

"PUBLIC"

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES



In the Matter of

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

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

**PATTERSON COMPANIES, INC.,
a corporation**

Docket No. 9379

ORIGINAL

PUBLIC

**NON-PARTY MICHIGAN DENTAL ASSOCIATION'S
MOTION FOR EXTENSION OF TIME TO SEEK *IN CAMERA* TREATMENT**

Pursuant to Rule 3.21 of the Federal Trade Commission's Rules of Practice ("Rules of Practice"), 16 C.F.R. § 3.45(b), non-party Michigan Dental Association (the "MDA") respectfully moves this Court for an Extension of Time to File a Motion for In Camera Treatment. On September 17, 2018, the Federal Trade Commission ("Complaint Counsel") notified the MDA that it intends to introduce materials produced by the MDA in a civil matter that were previously given confidential status ("Confidential Materials") into evidence during the trial of this matter. *See* Letter from the FTC dated September 17, 2018, attached as Exhibit A. Pursuant to the current scheduling order, motions for *in camera* treatment are due on September 26, 2018.

The MDA intends to file a Motion for *In Camera* Treatment for portions of the Confidential Materials, but is unable to do so before September 26, 2018. Counsel for the MDA experienced technical difficulties accessing the Confidential Materials, requiring the FTC to overnight it hard copies of the Confidential Materials. The MDA was only able to view the materials on September 20, 2018. *See* Letter from the FTC dated September 20, 2018, attached as Exhibit B. Further, the

President of the MDA Insurance and Financial Group, Craig Start, has been travelling and unable to review these materials to determine the extent of *in camera* treatment required.

Pursuant to 16 C.F.R. § 3.45, a Motion for *In Camera* Treatment must include a copy of the documents for which *in camera* treatment is sought and an affidavit by a person qualified to explain the confidential nature of the material. *In re 1-800 Contacts, Inc.*, 2017 WL 1345290 (F.T.C.), Docket No. 9372 (Apr. 4, 2017). The MDA cannot comply with these requirements by September 26 because it needs additional time to review over 200 pages of material.

For the reasons set forth above, the MDA respectfully requests an extension of seven (7) days to file a Motion for *In Camera* Treatment.

Respectfully Submitted,

KERR, RUSSELL AND WEBER, PLC

By: /s/ Daniel Schulte

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Dated: September 25, 2018

STATEMENT REGARDING MEET AND CONFER

The undersigned certifies that counsel for non-party Michigan Dental Association ("MDA") notified counsel for the parties via telephone on September 24-25, 2018 that it would be filing a motion to extend the deadline for seeking *in camera* treatment of confidential documents. Counsel for the Federal Trade Commission, Benco Dental Supply Co., Henry Schein, Inc. and Patterson Companies, Inc. indicated that they would not object to MDA's motion.

KERR, RUSSELL AND WEBER, PLC

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Dated: September 25, 2018

EXHIBIT A



Western Regional Office

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

WASHINGTON, D.C. 20580

"PUBLIC"

September 17, 2018

VIA EMAIL TRANSMISSION

MDA Insurance and Financial Group
c/o Daniel J. Schulte, Esq.
Kerr Russell
500 Woodward Avenue, Suite 2500
Detroit, Michigan 48226
dschulte@kerr-russell.com

RE: *In the Matter of Benco Dental Inc., et al., Docket No. 9379*

Dear Mr. Schulte:

By this letter we are providing formal notice, pursuant to Rule 3.45(b) of the Commission's Rules of Practice, 16 C.F.R. § 3.45(b), that Complaint Counsel intends to offer the documents and testimony referenced in the enclosed Attachment A into evidence in the administrative trial in the above-captioned matter. For your convenience, a copy of the documents and testimony will be sent to you in a separate email with an FTP link.

The administrative trial is scheduled to begin on October 16, 2018. All exhibits admitted into evidence become part of the public record unless Administrative Law Judge D. Michael Chappell grants *in camera* (i.e., non-public/confidential) status.

For documents or testimony that include sensitive or confidential information that you do not want on the public record, you must file a motion seeking *in camera* status or other confidentiality protections pursuant to 16 C.F.R §§ 3.45 and 4.10(g). Judge Chappell may order that materials, whether admitted or rejected as evidence, be placed *in camera* only after finding that their public disclosure will likely result in a clearly-defined, serious injury to the person, partnership, or corporation requesting *in camera* treatment.

Motions for *in camera* treatment for evidence to be introduced at trial must meet the strict standards set forth in 16 C.F.R. § 3.45 and explained in *In re 1-800 Contacts, Inc.*, 2017 FTC LEXIS 55 (April 4, 2017); *In re Jerk, LLC*, 2015 FTC LEXIS 39 (Feb. 23, 2015) and *In re Basic Research, Inc.*, 2006 FTC LEXIS 14 (Jan. 25, 2006). Motions also must be supported by a declaration or affidavit by a person qualified to explain the confidential nature of the material. *In re 1-800 Contacts, Inc.*, 2017 FTC LEXIS 55 (April 4, 2017); *In re North Texas Specialty Physicians*, 2004 FTC LEXIS 66 (Apr. 23, 2004). For your convenience, we included, as links in the cover email, an example of a third-party motion (and the accompanying declaration or affidavit) for *in camera* treatment that was filed and granted in an FTC administrative proceeding. If you choose to move for *in camera* treatment, you must provide a copy of the

document(s) for which you seek such treatment to the Administrative Law Judge. Also, you or your representative will need to file a Notice of Appearance in the administrative proceeding. For more information regarding filing documents in adjudicative proceedings, please see <https://www.ftc.gov/faq/ftc-info/file-documents-adjudicative-proceedings>.

Please be aware that under the current Scheduling Order **the deadline for filing motions seeking *in camera* treatment is September 26, 2018**. A copy of the March 14, 2018 Scheduling Order can be found at <https://www.ftc.gov/enforcement/cases-proceedings/151-0190/bencoscheinpatterson-matter>.

If you have any questions, please feel free to contact me at 415-848-5190.

Sincerely,



Erika Wodinsky
Counsel Supporting the Complaint

Attachment

Attachment A

Exhibit No.	Full Name	Date	BegBates	EndBates
CX9069	Deposition of Craig Start (Class Litig.) and the accompanying exhibits	TBD	CX9069-001	CX9069-215

EXHIBIT B



Western Regional Office

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

WASHINGTON, D.C. 20580

"PUBLIC"

September 20, 2018

VIA EMAIL TRANSMISSION

Daniel J. Schulte, Esq.
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500 Woodward Avenue, Suite 2500
Detroit, Michigan 48226
dschulte@kerr-russell.com

RE: *In the Matter of Benco Dental Inc., et al., Docket No. 9379*

Dear Mr. Schulte:

Thank you for your email regarding the documents referenced in Attachment A to my letter of September 17 regarding MDA Insurance and Financial Group.

We will continue to try to find a satisfactory way to send the document to you electronically so that you will have a copy in electronic form. In the meantime, I am enclosing a paper copy of the document (Mr. Start's deposition with attachments).

Please do not hesitate to call if you have any questions about the process of seeking *in camera* treatment, should you decide that such treatment is required. I can be reached at 415-848-5190.

Sincerely,

A handwritten signature in blue ink that reads "Erika Wodinsky".

Erika Wodinsky
Counsel Supporting the Complaint

Enclosure

Notice of Electronic Service

I hereby certify that on September 25, 2018, I filed an electronic copy of the foregoing Non-Party Michigan Dental Association's Motion for Extension of Time, 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 25, 2018, I served via E-Service an electronic copy of the foregoing Non-Party Michigan Dental Association's Motion for Extension of Time, upon:

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