated net earning. These Defendants will not cause Staples to bring suit to remedy the wrongs complained of herein because it would expose themselves to suit for securities fraud and proxy violations; thus, all of the Current Defendants are hopelessly conflicted and unable to make an independent determination in response to a demand that they cause the Company to bring this action.

102. Thus, nine of the eleven current members of the Staples Board of Directors either personally benefited from back-dated stock options, were members of the Compensation Committee that was responsible for authorizing the back-dated grants, were members of the Audit Committee that was directly responsible for approving of the Company's materially false and misleading financial statements, and/or personally were responsible for the dissemination of false and misleading financial statements. The following chart summarizes these conflicts:

Current Director	Received Back-Dated Options	Board Member at Time Back-Date Options Were Granted	Oversaw False Financial Statements as Member of Audit Committee	Authorized Back-Dated Grants as Member of Compensation Committee	Disseminated Fraudulent Proxy Statements and Annual Reports
Sargent	X	X			X
Barnes		X	X		X
Burton		X	X		X
Moriarty		X			X
Blank		X		X	X
Trust		X		X	X
Walsh		X	X		X
Anderson	X	X	X		X
Nakasone		X		X	X
Crittenden					
Schuckenbrock					

103. Defendant Sargent is currently employed as CEO of Staples. His ability to continue to hold this position depends on the goodwill of the other Directors. According to the most recent Proxy, in fiscal year 2005, Sargent received compensation of $2,619,023 in cash and other payments, $3,258,000 in restricted stock awards, and 525,000 common stock options. Sargent's interest in maintaining this generous compensation package makes him incapable of considering a demand here.

104. Defendant Blank is a co-founder of The Home Depot, Inc. At various times between 1978 and 2001 he served as Co-Chairman of the Board, Director, CEO, President, and COO. Home Depot recently admitted that it back-dated options for 20 years, from 1981 to 2000, and as a result understated compensation expenses by $200 million. This practice is the subject of litigation and is under investigation by the SEC and U.S. Attorney for the Southern District of New York. Given that Blank will be intimately involved in the Home Depot scandal, he has a vested interest in minimizing character-tarnishing investigations into his involvement in back-dating at Staples. He is thus incapable of considering a demand here.

CAUSES OF ACTION

COUNT I
Against all Defendants for Breach of Fiduciary Duty

105. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

106. Defendants owe Staples fiduciary obligations. By reason of their fiduciary relationships, the Defendants owed and owe Staples the highest obligation of good faith, fair dealing, loyalty and due care.

107. Defendants, and each of them, violated and breached their fiduciary duties of

care, loyalty, fair dealing, and good faith.

108. Each of the Defendants authorized, or by abdication of duty, permitted stock options granted to past and present officers and Directors to be back-dated. These actions were not a good faith exercise of prudent business judgment to protect and promote the Company's corporate interests.

109. As a direct and proximate result of the Defendants' failure to perform their fiduciary obligations, Staples has sustained and will continue to sustain significant damages. As a result of the misconduct alleged herein, the Defendants are liable to the Company.

110. Plaintiff has no adequate remedy at law.

COUNT II
Against all Defendants for Waste

111. Plaintiff incorporates by reference and realleges each and every allegation set forth above, as though fully set forth herein.

112. By failing to properly consider the interests of the Company and its public shareholders, by failing to conduct proper supervision, and by sacrificing without consideration payments Staples would have received for properly priced stock options, Defendants, without any valid corporate purpose, have caused Staples to waste valuable corporate assets solely for the financial gain of numerous past and present officers and Directors.

113. As a result of the waste of corporate assets, the Defendants are liable to the Company.

114. Plaintiff has no adequate remedy at law.

COUNT III
Against Management Defendants for Unjust Enrichment

115. Plaintiff incorporates by reference and realleges each and every allegation set forth above, as though fully set forth herein.

116. As a result of the back-dating of the options granted to them, the Management Defendants have been and will continue to be unjustly enriched at the expense of and to the detriment of Staples.

117. Accordingly, this Court should order the Management Defendants to disgorge all profits, benefits and other compensation obtained by the Management Defendants, and each of them, from their wrongful conduct and fiduciary breaches described herein, and should order the stock options held by the Management Defendants, which have not yet been exercised, to be rescinded or repriced at the market price of Staples' stock on the dates the Court finds that those options were actually, in fact, granted.

118. Plaintiff has no adequate remedy at law.

COUNT IV

Against the Management Defendants for Rescission of *Ultra Vires* Grants and Imposition of Constructive Trust

119. Plaintiff incorporates by reference and realleges each and every allegation set forth above, as though fully set forth herein.

120. The back-dated stock options issued to the Management Defendants violated the terms of the Plans and were *ultra vires*. As such, they are void, or voidable by this Court, pursuant to 8 Del. C. § 124, which provides:

> No act of a corporation and no conveyance or transfer of real or personal property to or by a corporation shall be invalid by reason of the fact that the corporation was without capacity or power to do such act or to make or receive such conveyance or transfer, but

such lack of capacity or power may be asserted:

* * *

> (2) In a proceeding by the corporation, whether acting directly or through a receiver, trustee or other legal representative, or through stockholders in a representative suit, against an incumbent or former officer or director of the corporation, for loss or damage due to such incumbent or former officer's or director's unauthorized act;

121. As a result, all back-dated stock option grants to the Management Defendants are invalid and should, therefore, be rescinded. All shares obtained and held, as well as gains realized on sales of shares sold, should be returned to the Company directly or placed in constructive trust. All executory contracts relating to back-dated options should be cancelled and declared void.

122. Plaintiff has no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, plaintiff demands judgment as follows:

a. Against all of the Defendants and in favor of the Company for the amount of damages sustained by the Company as a result of these Defendants' breaches of fiduciary duties and waste of corporate assets;

b. Against the Management Defendants and in favor of the Company for the amount of their unjust enrichment;

c. Awarding to Staples restitution from the Management Defendants and each of them, and ordering disgorgement of all profits, benefits and other compensation obtained by the Management Defendants as a result of the conduct alleged herein;

d. Rescinding and/or repricing the back-dated stock options granted to the Management Defendants, or to the extent such options have been exercised, put profits in constructive trust for the benefit of the Company;

e. Extraordinary equitable and/or injunctive relief as permitted by law, equity and state statutory provisions sued hereunder, including attaching, impounding, imposing a constructive trust on or otherwise restricting the proceeds of Defendants' trading activities or their other assets so as to assure that plaintiff on behalf of Staples have an effective remedy;

f. Awarding to plaintiff the costs and disbursements of the action, including reasonable attorneys' fees, accountants' and experts' fees, costs, and expenses; and

g. Granting such other and further relief as the Court deems just and proper.

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December 15, 2006