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UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS:	**Joseph J. Simons, Chairman** **Noah Joshua Phillips** **Rohit Chopra** **Rebecca Kelly Slaughter** **Christine S. Wilson**

In the Matter of	)	
	)	
Sycamore Partners II, L.P.,	)	
a limited partnership;	)	
	)	
Staples, Inc.,	)	
a corporation;	)	
	)	**DECISION AND ORDER**
and	)	**DOCKET NO. C-4667**
	)	
Essendant Inc.,	)	
a corporation.	)	
	)	

DECISION
[Public Record Version]

The Federal Trade Commission ("Commission") initiated an investigation of the proposed acquisition by Staples, Inc. ("Staples") and its affiliates, whose owner is Sycamore Partners II, L.P. ("Sycamore"), of all of the outstanding shares of common stock of Essendant Inc., ("Essendant"), collectively "Respondents." The Commission's Bureau of Competition prepared and furnished to Respondents a draft of the Complaint, which it proposed to present to the Commission for its consideration. If issued by the Commission, the draft Complaint would charge Respondents with violations of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45.

Respondents and the Bureau of Competition executed an agreement ("Agreement Containing Consent Order" or "Consent Agreement") containing (1) an admission by Respondents of all the jurisdictional facts set forth in the draft Complaint, (2) a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by Respondents that the law has been violated as alleged in the draft Complaint, or that the facts as alleged in the draft Complaint, other than jurisdictional facts, are true, (3) waivers and other provisions as required by the Commission's Rules, and (4) a proposed Decision and Order.

The Commission considered the matter and determined that it had reason to believe that Respondents have violated the said Acts, and that a complaint should issue stating its charges in that respect. The Commission accepts the executed Consent Agreement and places it on the public record for a period of 30 days for the receipt and consideration of public comments. Now, in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission issues its Complaint, makes the following jurisdictional findings, and issues the following Decision and Order ("Order"):

1. Respondent Sycamore is a limited partnership organized, existing, and doing business under, and by virtue of, the laws of the Cayman Islands, with its executive offices and principal place of business located at 9 West 57th Street, 31st floor, New York, New York 10019.

2. Respondent Staples is a corporation organized, existing, and doing business under, and by virtue of, the laws of the State of Delaware, with its executive offices and principal place of business located at 500 Staples Drive, Framingham, Massachusetts 01702.

3. Respondent Essendant is a corporation organized, existing, and doing business under, and by virtue of, the laws of the State of Delaware with its executive offices and principal place of business located at One Parkway North Boulevard, Suite 100, Deerfield, Illinois 60015.

4. The Federal Trade Commission has jurisdiction over the subject matter of this proceeding and over Respondents, and the proceeding is in the public interest.

ORDER

I. Definitions

IT IS ORDERED that, as used in this Order, the following definitions shall apply:

A. "Sycamore" means Sycamore Partners II, L.P., its directors, officers, employees, agents, representatives, successors, and assigns; and the subsidiaries, divisions, groups, and affiliates in each case controlled by Sycamore Partners II, L.P., including but not limited to Staples, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each. After the Acquisition, Sycamore will include Essendant.

B. "Staples" means Staples, Inc., its directors, officers, employees, agents, and representatives; its successors and assigns; its joint ventures, subsidiaries, divisions, groups and affiliates in each case controlled by Staples, Inc., and the respective directors, officers, employees, agents, representatives, successors and assigns of each.

C. "Essendant" means Essendant Inc., its directors, officers, employees, agents, and representatives; its successors and assigns; its joint ventures, subsidiaries, divisions, groups and affiliates in each case controlled by Essendant Inc., and the respective directors, officers, employees, agents, representatives, successors and assigns of each.

D. "Respondent(s)" means Sycamore, Staples, and Essendant, individually and collectively.

E. "Commission" means the Federal Trade Commission.

F. "Acquisition" means the proposed acquisition of all of the outstanding shares of common stock of Essendant by Staples and its affiliates pursuant to the Agreement and Plan of Merger dated September 14, 2018, that was submitted by the Respondents to the Commission.

G. "Acquisition Date" means the date on which the Acquisition is consummated.

H. "Commercially Sensitive Information" means all confidential information, and all proprietary non-public information (*i.e.*, information that is not generally known or otherwise publicly available) Relating To Essendant Resellers and Essendant Resellers' End Users, including but not limited to: Essendant and Essendant Reseller bidding procedures and bid proposals, and all related documents, data, and materials, including term sheets, initial bid terms, final bid terms, and other documents that support cost and rate structures underlying the bids; responses to requests for either proposals or other solicitations; cost information, including cost of goods; customer contracts; customer lists; customer product, service, and delivery specifications; customer purchasing histories; customer service and support requirements and materials; customer approvals and related information; price lists; actual sale prices (net and gross); rebate programs and rebates paid to customers; advertising, marketing and sales support payments or allowance programs, including actual payments under such programs; credit records; non-public advertising, promotional and marketing plans and materials, including website content; sales and marketing training and compliance materials; marketing methods and strategies; strategic plans; competitive intelligence and research; Essendant Reseller's and Essendant Reseller End User's identity and terms of service; and Essendant Reseller financial information, including profit and loss statements, balance sheets, and other confidential financial documents;

Provided, however, the term Commercially Sensitive Information (i) does not include information about Essendant Resellers that is presented in an aggregated (where information and identities of individual Essendant Resellers are not revealed) and anonymized (where identities of individual Essendant Resellers are not revealed) format; and (ii) does not include information about Staples.

I. "Compliance Program" means a program that meets the definition of an "effective" compliance program under the guidance of Chapter 8 of the Guidelines Manual of the United States Sentencing Commission (including, but not limited to, an effective in-person or web-based training program) established to ensure compliance with the requirements and prohibitions of this Order.

J. "End User" means any customer that purchases Office Products for its own consumption rather than for resale or redistribution. End Users include businesses (including private and public organizations) and individual consumers.

K. "Essendant Reseller" means any Reseller that purchases Office Products from Essendant, other than Staples.

L. "Essendant Reseller Commercially Sensitive Information" means:

1. All Commercially Sensitive Information Relating To an Essendant Reseller: (i) that is being, will be, or has been maintained in confidence by such Essendant Reseller; (ii) that has been or will be provided, disclosed, or made available to Essendant prior to the Acquisition or otherwise is or will be in Essendant's possession, custody, or control as of the Acquisition Date; or (iii) that will be provided, disclosed, or made available to Essendant after the Acquisition Date; for avoidance of doubt, Essendant Reseller Commercially Sensitive Information includes any Essendant Reseller End User's Commercially Sensitive Information; and

2. Any portion of any Essendant document that includes, uses, or incorporates Essendant Reseller Commercially Sensitive Information as described in the above sub-Paragraph I.L.1.

M. "Essendant Reseller Goods" means Office Products sold by Essendant and Essendant Resellers in the United States.

N. "Essendant Wholesale Business" means the wholesale sale and distribution of Office Products to Essendant Resellers and any ancillary services that support Essendant Resellers and Essendant Resellers' End Users, including, but not limited to:

1. Offering, sale, and distribution of Office Products, which span all product categories and brands of Office Products;

2. Offering, sale, and distribution of private label Office Products;

3. Office Product ordering support, including the Automatic Distributor Order Transfer ("ADOT") system;

4. Overnight delivery to Essendant Resellers;

5. National next-day drop-ship delivery to an Essendant Resellers End Users on behalf of an Essendant Reseller;

6. "Wrap and label" services that deliver orders to Essendant Resellers pre-packed for Essendant Resellers' End Users, with each Essendant Reseller's End User's order ready for delivery to the name and address on the package;

7. Direct purchasing assistance, coordinating direct purchasing of large quantities of Office Products at lower prices on behalf of Essendant Resellers; and

8. Marketing assistance that includes helping Essendant Resellers with print marketing and digital marketing support, including web content, digital analytics, as well as Promotional Activities, marketing, Merchandising, and merchandising tools and training.

O. "Firewalled Respondent Personnel" means Respondent Personnel who:

1. As of the date on which Respondents execute the Agreement Containing Consent Order, perform (i) Wholesaler Functions; (ii) Legal and Regulatory Functions; or (iii) Shared Services;

2. Are Persons who report directly to such Respondent Personnel identified in sub-Paragraph I.O.1 and who, on or after the date on which the Agreement Containing Consent Order is executed, perform or who are assigned to perform Wholesaler Functions, Legal and Regulatory Functions, or Shared Services;

3. Are described and identified pursuant to the provisions and procedures in Paragraph II.C. of this Order; or

4. Are specifically identified in Appendix A to this Order; *provided, however*, that Firewalled Respondent Personnel includes additional Respondent Personnel who are identified and approved as Firewalled Respondent Personnel pursuant to the provisions in Paragraph II.C.4. of this Order.

P. "Legal and Regulatory Functions" means activities necessary to comply with financial or other regulatory requirements, to obtain or provide legal advice, or otherwise comply with applicable laws and regulations, including this Order, to the extent that such activities require access to Essendant Reseller Commercially Sensitive Information.

Q. "Management Oversight Group" means the persons or positions in Staples that are listed in Appendix B to this Order. The Management Oversight Group may have access to Essendant Reseller Commercially Sensitive Information for the purposes described in Paragraphs II.B.5 and II.D. of this Order. All changes to the Management Oversight Group shall be in accordance with the procedures outlined in Paragraph II.D. of this Order.

R. "Merchandising" means determining the selection of products sold by Essendant or Staples that will be sourced from suppliers and re-sold on a wholesale or retail basis.

S. "Monitor" means the Person appointed pursuant to Paragraph III. of this Order, as well as his or her designees.

T. "Office Products" means consumables, equipment, and other products used by consumers, businesses, and other organizations, such as traditional office supplies (*e.g.*, pens, pencils, paper clips, staples, folders, and binders); copy paper; ink and toner; technology products (*e.g.*, laptops, personal computers, monitors, and tablets); office equipment (*e.g.*, printers and copiers); JanSan supplies (*e.g.*, bath tissue and dispensers, paper towels and dispensers, antibacterial lotion, and hand soap); breakroom supplies (*e.g.*, coffee, cold beverages, snacks, disposable plates, cups, cutlery, and napkins); office furniture; print and promotional services; managed print services; school supplies; safety supplies; and maintenance, repair and operations ("MRO") supplies.

U. "Ownership Interest" means any and all rights, title and interest, present and/or contingent, to own and/or hold any of the following: (i) any voting or non-voting stock, share capital, equity, membership interest, general or limited partnership interest, or any other interest(s) in a specified entity; or (ii) any notes or options or other instruments convertible into any voting or non-voting stock in a specified entity.

V. "Person" means any individual, partnership, joint venture, firm, corporation, limited liability company or partnership, association, trust, unincorporated organization, or other business or government entity.

W. "Promotional Activities" means the preparation and supply of price and non-price promotions, in-store displays, electronic or paper catalog and mailer pages, on-line pages, social media content, and newspaper inserts.

X. "Respondent Personnel" means any director, officer, employee, agent, representative, consultant, or other Persons designated, hired, retained, or otherwise representing Respondents.

Y. "Relating To" means discussing, analyzing, summarizing, describing, or constituting, but not merely referring to.

Z. "Reseller" means a Person that sells and distributes Office Products directly to End Users. Resellers include independent resellers, dealers, and distributors ("IDCs"), office supply superstores (*e.g.*, Staples, and Office Depot), online retailers, mass merchants, and club stores. For purposes of this Order, Staples is a Reseller.

AA. "Reseller Functions" means the activities of a Reseller that are typical of a Reseller operating separately and independently of and from any Wholesaler with which it is affiliated or in which it may have an interest, including marketing, advertising, promoting, distributing, pricing, and selling Office Products to End Users; *provided, however,* that no Wholesaler Functions are included in Reseller Functions.

BB. "Shared Services" means a Wholesaler Function that, before the Acquisition Date, was performed by Essendant and that, after the Acquisition Date, is transitioned to Respondent Personnel. Any Respondent Personnel providing Shared Services shall be Firewalled Respondent Personnel and subject to the provisions of Paragraph II.C. of this Order. Shared Services are listed in Appendix C.

CC. "Staples Customer Goods" means Office Products sold by Staples in the United States to End Users.

DD. "Staples Reseller Functions" means all Reseller Functions engaged in by Staples and all Respondent Personnel whose duties, responsibilities, activities or positions involve or constitute Reseller Functions. For purposes of this Order, Staples Reseller Functions are identified on Appendix D of this Order.

EE. "Wholesaler" means a Person that sells and distributes Office Products to Resellers. For purposes of this Order, Essendant is a Wholesaler.

FF. "Wholesaler Functions" means the activities of a Wholesaler, typical of a standalone Wholesaler with no related Reseller Functions, including the functions necessary to support the Essendant Wholesale Business; *provided, however,* that no Reseller Functions

are included in Wholesaler Functions; *provided, further* that Essendant's Vertical Markets Group is included in Wholesaler Functions. Wholesaler Functions are listed in Appendix E.

II. Firewall and Related Requirements

IT IS FURTHER ORDERED that**:**

A. No later than the Acquisition Date, and except for (i) Firewalled Respondent Personnel as provided in Paragraph II.C. of this Order; (ii) the Management Oversight Group as provided in Paragraph II.D.; or (iii) to the extent necessary to comply with this Order, Respondents shall not:

1. Have access to, knowingly review, or otherwise request, solicit, seek, receive, or obtain, directly or indirectly, any Essendant Reseller Commercially Sensitive Information;

2. Disclose, provide, share, convey, discuss, exchange, transfer, circulate, or otherwise provide access to, directly or indirectly, any Essendant Reseller Commercially Sensitive Information to any Person except as expressly permitted under this Order; or

3. Use, directly or indirectly, any Essendant Reseller Commercially Sensitive Information for any purpose other than as provided in Paragraphs II.C and II.D of this Order.

B. Beginning no later than the Acquisition Date, Respondents shall: (i) take all actions necessary and appropriate to prevent access to, and the disclosure or use of, Essendant Reseller Commercially Sensitive Information by or to any Person(s) not authorized to access, receive, and/or use such information pursuant to the terms of this Order, including, but not limited to, Respondent Personnel performing Staples Reseller Functions as identified Appendix D; (ii) not integrate relevant functions or services or share Essendant Reseller Commercially Sensitive Information until Respondents comply with the requirements of sub-Paragraphs II.B.3, II.B.5.b, II.C.1.b, II.C.2.a, and II.D.5, with the approval of the Monitor; and (iii) with the advice, assistance, and approval of the Monitor, establish and maintain a Compliance Program, which shall include the development, implementation, and maintenance of procedures, requirements, and a system of access and data controls with respect to protecting and segregating such Essendant Reseller Commercially Sensitive Information, including:

1. Establishing and maintaining appropriate firewalls, confidentiality protections, internal practices, training, communications, protocols, and system and network controls and restrictions;

2. Maintaining Essendant Reseller Commercially Sensitive Information separate from other Respondent data and information and granting access to Essendant Reseller Commercially Sensitive Information only to Firewalled Respondent Personnel by reasonable and appropriate means such as, segregating data in information systems; physically separating, securing, and/or shielding all

electronic and hard copies of such Essendant Reseller Commercially Sensitive Information, and any email and hard copy communication regarding such Essendant Reseller Commercially Sensitive Information; maintaining current information in human resources and other systems to identify members of Firewalled Respondent Personnel and the Management Oversight Group; physically separating Firewalled Respondent Personnel; and employing other processes designed to confine the flow, discussion, and dissemination of such Essendant Reseller Commercially Sensitive Information to Firewalled Respondent Personnel only, and ensuring that this information is not shared with Respondent Personnel performing Staples Resale Functions as identified in Appendix D;

3. Requiring all (i) Firewalled Respondent Personnel; (ii) members of the Management Oversight Group; and (iii) and any other Respondent Personnel who may have access to Essendant Reseller Commercially Sensitive Information to complete training on the requirements and prohibitions of this Order, sign appropriate non-disclosure or equivalent agreements providing written acknowledgement of his/her/their responsibilities regarding the restrictions on the use and dissemination of Essendant Reseller Commercially Sensitive Information, and a statement attesting that he or she has received a copy of this Order or a summary of the key requirements and prohibitions of this Order (which summary will have been approved in advance by the Monitor), will comply with the terms of this Order, and will take all reasonable steps to assure that Respondent Personnel that report to him or her directly or indirectly will comply with the terms of this Order;

4. Preventing Firewalled Respondent Personnel from (i) participating in any way, directly or indirectly, in Staples Reseller Functions; and/or (ii) disclosing any Essendant Reseller Commercially Sensitive Information to any Respondent Personnel outside of Firewalled Respondent Personnel;

5. Preventing the Management Oversight Group from receiving or having access to Essendant Reseller Commercially Sensitive Information, and preventing Firewalled Respondent Personnel from directly or indirectly disclosing Essendant Reseller Commercially Sensitive Information to the Management Oversight Group, unless and solely to the extent permitted pursuant to this Paragraph and with the Monitor's approval. In this regard, the Management Oversight Group:

   a. May receive data and reports with detail only to the extent necessary for the management and oversight of the Essendant Wholesale Business. Such information may include budget reviews, long range plans, finance updates, but in no case shall the reports contain any information that reveals the identity of Essendant Resellers or Essendant Resellers' End Users; *provided, however*, nothing herein shall prevent the Management Oversight Group from receiving or having access to a list of Essendant Reseller Customers and their contact information, without more, and in each case, to enable the Management Oversight Group to perform the functions described in Paragraph II.D. of this Order:

i. only after Respondents' chief legal officer, or designee (each of whom shall be trained regarding the requirements and prohibitions of the Order, and shall sign appropriate non-disclosure or equivalent agreements providing written acknowledgement of their responsibilities regarding the restrictions on the use and disclosure of Essendant Reseller Commercially Sensitive Information), has reviewed any such Essendant Reseller Commercially Sensitive Information and verified that its disclosure to and use by the Management Oversight Group are in compliance with this Order; and

ii. where any such disclosure or communication to the Management Oversight Group containing Essendant Reseller Commercially Sensitive Information shall be provided to the Monitor for review 7 days prior to disclosure or communication to the Management Oversight Group;

b. Shall receive training on the requirements and prohibitions of the Order, certify their understanding of and commitment to abide by the terms of the Order, and sign an appropriate non-disclosure agreement; and

c. To the extent Firewalled Respondent Personnel are permitted to disclose Essendant Reseller Commercially Sensitive Information to the Management Oversight Group, the Management Oversight Group shall not thereafter disclose such information to Respondent Personnel or any Persons that are not part of the Management Oversight Group or use the disclosed information for any purpose except to the extent permitted by this Order.

C. Firewalled Respondent Personnel shall, as relevant to their position, have access to and may use Essendant Reseller Commercially Sensitive Information as reasonably necessary to perform Essendant Wholesaler Functions, to perform Legal or Regulatory Functions, and to fulfill Shared Services, subject to the use and disclosure restrictions set forth in sub-Paragraphs II.B.3-5 above, and for no other purpose, in accordance with the following:

1. Firewalled Respondent Personnel shall include only those Persons (and related functions or positions) who, as of the Acquisition Date:

a. Perform Essendant Wholesaler Functions, Legal or Regulatory Functions, or Shared Services, or who report, directly to such Persons; *provided, however,* that Persons, functions, or positions included within Firewalled Respondent Personnel shall have access to and use of such Essendant Reseller Commercially Sensitive Information only to the extent necessary to perform their duties;

b. Do not perform and are not responsible, directly or indirectly, for Staples Reseller Functions, and if any such Person, function, or position reports (directly or indirectly) to a Person responsible for Staples Reseller Functions, that Person, function, or position shall receive training on Order terms, sign an appropriate non-disclosure agreement (if applicable), certify compliance with the terms of the Order, and not disclose, provide, or otherwise make available Essendant Reseller Commercially Sensitive Information to the Person responsible (directly or indirectly) for Staples Reseller Functions; and

c. Do not receive bonus or other tangible benefits related to the marginal sale of Staples Customer Goods as a disproportionate benefit to any bonus or tangible benefit related to the marginal sale of Essendant Reseller Goods.

2. Firewalled Respondent Personnel shall be trained on the requirements or prohibitions of the Order and shall execute non-disclosure agreements and statements attesting that they have received a copy or approved summary of this Order, will comply with the Order's terms, and will take all reasonable steps to assure that employees who report to them directly will comply with the Order's terms:

a. For Firewalled Respondent Personnel, no later than forty (40) days after Respondents execute the Agreement Containing Consent Order; and

b. For Firewalled Respondent Personnel identified after Respondents execute the Agreement Containing Consent Order, sufficiently in advance of the date on which they assume those responsibilities to permit them to be trained and to sign the required non-disclosure agreements and statements attesting that they have received a copy or approved summary of this Order, will comply with the Order's terms, and will take all reasonable steps to assure that employees who report to them directly will comply with the Order's terms.

3. Firewalled Respondent Personnel reporting directly or indirectly into Essendant Wholesaler Functions may use Essendant Reseller Commercially Sensitive Information only to the extent necessary to perform their Essendant Wholesaler Functions, and for no other purpose, and the Firewalled Respondent Personnel reporting directly or indirectly into the Legal or Regulatory Functions or Shared Services function may use Essendant Reseller Commercially Sensitive Information only to the extent necessary to perform their respective functions.

4. Respondents shall add to or change the Firewalled Respondent Personnel only pursuant to the following procedures:

a. Replacing or adding individuals who report directly to the Persons, functions, or positions specifically identified in Appendices A and C shall be in accordance with Respondents' usual and customary business practices;

b. Replacing any of the Persons or positions specifically identified in Appendices A and C, or re-organizing functions or positions specifically identified in Appendices A and C, shall be in accordance with the usual and customary business practices of Respondents after notification to and no objection from the Monitor, provided that the Monitor is provided with information about the position and individual, including the individual's background and prior positions held, 7 days prior to the replacement or reorganization;

c. Transitioning or replacing Persons or positions specifically identified in Appendix A to Shared Services shall require Respondents to provide the Monitor with information about the position and individual, including the individual's background and prior positions held, 7 days prior to the transition or replacement, and such transition or replacement may take effect only if there is no objection from the Monitor;

d. Adding new functions or positions that are not specifically identified in Appendices A and C shall require prior notification to the Monitor and Commission staff in accordance with the following:

i. Commission staff shall have 10 business days from notification to consider the proposed change; and

ii. If Commission staff does not object, in writing, including the reasons for objecting, to the change within 10 days of notification, Respondents shall be permitted to make the change.

5. Respondents who wish to transfer an employee working within the Firewalled Respondent Personnel group to any position within either Staples or Sycamore must notify the Monitor 30 days prior to such transfer with information on the nature of the employee's prior and future job responsibilities, and the nature and extent of his or her exposure to Essendant Reseller Commercially Sensitive Information, in accordance with the following:

a. If the transferred employee will be in a position directly competing with the Essendant Wholesale Business, then such employee must be removed from access to Essendant Reseller Commercially Sensitive Information for a period of 6 months prior to assuming his or her new responsibilities;

b. If the transferred employee (i) will be in a position that supports a business that does not compete with or manage the Essendant Wholesale Business, or (ii) was not exposed to Essendant Reseller Commercially Sensitive Information, the transfer may take effect after the notice period if there is no objection from the Monitor; and

c. The transferred employee shall continue to be bound by the terms of the non-disclosure agreement signed pursuant to Paragraph II.C. of the Order for the duration of the Order.

D. The Management Oversight Group, as identified in Appendix B, may receive specified Essendant Reseller Commercially Sensitive Information as provided in Paragraph II.B.5 in order to make enterprise decisions to fulfill their oversight and management responsibilities; *provided, however,* that the Monitor must be notified 7 days in advance and must approve such receipt prior to the disclosure of Essendant Reseller Commercially Sensitive Information to any member of the Management Oversight Group; *provided, further* that the Management Oversight Group and each member thereof shall:

1. Receive Essendant Reseller Commercially Sensitive Information only to the extent necessary to perform their oversight responsibilities;

2. Use such Essendant Reseller Commercially Sensitive Information only as necessary to perform their oversight responsibilities and not for any other purpose;

3. Protect the confidentiality of such Essendant Reseller Commercially Sensitive Information;

4. Not disclose such Essendant Reseller Commercially Sensitive Information to any Person not authorized to have it pursuant to this Order;

5. Receive training on the Order, and execute (i) a non-disclosure agreement providing written acknowledgment of his or her responsibilities regarding the restrictions on the use and dissemination of such Essendant Reseller Commercially Sensitive Information; and (ii) a statement attesting that he or she has received a copy of this Order or an approved summary, has been trained on the requirements and prohibitions of the Order, will comply with its terms, and will take all reasonable steps to assure that employees who report to him or her directly or indirectly will comply with the Order's terms, all no later than 40 days after Respondents have identified the Management Oversight Group member or in any event before such member may have access to or receive any Essendant Reseller Commercially Sensitive Information; and

6. Proposed additions to the Management Oversight Group shall be approved by the Monitor, and access to information shall follow the procedures outlined in this Paragraph II.D.

E. Respondents shall develop and implement written procedures and protocols and maintain a system of access and data controls to assure compliance with the requirements and prohibitions of this Order ("Compliance Program"), to be reviewed and approved by the Monitor, which shall include, but not be limited to, procedures for:

1. Monitoring compliance;

2. Requiring and enforcing compliance with appropriate remedial action in the event of non-compliance by Respondent Personnel;

3. Notifying the Monitor in writing of any non-compliance with this Order;

4. Distributing a copy of this Order or an approved summary to all (i) Firewalled Respondent Personnel; (ii) the Management Oversight Group; and (iii) any other Respondent Personnel who may have access to Essendant Reseller Commercially Sensitive Information within 7 days of the date this Order becomes final, and annually thereafter (or on such other schedule as the Monitor may approve) or, for Persons added to the Firewalled Respondent Personnel group or Management Oversight Group pursuant to Paragraph II.C.4 and II.D. of this Order no later than 20 days after Respondents have identified the additional Firewalled Respondent Personnel or Management Oversight Group member or in any event before such member may have access to or receive any Essendant Reseller Commercially Sensitive Information;

5. Training on the requirements and prohibitions of this Order for all (i) Firewalled Respondent Personnel; (ii) the Management Oversight Group; and (iii) any other Respondent Personnel who may have access to Essendant Reseller Commercially Sensitive Information, where the content of such training shall be approved by the Monitor prior to delivery, and periodic refresher training and communications shall occur no less frequently than annually;

6. Adding to or changing the composition of the Management Oversight Group;

7. Internal auditing or self-evaluation of adherence to each provision of the Order; and

8. The retention of documents and records in connection with Respondents' compliance with their obligations under this Order.

F. No later than 30 days of the date this Order become final, Respondents shall submit a detailed plan for complying with the provisions of Paragraph II. of this Order to the Commission and the Monitor. No later than 15 days after receipt of the detailed compliance plan, the Commission and the Monitor shall advise Respondents of any objections and proposed modifications to the plan.

G. The purpose of the provisions of Paragraph II. of this Order is to assure that Respondents maintain the confidentiality of and use Essendant Reseller Commercially Sensitive Information in a manner consistent with the applicable requirements and prohibitions, and to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's Complaint.

III. Monitor

IT IS FURTHER ORDERED that:

A. Theodore Banks shall serve as the Monitor pursuant to the agreement executed by the Monitor and Respondents and attached as Appendix F ("Monitor Agreement") and Non-Public Appendix G ("Monitor Compensation"). The Monitor is appointed to assure that Respondents expeditiously comply with all of their obligations and perform all of their responsibilities as required by this Order. The Monitor Agreement shall become effective no later than the date this Order is issued.

B. Respondents shall transfer to the Monitor all rights, powers, and authorities necessary to permit the Monitor to perform his duties and responsibilities, pursuant to the Order and consistent with the purposes of the Order, in consultation with the Commission or its staff, on the following terms, which shall be included in the Monitor Agreement:

1. The Monitor shall (i) monitor Respondents' compliance with the obligations set forth in this Order, (ii) act in consultation with the Commission or its staff, and (iii) serve as an independent third party and not as an employee or agent of the Respondents or of the Commission.

2. Respondents shall (i) ensure that the Monitor has full and complete access to all Respondents' personnel, books, records, documents, and facilities Relating To compliance with this Order and to any other relevant information as the Monitor may reasonably request, and (ii) cooperate with, and take no action to interfere with or impede the ability of, the Monitor to perform his duties pursuant to this Order;

3. The Monitor (i) shall serve at the expense of Respondents, without bond or other security, on such reasonable and customary terms and conditions as the Commission may set, and (ii) may employ, at the cost and expense of Respondents, such consultants, accountants, attorneys, and other representatives and assistants as the Monitor deems are reasonably necessary or advisable to carry out the Monitor's duties and responsibilities;

4. Respondents shall indemnify the Monitor and such consultants, accountants, attorneys, and other representatives and assistants as may be engaged by the Monitor, and hold them harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of his duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from the Monitor's gross negligence or willful misconduct; and

5. Respondents may require the Monitor and each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants to sign a suitable confidentiality agreement; *provided, however,* that such agreement shall not restrict the Monitor from providing any information to the Commission.

C. The Monitor shall report in writing to the Commission (i) 30 days after this Order is issued or 30 days after Respondents submit their first interim compliance report pursuant to Paragraph V.B.1 of this Order, whichever is earlier, (ii) no later than 30 days after Respondents submit their subsequent interim and annual compliance reports as required by Paragraph V.B. of this Order, (iii) no later than 10 days after this Order terminates ("Final Report"), and (iv) at any other time as requested by the staff of the Commission, concerning Respondents' compliance with this Order.

D. The Commission may require the Monitor and each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants to sign a confidentiality agreement related to Commission materials and information received in connection with the performance of the Monitor's duties.

E. The Monitor's power and duties shall terminate 10 business days after the Monitor has completed his Final Report pursuant to Paragraph III.C.(iii) of this Order, or at such other time as directed by the Commission.

F. If at any time the Commission determines that the Monitor has ceased to act or failed to act diligently, or is unwilling or unable to continue to serve, the Commission may appoint a substitute Monitor, subject to the consent of Respondents, which consent shall not be unreasonably withheld:

1. If Respondents have not opposed, in writing, including the reasons for opposing, the selection of the substitute Monitor within 5 days after notice by the staff of the Commission to Respondents of the identity of any substitute Monitor, then Respondents shall be deemed to have consented to the selection of the proposed substitute Monitor; and

2. Respondents shall, no later than 5 days after the Commission appoints a substitute Monitor, enter into an agreement with the substitute Monitor that, subject to the approval of the Commission, confers on the substitute Monitor all the rights, powers, and authority necessary to permit the substitute Monitor to perform his or her duties and responsibilities pursuant to this Order on the same terms and conditions as provided in this Paragraph III.

G. The Commission may on its own initiative or at the request of the Monitor issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of this Order.

IV. Prior Notice

IT IS FURTHER ORDERED that, for a period of 10 years from the date this Order is issued, Respondents shall not, without providing prior written notification ("Notification") to the Commission in the manner described in this paragraph, acquire directly or indirectly, through subsidiaries or otherwise, any Person engaged in selling Office Products directly or indirectly to any wholesaler, distributor, or reseller of Office Products or to Office Products End Users in the United States, or any Ownership Interest, in whole or in part, in such Person ("To-Be-Acquired Person"), *provided, however*, that prior notification shall not be required under Paragraph IV of this Order for a transaction for which notification is required to be made, and has been made, pursuant to Section 7A of the Clayton Act, 15 U.S.C. § 18a. With respect to the Notification:

A. Notification required by this Paragraph shall contain:

1. The Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations as amended, and shall be prepared and transmitted in accordance with the requirements of that Part, except that no filing fee will be required for any such Notification, Notification shall be filed with the Secretary of the Commission, Notification need not be made to the United States Department of Justice, and Notification is required only of Respondents and not of any other party to the transaction;

2. The name, headquarters address, telephone number, and the name of a contact person of the To-Be-Acquired Person;

3. A description of the proposed acquisition and the assets to be acquired, and the acquisition price;

4. If acquiring less than 100 percent ownership interest in a To-Be-Acquired Person, Respondents' plans if any, to acquire additional ownership interest in the future;

5. All documents Relating To communications between Respondents and the To-Be-Acquired Person;

6. A list of the top 20 customers and top 20 vendors of the To-Be-Acquired Person and the Respondents; and

7. All documents Relating To the proposed acquisition.

Provided, however, that Notification shall not be required for acquisitions resulting in total holdings of an Ownership Interest of 10 percent or less of a To-Be-Acquired Person.

B. Respondents shall provide the Notification to the Commission at least 30 days prior to consummating the transaction (hereinafter referred to as the "first waiting period"). If, within the first waiting period, representatives of the Commission make a written request for additional information or documentary material (within the meaning of 16 C.F.R. § 803.20), Respondents shall not consummate the transaction until 30 days after submitting such additional information or documentary material.

C. Early termination of the waiting periods in this Paragraph may be requested and, where appropriate, granted by letter from the Bureau of Competition.

V. Compliance Reports

IT IS FURTHER ORDERED that:

A. Respondents shall notify Commission staff via email at bccompliance@ftc.gov of the Acquisition Date no later than 5 days after the Acquisition Date; and

B. Respondents shall submit verified written reports ("compliance reports") in accordance with the following:

1. An interim compliance report 30 days after the Order is issued, and every 90 days thereafter until one year after the date this Order is issued, at which time Respondents shall submit reports in accordance with Paragraph V.B.2;

2. Annual compliance reports one year after the date this Order is issued, and annually for the next nine years on the anniversary of that date; and

3. Additional compliance reports as the Commission or its staff may request.

C. Each compliance report shall set forth in detail the manner and form in which Respondents intend to comply, are complying, and have complied with this Order. Each compliance report shall contain sufficient information and documentation to enable the Commission to determine independently whether Respondents are in compliance with the Order. Conclusory statements that Respondents have complied with their obligations under the Order are insufficient. Respondents shall include in their reports, among other information or documentation that may be necessary to demonstrate compliance, a full description of the measures Respondents have implemented or plan to implement to ensure that they have complied or will comply with each paragraph of the Order. Respondents shall retain copies of all material written communications, as well as all non-privileged internal memoranda, reports, and recommendations concerning completing their obligations under the Order for a period of 10 years, and shall provide copies of those records to Commission staff upon request.

D. Each compliance report shall be verified in the manner set forth in 28 U.S.C. § 1746 by the Chief Executive Officer or another officer or employee specifically authorized to perform this function. Respondents shall submit an original and 2 copies of each compliance report as required by Commission Rule 2.41(a), 16 C.F.R. § 2.41(a), including a paper original submitted to the Secretary of the Commission and electronic copies to the Secretary at ElectronicFilings@ftc.gov and to the Compliance Division at bccompliance@ftc.gov.

E. Respondents shall provide a copy of each compliance report to the Monitor at the same time that they submit compliance reports to the Commission and to the Compliance Division.

VI. Change in Respondent

IT IS FURTHER ORDERED that each Respondent shall notify the Commission at least 30 days prior to:

A. Its proposed dissolution;

B. Its proposed acquisition, merger, or consolidation; or

C. Any other change in the Respondent, including assignment and the creation, sale, or dissolution of subsidiaries, if such change may affect compliance obligations arising out of this Order.

VII. Access

IT IS FURTHER ORDERED that, for purposes of determining or securing compliance with this Order, and subject to any legally recognized privilege, upon written request and 5 days' notice to the relevant Respondent, made to its principal place of business as identified in this Order, registered office of its United States subsidiary, or its headquarters office, the notified Respondent shall, without restraint or interference, permit any duly authorized representative of the Commission:

A. Access, during business office hours of the Respondents and in the presence of counsel, to all facilities and access to inspect and copy all business and other records and all documentary material and electronically stored information as defined in Commission Rules 2.7(a)(1) and (2), 16 C.F.R. § 2.7(a)(1) and (2), in the possession or under the control of the Respondents related to compliance with this Order, which copying services shall be provided by the Respondents at the request of the authorized representative of the Commission and at the expense of the Respondents; and

B. To interview officers, directors, or employees of the Respondents, who may have counsel present, regarding such matters.

VIII. Purpose

IT IS FURTHER ORDERED that the purpose of this Order is to remedy the harm to competition the Commission alleged in its Complaint and ensure that Respondents maintain the confidentiality of Essendant Reseller Commercially Sensitive Information in a manner consistent with all applicable requirements and prohibitions of this Order.

IX. Term

IT IS FURTHER ORDERED that this Order shall terminate on January 25, 2029.

By the Commission, Commissioner Chopra and Commissioner Slaughter dissenting.

April Tabor
Acting Secretary

SEAL:
ISSUED: January 25, 2019

Appendix A: Firewalled Respondent Personnel

1. President & CEO
2. SVP, General Counsel
    a. Counsel, Associate General
    b. Assistant General Counsel
3. SVP, Chief HR Officer
4. SVP, Strategy & Corporate Development
    a. Chief Operating Officer, Automotive
5. President, Office & Facilities
    a. SVP, Trade Development
    b. Architect, Senior, User Experience
    c. Manager, Inventory Management & Analytics
    d. VP, Customer Care & Sales Operations
    e. Manager Senior, Marketing Research & User Experience
        i. Manager, Reseller Development
        ii. Analyst Senior, III
        iii. Associate, Marketing Services
        iv. Specialist, Marketing Communications
        v. Manager, Web – Marketing
    f. VP, Vertical Markets
        i. Director, Business Development – Enterprise Accounts
        ii. Manager Senior, Business Development Healthcare
        iii. Manager, Business Development Vertical Markets
        iv. Director, Diverse Business Development
        v. Director, Vertical Markets
        vi. Director, New Channel
        vii. Director, Vertical Markets Sales Operations
    g. Director, Marketing Sales Programs
        i. Manager, Marketing Tech Specialist
        ii. Manager, Marketing Customer Enablement
        iii. Manager, Marketing Programs – Operations
        iv. Manager, Channel Marketing
        v. Manager Assistant, Graphic Mfg & O
    h. Director, Marketing

i. VP, Strategic Accounts

    i. Executive, Strategic Accounts
    ii. Director, National Accounts
    iii. Director, New Channel
    iv. Director, Strategic Groups – FE
    v. Manager, Strategic Events

j. VP, Sales – Mason

    i. Manager, WB Mason
    ii. Director, Operations & Logistics – Mason
    iii. Director, Category Management

k. VP, Independent Channels

    i. Director, Facilities Engagement
    ii. Director, Strategic Groups
    iii. Director, Field Support
    iv. Director Senior, East Region Sales
    v. Director, Inside Sales
    vi. Director, Sales West Region

l. Director, Digital Services

6. SVP, CFO & CIO

    a. VP, Treasurer

    b. Controller & CAO

7. VP, Operations & Transportation

    a. VP, Operations Region OH

8. SVP, Merchandising, Inventory & Pricing

    a. VP, Office Products & Furniture

    b. VP, Pricing & Margin Management

        i. Director, Pricing

    c. VP, Essendant Brands & Global Sourcing

    d. VP, Merchandising

    e. VP, Pricing/Business Integration

        i. Manager, Price Development & Communications
        ii. Manager Senior, Pricing Development & Communications
        iii. Director, Pricing/Margin LG

    f. VP, GM – Tech & Azerty

        i. VP, Sales Azerty

ii. VP, Operations & Customer

g. SVP, Inventory

Non-Public Appendix A-1: Firewalled Respondent Personnel

[Redacted From the Public Record Version, But Incorporated By Reference]

Appendix B: Management Oversight Group

- John Lederer, Executive Chairman
- Sandy Douglas, Chief Executive Officer
- Joanne Harris, Chief Commercial Officer
- Edward Ludwigson, VP Management Operations

Appendix C: Shared Services

- Audit/Accounting/Compliance: SVP Corporate Controller; Assistant Controller; VP Financial Services & System; Director Corporate Credit; Director Finance, Staples Promotional Products; VP General Auditor

- Financial Planning and Analysis: Vice Chairman & CFO; VP Corporate Financial Planning & Analysis; Director, Financial Planning & Analysis

- Tax/Treasury: SVP Financial & Treasurer; Head of Tax

- Information Technology: Chief Technology Officer; SVP Chief Information Security Officer; SVP Global eCommerce Technology; VP Order Management Systems; VP Technical Operations SDS; VP Data & Analytics; Director Enterprise/Financial Systems; Director Threat Vulnerability Management; Director Security & Compliance; VP eCommerce Engineering; VP Data Solutions & Merch; VP eCommerce Product & Customer Experience; Director Quill Technology; Director e-Commerce Engineering; Director e-Commerce Product Management & Strategy; Director Supply Chain Systems; Director Telecom Remote Infrastructure Services; Director Business Systems

- Human Resources/Talent Management/Recruiting: Chief Human Resources Officer; VP Talent & Organizational Development; VP Talent Acquisition & Workforce Planning; Director Learning & Development; VP Total Rewards; Director Global Human Resources Operations; Directors Human Resources

- Real Estate: VP Real Estate; VP Property Management; VP Facilities Management & Design; Director Real Estate Development; Director Design & Construction; Director NA Fixture Procurement & Install

- Legal: Chief Legal Officer; VP Associate General Counsels; Senior Company Counsels

- Risk Management: Director Risk Management

- Merchandising: Chief Merchandising Officer; VP/DMMs; VP/GMMs; Director DMMs; VP Merchandise Operations & Vendor Management; Director Vendor Programs Administration; Director Portfolio Group; see also Staples Brands Group below

- Marketing: Chief Marketing Officer; VP Staples Creative Group; Director Category Marketing

- Supply Chain/Logistics: Chief Supply Chain Officer; VP Engineering & Operations Support: RVPs DC/FC/Fleet; VP Supply Chain Analytics & Strategy; Director DMM; VP Transportation & Supplier Collaboration; Distinguished Scientist; Director National Transportation; Directors Regional Delivery Operations; Directors Fulfillment Centers; Directors Distribution; Director Delivery Operations Planning; Director Transportation; Director Furniture Operations

- M&A/Strategy: EVP Corporate Development
- Integration: Director Business Integration PMO; Director Integration
- Communications/Investor Relations: Director Corporate Communications
- Staples Brands Group: SVP Staples Brands Group; VP Global Sourcing Manufacturing & Operations SBG; VP Global Sales Channels; VP Product Development & Management; Director Product Quality & Compliance; Director Product Design Innovation; Director Sourcing & Procurement; Director SBG International Supply Chain; Directors Product Strategy
- Inventory Planning: SVP Merchandise Planning & Inventory Management; Director Sales & Operations Planning; Directors Planning & Inventory Management
- Loss Prevention: Director North America Delivery & Corporate Investigations; Director Global Health & Safety; Director, Fraud Intelligence
- Customer Service: VP NAC Customer Service; VPs Contact Center Operations; Director Business Intelligence & Project Services; Director Workforce Planning
- Indirect Procurement: VP Procurement; Directors Strategic Sourcing

Appendix D: Staples Reseller Functions

- Staples Business Advantage ("SBA") Sales Admin & Ops (reporting to Vice President, Management Operations)
- SBA Pricing (reporting to Vice President, Pricing)
- SBA Commercial and Enterprise Sales (reporting to Senior Vice President, Commercial and Enterprise, SBA Sales)
- SBA Mid-market Sales (reporting to Vice President, Mid-market, SBA Sales)
- Quill (reporting to Senior Vice President, Quill)
- Customer Transformation (reporting to Vice President, Customer Transformation)
- Digital Business (reporting to Vice President, Digital Business)
- Staples Promotional Products ("SPP") (reporting to Vice President/General Manager, SPP)
- SBA Financial Planning & Analysis (reporting to Vice President, Financial Planning & Analysis)
- HiTouch (reporting to President, HiTouch,, who reports to Senior Vice President, Commercial and Enterprise, SBA Sales)
- Corporate Development—Tuck-in Integration (reporting to Director, Integration)
- North American Delivery B2B Marketing (reporting to Vice President, B2B Marketing)

Appendix E: Wholesaler Functions

- Senior Leadership Team (reporting to President & CEO) (excluding Assistant, Executive – CEO and Group President, Industrials)
- Legal (reporting to SVP, General Counsel) (Counsel, Associate General and Assistant General Counsel only)
- Strategy & Corporate Development (reporting to SVP, Strategy & Corporate Development) (Chief Operating Officer - Automotive only)
- Office & Facilities (reporting to President, Office & Facilities) (excluding Assistant, Executive)
- Finance, Accounting and Information Technology (reporting to SVP, CFO & CIO) (VP, Treasurer and Controller & CAO only)
- Operations & Transportation (reporting to VP, Operations & Transportation) (VP, Operations Region OH only)
- Merchandising, Inventory and Pricing (reporting to SVP, Merchandising, Inventory & Pricing) (excluding Consultant - Merch)
- Marketing Research & User Experience (reporting to Manager Senior, Marketing Research & User Experience)
- Vertical Markets Group (reporting to VP, Vertical Markets)
- Marketing Sales Programs (reporting to Director, Marketing Sales Programs) (excluding direct reports of Manager Assistant, Graphic Mfg & O)
- Marketing (Director, Marketing only)
- Strategic Accounts (reporting to VP, Strategic Accounts)
- WB Mason (reporting to VP, Sales - Mason) (excluding Assistant, Executive)
- Independent Channels (reporting to VP, Independent Channels)
- Office Products & Furniture (VP, Office Products & Furniture only)
- Pricing & Margin Management (reporting to VP, Pricing & Margin Management)
- Essendant Brands & Global Sourcing (VP, Essendant Brands & Global Sourcing only)
- Merchandising (VP, Merchandising only)

- Technology & Azerty (reporting to VP, GM – Tech & Azerty) (excluding Director, Category Management)
- Pricing/Business Integration (reporting to VP, Pricing/Business Integration)
- Inventory (SVP Inventory only)

Appendix F: Monitor Agreement

MONITOR RETENTION AGREEMENT

This Monitor Agreement ("Monitor Agreement") entered into on October 26, 2018 between Theodore Banks ("Monitor") and Staples, Inc. ("Staples") provides as follows:

WHEREAS the United States Federal Trade Commission (the "FTC") has accepted or will shortly accept for public comment an Agreement Containing Consent Orders, containing a proposed Decision and Order ("Order"), which, among other things, (i) would require Staples to implement a "firewall" restricting its use of confidential information of Essendant, Inc. ("Acquired"), as defined in the Decision and Order, (ii) implement an effective compliance program regarding provisions of the Order, and (iii) contemplates the appointment of a Monitor to monitor Staples' compliance with its obligations under the Order;

WHEREAS the FTC may appoint Theodore Banks as Monitor pursuant to the Order;

WHEREAS the Order further provides that Staples shall execute an agreement, subject to the prior approval of the FTC, that confers all the rights and powers necessary to permit the Monitor to monitor Staples' compliance with the terms of the Order; and

WHEREAS the parties to this Monitor Agreement intend to be legally bound, subject only to the FTC's approval of this Agreement.

NOW, THEREFORE, the parties agree as follows:

All capitalized terms used in the Agreement and not specifically defined herein shall have the respective definitions given to them in the Order.

A. Monitor's Responsibilities. The Monitor shall be responsible for monitoring Staples' compliance with its obligations as set forth in the Order ("Monitor's Responsibilities"). In so doing, the Monitor shall act in consultation with the FTC or its staff and **shall serve as an independent third party and not as an employee or agent of the Staples or the FTC**. The Monitor shall have all rights, duties, powers and authorities required by the Order, and nothing in the Monitor Agreement shall change, amend, modify or otherwise limit those rights, duties, powers, and authorities.

B. Access to Relevant Information and Facilities. Subject to any demonstrated legally recognized privilege, the Monitor shall have full and complete access to the personnel, books and records of Staples kept in the ordinary course of business, facilities, technical information related to Staples' compliance with its obligations under the Order and such other relevant information as the Monitor may reasonably request.

Staples shall cooperate with any reasonable request of the Monitor. The Monitor shall give Staples reasonable written notice of any request for such access or such information and shall attempt to schedule any access or requests for information in such a manner as will not unreasonably interfere with Staples' operations. At

the request of the Monitor, Staples shall promptly arrange meetings and discussions, including tours of relevant facilities, at reasonable times and locations between the Monitor and employees of Staples who have knowledge relevant to the proper discharge of the Monitor's responsibilities under the Order.

C. Compliance Reports. Staples shall provide the Monitor with copies of all compliance reports filed with the FTC in a timely manner, but in any event, no later than five (5) days after the date on which Staples files such report with the FTC.

D. Additional Personnel. Staples agrees that, to the extent authorized by the Order, the Monitor shall have the authority to employ, at the expense of the Staples, such consultants, accountants, attorneys, and other representatives and assistants as are reasonably necessary to carry out the Monitor's Responsibilities.

E. Monitor's Obligations. The Monitor shall:

1. Carry out the Monitor's Responsibilities, including submission of periodic reports to the FTC or its staff concerning performance by Staples of its obligations under the Order, and any additional written reports as may be requested by the FTC or its staff;

2. Maintain the confidentiality of all non-public information, including Acquired's Commercially Sensitive Information, provided to the Monitor by Staples, Acquired, any supplier or customer of the Staples, Acquired, the FTC, or FTC staff in connection with the Monitor's Responsibilities ("Confidential Information"). Such Confidential Information shall be used only for the purpose of discharging the Monitor's obligations pursuant to this Monitor Agreement and not for any other purposes, including, without limitation, any other business, scientific, technological, or personal purpose. The Monitor may only disclose Confidential Information to:

   a. Persons employed by or working with the Monitor under this Monitor Agreement and who have executed a confidentiality agreement consistent with the provisions of this Agreement;

   b. Persons employed by Staples that are entitled to have access to such Confidential Information;

   c. FTC staff that are working on this matter; or

   d. Persons employed by Acquired that are entitled to have access to such Confidential Information.

3. Maintain a record and inform the FTC or its staff of all persons to whom Confidential Information related to this Monitor Agreement has been disclosed;

4. Require any consultants, accountants, attorneys, and any other representatives and/or assistants retained by the Monitor to assist in carrying out the Monitor's Responsibilities to execute a confidentiality agreement that requires such third parties

to treat Confidential Information with the same standards of care and obligations of confidentiality to which the Monitor must adhere under this Monitor Agreement;

5. Maintain the confidentiality for a period of ten (10) years after the termination of this Monitor Agreement, of all other aspects of the performance of the Monitor's Responsibilities and not disclose Confidential Information relating thereto except as required by law, or as may be permitted by Staples. In the event the Monitor is requested pursuant to subpoena or other legal process to produce any documents or to provide testimony relating to this matter in judicial or administrative proceedings to which the Monitor is not a party, Staples shall reimburse the Monitor at standard billing rates for all professional time and expenses, including reasonable attorneys' fees, incurred in preparing for and responding to requests for documents and providing testimony;

6. Upon termination of the Monitor's duties under this Monitor Agreement, the Monitor shall consult with FTC staff regarding disposition of any written and electronic materials (including materials that Staples provided to the Monitor) in the possession or control of the Monitor that relate to the Monitor's duties, and the Monitor shall dispose of such materials, which may include sending such materials to the FTC staff, as directed by the FTC staff. In response to a request by Staples to return or destroy materials that Staples provided to the Monitor, the Monitor shall inform FTC staff of such request and, if the FTC staff does not object, shall comply with the Staples' request. Nothing herein shall abrogate the Monitor's duty of confidentiality, which includes an obligation not to disclose any non-public information obtained while acting as a Monitor.

For the purpose of this Monitor Agreement, information shall not be considered confidential or proprietary to the extent it is or becomes part of the public domain (other than as a result of any action by the Monitor or by any employee, agent, affiliate or consultant of the Monitor), or to the extent that the recipient of such information can demonstrate that such information was already know to the recipient at the time of receipt from a source other than the Monitor, Staples, or any director, officer, employee, agent, consultant or affiliate of the Monitor or Staples, when such source was not known to the recipient after the due inquiry to be restricted from making such disclosure to such recipient.

F. Monitor Payment. Staples will pay the Monitor for services rendered by the Monitor and other employees performing services pursuant to this Agreement in accordance with the fee schedule listed on Schedule A to this Agreement. In addition, Staples will pay: (a) out-of-pocket expenses reasonably incurred by the Monitor in the performance of the Monitor's duties; and (b) fees and disbursements reasonably incurred by such consultants, accountants, attorneys, and other representatives and assistants as are reasonably necessary to carry out the Monitor's duties and responsibilities hereunder. The Monitor shall invoice Staples monthly, including details and an explanation of all matters for which the Monitor submits an invoice to Staples. Staples shall pay such invoices within thirty (30) days of receipt. At its own expense, Staples may retain an

independent auditor to verify such invoices. The Monitor and Staples shall submit any disputes about invoices to the FTC for assistance in resolving such disputes.

G. Monitor's Indemnification and Limitation of Liability. Staples shall indemnify and hold harmless the Monitor against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Monitor's Responsibilities, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of, any claim whether or not resulting in any liability, except to the extent that such liabilities, losses, damages, claims, or expenses result from gross negligence, willful misconduct, or bad faith by the Monitor. In addition, the parties shall not be liable to each other for any consequential, incidental, special or punitive damages, nor shall the Monitor be liable for direct compensatory damages in excess of the fees actually received by the Monitor for the performance of services hereunder.

H. Disputes. In the event of a disagreement or dispute between Staples and the Monitor concerning Staples' obligations under the Order, and, in the event that such disagreement or dispute cannot be resolved by the parties, either party may seek the assistance of the staff of the FTC in charge of compliance.

I. Conflicts of Interest. If the Monitor becomes aware during the term of this Monitor Agreement that the Monitor has or may have a conflict of interest that may affect or could have the appearance of affecting performance by the Monitor of any of the Monitor's Responsibilities, the Monitor shall immediately inform the Staples and FTC staff of any such conflict. The Monitor may accept other retentions during the term of this Monitor Agreement and thereafter, provided that, during the pendency of this Monitor Agreement, the Monitor agrees not to accept any other engagement which would result in the Monitor working in a position directly adverse to the FTC or Staples in any substantially related matter.

J. Standard of Care. In the performance of the Monitor's Responsibilities, the Monitor shall exercise the standard of care and diligence that would be expected of a reasonable person in the conduct of the person's own business affairs.

K. Term. This Monitor Agreement shall terminate no later than: (i) the date set forth in the relevant provisions of the Order; (ii) the date on which the FTC appoints a substitute monitor pursuant to the Orders; (iii) the date Staples notifies the Monitor that Staples has received a notification from FTC staff that the Monitor has ceased to act or failed to act in a manner consistent with the Monitor's responsibilities under the Orders; or (iv) with at least thirty (30) days advance notice to be provided by the Monitor to Staples and to the FTC, upon resignation of the Monitor.

L. Termination. In the event that FTC staff notifies Staples that the Monitor has ceased to act or failed to act in a manner consistent with the Monitor's responsibilities under the Order, Staples shall be entitled to immediately terminate this Monitor Agreement.

M. Governing Law. This Agreement and the rights and obligations of the parties hereunder shall in all respects be governed by the substantive laws of the State of Delaware,

including all matters of construction, validity and performance. The Order shall govern this Monitor Agreement and any provisions herein which conflict or are inconsistent with it may be declared null and void by the FTC and any provision not in conflict shall survive and remain a part of this Monitor Agreement.

N. Not an Attorney-Client Relationship. Staples and Monitor acknowledge that the relationship formed through this Agreement is not that of attorney/client and that no attorney/client privileges will apply to any communications between them.

O. Disclosure of Information. Nothing in this Monitor Agreement shall require Staples to disclose any material information that is subject to a legally recognized privilege or that Staples is prohibited from disclosing by reason of law.

P. Assignment. This Monitor Agreement may not be assigned or otherwise transferred by Staples or the Monitor without the consent of Staples, the Monitor, and the approval of the FTC. Any such assignment or transfer may only be made in a manner consistent with the terms of the Order.

Q. Modification. No amendment, modification, termination, or waiver of any provision of this Monitor Agreement shall be effective unless made in writing, signed by all parties, and approved by the FTC. Any such amendment, modification, termination, or waiver may only be made in manner consistent with the terms of the Order.

R. Approval by the FTC. This Monitor Agreement shall have no force or effect with respect to the Order until approved by the FTC.

S. Entire Agreement. This Monitor Agreement, and those portions of the Order incorporated herein by reference, constitute the entire agreement of the parties and supersede any and all prior agreement and understandings between the parties, written or oral, with respect to the subject matter hereof.

T. Duplicate Originals. This Agreement may be executed in several counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document.

U. Section Headings. Any heading of a section is for convenience only and is to be assigned no significance whatsoever as to its interpretation and intent.

IN WITNESS WHEREOF, the parties hereto have executed this Monitor Agreement as of the date first written above.

MONITOR

Theodore Banks

STAPLES

Cristina Gonzalez

Non-Public Appendix G: Monitor Compensation

[Redacted From the Public Record Version, But Incorporated By Reference]