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UNITED SAFEGUARD DISTRIBUTORS

ASSOCIATION, INC.

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

UNITED SAFEGUARD) Case No. 2:15-CV-3998
DISTRIBUTORS ASSOCIATION,)
INC., a Georgia corporation,) **COMPLAINT FOR**
) **DECLARATORY AND**
Plaintiff,) **INJUNCTIVE RELIEF**

v.)

SAFEGUARD BUSINESS SYSTEMS,)
INC., a Delaware corporation;)
DELUXE CORPORATION; a)
Minnesota corporation; and DOES 1-)
10.)

Defendants.)

1 Plaintiff United Safeguard Distributors Association, Inc. hereby complains
2 and alleges as follows:

3 **NATURE OF ACTION**

4 1. This case involves a scheme implemented by Deluxe Corporation and its
5 subsidiary Safeguard companies to usurp its distributors' profits to itself through actions
6 inconsistent with and in violation of their distributor agreements. Deluxe and the
7 Safeguard companies, sellers of business forms and systems, apparel, promotional items
8 and other business services, have undertaken multiple commercially unreasonable actions
9 to increase their profits at the expense of their distributors. Their end goal is to drive the
10 Safeguard distributors out of business, thereby eliminating what they consider to be
11 competition.

12 2. Since 1956, Safeguard Business Systems, Inc. ("SBS") has sold various
13 business products primarily to small businesses. As far back as 1972, SBS Distributors
14 have entered into SBS Distributor Agreements with SBS. SBS Distributor Agreements
15 are uniform with respect to several provisions.

16 3. SBS Distributors are granted 36 months of exclusive rights to all
17 commissions from customers they are the first to solicit. They also possess the
18 unqualified right to participate in commissions generated through sales to that customer
19 for a period up to five years after the termination of their contracts with SBS.

20 4. The SBS Distributor Agreements allow the SBS Distributors to purchase
21 products manufactured by approved non-SBS sourced vendors ("Approved Vendors").
22 Such a relationship was crucial to the success of the distributors as SBS did not
23 manufacture every product and ended its manufacturing all together in 2004. SBS is
24 allowed to add reasonable fees to compensate it for its role in the administrative functions
25 of billing, collecting, managing sales tax and vendor payments.

26 5. The SBS Distributor Agreement requires that SBS act with commercial
27 reasonableness and not take unilateral actions that would deprive the SBS Distributors of
28 the benefit of their bargain.

1 6. SBS' relationship with its distributors was amicable and worked to the
2 benefit of all parties from 1972 up until 2004. This changed in 2004 when SBS became a
3 subsidiary of Deluxe.

4 7. Deluxe was a competitor of SBS and remains a competitor of SBS
5 Distributors in terms of selling many products. As such, Deluxe manufactures many of
6 the same products that SBS Distributors have bought from other vendors. Once Deluxe
7 took over SBS, it engaged in a multi-tiered strategy to ensure that SBS Distributors
8 source Deluxe products and not the products of the other Approved Vendors that the
9 distributors previously purchased from.

10 8. To implement their strategy, Deluxe and SBS have implemented multiple
11 unlawful policies in violation of the SBS Distributor Agreements. First, Deluxe tripled
12 the amount of fees that SBS Distributors must pay when they source products from other
13 previously approved manufacturers. This penalty fee is not borne out of SBS' actual
14 administrative costs in handling these orders. Instead, the fees are designed to force the
15 distributors to source products from Deluxe or where Deluxe doesn't manufacture the
16 product, they must buy from what Deluxe and SBS characterize as "Preferred Suppliers".

17 9. Where these inflated fees were not enough of a deterrent, SBS and Deluxe
18 explicitly have threatened the distributors. Despite the fact that SBS Distributors have
19 been placing orders with the Approved Vendors for Safeguard products for 25 years,
20 Deluxe and its subsidiary SBS have now implemented a policy of restricting what
21 manufacturers may be used for Safeguard products. Whereas certain competitively
22 priced manufacturers were allowed before, SBS has not only imposed punitive fees but in
23 many instances it has unilaterally revoked the right to purchase products from these
24 manufacturers. Instead, SBS is requiring distributors to buy from Deluxe, merely an
25 Approved Vendor itself, or if Deluxe doesn't make the product, from Preferred Suppliers.
26 If a distributor does not comply, it is threatened with termination.

27 10. After forcing SBS Distributors to go to Deluxe or its Preferred Suppliers to
28 buy products, Deluxe then refused to allow the distributors to buy from it directly.

1 Instead, Deluxe requires SBS Distributors to source Deluxe products through SBS. This
2 allows Deluxe to impose, through SBS, a large undisclosed surcharge to the products
3 before allowing the distributors to purchase them. This fee has no basis in SBS' actual
4 administrative costs.

5 11. Beyond increasing this wholesale price, Deluxe and SBS have also marked
6 up the Manufactured Suggested Retail Price ("MSRP") of the Deluxe products far
7 beyond comparative companies and the Producer Price Index. These actions directly
8 affect the distributors' bottom-line. The distributors receive a smaller commission, or
9 lower percentage of the profit, the more they mark the product down below MSRP. So
10 by increasing the MSRP far beyond what is competitive in the industry and what prices
11 distributors can sell at, Deluxe has been able to directly reduce the commissions SBS
12 pays to its distributors.

13 12. Deluxe and SBS have also been artificially doubling the shipping and
14 handling costs on the products SBS Distributors' offer, further hurting customer sales.
15 With Deluxe and SBS' artificially inflated MSRP and shipping and handling costs, the
16 distributors are forced to mark down the product more and receive lower commissions.
17 This again increases Deluxe's profits.

18 13. Where Deluxe doesn't make a product, it has implemented a scheme to
19 siphon more profit by classifying some vendors as preferred. Deluxe and SBS have
20 confronted many of the largest manufacturers of Safeguard products and required that
21 they (1) pay SBS and Deluxe "kickbacks" or what they refer to as "rebates"; and (2)
22 agree not sell any product type to the distributors that Deluxe also manufactures in order
23 to become Preferred Suppliers. The end result of this tactic is that these manufacturers, if
24 they want to keep their business, have to correspondingly increase the cost of their
25 products in order to pay these rebates. Consequently, the SBS Distributors are forced to
26 source from these Preferred Suppliers or Deluxe at higher cost and thus less profits.

27 14. As a further disincentive to buying products from manufacturers who refuse
28 to give in and become a Preferred Supplier, Deluxe and SBS decided to unilaterally

1 implement a 2% Net 30 program. Under this new program, SBS receives a 2% rebate
2 from the Approved Vendor when SBS makes payment within 30 days. This
3 automatically reduces the Approved Vendors' margins who in turn have to raise their
4 product prices to make up for the 2% loss. When the Approved Vendors sell their
5 product at higher prices, the distributors' profits are reduced. If allowed to continue,
6 Deluxe and SBS are likely to introduce further unilateral actions to take the profits of
7 their distributors and eliminate other manufacturers as competitors to Deluxe.

8 15. Beyond this pricing stranglehold, Deluxe and SBS have also instituted a
9 policy of introducing new distributors into the market to increase their profits. Deluxe
10 does this through a program called the Business Acquisitions and Merger ("BAM")
11 program. The BAM program is operated by Deluxe subsidiary Safeguard Acquisitions,
12 Inc. ("SAI"). Under the BAM program, SAI acquires independent non-Safeguard
13 distributor businesses in the small business forms, supplies and services product market
14 and then re-sells the customer list to a new distributor of Safeguard products, which is
15 often an ownership group composed of the same individuals who sold the customer list to
16 SAI. This new distributor is then allowed to sell to many of the same Protected
17 Customers of the SBS Distributors.

18 16. As the BAM program has evolved, Deluxe has bought distributors under the
19 BAM program and consequently ran the distributor thereafter as a company owned
20 distributor. In these instances, Deluxe and SBS themselves are using these company
21 owned distributors to compete with and take the SBS Distributors' Protected Customers.

22 17. Through its BAM program, Deluxe and SBS have orchestrated a system to
23 allow themselves and new distributors to enter the market and not only sell to Protected
24 Customers but to do so through predatory prices. Deluxe and SBS give these new
25 distributors a distinct advantage by selling products at prices much below what SBS
26 Distributors are charged. These predatory prices allow the new distributor to gain a
27 foothold and take away significant chunks of the SBS Distributors' then existing
28

1 business. The BAM program violates the distributors' valuable right to Customer
2 Protection and is not commercially reasonable.

3 18. Despite bringing in new competitors who poach their Protected Customers,
4 the distributors have themselves been restricted from growing by acquisition. SBS has
5 conditioned the transfer of any franchise, be it buying or selling, on the signing of a
6 general release of all legal claims. There is no basis for this requirement and the end
7 result is that distributors are forced to give up their legal rights or suffer further from SBS
8 and Deluxe's actions.

9 19. For these reasons, set forth in detail below, USDA seeks a judicial
10 declaration that Deluxe and SBS' actions are unlawful in and violation of the SBS
11 Distributor Agreements.

12 20. Deluxe and SBS' unilateral and commercially unreasonable actions have
13 reached a boiling point. Every day that these actions continue, the more damage that is
14 inflicted on the distributors. If Deluxe is allowed to continue with its scheme in violation
15 of the SBS Distributor Agreements, it will be able to fulfill its goal of eliminating the
16 SBS Distributors. Deluxe would like nothing more than to rid itself of this trade channel
17 completely so it can operate only through Deluxe and company owned distributors. The
18 distributors face irreparable harm if SBS and Deluxe's actions are not put to an end.

19 **THE PARTIES**

20 21. Plaintiff United Safeguard Distributor Association, Inc., is a Georgia
21 corporation with offices located at 14670 E. Firestone Blvd., Ste. 406, La Mirada, CA
22 90638. Founded in April 1997, the USDA is a membership organization composed of
23 Safeguard franchisees and distributors. The USDA's membership includes more than
24 193 distributors nationwide.

25 22. USDA was formed as a direct result of its members' commonly-themed
26 grievances pertaining to certain practices and operations of SBS. USDA was organized
27 and exists for the purpose of protecting and preserving the rights of SBS Distributors and
28 was created to serve as an official voice of the SBS Distributor community.

23. Defendant Safeguard Business Systems, Inc. is a corporation organized and existing under the laws of the State of Delaware with its principal place of business in Dallas, Texas. SBS is a franchisor of the Safeguard brand of franchised businesses. SBS, through its network of more than 193 franchisees (referred to herein as “SBS Distributors”), distributes office products and business services nationwide.

24. Defendant Deluxe Corporation is a corporation organized and existing under the State of Minnesota with its principal place of business in Shoreview, Minnesota. Upon information and belief, SBS, SAI and Safeguard Franchise Systems, Inc. (“SFS”) are subsidiaries and/or affiliates of Deluxe, a company with annual revenues well in excess of 1.6 billion dollars. Deluxe is one of the two largest check printers in the United States and provides, through its numerous subsidiaries, various personalized products and services to small businesses, financial institutions, and consumers, including but not limited to, design services, website services, print marketing, promotional products, and fraud protection services.

JURISDICTION AND VENUE

25. Plaintiff has satisfied the amount in controversy requirement as the value of the requested declaratory relief exceeds the jurisdictional threshold of \$75,000.

26. This Court has jurisdiction over this action under diversity of citizenship jurisdiction, 28 U.S.C. § 1332. Plaintiff USDA is a Georgia corporation with its principal place of business in La Mirada, California. Defendants Deluxe and SBS are Minnesota and Delaware corporations, respectively, with their principal offices located in Shoreview, Minnesota and Dallas, Texas.

27. This Court has personal jurisdiction over SBS on the grounds that it is registered with the California Secretary of State to do business in California and physically does business throughout California. SBS ships products to and accepts orders from customers in California. Also, jurisdiction over SBS is proper because SBS has sufficient continuous and systematic minimum contacts with California such that it foresaw the possibility of being sued in this state, including but not limited to, conducting

1 significant business activities in this state and engaging in the conduct which is the
2 subject matter of this dispute.

3 28. This Court has personal jurisdiction over Deluxe on the grounds that it is
4 registered with the California Secretary of State (as Deluxe Check Printers) to do
5 business in California and physically does business throughout California. Deluxe ships
6 products to and takes orders from customers in California. Also, jurisdiction over Deluxe
7 is proper because Deluxe has sufficient continuous and systematic minimum contacts
8 with California such that it foresaw the possibility of being sued in this state, including
9 but not limited to, conducting significant business activities in this state and engaging in
10 the conduct which is the subject matter of this dispute.

11 29. Venue is proper in this district in that all of the defendants are subject to
12 personal jurisdiction in this District. Venue is also proper in this District because a
13 substantial amount of SBS Distributors are located within the jurisdiction of this Court,
14 the BAM program is prominently operated in this District, a substantial amount of
15 Deluxe products are shipped and sold to customers in this District and a substantial
16 amount of the events giving rise to the complained of conduct occurred in this District
17 and one or more of the violations alleged in this Complaint arose in the District.

18 **ASSOCIATIONAL STANDING**

19 30. The USDA has standing to maintain this action. At least one of its members
20 (indeed, all of its members) has suffered injury in fact by Deluxe and SBS' conduct.
21 More damage is inflicted every day that Deluxe and SBS are allowed to continue their
22 conduct. Deluxe and SBS' conduct has proceeded to the point that a Court must
23 intervene to declare the parties' rights and obligations lest the parties' distribution
24 relations all together collapse.

25 31. Pursuant to Article I of the USDA's bylaws, USDA is to act in the interests
26 of the distributors of Safeguard Business Systems, Inc. The interests sought to be
27 protected by this action are germane to the USDA's purpose.
28

1 32. The interests sought to be protected are the rights of SBS Distributors to
 2 prevent Deluxe and SBS from (1) unfairly and unilaterally modifying the terms of the
 3 SBS Distributor Agreements; and (2) conducting their business in a commercially
 4 unreasonable way which runs contrary to the terms of the SBS Distributor Agreements
 5 and makes the SBS Distributor Agreements commercially impracticable.

6 33. Finally, neither the claim asserted nor the relief requested requires the
 7 participation of individual members of the USDA since the USDA can prove its
 8 allegations of Deluxe's and SBS' breach of the SBS Distributor Agreement and breach of
 9 the duty of good faith and fair dealing, which are both contractual and implied by law,
 10 and other distribution abuses through Deluxe and SBS' own documents and data and
 11 through expert testimony.

12 **COMMON ALLEGATIONS**

13 **The Safeguard Distributor Model**

14 34. All allegations herein are made on information and belief.

15 35. SBS Distributors own and operate independent Safeguard businesses
 16 through which they solicit orders for products and services, many of which carry the
 17 Safeguard trademarks, including printed business forms and products, one-write account
 18 and other financial systems, non-financial one-write systems like gift certificates and
 19 visitor pass systems, continuous and laser computer forms and checks, envelopes, tax
 20 forms, computer software, records management, full-color printing, business apparel,
 21 promotional products, office products, web and design services and related business
 22 supplies, W-2 processing and other employee tax reporting services and other lines of
 23 products manufactured by, or supplied to, SBS and its distributors by outside vendors or
 24 companies affiliated with SBS (hereinafter referred to as "Safeguard Systems")

25 36. Each SBS Distributor is responsible for soliciting customer orders for the
 26 Safeguard Systems and, if those orders are accepted, places the orders through SBS. SBS
 27 then administers the customer billing, and processes all accounts receivable.
 28

1 Commissions are then paid by SBS to the SBS Distributor on all retail sales which are the
2 subject of each SBS Distributor's Safeguard Systems' order.

3 37. During the period 1956 through 2004, SBS manufactured and sold various
4 business products and services, primarily to small (fewer than 50 employees)
5 commercial, industrial, governmental, retail and not-for-profit businesses (the "Small
6 Business Market") through a network of independent distributors.

7 38. Since on or around 1988-1989, all products that SBS offered through its
8 SBS Distributors – but did not itself manufacture – were obtained from Approved
9 Vendors. Thus, for the past 25 years, hundreds of the Safeguard Systems' product
10 categories have been obtained from Approved Vendors for re-sale by SBS to the Small
11 Business Market. This practice has been known within the SBS System as the "Sourced
12 Products Program."

13 **The SBS Distributor Agreements Afford SBS Distributors Numerous Protections**

14 39. As of December 31, 2014, there were 193 SBS Distributors operating
15 franchised businesses throughout 38 states within the United States. These SBS
16 Distributors entered into SBS Distributor Agreements with SBS, beginning as far back as
17 1972. An exemplar distribution agreement has been attached hereto as Exhibit A.

18 40. SBS Distributors execute distributor agreements which are substantially
19 similar in form and substance.

20 41. By executing the SBS Distributor Agreement, the SBS Distributor was
21 appointed a distributor of those Safeguard products and services identified in the various
22 addenda to the SBS Distributor Agreements. The *generic* products and services defined
23 in the various addenda are then collectively defined as "Safeguard Systems." The
24 addenda describe the various *generic* product line categories and services that are referred
25 to as Safeguard Systems.

26 42. Generally, the addenda for the SBS manufactured products identify
27 distributor commissions as a fixed percentage of "net sales" for that product or service
28 (*e.g.*, distributors are contractually guaranteed a 35% of net sales commission on One-

Write Accounting Systems). The term “net sales” generally is defined as the amount received by SBS less: “(i) all taxes applicable thereto; (ii) all transportation and freight costs applicable thereto; (iii) all handling costs applicable thereto; and (iv) all returns and allowances.” (See Distributor Agreement section titled, “Operation and Payment of Commissions.”)

43. The SBS Distributor Agreements contain the following uniform terms which require SBS to:

- Take action to prohibit other Distributors from selling to Protected Customers pursuant to the Customer Protection rights identified in the Distributor Agreement;
- Pay distributors all commissions generated on sales to its customers pursuant to the Customer Protection rights identified in the Distributor Agreement;
- Provide distributors with copies of all inquiries and other correspondence related to its Protected Customers, together with copies of SBS’s reply to such inquiries or correspondence; and
- Notify distributors, with reasonable promptness, of any event that may reasonably be expected to have a material adverse effect upon the sale of Safeguard Systems to its Protected Customers.

44. The SBS Distributor Agreements allow the distributors to source the Safeguard System products by the vendor of their choice. As a result, SBS Distributors have used Approved Vendors for over 25 years.

45. The SBS Distributor Agreements did not contemplate purchasing products from Deluxe, an entity which had no involvement and in fact was a competitor of Safeguard prior to 2004.

46. The SBS Distributor Agreements require that SBS set commercially reasonable source fees as well as shipping and handling costs.

47. Some of the SBS Distributor Agreements contain express language that requires that SBS act with “commercial reasonableness.” To the extent that some of the

1 agreements do not contain these provisions, implied commercial reasonableness
2 standards are still read into the SBS Distributor Agreements as part of the implied
3 covenant of good faith and fair dealing.

4 48. Under this implied covenant of good faith and fair dealing, each party has an
5 obligation and duty to act fairly towards the other and to do nothing that would deprive
6 another party of the benefits of the contract.

7 49. In the franchise context (SBS Distributors are franchises), a franchisor has
8 an obligation to act in good faith and to treat its franchisees in a commercially reasonable
9 manner. When a contract gives one party a discretionary power affecting the rights of the
10 other, that party must exercise its discretion in good faith and in accordance with fair
11 dealing. Here, Deluxe and SBS' system wide discretionary practices are neither in good
12 faith nor commercially reasonable.

13 50. Deluxe and SBS' obligation to abide by the implied covenant of good faith
14 and fair dealing is heightened by the substantial imbalance of power between SBS,
15 Deluxe and their distributors, which imbalance allows them to implement the business
16 scheme described in detail in this Complaint and incorporated by reference.

17 **Safeguard's Traditional MSRP Based Commission For Products It Manufactured**

18 51. During the period, 1956 through 2004, SBS manufactured various business
19 products. These consisted primarily of One-Write checks, envelopes, business stationary,
20 laser checks and forms, short run continuous checks and forms, financial reporting
21 programs, professional timekeeping systems, dental practice systems, and medical
22 practice systems. By 2000, some of these products were discontinued as a function of
23 technological advances. When Deluxe purchased SBS in 2004, SBS discontinued all
24 manufacturing operations.

25 52. For the products manufactured by SBS, SBS set up a commission system for
26 the distributors based on the Safeguard Systems' products' MSRP. This was chosen
27 instead of a wholesale price model. Under the MSRP based commission system,
28 Distributors receive a percentage of the product selling price as a commission. This

1 percentage increases the closer the product is sold to the MSRP. For most products, if the
2 product is sold for SBS' MSRP, the distributor's commission is 35% of the selling price.
3 If the sale price is discounted from SBS' MSRP, the commission is generally reduced to
4 32% of the selling price.

5 53. For example, if a Safeguard manufactured product with a \$100 MSRP is
6 sold for \$100, sales proceeds are apportioned \$65 ($\$100 \times 65\%$) and \$35 ($\$100 \times 35\%$) to
7 Safeguard and the distributor, respectively. However, if the Safeguard product is sold for
8 \$99, sales proceeds are apportioned \$67.32 ($\$99 \times 68\%$) and \$31.68 ($\$99 \times 32\%$) to
9 Safeguard and the distributor, respectively.

10 54. Prior to 2004, the commission based model was successful as SBS set
11 commercially reasonable MSRP's for its manufactured products. As long as the MRSP
12 was set in line with industry prices, distributors could go out and obtain orders at that
13 price, thus obtaining the full possible commission.

14 **Safeguard's Sourced Products Program Addendum**

15 55. The Sourced Products Program has been in effect since at least 1989. Under
16 this program, SBS permitted the SBS Distributors to augment and expand the Safeguard
17 Systems product lines that they could offer to customers in the Small Business Market by
18 using other manufacturers. Consequently, SBS Distributors supplemented their
19 Safeguard Systems product offerings by developing commercial relationships with
20 hundreds of small and large Approved Vendors.

21 56. Under the Sourced Products Program, the SBS Distributors place wholesale
22 purchase orders with the Approved Vendor. The vendors then submit their wholesale
23 invoices directly to SBS for payment. The SBS Distributors submit the retail orders for
24 those products to SBS for processing and collection by SBS in connection with the retail
25 transactions. The vendors drop ship the products to the retail customers. SBS then pays
26 its SBS Distributors the commission that they are entitled to under the SBS Distributor
27 Agreements.
28

1 57. The commission structure under the Sourced Products Program is set forth in
 2 the various addenda to the SBS Distributor Agreements. For example, under the Sourced
 3 Product Addenda, SBS is required to “maintain a schedule” identifying the minimum
 4 price for each product at which SBS is willing to sell the product. The SBS Distributor’s
 5 commission is then calculated as the difference between the price paid by the customer,
 6 and “the minimum price for such product on the schedule then in effect.”

7 58. SBS’s minimum sales price consists of a “Sourced Fee” surcharge expressed
 8 as a nominal percentage of the net retail invoice figure. The SBS Distributors pay SBS
 9 this Sourced Fee in order to compensate SBS for its “back-office” administrative
 10 activities, consisting of customer billing, payment of vendors and management of sales
 11 tax payments and customer receivables.

12 59. SBS is contractually required to charge no more than that which is
 13 “commercially reasonable” and rationally related to the administrative activity which
 14 SBS performs in connection with the retail sales transaction. SBS’s current Sourced Fee
 15 is inversely correlated with the retail invoice amount. For example, the maximum
 16 Sourced Fee is 7% for invoice amounts less than \$300; and, the Sourced Fee is 1% for
 17 invoice amounts equal to – or greater than – \$15,000.

18 **Safeguard’s BODP Program Addendum**

19 60. The SBS Distributors historically have sourced – and, since 1996, have
 20 made direct purchases of – the Safeguard Systems from vendors they themselves sourced.
 21 These vendors have always been approved by SBS. Among other things, this open
 22 market for Safeguard Systems supplied by Approved Vendors has allowed the SBS
 23 Distributors to work with local vendors to obtain the best pricing and most efficient order
 24 fulfillment. It also has minimized various costs, including freight and shipping costs.

25 61. The Billing Only Distributor Paid (the “BODP Program”) was born out of
 26 SBS’ failure to pay its bills and was a byproduct of the financial instability wrought by
 27 SBS’ two bankruptcies. During 1996-1997, SBS experienced significant and continuous
 28 financial difficulties that seriously impaired its ability to timely pay the Approved

1 Vendors. In May-June 1997, therefore, SBS introduced a new procedure for processing
2 SBS Distributor sourced orders and vendor invoices. Under this new procedure, referred
3 to as “Distributor Sourced/Distributor Paid,” the SBS Distributors – not SBS – would
4 have to pay the vendor directly and would thereafter submit a request to SBS to bill the
5 customer only, not to pay the vendor.

6 62. This process became known as the BODP program. By 2000, the BODP
7 Program became the subject of a formal addendum to the SBS Distributor Agreements,
8 and continues through today. The Addendum is entitled “Sourced or Brokerage Products
9 – Bill Only Distributor Paid (BODP)” (the “BODP Addendum”) attached as Exhibit B.
10 Pursuant to the BODP Addendum, “the Distributor pays the vendor invoice directly and
11 Safeguard bills the customer, collects the customer payment, and pays the SBS
12 Distributor the appropriate commission.” *Id.*

13 63. Thus, under the BODP Addendum, the SBS Distributors place wholesale
14 purchase orders directly with the Approved Vendors, pay the vendors’ wholesale invoices
15 themselves, and thereafter include the cost of purchasing the Safeguard Systems from the
16 Approved Vendors in the retail orders that are submitted to SBS for processing and
17 collection by SBS in connection with the retail transactions. The Approved Vendors drop
18 ship the products to the retail customers.

19 64. The BODP Addendum provides that “[SBS] shall maintain a schedule of
20 handling and processing charges for BODP orders.” (the “BODP Fee”) *See* BODP
21 Addendum. The SBS Distributor’s commission is then calculated as the difference
22 between the amount billed to the customer, less the BODP Fee and sales tax. *Id.*

23 65. Although SBS had less administrative duties with the BODP program in that
24 it didn’t handle payments to the vendor, it still charged the same Sourced Fee. Thus,
25 SBS’ fees for its sourced products and the Approved Vendor products were
26 approximately the same.
27
28

Deluxe Forces Safeguard To Change Its Approach Toward Its Distributors

66. The corporate strategy of Safeguard changed dramatically when it was acquired by Deluxe. In 2004, Deluxe purchased New England Business Systems, Inc., a company which had purchased SBS in 2003. Thereafter, Deluxe – through a corporate reorganization – formed a wholly-owned subsidiary holding corporation, Safeguard Holdings Corp. (“SHC”). Pursuant to this reorganization, both SBS and SFS became wholly-owned subsidiaries of SHC. As a result of the acquisition, Deluxe and SBS acquired a financial interest in making sure that SBS Distributors purchases products from Deluxe and not from other manufacturers.

67. Deluxe is one of the two largest check printers in the United States and manufactures various office products and services for sale to the Small Business Market, as well as to financial institutions and consumers. Deluxe was and is a direct competitor of SBS in the manufacture of One-Write checks, continuous feed checks, laser checks and related products. Furthermore, several of Deluxe’s wholly-owned subsidiaries, such as DFS, are competitors of the SBS Distributors.

68. Deluxe provides the Deluxe Products to, among other purchasers, retail customers in the Small Business Market, both directly – *i.e.*, direct sales to retail customers – and indirectly through its subsidiaries and its independent dealer network. In many instances, therefore, Deluxe is and continues to be a competitor of SBS and its independent distributors in the retail sales of business products and services to the Small Business Market. Indeed, Deluxe often sends SBS Distributors’ customers Deluxe’s marketing material.

69. After acquiring SBS, Deluxe forced the SBS’ Distributors to purchase Deluxe products through SBS instead of Deluxe directly. Deluxe dictated that Deluxe would sell to SBS and SBS would sell to the SBS Distributors’ customers. Thus, Deluxe is no different than any other of SBS’ Approved Vendors. As such, SBS Distributors may choose to – *but are not required to* – source their product orders through Deluxe.

70. Despite this freedom of choice, Deluxe and its subsidiary companies have engaged in a multi-tiered strategy to ensure that it is Deluxe products and not those of any other Approved Vendor that are sourced by the SBS Distributors. Where this cannot be done, Deluxe and SBS have engaged in a scheme in which to decrease the distributors' profits and increase their own. This strategy is designed to force the distributors to either offer Deluxe's products or be run out of business.

Deluxe and Safeguard Penalize Distributors For Using Approved Vendors Other Than Deluxe By Tripling Their Fees On These Transactions

71. Prior to Deluxe's takeover, SBS had charged a BODP Fee commensurate with its Sourced Fees. This changed when Deluxe entered the picture. Deluxe forced SBS to implement a percentage schedule for the BODP Program. This tripled the fees for products sourced from the Approved Vendors (other than Deluxe). In doing so, Deluxe is able to discourage the distributors from using these Approved Vendors.

72. If it was commercially reasonable, BODP Fees would be directly tied to the administrative costs SBS incurs in the transactions. Instead, Deluxe had SBS utilize a percentage schedule in implementing the BODP Program. The percentage schedule for the administrative handling and "processing" function is *ipso facto* unreasonable for this reason: the "processing" function is static. This administrative function – i.e., customer billing and management of sales tax payments and customer receivables – is no more difficult, requires no more direct or variable cost, and takes no more time when the customer invoice is for \$15,000 rather than \$230. Yet, SBS charges the SBS Distributors a 20% BODP Fee for both invoice amounts. That means that SBS charges a BODP Fee of \$3,000 for billing the customer and collecting its receivable on the \$15,000 customer order, but no more than \$46 for performing the identical activity with respect to the \$230 customer order. That is not commercially reasonable.

73. Under SBS's Sourced Products Program, SBS provides more services in return for its Sourced Fee, but charges less for performing that function. Thus, under the Sourced Products Program, in addition to customer billing and receivables and

1 management of sales tax payments, SBS also is responsible for the payments to the
2 vendors. In addition, SBS also pays the SBS Distributors' commission twice a month,
3 regardless of whether the customer paid SBS. Yet, under SBS's Sourced Fee schedule,
4 unlike the BODP Fee schedule, the Sourced Fee is inversely related to the total amount of
5 the customer order. Thus, the Sourced Fee for a \$229 order is 7% (\$16.03), but the
6 Sourced Fee for a \$15,000 order is only 1% (\$150). And, most significantly, the entire
7 percentage range for Sourced Fees is from 1% to a maximum of 7% – up to 65% less
8 than the 20% BODP Fee.

9 74. The SBS Distributors pay SBS this BODP Fee in order to compensate SBS
10 for its “back-office” administrative activities, consisting of customer billing and
11 management of sales tax payments and customer receivables. SBS, however, is only
12 entitled to a reasonable fee for its handling of the processing and collection activities in
13 connection with each retail transaction. Because, under the BODP Program – and, unlike
14 the Sourced Products Program – SBS does not have any responsibility to pay vendor
15 invoices – i.e., the SBS Distributors themselves pay the vendors' invoices directly – the
16 BODP Fee rationally should be less than the Sourced Fee that SBS charges under the
17 Sourced Products Program. But it is not; instead, SBS charges BODP Fees that are
18 almost three times higher than the Sourced Fees. This is unlawful and violates the SBS
19 Distributor Agreements.

20 75. SBS has intentionally implemented its commercially irrational BODP Fee
21 schedule so as to penalize the SBS Distributors. SBS designed its punitive BODP Fee
22 schedule expressly for the purpose of moving the SBS Distributors away from their
23 contractual rights under the BODP Addendum. It has done so because, following
24 Deluxe's acquisition of SBS, SBS has sought to force the SBS Distributors back to the
25 Sourced Products Program and Deluxe products and because SBS cannot recognize sales
26 revenue under the BODP program.

27 76. SBS has no commercially reasonable justification for having the BODP Fee
28 be greater than then Sourced Fee. The BODP Addendum provides that SBS will receive

1 a “processing charge” as determined by a schedule of handling and processing charges
 2 then in effect for BODP orders. See BODP Addendum, “Commission Rate and Terms of
 3 Payment.” These “processing charges” must be commercially reasonable; they may not
 4 simply represent arbitrary and capricious percentage figures that bear no rational
 5 relationship to the nature and extent of the activity performed for the benefit of the SBS
 6 Distributors. SBS’s assessment of the 20% BODP Fee is patently unreasonable and
 7 unlawful.

8 77. USDA seeks a judicial declaration that the BODP fees violate the SBS
 9 Distributor Agreements. SBS is only entitled to commercially reasonable fees for the
 10 administrative functions it provides. These fees cannot be greater than the fees it applies
 11 in the Sourced Products Program, which provides greater services to the distributors than
 12 the BODP Program.

13 **SBS Threatens to Terminate Distributors That Do Not Source Products through**
 14 **Deluxe Or Its “Preferred Suppliers”**

15 78. The SBS Distributors have been placing orders with the Approved Vendors
 16 of Safeguard Systems for 25 years – and under the BODP Program they have been
 17 making direct purchases from those same vendors for almost 20 years. Safeguard always
 18 has approved and accepted these BODP products as supply-side substitutes for the
 19 Deluxe manufactured products. These approved and accepted suppliers include Ennis,
 20 Wilmer and Northstar. They have, and do, provide a full line of business products and
 21 services which SBS has been selling to customers since the beginning of Safeguard’s
 22 existence. Stated simply, these Approved Vendors always have, and still do, meet all of
 23 Safeguard’s quality and other product standards.

24 79. Nevertheless, on September 22, 2014, SBS sent a letter to USDA member
 25 Richard Starcher (“Starcher”) announcing that, “pursuant to examinations of [Starcher’s]
 26 orders with Wilmer, there were several that appear to be for products that should have
 27 been placed with us or with one of our preferred vendors” (“SBS’s Starcher Letter”).
 28 SBS’s September 22, 2014 Letter is attached to this memorandum as Exhibit C.

1 According to SBS, now for the first time in SBS's history, Starcher's placement of orders
2 for Safeguard Systems supplied by Wilmer is both "unacceptable and is a breach of
3 [Starcher's] contractual commitment."

4 80. Wilmer is – and has been for the past 25 years – an approved supplier of
5 Safeguard Systems. During that time period, the SBS Distributors consistently have been
6 – with the explicit approval of SBS – sourcing Safeguard Systems through Wilmer for re-
7 sale to SBS's customers. Starcher's submission of orders that provide for the sale of
8 Safeguard Systems supplied by Wilmer is consistent with – not contrary to – his
9 "contractual commitment" to SBS.

10 81. SBS' Starcher Letter has for its clear purpose and intent, the transparent
11 attempt to intimidate the SBS Distributors. Thus, SBS has threatened Starcher that it
12 intends: (a) to "audit all customer and financial records pertaining to [SBS] and
13 [Starcher's] Distributorship"; (b) to "charge[] back against other commissions otherwise
14 due and owing to [Starcher} in the future...[a]ny and all commissions [that Starcher has]
15 earned on orders placed with Wilmer"; and (c) to "reserve the right to terminate"
16 Starcher's Distributor Agreement because he has placed orders with SBS that call for
17 Safeguard Systems supplied by Wilmer. See Exhibit C.

18 82. Quite significantly, SBS's Starcher Letter neither suggests – nor attempts to
19 suggest – that although Wilmer is – and always has been – a qualified and approved
20 supplier of Safeguard Systems, it now is otherwise. Nor does SBS's Starcher Letter
21 suggest that SBS Distributors may no longer source retail orders through Wilmer.
22 Instead, SBS now has declared – without any apparent legal justification – that, "effective
23 immediately[,] should you or anyone on behalf of your [SBS] distributorship wish to
24 place any order with Wilmer, you must first obtain our written permission to do so." Id.
25 (emphasis added.)

26 83. And, by this language, SBS makes clear that it's purported "written
27 permission has nothing to do with the quality of Wilmer's Safeguard Systems, but
28 everything to do with the elimination of a lower-priced and equivalent supplier of

1 Safeguard Systems in favor of SBS's higher priced "preferred vendors" – *i.e.*, Deluxe,
2 itself, and its "Preferred Suppliers."

3 84. The SBS Distributors will suffer irreparable harm if Deluxe and SBS are
4 allowed to continue with this scheme. One week after the Starcher letter, SBS sent a
5 similar letter to another USDA member, Patrick Ryan, threatening termination of his SBS
6 Distributor Agreement. A copy of the September 29, 2014 letter is attached as Exhibit D.

7 85. After Ryan responded to the letter, J.J. Sorrenti, the President at SBS and
8 Vice-President at Deluxe sent him an email correspondence. A copy of the April 17,
9 2015, email correspondence is attached as Exhibit E. In the email, Sorrenti stated that if
10 Ryan didn't work with USDA to broker a solution, that "more distributors will be
11 receiving the same directive" regarding threats of termination. Thus, barring action by
12 the Court, Deluxe and SBS will began terminating distributors for the distributors' failure
13 to fall in line with their illegal scheme.

14 86. These termination threat letters are predatory and anti-competitive. SBS has
15 no commercially reasonable justification for attempting to foreclose the SBS
16 Distributors' use of the Approved Vendors. The Safeguard Systems that have been – and
17 are – supplied by the Approved Vendors are the very same Safeguard Systems that SBS
18 has accepted and approved for more than 25 years.

19 87. The underlying rationale for SBS' – *i.e.*, Deluxe's – threatening demand is
20 not opaque. Deluxe seeks to eliminate supplier competition and obtain secret rebate
21 revenue from Preferred Suppliers that promise both that they will (a) pay to SBS and
22 Deluxe their mandatory rebate charges; and (b) eliminate themselves as competitors of
23 Deluxe in the supply of Safeguard Systems. And, with respect to the Deluxe Products,
24 SBS seeks to "purchase" them from Deluxe at indeterminate –at supracompetitive
25 "wholesale prices" – and thereafter impose upon the SBS Distributors an additional secret
26 and unearned "surcharge" that unfairly increases the SBS Distributors' "cost-base" for
27 the Deluxe Products. This is unlawful.
28

88. USDA now seeks a judicial declaration that SBS Distributors can purchase from any otherwise qualified Approved Vendors. They are not contractually mandated to purchase from Deluxe, a company that was not in the picture or contemplated when the SBS Distributors signed their franchise agreement with SBS. Nor should SBS Distributors be required to source Safeguard Systems through Deluxe who has, as outlined below, engaged in rampant price gouging through its subsidiary SBS. USDA seeks an injunction against SBS and Deluxe from terminating any agreement on the basis that the SBS Distributor has not sourced its product orders through Deluxe and/or has used an Approved Vendor.

After Deluxe Forces The Distributors To Offer Its Products, It Then Institutes Unjustifiable Price Increases To Increase Its Profits At The Distributors Expense

89. Once Deluxe had the SBS Distributors cornered and sourcing Deluxe products, it had to decide what to charge them. Since Deluxe is merely an Approved Vendor of SBS, SBS should have charged the same Source Fee that it charged for other Approved Vendors. This Source Fee would have been commensurate with the back-office” administrative activities – *i.e.*, customer billing and management of sales tax payments and customer receivables – that SBS provides.

90. Instead, Deluxe and SBS implemented a secret two tiered markup of the fees it charges. Deluxe did this first by forcing SBS to offer the Deluxe products at wholesale prices higher than that of comparative products. Deluxe refused to reveal whether it is artificially increasing the prices of the products it sells to SBS or if SBS is adding some artificially high surcharge. Secondly, as further outlined below, Deluxe increased the MSRP on the Deluxe products sourced through SBS.

91. SBS refuses to identify for the SBS Distributors the prices that Deluxe charges SBS for SBS’s purchase of the Deluxe Products and/or the amount of SBS’ subsequent surcharge to the SBS Distributors. However, after the surcharge is added, the price of Deluxe/SBS products is significantly greater, up to 115% higher than that of comparative wholesale prices for Safeguard Systems provided by Approved Vendors.

Attached as Exhibit F is a true and correct copy of a price comparison between Deluxe/SBS and its competitors Wilmer and Northstar as well as Deluxe subsidiary DFS' prices. The exhibit shows, for instance, that Deluxe/SBS charges 19 to 78% more for the same products than does Deluxe's subsidiary, DFS, to its customers.

92. The gross profit margins earned by the SBS Distributors on products purchased from the Approved Vendors either by Safeguard or by the SBS Distributors themselves are significantly greater than the margins that are available in connection with most Deluxe manufactured products. This is true even assuming that the SBS Distributors could obtain retail orders at the MSRP levels. And it also is true even when you add into the sales transaction the assessment of Safeguard's Sourced Fee for the "back-office" and other "services." This makes clear either (or both) that Deluxe is overcharging SBS and/or that SBS' exercise of its "right to price its products in its discretion, including determining its profit margin" is abusive and outright punitive.

Deluxe Then Increases The Manufactured Suggested Retail Prices On Its Products To Reduce The Distributors' Commissions

93. Throughout SBS' history, only SBS manufactured products were sold on a commission system tied to the product's MSRP. After Deluxe purchased SBS and directed it to sell Deluxe's products to the SBS Distributors, Deluxe required that SBS sell Deluxe's products on the commission system too. Since Deluxe was merely an Approved Vendor, SBS should have only charged a Source Fee and everything over the wholesale cost and Source Fee should have been the SBS Distributors' profits.

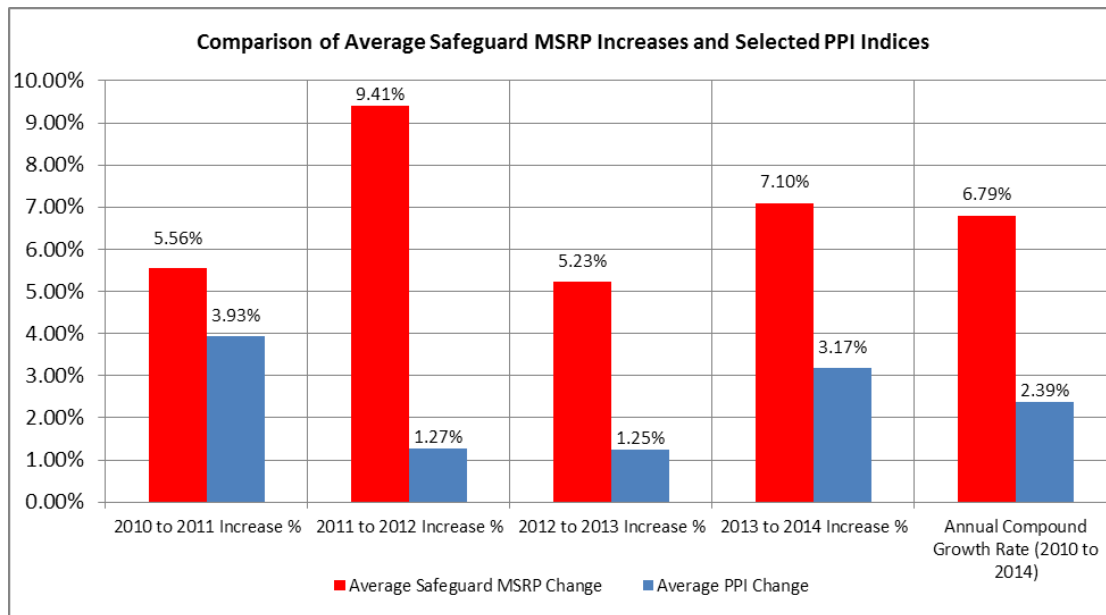
94. Instead, Deluxe mandated that the products be sold wherein the SBS Distributors' commissions were tied to the product's MSRP. Then, over the course of five years Deluxe had SBS implement a relentless series of unfair and anti-competitive MSRP increases for the Deluxe manufactured products.

95. When the MSRP was increased the SBS Distributor had the choice of either (1) raising the price at which the product would be sold to correspond to the increase; or (2) selling the product at the same price at a lower percentage of commission.

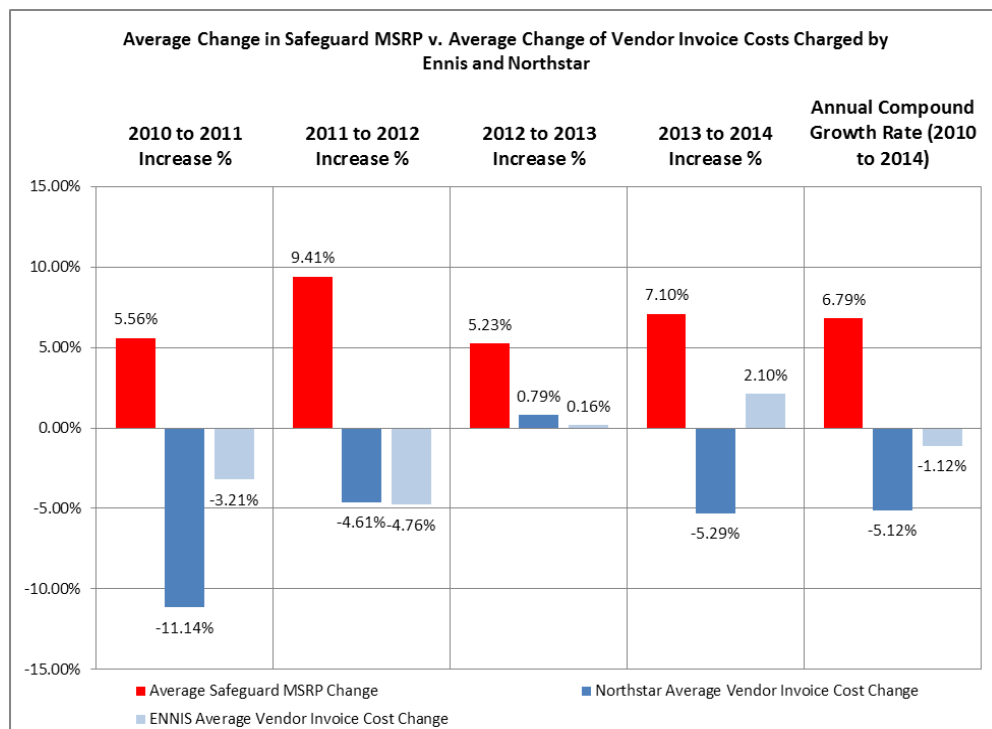
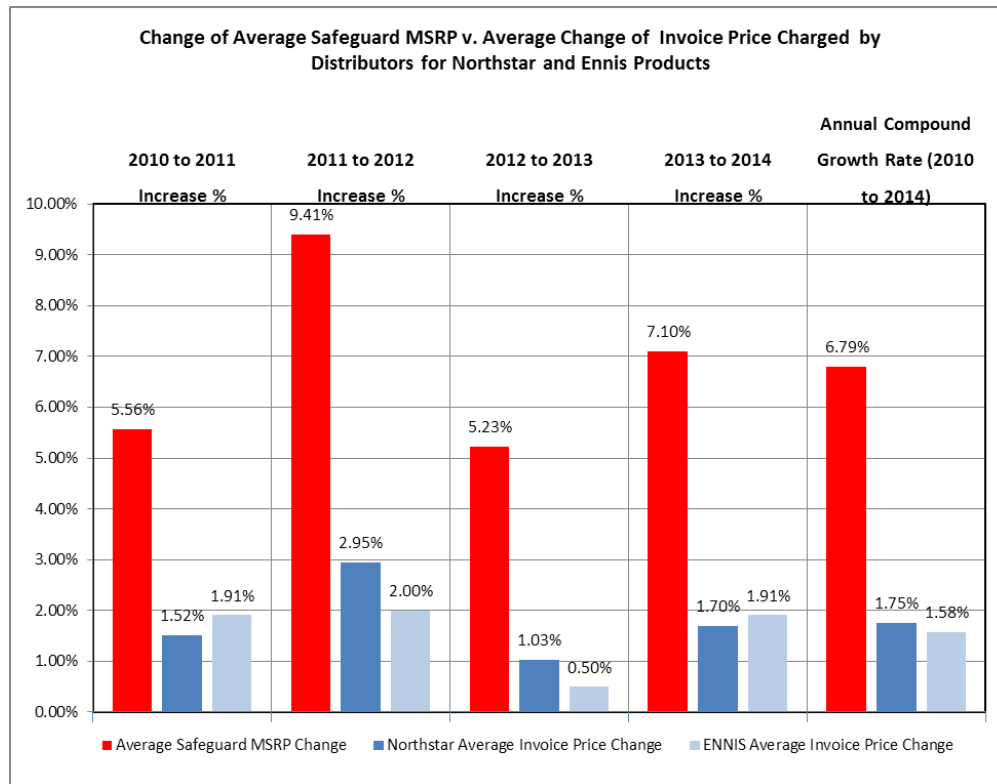
Consequently, increases in MSRP had as its byproduct the reduction in commissions paid by SBS to the SBS Distributors. By causing SBS to pay less in commission SBS and Deluxe made more profit.

96. Deluxe has implemented these MSRP increases despite the fact that market factors in the industry do not support them. The printing industry is experiencing overcapacity due to consumer migration toward digital alternatives, including electronic payment options. Industry revenue is projected to contract at an annual rate of 2.7% during the five years to 2019.

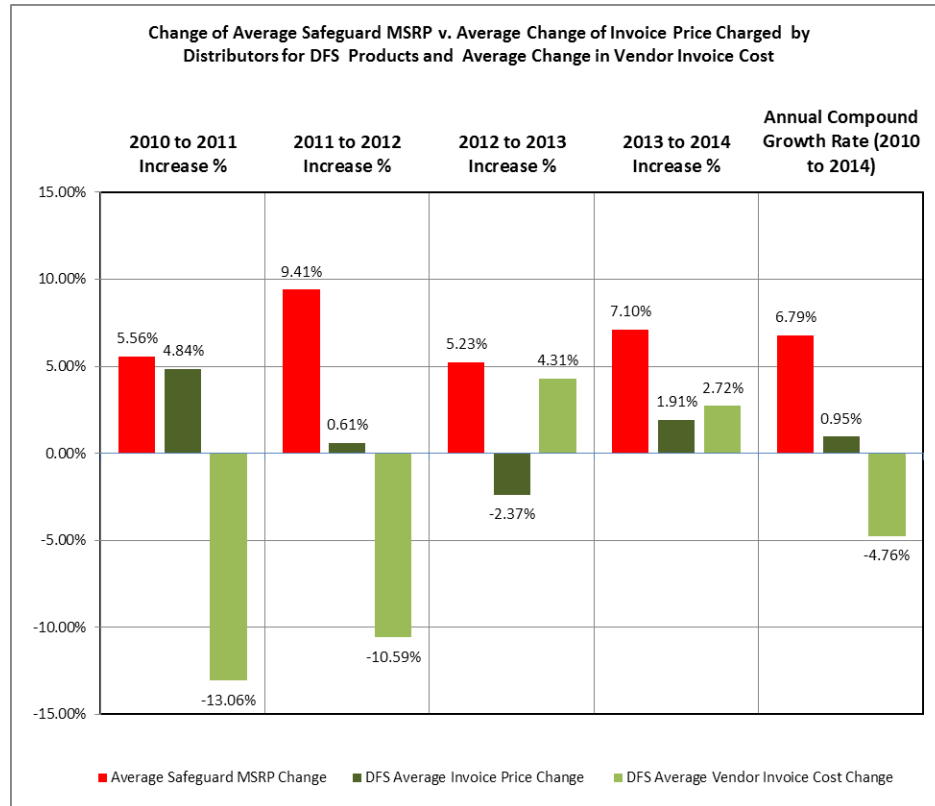
97. SBS' business practices and product pricing policies have resulted in MSRP increases on Deluxe products far in excess of increases in similar market indices or competitor price increases. For instance, SBS' MSRP increases have been far greater than increases in the Producer Price Index:



98. Northstar and Ennis are two of the largest competitors of Deluxe. The following two charts show that SBS' MSRP increases are substantially greater than price changes for comparable Northstar and Ennis products. This is true whether SBS' MSRP increases are compared to vendor invoice costs or the invoice price charged by distributors for those products.



99. That SBS' MSRP prices are unjustified by any market reality is also shown by the prices DFS, a Deluxe subsidiary, charges distributors.



100. Put simply, SBS' MSRP increases have no basis in competitive market pricing. SBS' MSRP increases are not supported by relevant PPI Index commodity increases or comparable industry products. These increases are a transparent grab by Deluxe and SBS to take the profits of their distributors for themselves and harm the SBS Distributors.

101. Deluxe and SBS have no legitimate underlying rationale for why its products should be that much more expensive compared to others in the industry. There is no material difference between the Deluxe manufactured products and the Sourced or BODP products. Because other suppliers (e.g., Wilmer, Ennis, etc.) competitively price their products, they represent the pricing benchmark by which SBS' sale of Deluxe products

1 must be measured. And SBS' right to mark-up the Deluxe manufactured products, or
2 SBS' "profit margin component," is not absolute. Just like SBS' "Sourced Fee" revenue
3 model for the Sourced products, SBS' "profit margin component" for Deluxe
4 manufactured products must be both rational and reasonable.

5 102. SBS is incentivized to increase product MSRP's even when said increases
6 cannot and will not be passed on to the retail customer because the effect of the price
7 increase is to increase SBS's revenue from the sale at the expense of the distributor. If
8 nothing is done to stop Deluxe and SBS, the distributors will face irreparable harm.

9 103. These ongoing MSRP increases are destroying the SBS Distributors'
10 businesses. In most instances, distributors cannot pass them on to customers. Given the
11 current industry pricing pressures, factory over-capacity and technological changes,
12 distributors have had to offer greater and quantitatively more numerous discounts on
13 MSRPs for the Deluxe manufactured products. SBS's unilateral increase of product
14 MSRP's has resulted in a dramatic increase in both the percentage of transactions in
15 which distributors customers require a discount from MSRP and the magnitude of the
16 necessary discount.

17 104. On information and belief, the potentially excess profit retained by Deluxe
18 and SBS to the detriment of its distributors during the years 2010 through 2014 is at least
19 \$7,400,000. The continued yearly impact exceeds \$1,500,000.

20 105. SBS' continued MSRP increases will exacerbate this profit take by SBS and
21 Deluxe. These increases are not commercially reasonable and run contrary to the SBS
22 Distributor Agreements.

23 **Deluxe and SBS' Further Inflate Deluxe Product Prices Through**
24 **Unlawful Shipping And Handling Fees**

25 106. When SBS invoices the distributors' customers for the Deluxe products, it
26 includes on the invoice shipping and handling costs. On information and belief, SBS has
27 arbitrarily doubled these costs, keeping the difference as profits. These costs are double
28 the actual shipping costs under UPS or comparable shipping companies.

107. The doubling of shipping and handling fees marks up the price sold to customers and makes it (1) more difficult to maintain or increase sales to these customers; and (2) results in the SBS Distributor having to lower its prices to make up for these arbitrarily high shipping and handling fees. By having to sell at a lower price or larger discount to MSRP, the SBS Distributors receive less commissions.

108. On information and belief, SBS fails to tie its shipping and handling charges to the actual costs of implementing those services. For this reason, these fees are not commercially reasonable and are unlawful. They violate the SBS Distributor Agreements.

109. USDA seeks a judicial declaration that Deluxe and SBS have no right to inflate shipping and handling costs under the SBS Distributor Agreements. Such practices have resulted in increasing product prices and are not commercially reasonable.

**Deluxe Pressures The Approved Vendors Into Paying Unlawful Rebates
And Not Competing With Deluxe**

110. Where Deluxe does not itself manufacture a product, it has sought to intimidate and in many instances successfully has intimidated the Approved Vendors into (1) selling only those products that Deluxe does not manufacture and no others; and (2) paying Deluxe more for this arrangement. For example, Deluxe's corporate Strategic Sourcing Group has successfully solicited various Approved Vendors to join Deluxe's "Preferred Supplier Program." A true and correct copy of an exemplar of this Safeguard Preferred Supplier ("PSP") Agreement is attached hereto as Exhibit G and incorporated by reference.

111. On information and belief, under the Preferred Supplier Program, Deluxe seeks to achieve two principal goals.

a. **First**, Deluxe has approached certain Approved Vendors and has pressured them to pay secret "kickback" rebates in amounts totaling 7% - and greater – of all dollar sales by the vendor (to which SBS then adds additional Sourced Fees or BODP Fees) for SBS Distributor product orders. These so-called "Preferred Suppliers" thereafter must

1 increase their standard wholesale prices to the SBS Distributors in order to accommodate
 2 the mandatory rebates that they must pay to SBS and Deluxe. In fact, Deluxe *expressly*
 3 *encourages the Preferred Suppliers to do so*. Functionally, then, when these compulsory
 4 rebate payments are combined with SBS's additional Sourced Fees, the "Preferred
 5 Supplier's" standard wholesale price to the SBS Distributors is elevated by 14% - 27%.
 6 These wholesale price increases are insuperably supracompetitive.

7 b. **Second**, Deluxe seeks to eliminate price competition from its Preferred
 8 Suppliers by demanding (a) that they expressly must promise not to make available to
 9 SBS's customers – *i.e.*, through orders obtained by the SBS Distributors for the Small
 10 Business Market – any Safeguard Systems that *compete* with the Deluxe Products; and
 11 (b) that Deluxe's Preferred Suppliers can simply pass the cost of the mandatory
 12 "kickback" rebate on by raising the prices charged to the SBS Distributors. This requires
 13 the SBS Distributors to raise prices for their customers, thus placing the Preferred
 14 Suppliers and the SBS Distributors at a competitive disadvantage in the market place.

15 112. Deluxe's "*non-negotiable*" SPS Agreement states that "the Preferred
 16 Suppliers will supply products agreed and outlined below [*i.e.*, the only product lines
 17 approved by Deluxe for sale by the vendor, and which must be on the "approved list" and
 18 identified in Exhibit "A" to Deluxe's SPS Agreement] with the understanding that when
 19 their product lines conflict with products offered by Deluxe for Safeguard Systems
 20 orders, [the Preferred Suppliers] will not knowingly market those products to [SBS]
 21 [D]istributors or customers." *See*, Exhibit 2, Deluxe's SPS Agreement, page 1. *See also*,
 22 Paragraph 2.1, page 2 ("Product lines listed [in Exhibit A] are subject to [Deluxe]
 23 approval to ensure conflicting product lines are not listed [on Exhibit "A"]"; *see also*,
 24 Exhibit "A" ("Product lines listed are subject to [Deluxe] approval to ensure conflicting
 25 product lines are not on the list. Supplier can provide products offered by Deluxe *when*
 26 *Deluxe has refused the order.* ").

27 113. Deluxe's anticompetitive scheme is designed to force its Preferred Vendors
 28 to increase their wholesale prices of the Safeguard Systems to artificially

1 supracompetitive levels (because they must accommodate Deluxe’s “kickback” rebate
2 revenue concession). In this fashion, Deluxe’s Preferred Supplier Program is intended to
3 make the products of Deluxe’s Preferred Suppliers appear more expensive than products
4 manufactured by Deluxe. Conversely, by utilizing its Preferred Supplier Program to
5 exact revenue from its Preferred Suppliers, and thereby *increase their costs*, Deluxe also
6 then raises its wholesale prices for the Deluxe Products to supracompetitive levels that
7 then are consistent with the supracompetitive levels of its Preferred Supplier competitors.
8 This, in turn, then falsely makes the supra-competitively priced Deluxe Products appear
9 to be reasonable and competitive.

10 114. The experiences of two Approved Vendors illustrate Deluxe’s Preferred
11 Supplier Program and its anticompetitive effects.

12 **Ennis**

13 115. Ennis was founded in 1909. Today, Ennis has 50 locations across North
14 America. It has 6,000 employees, and its annual sales exceed \$500 million annually.
15 Ennis serves a world-wide network of more than 40,000 distributors, and is the largest
16 wholesale manufacturer of printed forms and products in North America. The breadth of
17 its product lines have allowed the SBS Distributors to provide customers in the Small
18 Business Market with Safeguard Systems that include almost every type of printed forms
19 and products.

20 116. As stated above, by 2000, some of SBS’s core manufactured products were
21 discontinued as a function of technological advances. At that time, among other things,
22 SBS developed a strategic relationship with Ennis. SBS designated that relationship a
23 “Strategic Sourced Program.” Under this program, Ennis provided SBS with a fixed
24 monthly revenue stream for the benefit of the SBS Distributors, and SBS agreed that it
25 would not charge the SBS Distributors any additional “sourced fees” or other fees in
26 addition to Ennis’ monthly payment to SBS. In November, 2005, Ennis and SBS agreed
27 that Ennis would pay SBS a flat fee of \$12,500 per month. In effect, under SBS’s
28 Strategic Sourced Program with Ennis, Ennis – rather than the SBS Distributors – paid to

1 SBS the Sourced Fee to which SBS was entitled pursuant to the Sourced Products
2 Program under the SBS Distributor Agreements.

3 117. SBS expressly approved Ennis as an authorized supplier of Ennis' entire
4 product lines, assigned Ennis a single vendor code in the SBS computer and order entry
5 system, and consistently has approved all orders for Ennis' products. The Ennis product
6 lines – as well as the product lines of the hundreds of Approved Vendors – *e.g.*, Wilmer –
7 always have been qualified Safeguard Systems within the meaning of the SBS Distributor
8 Agreements. And, for more than 14 years, SBS unqualifiedly accepted all SBS
9 Distributor retail orders for the panoply of Safeguard Systems supplied by Ennis under
10 SBS's Strategic Sourced Program.

11 118. This arrangement continued until December 2013, when Deluxe tried to
12 coerce Ennis – Deluxe's direct competitor in the manufacture and supply of print and
13 other office supply products – to sign Deluxe's SPS Agreement. In December 2013,
14 Deluxe summoned Ennis and directed that its corporate representatives meet with
15 Deluxe's Strategic Sourcing Group at its corporate offices in Shoreview, Minnesota.
16 Among others, Ennis Executive Vice President (previously SBS' CEO), Michael Magill
17 attended the meeting on behalf of Ennis.

18 119. During the meeting, Deluxe presented Mr. Magill with its *confidential* SPS
19 Agreement. On information and belief, SBS has been offering other vendors the same
20 agreement. Deluxe's SPS Agreement included the following provisions:

- 21 a. Ennis must provide secret kickback payments to Deluxe totaling 7% of
- 22 Ennis sales to SBS Distributors.
- 23 b. The kickback payments are to be paid to Deluxe before Ennis receives
- 24 payment for its products.
- 25 c. The proposed agreement, which characterized the kickback payments as
- 26 'rebates,' specifies that the existence of the rebate, the amount and all rebate
- 27 terms are *confidential* between the Preferred Supplier and Deluxe and are
- 28

1 not to be shared with any other person or entity, including but not limited to
2 the SBS Distributors, under any circumstance.

3 d. Under no circumstances would the rebates be considered commissions or
4 rebates which may be paid over to the SBS Distributors.

5 e. Deluxe's proposed agreement would forbid Ennis from offering lower prices
6 to SBS Distributors outside the SBS system.

7 120. When Ennis balked at the amount of kickbacks demanded by Deluxe,
8 Deluxe suggested that Ennis pass those costs on by raising the prices charged to the SBS
9 Distributors. That would require the SBS Distributors to raise prices for their customers,
10 thus placing Ennis and the SBS Distributors at a competitive disadvantage in the
11 marketplace.

12 121. Ennis refused to sign Deluxe's SPS Agreement. Among other reasons for
13 refusing to do so was that it had concerns about its legality. Ennis also concluded that
14 Deluxe's attempt to squeeze as much as a five-fold increase in its own revenues from the
15 sale of Ennis products to the SBS Distributors would have disastrous consequences for
16 Ennis and the SBS Distributors selling Ennis products. After Deluxe retaliated by ending
17 Ennis' status as a Strategic Sourced Vendor and started charging source fees Ennis filed a
18 lawsuit against SBS. The verified Complaint, further revealing Deluxe and SBS'
19 scheme, is attached as Exhibit H.

20 **Printer Essentials**

21 122. Printer Essentials is a longstanding Approved Vendor. In May, 2014, Kellye
22 Santos (SBS's then Vice-President of Customer Service & Operations) presented Printer
23 Essentials (Jeff Gardner, Printer Essentials' then Chief Operating Officer) with Deluxe's
24 SPS Agreement. Deluxe's SPS Agreement is attached to this letter memorandum as
25 Exhibit G. On information and belief, this is the same agreement that Deluxe offered to
26 Ennis. Deluxe insisted that Printer Essentials sign Deluxe's SPS Agreement if Printer
27 Essentials wanted to continue as an approved Approved Vendor for the SBS Distributors.
28

123. Among other terms, the Deluxe SPS Agreement that was given to Mr. Gardner provides that Printer Essentials would be required to pay SBS a 7% “rebate” on all sales (See Exhibit G, paragraph 3.0) and prohibited Printer Essentials from supplying to the SBS Distributors any product lines that Deluxe currently manufactures – or that Deluxe may manufacture in the future. See, Exhibit G, page 1; paragraph 2.1.

124. Deluxe’s SPS Agreement also mandates *absolute secrecy*:

a. **3.0 Rebate. 3.1** Supplier agrees the existence of a rebate, the amount and all rebate terms are confidential between [Preferred] Supplier and Safeguard and are not to be shared with any other person or entity, including but not limited to Safeguard Distributors or any person engaged by a Safeguard distributorship, under any circumstance.

b. **10.0 Confidentiality and Protection.** ...For avoidance of doubt, rebate terms are confidential between supplier and Safeguard and are not to be shared with distributors under any circumstance, see Non-Disclosure Agreement. Supplier understands that this is critical for them continuing to be a preferred supplier.

125. When presented with Deluxe’s SPS Agreement, Mr. Gardner asked Ms. Santos whether SBS also would be charging the SBS Distributors an additional Sourced Fee on top of the 7% rebate that SBS would receive from the Preferred Suppliers. Ms. Santos responded that she would not answer Mr. Gardner’s question because it was a “private” matter. She did, however, pressure Mr. Gardner by telling him that two of Printer Essentials’ competitor suppliers already had signed Deluxe’s SPS Agreement.

126. Mr. Gardner was “shocked” when he later learned that SBS does in fact impose Sourced Fees on top of the rebates that it charges its Preferred Suppliers. On information and belief, Mr. Gardner’s employment with Printer Essentials was terminated (for “irreconcilable differences”) following his publication of Deluxe’s SPS Agreement.

127. Mr. Gardner made clear to Deluxe that Printer Essentials could not sign Deluxe’s SPS Agreement because – just as Mr. Magill concluded – the effect of doing so would require Printer Essentials to increase its wholesale prices for the Safeguard

1 Systems to levels that would be supra-competitive. And, in doing so, the Printer
2 Essentials' Safeguard Systems then would no longer be competitively priced at the retail
3 level in the Small Business Market.

4 128. The average product order for Printer Essentials office products is less than
5 \$300. Under SBS's Sourced Products Program, Deluxe currently charges the SBS
6 Distributors a "Sourced Fee" of 7% for invoiced orders placed by the SBS Distributors
7 that are for \$299.99 or less. Therefore, in addition to the 7% rebate, Deluxe also would
8 receive an additional 7% Sourced Fee. This represents a 14% increase in the base-cost to
9 the SBS Distributors and would render the Printer Essentials' products non-competitive
10 at the retail level.

11 **Deluxe and SBS Conceal Their Preferred Supplier Rebate Scheme**

12 129. Notwithstanding Ennis and Printer Essentials, SBS and Deluxe successfully
13 have pressured various Approved Vendors to sign Deluxe's SPS Agreement and actively
14 are soliciting secret volume rebates (or "kickbacks") from certain Approved Vendors
15 based on volume purchases by distributors. To accommodate the rebate charges, these
16 Preferred Suppliers inflated their wholesale prices. These insuperably supracompetitive
17 prices are then passed on to the retail customers. And to the extent that those prices now
18 are irrationally excessive, SBS has materially constrained the SBS Distributors' ability to
19 achieve maximum penetration of Safeguard Systems in the Small Business Market, and
20 has otherwise deprived the SBS Distributors of their full commission.

21 130. Beyond soliciting and obtaining rebates in exchange for Preferred Supplier
22 status, Deluxe and SBS have attempted to conceal this scheme from the distributors.
23 First, Deluxe does so by making the Preferred Supplier's disclosure of the rebate a breach
24 of the SPS Agreement. Secondly, Deluxe has refused to identify to the SBS Distributors
25 which vendors are paying rebates and how much money Deluxe is receiving.

26 131. There is no authority under the SBS Distributor Agreements for SBS and
27 Deluxe to unilaterally obtain rebates from the vendors. SBS's receipt of rebates from
28

1 Preferred Suppliers constitutes a breach of both the express and implied terms of the SBS
2 Distributor Agreements.

3 132. Deluxe has increasingly been pushing the SBS Distributors to use only
4 Deluxe or Deluxe's "Preferred Suppliers" for products. In doing so, SBS seeks to
5 prohibit the SBS Distributors from sourcing Safeguard Systems through lower priced and
6 more efficient Approved Vendors. This violates the rights of the SBS Distributors under
7 their SBS Distributor Agreements.

8 133. USDA seeks a judicial declaration that SBS Distributors are not required to
9 purchase products from Preferred Suppliers. They are not contractually mandated to
10 purchase from any Preferred Supplier or any company that is forced to pay rebates to
11 SBS and Deluxe. There is no difference in quality between the products of the Preferred
12 Suppliers and the Approved Vendors. Furthermore, SBS and Deluxe have no contractual
13 basis for instituting a rebate scheme and this contradicts the SBS Distributor Agreements.

14 **Deluxe's Business Acquisitions & Mergers ("BAM") Program Eviscerates The**
15 **SBS Distributors' Customer Protection Rights**

16 134. If Deluxe's and SBS' stranglehold on manufacturing and blatant attempts to
17 take the distributors' profits were not enough, they also have instituted policies that
18 threaten the SBS Distributors' primary assets, their contractually protected customer
19 relationships.

20 135. After an SBS Distributor solicits orders from a customer – and the order is
21 later invoiced by SBS (or its affiliate) and paid by the customer – SBS contractually
22 guarantees the SBS Distributor the exclusive right to the commissions generated from all
23 sales to that customer for the next 36 months. This exclusive right to commissions is
24 referred to as "Customer Protection." Anytime a new sale is made by the SBS Distributor
25 to one of its customers, the 36 months of exclusive rights to commissions for that
26 customer starts over.

27 136. All SBS Distributors are contractually prohibited from soliciting orders
28 from, or selling to, the Protected Customers of other SBS Distributors – regardless of

1 where the customers may be located (e.g. within or outside a distributor's assigned
2 territory). And, importantly, if the Protected Customer is only purchasing envelopes
3 from a SBS Distributor, that SBS Distributor's Customer Protection rights prohibit other
4 Safeguard Distributors from offering any products – *e.g.*, tax forms, computer software,
5 full-color printing, business apparel, etc. – to that Protected Customer.

6 137. SBS has incorporated Customer Protection into its franchise system in order
7 to provide its SBS Distributors with the reward and incentive to invest significant
8 ongoing time, effort and money in the development of significant commercial
9 relationships with their customers. SBS Distributors spend an inordinate amount of time,
10 effort and money marketing Safeguard products to potential and existing customers. In
11 doing this, they develop valuable business relationships which produce maximal market
12 penetration and sales of Safeguard Systems for the benefit of both the SBS Distributors
13 and SBS.

14 138. The contractual right to Customer Protection is considered the principal
15 asset of the SBS Distributor's business, and the value of the business is directly
16 proportional to, and dependent upon, the nature and extent of the number of exclusive
17 customers serviced by that SBS Distributor.

18 139. Without Customer Protection, other Safeguard distributors will "free-ride"
19 on – and potentially destroy – an SBS Distributor's efforts and activities in establishing
20 and maintaining its commercial relationships. Open access to each other's customer base
21 would dissuade SBS Distributors from investing the money and time needed to develop
22 meaningful customer relationships.

23 140. Beginning in 2008, Deluxe, through its then-formed wholly-owned
24 subsidiary, SAI, launched its BAM program. The BAM program was designed to expand
25 the sales of Safeguard Systems through the acquisition or merger of existing independent
26 non-Safeguard distributorships that offer and sell products and services that compete with
27 the Safeguard Systems offered by SBS Distributors. SAI's acquisition of these non-
28

1 Safeguard distributors through the BAM program are hereafter referred to as the “BAM
2 Transactions.”

3 141. Pursuant to its BAM program, Deluxe and SBS systematically have been
4 acquiring independent non-Safeguard distributors. These non-Safeguard distributors are
5 direct competitors of the SBS Distributors.

6 142. The BAM Transactions involve SAI purchasing the selling distributor’s
7 assets, consisting primarily of the selling distributor’s customer list (collectively, the
8 “BAM Customer Lists”). Following acquisition, SAI then re-sells the BAM Customer
9 Lists to (1) existing SBS Distributors, or (2) third-parties (often, an employee of the
10 acquired business) who also become new Safeguard distributors. The purchaser of the
11 Customer List then enters into an Asset Purchase Agreement with SAI for the sale of the
12 Customer List (and any other assets of the acquired business). In addition, Safeguard and
13 Deluxe increasingly have simply operated those businesses themselves as Safeguard
14 distributors, in direct competition with the SBS Distributors and have themselves directly
15 violated the Customer Protection rights of the SBS Distributors.

16 143. Through its use of SAI to acquire these BAM Customer Lists, Deluxe has
17 been able to expand market penetration of the Safeguard brand, and bring the business of
18 customers identified in the BAM Customers Lists into the Deluxe manufacturing plants.
19 This, then permits Deluxe to achieve non-trivial additional revenue by requiring that the
20 acquired distributor solicit orders for products that are manufactured and sold by Deluxe;
21 or, if Deluxe does not manufacture the product, for products that are supplied by its
22 “preferred” vendors and other vendor sources that contractually are required to pay
23 Deluxe substantial “rebates.” This activity has been designed to (and, in fact has)
24 substantially increased revenue for Deluxe.

25 144. R. Scott Sutton, the director and vice president of franchise development for
26 SAI, and the vice president of franchise development for SBS, is responsible for the
27 oversight of the BAM program and related launch of the conversion-focused Business
28 Development Funding strategy – which has reportedly resulted in “record growth” for

1 Deluxe in 13 of the past 15 quarters. For example, Deluxe estimates that the carrying
2 value of the BAM Customer Lists held for sale, as of December 31, 2013, exceeds \$25
3 million – a \$24.5 million increase compared to the value of the BAM Customer Lists held
4 for sale as of December 31, 2102.

5 145. According to Sutton, “[SAI has] actually completed nearly 90 transactions in
6 the last five and a half years, so [BAM has] been an evolving strategy that the company is
7 committed to.” Also, Deluxe publicly praises the BAM program as being the “most
8 aggressive and successful acquisition and conversion strategy in company history.” The
9 BAM program has greatly affected the SBS Distributors in California. Most
10 prominently, Deluxe, SBS and SAI recently acquired Fontis Solutions, an Irvine based
11 commercial printing company with annual sales of around \$37 million.

12 146. Because all of the acquired businesses are competitors of SBS Distributors,
13 it is common for both the acquired non-Safeguard distributors and the existing SBS
14 Distributors to service or sell to “Cross-Over Customers”. And, given Deluxe’s reported
15 “monumental revenue growth” resulting from its aggressive completion of its many
16 BAM Transactions, the Customer Protection rights of many SBS Distributors throughout
17 the United States have been compromised, infringed upon, and outright violated by SBS
18 and Deluxe.

19 147. SBS and Deluxe claim that it “washes” the newly acquired distributors’
20 customer list against SBS Distributors’ existing customers. It does not. SBS tries to
21 cover this up by stating that an “incomplete or slightly different address” or “phone”
22 number will result in not finding a match even where the business name is the same. On
23 information and belief, SBS does not do any follow-up and only takes, if any at all, exact
24 matches out of the new distributor’s customer list.

25 148. SBS and Deluxe also state that SBS Distributors “will then be notified of
26 which customers are protected or are in territories where certain Safeguard distributors
27 enjoy the exclusive right to commission on anything sold in the territory.” However,
28

1 despite this language, SBS has failed to properly notify the SBS Distributors of these
2 matches.

3 149. Although SAI can – and does – identify Cross-Over Customers as a function
4 of its pre-sale due diligence for the BAM Transactions, SBS tells its SBS Distributors
5 that this cannot be done. Instead, SAI and SBS impose upon the distributors the
6 impossible task of identifying – without providing the SBS Distributors with the BAM
7 Customer List – which of the customers acquired as part of the BAM Transaction are
8 Cross-Over Customers. By doing so, SBS seeks to delegate to its SBS Distributors the
9 impossible task of performing Deluxe and SBS’ obligation – not the distributor’s
10 obligation – of identifying who the Cross-Over Customers are in the first instance, and
11 thereafter imposes upon the SBS Distributor the obligation of enforcing its Customer
12 Protection rights against the infringing party. SBS intends that the market confusion that
13 it purposefully “unleashes” will overtake the SBS Distributor, who then will recognize
14 the futility of any possible corrective action. Deluxe’s end goal is that the SBS
15 Distributors will capitulate to sharing or giving up its Cross-Over Customers to the new
16 Safeguard distributors (including company owned ones) in that geographic market.

17 150. Deluxe and SBS have knowingly allowed the acquired distributors to
18 continue selling Safeguard products to those very customers for whom the SBS
19 Distributors have exclusive rights and Customer Protection. Furthermore, SBS and
20 Deluxe have operated many of these acquired businesses during the purported transition
21 periods or in the case of some acquired distributors, SBS and Deluxe are permanently in
22 control of the acquired distributor. Consequently, Deluxe itself and its company owned
23 distributors continuously have been selling to the SBS Distributors’ Protected Customers
24 in violation of the SBS Distributor Agreement.

25 151. In addition to this wrongful conduct, SBS and its acquired BAM distributors
26 also are selling products to the SBS Distributors’ Protected Customers at retail prices that
27 are below the SBS Distributors’ wholesale cost structure. SBS achieves this result
28 because the Deluxe manufactured products are sold by Deluxe to the newly acquired

1 Safeguard distributor at prices that are well below the SBS Distributors' wholesale price
2 structure. By doing so Deluxe and its BAM distributors are able to take further business
3 from the SBS Distributors by undercutting them on prices.

4 152. Through its BAM program, Deluxe and SBS have orchestrated a system to
5 allow new Safeguard distributors to enter the market and not only sell to Protected
6 Customers but to do so through predatory prices. BAM achieves its goal of forcing the
7 older SBS Distributor to capitulate or face lower commissions in the future as it struggles
8 to compete with the new Safeguard distributor competition. If the BAM program is not
9 stopped, SBS Distributors will face irreparable harm as they continue to lose their
10 customers and their very existence is threatened.

11 153. Deluxe and SBS' conduct in running the BAM program and operating
12 company owned Safeguard distributors eviscerates the Customer Protection provision
13 that is the foundation of the SBS Distributor Agreement.

14 154. USDA seeks injunctive relief and a judicial declaration that SBS and Deluxe
15 are required to enforce the Customer Protection provisions of the SBS Distributor
16 Agreements. The SBS Distributor Agreement allows for Customer Protection for any
17 Safeguard product sold to that customer. Deluxe and SBS must follow the Customer
18 Protection provisions of the SBS Distributor Agreement.

19 **SBS Now Requires An Unlawful General Release**
20 **Before A Franchise Can Be Transferred**

21 155. All of the SBS Distributor Agreements between SBS and its SBS
22 Distributors explicitly provide that the SBS Distributors have the ability to transfer their
23 rights, title and interests in their SBS Distributor Agreements, including their Protected
24 Customers, to qualified third-parties and to other SBS Distributors. These assignment
25 rights are subject to SBS' approval. But, importantly, SBS cannot "*unreasonably*"
26 withhold its approval.
27
28

1 156. None of these SBS Distributor Agreements contain any provision that
2 requires the signing of a “General Release” as a prerequisite to the transfer of SBS
3 Distributor Agreements to third-parties or to existing SBS Distributors.

4 157. Upon information and belief, SBS has required SBS Distributors to sign a
5 “General Release” of all legal claims as a precondition to the purchase and sale of their
6 franchises. Many of the SBS Distributors have sought to transfer their agreements to
7 other SBS Distributors. In response, SBS and Deluxe have conceded that the assignee,
8 SBS Distributors are unequivocally qualified, but nevertheless refuse to consent to the
9 transfers unless and until the *purchasing or assignee* SBS Distributors sign all-
10 encompassing “General Releases” that absolve SBS and Deluxe from any and all
11 potential claims. These actions have prevented the transfer of franchises and continue to
12 freeze the franchise transfer market and thus the ability of SBS Distributors to grow by
13 purchasing SBS Distributors or to exit their investments and thereby realize the intrinsic
14 value of their SBS Distributor businesses.

15 158. On the one hand, Deluxe and SBS have introduced the BAM distributors
16 into the SBS Distributors’ markets, which has facilitated both the saturation of the market
17 and the theft of the distributors’ Protected Customers. And, on the other hand, SBS and
18 Deluxe have demanded that the purchasing SBS Distributors execute unlawful General
19 Releases as a pre-condition to their ability to achieve growth through acquisition. This
20 combined conduct obviously is part and parcel of Deluxe’s calculated and systemic
21 motive to eliminate SBS Distributors.

22 159. USDA seeks a judicial declaration that SBS and Deluxe cannot require a
23 general release as a condition to the transfer of a SBS Distributor franchise. There is no
24 basis in the SBS Distributor Agreement for such a release.

25 **Deluxe New 2% Net 30 Rebate Scheme Is Deluxe’s Next Step In Forcing The**
26 **Distributors To Buy From Deluxe**

27 160. Deluxe and SBS have continued their war of attrition against the SBS
28 Distributors by unilaterally implementing one policy after another policy which deprives

1 the SBS Distributors of their profits and pushes them to buy from Deluxe. Deluxe's
2 brand new policy of 2 % Net 30 is now being forced upon the non-preferred Approved
3 Vendors. This allows Deluxe to increase the prices on these products even where the
4 vendor has not agreed to or will not agree to Deluxe's SPS Agreement.

5 161. Effective June 1, 2015, Deluxe is forcing on Approved Vendors another
6 revenue enhancement strategy wherein Deluxe receives a 2% rebate (of the wholesale
7 price) from vendors when Deluxe makes payments to the Approved Vendor within 30
8 days of the order. This discount or rebate to Deluxe is not reflected in the invoice to the
9 Approved Vendor.

10 162. This new policy was announced in a May 12, 2015 letter sent by Deluxe to
11 the Safeguard vendors, which is attached to this Complaint as Exhibit I. It was not well
12 received by vendors who have questioned Deluxe's unilateral imposition of different
13 credit and payment terms. Attached to this Complaint as Exhibit J is a letter from one
14 such Safeguard Approved Vendor voicing frustration with Deluxe and SBS. In that
15 letter, the Approved Vendor states that it is increasing prices 10% in retaliation for
16 Deluxe's new "credit" terms. This is indicative of the end result of this rebate scheme.

17 163. Just as is the case for the rebates charged by Deluxe to Safeguard's
18 "Preferred Suppliers", the ramification of this policy is that SBS Distributors now are
19 forced to pay higher wholesale prices for the approved sourced products. Attached to this
20 Complaint as Exhibit K is an email from an Approved Vendor, Custom Printing, wherein
21 it states that it will be adding 2% surcharge to all product invoices. The Approved
22 Vendor has done this directly as a result of Deluxe's new pricing. It replaces the 2% that
23 is lost in Deluxe's new coerced arrangement.

24 164. Typically, in a 2%, Net 30 arrangement, the seller gives a 2% discount as an
25 incentive for quick payment and that discount is shown on the invoice. For example, a
26 product that would sell for \$100 would invoice at \$98 for payment that was made within
27 30 days. Here, Deluxe's rapacious strategy is to take that 2% rebate but leave the \$100
28 price on the invoice, as if the 2% rebate never happened.

165. Deluxe's failure to reduce the invoice to account for the 2% "rebate" results in a higher wholesale price. This inflated wholesale price directly affects the SBS Distributor's commissions, which are based in part on the price it sells the product at minus the wholesale price. As such, Deluxe's 2% Net 30 rebates violate the SBS Distributor Agreements.

166. USDA seeks a judicial declaration that under the SBS Distributor Agreements Deluxe and SBS have no right to retain "rebates" from the Preferred Supplier Program or demand payment terms of 2% Net 30 under their newly devised program. Such practices have resulted in increasing product prices by 30 to 40% and violate the SBS Distributor Agreements.

FIRST CLAIM FOR RELIEF

Declaratory Judgment

167. USDA repeats, realleges and incorporates by reference the preceding paragraphs of its Complaint as though fully set forth herein.

168. The Declaratory Judgment Act, 28 U.S.C. § 2201, et seq., grants the Court, in cases of actual controversy such as this one, the power to issue judgments declaring the rights and other legal relations of any interested party, whether or not further relief is or could be sought.

169. Seven specific disputes have arisen and now exist between the USDA, Deluxe and SBS concerning their respective rights and duties under the SBS Distributor Agreements. These disputes include:

- a. Whether under the SBS Distributor Agreement, SBS can require the SBS Distributors to purchase from Deluxe's preferred suppliers, including Deluxe itself;
- b. Whether under the SBS Distributor Agreement, SBS can require "Preferred Suppliers" to pay rebates or "kickbacks" at the expense of the SBS Distributors;

- c. Whether under the SBS Distributor Agreement, SBS' can impose 2% Net 30 payment terms on non-preferred Approved Vendors at the expense of the SBS Distributors;
- d. Whether under the SBS Distributor Agreement, the BODP fees charged by SBS violate the SBS Distributors Agreements;
- e. Whether under the SBS Distributor Agreement, SBS can arbitrarily increase shipping and handling costs for its own profits unrelated to the expenses of shipping and handling;
- f. Whether the BAM program, as implemented, violates the SBS Distributors' rights to Customer Protection; and
- g. Whether under the SBS Distributor Agreement, SBS may require a general release from the purchasing SBS Distributor as a condition of transferring another SBS Distributor's Agreement.

170. Deluxe and SBS have already implemented, effectuated and/or evidenced their intent to take additional action in furtherance of the drastic, material system-wide changes detailed above, all of which constitute breach of contract and/or a violation of the implied duty of good faith and fair dealing under the SBS Distribution Agreements

171. Therefore, an actual controversy has arisen and now exists between the USDA on the one hand and SBS and Deluxe on the other hand, concerning the rights of SBS Distributors under the terms of their SBS Distribution Agreements, and SBS, and Deluxe's rights, if any, to take the actions, engage in the conduct and implement the changes it has mandated.

172. Deluxe's and SBS' actions have caused real injuries that grow every day. In particular, the loss of Deluxe's Protected Customers caused by Deluxe's BAM program and from its efforts to take further profits by increasing the prices of the products through higher MSRP, shipping costs, payment terms, BODP fees and manufacturer "rebates". These increases directly affect the commissions received by the SBS Distributors. These increases in product costs also directly affect the SBS Distributors' profits by not only

1 reducing sales to current customers but decreasing the ability of the SBS Distributors to
 2 obtain new customers. Furthermore, SBS has threatened to terminate SBS Distributors
 3 that fail to purchase through its Preferred Supplier. Lastly, SBS Distributors have tried to
 4 execute the purchase and sale of franchises but have been unable to due to the
 5 requirement that they release their legitimate legal claims. These actions are ripe for legal
 6 determination. The SBS Distributors face irreparable harm if the issues are not resolved,
 7 because the cumulative effect of Deluxe's unlawful conduct threatens the continued
 8 viability of these long-standing SBS Distributor franchises.

9 173. USDA accordingly desires a judicial determination that:

- 10 a. SBS Distributors may source Safeguard products through any Approved
- 11 Vendor and are not required to purchase from Deluxe or Preferred Suppliers;
- 12 b. Deluxe and SBS' BODP Fees violate the SBS Distributor Agreements;
- 13 c. Deluxe and SBS inflated shipping and handling costs violate the SBS
- 14 Distributor Agreements;
- 15 d. Deluxe and SBS have no right under the SBS Distributor Agreements to
- 16 obtain "rebates" from any Approved Vendors;
- 17 e. Deluxe and SBS have no right under the SBS Distributor Agreements to
- 18 impose a 2% Net 30 Program on non-preferred Approved Vendors;
- 19 f. Deluxe and SBS' BAM program, as implemented, violates the SBS
- 20 Distributors' rights to Customer Protection; and
- 21 g. Deluxe and SBS may not require a general legal release as a condition of
- 22 transferring the distributorship.

23 174. A judicial declaration is necessary and appropriate at this time under the
 24 circumstances so that the parties to this action may ascertain their rights and duties under
 25 the distribution agreements. Given Deluxe and SBS' announcements, communications
 26 and actions concerning the changes and modifications detailed above, the facts have
 27 sufficiently crystalized to permit an intelligent and useful decision to be made, and the
 28 issues are fit for a judicial determination.

WHEREFORE, USDA prays for relief against Deluxe and SBS as follows:

1. For a judicial determination and declaration that
 - a. SBS Distributors may source Safeguard products through any Approved Vendor and are not required to purchase from Deluxe or Preferred Suppliers;
 - b. Deluxe and SBS' BODP Fees violate the SBS Distributor Agreements;
 - c. Deluxe and SBS inflated shipping and handling costs violate the SBS Distributor Agreements;
 - d. Deluxe and SBS have no right under the SBS Distributor Agreements to obtain "rebates" from any Approved Vendors;
 - e. Deluxe and SBS have no right under the SBS Distributor Agreements to impose a 2% Net 30 Program on Approved Vendors;
 - f. Deluxe and SBS' BAM program, as implemented, violates the SBS Distributors' rights to Customer Protection; and
 - g. Deluxe and SBS may not require a general legal release as a condition of transferring the distributorship.
2. For a preliminary and permanent injunction, enjoining Deluxe and SBS from the following:
 - a. Terminating any distributorship for purchasing products through Approved Vendors and/or not purchasing products through Deluxe or Preferred Suppliers;
 - b. Imposing BODP Fees and shipping and handling fees above actual costs;
 - c. Violating the Customer Protection provision of the SBS Distributor Agreements;
 - d. Collecting any rebates from Approved Vendors or Preferred Supplier;
 - e. Imposing 2% Net 30 payment terms on non-preferred Approved Vendors; and

1 f. Requiring a general release as a condition of transferring the
2 distributorship.

3 3. An award of costs and expenses, including reasonable attorneys' fees,
4 incurred by USDA in connection with this action; and

5 4. For such other and further relief as the Court may deem just and proper.
6

7 DATED: May 27, 2015

MULCAHY LLP

8
9 By: /s/ James M. Mulcahy

10 James M. Mulcahy

11 Attorneys for Plaintiff

12 UNITED SAFEGUARD DISTRIBUTORS
13 ASSOCIATION, INC.
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