

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

STREET ADDRESS: 330 West Broadway
MAILING ADDRESS: 330 West Broadway
CITY AND ZIP CODE: San Diego, CA 92101
BRANCH NAME: Central
TELEPHONE NUMBER: (619) 450-7069

PLAINTIFF(S) / PETITIONER(S): Jeffrey Michaelson

DEFENDANT(S) / RESPONDENT(S): Staples Inc

MICHAELSON VS. STAPLES INC

NOTICE OF CASE ASSIGNMENT

CASE NUMBER:

37-2009-00083487-CU-BT-CTL

Judge: Jeffrey B. Barton

Department: C-69

COMPLAINT/PETITION FILED: 02/17/2009

CASES ASSIGNED TO THE PROBATE DIVISION ARE NOT REQUIRED TO COMPLY WITH THE CIVIL REQUIREMENTS LISTED BELOW

IT IS THE DUTY OF EACH PLAINTIFF (AND CROSS-COMPLAINANT) TO SERVE A COPY OF THIS NOTICE WITH THE COMPLAINT (AND CROSS-COMPLAINT).

ALL COUNSEL WILL BE EXPECTED TO BE FAMILIAR WITH SUPERIOR COURT RULES WHICH HAVE BEEN PUBLISHED AS DIVISION II, AND WILL BE STRICTLY ENFORCED.

TIME STANDARDS: The following timeframes apply to general civil cases and must be adhered to unless you have requested and been granted an extension of time. General civil consists of all cases except: Small claims appeals, petitions, and unlawful detainers.

COMPLAINTS: Complaints must be served on all named defendants, and a CERTIFICATE OF SERVICE (SDSC CIV-345) filed within 60 days of filing. This is a mandatory document and may not be substituted by the filing of any other document.

DEFENDANT'S APPEARANCE: Defendant must generally appear within 30 days of service of the complaint. (Plaintiff may stipulate to no more than a 15 day extension which must be in writing and filed with the Court.)

DEFAULT: If the defendant has not generally appeared and no extension has been granted, the plaintiff must request default within 45 days of the filing of the Certificate of Service.

THE COURT ENCOURAGES YOU TO CONSIDER UTILIZING VARIOUS ALTERNATIVES TO LITIGATION, INCLUDING MEDIATION AND ARBITRATION, PRIOR TO THE CASE MANAGEMENT CONFERENCE. MEDIATION SERVICES ARE AVAILABLE UNDER THE DISPUTE RESOLUTION PROGRAMS ACT AND OTHER PROVIDERS. SEE ADR INFORMATION PACKET AND STIPULATION.

YOU MAY ALSO BE ORDERED TO PARTICIPATE IN ARBITRATION PURSUANT TO CCP 1141.10 AT THE CASE MANAGEMENT CONFERENCE. THE FEE FOR THESE SERVICES WILL BE PAID BY THE COURT IF ALL PARTIES HAVE APPEARED IN THE CASE AND THE COURT ORDERS THE CASE TO ARBITRATION PURSUANT TO CCP 1141.10. THE CASE MANAGEMENT CONFERENCE WILL BE CANCELLED IF YOU FILE FORM SDSC CIV-359 PRIOR TO THAT HEARING

1 **Stephen B. Morris (SBN 126192)**
2 **MORRIS and ASSOCIATES**
3 **444 West C Street, Suite 300**
4 **San Diego, California 92101**

5 **(619) 239-1300**

6 Attorneys for Plaintiff

FILED
CIVIL
MAY 11 P 2:51
SUPERIOR COURT
SAN DIEGO

7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
8 **IN AND FOR THE COUNTY OF SAN DIEGO**

10 _____)
11 JEFFREY MICHAELSON for himself and All)
12 Others Similarly Situated,)

13 Plaintiff,

14 vs.)

15 STAPLES, INC. and DOES 1 through 20,)
16 inclusive,)

17 Defendants.)

CASE NO. 37-2009-00083487-CU-BT-CTL

COMPLAINT

(1) **VIOLATION B&P CODE 17200**
(2) **VIOLATION CONSUMER LEGAL
REMEDIES ACT**

CLASS ACTION

18 Plaintiff alleges as follows:

19
20
21 **FIRST CAUSE OF ACTION**

22 **(Violation of B&P Code section 17200 et seq)**

23 1. Plaintiff Jeffrey Michaelson (Plaintiff) is a current STAPLES, INC. (STAPLES)
24 customer who resides in San Diego, California.

25 2. Defendant STAPLES is a corporation headquartered in Framingham, MA, and
26 doing business in California as "STAPLES."

27 3. DOES 1 through 20, inclusive, are, and were at all relevant times hereto,
28 corporations and/or business entities qualified to do business throughout the United States. Each

1 DOE Defendant was the agent and/or employee of the other Defendants, and each of them, and
2 was at all times herein mentioned acting within the course and scope of such agency and
3 employment. Each was in some manner responsible for Plaintiff's damages.

4 4. Within the four years prior to the time this action was commenced, and continuing,
5 STAPLES has had a policy of issuing to its customers Gift Cards in connection with its
6 promotional programs. These Gift Cards can be used at any STAPLES store throughout the
7 United States, including all California stores. Plaintiff, received in the mail from STAPLES a \$20
8 promotional Gift Card, which contained, on the reverse of the card, an expiration date set forth in
9 less than 10-point font. The expiration date was 5/3/08. Plaintiff did not immediately realize that
10 his promotional Gift Card had an expiration date. The expiration date was less than obviously set
11 forth. When he did notice, it was too late to use. The card had expired. Plaintiff has incurred
12 expenses at STAPLES which would have been reduced by \$20, but for the failure of STAPLES to
13 comply with section 1749.5 as set forth below.

14 5. Plaintiff is informed and believes and based thereon alleges that these Gift Cards
15 contain expiration dates set forth in less than 10-point font, and only on the reverse of the card, in
16 violation of Civil Code section 1749.5, which provides:

17 (a) As used in this title, "Gift Certificate" includes gift cards

18 6. Furthermore section 1749.5 provides:

19 It is unlawful for any person or entity to sell a gift certificate to a purchaser that
20 contains any of the following:

21 ***

22 (1) An expiration date.

23 ***

24 (d) This section does not apply to any of the following gift
25 certificates issued on or after January 1, 1998, provided the
26 expiration date appears in capital letters in at least 10-point
27 font on the front of the gift certificate:

28 (1) Gift certificates that are distributed by the issuer to a

1 consumer pursuant to an awards, loyalty or
2 promotional program without any money or other
3 thing of value being given in exchange for the gift
4 certificate by the consumer.

5 7. Plaintiff is informed and believes, and based thereon alleges that numerous
6 STAPLES customers have failed to use their gift cards prior to the expressed expiration date,
7 which does not appear in at least 10-point font, and which appears only on the reverse of the card.

8 8. STAPLES has engaged in an unlawful business practice in violation of Business and
9 Professions Code section 17200 causing injury in fact to each of its gift card customers.
10 Specifically, customers have failed to timely utilize their gift cards because of the difficulty in
11 reading the expiration date on the gift cards. As a consequence, customers like plaintiff have not
12 realized the financial benefits of the gift cards when they have subsequently shopped at
13 STAPLES stores, thereby incurring additional expense which otherwise would not have been
14 incurred. Plaintiff and the class have been damaged in an amount to be proven at the time of trial.

15 9. Plaintiff and the class seek disgorgement of all profits realized by STAPLES as the
16 result of the issuance of its non-compliant gift cards and, further, seek an injunction requiring
17 STAPLES to include on its Gift Cards (which expire) an expiration date in compliance with Civil
18 Code section 1749.5 et seq.

19
20 **II. SECOND CAUSE OF ACTION**

21 **(Violation of the Consumers Legal Remedies Act**

22 **Civil Code §1761(d), as against all Defendants)**

23 10. Plaintiff realleges and incorporates by reference paragraphs 1 through 9 inclusive,
24 of this Complaint, as though set forth in full herein.

25 11. The California Consumers Legal Remedies Act (the Act), Cal. Civ. Code §1750, *et*
26 *seq.* (the "Act"), provides consumers with a comprehensive procedure for redressing Defendant's
27 violations of various statutory rights.

28 12. Defendant has violated and is continuing to violate the Act in at least the following

1 respects: In violation of §1770(a)(14) of the Act, Defendants' acts and practices constitute
2 representations that a transaction confers or involves rights, remedies, or obligations which it does
3 not have or involve, or which are prohibited by law, towit the issuance of Gift Cards which fail to
4 adequately apprise customers of expiration dates.

5 13. By reason of the foregoing, Plaintiff and the Class members have been irreparably
6 harmed, entitling them to both injunctive relief and restitution.

7 14. Pursuant to §1782, Plaintiff has given written notice to Defendants of his intention
8 to file an amended complaint without leave of Court for damages under the Act if Defendants fail
9 to offer appropriate consideration or other remedy for damages or if Defendants fail to offer
10 appropriate consideration or other remedy to all affected consumers as described in the written
11 notice.

12 III. CLASS ALLEGATIONS

13 15. This action is brought, and may properly be maintained, as a class action pursuant to
14 the provisions of California Code of Civil Procedure Section 382 and Civil Code Section 1781(a).
15 Plaintiff brings this action on behalf of himself and on behalf of a Class of all other STAPLES
16 customers who received Gift Cards which failed to comply with Civil Code section 1749.5.

17 16. The claims of the representative Plaintiff are typical of the claims of the members of
18 the Class and all members of the Class were similarly affected by Defendant's wrongful conduct
19 complained of herein.

20 17. The representative Plaintiff will fairly and adequately protect the interests of the
21 Class and has retained counsel competent and experienced in class action litigation.

22 18. The identification of the individual Class members may be effectuated by reference
23 to Defendants' records.

24 19. Common questions of law and/or fact exist as to all members of the Class and
25 predominate over any question solely affecting individual members of the Class. Among the
26 questions of law or fact common to the Class are: (1) Whether STAPLES Gift Cards contain a
27 statutorily compliant expiration date; (2) Whether its practice violates Business and Professions
28 Code sections 17200 et seq and Civil Code section 1749.5.

1 20. The Class of persons for whose benefit this case is brought consists of all STAPLES
2 customers who received but did not use fully their STAPLES Gift Cards, which contained non-
3 compliant expiration dates.

4 21. A class action is superior to other methods for the fair and efficient adjudication of
5 this controversy since the Class is so numerous that joinder of all members in a single action
6 would be impracticable and the repetitive testimony of each Class member at trial would be
7 unnecessary and an inefficient use of judicial resources. Since the practices engaged in are
8 common to all members of the Class, judicial economy would not be served by multiple actions
9 with duplicative and repetitive testimony. Furthermore, as the monetary injury suffered by
10 individual Class members may be relatively small, the expense and burden of individual litigation
11 would make it impossible for members of the Class to individually redress the wrongs done to
12 them.

13 22. Plaintiff is aware of no difficulty which will be encountered in the management of
14 this litigation which would preclude its maintenance as a class action.

15 **WHEREFORE**, Plaintiff prays for relief as follows:

- 16 1. For disgorgement by Defendants of all amounts that have been obtained in
17 connection with any of the deceptive, unfair and/or unlawful business practices alleged herein;
- 18 2. For restitution to all Class members according to proof;
- 19 3. For an injunction requiring Defendant to comply with Civil Code section 1749.5;
- 20 4. For attorney and paralegal fees;
- 21 5. For prejudgment interest as allowed by law;
- 22 6. For costs of suit incurred herein; and
- 23 7. For such other relief as the Court deems just and proper.
- 24

25 DATED: February 12, 2009

MORRIS and ASSOCIATES

27 By: Stephen B. Morris
28 Stephen B. Morris
 Attorneys for Plaintiff

**SUMMONS
(CITACION JUDICIAL)**

**NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):**
Staples, Inc. and DOES 1 through 20, inclusive,

**YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTA DEMANDANDO EL DEMANDANTE):**
Jeffrey Michaelson for himself and All Others
Similarly Situated.

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)
FILED
MAR 11 2009
P 2:51
COURT CLERK

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.

Tiene 30 DIAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp/espanol/), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.courtinfo.ca.gov/selfhelp/espanol/) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:
(El nombre y dirección de la corte es):
San Diego Superior Court
Hall of Justice
330 W. Broadway

CASE NUMBER:
(Número del Caso):
37-2009-00083487-CU-BT-CTL

San Diego, CA 92101

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

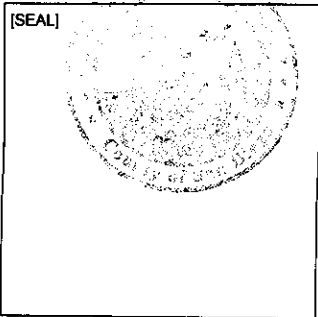
Stephen B. Morris
444 West C Street
(619) 239-1300

MORRIS AND ASSOCIATES
San Diego, CA 92101

DATE: FEB 17 2009
(Fecha)

Clerk, by C. Beutler C. Beutler, Deputy
(Secretario) (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).



NOTICE TO THE PERSON SERVED: You are served

1. as an individual defendant.
2. as the person sued under the fictitious name of (specify):
3. on behalf of (specify):
under:

<input type="checkbox"/> CCP 416.10 (corporation)	<input type="checkbox"/> CCP 416.60 (minor)
<input type="checkbox"/> CCP 416.20 (defunct corporation)	<input type="checkbox"/> CCP 416.70 (conservatee)
<input type="checkbox"/> CCP 416.40 (association or partnership)	<input type="checkbox"/> CCP 416.90 (authorized person)
<input type="checkbox"/> other (specify):	
4. by personal delivery on (date):

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State, number, and address):
Stephen B. Morris 126192
MORRIS AND ASSOCIATES
 444 West C Street
 San Diego, CA 92101
 TELEPHONE NO.: (619) 239-1300 FAX NO.: (619) 234-3672
 ATTORNEY FOR (Name): Plaintiff

SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Diego
 STREET ADDRESS: 330 W. Broadway
 MAILING ADDRESS:
 CITY AND ZIP CODE: San Diego, CA 92101
 BRANCH NAME: Hall of Justice

CASE NAME: Michaelson v. Staples, Inc.

FOR COURT USE ONLY

FILED
 2009 FEB 12 10:51
 SUPERIOR COURT
 SAN DIEGO

CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)	Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)	CASE NUMBER: 37-2009-00083487-CU-BT-CTL
		JUDGE: DEPT.:

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41)
Other PI/PD/W/D (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/W/D (23)	Real Property <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26)	Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20)
Non-PI/PD/W/D (Other) Tort <input checked="" type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/W/D tort (35)	Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38)	Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42)
Employment <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)

2. This case is is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

a. <input type="checkbox"/> Large number of separately represented parties	d. <input type="checkbox"/> Large number of witnesses
b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve	e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
c. <input type="checkbox"/> Substantial amount of documentary evidence	f. <input type="checkbox"/> Substantial postjudgment judicial supervision

3. Remedies sought (check all that apply): a. monetary b. nonmonetary; declaratory or injunctive relief c. punitive

4. Number of causes of action (specify): 2

5. This case is is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: February 12, 2009

Stephen B. Morris (TYPE OR PRINT NAME)  (SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.