

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

PUBLIC VERSION



In the Matter of)
)
)

BENCO DENTAL SUPPLY CO.,)
a corporation,)
)

HENRY SCHEIN, INC.,)
a corporation, and)
)

PATTERSON COMPANIES, INC.,)
a corporation.)
_____)

DOCKET NO. 9379

PUBLIC

ORIGINAL

**PATTERSON’S MOTION [AND PROPOSED ORDER]
FOR SUMMARY DECISION**

Pursuant to Rule 3.24 of the Federal Trade Commission’s Rules of Practice, Respondent Patterson Companies, Inc. (“Patterson”) respectfully moves for summary decision in this action. For the reasons set forth in the accompanying memorandum, this motion should be granted.

Dated: September 21, 2018

/s/ Joseph A. Ostoyich

Joseph A. Ostoyich
William C. Lavery
Andrew T. George
Caroline L. Jones
Jana I. Seidl
Kristen E. Lloyd
Baker Botts L.L.P.
1299 Pennsylvania Avenue NW
Washington, DC 20004
Tele: (202) 639-7905
Email: joseph.ostoyich@bakerbotts.com
Email: william.lavery@bakerbotts.com

James J. Long
Jay W. Schlosser
Briggs and Morgan, P.A.
80 South Eighth Street, Suite 2200
Minneapolis, MN 55402
Tele: (612) 977-8582
Email: jlong@briggs.com

Email: jschlosser@briggs.com

***ATTORNEYS FOR
PATTERSON COMPANIES, INC.***

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION**

_____)	
In the Matter of)	
)	
BENCO DENTAL SUPPLY CO.,)	
a corporation,)	
)	DOCKET NO. 9379
HENRY SCHEIN, INC.,)	
a corporation, and)	
)	
PATTERSON COMPANIES, INC.,)	
a corporation.)	
_____)	

[PROPOSED ORDER]

Having carefully considered Respondent’s Motion, Complaint Counsel’s Opposition, and Respondent’s Reply, and all supporting and opposing evidence, and the applicable law, it is hereby ORDERED AND ADJUDGED, that Respondent’s Motion for Summary Decision is hereby GRANTED, and this action is DISMISSED.

ORDERED:
By the Commission.

Donald S. Clark
Secretary

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION**

In the Matter of)	
)	
BENCO DENTAL SUPPLY CO.,)	
a corporation,)	
)	DOCKET NO. 9379
HENRY SCHEIN, INC.,)	
a corporation, and)	PUBLIC
)	
PATTERSON COMPANIES, INC.,)	
a corporation.)	

**MEMORANDUM IN SUPPORT OF PATTERSON'S
MOTION FOR SUMMARY DECISION**

***REDACTED MATERIAL PROTECTED PURSUANT TO
FEBRUARY 13, 2018 PROTECTIVE ORDER
ENTERED BY THIS COURT***

TABLE OF AUTHORITIES

	Page(s)
CASES	
<i>Alvord-Polk, Inc. v. F. Schumacher & Co.</i> , 37 F.3d 996 (3d Cir. 1994).....	30
<i>American Key Corp. v. Cumberland Associates</i> , 579 F. Supp. 1245 (N.D. Ga. 1983).....	29
<i>American Tobacco Co. v. United States</i> , 328 U.S. 781 (1946).....	23
<i>Anderson v. Liberty Lobby, Inc.</i> , 477 U.S. 242 (1986).....	22
<i>Barry Wright Corp. v. ITT Grinnell Corp.</i> , 724 F.2d 227 (1st Cir. 1983) (Breyer, J.).....	3
<i>Bell Atl. Corp. v. Twombly</i> , 550 U.S. 544 (2007).....	22, 23, 26
<i>Blomkest Fertilizer, Inc. v. Potash Corp. of Saskatchewan</i> , 203 F.3d 1028 (8th Cir. 2000)	24, 28, 29
<i>Brooke Grp. Ltd. v. Brown & Williamson Tobacco Corp.</i> , 509 U.S. 209 (1993).....	2, 24, 25, 28
<i>California Dental Ass'n v. FTC</i> , 526 U.S. 756 (1999).....	23
<i>Celotex Corp. v. Catrett</i> , 477 U.S. 317 (1986).....	22
<i>City of Moundridge v. Exxon Mobil Corp.</i> , 429 F. Supp. 2d 117 (D.D.C. 2006), <i>aff'd</i> 409 F. App'x 362 (D.C. Cir. 2011).....	passim
<i>Clamp-All Corp. v. Cast Iron Soil Pipe Inst.</i> , 851 F.2d 478 (1st Cir. 1988).....	27
<i>FTC v. Cement Institute</i> , 333 U.S. 683 (1948).....	23
<i>In re Baby Food Antitrust Litig.</i> , 166 F.3d 112 (3d Cir. 1999).....	22, 23, 27, 28
<i>In re Hearst Corp.</i> , 80 F.T.C. 1011 (1972).....	22
<i>In re Polygram Holding, Inc.</i> , 2002 WL 31433923 (FTC Feb. 26, 2002)	22

<i>In re Wellbutrin XL Antitrust Litig. Indirect Purchaser Class</i> , 868 F.3d 132 (3d Cir. 2017).....	23
<i>Kreuzer v. Am. Acad. of Periodontology</i> , 735 F.2d 1479 (D.C. Cir. 1984).....	23
<i>Lamb’s Patio Theatre, Inc. v. Universal Film Exchanges, Inc.</i> , 582 F.2d 1068, 1070 (7th Cir. 1978)	29
<i>Matsushita Elec. Indus. Co. v. Zenith Radio Corp.</i> , 475 U.S. 574 (1986).....	22, 23, 25
<i>Mitchael v. Intracorp, Inc.</i> , 179 F.3d 847 (10th Cir. 1999)	27
<i>Monsanto Co. v. Spray-Rite Serv. Corp.</i> , 465 U.S. 752 (1984).....	23
<i>Reserve Supply Corp. v. Owens-Corning Fiberglas Corp.</i> , 971 F.2d 37 (7th Cir. 1992)	27
<i>Williamson Oil Co. v. Philip Morris USA</i> , 346 F.3d 1287 (11th Cir. 2003)	27, 28
STATUTES	
FTC Act Section 5	22, 23
Sherman Act.....	23
Sherman Act Section 1.....	passim
OTHER AUTHORITIES	
16 C.F.R. §3.24(a)(3).....	22
Federal Rule of Civil Procedure 56	22

Table of Contents

	Page
INTRODUCTION	1
SUMMARY OF UNDISPUTED MATERIAL FACTS.....	4
I. Patterson’s Independent Decision-Making Resulted In A Waterfall Of Pro-Competitive Price Concessions To Solo And Small Dental Practices Throughout The 2013-16 Period That Continues To This Day	7
II. Starting In 2013, Patterson Invested Heavily To Build The Capabilities To Invade Schein And Benco’s Stronghold ██████████	9
III. Patterson Regions, Branches, And Territory Representatives Always Independently Evaluated “Buying Groups,” But Rarely Found Them Attractive Customers.	11
IV. Every Witness Flatly Denied That Patterson Agreed With Benco or Schein To Boycott “Buying Groups”	14
V. Patterson Did Not Agree To Boycott “Buying Groups” In Response To ██████████ Or At Any Other Time	15
VI. There Is No Evidence That Patterson Agreed To Boycott Any of the “Buying Groups” Identified By Complaint Counsel.....	20
LEGAL STANDARD.....	22
ARGUMENT	22
I. Undisputed Evidence Demonstrates Patterson’s Thousands Of Independent Decisions To Discount, Invade Corporate DSOs, And Meet With, Evaluate, And, At Times, Sell To “Buying Groups”	24
II. Complaint Counsel’s Few Emails Do Not Show That Patterson Joined Any Alleged Benco-Schein Conspiracy In February 2013 Or Afterwards	25
CONCLUSION.....	30

INTRODUCTION

A mountain of undisputed evidence—literally, thousands of contemporaneous documents and sworn answers in depositions—demonstrates that Patterson Dental (“Patterson”) consistently made its own, independent, competitive decisions. That approach was at the core of the company’s strategic goals and its success: it [REDACTED] against Benco and Schein (and its other competitors), [REDACTED] them with price cuts and better service to convince customers to [REDACTED] their allegiance to Patterson. It engaged in extraordinary efforts—the record contains more than [REDACTED] [REDACTED]—to [REDACTED] business away from Benco and Schein, [REDACTED] their customers, [REDACTED] and [REDACTED]. Those [REDACTED] battles led Patterson to cut prices and provide better support [REDACTED] in a dentist-by-dentist effort to [REDACTED]

Beginning in 2013, [REDACTED]

[REDACTED] Schein [REDACTED] and Benco [REDACTED] had long dominated the segment, and it was the fastest-growing part of an otherwise stagnant industry. Patterson attacked, starting in 2013, and its efforts to invade Schein and Benco’s stronghold worked: over the next three years, [REDACTED]

“Buying groups” were a very different type of customer from the corporate DSOs: they were loose affiliations of dentists that were often just starting out and had very few members, were *not* incorporated, did *not* own their member practices, could *not* commit to any set volume of purchases on their behalf, and *always* left their member-dentists free to buy or not buy from any distributor the “buying group” endorsed. In short, they were self-appointed “middle men” who inserted themselves between the distributor and its dentists, and asked for significantly lower product prices from the distributor—and, of course, took their own “taste.”¹ In return, the distributor got no concrete commitment to buy anything, and no cost savings because each member-practice still had its own location for bill-to and ship-to and equipment support, maintenance, and repair. As a result, Patterson never considered “buying groups” attractive customers—but it always met with them, evaluated them, and made its own decisions on whether to engage or not. When it made sense for Patterson, the company sold to “buying groups.” But when it did not make sense for Patterson, the company did not.

Patterson’s conduct—cutting prices, [REDACTED] and making its own, independent decision on whether to sell to it—is, of course, at the very core of legitimate unilateral conduct under the antitrust laws. “[C]utting prices in order to increase business” “stimulates competition” and is its “very essence.” *Brooke Grp. Ltd. v. Brown & Williamson Tobacco Corp.*, 509 U.S. 209, 226 (1993) (affirming judgment as a matter of law for defendant) (citations omitted). A “procompetitive price cut” is “perhaps the most desirable activity (from an

¹ Mar. 14, 2018 Scheduling Hr’g Tr. 13 (“JUDGE CHAPPELL: Okay. And don’t they take a taste? . . . JUDGE CHAPPELL: You don’t want to concede middle man? MS. KAHN: They can be viewed as a middle man.”).

antitrust perspective) that can take place in a concentrated industry[.]” *Barry Wright Corp. v. ITT Grinnell Corp.*, 724 F.2d 227, 235 (1st Cir. 1983) (Breyer, J.) (affirming judgment for defendant). Invading a competitor’s customer base, meeting with and carefully assessing each customer, and selling to customers on terms that make independent sense, are likewise the epitome of independent and competitive conduct.

That mountain of evidence of Patterson’s independent and pro-competitive conduct is insurmountable. But, the fact record here also contains hundreds of sworn denials from every witness in the case that anyone from Patterson agreed with anyone from Benco or Schein to boycott “buying groups.” “Facing the sworn denial of the existence of conspiracy, it [is] up to plaintiff to produce *significant probative evidence* by affidavit or deposition that conspiracy existed if summary judgment [is] to be avoided.” *See City of Moundridge v. Exxon Mobil Corp.*, 429 F. Supp. 2d 117, 130 (D.D.C. 2006) (emphasis added) (citation omitted), *aff’d* 409 F. App’x 362 (D.C. Cir. 2011).

Complaint Counsel has no such evidence. Instead, it has and will point to a small handful of emails; but on their face those emails do not show any agreement with, or any “conscious commitment” to, Benco or Schein that Patterson would boycott “buying groups.” [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

These few emails do not raise an inference that Patterson agreed to boycott “buying groups” and they do not come close to being the “significant probative evidence” that is necessary to overcome the mountain of evidence of the company’s independent and competitive decision-making and the many, many sworn denials of conspiracy that are in the record. *Moundridge*, 429 F. Supp. at 130. Accordingly, summary decision should be granted in Patterson’s favor.

SUMMARY OF UNDISPUTED MATERIAL FACTS

Patterson has been distributing dental equipment (*e.g.*, X-Ray and CAD/CAM machines, digital radiography sensors, and integrated operatory treatment centers), and consumable supplies (gloves, cotton rolls, rinse cups, disposable syringes) for over 140 years. SOF ¶ 1. Its product catalog includes more than 100,000 SKUs. SOF ¶ 2. Patterson employs more than [REDACTED], organized in eight geographic regions and more than 70 local branches, who serve tens of thousands of dentists across the country.

SOF ¶ 2. [REDACTED]

[REDACTED] SOF ¶ 4. [REDACTED]

[REDACTED] SOF ¶ 5. [REDACTED]

[REDACTED]

[REDACTED] SOF ¶ 6.

In addition, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] as discussed below. SOF ¶ 7.

For most of its 140-year history, [REDACTED]

[REDACTED]

[REDACTED] SOF ¶ 8. Even today, [REDACTED]

[REDACTED]

[REDACTED] SOF ¶

[REDACTED]

[REDACTED] SOF ¶ 10. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] SOF ¶ 11. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] SOF ¶ 12. Starting in 2013, however, Patterson

[REDACTED]

[REDACTED] SOF ¶ 13.

In recent years, a [REDACTED]

[REDACTED] SOF ¶ 14. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] SOF ¶ 15. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] SOF

¶ 16.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] SOF ¶ 17. [REDACTED]

[REDACTED]

[REDACTED] SOF ¶ 18. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] SOF ¶ 19. For these

reasons, Patterson [REDACTED]

[REDACTED]

[REDACTED] SOF ¶ 20.

I. Patterson’s Independent Decision-Making Resulted In A Waterfall Of Pro-Competitive Price Concessions To Solo And Small Dental Practices Throughout The 2013-16 Period That Continues To This Day

Patterson’s strategic goals every year highlight its desire to [REDACTED]

[REDACTED]

[REDACTED] SOF

¶ 21.

To take share from its competitors, Patterson engaged in brutal competition: [REDACTED]

[REDACTED] Patterson Companies’

CEO, Scott Anderson, testified that Patterson [REDACTED]

SOF ¶ 22, and Patterson Dental’s President from May 2010 to 2015, Paul Guggenheim,

described his organization’s efforts as [REDACTED] SOF ¶ 23. The company was

[REDACTED] and in [REDACTED] with Schein and Benco and its many other

competitors [REDACTED] SOF ¶ 24. Guggenheim’s successor, David Misiak, testified

that [REDACTED] SOF ¶ 25. Vice President

of Marketing and Merchandise, Tim Rogan, and other executives and regional managers likewise

testified that the company was [REDACTED]

[REDACTED] SOF ¶ 26. [REDACTED]

[REDACTED] SOF ¶ 27.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] SOF ¶ 28. But, in addition to that, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] to win or keep business from Schein, Benco, and other competitors during the 2013-16 period. SOF ¶ 29.

[REDACTED]

[REDACTED] demonstrates just how brutal Patterson's competitive efforts were throughout this period. In 2013, for example, sales reps reported: [REDACTED]

[REDACTED]

[REDACTED] SOF ¶ 30.

Patterson's efforts to beat Schein, Benco, and its other competitors continued throughout 2014: [REDACTED]

[REDACTED]

[REDACTED] SOF ¶ 31.

Patterson's daily price competition continued throughout 2015 and 2016: [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] SOF ¶ 32.

II. Starting In 2013, Patterson Invested Heavily To Build The Capabilities To Invade Schein And Benco's Stronghold [REDACTED]

[REDACTED]

[REDACTED] SOF ¶ 33. [REDACTED]

[REDACTED] SOF

¶ 34. [REDACTED]

[REDACTED]

[REDACTED] SOF

¶ 35. [REDACTED]

[REDACTED] SOF ¶ 36.

Patterson thus decided to [REDACTED]

[REDACTED]

[REDACTED] SOF ¶ 37. In late Summer 2012, Patterson [REDACTED]

[REDACTED]

[REDACTED] SOF ¶ 38. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

SOF ¶ 39. In Fall 2012, [REDACTED]

[REDACTED]

SOF ¶ 40.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] SOF ¶ 41. Patterson's executive team [REDACTED]

[REDACTED]

SOF ¶ 42. Neal McFadden, the company's Southeast regional manager, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] SOF ¶ 44.

Patterson's work to build the capability to handle centralized demands of corporate DSOs, was monumental, expensive, and risky: [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] SOF ¶¶ 45, 46. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] SOF ¶ 47.

[REDACTED]

[REDACTED]

[REDACTED] SOF ¶ 48.² [REDACTED]

[REDACTED] SOF ¶ 49.

III. Patterson Regions, Branches, And Territory Representatives Always Independently Evaluated “Buying Groups,” But Rarely Found Them Attractive Customers

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] SOF ¶ 50. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] SOF ¶ 51. Patterson executives testified, [REDACTED]

[REDACTED]

[REDACTED] SOF ¶ 53.

Patterson’s Shelly Beckler, a territory representative and, later, member of the Special Markets team, reported that Patterson [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] SOF ¶ 54.

[REDACTED]

[REDACTED]

² Complaint Counsel may [REDACTED]
[REDACTED]

[REDACTED]

³

Still, Patterson regions, branches, and 800+ territory representatives were [REDACTED]

[REDACTED]

[REDACTED]

Patterson's President, Paul Guggenheim, explained that the company [REDACTED]

[REDACTED]

[REDACTED] SOF ¶ 56. The Vice President of Marketing, Mr. Rogan, reiterated that Patterson

[REDACTED]

[REDACTED]

[REDACTED] SOF ¶ 57. [REDACTED]

[REDACTED] SOF ¶ 58.

In September 2014, for example, Mr. McFadden, the head of Special Markets, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] SOF ¶ 59. In May 2015,

Mr. McFadden [REDACTED]

[REDACTED]

[REDACTED]

³ SOF ¶ 55.

[REDACTED]

[REDACTED] SOF ¶ 60. Patterson's Maine branch manager responded, [REDACTED]

[REDACTED] SOF ¶ 61. [REDACTED]

[REDACTED] SOF ¶ 62.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] SOF ¶ 63. [REDACTED]

[REDACTED] SOF ¶ 64.

[REDACTED]

[REDACTED]

[REDACTED] [REDACTED]

[REDACTED] SOF ¶ 65. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

In 2015, Patterson thus appointed Wesley Fields as Director of Business Development in its corporate office and [REDACTED]

[REDACTED] SOF

¶ 66. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] SOF ¶ 68.

IV. Every Witness Flatly Denied That Patterson Agreed With Benco or Schein To Boycott “Buying Groups”

Every current and former Patterson employee in this case flatly denied participating in the alleged Benco-Schein conspiracy to boycott “buying groups.” Patterson Companies CEO Anderson, [REDACTED]; Patterson Dental President Guggenheim [REDACTED]; his successor, Misiak [REDACTED]; [REDACTED]; Vice President of Marketing and Merchandise, Rogan [REDACTED]; [REDACTED]; McFadden, head of Patterson Special Markets [REDACTED]; Lepley (as corporate designee), Director of Strategic Pricing [REDACTED]; Fruehauf, southeast regional manager [REDACTED]; Nease, branch manager [REDACTED] SOF ¶ 69.

Every Schein witness, likewise, [REDACTED]: James Breslawski, President, [REDACTED], Tim Sullivan, President, [REDACTED], David Steck, Vice President of Sales [REDACTED], Brian Brady, Senior Director of Sales [REDACTED], Joseph Cavaretta, Vice President of Sales, Western Area [REDACTED], Jake Meadows, Vice President of Sales, Eastern Area [REDACTED] Hal Muller, President of Special Markets [REDACTED], Randy Foley, Vice President of Sales, Special Markets [REDACTED], Debbie Foster, Director of Sales, Special Markets [REDACTED], Andrea Hight, Director of Group Practice [REDACTED], Kathleen Titus, Director of Group Practice [REDACTED], Michael Porro, Zone Manager [REDACTED], Darci Wingard, Director of Alternative Purchasing Chanel [REDACTED] SOF ¶ 70.

Benco witnesses, too, [REDACTED]: Chuck Cohen, Managing Director [REDACTED], Patrick Ryan, Director of Sales, Strategic Markets [REDACTED]. SOF ¶ 71.

V. Patterson Did Not Agree To Boycott “Buying Groups” In Response To [REDACTED] Or At Any Other Time

Complaint Counsel’s interrogatory responses list numerous documents that, they claim, support their allegation that Patterson joined the alleged Benco-Schein conspiracy in February 2013. But those documents show nothing of the sort. In fact, virtually all those documents *on their face* have nothing to do with buying groups or the allegations in this case.

First, [REDACTED]

[REDACTED] SOF ¶ 72

Second, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] SOF ¶ 73.

Third, [REDACTED]

[REDACTED]

[REDACTED] SOF ¶ 74.

Fourth, [REDACTED]

[REDACTED]

[REDACTED] SOF ¶ 75. They contain no narrative at all, let alone anything connecting them to “buying groups,” and [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. SOF ¶ 76.

What's left, literally, are [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] SOF ¶ 77. [REDACTED]

[REDACTED] SOF

¶ 78.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] SOF ¶ 79. [REDACTED]

[REDACTED]

[REDACTED] SOF ¶ 80.

In fact, [REDACTED]

[REDACTED]

[REDACTED] SOF ¶ 81. [REDACTED]

[REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

[REDACTED] SOF ¶ 82.⁴

Instead, [REDACTED]

[REDACTED]

[REDACTED] SOF ¶ 83. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] SOF ¶ 84. [REDACTED]

[REDACTED]

SOF ¶ ¶ 50–68.

[REDACTED]

⁴

[REDACTED]

Id. Misiak testified that

Id. Misiak further explained that

Id. Misiak said

Id.

[REDACTED] Again, it shows no such thing.

Instead, [REDACTED]

[REDACTED]

[REDACTED] SOF ¶ 85.

In early 2013, Patterson's Chesapeake branch manager [REDACTED]

[REDACTED] SOF ¶ 86. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] SOF ¶ 87. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] SOF ¶ 88. Patterson's branch manager and territory

rep [REDACTED] SOF ¶ 89. [REDACTED]

[REDACTED]

[REDACTED] SOF ¶ 90. [REDACTED] SOF ¶ 91. [REDACTED]

[REDACTED]

[REDACTED] SOF ¶ 92. No evidence supports Complaint Counsel's assertion that

Patterson changed its approach to [REDACTED] SOF ¶ 93.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] SOF ¶ 95. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] SOF ¶ 96. As a result, each company acted *differently*: [REDACTED]

[REDACTED]

[REDACTED] SOF ¶ 97.

This exchange, and Patterson and Benco's [REDACTED], were the only two communications between the two companies discussing buying groups.

[REDACTED]

[REDACTED]

[REDACTED] SOF ¶ 98. Indeed, Complaint Counsel's Interrogatory Response

[REDACTED]

[REDACTED] SOF ¶ 99.

Instead, Complaint Counsel cites a [REDACTED]

[REDACTED]

[REDACTED] SOF ¶ 100.

But by the time of the email, Patterson [REDACTED]

[REDACTED] SOF ¶ 101. Patterson's regional manager [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] SOF ¶ 102. [REDACTED]

[REDACTED]. SOF ¶ 103. In January 2014,

[REDACTED]

[REDACTED]

[REDACTED] SOF ¶ 104. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] SOF ¶ 105. [REDACTED]

[REDACTED]

[REDACTED] SOF ¶ 106.

VI. There Is No Evidence That Patterson Agreed To Boycott Any of the “Buying Groups” Identified By Complaint Counsel

[REDACTED]

[REDACTED]

SOF ¶ 107.⁵ [REDACTED]

[REDACTED] SOF ¶ 108.

[REDACTED]

[REDACTED]

[REDACTED]

Accordingly, there is *zero evidence* of an agreement to boycott those four “buying groups.”

Instead, [REDACTED]

[REDACTED]

⁵ The record thus contains no testimony from: [REDACTED]

[REDACTED] Complaint Counsel’s 8-17-2018 Supplemental Responses to Patterson’s First Set of Interrogatories.

[REDACTED]

[REDACTED] SOF ¶ 110. [REDACTED]

[REDACTED] SOF ¶ 111.

[REDACTED]

[REDACTED]. SOF ¶ 112.

[REDACTED]

[REDACTED] SOF

¶ 113. [REDACTED]

[REDACTED] SOF ¶ 114.

Finally, [REDACTED]

[REDACTED]

SOF ¶ 115. It [REDACTED]

[REDACTED] SOF ¶ 116. [REDACTED]

[REDACTED]

LEGAL STANDARD

The standard of review for a motion for summary decision under FTC Rule 3.24 is “virtually identical” to that for a motion for summary judgment in federal court under Federal Rule of Civil Procedure 56: the plaintiff must establish a disputed issue of material fact. *In re Polygram Holding, Inc.*, 2002 WL 31433923, at *1 (FTC Feb. 26, 2002) (citing *In re Hearst Corp.*, 80 F.T.C. 1011, 1014 (1972) (noting that “Rule 3.24(a)(4) tracks Federal Rule 56(f)”). The party opposing the motion “may not rest upon the mere allegations or denials of his or her pleading” and instead “must set forth specific facts showing that there is a genuine issue of material fact for trial.” 16 C.F.R. §3.24(a)(3); *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). The evidence must be substantial to survive summary judgment: “[t]he mere existence of a scintilla of evidence in support of the plaintiff’s position will be insufficient.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 252 (1986); *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986) (same).

ARGUMENT

The Administrative Complaint alleges that Patterson joined the Benco-Schein conspiracy in February 2013 in violation of FTC Act Section 5. “The existence of an agreement is the hallmark” and “essence” of a conspiracy claim. *In re Baby Food Antitrust Litig.*, 166 F.3d 112, 117-18 (3d Cir. 1999). The agreement must *precede* the alleged fixing of prices. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 557 (2007) (“[W]hen allegations of parallel conduct are set out in order to make a § 1 claim, they must be placed in a context that raises a suggestion of a preceding agreement, not merely parallel conduct that could just as well be independent

action.”).⁶ Plaintiff thus bears the burden of showing facts demonstrating that defendants agreed *in advance* upon “a unity of purpose or common design and understanding, or a meeting of minds in an unlawful arrangement.” *American Tobacco Co. v. United States*, 328 U.S. 781, 810 (1946). Thus, the central question in this case is whether Patterson’s decisions with regard to “buying groups” in 2013-15 “stem[] from independent decision or from an agreement.” *Twombly*, 550 U.S. at 553.

A plaintiff alleging a Section 1 conspiracy “must present evidence ‘that tends to exclude the possibility’ that the alleged conspirators acted independently.” *Matsushita*, 475 U.S. at 588 (quoting *Monsanto Co. v. Spray-Rite Serv. Corp.*, 465 U.S. 752, 764 (1984)). “[S]poradic exchanges of shop talk” or “evidence that competitors merely exchanged information” is insufficient to survive summary judgment—particularly where, like here, that information is exchanged *after* each company has already made its own, independent decision. *Moundridge*, 429 F. Supp. 2d at 132; *Baby Food*, 166 F.3d at 125 (“to survive summary judgment, there must be evidence that the exchanges of information had an impact on pricing decisions”); *Kreuzer v. Am. Acad. of Periodontology*, 735 F.2d 1479, 1487 (D.C. Cir. 1984); *In re Wellbutrin XL Antitrust Litig. Indirect Purchaser Class*, 868 F.3d 132, 153 (3d Cir. 2017) (“Mere communication between alleged co-conspirators, without more, is not sufficient to defeat the

⁶ An agreement under FTC Act Section 5 requires the same proof as an agreement under Sherman Act Section 1. *See, e.g., California Dental Ass’n v. FTC*, 526 U.S. 756, 762 & n.3 (1999) (explaining that Section 5 of the FTC Act “overlaps the scope of § 1 of the Sherman Act”); *FTC v. Cement Institute*, 333 U.S. 683, 691–92 (1948) (“[S]oon after its creation the Commission began to interpret the prohibitions of § 5 as including those restraints of trade which also were outlawed by the Sherman Act, and that this Court has consistently approved that interpretation of the Act.”).

presumption of independent action”); *Blomkest Fertilizer, Inc. v. Potash Corp. of Saskatchewan*, 203 F.3d 1028, 1036 (8th Cir. 2000) (same).

I. Undisputed Evidence Demonstrates Patterson’s Thousands Of Independent Decisions To Discount, Invade Corporate DSOs, And Meet With, Evaluate, And, At Times, Sell To “Buying Groups”

The undisputed record evidence demonstrates that Patterson always acted independently regarding all customers, including “buying groups,” and did not joined any alleged Benco-Schein conspiracy to boycott “buying groups” in 2013 or at any time. Instead, an enormous quantity of undisputed facts—thousands of contemporaneous Patterson documents and myriad sworn statements from every Patterson witness—demonstrate that the company acted independently and pro-competitively and day-in and day-out, cut its prices, invaded Schein and Benco’s stronghold of corporate DSOs, and met with and evaluated whether to sell to ‘buying groups’—and sold to them when it made sense to Patterson, and did not, when it did not. Indeed, Patterson granted thousands of price concessions to win away business from Schein and Benco and invested millions of dollars to invade their stranglehold on the DSO market, all to the benefit of the end customer. Patterson’s conduct—cutting prices, taking customers from competitors, and independently evaluating “buying groups”—is consistent with what the Supreme Court has held is the “very essence” of legitimate unilateral conduct under the antitrust laws. *Brooke Group*, 509 U.S. at 226. The uncontradicted, corroborated evidence points to nothing but Patterson’s independent decision-making and procompetitive conduct.

Patterson’s decision to not work with most “buying groups” was sensible and rational given its strong, unilateral interest in maintaining its relationships with the individual dental practices that were its mainstay. As its witnesses explained exhaustively, Patterson was not eager to cut prices for loosely affiliated groups that could not commit to buying anything in any

volume, that had no single buyers or agreed-upon formularies of available products to work with, and that would insinuate themselves into Patterson’s critical relationships with independent dental practices. *See supra* pp. 6, 13. Additionally, Patterson [REDACTED]

[REDACTED] SOF ¶ 47. Any distraction—such as time spent evaluating entities unable to commit to buying anything—could have risked millions in capital being spent to pursue the corporate segment in competition with rivals like Schein. *Id.* Yet [REDACTED]

[REDACTED] *See supra* p.12. It is black letter law that conduct that is “as consistent with permissible [activity] as with illegal conspiracy does not, standing alone, support an inference of an antitrust conspiracy.” *Matsushita*, 475 U.S. at 588. The overwhelming record shows that Patterson’s conduct was both procompetitive and in its own self-interest, and Complaint Counsel has not and cannot point to any evidence in the record to refute this.

II. Complaint Counsel’s Few Emails Do Not Show That Patterson Joined Any Alleged Benco-Schein Conspiracy In February 2013 Or Afterwards

The record also contains hundreds of sworn denials of any agreement with Schein and Benco not to discount to “buying groups.” Every witness asked—from Patterson and the other respondents—either affirmatively denied the existence of such an agreement or testified that they knew nothing of Patterson participating in one. SOF ¶¶ 69–71. The few communications cited in the Complaint do not show any advance communication or commitment to refrain from bidding on any buying group—and there are no communications at all between Patterson and Schein or Benco regarding the four buying groups Complaint Counsel alleges Patterson “refused” to deal with. Each witness involved in the few communications cited also flatly denied Complaint Counsel’s interpretations of them. “Facing the sworn denial of the existence of conspiracy, it [is] up to plaintiff to produce significant probative evidence *by affidavit or*

deposition that conspiracy existed if summary judgment [is] to be avoided.” *Moundridge*, 429 F. Supp. 2d at 130 (emphasis added) (citation omitted). Complaint Counsel has not done so.

Complaint Counsel’s only “evidence” *against Patterson* center on two short email strings that, on their face, do not show any conscious commitment to boycott “buying groups.”

[REDACTED]

[REDACTED]

[REDACTED] SOF ¶ 77. [REDACTED]

[REDACTED] SOF ¶¶ 77–79. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] SOF

¶¶ 85–97. Thus, the companies behaved *differently*. There was no discussion regarding boycotting any entity and no commitment to do so. Finally, in late 2013 Patterson’s Region Manager for Texas [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] SOF ¶¶ 100–106.

[REDACTED]

[REDACTED] SOF ¶¶ 105–106. [REDACTED]

[REDACTED]

[REDACTED] mere “follow-the-leader” conduct is insufficient as a matter of law to establish a violation of Section 1. *See Twombly*, 550 U.S. at 566 (“[I]f alleging parallel decisions to resist

competition were enough to imply an antitrust conspiracy, pleading a § 1 violation against almost any group of competing businesses would be a sure thing.”); *Reserve Supply Corp. v. Owens-Corning Fiberglas Corp.*, 971 F.2d 37, 53 (7th Cir. 1992) (“One does not need an agreement to bring about this kind of follow-the-leader effect in a concentrated industry.”) (quoting *Clamp-All Corp. v. Cast Iron Soil Pipe Inst.*, 851 F.2d 478, 484 (1st Cir. 1988)).

Complaint Counsel’s entire case centers on these few documents, but witnesses have explained in detail that Complaint Counsel’s inferences regarding the documents are flatly wrong. Complaint Counsel’s own contentions (without any testimonial support) do nothing to overcome the insurmountable mountain of evidence showing Patterson’s procompetitive conduct and are plainly insufficient to meet their burden of presenting a “material fact” to survive summary judgment. *Moundridge*, 429 F. Supp. 2d at 130 (granting summary judgment where defendants each denied any conspiracy and testified they made independent price and output decisions), 409 F. App’x 362, 364 (affirming summary judgment, holding that the plaintiffs’ “few scattered communications” and other evidence “falls far short” of creating a genuine issue of material fact). The emails do not show an advance agreement and, of course, [REDACTED] [REDACTED] they also show a *disagreement* and plainly non-parallel conduct. See *Williamson Oil Co. v. Philip Morris USA*, 346 F.3d 1287, 1300 (11th Cir. 2003) (affirming summary judgment, holding that “[e]vidence that does not support the existence of a price fixing conspiracy any more strongly than it supports conscious parallelism is insufficient to survive a defendant’s summary judgment motion”); *Mitchael v. Intracorp, Inc.*, 179 F.3d 847, 858 (10th Cir. 1999) (affirming summary judgment because “ambiguous conduct that is as consistent with permissible competition as with illegal conspiracy does not by itself support an inference of antitrust conspiracy under Sherman Act section 1”); *Baby Foods*, 166 F.3d at 122 (“No

conspiracy should be inferred from ambiguous evidence or from mere parallelism when defendants' conduct can be explained by independent business reasons.”).

Courts have consistently held the same and rejected such strained inferences. In *Moundridge*, for example, 18 municipalities brought a Section 1 case against a series of energy companies, alleging among other things an agreement to artificially inflate the price of natural gas. The defendants testified there, as here, that they made their price and output decisions independently. 429 F. Supp. 2d at 132. The plaintiffs responded with evidence that the defendants had an opportunity to conspire (during a series of industry meetings) and pointed to internal documents that, they argued, suggested a conspiracy. *Id.*; *Moundridge*, 409 F. App'x at 364. The district court rejected the plaintiffs' argument, noting that they had not even showed that the defendants had lied in their sworn statements. 429 F. Supp. 2d at 134. The D.C. Circuit affirmed, holding that the plaintiffs' "few scattered communications" and other evidence fell "far short" of creating a genuine issue of material fact. 409 F. App'x at 364.

In *Williamson*, the Eleventh Circuit likewise affirmed summary judgment in favor of the defendants despite 11 consecutive parallel price increases announced by every defendant, numerous alleged price "signals" between the defendants suggesting a desire to end a price war (and its subsequent end), regular sharing of very detailed sales information broken down by company, and an expert's opinion that it all amounted to a conspiracy. The Court found that the plaintiffs' evidence was insufficient to overcome defendants' sworn denials and it would be improper to permit the jury "to engage in speculation" in the face of defendants' denials. 346 F.3d. at 1302; *see also Blomkest*, 203 F.3d at 1033, 1037 (affirming summary judgment despite evidence that defendants engaged in "a high level of interfirm communications," including evidence plaintiffs argued demonstrated that the defendants "signaled pricing intentions to each

other,” because the evidence was insufficient to overcome defendants’ denials and was “far too ambiguous to defeat summary judgment”); *Lamb’s Patio Theatre, Inc. v. Universal Film Exchanges, Inc.*, 582 F.2d 1068, 1070 (7th Cir. 1978) (affirming summary judgment because plaintiff had only “its bald allegation of conspiracy to refute the sworn affidavit denying a conspiracy”); *American Key Corp. v. Cumberland Associates*, 579 F. Supp. 1245, 1259 (N.D. Ga. 1983) (affirming summary judgment because each of the defendants submitted “sworn affidavits denying the existence of any contract, combination or conspiracy” and plaintiff failed to “come forward with significant probative evidence supporting its allegations of a conspiracy”).

Finally, in *Blomkest*, the Eighth Circuit upheld a grant of summary judgment where the defendants engaged about three dozen “price verification calls” on *completed* sales, not future transactions, around the times that parallel pricing behavior occurred. 203 F.3d at 1033–34. Such a case theory, the court noted, “assumes a conspiracy first, then sets out to ‘prove’ it.” *Id.* at 1033. The court held, “*Subsequent* price verification evidence on particular sales cannot support a [price fixing] conspiracy.” *Id.* (emphasis in original)

Here, Complaint Counsel’s “few scattered communications” between Patterson and Benco or Schein represent *after-the-fact* communications regarding decisions the companies had already made, and they are buried by an avalanche of unrefuted sworn witness denials and explanations. Complaint Counsel’s case consists of nothing more than *its* interpretations and inferences regarding communications about past decisions made—interpretations that no sworn fact witness has agreed with. A plaintiff cannot prevail under Section 1 by seeking to infer an agreement from communications “despite a lack of independent evidence tending to show an agreement and in the face of uncontradicted testimony that only informal exchanges took place.”

Alvord-Polk, Inc. v. F. Schumacher & Co., 37 F.3d 996, 1014 (3d Cir. 1994). A plaintiff’s “mere disbelief” of testimony contrary to its case theory is not evidence. *Id.*

CONCLUSION

Patterson respectfully submits there are no disputed facts to resolve, and summary decision should be granted in Patterson’s favor.

Dated: September 21, 2018

/s/ Joseph A. Ostoyich

Joseph A. Ostoyich
William C. Lavery
Andrew T. George
Caroline L. Jones
Jana I. Seidl
Kristen E. Lloyd
Baker Botts L.L.P.
1299 Pennsylvania Avenue NW
Washington, DC 20004
Tele: (202) 639-7905
Email: joseph.ostoyich@bakerbotts.com
Email: william.lavery@bakerbotts.com

James J. Long
Jay W. Schlosser
Briggs and Morgan, P.A.
80 South Eighth Street, Suite 2200
Minneapolis, MN 55402
Tele: (612) 977-8582
Email: jlong@briggs.com
Email: jschlosser@briggs.com

**ATTORNEYS FOR
PATTERSON COMPANIES, INC.**

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION**

In the Matter of)	
)	
BENCO DENTAL SUPPLY CO.,)	
a corporation,)	
)	DOCKET NO. 9379
HENRY SCHEIN, INC.,)	
a corporation, and)	PUBLIC
)	
PATTERSON COMPANIES, INC.,)	
a corporation.)	

**STATEMENT OF MATERIAL FACTS AS TO WHICH THERE IS NO GENUINE
DISPUTE IN SUPPORT OF RESPONDENT’S PATTERSON COMPANIES, INC.’s
MOTION FOR SUMMARY DECISION**

***REDACTED MATERIAL PROTECTED PURSUANT TO
FEBRUARY 13, 2018 PROTECTIVE ORDER
ENTERED BY THIS COURT***

TABLE OF CONTENTS

	Page
SUMMARY OF UNDISPUTED MATERIAL FACTS.....	1
I. Patterson’s [REDACTED] [REDACTED] Throughout The 2013-16 Period, And It Continues To This Day	4
II. Starting In 2013, Patterson [REDACTED] [REDACTED]	8
III. Patterson Regions, Branches, And Territory Representatives Always [REDACTED] [REDACTED]	11
IV. Every Witness [REDACTED] [REDACTED]	16
V. Patterson Did Not Agree To Boycott “Buying Groups” In Response To [REDACTED] [REDACTED] Or At Any Other Time	17
VI. There Is No Evidence That Patterson Agreed To Boycott Any of the “Buying Groups” Identified By Complaint Counsel.....	27

Pursuant to Rule 3.24 of the Federal Trade Commission’s Rules of Practice, Respondent Patterson Companies, Inc. (“Patterson”), submits this Statement of Material Facts as to Which There is No Genuine Dispute (“SOF”), in support of its Motion for Summary Decision.

There is no genuine dispute as to the following facts:

SUMMARY OF UNDISPUTED MATERIAL FACTS

1. Patterson has been distributing dental equipment (e.g., X-Ray and CAD/CAM machines, digital radiography sensors, and integrated operatory treatment centers), and consumable supplies (gloves, cotton rolls, rinse cups, disposable syringes) for over 140 years. (*See* <https://www.pattersoncompanies.com/who-we-are/default.aspx#section=history>.)
2. Its product catalog includes more than 100,000 SKUs. (*Id.*)
3. Patterson employs more than [REDACTED], organized in eight geographic regions and more than 70 local branches, who serve tens of thousands of dentists across the country. (*See* <https://www.pattersoncompanies.com/who-we-serve/default.aspx#section=animal>; McFadden 6-21-2018 FTC Dep. (Exhibit 4) 65:3–67:9; 72:8–20).
4. [REDACTED]
[REDACTED]
[REDACTED] (Lepley 7-24-2018 (Exhibit 8) FTC Dep. 18:3–17).
5. [REDACTED] (Rogan 7-13-2018 (Exhibit 2) FTC Dep. 210:3).
6. [REDACTED]
[REDACTED]
[REDACTED] (Lepley 30(b)(6) 7-24-2018 (Exhibit 3) FTC Dep. 90:8-91:7, 92:4-6).

7. In addition, [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] as discussed below.
(Lepley 7-24-2018 (Exhibit 8) FTC Dep. 24:14–21; 27:24–28:9; 30:4–24; *see e.g.*, PDCO 00064461-63) (Exhibit 16).

8. For most of its 140-year history, [REDACTED]
[REDACTED]
[REDACTED] (McFadden 6-21-2018 (Exhibit 4) FTC Dep. 49:7–21).

9. [REDACTED]
[REDACTED]
[REDACTED] (PDCO 00023794 (Exhibit 5), slide 21).

10. [REDACTED]
[REDACTED]
(PDCO 00023794 (Exhibit 5), slide 39).

11. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] (*See* McFadden 6-21-2018 (Exhibit 4) FTC Dep. 97:6–17;
http://www.oralhealthworkforce.org/wpcontent/uploads/2017/09/OHWRC_Trends_in_Dental_Service_Organization_Model_2017.pdf).

12. [REDACTED]
[REDACTED]

[REDACTED]
[REDACTED] (PDCO 00054455

(Exhibit 6), p. 57).

13. Starting in 2013, however, Patterson [REDACTED]
[REDACTED] (McFadden 4-
20-2017 (Exhibit 181) I.H. 52:2–7; Anderson 7-19-2018 (Exhibit 13) FTC Dep. 67:7–11).

14. In recent years, [REDACTED]
[REDACTED] PDCO 00023794
(Exhibit 5), slide 49).

15. [REDACTED]
[REDACTED]
[REDACTED] (McFadden 6-21-2018 (Exhibit 4) FTC Dep. 97:6–25;
138:5–22; Rogan 7-13-2018 FTC Dep. 220:10–221:8) (Exhibit 2).

16. As a result, [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] (McFadden 6-
21-2018 (Exhibit 4) FTC Dep. 138:5–22.)

17. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED] (Fruehauf 7-10-2018 (Exhibit 1) FTC Dep. 63:24–65:23; Guggenheim 7-17-2018 (Exhibit 7) FTC Dep. 270:20–271:5.)

18. [REDACTED]
[REDACTED]
[REDACTED] (McFadden 6-21-2018 (Exhibit 4) FTC Dep. 97:18–98:12.)

19. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] (Fruehauf 7-10-2018 (Exhibit 1) FTC Dep. 58:17–59:17.)

20. For these reasons, Patterson [REDACTED]
[REDACTED]
[REDACTED] (Rogan 7-13-2018 (Exhibit 2) FTC Dep. Tr. 108:5–16; McFadden 6-21-2018 (Exhibit 4) FTC Dep. Tr. 28:3–7; Guggenheim 7-17-2018 (Exhibit 7) FTC Dep. Tr. 150:6–151:6; Lepley 7-24-2018 (Exhibit 3) FTC Dep. Tr. 89:16–90:2).

I. Patterson’s [REDACTED] Throughout The 2013-16 Period, And It Continues To This Day

21. Patterson’s strategic goals every year highlight [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] (See PDCO 00037254 (Exhibit 9) ([REDACTED])
[REDACTED]); PDCO 00051385 (Exhibit 10) ([REDACTED]); see also PDCO

00052032-33 ([REDACTED]) (Exhibit 11); PDCO 00027012 ([REDACTED]) (Exhibit 12).

22. [REDACTED]
[REDACTED]

[REDACTED] Patterson Companies' CEO, Scott Anderson, testified that Patterson [REDACTED] (Anderson 7-19-2018 FTC Dep. (Exhibit 13) 110:3-4).

23. Patterson Dental's President from May 2010 to 2015, Paul Guggenheim, described his organization's efforts as [REDACTED] (Guggenheim 7-17-2018 FTC Dep. (Exhibit 7) 397:3-7).

24. The company was [REDACTED] and in [REDACTED] with Schein and Benco and its many other competitors [REDACTED] (Guggenheim 7-17-2018 FTC Dep. (Exhibit 7) 397:3-7).

25. Guggenheim's successor, David Misiak, testified that [REDACTED] [REDACTED] (Misiak 7-25-2018 FTC Dep. (Exhibit 14) 214:13-15).

26. Vice President of Marketing and Merchandise, Tim Rogan, and other executives and regional managers likewise testified that the company was [REDACTED]
[REDACTED]
[REDACTED] (Rogan 7-13-2018 FTC Dep. (Exhibit 2) 26:9-10; Lepley 7-24-2018 FTC Dep. (Exhibit 3) 86:11-12).

27. Patterson's Anthony Fruehauf testified that [REDACTED] (Fruehauf 7-10-2018 FTC Dep. (Exhibit 1) 43:17-19).

28. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] (Lepley 7-24-2018 FTC Dep. (Exhibit 3) 90:8–93:16).

29. But, in addition to that, [REDACTED]
[REDACTED]
[REDACTED] to win or keep business from Schein, Benco, and other competitors during the 2013-16 period. (See PDCO 00069522-00107742 and PDCO 00063442-00067165) (Exhibit 15).

30. [REDACTED]
[REDACTED] demonstrates just how brutal Patterson’s competitive efforts were throughout this period. In 2013, for example, sales reps reported [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] (See PDCO 00064461-63 (February 14, 2013) (Exhibit 16); PDCO 00065210-12 (Exhibit 17) (February 12, 2014); PDCO 00064466-68 (Exhibit 18) (February 18, 2013); PDCO 00064486-88 (February 27, 2013) (Exhibit 19); PDCO 00066278-82 (April 24, 2013) (Exhibit 20); PDCO 00066292-93 (May 28, 2013) (Exhibit 21); PDCO 00064743-45 (June 5, 2013) (Exhibit 22); PDCO

00064752 (June 9, 2013) (Exhibit 23); PDCO 00064843-45 (September 17, 2013) (Exhibit 24); and PDCO 00064907-11 (October 16, 2013) (Exhibit 25), *respectively*).

31. Patterson's efforts to beat Schein, Benco, and its other competitors continued throughout 2014: [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] (See PDCO 00065160-62

(January 15, 2014) (Exhibit 26); PDCO 00070025-30 (February 28, 2014) (Exhibit 27);

PDCO 00065343-45 (April 7, 2014) (Exhibit 28); PDCO 00065364-66 (April 16, 2014)

(Exhibit 29); PDCO 00065398-400 (April 24, 2014) (Exhibit 30); PDCO 00063725-27

(April 30, 2014) (Exhibit 31); PDCO 00065503-05 (June 13, 2014) (Exhibit 32); PDCO

00064224-27 (August 28, 2014) (Exhibit 33); PDCO 00065623-25 (October 8, 2014)

(Exhibit 34); PDCO 00064157-60 (December 18, 2014) (Exhibit 35); and PDCO

00065738-40 (December 11, 2014) (Exhibit 36), *respectively*).

32. Patterson's daily price competition continued throughout 2015 and 2016: [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] (See PDCO 00065779-81 (February 4, 2015) (Exhibit 37); PDCO 00066375-77 (March 2, 2015) (Exhibit 38); PDCO 00065859-60 (April 20, 2015) (Exhibit 39); PDCO 00064170-73 (May 11, 2015) (Exhibit 40); PDCO 00066060-62 (August 21, 2015) (Exhibit 41); PDCO 00067014-16 (September 18, 2015) (Exhibit 42); PDCO 00064092-93 (October 8, 2015) (Exhibit 43); PDCO 00066392-34 (November 13, 2015) (Exhibit 44); PDCO 00070602-04 (May 12, 2016) (Exhibit 45); and PDCO 00070607-10 (May 12, 2016) (Exhibit 46), respectively).

II. Starting In 2013, Patterson Invested Heavily To Build The Capabilities To Invade Schein And Benco’s Stronghold In Corporate DSOs.

33. [REDACTED]

[REDACTED] (McFadden 6-21-2018 FTC Dep. (Exhibit 4) 49:22–50:5; PDCO 00023794, slide 12) (Exhibit 5).

34. [REDACTED]

[REDACTED] (PDCO 00023794 (Exhibit 5), slide 39).

35. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] (McFadden 6-21-2018 FTC Dep. (Exhibit 4) 51:6–17).

36. [REDACTED]

[REDACTED] (PDCO 00054455 (Exhibit 6), p. 18).

37. Patterson thus decided to [REDACTED]
[REDACTED]
[REDACTED] (PDCO 00054455 (Exhibit 6), p. 57).

38. In late Summer 2012, Patterson [REDACTED]
[REDACTED]
(McFadden 6-21-2018 FTC Dep. (Exhibit 4) 50:18–25; PDCO 00054455-553) (Exhibit 6).

39. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] (PDCO 00054455 (Exhibit 6), pp 32–39).

40. In Fall 2012, [REDACTED]
[REDACTED]
[REDACTED] (PDCO 00054455 (Exhibit 6)).

41. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] (PDCO 00054455 (Exhibit 6),
pp. 86, 95–96).

42. Patterson’s executive team [REDACTED]
[REDACTED] (Guggenheim 7-17-2018 FTC Dep. (Exhibit
7) 174:14–23; PDCO 00037253-54 ([REDACTED]
[REDACTED]) (Exhibit 10).

43. Neal McFadden, the company's Southeast regional manager, [REDACTED]
[REDACTED]
[REDACTED] (PDCO
00023794 (Exhibit 5), slide 39).

44. [REDACTED] (PattersonDental 00024687
(Exhibit 47).

45. Patterson's work to build the capability to handle centralized demands of corporate DSOs,
was monumental, expensive, and risky: [REDACTED]
[REDACTED]
[REDACTED]
(McFadden 6-21-2018 FTC Dep (Exhibit 4) 51:25-52:11).

46. [REDACTED]
[REDACTED]
[REDACTED] (McFadden 6-21-2018 FTC Dep (Exhibit 4) 51:25-52:11).

47. So, [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] (Guggenheim 7-17-2018 FTC Dep. (Exhibit 7)
175:14-23; 191:12-19).

48. [REDACTED]
[REDACTED]

[REDACTED] (McFadden 6-21-2018 FTC Dep. (Exhibit 4) 65:3–67:9; 72:8–20).

49. [REDACTED]
[REDACTED] (PattersonDental 00024688 (Exhibit 48) ([REDACTED]
[REDACTED])).

III. Patterson Regions, Branches, And Territory Representatives Always Independently Evaluated “Buying Groups,” But Rarely Found Them Attractive Customers.

50. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] (McFadden 6-21-2018 FTC Dep. (Exhibit 4) 81:12–83:16).

51. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] (PDCO 26105 ([REDACTED]
[REDACTED]) (Exhibit 49); PDCO 20599 ([REDACTED]) (Exhibit 50); PDCO 00015123 (March 2012) (Exhibit 51).

52. Patterson executives testified that [REDACTED]
[REDACTED] (McFadden 6-21-2018 FTC Dep. (Exhibit 4) 76:25-77:3).

53. Patterson [REDACTED] (Rogan 7-13-2018 FTC Dep. (Exhibit 2) 68:7-9).

54. Patterson’s Shelly Beckler, a territory representative and, later, member of the Special Markets team, reported that Patterson [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] (PDCO 00028076–81 (Exhibit 52).

55. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(McFadden 6-21-2018 FTC Dep. (Exhibit 4) 96:23–98:12).

56. Still, Patterson regions, branches, and 800+ territory representatives were [REDACTED]

[REDACTED]

[REDACTED]

Patterson’s President, Paul Guggenheim, explained that the company [REDACTED]

[REDACTED]

[REDACTED] (Guggenheim 7-17-2018 FTC Dep. 185:14–17 (Exhibit 7); *see*

also id. 134:13–19 ([REDACTED]

[REDACTED]).

57. The Vice President of Marketing, Mr. Rogan, reiterated that Patterson [REDACTED]
[REDACTED]
[REDACTED] (Rogan 7-13-2018 FTC Dep. (Exhibit 2) 13:25–14:2,
60:19–24).

58. [REDACTED]
[REDACTED] (Rogan 7-13-2018 (Exhibit 2) FTC Dep. 97:3–12).

59. In September 2014, for example, Mr. McFadden, the head of Special Markets, [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
(PDCO 00026064 (Exhibit 53).

60. In May 2015, [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] (PDCO 00026237 (emphasis added) (Exhibit 54).

61. Patterson’s Maine branch manager responded, [REDACTED]
[REDACTED] (*Id.* (emphasis added) (Exhibit 54).

62. McFadden noted that [REDACTED]
[REDACTED]
[REDACTED] (PDCO 00059246 (emphasis added) (Exhibit 55).

63.

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] (See, e.g., PDCO 00033478 ([REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]) (Exhibit 56); Guggenheim 7-17-2018 FTC Dep.
(Exhibit 7) 157:10–158:24 ([REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]); 188:18–189:5 ([REDACTED]
[REDACTED]); 224:14–227:17
([REDACTED]
[REDACTED]); 272:13–19 ([REDACTED]
[REDACTED]); Fruehauf 7-10-2018 FTC Dep. (Exhibit 1) 58:17–59:14 ([REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]); 65:6–23 ([REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]).

64. [REDACTED]
[REDACTED] (*See, e.g.*, Misiak 7-25-2018 FTC Dep. (Exhibit 14) 137:24–138:3).

65. [REDACTED]
[REDACTED]
[REDACTED] (*See* PDCO 00068782 (Exhibit 57), PDCO 00021578 (Exhibit 58), *and* McFadden 6-21-2018 FTC Dep. (Exhibit 4) 120:4–5 ([REDACTED]); *see also* PDCO 00044213 ([REDACTED]) (Exhibit 59).

66. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] In 2015, Patterson thus appointed Wesley Fields as Director of Business Development in its corporate office and [REDACTED]
[REDACTED]
[REDACTED] (*Guggenheim* 7-17-2018 FTC Dep. (Exhibit 7) 154:9–155:4; *Fields* 4-6-2017 (Exhibit 60) IH Tr. 29:5–30:4).

67. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] (PDCO 00023794 (Exhibit 5), slide 54).

68. [REDACTED]
 [REDACTED]
 [REDACTED] (Mauer 8-9-2018
 FTC Dep. (Exhibit 61) 54:3-55:1; Misiak 7-25-2018 FTC Dep. (Exhibit 14) 154:23–
 156:2; Lepley 7-24-18 FTC Dep. (Exhibit 8) 37:3–16; McFadden FTC Dep. (Exhibit 14)
 120:11-23; Rogan I.H. (Exhibit 2) 176:15-25, 397:16-399:19).

IV. Every Witness Flatly Denied That Patterson Agreed With Benco or Schein To Boycott “Buying Groups”

69. Every current and former Patterson employee in this case flatly denied participating in the alleged Benco-Schein conspiracy to boycott “buying groups.” Patterson Companies CEO Anderson, [REDACTED] Patterson Dental President Guggenheim [REDACTED]; his successor, Misiak [REDACTED] Vice President of Marketing and Merchandise, Rogan [REDACTED] McFadden, head of Patterson Special Markets [REDACTED] [REDACTED] Lepley ([REDACTED]), Director of Strategic Pricing [REDACTED] Fruehauf, southeast regional manager [REDACTED] Nease, branch manager [REDACTED] [REDACTED] (Anderson 7-19-2018 FTC Dep. (Exhibit 13) 161:23–162:12; Guggenheim 7-17-2018 FTC Dep. (Exhibit 7) 400:24–401:11; Misiak 7-25-2018 FTC Dep. (Exhibit 14) 315:21–316:2; 4-18-2017 IH Tr. 10:8–16 (Exhibit 63); Rogan 7-13-2018 FTC Dep. (Exhibit 2) 261:17–19; 257:20–22; Lepley 30(b)(6) 7-24-2018 FTC Dep. (Exhibit 3) 111:23–11:12; Fruehauf 7-10-2018 FTC Dep. (Exhibit 1) 191:10–15; Nease 6-15-2018 FTC Dep. (Exhibit 64) 127:19–22; 134:24–135:2, *respectively*).

70. Every Schein witness, likewise, [REDACTED]: James Breslawski, President, Henry Schein [REDACTED] Tim Sullivan, President, Henry Schein Dental [REDACTED] David Steck, Vice President of Sales [REDACTED] Brian Brady, Senior

Director of Sales [REDACTED] Joseph Cavaretta, Vice President of Sales, Western Area [REDACTED] Jake Meadows, Vice President of Sales, Eastern Area [REDACTED] Hal Muller, President of Special Markets [REDACTED] Randy Foley, Vice President of Sales, Special Markets [REDACTED] Debbie Foster, Director of Sales, Special Markets [REDACTED] Andrea Hight, Director of Group Practice [REDACTED] Kathleen Titus, Director of Group Practice [REDACTED] Michael Porro, Zone Manager [REDACTED] Darci Wingard, Director of Alternative Purchasing Chanel [REDACTED] (Breslawski 7-10-2018 FTC Dep. (Exhibit 65) 242:13–22; Sullivan 7-20-18 FTC Dep. (Exhibit 66) 466:15–20; 528:24–529:5; Steck 7-27-2018 FTC Dep. (Exhibit 67) 145:19–146:15; Brady 7-12-2018 FTC Dep. (Exhibit 68) 318:13–319:2; Cavaretta 7-26-2018 (Exhibit 69) FTC Dep. 255:10–17; Meadows 7-13-2018 FTC Dep. (Exhibit 70) 268:23–269:12; Muller 6-21-2018 FTC Dep. (Exhibit 71) 223:12–16; Foley 6-20-2018 FTC Dep. (Exhibit 72) 381:19–22; Foster 6-7-2018 FTC Dep. (Exhibit 73) 164:6–11; Hight 7-17-2018 FTC Dep. (Exhibit 74) 192:25–193:6; Titus 6-29-2018 FTC Dep. (Exhibit 75) 249: 12–18; Porro 6-6-2018 FTC Dep. (Exhibit 76) 387:13–17; Wingard 6-27-2018 FTC Dep. (Exhibit 77) 233:11–19, *respectively*).

71. [REDACTED] Chuck Cohen, Managing Director [REDACTED] Patrick Ryan, Director of Sales, Strategic Markets [REDACTED] (Cohen 7-13-2018 Dep. (Exhibit 78) 484:5–10); Ryan 7-24-2018 FTC Dep. (Exhibit 79) 392:10–16).

V. Patterson Did Not Agree To Boycott “Buying Groups” In Response To [REDACTED] Or At Any Other Time

72. [REDACTED]
[REDACTED]
[REDACTED]

██████████ e.g., BDS-FTC00038834 (January 2012) (Exhibit 80); BDS-FTC00007454-55 (March 2012) (Exhibit 81); PDCO 00010794 (March 2012) (Exhibit 82); PDCO 00010801 (March 2012) (Exhibit 83); PDCO 00010804 (March 2012) (Exhibit 84); BDS-FTC00013115 (August 2012) (Exhibit 85); BDS-FTC00013117 (August 2012) (Exhibit 86); BDS-FTC00013118 (August 2012) (Exhibit 87); BDS-FTC00013121 (August 2012) (Exhibit 88); BDS-FTC00013136 (August 2012) (Exhibit 89); BDS-FTC00013140 (August 2012) (Exhibit 90); BDS-FTC00013141 (August 2012) (Exhibit 91), ██████████ e.g., PDCO 00010481 (April 2011) (Exhibit 92); PDCO 00010482-83 (May 2011) (Exhibit 93); PDCO 00010484 (May 2011) (Exhibit 94); PDCO 00010514 (May 2011) (Exhibit 95); PDCO 00010545-46 (May 2011) (Exhibit 96); PDCO 00010549 (May 2011) (Exhibit 98); PDCO 00010553 (May 2011) (Exhibit 97); PDCO 00010565 (May 2011) (Exhibit 99); BDS-FTC00006347 (September 2011) (Exhibit 100); BDS-FTC00006353 (September 2011) (Exhibit 101); CAPDSI 00026531 (September 2011) (Exhibit 102); PDCO 00010706 (September 2011) (Exhibit 103); PDCO 00010707-08 (September 2011) (Exhibit 104); PDCO 00010711 (September 2011) (Exhibit 105); BDS-FTC 00006460 (October 2011) (Exhibit 106); BDS-FTC00038734 (October 2011) (Exhibit 107); PDCO 00010737-39 (October 2011) (Exhibit 108); PDCO 00010743 (November 2011) (Exhibit 109); BDS-FTC00006594 (December 2011) (Exhibit 110); BDS-FTC00006604 (December 2011) (Exhibit 111); BDS-FTC00006609 (December 2011) (Exhibit 112); BDS-FTC00006611 (December 2011) (Exhibit 114); BDS-FTC00006613 (December 2011) (Exhibit 113); PDCO 00010745-46 (December 2011) (Exhibit 115); PDCO 00010749-50 (December 2011) (Exhibit 116); PDCO 00010752-53 (December

2011) (Exhibit 117); PDCO 00010755 (December 2011) (Exhibit 118); PDCO 00010757 (December 2011) (Exhibit 119); PDCO 00062590 (December 2011) (Exhibit 120).

73.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] (Henry Schein-000068293 (Exhibit 121) ([REDACTED])); Henry Schein-000068284 (Exhibit 122) ([REDACTED]); Henry Schein-000068234 (Exhibit 123) ([REDACTED]); Henry Schein-000068279 (Exhibit 124) ([REDACTED]); BDS-FTC00004759 (Exhibit 125) ([REDACTED]); PDCO 00062410 (same) (Exhibit 126); BDS-FTC00006353 (Exhibit 101) ([REDACTED]); PDCO 00010755 (Exhibit 118) ([REDACTED]); PDCO 00010804 (Exhibit 84) ([REDACTED]); [REDACTED]; [REDACTED]; See Henry Schein-000068230 (Exhibit 127); Henry Schein-000068232 (Exhibit 128); Henry Schein-000068237 (Exhibit 129); Henry Schein-000068242 (Exhibit 130); Henry Schein-000068245 (Exhibit 131); Henry Schein-000068248 (Exhibit 132); Henry Schein-000068250 (Exhibit 133); Henry Schein-000068252 (Exhibit 134); Henry Schein-000068256-57 (Exhibit 135); Henry Schein-000068260 (Exhibit 136); Henry Schein-000068263-64 (Exhibit 137); Henry Schein-000068269 (Exhibit 138); Henry Schein-000068271-72 (Exhibit 139); Henry Schein-000068274 (Exhibit 140); Henry Schein-000068277 (Exhibit 141); Henry Schein-

000068281 (Exhibit 142); Henry Schein-000068286 (Exhibit 143); Henry Schein-000068289 (Exhibit 144); Henry Schein-000068291 (Exhibit 145), respectively).

74. [REDACTED]
[REDACTED]
[REDACTED] (PDCO 00010988 (Exhibit 146) ([REDACTED]
[REDACTED])); *see also* BDS-FTC00009786-87 (Exhibit 147) (discussing same); PDCO 00011000 (Exhibit 148) (discussing same); PDCO 00011308 (Exhibit 149) ([REDACTED]
[REDACTED]).

75. Fourth, [REDACTED]
[REDACTED]
[REDACTED] (*See e.g.*, PDCO 00011087-88 and BDS-FTC00004759 (Exhibits 150 & 125) ([REDACTED]); BDS-FTC00005738 (Exhibit 151) ([REDACTED]); BDS-FTC00088784 (Exhibit 152) ([REDACTED]
[REDACTED]); BDS-FTC00075637 (Exhibit 153) ([REDACTED]
[REDACTED]).

76. These documents contain no narrative at all, let alone anything connecting them to “buying groups,” [REDACTED]
[REDACTED]
[REDACTED]

[REDACTED] (See e.g., Anderson
7-9-2018 FTC Dep. 130:23–131:21 (Exhibit 13) ([REDACTED]
[REDACTED]); 130:5–15 ([REDACTED]
[REDACTED]
[REDACTED]); PATTERSON
0000977 (Exhibit 154) ([REDACTED]
[REDACTED]
[REDACTED]); PATTERSON 0002247 (Exhibit 155) ([REDACTED]
[REDACTED]); Sullivan 7-19-2018 FTC
Dep. (Exhibit 182) 373:17–374:23 ([REDACTED]
[REDACTED]).

77. What’s left, literally, are [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

(BDS-FTC00085771 (Exhibit 156), page 6).

78. [REDACTED]
[REDACTED] (PDCO 00010959 (Exhibit 183)).

79. Guggenheim said [REDACTED]
[REDACTED] He noted that Patterson [REDACTED]
[REDACTED] (Guggenheim 3-16-2017 IH
Dep. (Exhibit 158) 240:7–243:15; 243:16–18; 244:8–12; 244:19–22).
80. Guggenheim [REDACTED]
[REDACTED]
(BDS-FTC00009442 (Exhibit 157) (Cohen wrote in a contemporaneous text message to a
Benco colleague: [REDACTED])).
81. In fact, unbeknownst to Mr. Guggenheim (and to Mr. Cohen, obviously) Patterson’s local
branch manager, Scott Belcheff, [REDACTED]
[REDACTED]
[REDACTED] (CX 4090 (Exhibit 159).
82. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] (PDCO 00051886 (Exhibit 160). Misiak told
[REDACTED]
[REDACTED] PDCO 00051886 (Exhibit 160). Misiak testified that [REDACTED]
[REDACTED]
[REDACTED] Misiak 4-18-2017 IH Tr.
(Exhibit 63) 102:7–9. Misiak further explained that [REDACTED]
[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Misiak 7-25-2018 FTC Dep. (Exhibit 14) 136:22–137:1. Misiak said [REDACTED]

[REDACTED]

[REDACTED] Misiak 7-25-2018 FTC

Dep. (Exhibit 14) 137:24–138:3).

83. Mr. Cohen and Mr. Guggenheim [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Instead, he testified that [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] (Guggenheim 3-16-2017

IH Tr. (Exhibit 158) 255:13–256:21).

84. Indeed, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] (PDCO 00010908 (Exhibit 161); Misiak 7-25-2018 FTC Dep.

80:84:4 (Exhibit 14); Rogan I.H. (Exhibit 62) at 257:3-7 ([REDACTED]

[REDACTED]); Rogan 7-23-2018 FTC Dep. 50:19-21, 53:7-12,

53:24-54:3 (Exhibit 2). Indeed, [REDACTED]

[REDACTED] Misiak 7-25-2018 FTC Dep. (Exhibit 14) 99:22–100:7 ([REDACTED]

[REDACTED]); Rogan 7-13-2018
FTC Dep. (Exhibit 2) 53:14–16 (same).

85. [REDACTED]
[REDACTED]
[REDACTED] Again, it shows no
such thing. Instead, [REDACTED]
[REDACTED]
[REDACTED]
(PATTERSON 0001594) (Exhibit 180).

86. In early 2013, Patterson’s Chesapeake branch manager [REDACTED]
[REDACTED] (Nease 6-15-2018
FTC Dep. (Exhibit 64) 31:24 – 32:11).

87. [REDACTED]
[REDACTED]
[REDACTED] (Nease 6-15-2018 FTC Dep.
(Exhibit 64) 47:12–15; Fruehauf 7-10-2018 FTC Dep. (Exhibit 1) 101:19–102:22).

88. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] (PDCO 00051880, pgs. -81 and -83) (Exhibit 184).

89. Patterson’s branch manager and territory rep were also [REDACTED]
[REDACTED] (Fruehauf 7-10-2018 FTC Dep. (Exhibit 1) 113:12–114:3; Misiak 7-25-
2018 FTC Dep. (Exhibit 14) 104:5-17).

90. [REDACTED]
[REDACTED] (PDCO 00010973 (Exhibit 162).

91. [REDACTED] (Guggenheim 7-17-2018 FTC Dep. (Exhibit 7)
419:11-15).

92. [REDACTED]
[REDACTED] (CX 0093 (Exhibit
163); Fruehauf 7-10-2018 FTC Dep. (Exhibit 1) 114:7–115:6).

93. No evidence supports Complaint Counsel’s assertion that Patterson changed its approach
to ADC in June 2013. (Compl. ¶ 50.).

94. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] (PDCO 00010955 (Exhibit 164).

95. [REDACTED]
[REDACTED] (Patterson
0001594 (Exhibit 180).

96. [REDACTED]
[REDACTED]
[REDACTED] (Guggenheim 7-17-2018 FTC Dep. (Exhibit 7)
418:18–419:1).

97. [REDACTED]
[REDACTED] Nease 6-15-2018 (Exhibit 64) FTC Dep. 48:10–23.

98. [REDACTED]
[REDACTED]
[REDACTED] (Patterson: Scott Anderson, Patterson Companies CEO (Exhibit 13) at 160:10-23; Paul Guggenheim, Patterson Dental President (Exhibit 7) at 398:4-400:9; David Misiak, Patterson Dental President (Exhibit 14) at 314:24 to 316:2, Tim Rogan, Vice President of Marketing and Merchandise (Exhibit 2) at 254:2-25; Neal McFadden, head of Patterson Special Markets (Exhibit 4) at 189:13-191:15, 192:5-25, 193:2-15, Joe Lepley, Director of Strategic Pricing (Exhibit 8) at 110:4-111:4; Anthony Fruehauf, Southeast Regional Manager (Exhibit 1) at 194:6-195:17).

99. Indeed, Complaint Counsel’s Interrogatory Response [REDACTED]
[REDACTED]
[REDACTED] (*See* Complaint Counsel’s Supplemental Responses to Respondent Patterson’s First Set of Interrogatories) (Exhibit 173).

100. Instead, Complaint Counsel cites [REDACTED]
[REDACTED]
[REDACTED] (Henry Schein 000012145; PDCO 00013330) (Exhibits 185 & 169).

101. But by the time of the email, Patterson [REDACTED]
[REDACTED] (PATTERSON 0000941; PATTERSON0000244; PATTERSON 0000245) (Exhibit 186).

102. Patterson’s regional manager [REDACTED]
[REDACTED]
[REDACTED]

[REDACTED] (BDS-FTC00001789 (Exhibit 165); Misiak 7-25-2018 FTC Dep. (Exhibit 14) 266:16–19; Rogan 4-5-2017 IH Tr. (Exhibit 62) 296:25– 297:2, 16–18; PattersonDental00033123-24 (Exhibit 166); PDCO 00028064-74 (Exhibit 167); PDCO 00009073 (Exhibit 168.

103. [REDACTED]

104. [REDACTED]
[REDACTED]
[REDACTED] (PDCO 00013330) (Exhibit 169).

105. Indeed, as late as April 2014 [REDACTED]
[REDACTED] (PATTERSON 0003339
(Exhibit 170) [REDACTED]
[REDACTED]

106. [REDACTED]
[REDACTED]
[REDACTED] (PATTERSON 0000216 (Exhibit 171) [REDACTED]
[REDACTED];
PATTERSON 0002477 (Exhibit 172) [REDACTED]
[REDACTED]

VI. There Is No Evidence That Patterson Agreed To Boycott Any of the “Buying Groups” Identified By Complaint Counsel

107. [REDACTED]
[REDACTED]
[REDACTED] (Complaint Counsel’s 8-17-2018 Supplemental Responses to Patterson’s First Set of Interrogatories) (Exhibit 173).

108. Complaint Counsel's expert [REDACTED]
[REDACTED] (See Expert Report of
Dr. Robert C. Marshall, August 10, 2018, pgs. 64-104; 116-120; 199-201) (Exhibit 187).
109. The record thus contains no testimony from: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] (Complaint Counsel's 8-17-2018
Supplemental Responses to Patterson's First Set of Interrogatories) (Exhibit 173).
110. Instead, the evidence shows that Patterson [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] (Kois
Sr. 6-27-2018 FTC Dep. (Exhibit 174) 37:25-38:5, 135:16-136:10; Kojs Jr. 6-27-2018
FTC Dep. (Exhibit 175) 119:6-9, 121:6-10; Guggenheim 7-17-2018 FTC Dep. (Exhibit
7) 272:4-273:6; PDCO 00033478) (Exhibit 176).
111. [REDACTED] (Kois
Sr. 6-27-2018 FTC Dep. (Exhibit 174) 37:25-38:5, 135:16-136:10; Kojs Jr. 6-27-2018
FTC Dep. (Exhibit 175) 119:6-9, 121:6-10; Guggenheim 7-17-2018 FTC Dep. (Exhibit
7) 272:4-273:6; PDCO 00033478) (Exhibit 176).

112. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] (McFadden FTC Dep. (Exhibit 4) 120:11-23;
Rogan I.H. (Exhibit 62) 176:15-25, 397:16-399.19; Maurer 8-9-2018 FTC Dep. (Exhibit
61) 55:19, 55:22-56:9; Maurer 8-9-2018 FTC Dep. (Exhibit 61) 64:4-9).

113. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] (McFadden 6-21-2018 FTC Dep. (Exhibit 4) 129:7-10).

114. [REDACTED]
[REDACTED] (Puckett 6-25-2018 FTC Dep. (Exhibit 177) 144:15-145:16; Puckett 6-25-2018
FTC Dep. (Exhibit 177) 194:13-16).

115. [REDACTED]
[REDACTED] (Johnson
7-26-2018 FTC Dep. (Exhibit 178) 144:10-145:5).

116. [REDACTED]
[REDACTED] (Johnson 7-26-2018 FTC Dep. (Exhibit 178)
145:23-147:23).

Dated: September 21, 2018

/s/ Joseph A. Ostoyich
Joseph A. Ostoyich

William C. Lavery
Andrew T. George
Caroline L. Jones
Jana I. Seidl
Kristen E. Lloyd
Baker Botts L.L.P.
1299 Pennsylvania Avenue NW
Washington, DC 20004
Tele: (202) 639-7905
Email: joseph.ostoyich@bakerbotts.com
Email: william.lavery@bakerbotts.com

James J. Long
Jay W. Schlosser
Briggs and Morgan, P.A.
80 South Eighth Street, Suite 2200
Minneapolis, MN 55402
Tele: (612) 977-8582
Email: jlong@briggs.com
Email: jschlosser@briggs.com

***ATTORNEYS FOR
PATTERSON COMPANIES, INC.***

EXHIBITS 1 – 187

**These exhibits have been
marked Confidential and
redacted in their entirety**

CERTIFICATE OF SERVICE

I hereby certify that on September 21, 2018, I filed the foregoing public document electronically using the FTC's E-Filing System, which will send notification of such filing to:

The Honorable D. Michael Chappell
Chief Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Avenue, N.W., Room H-110
Washington, D.C. 20580

Donald S. Clark
Office of the Secretary
Federal Trade Commission
Constitution Center
400 Seventh Street, S.W.
Fifth Floor
Suite CC-5610 (Annex B)
Washington, D.C. 20024

I also hereby certify that on September 21, 2018, I delivered via electronic mail a copy of the foregoing public document to:

Lin Kahn (Attorney)
lkahn@ftc.gov
Ronnie Solomon (Attorney)
rsolomon@ftc.gov
Matthew D. Gold (Attorney)
mgoid@ftc.gov
John Wiegand (Attorney)
jwiegand@ftc.gov
Erika Wodinsky (Attorney)
ewodinsky@ftc.gov
Boris Yankilovich (Attorney)
byankilovich@ftc.gov
Jeanine K. Balbach (Attorney)
ibalbach@ftc.gov
Thomas H. Brock (Attorney)
tbrock@fte.gov
Jasmine Rosner (Attorney)
jrosner@ftc.gov
Federal Trade Commission
901 Market St., Ste. 570
San Francisco, CA 94103
Phone Number: 415-848-5115

Complaint Counsel

Howard Scher, Esq.
howard.scher@bipc.com
Kenneth Racowski, Esq.
kenneth.racowski@bipc.com
Carrie Amezcua, Esq.
carrie.amezcua@bipc.com
Buchanan Ingersoll & Rooney PC
50 S. 16th Street, Ste. 3200
Philadelphia, PA 19102

Craig A. Waldman, Esq.
cwaldman@jonesday.com
Benjamin M. Craven, Esq.
bcraven@jonesday.com
Ausra O. Deluard, Esq.
adeluard@jonesday.com
Jones Day
555 California Street, 26th Floor
San Francisco, CA 94104
T: 415-626-3939
F: 415-875-5700

Geoffrey D. Oliver, Esq.
Jones Day
51 Louisiana Avenue, N.W.
Washington, D.C. 20001-2113
T: 202-879-3939
F: 202-626-1700
gdoliver@jonesday.com

Counsel for Respondent Benco Dental Supply Co.

Timothy J. Muris, Esq.
Sidley Austin LLP
1501 K Street, N.W.
Washington, D.C. 20005
T: 202-736-8000
F: 202 736-8711
tmuris@sidley.com

Colin Kass, Esq.
ckass@proskauer.com
Adrian Fontecilla, Esq.
afontecilla@proskauer.com
Proskauer Rose LLP

1001 Pennsylvania Ave., NW, Ste. 600 South
Washington, D.C. 20004-2533
T: 202-416-6800
F: 202-416-6899

John P. McDonald, Esq.
jpmcdonald@lockelord.com
Lauren Fincher, Esq.
lfinchergoekelord.com
Locke Lord LLP
2200 Ross Avenue, Ste. 2800
Dallas, TX 75201
T: 214-740-8000
F: 214-740-8800

Counsel for Respondent Henry Schein, Inc.

September 21, 2018

By: /s/ Andrew T. George

Attorney

CERTIFICATE FOR ELECTRONIC FILING

I certify that the electronic copy sent to the Secretary of the Commission is a true and correct copy of the paper original and that I possess a paper original of the signed document that is available for review by the parties and the adjudicator.

September 21, 2018

By: /s/ Andrew T. George

Attorney

Notice of Electronic Service

I hereby certify that on September 21, 2018, I filed an electronic copy of the foregoing Respondent Patterson's Motion for Summary Decision [PUBLIC], with:

D. Michael Chappell
Chief Administrative Law Judge
600 Pennsylvania Ave., NW
Suite 110
Washington, DC, 20580

Donald Clark
600 Pennsylvania Ave., NW
Suite 172
Washington, DC, 20580

I hereby certify that on September 21, 2018, I served via E-Service an electronic copy of the foregoing Respondent Patterson's Motion for Summary Decision [PUBLIC], upon:

Lin Kahn
Attorney
Federal Trade Commission
lkahn@ftc.gov
Complaint

Ronnie Solomon
Attorney
Federal Trade Commission
rsolomon@ftc.gov
Complaint

Matthew D. Gold
Attorney
Federal Trade Commission
mgold@ftc.gov
Complaint

John Wiegand
Attorney
Federal Trade Commission
jwiegand@ftc.gov
Complaint

Erika Wodinsky
Attorney
Federal Trade Commission
Complaint

Boris Yankilovich
Attorney
Federal Trade Commission
byankilovich@ftc.gov
Complaint

Jeanine K. Balbach
Attorney
Federal Trade Commission
jbalbach@ftc.gov
Complaint

Thomas H. Brock
Attorney
Federal Trade Commission
TBrock@ftc.gov
Complaint

Jasmine Rosner
Attorney
Federal Trade Commission
jrosner@ftc.gov
Complaint

Howard Scher
Attorney
Buchanan Ingersoll & Rooney PC
howard.scher@bipc.com
Respondent

Kenneth Racowski
Attorney
Buchanan Ingersoll & Rooney PC
kenneth.racowski@bipc.com
Respondent

Carrie Amezcua
Attorney
Buchanan Ingersoll & Rooney PC
carrie.amezcua@bipc.com
Respondent

John McDonald
Locke Lord LLP
jpmcdonald@lockelord.com
Respondent

Lauren Fincher
Locke Lord LLP
lfincher@lockelord.com
Respondent

Colin Kass
Proskauer Rose LLP
ckass@proskauer.com
Respondent

Adrian Fontecilla
Associate
Proskauer Rose LLP
afontecilla@proskauer.com
Respondent

Timothy Muris
Sidley Austin LLP
tmuris@sidley.com
Respondent

Geoffrey D. Oliver
Jones Day

gdoliver@jonesday.com
Respondent

Craig A. Waldman
Partner
Jones Day
cwaldman@jonesday.com
Respondent

Benjamin M. Craven
Jones Day
bcraven@jonesday.com
Respondent

Ausra O. Deluard
Jones Day
adeluard@jonesday.com
Respondent

Joseph Ostoyich
Partner
Baker Botts L.L.P.
joseph.ostoyich@bakerbotts.com
Respondent

William Lavery
Senior Associate
Baker Botts L.L.P.
william.lavery@bakerbotts.com
Respondent

Andrew George
Baker Botts L.L.P.
andrew.george@bakerbotts.com
Respondent

Jana Seidl
Baker Botts L.L.P.
jana.seidl@bakerbotts.com
Respondent

Kristen Lloyd
Associate
Baker Botts L.L.P.
Kristen.Lloyd@bakerbotts.com
Respondent

James Long
Attorney
Briggs and Morgan, P.A.
jlong@briggs.com
Respondent

Jay Schlosser
Attorney
Briggs and Morgan, P.A.
jschlosser@briggs.com
Respondent

Scott Flaherty
Attorney
Briggs and Morgan, P.A.
sflaherty@briggs.com
Respondent

Ruvn Jayasuriya
Attorney
Briggs and Morgan, P.A.
rjayasuriya@briggs.com
Respondent

William Fitzsimmons
Attorney
Briggs and Morgan, P.A.
wfitzsimmons@briggs.com
Respondent

Hyun Yoon
Buchanan Ingersoll & Rooney PC
eric.yoon@bipc.com
Respondent

David Owyang
Attorney
Federal Trade Commission
dowyang@ftc.gov
Complaint

Karen Goff
Attorney
Federal Trade Commission
kgoff@ftc.gov
Complaint

Emily Burton
Attorney
Federal Trade Commission
eburton@ftc.gov
Complaint

Jessica Drake
Attorney
Federal Trade Commission
jdrake@ftc.gov
Complaint

Ashley Masters
Attorney
Federal Trade Commission
amasters@ftc.gov
Complaint

Terry Thomas
Attorney
Federal Trade Commission
tthomas1@ftc.gov
Complaint

Danica Nobel
Attorney
Federal Trade Commission
dnoble@ftc.gov
Complaint

Mary Casale
Attorney
Federal Trade Commission
mcasale@ftc.gov
Complaint

Thomas Manning
Buchanan Ingersoll & Rooney PC
Thomas.Manning@bipc.com
Respondent

Sarah Lancaster
Locke Lord LLP
slancaster@lockelord.com
Respondent

Owen Masters
Associate
Proskauer Rose LLP
omasters@proskauer.com
Respondent

Stephen Chuk
Proskauer Rose LLP
schuk@proskauer.com
Respondent

Rucha Desai
Associate
Proskauer Rose LLP
rdesai@proskauer.com
Respondent

Jessica Moy
Federal Trade Commission
jmoy@ftc.gov
Complaint

Thomas Dilickrath
Federal Trade Commission
tdilickrath@ftc.gov
Complaint

Caroline L. Jones
Associate
Baker Botts L.L.P.
caroline.jones@bakerbotts.com
Respondent

David Munkittrick
Proskauer Rose LLP
dmunkittrick@proskauer.com
Respondent

David Heck
Proskauer Rose LLP
dheck@proskauer.com
Respondent

Jana Seidl
Attorney