IN THE UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

IN RE:	)	**Case No. 09-06240**
	)	
NUKOTE INTERNATIONAL, INC., et al.,	)	**Chapter 11**
	)	
	)	**Judge Keith M. Lundin**
Debtors.	)	
		Jointly Administered

NUKOTE INTERNATIONAL, INC., ***Plaintiff*,**	)	**Adversary Proceeding No. 09-___________**
	)	
vs.	)	
	)	
OFFICE DEPOT, INC.	)	
	)	
***Defendant*.**	)	

COMPLAINT

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ATTORNEYS FOR DEBTORS

COMES NOW Nukote International, Inc. (the "Debtor") filing this Complaint pursuant to sections 541(a)(1) and 542(b) of the Bankruptcy Code and F.R.B.P. Rule 7001(1) and in support thereof would respectfully show the Court as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over this subject matter of this Complaint pursuant to 28 U.S.C. §157(a) and 1334(b). This is a core proceeding pursuant to 28 U.S.C. §157(b)(2)(E). Venue is proper in this district pursuant to 28 U.S.C. § 1409(a). The Debtor's Chapter 11 case was filed on June 3, 2009 (the "Petition Date")

2. Office Depot, Inc. ("OD") is a Delaware Corporation doing business at 6600 North Military Trail, Boca Raton, Florida 33496. OD's registered agent for service of process in Delaware is Corporate Creations Network, Inc. which will be served with summons and this Complaint at 3411 Silverside Road, Rodney Building #104, Wilmington, DE 19810. Officers of OD, including Charles Rubin, President, and Randall Wick, Vice President of Technology and Services, will be served with summons and this Complaint at 6600 North Military Trail, Boca Raton, Florida 33496.

II. SUMMARY OF COMPLAINT

3. This Complaint is filed to seek redress for a series of egregious fraudulent misrepresentations and breaches of contract committed by OD that forced the Debtor to file these Chapter 11 cases. OD engaged in a cynical effort to defraud a long-time, loyal vendor through a pattern of deception that extended to the highest levels of OD. From late 2008 through May 2009, OD, motivated by its own financial distress, concocted a scheme to fraudulently obtain from the Debtor its most profitable product, private brand imaging supplies, with the smallest possible cash outlay. Through a series of fraudulent misrepresentations and omissions, OD

maintained a front of "business as usual" with the Debtor, thus inducing the Debtor to continue shipping product for which OD had no plans to pay, while at the same time OD was preparing to breach its contracts with the Debtor. Also during this time, OD was secretly negotiating with the Debtor's largest competitor to replace the Debtor as its primary vendor for the same or similar products. The Debtor relied on these misrepresentations and omissions, orchestrated by OD's senior management, by continuing to spend cash, manufacture goods and ship the product necessary to meet OD's requirements, and by making important concessions requested by OD on its obligations to the Debtor. When OD abruptly and without notice breached its agreements with the Debtors by moving the business to another vendor, the Debtor's anticipated cash flow and borrowing capacity dropped dramatically, and it was unable to survive without Chapter 11 protection. OD's actions were intentional, malicious and taken without regard for the devastating damage they caused the Debtor. The Debtor seeks actual, incidental, consequential and exemplary damages of approximately $217,000,000.00 for OD's willful, malicious and fraudulent misrepresentations, breaches of contract, and violations of the Uniform Commercial Code.

III. SUMMARY OF FACTS

A. DEBTOR AND OFFICE DEPOT – A TWENTY-YEAR BUSINESS RELATIONSHIP

4. The Debtor, together with its debtor and non-debtor affiliates, are independent manufacturers and distributors of supplies for office and home printing devices, copiers and facsimile machines. The Debtor and its affiliates employ, directly or indirectly, approximately 1100 persons worldwide, and sell their products primarily in the United States, Canada, Mexico and Europe. The Debtor and its affiliates manufacture and/or distribute products including: a) ink jet and laser toner cartridges; b) cartridge refill kits; c) ribbons, ink rollers, and lift-off tapes; d) copier toner; and e) thermal fax ribbons for use in a variety of models of impact and non-

impact printing mechanisms. The Debtor's manufacturing facilities are located in various cities in the U.S. and Mexico, as follows: i) remanufactured ink jet and laser toner cartridge operations in Monterrey, Mexico; ii) toner manufacturing in Connellsville, PA; and iii) coated media/fax ribbon/correctible ribbon/OEM ink jet operations in Rochester, NY. Administrative and distribution functions are located as follows: a) executive and corporate headquarters in Plano, Texas; b) administrative offices in Rochester, New York; c) a distribution center in Franklin, Tennessee; d) accounting and customer service operations in Bardstown, Kentucky; e) a third-party distribution center in Ventura, California; and f) a distribution/sales/customer service office for European operations in Membury, United Kingdom.

5. For twenty years beginning in 1989, OD and the Debtor have engaged in a mutually productive business relationship in which the Debtor and its affiliates have manufactured and sold to OD virtually every type of product the Debtor makes. Debtor's good performance has earned multiple honors in recent years, including being named OD's "Supplies Vendor of the Year". During this twenty-year period, the Debtor supplied OD with all or virtually all of OD's needs for a specified range of products. The agreements between OD and the Debtor constitute a "requirements" contract under the applicable provisions of the Uniform Commercial Code.

6. The types and amounts of the products supplied by the Debtor to OD changed over time as office and home printing devices changed. Improvements in office and home printing, fax and copier device technology caused the list of products required by OD to grow. New products evolved alongside the older products still needed to operate older printers, faxes and copiers. During this twenty-year history, the Debtor was OD's primary vendor for non-original equipment manufacturer ("OEM") replacements for the specified range of products, and OD became the Debtor's largest single customer, accounting for nearly 40% of Debtor's sales.

The amount of business increased over time such that by 2007 the Debtor was supplying OD over $85,000,000 per year of such products. This increase in sales caused the Debtor to greatly expand its manufacturing capacity from 1989 to 2009, including the long-term lease and expansion of a manufacturing operation in Monterrey, Mexico in 2008, which was acquired and expanded specifically to ensure that the Debtor could meet OD's requirements for the products it has supplied to OD over the last two decades.

B. DEBTOR AND OFFICE DEPOT AGREE TO A FOUR-YEAR CONTRACT

7. The business relationship between the Debtor and OD was governed by a series of contracts executed over the years. Until 2006 the parties executed a new vendor agreement every year. In 2006, however, the parties executed a "2006 Vendor Purchasing Profile For All Vendors", which has remained in place with various amendments to the present date. This twenty-three page form contract drafted by OD (the "2006 Vendor Agreement") covers a multitude of standard operational, delivery and other supply chain-related items. By its terms, the 2006 Vendor Agreement supersedes all prior agreements and remains in force until replaced by a subsequent agreement. The stated term of the 2006 Vendor Agreement was January 1, 2006 to December 30, 2006. A true and correct copy of the 2006 Vendor Agreement is attached hereto as Exhibit "A" and incorporated herein by reference.

8. On July 7, 2006, the same day the Debtor executed the 2006 Vendor Agreement, the Debtor also signed an "Amendment to 2006 Vendor Purchasing Profile For All Vendors" ("2006 Supplemental Agreement"). By its terms, the 2006 Supplemental Agreement controlled any inconsistent terms between it and the 2006 Vendor Agreement (the 2006 Vendor Agreement and the 2006 Supplemental Agreement are sometimes collectively referred to herein as the "2006 Agreements"). A true and correct copy of the 2006 Supplemental Agreement is attached hereto as Exhibit "B" and incorporated herein by reference.

9. The 2006 Supplemental Agreement extended the term of the 2006 Agreements to three years, beginning on July 15, 2006 and ending on July 14, 2009. The 2006 Supplemental Agreement recognized the Debtor as the Primary Vendor to OD of certain types of re-manufactured ink jet and laser toner cartridges.

10. The 2006 Supplemental Agreement contained a provision further extending the term of the agreement for a fourth year, from July 14, 2009 to July 14, 2010, provided that the Debtor forgive a $900,000 receivable then due to the Debtor by OD, which it did (this receivable was the subject of controversy between the parties, as further explained in paragraph 15, below). As further consideration for the forgiveness of this receivable, OD expressly committed that the dollar volume of OD's requirements for laser toner supplied by the Debtor from July 14, 2009 to July 14, 2010 would be no less than $51,000,000. This specially negotiated commitment to a four-year contract term modified the form termination provisions in the 2006 Vendor Agreement and in future vendor agreements between the parties.

11. In June and July 2007, the parties signed another modification to the 2006 Agreements titled "2007 Vendor Purchasing Profile Addendum" ("2007 Addendum"), followed by "Amendment One" to the 2007 Addendum ("2007 Amendment") (collectively sometimes the "2007 Agreements"). The 2007 Addendum states that it controls any conflicting terms with the 2006 Agreements, but otherwise the 2006 Agreements remained intact. A true and correct copy of the 2007 Addendum and the 2007 Amendment are attached hereto as Exhibits "C" and "D", respectively, and incorporated herein by reference.

C. <u>THE USED CARTRIDGE RECYCLING PROGRAM</u>

12. After execution of the 2007 Agreements the Debtor continued to supply OD with its requirements for the specified product types described in the 2006 Agreements and the 2007 Agreements. The Debtor also continued administering OD's recycling program by which used

ink and laser toner cartridges of all types that were returned to OD by OD customers were collected and sent to Debtor to be salvaged and re-used, as Debtor had done under the 2006 Agreements and for many years prior. Under this program, OD supplied the Debtor with used cartridges for remanufacturing and resale by the Debtor, and in exchange the Debtor granted OD credits at an agreed price per useable ink jet cartridge against amounts owed to the Debtor for previous OD purchases. Debtor depended on this recycling program to provide the raw material necessary for it to supply OD with its finished goods needs, and based its product pricing to OD on the anticipated steady flow of used cartridges through this program. Each time used cartridges were supplied by OD, the Debtor sorted the useable cartridges from those that could not be salvaged and advised OD of the amount of the cartridge credit.

13. Over the period of years between the inception of the recycling program and into 2008, the Debtor and OD developed a mutually beneficial course of dealing by which the credits granted to OD under the cartridge recycling program were taken by OD on a regular and consistent basis at times that roughly coincided with OD's payment of invoices owed to the Debtor. This was accomplished by an agreement between the parties that OD would apply these credits on a quarterly basis only, which approximately matched the Debtor's supply chain cycle for receiving empty cartridges, counting, sorting and remanufacturing the cartridges, and delivering the remanufactured product to OD. In this manner, the Debtor received net payments from OD on a regular and consistent basis, providing the Debtor with the cash flow it needed to continue purchasing raw materials and manufacturing the products required by OD. OD knew the Debtor greatly relied on this consistent cash flow to continue to operate its business and supply OD's needs.

D. OFFICE DEPOT'S MANIPULATION OF CREDITS, REBATES AND DISCOUNTS

14. OD's standard vendor contract contained numerous provisions for rebates, credits and discounts. For example, in the 2006 Vendor Agreement, OD required Debtor to accept no less than five separate rebates, from freight and cross-dock allowances to volume and strategic vendor rebates, on certain purchases OD made. The total percentage of rebates to sales was between 20% and 25% of the total purchases. As a result of this rebate strategy, the Debtor's invoices to OD reflected a much higher price for product than the actual amounts paid by OD once the rebates and discounts were taken.

15. OD manipulated the rebates and discounts to its advantage and the Debtor's detriment. The $900,000 receivable referred to in Paragraph 10 above is a prime example of this. In early 2006, Debtor discovered that OD had booked a $900,000 credit at the end of 2005 related to pre-payment discounts. When Debtor found that no pre-payment discounts had been earned by OD, Debtor challenged the validity of this discount. OD then admitted that it had taken an unearned discount for prepayments during that time period. Because OD, a public company, did not want to restate the prior year's overstated financial results and admit an SEC reporting violation, the Debtor agreed to forgive this improper discount in exchange for OD's agreement to extend its contract with the Debtor for an additional year, to July 14, 2010. OD acknowledged this improper discount in an email dated March 14, 2007 from one of its employees to one of the Debtor's officers, as follows: *"…I appreciate the support you gave us at the end of last year and on the un-earned discount credit deal that we worked out."*

16. Another example of OD's unscrupulous manipulation of monies owed to the Debtor occurred in 2007. When the parties were unable to fully reconcile the count of used cartridges received by the Debtor near the end of 2006, the Debtor agreed to advance a $500,000 credit against future cartridge collections for application by OD in the first quarter of 2007,

knowing that the cartridge credit would at least reach that amount. After completing the reconciliation, the Debtor sent OD a calculation showing actual collections and the correct credit amount. However, instead of subtracting the $500,000 from the actual amount earned, it came to light that OD had already taken the $500,000 into income, and then fictitiously increased the count of used cartridges by 222,000 (at $2.25 each) to add $500,000 in income to its books for the current period. This was discovered by Debtor's Chief Financial Officer during October 2008 meetings at OD offices with employees of OD.

E. OFFICE DEPOT'S MOUNTING FINANCIAL DIFFICULTIES LEAD TO EXPLOITATION OF THE DEBTOR

17. In the latter part of 2008 and the first part of 2009, OD suffered generally poor corporate financial results. Among these, as reported by OD to shareholders, was a 47% net loss in the fourth quarter of 2008; a 15% sales decrease in the quarter compared to the same quarter in the prior year; an increase in net debt from $593 million to $725 million over the prior year, and an announcement of 118 store closings planned for 2009. In the fourth quarter of 2008 alone, OD reported an operating loss of $1.65 billion, which sapped its cash and caused OD's shareholders' equity to drop dramatically. At that point, OD's total liabilities were nearly $4 billion, while its shareholders' equity barely reached $1 billion. From that point forward, motivated by its own desperate financial straits, OD began to squeeze cash from the Debtor through a series of fraudulent misrepresentations and omissions, and eventually breached its contracts with the Debtor in May 2009 in favor of another vendor, as detailed below.

18. In late December, 2008, OD informed the Debtor it would be required to make a presentation to OD known as a "line review", in which the Debtor would be forced to bid and compete with other vendors for OD's imaging supply business, despite the fact that the Debtor's contract with OD would not terminate for another eighteen months. On information and belief,

at this time OD had already begun the process of negotiating with another vendor to replace the Debtor, and the surprise line review was a part of this process. Despite the existence of a four-year contract, Debtor had no choice but to undertake a massive effort to comply with this demand due to its substantial investment in manufacturing facilities, inventory and personnel to meet OD's requirements. Over a six-week period the Debtor dedicated significant effort to prepare for this line review.

19. As the Debtor prepared for the line review, OD was beginning to accelerate the pace of credits, rebates and discounts it claimed from the Debtor. OD did not advise the Debtor it had begun accelerating the credits. It simply did so and offset them against its purchases from the Debtor. By accelerating its use of credits, OD starved Debtor of needed cash. This began as early as the fourth quarter of 2008, when OD's financial results began to decline, and continued through the first quarter of 2009. In fact, in the fourth quarter of 2008 and the first quarter of 2009 combined, the percentage of cash paid by OD on invoices for product received from the Debtor fell from an historical average of 70% to 43%, as shown below:

($ in millions)	2007	Q1-Q3 2008	Q4 2008 & Q1 2009
Gross Invoiced Sales to OD	$86.8	$51.5	$26.3
Cash Paid by OD to Debtor	$57.5	$38.2	$11.3
% of Cash Paid to Product Received	66.2%	74.2%	43.0%

This massive reduction in payments starting at the end of 2008 and into 2009 brought the Debtor to its knees. By unilaterally changing the historical course of dealing between the parties, OD reduced its payments to the Debtor by millions, undoubtedly motivated by its growing financial distress and its intent to soon switch vendors. Had OD merely continued paying at the historical

rate of 70% of gross invoices, Debtor would have received $7.1 million more in cash over these fateful two quarters, and would not have needed to file a Chapter 11 case.

20. The line review took place on February 10 and 11, 2009. After the Debtor granted substantial price concessions and offered significant marketing support, OD "awarded" the Debtor the business it already had under contract. OD affirmatively represented to the Debtor at this time that the Debtor would be OD's sole provider in the remanufactured inkjet and laser cartridge categories, and that the Debtor would continue to administer the collection and recycling of empty cartridges. On February 12, 2009, at the conclusion of the line review, OD and the Debtor entered into an agreement titled "Interim Agreement" (the "2009 Agreement"). The 2009 Agreement superseded any conflicting terms in any of the prior agreements, as had its predecessors, but otherwise those prior terms remained in "full force and effect." Immediately upon the conclusion of the line review, Debtor began to diligently fulfill its duties under the 2009 Agreement. A true and correct copy of the 2009 Agreement is attached hereto as Exhibit "E" and incorporated herein by reference.

21. During the line review process, the Debtor, having realized that OD was withholding payments, asked OD to return to its normal course of dealing with respect to the timing of credits, rebates and allowances. OD acknowledged that its new practice of accelerating credits and rebates would eventually bankrupt the Debtor, but on or about March 3, 2009, it informed Debtor that it intended to continue to accelerate the credits. OD further informed Debtor that after taking these accelerated credits, it would not resume paying Debtor for products for an additional sixty days. This was a completely unexpected and seriously detrimental blow to Debtor's actual and projected cash flow, and greatly hindered the Debtor's ability to manufacture the products OD was ordering. In an immediate response, the Debtor informed OD that it could not absorb such a blow and insisted that the two companies attempt to reach an

equitable arrangement that would allow Debtor to be paid on a timely, predictable basis so it could continue to manufacture products for OD. The Debtor gave OD the option to: (1) continue taking credits in the normal course of dealing, as they had been taken in the past, or (2) conduct a reconciliation of the amount owed to OD in credits against the amount owed to the Debtor for products already shipped, and from that point forward, make weekly shipments in exchange for set weekly payments from OD, with further reconciliations to occur monthly or quarterly. OD agreed, or at least pretended to agree, to try to work out such an arrangement with Debtor. On or about March 9, 2009, an "Addendum to the Interim Agreement" (the "2009 Agreement Addendum") was executed to address these issues. A true and correct copy of the 2009 Agreement Addendum is attached hereto as Exhibit "F" and incorporated herein by reference.

22. By late March 2009, however, problems were again appearing in the relationship, but as before, because of the importance to Debtor of the OD business, continued efforts to address them were being made by the Debtor. On March 26, 2009, executive officers of the Debtor traveled to OD's headquarters in Florida to again explain the Debtor's need for timely payments from OD in order to buy the materials and components necessary to manufacture the products to be sold to OD. At this meeting, OD again agreed to work on a fair resolution and expressed the desire for a "fresh start" to the relationship. During this time period, other officers and employees of the Debtor continued to meet with OD to discuss the Debtor's support for OD's marketing efforts and to settle credit and payment issues. Nonetheless, the problems were mounting to the Debtor's detriment. Despite OD's reassuring words, its payments for products received from the Debtor continued to average less than half the invoiced amounts, as detailed in paragraph 19 above.

F. OFFICE DEPOT CONTINUES ITS ASSURANCES OF "BUSINESS AS USUAL"

23. After March 16, 2009, Debtor received no further payments from OD. Yet, throughout April and early May 2009, OD continued to give Debtor assurances of payment. For example:

(a) On April 3, 2009, the Debtor again advised OD that it could not continue to ship product each week without receiving at least some payment from OD each week. In response, OD stated that it was confident the problems would be resolved and the business relationship could be put "back on track".

(b) On April 6, 2009, at a meeting at OD's offices, officers of the Debtor reiterated the Debtor's need for a predictable cash flow from OD, and again offered to ship weekly in exchange for weekly payments, to which OD responded that it wanted to continue doing business and pledged to work with the Debtor to resolve payment and credit issues. In a conversation between the parties' senior management after the meeting, OD's merchant buyer for imaging supplies made the comment to the Debtor's representatives that "They [the OD finance team] needed to hear that. We [OD] have been f--king you for the past two years."

(c) On April 21, 2009, OD's vice-president called the Debtor's chairman and repeated OD's prior acknowledgment of the Debtor's need for more predictable cash flow from OD. On the same date, other OD employees informed the Debtor that once all financial information had been gathered the parties would meet to resolve any remaining disputes.

(d) On April 23, 2009, during the course of four hours of meetings at OD's Florida offices, officers of the Debtor expressed concern over the lack of payments from OD and separately, but just as critical, an unexpected sharp

decline in the number of used cartridges provided by OD for use in remanufacturing products for OD. Again, OD agreed to work on a fair resolution and repeated its desire for a "fresh start".

(e) In phone conversations between employees of the Debtor and OD on April 28 and 30, 2009, the Debtor offered to show its good faith by shipping product immediately if OD would pay in the same week, and provided a list of the products it was ready to ship (as a result of OD's non-payment the Debtor had suspended shipments to OD as of March 31, 2009). OD at first agreed, then expressed reservations about the payment terms.

(f) On May 1, 2009, Chuck Rubin, OD's president, initiated a call to John Rochon, chairman of the Debtor's board of directors. Rubin professed ignorance over recent events, and seemed surprised to hear of OD's actions. Rubin gave assurances that OD had "plenty of cash", that "payments were not a problem", and even suggested that the two meet for dinner.

(g) On May 7, 2009, as a result of this friendly phone call between the Debtor's most senior officials, the Debtor advised OD that it would ship $700,000 of products to OD, with another shipment to be sent the next week, in trust that OD would make weekly payments. OD allowed this shipment to be made, but based on events of the next day as described in Paragraph 25 below (which caused the shipment to be recalled by the Debtor), obviously never intended to pay for it.

24. In short, during April and May 2009, OD represented to the Debtor in no uncertain terms and on multiple occasions its purported desire to continue the same business relationship it had enjoyed with the Debtor for the prior two decades. Based on OD's representations, the Debtor considered the communications between the parties regarding

payment and credit issues to be nothing different than expected from a complicated transactional relationship with a significant cartridge recycling element. The tenor of the communications was positive and hopeful with regard to working out problems as they arose. By the first week in May 2009, the Debtor had on hand over $1,500,000.00 of OD inventory ready for shipment. However, unbeknownst to the Debtor, March 16, 2009 would mark the last payment by OD to the Debtor. From that point forward, the Debtor received no payments whatsoever from OD.

G. OFFICE DEPOT OPENLY BREACHES ITS CONTRACTS WITH THE DEBTOR

25. On May 8, 2009, OD's real intentions became suddenly and shockingly apparent. With no prior notice and complete disregard for the representations made by OD throughout 2009, OD announced that it had designated Clover Technologies Group, Inc. ("Clover") as its new vendor for the product lines on which the Debtor had been servicing OD's requirements for some twenty years, and as the new recipient of all used cartridges for the recycling program.

26. This blatant and open breach of the four-year contract term as expressed in the 2006 Agreements, 2007 Agreements and the 2009 Agreements (collectively the "Operative Agreements") was a devastating blow to the Debtor's operations. As a direct result of OD's intentional and malicious acts, the Debtor and its affiliates had no choice but to file these Chapter 11 cases to recover from this massive loss of revenue.

27. It is apparent from these events that OD's own financial distress led it to deceive the Debtor into conducting business as usual, including the shipment of product and the granting of credits for empty cartridges, while OD prepared to breach the Operative Agreements and failed to pay open invoices owed to the Debtor. OD's communications with the Debtor during 2009 were largely fraudulent misrepresentations intended to lull the Debtor into inaction and build inventory for which OD did not intend to pay, while OD negotiated a new deal with a new vendor in order to avoid its future obligations to the Debtor under the Operative Agreements. In

multiple conversations over many months, at the highest levels of authority, OD intentionally and affirmatively represented to the Debtor that it intended to work in good faith to resolve all payment and credit issues, and repeatedly expressed full confidence that all issues would be resolved. These representations were clearly a tactic used by OD to deceive the Debtor into accepting OD's failure to pay its obligations, and to induce the Debtor to continue shipping product despite this non-payment, while at the same time, OD was secretly negotiating with Clover to shift the Debtor's business to Clover. OD apparently believed that its size and purchasing power insulated it from the consequences of its brazen disregard for the terms of the Operative Agreements.

H. THE FRAUD IS CONFIRMED

28. On June 22, 2009, OD announced an agreement with BC Partners, a UK private equity group, for the infusion of $350 million cash into OD in exchange for preferred stock with a 10% dividend, convertible into more than 20% of OD's common stock. This deal was exceedingly expensive for OD, and very dilutive of its shareholders' interests. In fact, the only reason OD would engage in such a costly exercise was that it had no other choice. After grabbing every bit of free product it could from the Debtor (and perhaps others) OD was forced to raise the rest of its cash needs in this high-priced maneuver. Given the time necessary to initiate and complete such a large investment transaction, OD clearly had begun its search for this funding many months earlier, while at the same time starting its pattern of deception and misrepresentations designed to defraud the Debtor.

CAUSES OF ACTION

COUNT ONE – BREACH OF CONTRACT

29. The Debtor incorporates by reference the allegations in Paragraphs 1- 28.

30. The Operative Agreements constitute a valid, binding and enforceable contract between the Debtor and OD. OD breached the Operative Agreements by failing to pay for goods ordered by OD and delivered by the Debtor under the terms of said Agreements. Specifically, OD has failed to pay for invoiced and delivered items in amounts totaling $12,129,270, less any credits upon reconciliation.

31. OD's breach of the Operative Agreements caused the Debtor to suffer actual and consequential damages. As actual damages, the Debtor and its estate lost the $12,129,270 that OD agreed to pay under the Operative Agreements. Consequential damages include the loss of the Debtor's equity value resulting from its inability to survive without this revenue and the filing of this Chapter 11 case, which was made necessary by this loss of revenue. The Debtor's equity value prior to OD's breaches of the Operative Agreements was in excess of $90,000,000, but is now a fraction of this as a consequence of said breaches.

COUNT TWO – FRAUDULENT MISREPRESENTATION

32. The Debtor incorporates by reference the allegations in paragraphs 1 – 31 above.

33. The above-described representations and omissions made by OD to the Debtor were willful, material and false in the manner described. Specifically, through a series of false statements and intentional omissions over a period of months, OD deceived Debtor into continuing to manufacture and ship product for which it intended to avoid payment by improperly accelerating credits against the amounts owed, while at the same time secretly negotiating and consummating an agreement with Debtor's largest competitor to replace the Debtor as a supplier and cartridge remanufacturer and further planning to breach its commitment to purchase at least $51 million in products from the Debtor from July 14, 2009 through July 14, 2010. At the time these representations and omissions were made, OD knew them to be false, or made them recklessly, as a positive assertion, and without knowledge of their accuracy. These

misrepresentations and omissions were made by OD with the intent that the Debtor act on them, and in fact, the Debtor did rely on these misrepresentations to its detriment. Pleading in the alternative to Count One above, as a result of Debtor's reasonable reliance on the misrepresentations of OD, the Debtor has suffered direct and actual damages in an amount of at least $12,129,270, representing the amount the Debtor is owed for product shipped but for which it did not receive payment. Defendants further caused consequential damages in an amount of at least $90,000,000 due to the precipitous drop in the Debtor's equity value caused by OD's willful, sudden and inequitable removal of its business from the Debtor without cause and in breach of the Operative Agreements, and consequent filing of this bankruptcy case. Furthermore, because OD's conduct was willful and malicious, the Debtor is entitled to exemplary damages in an amount of not less than $100,000,000.

COUNT THREE – NEGLIGENT MISREPRESENTATION

34. Plaintiff incorporates by reference the allegations in paragraphs 1 - 33 above. Pleading in the alternative, Plaintiff alleges that the foregoing representations were made by the Defendants in the course of certain transactions in which the Defendants had an economic interest, i.e., the Operative Agreements. OD supplied the above-described false information to the Debtor for the purpose of guiding the Debtor's decision to continue manufacturing and shipping product to OD for which it did not intend to pay, and failed to exercise reasonable care or competence in obtaining and communicating that information to the Debtor. The Debtor justifiably relied on these negligent representations, which proximately caused injury to Debtor in the form of $12,129,270 in losses realized on the Operative Agreements.

COUNT FOUR – GOODS DELIVERED AND ACCEPTED

35. The Debtor incorporates the factual allegations set forth in paragraphs 1 - 34 above as if fully set forth at length. Pleading in the alternative to Count One above, OD

breached the Operative Agreements with regard to its obligation to pay for goods delivered pursuant to same. OD has failed to pay for invoiced items regarding items totaling $12,129,270, less credits after reconciliation. OD has not revoked the acceptance of the product delivered which encompasses this amount due. With regard to the delivered items the Debtor is entitled, pursuant to §§672.703(e) and 672.709(1)(a) (Fla. Civ. Stat. – 2009)[1] to the price of any goods accepted or for which the risk of loss has shifted to OD (the $12,129,270 referenced), together with any incidental damages pursuant to §672.710 (Fla. Civ Stat. - 2009).

COUNT FIVE – SECTION 542 TURNOVER OF AMOUNTS DUE FOR DEDUCTIONS AND CREDITS

36. The Debtor incorporates the factual allegations set forth in paragraphs 1 - 35 above. Pleading in the alternative to the above counts, the Operative Agreements provide for various deductions relative to multiple aspects of the requirements relationship between the Debtor and OD. Without limiting the nature or scope of such deductions and credits, there exist amounts due to the Debtor by OD for shortages, pricing formulas, returns, specific program deductions, crossdock allowances, freight management charges and cartridge collection discrepancies. These accounts add up to a total due on account of such deductions and credits of $3,516,536, as to which the Debtor is entitled have turned over to it pursuant to §542 of the Bankruptcy Code.

COUNT SIX – SECTION 542 TURNOVER OF AMOUNTS DUE FOR UNTAKEN AND UNSOLD GOODS

37. The Debtor incorporates the factual allegations set forth in paragraphs 1 - 36 above. Pleading in the alternative to the counts above, OD breached the Operative Agreements with regard to its obligation to pay for goods identified to the Operative Agreements pursuant to

[1] Title XXXIX, Chapter 672 of the Florida Statutes is Florida's enactment of the Uniform Commercial Code ("UCC") with regard to sales of goods. Section 672.703 is §2-703 of the UCC without variation. The Operative Agreements designate Florida law as the choice of law (See Paragraph 15.a. of the 2006 Vendor Agreement)

§672.703(e) and 672.709(1)(b) (Fla. Civ. Stat. 2009). The Debtor has been unable, after reasonable efforts, to resell its line of products which it produces and ships to OD, or the circumstances reasonably indicate that such an effort would be unavailing. With regard to the goods identified to the Operative Agreements, those goods remain, as required under § 672.709(2) (Fla. Civ. Stat. - 2009), available to OD unless and until they can be sold at a reasonable price, in which case such amount will be credited with regard to the damages which the Debtor seeks as to such identified goods to the Operative Agreements. The amount of goods identified to the Operative Agreements to which turnover pursuant to §542 of the Bankruptcy Code applies is $1,164,000. The Debtor also seeks incidental damages pursuant to §672.710 (Fla. Civ. Stat. - 2009).

COUNT SEVEN – SECTION 542 TURNOVER OF PAST-DUE ACCOUNT

38. The Debtor incorporates the factual allegations set forth in paragraphs 1 - 37 above. The 2006 Supplemental Agreement extended the term of the Operative Agreements from July 14, 2009 to July 14, 2010. This extension was based on the Debtor's conditional agreement to forgive a $900,000.00 receivable then due to the Debtor by OD. Such forgiveness was conditioned upon the fulfillment of OD's promise that the dollar volume of its laser toner purchases would be least $51,000,000 during the period of July 14, 2009 to July 14, 2010. OD, by designating Clover as its new vendor for the product lines the Debtor had been servicing, caused this condition precedent to the forgiveness of the $900,000 receivable to fail. Therefore, pleading in the alternative to the counts above, the Debtor is entitled, pursuant to the Operative Agreements and §542 of the Bankruptcy Code, to the turnover of the sum of $900,000, plus interest from the date of the 2006 Supplemental Agreement.

COUNT EIGHT – ANTICIPATORY REPUDIATION OF REQUIREMENTS CONTRACT

39. The Debtor incorporates the factual allegations set forth in paragraphs 1 - 38 above as if fully set forth at length. The Debtor additionally asserts that, pursuant to §672.306 (Fla. Civ. Stat. 2009), the Operative Agreements coupled with the parties' decades-long course of dealing comprised a four-year requirements contract wherein the Debtor was the seller and OD the buyer. However, the designation of Clover as Primary Vendor for the product lines on which the Debtor had been fulfilling OD's requirements is an anticipatory repudiation of the Operative Agreements in violation of §672.610 (Fla. Civ. Stat. 2009). OD's actions, with respect to performance not yet due, substantially impaired the value of the remaining fifteen-month term of the Operative Agreements. Such wrongful anticipatory repudiation entitles the Debtor to damages pursuant to §672.703(e) and 672.708(1) or (2) (Fla. Civ. Stat. 2009). The Debtor is entitled to recover its lost profits on the sales of the products covered by the Operative Agreements through the term of the Operative Agreements, July 14, 2010, which equates to at least $15,000,000. To the extent applicable the Debtor seeks any incidental damages pursuant to §672.710 (Fla. Civ Stat. - 2009) regarding OD's anticipatory repudiation.

COUNT NINE – ATTORNEY FEES

40. The Debtor incorporates the factual allegations set forth in paragraphs 1 - 39 above. Pursuant to the Operative Agreements, the prevailing party in any litigation shall, if entitled to recover its costs, be entitled to recover its reasonable attorney fees, including any fees relative to prosecuting or defending appeals of such determinations. The Debtor asserts that pursuant to this term of the Operative Agreements it is entitled to recovery of its reasonable attorney fees in an amount to be determined at trial.

WHEREFORE PREMISES CONSIDERED, Nukote International, Inc. prays that this Court grant it judgment against Office Depot, Inc. in the following amounts:

a) actual damages in the amount of $12,129,270 incurred by the Debtor as a result of OD's breach of the Operative Agreements;

b) alternatively, actual damages in the amount of $12,129,270 incurred by the Debtor in reliance on OD's fraudulent and/or negligent misrepresentations;

c) consequential damages in the amount of $90,000,000 resulting from OD's breach of the Operative Agreements;

d) alternatively, consequential damages in the amount of $90,000,000 resulting from the Debtor's reliance on OD's fraudulent and/or negligent misrepresentations

e) exemplary damages for OD's willful and malicious actions in the amount of $100,000,000;

f) alternatively, the turnover of $12,129,270, together with any incidental damages pursuant to §672.710 (Fla. Civ Stat. - 2009), with regard to conforming goods delivered but which are as yet unpaid;

g) alternatively, the turnover of $3,516,536 on account of deductions and credits that the Debtor asserts to be due it under the Operative Agreements;

h) alternatively, the turnover of $906,714.00, with interest accruing thereafter, due to the failure of OD to meet the condition precedent to forgiveness of an acknowledged $900,000.00 account receivable due to the Debtor;

i) lost profits and incidental damages of at least $15,000,000 for the anticipatory repudiation of the balance of the term of the Operative Agreements;

j) attorneys fees and costs as provided for in the Operative Agreements;

k) pre-judgment and post judgment interest as allowable by law; and

l) such other and further relief to which Nukote International, Inc. may show itself entitled to, at law or in equity.

Respectfully submitted

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