

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

-----X  
ALAN S. NOONAN,  
  
Plaintiff,  
  
v.  
  
STAPLES, INC. and  
JAY G. BAITLER,  
  
Defendants.  
-----X

**09 CA 1160.5 WGY**

Civil Action No. \_\_\_\_\_

FILED  
IN CLERKS OFFICE  
2009 SEP 25 A 11:46  
U.S. DISTRICT COURT  
DISTRICT OF MASS.

**COMPLAINT AND JURY DEMAND**

Plaintiff Alan S. Noonan, by his attorneys, for his Complaint and Jury Demand alleges as follows against defendants Staples, Inc. and Jay G. Baitler:

**PARTIES**

1. Plaintiff Alan S. Noonan ("Noonan") is an individual residing at 740 Bluebird Lane, Plantation, Florida.
2. Defendant Staples, Inc. ("Staples") is a duly organized corporation with a principal place of business located at 500 Staples Drive, Framingham, Middlesex County, Massachusetts.
3. Defendant Jay G. Baitler ("Baitler") is an individual residing at 42 Union Park Street, Boston, Suffolk County, Massachusetts. Staples and Baitler are collectively referred to herein as "Defendants."

**JURISDICTION AND VENUE**

4. This Court has original jurisdiction over this action pursuant to 28 U.S.C. § 1332 because it is “between citizens of different states,” and the amount in controversy exceeds \$75,000.00, exclusive of costs and interest.

5. Venue is proper in the District of Massachusetts pursuant to 28 U.S.C. § 1391(a) and (c).

**GENERAL ALLEGATIONS**

6. Noonan was employed by Staples as a sales person in 1994. In 2000, he was promoted to Regional Sales Director, and remained in that position until his employment with Staples was terminated in January 2006.

7. Baitler is Staples’ Executive Vice President responsible for its North American Delivery Contract Division (“Division”).

8. In September 2009, Baitler participated in a telephone conference among various Staples employees (i.e., Regional Vice Presidents) in the Division (“the Baitler Conference”). During the Baitler Conference, Baitler falsely stated that Noonan never denied “stealing” from Staples. Moreover, William Wilkinson, a Staples employee, prepared an email on September 4, 2009 memorializing notes of what was stated at the Baitler Conference (“the September 4<sup>th</sup> Email”). A copy of the September 4<sup>th</sup> Email is attached hereto as **Exhibit A**.

9. Baitler orally and Staples in writing published defamatory statements about Noonan. Moreover, Baitler knew full well that his statement was false or he acted with reckless disregard as to whether his statement was true. Baitler was grossly negligent, or at a minimum negligent, when he published his false statement concerning Noonan to third parties.

10. Defendants' false statements regarding Noonan (i.e. Noonan did not deny "stealing") accuses Noonan of a criminal act, and therefore, constitutes defamation *per se*.

11. Defendants maintain that they acted properly when they published false statements about Noonan. However, as Defendants well know, Noonan denies that he ever stole while employed by Staples, and therefore, verbal and written statements by Defendants that Noonan never denied stealing from Staples falsely and maliciously impute criminal conduct on Noonan that is defamatory *per se*.

12. As a direct result of Defendants' conduct towards Noonan as described above, Noonan has suffered and continues to suffer damages for loss of reputation, humiliation and mental anguish and suffering. Noonan's emotional distress has been exacerbated as a result of how the conduct of Defendants is affecting his wife and child.

**COUNT I**  
**(DEFAMATION: SLANDER AND LIBEL)**

13. Noonan realleges and incorporates by reference paragraphs 1 through 12 of the Complaint as if fully set forth herein and in addition makes the allegations set forth below.

14. The false statement published by Defendants about Noonan during the Baitler Conference and the further publications of the September 4<sup>th</sup> Email by Staples have defamed Noonan. Moreover, the September 4<sup>th</sup> Email and/or its contents, according to representations made by Staples' legal counsel, was forwarded to other email recipients by Staples employees.

15. Baitler knew at the time of making his statement about Noonan that his statement was false or he made his statement concerning Noonan with reckless disregard for its truth. Moreover, Baitler's statement—further published by Staples—was done out of malice to indulge ill will and hostility towards Noonan with the intent to harm him and injure his reputation.

Defendants publications of false statements concerning Noonan were grossly negligent or at a very minimum negligent.

16. Defendants are liable to Noonan for the damages he has suffered, and continues to suffer, as a result of the publications of statements by Defendants that are defamatory *per se* concerning Noonan in an amount to be determined at trial, together with interest and costs, including reasonable attorneys' fees.

**RELIEF**

**WHEREFORE**, plaintiff Alan S. Noonan prays for relief as follows:

1. For judgment on Count I in favor of plaintiff Alan S. Noonan against defendants Staples, Inc. and Jay G. Baitler, jointly and severally, in an amount to be determined at trial together with interest and costs including reasonable attorneys' fees; and
2. For such other and further relief as this Court may deem just and proper.

**DEMAND FOR TRIAL BY JURY**

Plaintiff Alan S. Noonan hereby demands a trial by jury on all issues so triable in the Complaint.

PLAINTIFF ALAN S. NOONAN,  
By his attorneys,



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Daniel K. Gelb (BBO# 659703)

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Stamenia (Stephanie) Tzouganatos (BBO # 661509)

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Boston, MA 02109

Telephone: (617) 345-0010

Facsimile: (617) 345-0009

Dated: September 25, 2009

JS 44 (Rev. 12/07)

**CIVIL COVER SHEET**

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

**I. (a) PLAINTIFFS**

Alan S. Noonan

**DEFENDANTS**  
Staples, Inc. and Jay G. Baitler

(b) County of Residence of First Listed Plaintiff Florida  
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant  
(IN U.S. PLAINTIFF CASES ONLY)

(c) Attorney's (Firm Name, Address, and Telephone Number)  
(See Attachment)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.  
Attorneys (If Known)  
(See Attachment)

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 2 U.S. Government Defendant
- 3 Federal Question (U.S. Government Not a Party)
- 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   |                                       |                                       |   |                            |                                       |     |
|---|---------------------------------------|---------------------------------------|---|----------------------------|---------------------------------------|-----|
| (For Diversity Cases Only)              |                                       | PTF                                   | DEF   |                            | PTF                                   | DEF |
| Citizen of This State                   | <input type="checkbox"/> 1            | <input checked="" type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input checked="" type="checkbox"/> 4 |     |
| Citizen of Another State                | <input checked="" type="checkbox"/> 2 | <input type="checkbox"/> 2            | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5            |     |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3            | <input type="checkbox"/> 3            | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6            |     |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

- |   |  |   |  |  |  |
|---|--|---|--|--|--|
| <input type="checkbox"/> 110 Insurance  | <input type="checkbox"/> 310 Airplane                            | <input type="checkbox"/> 362 Personal Injury - Med. Malpractice         | <input type="checkbox"/> 610 Agriculture                                 | <input type="checkbox"/> 422 Appeal 28 USC 158                   | <input type="checkbox"/> 400 State Reapportionment                                     |
| <input type="checkbox"/> 120 Marine   | <input type="checkbox"/> 315 Airplane Product Liability          | <input type="checkbox"/> 365 Personal Injury - Product Liability        | <input type="checkbox"/> 620 Other Food & Drug                           | <input type="checkbox"/> 423 Withdrawal 28 USC 157               | <input type="checkbox"/> 410 Antitrust   |
| <input type="checkbox"/> 130 Miller Act   | <input checked="" type="checkbox"/> 320 Assault, Libel & Slander | <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability | <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 | <input type="checkbox"/> 820 Copyrights                          | <input type="checkbox"/> 430 Banks and Banking   |
| <input type="checkbox"/> 140 Negotiable Instrument                                | <input type="checkbox"/> 330 Federal Employers' Liability        | <input type="checkbox"/> 370 Other Fraud                                | <input type="checkbox"/> 630 Liquor Laws                                 | <input type="checkbox"/> 830 Patent                              | <input type="checkbox"/> 450 Commerce  |
| <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment    | <input type="checkbox"/> 340 Marine                              | <input type="checkbox"/> 371 Truth in Lending                           | <input type="checkbox"/> 640 R.R. & Truck                                | <input type="checkbox"/> 840 Trademark                           | <input type="checkbox"/> 460 Deportation   |
| <input type="checkbox"/> 151 Medicare Act   | <input type="checkbox"/> 345 Marine Product Liability            | <input type="checkbox"/> 380 Other Personal Property Damage             | <input type="checkbox"/> 650 Airline Regs.                               | <input type="checkbox"/> 861 HIA (1395ff)                        | <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations            |
| <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) | <input type="checkbox"/> 350 Motor Vehicle                       | <input type="checkbox"/> 385 Property Damage Product Liability          | <input type="checkbox"/> 660 Occupational Safety/Health                  | <input type="checkbox"/> 862 Black Lung (923)                    | <input type="checkbox"/> 480 Consumer Credit   |
| <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits        | <input type="checkbox"/> 355 Motor Vehicle Product Liability     | <input type="checkbox"/> 510 Motions to Vacate Sentence                 | <input type="checkbox"/> 690 Other                                       | <input type="checkbox"/> 863 DIWC/DIWW (405(g))                  | <input type="checkbox"/> 490 Cable/Sat TV  |
| <input type="checkbox"/> 160 Stockholders' Suits                                  | <input type="checkbox"/> 360 Other Personal Injury               | <input type="checkbox"/> 530 General                                    | <input type="checkbox"/> 710 Fair Labor Standards Act                    | <input type="checkbox"/> 864 SSID Title XVI                      | <input type="checkbox"/> 810 Selective Service   |
| <input type="checkbox"/> 190 Other Contract                                       | <input type="checkbox"/> 441 Voting                              | <input type="checkbox"/> 535 Death Penalty                              | <input type="checkbox"/> 720 Labor/Mgmt. Relations                       | <input type="checkbox"/> 865 RSI (405(g))                        | <input type="checkbox"/> 850 Securities/Commodities/Exchange                           |
| <input type="checkbox"/> 195 Contract Product Liability                           | <input type="checkbox"/> 442 Employment                          | <input type="checkbox"/> 540 Mandamus & Other                           | <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act      | <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) | <input type="checkbox"/> 875 Customer Challenge 12 USC 3410                            |
| <input type="checkbox"/> 196 Franchise  | <input type="checkbox"/> 443 Housing/Accommodations              | <input type="checkbox"/> 550 Civil Rights                               | <input type="checkbox"/> 740 Railway Labor Act                           | <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609         | <input type="checkbox"/> 890 Other Statutory Actions                                   |
| <input type="checkbox"/> 210 Land Condemnation                                    | <input type="checkbox"/> 444 Welfare                             | <input type="checkbox"/> 555 Prison Condition                           | <input type="checkbox"/> 790 Other Labor Litigation                      | <input type="checkbox"/> 462 Naturalization Application          | <input type="checkbox"/> 891 Agricultural Acts   |
| <input type="checkbox"/> 220 Foreclosure  | <input type="checkbox"/> 445 Amer. w/Disabilities - Employment   | <input type="checkbox"/> 530 General                                    | <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act                | <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee      | <input type="checkbox"/> 892 Economic Stabilization Act                                |
| <input type="checkbox"/> 230 Rent Lease & Ejectment                               | <input type="checkbox"/> 446 Amer. w/Disabilities - Other        | <input type="checkbox"/> 535 Death Penalty                              | <input type="checkbox"/> 465 Other Immigration Actions                   | <input type="checkbox"/> 466 Habeas Corpus - Alien Detainee      | <input type="checkbox"/> 893 Environmental Matters                                     |
| <input type="checkbox"/> 240 Torts to Land  | <input type="checkbox"/> 440 Other Civil Rights                  | <input type="checkbox"/> 540 Mandamus & Other                           |  | <input type="checkbox"/> 467 Habeas Corpus - Alien Detainee      | <input type="checkbox"/> 894 Energy Allocation Act                                     |
| <input type="checkbox"/> 245 Tort Product Liability                               |  | <input type="checkbox"/> 550 Civil Rights                               |  | <input type="checkbox"/> 468 Habeas Corpus - Alien Detainee      | <input type="checkbox"/> 895 Freedom of Information Act                                |
| <input type="checkbox"/> 290 All Other Real Property                              |  | <input type="checkbox"/> 555 Prison Condition                           |  | <input type="checkbox"/> 469 Habeas Corpus - Alien Detainee      | <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice |

**V. ORIGIN**

- (Place an "X" in One Box Only)
- 1 Original Proceeding
  - 2 Removed from State Court
  - 3 Remanded from Appellate Court
  - 4 Reinstated or Reopened
  - 5 Transferred from another district (specify)
  - 6 Multidistrict Litigation
  - 7 Appeal to District Judge from Magistrate Judgment

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 28 U.S.C. 1332

Brief description of cause:  
Publication of defamatory statements orally and in writing.

**VII. REQUESTED IN COMPLAINT:**

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMANDS Over \$75,000.00 CHECK YES only if demanded in complaint:  
JURY DEMAND:  Yes  No

**VIII. RELATED CASE(S) IF ANY**

(See instructions): JUDGE William G. Young DOCKET NUMBER 06-CV-10716

DATE

9/25/09

SIGNATURE OF ATTORNEY OF RECORD

*Stagnata*

FOR OFFICE USE ONLY

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFF \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_



UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

1. Title of case (name of first party on each side only) Alan S. Noonan v. Staples, Inc. et al

FILED  
CLERK'S OFFICE

2. Category in which the case belongs based upon the numbered nature of suit Code listed on the civil cover sheet. (See local rule 40.1(a)(1)).

2009 SEP 25 4:44 PM

- I. 160, 410, 470, 535, R.23, REGARDLESS OF NATURE OF SUIT
- II. 195, 196, 368, 400, 440, 441-446, 540, 550, 555, 625, 710, 720, 730, 740, 790, 791, 820\*, 830\*, 840\*, 850, 890, 892-894, 895, 950. \*Also complete AO 120 or AO 121 for patent, trademark or copyright cases
- III. 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371, 380, 385, 450, 891.
- IV. 220, 422, 423, 430, 460, 462, 463, 465, 480, 490, 510, 530, 810, 620, 630, 640, 650, 860, 890, 810, 861-865, 870, 871, 875, 900
- V. 150, 152, 153.

09 CA 11605 WGY

3. Title and number, if any, of related cases. (See local rule 40.1(g)). If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court.

Alan S. Noonan v. Staples, Inc; Case No: 06-10716-WGY

4. Has a prior action between the same parties and based on the same claim ever been filed in this court?

YES  NO

5. Does the complaint in this case question the constitutionality of an act of congress affecting the public interest? (See 26 USC §2403)

YES  NO

If so, is the U.S.A. or an officer, agent or employee of the U.S. a party?

YES  NO  N/A

6. Is this case required to be heard and determined by a district court of three judges pursuant to title 28 USC §2284?

YES  NO

7. Do all of the parties in this action, excluding governmental agencies of the united states and the Commonwealth of Massachusetts ("governmental agencies"), residing in Massachusetts reside in the same division? - (See Local Rule 40.1(d)).

YES  NO

A. If yes, in which division do all of the non-governmental parties reside?

Eastern Division  Central Division  Western Division

B. If no, in which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?

Eastern Division  Central Division  Western Division

8. If filing a Notice of Removal - are there any motions pending in the state court requiring the attention of this Court? (If yes, submit a separate sheet identifying the motions)

YES  NO  N/A

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME Richard M. Gelb, Daniel K. Gelb, Stamenia Tzouganatos

ADDRESS Gelb & Gelb LLP, 84 State Street, Boston MA 02109

TELEPHONE NO. (617) 345-0010

# **EXHIBIT A**

-----Original Message-----

**From:** Wilkinson, Wayne (Atlanta)  
**Sent:** Friday, September 04, 2009 7:59 AM  
**To:** Moss, Kevin; Facer, Steve  
**Subject:** FW: Baiter call

Have a great weekend.

Notes:

- Courier conversion still experiencing issues. Difficulties in download of customer information. Communication is the key and also a focus on more facts, less passion. We want to make sure this does not occur with CE customers.
- We exceeded P6 numbers in P7. Do not have details yet but we beat the forecast yesterday by \$2M, equally split between Staples and CE.
- It appears that we are headed for a 56-60% payout on bonuses based on RONA assumptions at this point. This is great news and there is a definite lift in spirit across the teams. Caution, as indicated these are assumptions but the trend is positive and optimistic.
- Al Noonan sued us years ago. This has become a landmark case. It is making history in terms of what constitutes standard of libel. At first the issue was truth, now they have changed tactics to "intention". The interesting thing is that he has never denied stealing from us. The latest round of court battles will occur 1<sup>st</sup> week of Oct so expect to see more headlines.
- Product transition is moving well. Customer-specific information has been relayed to sales teams. Next phase to focus on tax and licensing.