

**SETTLEMENT AGREEMENT
SUSAN DAVIA AG NOTICE 2016-00408**

1. INTRODUCTION

1.1 The Parties

This settlement agreement (this “Agreement” or “Settlement Agreement”) is entered into by and between Susan Davia (“Davia”), Tenacious Holdings, Inc. d/b/a Ergodyne (hereafter, collectively, “Tenacious”) and Staples, Inc. (hereafter, “Staples”), with Davia, Tenacious and Staples collectively being referred to as the “Parties.”

1.2 Davia

Davia represents that she is an individual residing in the State of California who seeks to promote awareness of exposure to toxic chemicals and improve human health by reducing or eliminating hazardous substances contained in consumer products.

1.3 Tenacious Holdings, Inc. d/b/a Ergodyne

Tenacious is a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code §§ 25249.6 *et seq.* (“Proposition 65”). Tenacious is alleged to have been responsible for the manufacture and/or California distribution of the products subject to this Agreement.

1.4 Staples, Inc.

Staples is a person in the course of doing business for purposes of Proposition 65. Staples is alleged to have been responsible for the California distribution and/or California sale of the products subject to this Agreement.

1.5 General Allegations

Davia alleges that Tenacious and Staples participated in the manufacture (or other acquisition), distribution and/or sale, in the State of California, of vinyl ID Badge Holder products, which products exposed users to di(2-ethylhexyl)phthalate (DEHP) and di(isononyl)phthalate (DINP) without first providing “clear and reasonable warning” under Proposition 65. DEHP is listed as a reproductive and developmental toxicant pursuant to Proposition 65. DINP is listed as a carcinogen pursuant to Proposition 65. DEHP and DINP shall hereinafter, where applicable, collectively be referred to as the “Listed Chemical.”

1.6 Notice of Violation

On May 5, 2016, Davia served Tenacious, Staples, and various public enforcement agencies with a document entitled "60-Day Notice of Violation" that provided such public enforcement agencies and the noticed entities with notice of alleged violations of Health & Safety Code § 25249.6 for failing to warn consumers of the presence of DEHP and DINP in Covered Products sold in California. Tenacious and Staples received the May 5, 2016, 60-Day Notice of Violation.

Tenacious and Staples each represent that, as of the date it executes this Agreement, it is not aware of any public enforcement agency that is diligently prosecuting a Proposition 65 enforcement action related to DEHP or DINP in the Covered Products, as identified in the 60-Day Notice.

1.7 No Admission

This Agreement resolves claims that are denied and disputed by Tenacious and Staples. The Parties enter into this Agreement pursuant to a full and final settlement of any and all claims between the Parties for the purpose of avoiding the expense, distraction, and uncertainty of litigation. Each of Tenacious and Staples denies and disputes the material factual and legal allegations contained in the Notice, maintains that it did not knowingly or intentionally expose California consumers to the Listed Chemical through the reasonably foreseeable use of the Covered Products and otherwise contends that all Covered Products each has manufactured, distributed and/or sold in California have been and are in compliance with all applicable laws. Nothing in this Agreement shall be construed as an admission by Tenacious or Staples of any fact, finding, conclusion, issue of law, or violation of law, nor shall compliance with this Agreement constitute or be construed as an admission by Tenacious or Staples of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied and disputed by Tenacious and Staples. However, notwithstanding the foregoing, this Section shall not diminish or otherwise affect Tenacious' and Staples' obligations, responsibilities, and duties under this Agreement.

1.8 Consent to Jurisdiction

For purposes of this Agreement only, the Parties stipulate that the Marin County Superior Court has jurisdiction over Tenacious and Staples as to the allegations in the 60-Day Notice received from Davia, that venue is proper in the County of Marin, and that the Marin County Superior Court has jurisdiction to enforce

the provisions of this Agreement. As an express part of this Agreement, pursuant to Code of Civil Procedure Section 664.6, the Marin County Superior Court has jurisdiction over the Parties to enforce the settlement until performance in full of the terms of the settlement.

2. DEFINITIONS

2.1 The term “Covered Products” shall mean all ID Badge Holders manufactured by or on behalf of Tenacious and made in whole or in part with vinyl, including, but not limited to, Ergodyne Armband Badge Holder (#3386).

2.2 The term “Phthalate Free” Covered Products shall mean any component of any Covered Product containing less than or equal to 1,000 parts per million (“ppm”) of DEHP, DBP, DINP, DIDP, DnHP and BBP as determined by a minimum of duplicate quality controlled test results using Environmental Protection Agency (“EPA”) testing methodologies 3580A and 8270C.

2.3 “Effective Date” shall mean the date upon which this Agreement has been fully executed by the Parties.

3. INJUNCTIVE-TYPE RELIEF

3.1 Products No Longer in Tenacious’ Control

No later than the Effective Date, Tenacious shall send a letter, electronic or otherwise (“Notification Letter”), to (1) its primary contact at Staples; and (2) each California customer and/or distributor to which Tenacious, after June 1, 2014, supplied any Covered Products and that Tenacious reasonably understands or believes had any inventory of Covered Products for resale in California as of January 1, 2016. The Notification Letter shall advise the recipient that the Covered Products “contain DEHP and DINP, chemicals known to the State of California to cause cancer and birth defects or other reproductive harm,” and, if and to the extent applicable, request that the recipient return, at Tenacious’ sole expense, all Covered Products remaining in inventory for resale in California. Alternatively, the recipient may provide Tenacious with the number of Covered Products remaining in inventory for resale in California and Tenacious shall provide 2.5 cm.-diameter labels with the following warning language printed on each label in no less than 6 point font size:

WARNING: This product contains chemicals known to the State of California to cause cancer and birth defects or other reproductive harm.

The Notification Letter shall, if and to the extent applicable, require a response from the recipient within 15 days, confirming that the Covered Products will be returned, or alternatively, labeled.

Tenacious shall maintain records of all correspondence or other communications generated pursuant to this Section for two years after the Effective Date and shall promptly produce copies of such records upon Davia's written request.

3.2 Product Reformulation Commitment

3.2.1 As a material term of this Agreement, Tenacious confirms it has already provided the Phthalate Free concentration standards set forth in Section 2.2 above to the manufacturer and the vendor of any Covered Product at issue herein, and the vinyl components thereof, and instructed each such entity through adoption of updated product specifications not to incorporate any raw or component materials into such Covered Product that do not meet the Phthalate Free concentration standards of Section 2.2. Tenacious further confirms that as of October 1, 2016, it shall not manufacture or cause to be manufactured, or order or cause to be ordered, any Covered Product that is not Phthalate Free. Tenacious shall maintain copies of all vendor correspondence and test results relating to the Phthalate Free concentration standards and shall produce such copies to Davia within fifteen (15) days of receipt of a written request from Davia.

3.2.2 After the Effective Date, Tenacious shall provide the Phthalate Free concentration standards set forth in Section 2.2 above to any new manufacturer or vendor of the Covered Product, any vinyl component thereof and any raw material used in any vinyl component thereof and instruct such manufacturer or vendor not to incorporate into such Covered Product any raw or component materials that do not meet the Phthalate Free concentration standards of Section 2.2. Prior to purchase or other acquisition of any Covered Product from any new manufacturer or vendor, Tenacious shall obtain a written confirmation and accompanying laboratory test result from the new manufacturer or vendor demonstrating compliance with the Phthalate Free concentration standards in all vinyl materials incorporated into a post-production Covered Product.

For every Covered Product Tenacious manufactures, causes to be manufactured, orders, causes to be ordered or otherwise obtains from a new manufacturer or vendor after the Effective Date, Tenacious shall maintain copies of all testing of such products demonstrating compliance with this Section, shall maintain

copies of all vendor correspondence relating to the Phthalate Free concentration standards and shall produce such copies to Davia within fifteen (15) days of receipt of a written request from Davia.

3.3 Product Warnings for Existing Inventory

As of October 1, 2016, Tenacious shall not sell or ship any Covered Product that is not Phthalate Free, as defined in Section 2.2 herein, into California, to a California customer or distributor, or to a non-California customer or distributor that Tenacious reasonably understands maintains retail outlets in California. To the extent that Covered Product manufactured before October 1, 2016, is sold or shipped from existing inventory, it shall not be sold or shipped to California customers or distributors and, in any event, shall include the following warning language printed on the label of each such Covered Product in no less than 6 point font size:

WARNING: This product contains chemicals known to the State of California to cause cancer and birth defects or other reproductive harm.

Each warning shall be prominently placed with such conspicuousness as compared with other words, statements, designs, or devices as to render it likely to be read and understood by an ordinary individual under customary conditions before purchase or use. Each warning shall be provided in a manner such that the consumer or user understands to which specific Covered Product the warning applies, so as to minimize the risk of consumer confusion.

Tenacious represents as a material part of this Agreement that it currently does not sell a material number of Covered Product directly through an internet e-commerce website or a printed catalog. Based upon this representation, this Agreement does not include any obligations for clear and reasonable warnings as it relates to such methods of commerce.

3.4 Staples

3.4.1 Staples suspended its sales of Covered Products pending Tenacious' reformulation of the Covered Products. Tenacious has expressly confirmed that the reformulation process has been completed and that all Covered Products manufactured on or after October 1, 2016, meet the Phthalate Free standards as set forth in Section 2.2. As of the Effective Date, Tenacious therefore may resume accepting and processing orders from Staples for Covered Products and shall fulfill such orders only with reformulated Covered

Products.

4. MONETARY PAYMENTS

4.1 Civil Penalty

As a condition of settlement of all the claims referred to in this Agreement, Tenacious shall pay a total of \$10,000 in civil penalties in accordance with California Health & Safety Code § 25249.12(c)(1) & (d).

4.2 Augmentation of Penalty Payments

For purposes of the penalty assessment under this Agreement, Davia is relying entirely upon Tenacious and its counsel for accurate, good faith reporting to Davia of the nature and amounts of relevant sales activity. If within nine (9) months of the Effective Date, Davia discovers and presents to Tenacious evidence that the Covered Products have been distributed by Tenacious in sales volumes materially (more than 25%) different than those identified by Tenacious prior to execution of this Agreement, then Tenacious shall be liable for an additional penalty amount of up to \$10,000. Tenacious shall also be liable for any reasonable, additional attorney fees expended by Davia, up to \$10,000, in discovering such additional retailers or sales. Davia agrees to provide Tenacious with a written demand for all such additional penalties and attorney fees under this Section. After service of such demand, Tenacious shall have thirty (30) days to agree to the amount of fees and penalties owing by Tenacious and submit such payment to Davia in accordance with the method of payment of penalties and fees identified in Section 4.4. Should this thirty (30) day period pass without any such resolution between the Parties and payment of such additional penalties and fees, Davia shall be entitled to file a formal legal claim to recover supplemental civil penalties consequent to the material discrepancy in sales reporting and, if and only if Davia is the prevailing party with respect to such claim, shall be entitled to all reasonable attorney fees and costs relating to such claim.

4.3 Reimbursement of Davia's Attorney Fees and Costs

The Parties acknowledge that Davia and her counsel offered to resolve this dispute without reaching terms on the amount of attorney fees and costs to be reimbursed to them, thereby leaving this fee and cost issue to be resolved after the material terms of the agreement had been settled. Tenacious then expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had been finalized. The Parties then attempted to (and did) reach an accord on the reimbursement due to Davia and her counsel under general

contract principles and the private attorney general doctrine codified at California Code of Civil Procedure Section 1021.5, for all work performed in this matter, except fees that may be incurred on appeal. Under these legal principles, Tenacious shall pay Davia's counsel the amount of \$21,000 for fees and costs incurred investigating, litigating and enforcing this matter. Such payment shall be made payable to "Sheffer Law Firm".

4.4 Payment Procedures

Tenacious shall pay civil penalties pursuant to Section 4.1 by a civil penalty check payable to "OEHHA" (Memo line "Prop 65 Penalties, 2016-00408") in the amount of \$7,500 and a civil penalty check payable to "Susan Davia" (Memo line "Prop 65 Penalties, 2016-00408") in the amount of \$2,500.

Tenacious shall pay any civil penalties pursuant to Section 4.2 by civil penalty checks payable to "OEHHA" and "Susan Davia" (Memo line "Prop 65 Penalties, 2016-00408"), in the amounts agreed to by the Parties pursuant to Section 4.2 or as ordered by the Court.

Tenacious shall pay attorney fees and costs pursuant to Section 4.3 by a check payable to "Sheffer Law Firm" (Memo line "2016-00408") in the amount of \$21,000.

Tenacious shall pay any attorney fees and costs pursuant to Section 4.2 by a check payable to "Sheffer Law Firm" (Memo line "2016-00408") in the amount agreed to by the Parties pursuant to that Section or as ordered by the Court.

All Section 4.1 and Section 4.3 civil penalty and attorney fee/cost payments shall be delivered to Davia's counsel at the following address on or before November 30, 2016:

Sheffer Law Firm
Attn: Proposition 65 Controller
81 Throckmorton Ave., Suite 202
Mill Valley, CA 94941

All Section 4.2 civil penalty and attorney fee/cost payments shall be delivered to Davia's counsel at the following address on or before the date determined pursuant to that Section:

Sheffer Law Firm
Attn: Proposition 65 Controller
81 Throckmorton Ave., Suite 202
Mill Valley, CA 94941

Tenacious shall be liable for payment of interest, at a rate of 10% simple interest per annum, for all amounts due and owing from it under this Section that are not received by Sheffer Law Firm within two

business days of the due date for such amounts.

4.5 Issuance of 1099 Forms

After this Agreement has been executed and the settlement funds have been transmitted to Davia's counsel, Tenacious shall issue three separate 1099 forms, as follows:

- (a) The first 1099 shall be issued to the Office of Environmental Health Hazard Assessment, P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-0284486) in the amount paid pursuant to Section 4.1 and, if applicable, Section 4.2;
- (b) The second 1099 shall be issued to Davia, whose address and tax identification number shall be furnished upon request, in the amount paid pursuant to Section 4.1 and, if applicable, Section 4.2; and
- (c) The third 1099 shall be issued to the Sheffer Law Firm (EIN: 55-08-58910) in the amount paid pursuant to Section 4.3 and, if applicable, Section 4.2.

4.6 Delayed Payment or Non-Payment of Civil Penalties or Attorney Fees/Costs

While the obligations of this Agreement are binding upon execution, the release of Tenacious and Staples as set forth in Section 5.1 below shall not become effective until after all Section 4.1 and Section 4.3 monetary payments have been made by Tenacious and all funds have cleared.

5. RELEASES

5.1 DAVIA'S RELEASE OF TENACIOUS AND STAPLES

5.1.1 Davia, on behalf of herself and her heirs, executors, administrators, attorneys, agents, representatives, successors, and assigns, strictly in their capacities as such (collectively, the "Davia Releasers"), hereby fully and finally releases and forever discharges Tenacious, Staples, their respective parents, subsidiaries, and affiliates, and their respective past and current officers, directors, principals, partners, managers, members, shareholders, employees, agents, representatives, attorneys, successors and assigns, strictly in their capacities as such, and each entity or individual to whom Tenacious or Staples directly or indirectly has distributed or sold Covered Products, including, but not limited, to downstream distributors, wholesalers, dealers, customers, purchasers, users, retailers, franchisees, cooperative members, and licensees (collectively, "Releasees"), from all claims for violations of Proposition 65, including, without limitation, all

actions, causes of action, suits, liabilities, demands, obligations, damages, fines, penalties, fees, expenses, costs, and losses of every kind, nature, and description whatsoever, whether known or unknown, anticipated or unanticipated, suspected or unsuspected, fixed or contingent, at law or in equity, including, without limitation, investigation fees, expert fees, and attorney fees and costs arising under Proposition 65 (collectively, "Claims"), that were or could have been asserted by the Davia Releasors against Releasees with respect to DEHP and DINP contained in the Covered Products that were manufactured, distributed, sold and/or offered for sale by Tenacious and/or Staples through the Effective Date; provided, however, that any obligations created by or set forth in this Agreement shall not be released.

5.1.2 In further consideration of the promises and agreements herein contained, with the exception of any action to convert this agreement into a judgment pursuant to Section 6 of this Agreement, the Davia Releasors hereby waive all rights that they may have to file, institute or participate in, directly or indirectly, any form of legal action or proceeding, at law or in equity, arising under Proposition 65 with respect to the Listed Chemical contained in the Covered Products that were manufactured, distributed, sold and/or offered for sale by Tenacious and/or Staples through the Effective Date.

5.1.3 The Davia Releasors also provide a general release herein which shall be effective as a full and final accord and satisfaction, and as a bar to all Claims of the Davia Releasors arising out of the subject matter of the Notice as to Covered Products manufactured, distributed, sold, and/or offered for sale by Tenacious, Staples and/or Releasees through the Effective Date. Davia acknowledges that she is familiar with Section 1542 of the California Civil Code, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

Davia expressly waives and relinquishes any and all rights and benefits that she may have under, or which may be conferred on her by the provisions of Section 1542 of the California Civil Code as well as under any other state or federal statute or common law principle of similar effect, to the fullest extent that she may lawfully waive such rights or benefits pertaining to the released matters. In furtherance of such intention, the release hereby given shall be and remain in effect as a full and complete release notwithstanding the discovery

or existence of any additional or different claims or facts arising out of the released matters.

This Section 5.1 release is expressly limited to those claims that arise under Proposition 65, as such claims relate to Tenacious' and Staples' alleged failure to warn about exposures to or identification of DEHP and DINP contained in the Covered Products and as such claims are identified in Davia's Proposition 65 60-Day Notice to Staples and Tenacious.

The Parties further understand and agree that this Section 5.1 release shall not extend upstream to any entities, other than Tenacious, that manufactured the Covered Products or any component parts thereof, or any distributors or suppliers that sold the Covered Products or any component parts thereof to Tenacious.

5.2 Tenacious' and Staples' Release of Davia

Tenacious and Staples, each on behalf of itself, its parents, subsidiaries, and affiliates, and their respective past and current officers, directors, principals, partners, managers, members, shareholders, employees, agents, representatives, attorneys, successors, and assigns, strictly in their capacities as such (collectively, "Releasers"), hereby fully and finally release and forever discharge Davia and her heirs, executors, administrators, attorneys, agents, representatives, successors, and assigns, strictly in their capacities as such (collectively, the "Davia Releasees"), for any and all Claims relating to actions taken or statements made (or those that could have been taken or made) by the Davia Releasees through the Effective Date, whether in the course of investigating claims, otherwise seeking to enforce Proposition 65 against Releasers in this matter, or with respect to the Covered Products; provided, however, that any obligations created by or set forth in this Agreement shall not be released. Each of Tenacious and Staples acknowledges that it is familiar with Section 1542 of the California Civil Code, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

Each of Tenacious and Staples expressly waives and relinquishes any and all rights and benefits which it may have under, or which may be conferred on it by, the provisions of Section 1542 of the California Civil Code as well as under any other state or federal statute or common law principle of similar effect, to the fullest extent that it may lawfully waive such rights or benefits pertaining to the released matters. In furtherance of

such intention, the release hereby given shall be and remain in effect as a full and complete release notwithstanding the discovery or existence of any additional or different claims or facts arising out of the released matters.

6. POST EXECUTION CONVERSION TO CONSENT JUDGMENT

Within twelve months of the execution of this Settlement Agreement Tenacious may ask Davia, in writing, to file a complaint, to incorporate the terms of this Settlement Agreement into a proposed consent judgment, and to seek the court's approval of the consent judgment pursuant to Health & Safety Code Section 25249.7, or as may be otherwise allowed by law. If so requested, Davia agrees to reasonably cooperate with Tenacious and to use her best efforts, and those of her counsel, to support the entry of a consent judgment by a superior court in California. Pursuant to Code of Civil Procedure Sections 1021 and 1021.5, Tenacious shall reimburse Davia and her counsel for their reasonable attorney fees and costs incurred in filing the complaint, converting this Settlement Agreement into a proposed consent judgment and seeking judicial approval of the consent judgment, in an amount not to exceed \$10,000, exclusive of fees and costs that may be incurred on appeal. Such additional fees and costs shall be paid by Tenacious, within ten days after its receipt of any invoice from Davia for work performed under this Section. Tenacious understands that no motion to approve any proposed consent judgment will be filed absent payment for the work performed under this Section. All payments owed to Davia, pursuant to this Section shall be made payable to "Sheffer Law Firm" (Memo Line "2016-00408") and delivered to the following payment address:

Sheffer Law Firm
Attn: Proposition 65 Controller
81 Throckmorton Ave., Suite 202
Mill Valley, CA 94941

Any failure by Tenacious to timely pay Davia's invoices under this Section shall result in the assessment of ten percent (10%) simple interest per annum on any outstanding balance.

7. SEVERABILITY

If any of the provisions of this Agreement are found by a court to be unenforceable, the validity of the enforceable provisions remaining shall not be adversely affected, unless the court finds that any unenforceable provision is not severable from the remainder of this Agreement.

8. GOVERNING LAW

The terms of this Agreement shall be governed by the laws of the State of California.

9. NOTICES

When any Party is entitled to receive any notice under this Agreement, the notice shall be sent by certified mail and electronic mail to the following:

For Tenacious Holdings, Inc. d/b/a Ergodyne, to:

Susan Horvath, Vice-President and C.F.O.
Tenacious Holdings, Inc. d/b/a Ergodyne
1021 Bandana Blvd. E., Suite 220
Saint Paul, MN 55108

For Staples, Inc., to:

G. Perry Wu, Esq./Legal Department
Staples, Inc.
500 Staples Drive
Framingham, MA 01702

With a copy to their counsel:

Cooper S. Ashley, Esq.
Maslon LLP
3300 Wells Fargo Center
90 South Seventh Street
Minneapolis, MN 55402-4140

For Davia to:

Proposition 65 Coordinator
Sheffer Law Firm
81 Throckmorton Ave., Suite 202
Mill Valley, CA 94941

Any Party may modify the person and address to whom the notice is to be sent by sending each other

Party notice by certified mail and/or other verifiable form of written communication.

10. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(F)

Davia agrees to comply with the reporting form requirements referenced in California Health & Safety Code §25249.7(f).

11. MODIFICATION

This Agreement may be modified only by written agreement of the Parties.

12. ENTIRE AGREEMENT

This Agreement contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and supersedes any and all prior discussions, negotiations, commitments, and understandings relating to such subject matter. No representations, oral or otherwise, express or implied, other than those contained herein have been made by any Party hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties. No supplementation, modification, waiver, or termination of this Agreement shall be binding unless executed in writing by the Party to be bound. No waiver of any of the provisions of this Agreement shall be deemed to be or shall constitute a waiver of any of the other provisions whether or not similar, nor shall such waiver constitute a continuing waiver

13. ATTORNEY FEES AND COSTS

13.1 Should any Party prevail on any motion, application for order to show cause or other proceeding to enforce a violation of this Agreement, the prevailing Party shall be entitled to its reasonable attorney fees and costs incurred as a result of such motion, order or application, consistent with C.C.P. § 1021.5.

13.2 Except as otherwise specifically provided herein, each Party shall bear its own attorney fees and costs in connection with the Notice.

13.3 Nothing in this Section shall preclude a Party from seeking an award of sanctions pursuant to law.

14. NEUTRAL CONSTRUCTION

All Parties and their counsel have participated in the preparation of this Agreement and this Agreement

is the result of the joint efforts of the Parties. This Agreement was subject to revision and modification by the Parties and has been accepted and approved as to its final form by all Parties and their counsel. Accordingly, any uncertainty or ambiguity existing in this Agreement shall not be interpreted against any Party by virtue of its participation in the preparation of this Agreement. Each Party to this Agreement agrees that any statute or rule of construction providing that ambiguities are to be resolved against the drafting party should not be employed in the interpretation of this Agreement and, in this regard, the Parties hereby waive California Civil Code Section 1654.


15. COUNTERPARTS, FACSIMILE SIGNATURES

This Agreement may be executed in counterparts and by facsimile or portable document format (PDF), each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

16. AUTHORIZATION

Each of the signatories to this Agreement represents that he or she is duly authorized to execute this Agreement for the Party on whose behalf he or she signs this Agreement and that, for and on behalf of such Party, he or she has read, understands, and agrees to all of the terms and conditions of this Agreement.

IT IS SO AGREED

<p>Dated: November __, 2016</p> <p>_____ Susan Horvath, Vice President and C.F.O. Tenacious Holdings, Inc. d/b/a Ergodyne</p>	<p>Dated: November __, 2016</p> <p>_____ By: _____ Staples, Inc.</p>
<p>Dated: November <u>11</u>, 2016</p> <p> _____ Susan Davia</p>	

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Each of the signatories to this Agreement represents that he or she is duly authorized to execute this Agreement for the Party on whose behalf he or she signs this Agreement and that, for and on behalf of such Party, he or she has read, understands, and agrees to all of the terms and conditions of this Agreement.

IT IS SO AGREED

<p>Dated: November <u>14</u>, 2016</p> <p> Susan Horvath, Vice President and C.F.O. Tenacious Holdings, Inc. d/b/a Ergodyne</p>	<p>Dated: November __, 2016</p> <p>_____ By: _____ Staples, Inc.</p>
<p>Dated: November <u>11</u>, 2016</p> <p> Susan Davia</p>	

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IT IS SO AGREED

<p>Dated: November __, 2016</p> <p>_____</p> <p>Susan Horvath, Vice President and C.F.O. Tenacious Holdings, Inc. d/b/a Ergodyne</p>	<p>Dated: November <u>23</u> 2016</p> <p><u>[Signature]</u></p> <p>By: <u>DMM</u></p> <p>Staples, Inc.</p>
<p>Dated: November <u>11</u>, 2016</p> <p><u>[Signature]</u></p> <p>Susan Davia</p>	

