

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

**FEDERAL TRADE COMMISSION, *et al.*,**

Plaintiffs,

v.

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

Defendants.

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

**DEFENDANT OFFICE DEPOT, INC.’S  
ANSWER AND AFFIRMATIVE DEFENSES TO COMPLAINT FOR TEMPORARY  
RESTRAINING ORDER AND PRELIMINARY INJUNCTION**

Defendant Office Depot, Inc. (“Office Depot”), by and through its attorneys, admits, denies, and avers as follows with respect to the Complaint (dated December 7, 2015):

**GENERAL RESPONSE TO PLAINTIFFS’ ALLEGATIONS**

Office Depot states that the premise of the Complaint—that the merger between Staples, Inc. (“Staples”) and Office Depot is anticompetitive—is fundamentally flawed and reflects a misguided application of the antitrust laws. Both companies face fierce and increasing competition from an expanding number of competitors.

To the extent the Complaint’s preamble requires a response, Office Depot 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 Office Depot 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 the United States Court of Appeals for the D.C. Circuit.

## **SPECIFIC RESPONSES TO PLAINTIFFS' ALLEGATIONS**

### **NATURE OF THE CASE**

1. Office Depot denies the allegations of Paragraph 1 of the Complaint, except that: (a) Office Depot admits that the Commission has brought this action to temporarily restrain and preliminarily enjoin the consummation of a merger between Office Depot and Staples; and (b) Office Depot admits that it is one of a large and growing number of vendors that can or do 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. Office Depot denies the allegations of Paragraph 2 of the Complaint, except to the extent that the allegations of Paragraph 2 state a legal conclusion to which no response is required. Office Depot specifically denies that Staples and Office Depot are each other's closest competitors for "large B-to-B" customers. Office Depot avers that Plaintiffs' selective quotation of unidentified written material or communications, offered without context, is misleading as framed. Further, Office Depot avers that Plaintiff Federal Trade Commission itself acknowledged in a unanimous statement and ruling in 2013 finding that Office Depot and Staples face "strong competition" for national and multi-regional customers from "a host" of competitors."

3. Office Depot denies the allegations of Paragraph 3 of the Complaint, except to the extent that the allegations of Paragraph 3 state a legal conclusion to which no response is required. Office Depot specifically denies that the merger between Staples and Office Depot is anticompetitive, except: (a) Office Depot admits that Office Depot has, at all times, competed against numerous vendors that sell, among other products, “consumable office supplies,” including Staples; and (b) Office Depot avers that Plaintiffs’ selective quotation of unidentified written material or communications, offered without context, is misleading as framed.

4. Office Depot denies the allegations of Paragraph 4 of the Complaint.

5. Office Depot denies that businesses “depend on...consistent and reliable delivery” of consumable office supplies, which statement does not follow from the mere fact that they “use consumable office supplies in connection with their jobs.” Office Depot admits the remaining allegations of Paragraph 5 of the Complaint.

6. Office Depot denies the allegations in Paragraph 6 of the Complaint, except Office Depot admits that 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 among the many options available.

7. Office Depot denies the allegations in Paragraph 7 of the Complaint, and in particular denies that contracts awarded through RFPs, auctions or bilateral negotiations grant any exclusive rights to sell “consumable office supplies,” or require customers to purchase any office supplies at all through Office Depot, and avers that in fact 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. Office Depot admits that (a) it, as well as other 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 Staples, 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 Office Depot “head-to-head”; (d) it may lower prices, increase discounts, and offer other incentives in response to competition from all of its competitors, including both during the bidding process and after the bidding process and award of a contract; 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 Office Depot.

8. Office Depot denies the allegations in Paragraph 8 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 Office Depot requires its customers to purchase office supplies solely through Office Depot, 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. Office Depot admits that (a) certain customers achieve lower prices, higher discounts, rebates, or other concessions, by purchasing office supplies in volume from Office Depot, although Office Depot still faces substantial price and non-price competition from numerous suppliers even following such measures; (b) it offers customers that contract with Office Depot the ability to order through Office Depot’s 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 Office Depot, thereby lowering their costs of doing business.

9. Office Depot denies the allegations in Paragraph 9 of the Complaint, except Office Depot admits that it, among numerous other suppliers, offers customers features including low prices, nationwide distribution, and other services and features. Office Depot 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, Office Depot 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. Office Depot 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 Office Depot requires its customers to purchase any office supplies at all through Office Depot, and avers that in fact 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. Office Depot admits that (a) certain customers achieve lower prices, higher discounts, rebates, or other concessions, by purchasing office supplies in volume from Office Depot, although Office Depot still faces substantial price and non-price competition from numerous suppliers even following such measures; (b) it seeks to offer customers that contract with Office Depot low prices, the ability to order through Office Depot's 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 Office Depot.

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

12. Office Depot denies the allegations in Paragraph 12 of the Complaint, except Office Depot admits that it competes vigorously against numerous other suppliers, including W.B. Mason, for sales to “large B-to-B customers.” On information and belief, Office Depot avers that in fact many other competitors have more lean and cost effective organizational structures—and therefore *lower* costs in at least that respect—than Office Depot.

13. Office Depot denies the allegations in Paragraph 13 of the Complaint.

14. Office Depot denies the allegations in Paragraph 14 of the Complaint, except to the extent that Paragraph 14 of the Complaint states legal conclusions to which no response is required.

15. Office Depot denies the allegations in Paragraph 15 of the Complaint, except to the extent that Paragraph 15 of the Complaint states legal conclusions to which no response is required, and except that Office Depot admits that it competes vigorously against numerous competitors, including, but not limited to, Amazon, 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. Office Depot 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, Office Depot denies the allegations in Paragraph 16 of the Complaint.

17. Office Depot denies the allegations in Paragraph 17 of the Complaint.

18. Office Depot denies the allegations in Paragraph 18 of the Complaint, except to the extent that Paragraph 18 of the Complaint states legal conclusions to which no response is required.

19. Office Depot denies the allegations in Paragraph 19 of the Complaint, except to the extent that Paragraph 19 of the Complaint states legal conclusions to which no response is required.

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

21. Office Depot denies the allegations contained in Paragraph 21.

#### **JURISDICTION AND VENUE**

22. Office Depot admits that the Commission purports to bring this civil action pursuant to Section 13 of the FTC Act, Section 16 of the Clayton Act, and 28 U.S.C. §§ 1331, 1337, and 1345, and admits that the Commission is an agency of the United States. Office Depot otherwise denies the allegations contained in Paragraph 22, except to the extent that Paragraph 22 contains legal conclusions to which no response is required.

23. Office Depot admits the allegations in Paragraph 23 of the Complaint.

24. Office Depot admits that the Plaintiff States purport to bring this action pursuant to Section 16 of the Clayton Act. Office Depot denies the allegations contained in Paragraph 24

in all other respects, except to the extent Paragraph 24 contains legal conclusions to which no response is required. Office Depot specifically denies that the merger violates the Clayton Act in any way, and that the sale and distribution of consumable office supplies to “large B-to-B customers” constitute a relevant product market. Office Depot 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, Office Depot 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.”

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

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

#### **THE PARTIES AND THE PROPOSED MERGER**

27. Office Depot admits the allegations in Paragraph 27 of the Complaint.

28. Office Depot admits the allegations in Paragraph 28 of the Complaint.

29. Office Depot avers that it lacks knowledge or information to respond to the last sentence of Paragraph 29 of the Complaint. On information and belief, Office Depot admits the remaining allegations in Paragraph 29 of the Complaint.



30. Office Depot avers that it lacks knowledge or information to respond to the last sentence in Paragraph 30 of the Complaint. Office Depot admits the remaining allegations in Paragraph 30 of the Complaint.

31. Office Depot avers that it lacks knowledge or information to respond to the allegations of Paragraph 31 of the Complaint, except that: Office Depot admits that it did consummate a merger with OfficeMax, Inc., in November 2013. Office Depot 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. Office Depot admits the allegations in Paragraph 32 of the Complaint.

33. Office Depot denies the allegations of Paragraph 33 except that Office Depot avers that it agreed, via a stipulation with Plaintiffs, not to consummate the merger until the Court renders a decision on Plaintiffs’ Motion for Preliminary Injunction.

34. Office Depot admits that on December 7, 2015, the Commission, by a vote of 4-0, commenced an administrative proceeding regarding the merger, and admits that the administrative trial is currently scheduled to begin on May 10, 2016. Office Depot avers that administrative proceedings before the Commission frequently take years to complete and that the administrative proceeding against Office Depot 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 the United States Court of Appeals for the D.C. Circuit. Office Depot otherwise denies the allegations contained in Paragraph 34 and specifically denies that the merger violates the FTC Act or the Clayton Act.

35. Office Depot denies the allegations contained in Paragraph 35 and specifically denies that the merger violates the FTC Act or the Clayton Act.

### **PURPORTED RELEVANT MARKET**

36. Office Depot denies the allegations in Paragraph 36 of the Complaint, except to the extent that Paragraph 36 of the Complaint states legal conclusions to which no response is required. Office Depot avers that, rather than being “vulnerable,” its largest and most sophisticated customers are in a strong negotiating position that enables them to obtain low pricing and other preferential terms.

#### **A. Purported Relevant Product Market**

37. Office Depot denies the allegations in Paragraph 37 of the Complaint, except to the extent that Paragraph 37 of the Complaint states legal conclusions to which no response is required.

38. Office Depot admits the allegations in Paragraph 38 of the Complaint.

39. Office Depot denies the allegations in Paragraph 39 of the Complaint, except to the extent that Paragraph 39 of the Complaint states legal conclusions to which no response is required.

40. Office Depot denies the allegations in Paragraph 40 of the Complaint, except to the extent that Paragraph 40 of the Complaint states legal conclusions to which no response is required.

41. Office Depot denies the allegations in Paragraph 41 of the Complaint, except to the extent that Paragraph 41 of the Complaint states legal conclusions to which no response is required.

42. Office Depot 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, but also avers that in many instances it does not include all of these functions—for example, Office Depot often partners with third parties for “last mile” delivery and other distribution functions. Office Depot 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. Office Depot avers that to the extent that Paragraph 43 of the Complaint states legal conclusions, no response is required. Office Depot denies the remaining allegations in Paragraph 43 of the Complaint, except admits that Office Depot 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. Office Depot further responds to the sub-paragraphs of Paragraph 43 as follows:

- a. Office Depot denies the allegations in Paragraph 43(a) of the Complaint, and in particular denies that Office Depot’s contracts with any of its customers are exclusive or require customers to purchase products from Office Depot, and avers that customers of consumable office supplies in fact purchase substantial amounts of consumable office supplies from suppliers other than those that have won contracts awarded through RFPs, auctions or bilateral negotiations. Office Depot admits that certain Office Depot customers enter into contracts with Office Depot that enable them to obtain contracted prices and certain benefits from Office Depot if they choose to purchase from Office Depot, although Office Depot still faces substantial price and non-price competition from numerous suppliers.

- b. Office Depot denies the allegations in Paragraph 43(b) of the Complaint, except that Office Depot admits that certain Office Depot customers have operations in multiple regions of the United States and that its customers generally seek to increase efficiency and reduce costs.
- c. Office Depot denies the allegation in Paragraph 43(c), except that Office Depot admits that certain of its customers, including certain “large B-to-B” customers, seek next-day and desktop delivery for certain deliveries.
- d. Office Depot denies the allegation in Paragraph 43(d), except that Office Depot admits that certain of its customers, including certain “large B-to-B” customers, seek higher levels of customer service than other customers seek.
- e. Office Depot 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 request the creation of customizable product catalogs to lower their prices.
- f. Office Depot denies the allegation in Paragraph 43(f), except that Office Depot 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. Office Depot 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. Office Depot denies the allegations in Paragraph 44 of the Complaint, except that: (a) Office Depot admits that it seeks to recognize the needs of its customers and tailors its products and services to meet those needs; and (b) Office Depot admits that certain of its employees spend more time serving certain sizes and types of customers than others.

45. Office Depot denies the allegations in Paragraph 45 of the Complaint, except to the extent that Paragraph 45 of the Complaint states legal conclusions to which no response is required.

**B. Purported Relevant Geographic Market**

46. Office Depot 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, Office Depot denies the allegations in paragraph 46 of the Complaint, except that: (a) Office Depot admits that it competes with numerous competitors, including Staples, for the sale and distribution of “consumable office supplies” across the United States; and (b) Office Depot admits that certain of its customers operate in multiple regions of the country.

47. Office Depot 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. Office Depot avers that Plaintiffs’ selective quotation of unidentified written material or communications, offered without context, is misleading as framed.

48. Office Depot denies the allegations in Paragraph 48 of the Complaint, except that: (a) Office Depot admits that it competes vigorously against numerous vendors, including Staples, that sell “consumable office supplies,” among other products, to customers, including “large B-

to-B” customers; and (b) Office Depot admits that it has a network of warehouses and distribution centers located in the United States.

49. Office Depot denies the allegations in Paragraph 49 of the Complaint, except that Office Depot 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. Office Depot denies the allegations in Paragraph 50, except that Office Depot admits that a number of “large B-to-B customers” enter into non-exclusive contracts with Office Depot that enable them to obtain one or more of the criteria alleged in Paragraph 50 if they choose to purchase from Office Depot.

51. Office Depot denies the allegations in Paragraph 51 of the Complaint, except to the extent that Paragraph 51 of the Complaint states legal conclusions to which no response is required.

**PURPORTED MARKET STRUCTURE AND THE MERGER’S  
PURPORTED PRESUMPTIVE ILLEGALITY**

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

53. Office Depot 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, Office Depot refers the Court to the Merger Guidelines themselves for a true and accurate description of its contents.

54. Office Depot denies the allegations in Paragraph 54 of the Complaint, except to the extent that Paragraph 54 of the Complaint states legal conclusions no response is required.

55. Office Depot denies the allegations in Paragraph 55 of the Complaint, except avers that to the extent that Paragraph 55 of the Complaint states legal conclusions, no response is required.

**PURPORTED ANTICOMPETITIVE EFFECTS:**

**The Merger Would Purportedly Eliminate Vital Head-To-Head Competition Between Staples And Office Depot**

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

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

58. Office Depot 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. Further, Office Depot avers that Plaintiff Federal Trade Commission itself acknowledged in a unanimous statement and ruling in 2013 finding that Office Depot and Staples face “strong competition” for national and multi-regional customers from “a host” of competitors.

59. Office Depot denies the allegations of Paragraph 59 of the Complaint, and specifically denies that Office Depot and Staples are often the first and second choices for “large B-to-B” customers of “consumable office supplies,” except that Office Depot 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. Office Depot admits that it competes for sales against numerous other vendors, including Staples, that sell, among other products, “consumable office supplies,” and Office Depot 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 Office Depot competes, including, but not limited to, Staples, W.B. Mason, other independent vendors, distribution consortia, manufacturers, Amazon, Amazon Business, and vendors of adjacent products.

61. Office Depot admits that its customers benefit from the competition between Office Depot and the numerous other vendors, including but not limited to Staples, W.B. Mason, other independent vendors, distribution consortia, manufacturers, Amazon, Amazon Business, and vendors of adjacent products, that sell, among other products, “consumable office supplies.” Office Depot 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 Office Depot also admits that its customers, including “large B-to-B” customers, that hold non-exclusive contracts with Office Depot often make purchases of products that Office Depot sells from other vendors that offer lower prices or better terms, while remaining on contract with Office Depot.

62. Office Depot avers that Plaintiffs’ selective documentation and examples of purported price competition between Office Depot and Staples for “large B-to-B customers,”



chosen from among the over fourteen (14) million pages of documents produced by Office Depot and Staples to Plaintiffs and offered without context, is misleading as framed, and ignores the many instances of documented competition, including but not limited to price competition between Office Depot and other vendors of office supplies in which Office Depot lowered its prices or offered better terms to match the prices of those other vendors, or lost sales to those other vendors, including both in the course of a bidding process, and throughout the life of the contract with the customer even once the contract was awarded to Office Depot. Office Depot admits that when its customers sign non-exclusive contracts with Office Depot, those customers are free to purchase office supplies from any other vendor and are not required to purchase any office supplies at all from Office Depot. Office Depot 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, lower prices, or better terms.

63. Office Depot denies the allegations in Paragraph 63 of the Complaint.

64. Office Depot denies the allegations of Paragraph 64 of the Complaint, except that:

(a) Office Depot admits that it competes against numerous other vendors, including Staples, W.B. Mason, other independent vendors, distribution consortia, manufacturers, Amazon, Amazon Business, and vendors of adjacent products, that sell office supplies, among other products, to offer the best overall terms to its customers, including “large B-to-B” customers; (b) Office Depot admits that its customers often switch, or threaten to switch, to numerous other vendors, to obtain better prices, services, or other terms; (c) Office Depot admits that customers, including “large B-to-B” customers, that hold contracts with Office Depot often make purchases of products that Office Depot sells from other vendors that offer lower prices or better terms,

while remaining on contract with Office Depot; and (d) Office Depot 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. Office Depot denies the allegations in Paragraph 65 of the Complaint, except that Office Depot 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. Office Depot denies the allegations in Paragraph 66 of the Complaint, and avers that not only are wholesalers working with independent vendors a significant competitive threat but furthermore Office Depot itself often partners with wholesalers for distribution to customers.

67. Office Depot denies the allegations in Paragraph 67 of the Complaint.

68. Office Depot denies the allegations in Paragraph 68 of the Complaint.

**PURPORTED LACK OF COUNTERVAILING FACTORS**

69. Office Depot denies the allegations in Paragraph 69 of the Complaint.

70. Office Depot denies the allegations in Paragraph 70 of the Complaint.

71. Office Depot denies the allegations in Paragraph 71 of the Complaint.

72. Office Depot denies the allegations in Paragraph 72 of the Complaint.

73. Office Depot denies the allegations in Paragraph 73 of the Complaint.

74. Office Depot denies the allegations in Paragraph 74 of the Complaint.

75. Office Depot denies the allegations in Paragraph 75 of the Complaint.

76. Office Depot denies the allegations in Paragraph 76 of the Complaint.

77. Office Depot denies the allegations in Paragraph 77 of the Complaint, except to the extent that Paragraph 77 of the Complaint states legal conclusions to which no response is required.

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

78. Office Depot denies the allegations contained in Paragraph 78, except to the extent that Paragraph 78 contains legal conclusions to which no response is required.

79. Office Depot denies the allegations contained in Paragraph 79 of the Complaint, and specifically denies that the sale of consumable office supplies to large B-to-B customers constitutes a relevant market, “large B-to-B customers,” as that phrase is used by the Plaintiffs, represent a unique class of customers for purposes of the antitrust laws, and that there are significant barriers to entry for office supplies providers.

80. Office Depot denies the allegations contained in Paragraph 80.

81. Office Depot denies the allegations of Paragraph 81 of the Complaint. Office Depot avers that Plaintiffs are not entitled to any of the relief requested and respectfully requests that Office Depot be awarded the costs incurred in defending this action, and any and all other relief as the Court may deem just and proper.

**AFFIRMATIVE DEFENSES**

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

**FIRST DEFENSE**

The Complaint fails to state a claim on which relief can be granted.

**SECOND DEFENSE**

Granting the relief sought is contrary to the public interest.

**THIRD DEFENSE**

The Complaint fails to allege a plausible relevant product market.

**FOURTH DEFENSE**

The Complaint fails to allege any plausible harm to competition.

**FIFTH DEFENSE**

The Complaint fails to allege any plausible harm to any consumers.

**SIXTH DEFENSE**

The Complaint fails to allege any plausible harm to consumer welfare.

**SEVENTH DEFENSE**

The Complaint fails to allege undue share in any plausibly defined relevant market.

**EIGHTH DEFENSE**

The Complaint fails to allege a plausible relevant geographic market.

**NINTH DEFENSE**

The customers at issue in the Complaint have a variety of tools to ensure that they receive competitive pricing and terms.

**TENTH DEFENSE**

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.

**ELEVENTH DEFENSE**

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.

#### **TWELFTH DEFENSE**

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.

#### **THIRTEENTH DEFENSE**

Office Depot reserves the right to assert any other defenses as they become known to Office Depot.

DATED: December 22, 2015

Respectfully submitted,

/s/ Matthew J. Reilly

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