

## SETTLEMENT AGREEMENT

This Settlement Agreement (hereinafter “Settlement Agreement”) and the related and incorporated document entitled Confidential Addendum to Settlement Agreement (collectively referred to herein as the “Full Agreement”) are entered into as of the Effective Date, as defined below in Section 1.6, by and between the following parties: American Council of the Blind (“ACB”), American Foundation for the Blind (“AFB”), Bay State Council of the Blind (“BSCB”) and California Council of the Blind (“CCB”) (collectively, the “Claimants”), and Staples, Inc. (“Staples”). Claimants and Staples are at times referred to collectively herein as the “Parties.”

### RECITALS

The Full Agreement is based on the following facts:

A. ACB, a non-profit corporation that provides advocacy services in the United States on behalf of individuals who are blind or have visual impairments, is dedicated to promoting the full integration of persons who are blind or have visual impairments into all aspects of society, and provides information to the general public about the accomplishments, needs and contributions of persons who are blind or visually-impaired. BSCB and CCB are ACB affiliates, serving the needs of blind and visually-impaired persons throughout Massachusetts and California respectively. ACB is incorporated and has its place of business in Washington, D.C. BSCB is incorporated and has its place of business in the Commonwealth of Massachusetts. CCB is incorporated and has its place of business in the State of California.

B. AFB is a national non-profit whose mission is to eliminate the inequities faced by the more than ten million blind and visually impaired persons in the United States. Among other things, AFB is: the leading publisher of professional materials on blindness and low vision through its publishing arm, AFB Press; a pioneer in the development of Talking Books; a national advocate representing the interests of blind or visually impaired people before Congress and government agencies; and home to the Helen Keller Archives.

C. Staples owns and operates retail stores in Massachusetts, California and other states across the United States.

D. Claimants contend that they and their respective boards, staff, members and clients, and other blind and visually-impaired persons, have been, are being, and continue to be denied full access to the services provided by retail establishments and are therefore being discriminated against due to alleged inaccessibility of certain Point of Sale Devices (defined in Section 1.8 below) found in Staples Stores and alleged inaccessibility of [www.Staples.com](http://www.Staples.com). Staples denies that it discriminates against blind and visually-impaired persons, including Claimants and their respective boards, staff, members and clients, in any way and specifically denies that it discriminates against such blind and visually-impaired persons due to alleged inaccessibility of certain Point of Sale Devices in Staples Stores and/or the alleged inaccessibility of [www.Staples.com](http://www.Staples.com).

E. The Parties enter into the Full Agreement in order to resolve the dispute and to avoid the burden, expense, and risk of potential litigation. In entering into the Full Agreement,

Staples does not admit, and specifically denies, that it has violated or failed to comply with any provisions of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101, *et seq.*, and the Title III implementing regulations, 28 C.F.R., Part 36, and any applicable laws of any state relating to accessibility for persons with disabilities to public accommodations, any regulations or guidelines promulgated pursuant to those statutes, or any other applicable laws, regulations, or legal requirements. Neither the Full Agreement, nor any of its terms or provisions, nor any of the negotiations connected with it, shall be construed as an admission or concession by Staples of any such violation or failure to comply with any applicable law. Neither the Full Agreement nor any of its terms and provisions shall be offered or received as evidence for any purpose whatsoever against Staples in any action or proceeding, other than a proceeding to enforce the terms of the Full Agreement.

NOW, THEREFORE, the Parties hereby agree to the following provisions:

1. Definitions. As used in the Full Agreement, the following terms shall be as defined below:

1.1 Access Laws means the Americans with Disabilities Act (as defined below) and any applicable laws of any state, county or municipality relating to accessibility for persons with disabilities to places of public accommodation, any regulations or guidelines promulgated pursuant to those statutes, or any other applicable disability laws, regulations, or legal requirements, including, without limitation, California Civil Code §§ 51, *et seq.* and 54, *et seq.*, California Financial Code § 13082, California Health & Safety § 19955, and Title 24 of the California Code of Regulations and Massachusetts Public Accommodations Law, G.L. c.272, § 98, and Amendment Article 114 to the Massachusetts Constitution.

1.2 Americans with Disabilities Act or ADA means the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101, *et seq.*, and the Title III implementing regulations, 28 C.F.R., Part 36.

1.3 Back End Checkout Counter means the counter at the back of some Staples Stores where a POS Device is placed and which is utilized by Staples employees to assist customers in paying for products or services.

1.4 Copy Center Counter means a counter that is separate from a Front End or Back End Checkout Counter where a POS Device is placed and which is utilized by Staples employees to assist customers in paying for products or services available at the Copy Center.

1.5 Counsel means Goldstein, Demchak, Baller, Borgen and Dardarian, The Law Office of Lainey Feingold, and the attorneys practicing law therein.

1.6 Effective Date means December 31, 2008.

1.7 Existing Staples Store means a Staples store that is open to the public on December 31, 2008.

1.8 Front End Checkout Counter means the counter at the front of a Staples Store where a POS Device is placed and which is utilized by Staples employees to assist customers in paying for products or services.

1.9 Point of Sale Device Function, or Function means a task related to payment for purchases that can be performed by the customer through the Point of Sale Device.

1.10 Point of Sale Device or POS Device means a device used by a customer at a point of purchase that allows the customer to pay for items with a debit, credit or other electronic funds card. POS Device does not include other equipment that may be used by a customer in conjunction with the Device to scan, price, or weigh products.

1.11 Tactile Keypad means a number keypad that is part of a unit separate from the Point of Sale Device but which is either snapped onto or plugged into a Point of Sale Device and has the following features: Each key (button) is tactually discernable from surrounding surfaces and adjacent keys; Numeric keys are arranged in a 12-key ascending telephone keypad layout; the number five key is tactually distinct from the other keys by means of a raised dot; Function keys have contrasting colors, as follows: (i) Enter/ Accept (green key); (ii) Cancel (red key); and (iii) Correct / Clear (yellow key). Claimants agree that the Hypercom overlay bearing model number 3010, and the Hypercom PIN pad bearing model number P1310 meet these requirements. A Tactile Keypad may be used to perform the following Functions: input, correct, cancel and enter PIN, telephone number, other numeric information, and cash-back amounts.

1.12 New Staples Store means a Staples store that is first opened to the public after December 31, 2008.

1.13 Next Generation POS Device means the POS Device that will replace the POS Devices that exist in Staples Stores as of the Effective Date. Any such device will include an integrated or permanently affixed Tactile Keypad, have raised tactile markings on the Function keys, as follows: Enter/ Accept (green key with a raised circle); (ii) Cancel (red key with a raised X); and (iii) Correct / Clear (yellow key with a raised backward arrow), and provide at least the same level of functionality for customers with visual impairments as provided by the Tactile Keypad.

1.14 Personal Identification Number, or PIN means a unique numerical code used by individual customers that must be entered into a POS Device before conducting certain transactions on the POS Device.

1.15 Staples Store(s) means retail stores owned and operated by Staples in the United States.

2. Duration and Geographic Scope of Agreement. The Full Agreement shall apply to Staples Stores in every State in the United States. The terms of the Full Agreement shall remain in effect from the Effective Date until September 30, 2010.

3. Provisions Regarding Tactile Keypads and Point of Sale Devices.

3.1 Installation of Tactile Keypads in Staples Stores in California. Staples will permanently affix Tactile Keypads on all POS Devices in all Existing Staples Stores in California no later than December 31, 2009. Staples will permanently affix Tactile Keypads on all POS Devices in all New Staples Stores in California prior to the date on which those stores are opened to the public.

3.2 Schedule for Installing Tactile Keypads in Staples Stores Outside of California.

3.2.1 Commencing in February 2009 and completing by no later than September 30, 2009, Staples will provide Tactile Keypads as designated in Section 3.3 in 25% of Existing and New Staples Stores. All Staples Stores in Massachusetts will be included within the 25% of Stores covered by this section 3.2.1.

3.2.2 By no later than April 30, 2010, Staples will provide Tactile Keypads as designated in Section 3.3 in 100% of Existing and New Staples Stores.

3.3 Locations of Tactile Keypads in Staples Stores Outside of California. The Tactile Keypads installed in each Staples Store pursuant to Section 3.2 shall be placed in the Stores as follows:

3.3.1 In Staples Stores without a Back End Checkout Counter, one Tactile Keypad shall be installed at one POS Device at the Front End Checkout Counter and one Tactile Keypad shall be installed at the POS Device at the Copy Center Counter. Subject to Section 3.5 herein, each Tactile Keypad described in this section, if not permanently affixed to the POS Device, shall be kept in a designated, labeled compartment or drawer at the Counter with the POS Devices, such that the cashier does not need to leave the POS Device to obtain the Tactile Keypad at the designated location. Whenever possible, the Tactile Keypad installed at the Front End Checkout Counter will be installed on the POS Device nearest to the exit door.

3.3.2 In all Staples Stores with a Back End Checkout Counter, one Tactile Keypad shall be installed at one POS Device at the Front End Checkout Counter; one Tactile Keypad shall be installed at one POS Device at the Back End Checkout Counter; and one Tactile Keypad shall be installed at the POS Device at the Copy Center Counter. Subject to Section 3.5 herein, the Tactile Keypads described in this section, if not permanently affixed to the POS Device, shall be kept in a designated, labeled compartment or drawer at the Counter with the POS Devices, such that the cashier does not need to leave the POS Device to obtain the Tactile Keypad at the designated location. Whenever possible, the Tactile Keypads installed at the Front End Checkout Counter will be installed on the POS Devices located nearest to the exit door.

3.4 Signature Block. If customers are required to sign directly on the Point of Sale Terminal in order to complete a transaction, the terminal screen shall have no virtual function keys below the signature line.

3.5 Maintenance of Tactile Keypads. Staples will use its best efforts to maintain all Tactile Keypads installed pursuant to this Agreement in operable, working condition except for isolated or temporary interruptions in service due to maintenance or repairs.

3.6 Installation Information to Claimants. No later than 30 days after the dates set forth in Sections 3.1 and 3.2 herein, Staples will provide written confirmation to Claimants that the required Tactile Keypads have been installed. The confirmation provided in connection with Sections 3.2.1 and 3.2.2 will also include the locations of Staples Stores at which Tactile Keypads have been installed during the reporting period.

4. Provisions Regarding Next Generation POS Devices. Staples will offer Claimants the opportunity to test and provide feedback on any Next Generation Device under consideration by Staples during the Term of this Agreement, prior to any final decision being made by Staples regarding the Next Generation Device. Claimants shall provide any feedback within fourteen days of their testing. Staples will consider in good faith the feedback provided by Claimants but will not be in breach of this Agreement if Staples does not incorporate the feedback. Staples will retain the right to decide the type and nature of the Next Generation POS Device.

5. Training of Staples Personnel.

5.1 On or before the date on which the Tactile Keypads are installed pursuant to this Agreement, Staples will modify its current training materials to include instruction to its managers and sales associates regarding: (i) the installation and location of Tactile Keypads; (ii) the reason blind and visually impaired Staples customers need the devices; (iii) the manner in which blind Staples customers use the devices; and (iv) guidelines for appropriate interactions with visually impaired customers using the Tactile Keypads. Additionally, Staples will provide all its Stores with an easy to use reference guide to serve as a “refresher” to the training. Appropriate store personnel will be trained to include as part of their daily store closing procedures ensuring that the Tactile Devices, if not affixed to POS Devices, are properly stored in their designated compartments or drawers. Staples will also instruct its district managers to conduct a monthly audit to ensure that the Tactile Devices, if not affixed to POS Devices, are properly stored in their designated compartments or drawers.

5.2 Staples will provide Claimants with a copy of the training materials prior to their being finalized. Review and distribution of the proprietary training material is to be limited to Claimants and their attorneys only for purposes of this dispute. All training material will be returned to Staples. Staples will consider the feedback provided by Claimants, but Staples retains full discretion over all matters relating to the training materials, including their form, content, and implementation.

5.3 All Staples managers and sales associates will receive the above-referenced training prior to the date on which the Tactile Keypads are installed in their respective stores.

6. Provisions Regarding Accessibility of [www.Staples.com](http://www.Staples.com).

6.1 Staples will continue to use good faith efforts to ensure that all pages of [www.Staples.com](http://www.Staples.com) will substantially comply with the Priority One and Two checkpoints of the Web Content Accessibility Guidelines (hereafter “WCAG” or “Guidelines”) by no later than June 30, 2009. The Parties recognize that some Priority One or Two checkpoints address features or design elements that may not be used on [www.Staples.com](http://www.Staples.com) and in such circumstances compliance with those checkpoints is not required.

6.2 To the extent Staples hires contractors or vendors for website development and design work on [www.Staples.com](http://www.Staples.com), it will make a good faith effort to locate and select contractors and vendors that are able to comply with the Guidelines.

6.3 CAPTCHA

6.3.1 If any Completely Automated Public Turing Test to Tell Computers and Humans Apart or similar visual or textual Turing or reverse-Turing verification test (referred herein as “CAPTCHA”) is used on [www.staples.com](http://www.staples.com), Staples will incorporate alternative security measures that are usable by Persons with Visual Impairments.

6.3.2 Testing of Proposed Alternatives to Visual Verifications. If, after the Effective Date, Staples plans to continue using any security measure that includes a CAPTCHA on [www.staples.com](http://www.staples.com), Staples will provide a method for Claimants’ representatives to test the alternative security measure to ensure that it is usable by Persons with Visual Impairments. Such testing will occur no later than April 30, 2009 and Staples will give good faith consideration to all feedback provided by Claimants’ representatives, provided that such feedback is provided within fifteen (15) days of the testing. Any disagreements regarding this feedback will be treated as a dispute subject to the terms of the dispute resolution provisions of Section 8 of this Agreement.

6.4 Third-Party Content. The Parties recognize that there may be certain content on [www.Staples.com](http://www.Staples.com) that is not written or controlled by Staples (“Third-Party Content”). Staples’s only obligations under this Agreement with respect to Third-Party Content are the following:

6.4.1 By no later than March 1, 2009, Staples will request in writing that third parties supplying web-content to [www.Staples.com](http://www.Staples.com) voluntarily bring their content into conformance with the Priority One and Two Checkpoints of WCAG 1.0 to the extent applicable.

6.4.2 If, on or after the Effective Date, Staples issues requests for proposals or enters into contracts for development or inclusion of Third-Party Content on [www.Staples.com](http://www.Staples.com), Staples will include a requirement that the third party make good faith efforts to comply with the Guidelines in all such requests for proposals and vendor contracts.

6.5 No later than April 30, 2009, Staples will provide Claimants with written confirmation that it has met the requirements of Section 6.1 of this Agreement.

6.6 Changes to WCAG 1.0. If WCAG 1.0 is superseded by a later version, such as the Web Content Accessibility Guidelines 2.0 Working Draft (“Version 2.0”) currently under development, Staples will have the option of complying with either Version 1.0 or Version 2.0. If Version 2.0 is selected, Staples will meet conformance level AA.

6.7 Accessibility Information. Staples will post information on its website, linked from the homepage, describing its efforts to comply with the Guidelines. Staples will provide a method by which users can notify the company about web accessibility concerns. Staples will notify visitors to [www.Staples.com](http://www.Staples.com) when they are linking to Third-Party Content, as that term is used herein.

7. Joint Press Release. The Claimants and Staples may jointly issue a press release announcing the terms of this Agreement. If the Parties cannot agree on the language of a joint press release, either party may issue its own release provided that it is shared with the other Parties at least three business days prior to issuance and provided that the release is consistent with the terms of this agreement and reflects the collaborative method in which the Parties’ Dispute was resolved.

8. Procedures in the Event of Disputes.

8.1 Notice of Non-Compliance. If a Party believes that the other Party has not complied with any provision of the Full Agreement, that party shall provide the other Party with Notice of Non-compliance containing the following information:

8.1.1 the alleged act of non-compliance;

8.1.2 a reference to the specific provision(s) of the Settlement Agreement or Confidential Addendum that are involved;

8.1.3 a statement of the remedial action sought by the initiating party;

8.1.4 a brief statement of the specific facts, circumstances and legal argument supporting the position of the initiating party.

8.2 Response. Within forty-five (45) days of receipt of a Notice provided pursuant to Section 8.1, the non-initiating Party shall respond to the initiating Party in writing.

8.3 Meet and Confer. Within two weeks after the response described above, the Parties shall informally meet and confer and attempt to resolve the issues raised in the Notice.

8.4 Submission to Mediation/Binding Arbitration.

8.4.1 If the matters raised in a Notice provided pursuant to Section 8.1 are not resolved within forty-five (45) days of the initial meet and confer required by Section 8.3, either party may submit the unresolved matters to nonbinding mediation before a mediator affiliated with JAMS, or such other mediator as the Parties may jointly agree to use.

If the dispute is not settled in mediation, it shall be submitted to binding arbitration before an arbitrator affiliated with JAMS. The arbitration hearing shall be conducted, in accordance with the JAMS Streamlined Arbitration Rules & Procedures. However, those Rules will be modified as necessary to ensure that the hearing is held as soon as practicable after the submission to arbitration, and that a written decision on the matter is rendered within sixty (60) days of the last hearing date.

9. Notice or Communication to Parties. Any notice or communication required or permitted to be given to the Parties hereunder shall be given in writing by email and United States mail, addressed as follows:

To Claimants:

Linda M. Dardarian  
c/o Goldstein, Demchak, Baller, Borgen & Dardarian  
300 Lakeside Drive, Suite 1000  
Oakland, CA 94612  
email: [ldardarian@gdblegal.com](mailto:ldardarian@gdblegal.com)

Lainey Feingold  
Law Office of Lainey Feingold  
1524 Scenic Avenue  
Berkeley, CA 94708  
email: [LF@LFLegal.com](mailto:LF@LFLegal.com)

To Staples:

Cindy Westervelt  
Vice President, Associate General Counsel  
Staples, Inc.  
500 Staples Drive  
2 West  
Framingham, MA 01702  
email: [Cindy.Westervelt@Staples.com](mailto:Cindy.Westervelt@Staples.com)

10. Feedback from Claimants. On a date during the third quarter of 2009 that is mutually agreed to by the Parties, Staples will meet by telephone or in person with representatives of Claimants to elicit input and receive feedback regarding the implementation of this Agreement and any other issue regarding technology used by Staples customers and its effect on customers who are blind or visually impaired. Staples will also make a good faith effort to arrange and participate in a meeting by telephone or in person between Claimants and the manufacturer of Staples' POS Devices and Tactile Keypads to discuss the inclusion of tactile markings on the Function keys of such devices.

11. Modification in Writing. No modification of the Full Agreement shall be effective unless in writing and signed by authorized representatives of all Parties.

12. No Other Representations. Each Party to the Full Agreement warrants that he, she or it is acting upon his, her or its independent judgment and upon the advice of his, her or its own counsel and not in reliance upon any warranty or representation, express or implied, of any nature or kind by any other Party, other than the warranties and representations expressly made in the Full Agreement.

13. Full Agreement Has Been Read. The Full Agreement has been carefully read by each of the Parties, or their responsible officers, and its contents are known and understood by each of the Parties. The Full Agreement is signed freely by each party executing it.

14. No Assignment. No Party to the Full Agreement has heretofore assigned, transferred or granted, or purported to assign, transfer or grant, any of the claims, demands, or cause or causes of action disposed of by the Full Agreement.

15. Agreement Binding on Assigns And Successors. The Full Agreement shall bind any assigns and successors of the Parties.

16. Force Majeure. The performance of Staples under this Full Agreement shall be excused during the period and to the extent that such performance is rendered impossible, impracticable or unduly burdensome due to acts of God, strikes or lockouts, or unavailability of



operable parts, equipment or materials through normal supply sources. If Staples seeks to invoke this Section, it shall notify Counsel in writing as soon as reasonably possible, specifying the particular action that could not be performed and the specific reason for the non-performance. Counsel and Staples will thereafter meet and confer regarding an alternative schedule for completion of the action that could not be performed, or an alternative action. Any dispute regarding the applicability of this Section, or any future action to be taken, that remains after the meet and confer session will be handled as a dispute pursuant to Section 8 of this Agreement.

17. No Admission of Liability. In entering into the Full Agreement, Staples does not admit, and specifically denies, that it has violated or failed to comply with any Access Laws.

18. Authority. The persons executing the Full Agreement each represent and warrant that he or she has the authority to enter into the Full Agreement, and to resolve the matters set forth in the Full Agreement, on behalf of the Party for whom he or she is executing the Full Agreement, and that no further approval is necessary in order for the Full Agreement to be binding on the Party for whom he or she is executing.

19. Integrated Agreement. The Full Agreement constitutes the entire agreement relating to the subject matters addressed therein.

20. Rules of Construction. Each party and its legal counsel have reviewed and participated in the drafting of the Full Agreement; and any rule of construction to the effect that ambiguities are construed against the drafting party shall not apply in the interpretation or construction of the Full Agreement. Section titles used herein are intended for reference purposes only and are not to be construed as part of the Full Agreement. The Recitals are integral to the construction and interpretation of the Full Agreement and are therefore incorporated into the Full Agreement in their entirety.

21. Triplicate Originals/Execution in Counterparts. All Parties and their respective counsel shall sign three copies of this document and each such copy shall be considered an original. This document may be executed in counterparts.

PARTIES

APPROVED AS TO FORM:

STAPLES, INC.

DLA PIPER LLP (US)

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

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

Merrill F. (Rick) Storms, Jr., Esq.

AMERICAN COUNCIL OF THE BLIND

GOLDSTEIN, DEMCHAK, BALLER,  
BORGAN & DARDARIAN

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

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

Melanie Brunson  
Executive Director

Linda M. Dardarian, Esq.

AMERICAN FOUNDATION FOR THE BLIND

LAW OFFICE OF LAINEY FEINGOLD

By: \_\_\_\_\_  
Paul Schroeder  
Vice President, Programs & Policy Group

By: \_\_\_\_\_  
Lainey Feingold, Esq.

CALIFORNIA COUNCIL OF THE BLIND

By: \_\_\_\_\_  
Jeff Thom  
President

BAY STATE COUNCIL OF THE BLIND

By: \_\_\_\_\_  
Bob Hachey  
President