

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

FEDERAL TRADE COMMISSION, *et al.*,

v.

**STAPLES, INC. and
OFFICE DEPOT, INC.,**

Civil Action No. 1:15-cv-02115-EGS

**DEFENDANT STAPLES, INC'S
ANSWER AND AFFIRMATIVE DEFENSES TO COMPLAINT FOR TEMPORARY
RESTRAINING ORDER AND PRELIMINARY INJUNCTION**

Defendant Staples, Inc. (“Staples”), by and through its attorneys, admits, denies, and avers as follows with respect to the Complaint.

GENERAL RESPONSE TO PLAINTIFFS’ ALLEGATIONS

Staples states that the Complaint is a fundamentally flawed and misguided application of the antitrust laws to the merger agreement between Staples and Office Depot, Inc. (“Office Depot”) because their businesses face fierce competition today and in the future from a strong and expanding set of competitors.

To the extent the Complaint’s preamble requires a response, Staples denies the allegations alleged therein except: (a) admits that Staples and Office Depot have executed a merger agreement; (b) admits that the Federal Trade Commission (“Commission”) commenced an administrative proceeding regarding the merger; (c) admits that the Commission also petitioned this Court for a temporary restraining order; (d) avers that Staples agreed, via a stipulation with Plaintiffs, not to consummate the merger until the Court renders a decision on Plaintiffs’ Motion for Preliminary Injunction; and (e) further avers that administrative proceedings before the Commission frequently take years to complete and that the administrative proceeding against Staples would conclude long after the merger’s deadline, given a trial of

many weeks, post-trial briefing, a months-long window for the Administrative Law Judge to issue an opinion, an appeal to the Commissioners, and an appeal to a United States Court of Appeals.

SPECIFIC RESPONSES TO PLAINTIFFS' ALLEGATIONS

NATURE OF THE CASE

1. Staples denies the allegations of Paragraph 1 of the Complaint, except that: (a) Staples admits that the Commission has brought this action to temporarily restrain and preliminarily enjoin the consummation of a merger between Staples and Office Depot; and (b) Staples admits that it is one of a large number of vendors that sell “consumable office supplies” and a wide range of other products to customers in the United States, including to “business-to-business” (“B-to-B”) customers.

2. To the extent that the allegations of Paragraph 2 state a legal conclusion, Staples avers that it need not respond. Staples denies the remaining allegations of Paragraph 2 of the Complaint, and specifically denies that Staples and Office Depot are each other’s closest competitors for “large B-to-B” customers. Staples avers that Plaintiffs’ selective quotation of unidentified written material or communications, offered without context, is misleading as framed. Further, Staples avers that Plaintiff Federal Trade Commission itself acknowledged in its unanimous statement and ruling in 2013 that Staples and Office Depot face “strong competition” for national and multi-regional customers from “a host” of competitors.

3. To the extent that the allegations of Paragraph 3 state a legal conclusion, Staples avers that it need not respond. Staples denies the remaining allegations of Paragraph 3 of the Complaint, and specifically denies that the merger between Staples and Office Depot is anticompetitive, except: (a) Staples admits that Staples has, at all times, competed against

numerous vendors that sell, among other products, “consumable office supplies,” including Office Depot; and (b) Staples avers that Plaintiffs’ selective quotation of unidentified written material or communications, offered without context, is misleading as framed.

4. Staples denies the allegations of Paragraph 4 of the Complaint.

5. Staples admits the allegations of Paragraph 5 of the Complaint.

6. Staples denies the allegations in Paragraph 6 of the Complaint, except Staples admits that some of its customers, including some “large B-to-B” customers, may consider one or more of the capabilities alleged therein in selecting one or more sources for office supplies from the options available.

7. Staples denies the allegations in Paragraph 7 of the Complaint, and in particular denies that the winners of contracts awarded through RFPs, auctions or bilateral negotiations are granted any exclusive rights to sell “consumable office supplies” or to require its customers to purchase office supplies exclusively through Staples, and avers that customers of “consumable office supplies” purchase substantial amounts of “consumable office supplies” from suppliers other than those that have won contracts awarded through RFPs, auctions or bilateral negotiations. Staples admits that (a) it, as well as numerous other competitors, offers low cost office supplies and possesses distribution centers, salesforces, a reputation, experience, customer service, IT systems, and product utilization monitoring and tracking that allow it to be a choice of certain customers and to compete for contracts; (b) it competes head-to-head with many vendors, including Office Depot, for contracts awarded through RFPs, auctions, or bilateral negotiations; (c) when participating in an RFP, it considers the impact of many competitors, including those that may not be participating in that RFP against Staples “head-to-head”; (d) it may lower prices, increase discounts, and offer other incentives in response to competition from

all of its competitors; and (e) its largest and most sophisticated customers are in a strong negotiating position that enables them to obtain low pricing and other preferential terms from Staples.

8. Staples denies the allegations in Paragraph 8 of the Complaint, and in particular denies that many—if any—of its “large B-to-B” customers purchase office supplies from a single vendor or that its contracts are exclusive or that Staples requires its customers to purchase office supplies solely through Staples, and avers that customers of “consumable office supplies” purchase substantial amounts of “consumable office supplies” from suppliers other than those that have won contracts awarded through RFPs, auctions or bilateral negotiations. Staples admits that (a) certain customers achieve lower prices, higher discounts, rebates, or other concessions, by purchasing office supplies in volume from Staples; (b) it offers customers that contract with Staples the ability to order through Staples’ IT interface and convenient payment options; (c) it seeks to offer and will continue to seek to offer ways for its customers to lower costs and increase efficiency; and (d) its largest and most sophisticated customers are able to obtain low pricing and other preferential terms from Staples, thereby lowering their costs of doing business.

9. Staples denies the allegations in Paragraph 9 of the Complaint, except Staples admits that it, among numerous other suppliers, offers customers features including low prices, nationwide distribution, and other services and features. Further, Staples avers that Plaintiff Federal Trade Commission’s allegations are directly contradicted by its unanimous 2013 ruling that there are “a host” of “strong competitors” for multi-regional and national customers. On information and belief, Staples avers that each of the “strong” competitors identified as such by

Plaintiff Federal Trade Commission in 2013 has grown stronger, and further avers that new strong competitors have entered the market since 2013, including Amazon Business.

10. Staples denies the allegations in Paragraph 10 of the Complaint, and in particular denies that many—if any—of its customers purchase office supplies from a single vendor or that its contracts are exclusive or that Staples requires its customers to purchase office supplies solely through Staples, and avers that customers of “consumable office supplies” purchase substantial amounts of “consumable office supplies” from suppliers other than those that have won contracts awarded through RFPs, auctions or bilateral negotiations. Staples admits that (a) certain customers achieve lower prices, higher discounts, rebates, or other concessions, by purchasing office supplies in volume from Staples; (b) it seeks to offer customers that contract with Staples low prices, the ability to order through Staples’ IT interface and convenient payment options; (c) it seeks to offer and will continue to seek to offer ways for its customers to lower costs and increase efficiency; and (d) its largest and most sophisticated customers are in a strong negotiating position that enables them to obtain low pricing and other preferential terms from Staples.

11. Staples denies the allegations in Paragraph 11 of the Complaint, except that Staples admits that it is one of many competitors for customers of office supplies and other products.

12. Staples denies the allegations in Paragraph 12 of the Complaint, except Staples admits that it competes vigorously against numerous other suppliers, including W.B. Mason, for sales to B-to-B customers, including “large B-to-B customers.” On information and belief, Staples avers that in fact some competitors may have leaner organizational structures and/or may

not be subject to the requirements of a public company, and therefore may have lower costs than Staples in certain respects.

13. Staples denies the allegations in Paragraph 13 of the Complaint.

14. Staples avers that to the extent that Paragraph 14 of the Complaint states legal conclusions, no response is required. Staples denies the remaining allegations in Paragraph 14 of the Complaint.

15. Staples avers that to the extent that Paragraph 15 of the Complaint states legal conclusions, no response is required. Staples denies the remaining allegations in Paragraph 15 of the Complaint, except that Staples admits that it competes vigorously against numerous competitors, including, but not limited to, Amazon and Amazon Business, independent vendors such as W.B. Mason, distribution consortia, manufacturers, and vendors of adjacent products, for sales of office supply products, janitorial/sanitation products, breakroom supplies, and many other products.

16. Staples avers that it lacks knowledge or information to respond to allegations concerning the direct sales practices of manufacturers and wholesalers. To the extent any response is required, Staples denies the allegations in Paragraph 16 of the Complaint.

17. Staples denies the allegations in Paragraph 17 of the Complaint.

18. Staples avers that to the extent that Paragraph 18 of the Complaint states legal conclusions, no response is required. To the extent a response is required, Staples denies the allegations in Paragraph 18 of the Complaint.

19. Staples avers that to the extent that Paragraph 19 of the Complaint states legal conclusions, no response is required. To the extent a response is required, Staples denies the allegations in Paragraph 19 of the Complaint.

20. Staples denies the allegations of Paragraph 20 of the Complaint, except that Staples admits that the Commission voted to authorize staff to file the Complaint. Staples specifically denies that the merger violates the FTC Act or the Clayton Act.

21. Staples avers that to the extent that Paragraph 21 of the Complaint states legal conclusions, no response is required. To the extent a response is required, Staples denies the allegations in Paragraph 21 of the Complaint.

JURISDICTION AND VENUE

22. Staples avers that Paragraph 22 of the Complaint states legal conclusions, and therefore no response is required.

23. Staples refers the Court to the cited statute for a true and accurate statement of its contents.

24. Staples avers that to the extent Paragraph 24 of the Complaint states legal conclusions, no response is required. To the extent a response is required, Staples denies the allegations in Paragraph 24 of the Complaint.

25. Staples avers that to the extent Paragraph 25 of the Complaint states legal conclusions, no response is required. To the extent a response is required, Staples admits the allegations in Paragraph 25 of the Complaint.

26. Staples avers that to the extent Paragraph 26 of the Complaint states legal conclusions, no response is required. To the extent a response is required, Staples denies the allegations in Paragraph 26 of the Complaint.

THE PARTIES AND THE PROPOSED MERGER

27. Staples avers that Paragraph 27 of the Complaint states legal conclusions, and therefore no response is required.

28. Staples avers that Paragraph 28 of the Complaint states legal conclusions, and therefore no response is required.

29. Staples avers that it lacks knowledge or information regarding the last sentence of Paragraph 29 of the Complaint. Staples admits the remaining allegations in Paragraph 29 of the Complaint.

30. Staples avers that it lacks knowledge or information regarding the last sentence of Paragraph 30 of the Complaint. On information and belief, Staples admits the remaining allegations in Paragraph 30 of the Complaint.

31. Staples avers that it lacks knowledge or information to respond to the allegations of Paragraph 31 of the Complaint, except, on information and belief, Staples admits that Office Depot did consummate a merger with OfficeMax, Inc., in November 2013. Staples avers that Plaintiff Federal Trade Commission itself acknowledged in its unanimous statement and ruling in 2013 that Staples and Office Depot face “strong competition” for national and multi-regional customers from “a host” of competitors.

32. Staples admits the allegations in Paragraph 32 of the Complaint, and refers to the Merger Agreement for a full and accurate statement of its contents.

33. Staples admits the allegations in Paragraph 33 of the Complaint.

34. Staples denies that the Merger “would substantially lessen competition in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18, and Section 5 of the FTC Act, 15 U.S.C § 45.” Staples admits the remaining allegations in Paragraph 34 of the Complaint, except that Staples avers that Staples agreed, via a stipulation with Plaintiffs, not to consummate the merger until the Court renders a decision on Plaintiffs’ Motion for Preliminary Injunction; and further avers that administrative proceedings before the Commission frequently take years to

complete and that the administrative proceeding against Staples would conclude long after the merger's deadline, given a trial of many weeks, post-trial briefing, a months-long window for the Administrative Law Judge to issue an opinion, an appeal to the Commissioners, and an appeal to a United States Court of Appeals.

35. Staples avers that it lacks knowledge or information to respond to allegations concerning the determination of the Commission. To the extent any response is required, Staples denies the allegations in Paragraph 35 of the Complaint.

RELEVANT MARKET

36. Staples avers that to the extent that Paragraph 36 of the Complaint states legal conclusions, no response is required. To the extent a response is required, Staples denies the allegations in Paragraph 36 of the Complaint. Staples avers that rather than being vulnerable, large B-to-B customers are among its largest and most sophisticated customers and are able to obtain low pricing and other preferential terms. Staples further avers that Plaintiff Federal Trade Commission's unanimous 2013 ruling contradicts the allegations in Paragraph 36 of the Complaint. Specifically, Plaintiff Federal Trade Commission held in its 2013 ruling that "large customers use a variety of tools to ensure that they receive competitive pricing."

A. Relevant Product Market

37. Staples avers that to the extent that Paragraph 37 of the Complaint states legal conclusions, no response is required. To the extent a response is required, Staples denies the allegations in Paragraph 37 of the Complaint.

38. Staples admits the allegations in Paragraph 38 of the Complaint.

39. Staples avers that to the extent that Paragraph 39 of the Complaint states legal conclusions, no response is required. To the extent a response is required, Staples denies the allegations in Paragraph 39 of the Complaint.

40. Staples avers that to the extent that Paragraph 40 of the Complaint states legal conclusions, no response is required. To the extent a response is required, Staples denies the allegations in Paragraph 40 of the Complaint.

41. Staples avers that to the extent that Paragraph 41 of the Complaint states legal conclusions, no response is required. To the extent a response is required, Staples denies the allegations in Paragraph 41 of the Complaint.

42. Staples admits that the sale and distribution of its products may include the warehousing, sale, and distribution of a range of office supplies, along with customer service and other value-added services. Staples avers that in many instances it does not include all of these functions—for example, Staples often partners with third parties for “last mile” delivery and other warehousing and distribution functions. Staples denies the remaining allegations in Paragraph 42 of the Complaint, and in particular denies that the above functions are particular to the sale of “consumable office supplies” or sales to “large B-to-B” customers.

43. Staples avers that to the extent that Paragraph 43 of the Complaint states legal conclusions, no response is required. Staples denies the remaining allegations in Paragraph 43 of the Complaint, except admits that Staples competes with numerous competitors for all of its customers, including “large B-to-B customers”, certain of which may seek one or more of the criteria identified in Paragraph 43(a)-(g) in the Complaint. Staples further responds to the subparagraphs of Paragraph 43 as follows:

- a. Staples denies the allegations in Paragraph 43(a) of the Complaint, and in particular denies that Staples' contracts with any of its customers are exclusive or require customers to purchase products from Staples, and avers that customers of "consumable office supplies" purchase substantial amounts of "consumable office supplies" from suppliers other than those that have won contracts awarded through RFPs, auctions or bilateral negotiations. Staples admits that certain Staples customers enter into contracts with Staples that enable them to obtain contracted prices and certain benefits from Staples if they choose to purchase from Staples.
- b. Staples denies the allegations in Paragraph 43(b) of the Complaint, except that Staples admits that some Staples customers, including some "large B-to-B" customers, have operations in multiple regions of the United States and that its customers generally seek to increase efficiency and reduce costs.
- c. Staples denies the allegation in Paragraph 43(c), except that Staples admits that certain of its customers, including certain "large B-to-B" customers, seek next-day and desktop delivery for certain deliveries.
- d. Staples denies the allegation in Paragraph 43(d), except that Staples admits that certain of its customers, including certain "large B-to-B" customers, seek higher levels of customer service than other customers seek.
- e. Staples admits that many of its customers, including "large B-to-B" customers, seek detailed reporting to track their uses and needs for office products, and that many of its customers, including "large B-to-B" customers, request the creation of customizable product catalogs to lower their prices.

- f. Staples denies the allegation in Paragraph 43(f), except that Staples admits that certain of its customers, including certain “large B-to-B” customers, seek a vendor with an IT system that can interface with their e-procurement and billing systems.
- g. Staples denies the allegation in Paragraph 43(g), except that Staples admits that certain of its customers, including certain “large B-to-B” customers, seek vendors with financial stability and experience and a reputation for supplying customers with office supplies and other products.

44. Staples denies the allegations in Paragraph 44 of the Complaint, except that: (a) Staples admits that it seeks to recognize the needs of its customers and tailors the products and services it offers to meet those needs; and (b) Staples admits that certain of its employees spend more time serving certain sizes and types of customers than others.

45. Staples avers that to the extent that Paragraph 45 of the Complaint states legal conclusions, no response is required. To the extent a response is required, Staples denies the allegations in Paragraph 45 of the Complaint.

B. Relevant Geographic Market

46. Staples avers that to the extent that Paragraph 46 of the Complaint states legal conclusions, no response is required. To the extent a response is required, Staples denies the allegations in paragraph 46 of the Complaint, except that: (a) Staples admits that it competes with numerous competitors, including Office Depot, for the sale and distribution of “consumable office supplies” across the United States; and (b) Staples admits that some of its customers, including “large B-to-B” customers, operate in multiple regions of the country.

47. Staples denies the allegations of Paragraph 47 of the Complaint, and specifically denies that it acknowledges the existence of a national market for the sale and distribution of “consumable office supplies” to “large B-to-B” customers. Staples avers that Plaintiffs’ selective quotation of unidentified written material or communications, offered without context, is misleading as framed.

48. Staples denies the allegations in Paragraph 48 of the Complaint, except that: (a) Staples admits that it competes vigorously against numerous vendors, including Office Depot, that sell “consumable office supplies,” among other products, to customers, including “large B-to-B” customers; and (b) Staples admits that it has a network of warehouses and distribution centers located in the United States.

49. Staples denies the allegations in Paragraph 49 of the Complaint, except that Staples admits that it competes with numerous competitors to provide office supplies and other products to customers and, when requested, seeks to provide centralized and consistent terms across its customers’ facilities.

50. Staples denies the allegations in Paragraph 50, except that Staples admits that a number of customers, including a number of “large B-to-B customers,” enter into non-exclusive contracts with Staples that enable them to obtain one or more of the criteria alleged in Paragraph 50 if they choose to purchase from Staples.

51. Staples avers that to the extent that Paragraph 51 of the Complaint states legal conclusions, no response is required. To the extent a response is required, Staples denies the allegations in Paragraph 51 of the Complaint.

MARKET STRUCTURE AND THE MERGER'S PRESUMPTIVE ILLEGALITY

52. Staples denies the allegations of Paragraph 52 of the Complaint, except that: (a) Staples admits that it is one of a number of large vendors that sell “consumable office supplies” and a wide range of other products to customers in the United States, including to “large B-to-B” customers; and (b) Staples admits that it competes for RFPs against numerous vendors that sell, among other products, “consumable office supplies,” including Office Depot.

53. Staples avers that to the extent that Paragraph 53 of the Complaint states legal conclusions, no response is required. To the extent a response is required, Staples refers the Court to the Merger Guidelines themselves for a true and accurate description of its contents.

54. Staples avers that to the extent that Paragraph 54 of the Complaint states legal conclusions, no response is required. To the extent a response is required, Staples denies the allegations in Paragraph 54 of the Complaint

55. Staples avers that to the extent that Paragraph 55 of the Complaint states legal conclusions, no response is required. To the extent a response is required, Staples denies the allegations in Paragraph 55 of the Complaint.

ANTICOMPETITIVE EFFECTS: THE MERGER WOULD ELIMINATE VITAL HEAD-TO-HEAD COMPETITION BETWEEN STAPLES AND OFFICE DEPOT

56. Staples denies the allegations of Paragraph 56 of the Complaint, and in particular denies that Office Depot is its closest competitor, except that Staples admits that it competes for sales against numerous vendors that sell, among other products, “consumable office supplies,” including, but not limited to, Office Depot, W.B. Mason, other independent vendors, distribution consortia, manufacturers, Amazon and Amazon Business, and vendors of adjacent products.

57. Staples denies the allegations in Paragraph 57 of the Complaint, except that Staples admits that it can offer customers one or more of the criteria set forth in Paragraph 57 of the Complaint.

58. Staples denies the allegations in Paragraph 58 of the Complaint, and avers that Plaintiffs' selective quotation of unidentified written material or communications, offered without context, is misleading as framed.

59. Staples denies the allegations of Paragraph 59 of the Complaint, and specifically denies that Staples and Office Depot are often the first and second choices for "large B-to-B" customers of "consumable office supplies," except that Staples admits that it competes for sales to customers, including "large B-to-B" customers, with numerous other vendors that sell, among other products, "consumable office supplies."

60. Staples denies the allegations in Paragraph 60 of the Complaint, except that Staples admits that it competes for sales against numerous other vendors, including Office Depot, that sell, among other products, "consumable office supplies," and Staples further admits that it often lowers prices, increases discounts or rebates, and provides other incentives or beneficial terms to its customers in response to competition from the numerous other vendors against which Staples competes.

61. Staples denies the allegations in Paragraph 61 of the Complaint, except that Staples admits that its customers benefit from the competition between Staples and the numerous other vendors, including Office Depot, that sell, among other products, "consumable office supplies." Staples further admits that its customers often switch, or threaten to switch, to any of numerous other vendors, to obtain better prices or other terms; and Staples also admits that its customers, including "large B-to-B" customers, that hold non-exclusive contracts with Staples

often make purchases of products that Staples sells from other vendors that offer lower prices or better terms, while remaining on contract with Staples.

62. Staples avers that Plaintiffs' selective documentation and examples of purported price competition between Staples and Office Depot for "large B-to-B customers," offered without context, is misleading as framed, and ignores the many instances of documented competition, including but not limited to price competition between Staples and other vendors of office supplies in which Staples lowered its prices or offered better terms to match the prices of those other vendors, or lost sales to those other vendors. Staples admits that when its customers sign non-exclusive contracts with Staples, those customers are free to purchase office supplies from any other vendor. Staples further admits that many of its customers have contracts with other office supply vendors but make purchases from other suppliers that do not have a contract with the customer when those suppliers can offer superior products and services, lower prices, or better terms.

63. Staples denies the allegations in Paragraph 63 of the Complaint. Further, Staples avers that the purpose and effect of the Merger will be to allow Staples to offer lower prices to customers, not only large commercial customers, but also small business customers and individual consumers who shop at Staples' and Office Depot's retail stores and websites.

64. Staples denies the allegations of Paragraph 64 of the Complaint, except that: (a) Staples admits that it competes against numerous other vendors, including Office Depot, that sell office supplies, among other products, to offer the best overall terms to its customers, including "large B-to-B" customers; (b) Staples admits that its customers often switch, or threaten to switch, to numerous other vendors, to obtain better prices, services, or other terms; (c) Staples admits that its customers, including "large B-to-B" customers, that hold contracts with Staples

often make purchases of products that Staples sells from other vendors that offer lower prices or better terms, while remaining on contract with Staples; and (d) Staples admits that its largest and most sophisticated customers are in a strong negotiating position that enables them to obtain low pricing and other preferential terms from Staples.

65. Staples denies the allegations in Paragraph 65 of the Complaint, except that Staples admits that it competes vigorously against numerous other vendors of office supplies, including retail stores and Internet websites, for sales of office supplies to customers, including “large B-to-B” customers.

66. Staples denies the allegations in Paragraph 66 of the Complaint.

67. Staples denies the allegations in Paragraph 67 of the Complaint.

68. Staples denies the allegations in Paragraph 68 of the Complaint.

LACK OF COUNTERVAILING FACTORS

69. Staples denies the allegations in Paragraph 69 of the Complaint.

70. Staples denies the allegations in Paragraph 70 of the Complaint.

71. Staples denies the allegations in Paragraph 71 of the Complaint.

72. Staples denies the allegations in Paragraph 72 of the Complaint.

73. Staples denies the allegations in Paragraph 73 of the Complaint.

74. Staples denies the allegations in Paragraph 74 of the Complaint.

75. Staples denies the allegations in Paragraph 75 of the Complaint.

76. Staples denies the allegations in Paragraph 76 of the Complaint.

77. Staples avers that to the extent that Paragraph 77 of the Complaint states legal conclusions, no response is required. To the extent a response is required, Staples denies the allegations in Paragraph 77 of the Complaint.

**LIKELIHOOD OF SUCCESS ON THE MERITS, BALANCE OF EQUITIES, AND
NEED FOR RELIEF**

78. Staples avers that to the extent that Paragraph 78 of the Complaint states legal conclusions, no response is required. Staples refers the Court to the cited statute for a true and accurate statement of its contents. To the extent a response is required, Staples denies the allegations in Paragraph 78 of the Complaint.

79. Staples avers that to the extent that Paragraph 79 of the Complaint states legal conclusions, no response is required. To the extent a response is required, Staples denies the allegations in Paragraph 79 of the Complaint.

80. Staples avers that to the extent that Paragraph 80 of the Complaint states legal conclusions, no response is required. To the extent a response is required, Staples denies the allegations in Paragraph 80 of the Complaint.

81. Staples avers that to the extent that Paragraph 81 of the Complaint states legal conclusions, no response is required. To the extent a response is required, Staples denies the allegations in Paragraph 81 of the Complaint.

STAPLES' AFFIRMATIVE DEFENSES

Staples asserts the following defenses, without assuming the burden of proof on such defenses that would otherwise rest with the Plaintiffs:

1. The Complaint fails to state a claim on which relief can be granted.
2. Granting the relief sought is contrary to the public interest.
3. The Complaint fails to allege a plausible relevant product market.
4. The Complaint fails to allege a plausible relevant geographic market.
5. The Complaint fails to allege undue share in any plausibly defined relevant market.

6. The Complaint fails to allege any plausible harm to competition.
7. The Complaint fails to allege any plausible harm to any consumers.
8. The Complaint fails to allege any plausible harm to consumer welfare.
9. New entry and expansion by competitors is easy, and can be timely, likely, and sufficient, such that it will ensure that there will be no harm to competition, consumers, or consumer welfare.
10. The customers at issue in the Complaint have a variety of tools to ensure that they receive competitive pricing and terms.
11. The combination of the Defendants' businesses will be procompetitive. The merger will result in substantial merger-specific efficiencies, cost synergies, and other procompetitive effects that will directly benefit consumers. These benefits will greatly outweigh any and all proffered anticompetitive effects.
12. The proposed divestiture of certain contracts and related assets in connection with the combination of the Defendants' businesses, will provide additional competition for the benefit of consumers and consumer welfare and will ensure that there will be no harm to competition, consumers, or consumer welfare.
13. Staples reserves the right to assert any other defenses as they become known to Staples.

Dated: December 22, 2015

Respectfully Submitted,

/s/ Diane Sullivan

Diane Sullivan (DC Bar 1014037)

Weil, Gotshal & Manges LLP

767 Fifth Avenue

New York, NY 10153

diane.sullivan@weil.com

Telephone: (212) 310-8897

Facsimile: (212) 310-8007

Jeffrey Perry (DC Bar 465991)

Carrie Mahan Anderson (DC Bar 459802)

1300 Eye Street NW

Washington, DC 20005

Telephone: (202) 682-7000

Facsimile: (202) 857-0940

jeffrey.perry@weil.com

carrie.anderson@weil.com

Counsel for Defendant Staples, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on December 22, 2015, I filed the foregoing with the Clerk of the Court using the CM/ECF system, which will automatically send a notification of such filing to all registered participants.

I further certify that I caused a copy of the foregoing document to be served on December 22, 2015, upon the following in the manner indicated:

Norman W. Marden
Chief Deputy Attorney General
Commonwealth of Pennsylvania
Pennsylvania Office of Attorney General
Antitrust Section
14th Floor, Strawberry Square
Harrisburg, PA 17120
nmarden@attorneygeneral.gov

Counsel for Commonwealth of Pennsylvania

/s/ Timothy J. Andersen

Case Manager