

PUBLIC

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION



COMMISSIONERS: Joseph J. Simons, Chairman
Noah Joshua Phillips
Rohit Chopra
Rebecca Kelly Slaughter
Christine S. Wilson

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

COMPLAINT COUNSEL'S OPPOSITION TO RESPONDENT
PATTERSON COMPANIES, INC.'S MOTION FOR SUMMARY DECISION

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CAST OF CHARACTERS

Name (Alphabetical)	Title	Company
Anderson, Scott	Special Advisor (2017-Present) CEO (2010-2017)	Patterson
Baytosh, Joseph	Dentist, former President & Exec Board (2014) Member of Corydon Palmer Dental Society	Corydon Palmer Dental Society
Bergman, Stanley	CEO and Chairman of the Board (1989-Present)	Henry Schein
Brady, Brian	Senior Director of Sales, Special Markets (2017-present) Director of Group Practices, Mid-Markets Division (2015-2017)	Henry Schein
Breslawski, James	Vice Chairman (2018-Present) President of Henry Schein Inc. (2005-Present)	Henry Schein
Capaldo, Frank	Executive Director and CEO (2014-Present)	Georgia Dental Association
Cavaretta, Joe	VP of Sales – Eastern Area (2018-Present) VP of Sales – West and Western Area Director (2015-2018) Zone Director, North Central Zone (2013-2015) Zone Manager, Western Zone (2009-2013)	Henry Schein
Chatham, John	VP Global Sales Leadership and Development (at least 2011-2017)	Henry Schein
Cohen, Charles (Chuck)	Managing Director & Co-Owner (1996-Present)	Benco
Fernandez, Ron	Regional Manager, Texas (2011-2016)	Benco
Fields, Wesley	Director of Business Development (2015-Present) Branch Manager, Louisville (2013-2015) Territory Sales Rep. (2007-2013)	Patterson
Foley, Randy	Vice President of Field Sales, Special Markets (2014-2016) Director of Field Sales, Special Markets (2009- 2013)	Henry Schein
Foster, Debbie	Regional Account Manager (2015-Present) Director of Sales, Special Markets (2005-2015)	Henry Schein
Fruehauf, Anthony	Southeast Region Manager/President (2012- Present)	Patterson
Goldsmith, Andrew	Chief Dental Officer (2013-2015) President (2011-2013)	Smile Source
Guggenheim, Paul	Chief Innovation Officer (2016-Present) President of Patterson Dental (2010-2016)	Patterson
Hight, Andrea	Area Sales Manager, Southwest (2018-Present) Area Director, Managed Group Practice and Community Health (2014-2018) Regional Account Manager (started 2008)	Henry Schein
Jackson, Paul	VP of Marketing (1996-Present)	Benco
Kois, John Jr.	CEO of Kois Center, Manager of Kois Buyers Group (2015-Present)	Kois Buyers Group
Kois, John Sr.	Director of Kois Center (1994-Present) Founder of Kois Buyers Group	Kois Buyers Group
Lauerman, Michelle	Director of Network & Patient Ambassador (2018- Present) Director of Marketing & Administration (2014- 2018)	Advantage Dental

Name (Alphabetical)	Title	Company
	Dental Services Advisor (2010-2014)	
Lepley, Joe	Director of Strategic Pricing (2015-Present)	Patterson
Mason, Brent	Dentist in New Mexico Member of NM Dental Co-op (2014-2015)	New Mexico Dental Cooperative
Maurer, Trevor	President	Smile Source
McElaney, Mike	Director of Sales, Northeast, and Regional Manager of New England (2015-2017) VP of Sales, Northeast (2013-2015) Director of Northeast (2011-2013)	Benco
McFadden, Neal	President, Special Markets (2013-2017) Regional Manager, Southeast (2009-2013)	Patterson
Meadows, Jake	VP of Sales, Special Markets (2017-Present) VP of Sales, Eastern Area (2014-2017) Northwest Zone General Manager (2011-2014)	Henry Schein
Misiak, Dave	President (2016-2018) VP of Sales (2010-2016)	Patterson
Moody, Tracy	Co-Founder of Smile Source	Smile Source
Muller, Hal	President, Special Markets (2008-Present)	Henry Schein
Nease, Devon	Branch Manager, Chesapeake Virginia (2011- 2014)	Patterson
Osio, Donovan	General manager, TDA Financial Services, Inc. (wholly owned subsidiary of TDA)	Texas Dental Association
Porro, Michael	Director of Technology for Sales, East (2018- Present) Zone Manager, Atlantic South (2016-2018) Zone Manager, Atlantic Coast (2014-2016) Corporate Director of HSD (2012-2013)	Henry Schein
Puckett, Justin	President (2013-Present)	MB2 Dental Solutions
Reece, Jeffrey	VP of Sales and Marketing (2008-Present)	Burkhart
Rogan, Tim	VP and General Manager (2017-Present) VP of Marketing/Merchandise (2009-2017)	Patterson
Ryan, Patrick	Director of Sales, Strategic Markets (2007- Present) Director of Bus. Development (2011-2014) Director of Equipment Sales (Pre-2016)	Benco
Showgren, Glenn	VP of Sales, West (2017-Present) Zone General Manager, California (2013-2017) Regional Manager, South Texas Region (2010- 2013)	Henry Schein
Steck, Dave	VP & General Manager (2005-Present)	Henry Schein
Sullivan, Tim	President of Henry Schein Dental (1997-Present)	Henry Schein
Titus, Kathleen	Director of Group Practices, Western Area (2014- 2018) Zone Manager, Special Markets (1990s-2014)	Henry Schein
Wingard, Darci	Director of Alternative Purchasing Channel (2018- Present) Group Practice Development Manager (2016- 2018)	Henry Schein

INTRODUCTION

Summary decision is appropriate only where there is no dispute of material fact. That Patterson's Motion lays out pages upon pages of disputed facts should end this inquiry before it begins. Patterson claims that there is no evidence linking it to Respondents' price fixing agreement, but one need not look far to find evidence of Patterson's involvement in the anticompetitive scheme. At best, Patterson's position is that the Commission should give no weight to the damning evidence of the conspiracy:

Dave Misiak (Patterson Director of Sales): "Confidential and not for discussion . . . our 2 largest competitors stay out of these [buying groups] as well. If you hear differently and have specific proof please send that to me."¹

Misiak: "I'm concerned that Schein and Benco sneak into these co-op bids and deny it."²

Tim Rogan (Patterson VP of Marketing): "We don't need GPO's in the dental business. Schein, Benco, and Patterson have always said no. I believe it is our duty to uphold this and protect this great industry."³

The Commission need only take these statements at face value to find Patterson participated in the illegal agreement. But there is far more. The record contains ample direct and circumstantial evidence of Patterson's part in the conspiracy, creating a genuine dispute of material fact that renders summary decision inappropriate.⁴

¹ CX0093 at -001 (PDCO00051886) (bold omitted).

² CX0092 at -001 (PDCO00051878).

³ CX0106 at -001 (PDCO00027980).

⁴ Patterson's Motion is not its first attempt to evade judicial scrutiny on similar facts. It recently lost a motion for summary judgment where a court found sufficient evidence suggesting Patterson conspired with Respondents against the Texas and Arizona state dental association buying groups, creating a dispute of material fact. *Sourceone Dental, Inc. v. Patterson Cos., Inc.*, 310 F. Supp. 3d 346 (E.D.N.Y. 2018). The evidence from this related case is one small part of Complaint Counsel's extensive record. Patterson did not prevail in its *Sourceone* motion, nor should its recycled arguments prevail here.

Rather than address Complaint Counsel’s allegations and supporting evidence, Patterson emphasizes its competition with Schein and Benco for customers *other* than buying groups. But this case is about an agreement not to discount to or compete for **buying groups**. Respondents feared that buying groups—which provide an inherently procompetitive benefit to their members—would fundamentally change Respondents’ principal customer base by aggregating purchasing power of an otherwise fragmented customer segment with little negotiating skill or leverage. Left unchecked, buying groups would threaten Respondents’ healthy margins by pushing down prices below what individual dentists can obtain on their own. Patterson’s adherence to the no-buying group agreement is the effective equivalent of price fixing.

With neither the facts nor the law on its side, Patterson argues for a novel legal standard that is contrary to established precedent. Patterson claims that Complaint Counsel must produce affidavits or sworn testimony proving an agreement to counter its executives’ belated attempts to explain away the clear language of the documentary evidence. That is the wrong standard. The Supreme Court has made clear that Patterson’s self-serving testimony deserves “little weight” where it conflicts with its own contemporaneous documents.⁵ Instead, to meet its burden, Patterson must concede all facts in favor of Complaint Counsel and still demonstrate Complaint Counsel’s complete failure of proof on an essential element of its case⁶—something Patterson has not attempted to do, because it cannot. With genuine issues of material fact present, Patterson’s Motion should be denied.

⁵ *United States v. U.S. Gypsum Co.*, 333 U.S. 364, 396 (1948).

⁶ *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986).

STATEMENT OF FACTS

I. BUYING GROUPS DRIVE DOWN PRICES FOR INDEPENDENT DENTISTS AND ALLOW DISTRIBUTORS TO INCREASE SALES

Buying groups provide important efficiencies for independent dentists. Sometimes referred to as “buying clubs,” “group purchasing organizations,” or “GPOs,” buying groups aggregate negotiating power on behalf of independent dentists. As a result, buying groups can negotiate greater discounts than their members can on their own, as well as monitor distributors’ compliance with pricing and other contract terms.⁷

Buying groups also benefit dental products distributors like Respondents. By amassing potential customers, buying groups enable distributors to win market share and increase profits efficiently through a single contract.⁸ While buying groups typically do not force members to purchase from their supplier partners, independent dentists are incentivized to buy from a buying group’s supplier partners to take advantage of lower prices.⁹

II. BENCO: [REDACTED] WITH A NO-BUYING GROUP PHILOSOPHY

While buying groups can increase distributors’ sales and profitability, Respondents feared that they could also slash margins and change the full-service distribution model,¹⁰ as

⁷ See, e.g., [REDACTED]

⁸ See, e.g., CX0149 at -001 (PDCO00021432) (Smile Source has “seen a 93% conversion to [its] vendors and ha[s] been able to prove that [it] can shift share.”); CX0321 (Kois, Jr. IH Tr. 139:20-23) (Kois brought new customers to Burkhart); [REDACTED]

⁹ [REDACTED] } cf. (Resp. Br. In Supp. of Mot. for Summ. Decision at 1-2, 24-25) (Patterson can win business from Schein and Benco through price concessions).

¹⁰ See, e.g., [REDACTED] ; CX1233 at -001 (BDS-FTC00024159) (buying groups are “death to dealers”).

occurred in the medical supply distribution market.¹¹ As a result, { [REDACTED]

[REDACTED]

{ [REDACTED] }¹² { [REDACTED]

{ [REDACTED] }¹³ and { [REDACTED]

[REDACTED]

{ [REDACTED] }¹⁵

After learning that Schein was discounting to buying groups, Chuck Cohen communicated with Tim Sullivan, President of Henry Schein Dental. Over the course of 2011 alone, the rivals exchanged scores of phone calls and text messages.¹⁶ { [REDACTED]

[REDACTED] }¹⁷

Following inter-firm communications, Schein shifted its pro-buying group strategy to match Benco’s no-buying group policy by refusing to discount to new buying groups¹⁸ and

¹¹ See, e.g., CX1156 at -001 (BDS-FTC00017053) (“GPOs are why medical works at the margins they do.”); CX0165 at -001 (Henry Schein-000004705) (“Dealing with GPOs is incredibly risky on many fronts . . . as soon as we start doing this we will turn into medical, margins will go down”); CX3419 at -001 (PDCO00021240) (referring to GPOs in medical as a “necessary evil”); CX3115 at -001 (PDCO00165969) (“Medical doctors screwed up their industry and [GPOs] should stay out of ours.”); CX1149 at -002 (BDS00181723) (“GPOs are what [ruined] the medical supply business . . . [i]f this door is ever opened in dental it[’]s all over for all of us.”).

¹² { [REDACTED] }

¹³ See, e.g., { [REDACTED]

[REDACTED]

¹⁴ { [REDACTED]

¹⁵ { [REDACTED]

[REDACTED] }

¹⁶ See CX6027 (Communications Summary Exhibit).

¹⁷ { [REDACTED]

[REDACTED] } CX0311 (Sullivan IH Tr. 260:25-263:24, 269:2-8); CX8025 (Sullivan Dep. Tr. 344:15-345:13).

¹⁸ See, e.g., CX2062 at -001 (Henry Schein-000176969) (“[U]nless you have some ‘ownership’ of your practices Henry Schein considers your business model as a Buying Group, and we no longer participate in Buying Groups.”).

terminating existing buying group relationships.¹⁹ Schein also repeatedly instructed its salesforce not to do business with buying groups.²⁰ { [REDACTED]

[REDACTED] }²¹ Throughout the conspiracy (at least 2012 through 2015), Cohen and Sullivan—and other Benco and Schein executives—continued to discuss potential buying group customers, particularly when Benco suspected that Schein might be discounting to buying groups again.²²

III. PATTERSON: “WE’VE SIGNED AN AGREEMENT THAT WE WON’T WORK WITH GPO’S”

In February 2013, Benco learned that Patterson was planning to discount to the buying group New Mexico Dental Cooperative (“NMDC”). As soon as Cohen received this news, he wrote, “*We don’t recognize buying groups . . . I’ll reach out to my counterpart at Patterson to let him know what’s going on in NM.*”²³ Within five minutes, he emailed Patterson’s President, Paul Guggenheim:

*Just wanted to let you know about some noise I’ve picked up from New Mexico. FYI: Our policy at Benco is that we do not recognize, work with, or offer discounts to buying groups (though we do work with corporate accounts) and our team understands that policy.*²⁴

¹⁹ See, e.g., CX2107 at -002 (Henry Schein-000104677) (“We ended the Smile Source relationship when they became more of a GPO th[a]n a ‘management company.’”); CX2216 at -001 (Henry Schein-000034704) (“GPO’s are popping up like crazy so it is nice when we can shut one down . . .”).

²⁰ See, e.g., CX0170 at -001 (Henry Schein-000045132) (discounting to a buying group was “against what Tim Sullivan has directed us to do in regards to supporting Buying groups”); CX0169 at -001 (Henry Schein-000075749) (“The [Dental Co-op of Utah, a buying group] is exactly what we are trying to avoid.”); [REDACTED]

[REDACTED] } CX0174 at -001 (Henry Schein-000011439) (“From Tim [Sullivan], HSD does not want to enter the GPO world.”).

²¹ See { [REDACTED]

²² See CX6027 (Communications Summary Exhibit).

²³ CX0055 at -001 (BDS00028207) (emphasis added).

²⁴ CX0056 at -001 (BDS-FTC00009442) (emphasis added).

{ [REDACTED] }
 [REDACTED]
 [REDACTED] }²⁵

At this time, { [REDACTED] }
 [REDACTED] }²⁶ Guggenheim immediately forwarded Cohen’s email to his heads of sales (Dave Misiak) and marketing (Tim Rogan).²⁷ A few hours later, Guggenheim (Patterson) replied to Cohen (Benco): *“Thanks for the heads up. I’ll investigate the situation. We feel the same way about these.”*²⁸ { [REDACTED] }

[REDACTED] }²⁹ Just three days later, Patterson informed NMDC it would not be partnering with the buying group.³⁰

Respondents’ own documents confirm their understanding that they were not alone in adhering to a no-buying group policy. For example, in August 2013, Patterson’s VP of Marketing Tim Rogan announced, *“We don’t need GPO’s in the dental business. Schein, Benco, and Patterson have always said no. I believe it is our duty to uphold this and protect this great*

²⁵ { [REDACTED] } (emphasis added).

²⁶ { [REDACTED] }

²⁷ CX0091 at -001 (PDCO00010908).

²⁸ CX0090 at -001 (PDCO00010912) (emphasis added).

²⁹ { [REDACTED] }

³⁰ Citing CX4090, Patterson argues that a local branch manager ended the relationship with NMDC the day before the Cohen-Guggenheim exchange. (Resp. Br. at 16.) That is not what CX4090 reveals. On February 7, 2013, the branch manager suggested cancelling a scheduled meeting with NMDC, but stated his intention to schedule a different meeting, as well as to continue partnering with NMDC: *“This has the opportunity to be huge and is moving fast and I want to make sure we are doing this right from the beginning. . . . I am hoping Patterson can be a partner you trust and that will always do the right thing for you. . . . I definitely want to keep this moving forward.”* CX4090 at -001-002 (PDCO00151225). The parties agreed to a dinner meeting scheduled for February 11. CX8035 (Mason Dep. Tr. 53:24-54:2). The Cohen-Guggenheim exchange occurred on February 8. With no contact since the February 7 email, Dr. Mason was surprised to discover at the dinner meeting that Patterson refused to work with NMDC, as NMDC was *“well on our way”* to partnering with Patterson. *Id.* 51:14-16, 52:3-6, 53:24-55:19.

industry.”³¹ In June 2014, Neal McFadden, Patterson’s President of Special Markets, sent a text message to a former colleague who was working for a buying group: “[W]e’ve signed an agreement that we won’t work with GPO’s.”³² On May 19, 2015, Benco’s Patrick Ryan turned down Dentistry Unchained, boasting internally: “The best part about calling these [buying groups] is I already KNOW that Patterson and Schein have said NO.”³³ Two months later, Ryan reassured a Benco sales representative who feared losing a \$1 million account to a buying group, saying, “We don’t allow [volume discount] pricing unless there is common ownership. Neither Schein nor Patterson do either.”³⁴ And when Benco was concerned that the agreement might collapse upon news that another distributor, Burkhart, was discounting to buying groups, Ryan implored Cohen: “CHUCK – maybe what you should do is make sure you tell Tim [Sullivan] and Paul [Guggenheim] to hold their positions as we are.”³⁵

A. Patterson Instructs Its Salesforce Not to Do Business with Buying Groups

Following the February 2013 communications with Benco, Patterson executives repeatedly instructed its salesforce not to do business with buying groups:

Misiak: “These co op [sic] situations can be very challenging so stay connected. You may have to help [Patterson branch manager] at the meeting communicate our position verbally to the reps. . . . When I get these calls directly I politely say that I appreciate the opportunity, but currently we do [not] participate with group purchasing organizations.”³⁶

³¹ CX0106 at -001 (PDCO00027980) (emphasis added).

³² CX0164 at -002 (PDCO00062511) (emphasis added).

³³ CX0012 at -001 (BDS-FTC00003405) (emphasis added).

³⁴ CX0011 at -003 (BDS-FTC00014984) (emphasis added).

³⁵ CX0023 at -001 (BDS-FTC00009881) (emphasis added). Notably, this email followed Benco VP of Sales’ report that he spoke to Jeff Reece (Burkhart) “at length . . . about buying groups. JEFF DOES NOT GET IT!!!” *Id.* This was the first of three unsuccessful attempts by Benco to convince Burkhart to stop discounting to buying groups. { [REDACTED] }.

³⁶ CX0093 at -001 (PDCO00051886); *see also* CX0092 at -001 (PDCO00051878) (“I’ve coached Anthony on how to stay out of this [co-op RFP process] with grace.”).

Misiak: “My guidance has been to politely say no [to buying groups] and w[ea]ther the storm with these.”³⁷

Rogan: “We don’t sell to buying groups. Let’s talk live.”³⁸

McFadden: “As a rule we are trying our best to steer clear of all buying groups.”³⁹

McFadden: “For now – I am electing to not participate with [buying groups] – we have said no to several already”⁴⁰

McFadden: “[D]oes he own all these offices—if not then he is a GPO—we don’t deal with GPOs.”⁴¹

Not only was the no-buying groups guidance consistently delivered, Patterson’s salesforce believed that guidance to be “clear.”⁴² As a result, Patterson routinely rejected buying groups.⁴³ For example, in 2013, Smile Source sought a partnership with Patterson multiple

³⁷ CX3074 at -001 (PDCO00021091); *see also* CX3115 at -001 (PDCO00165969) (“Different guy, same answer NO. We do not recognize these groups nor do we want to do business with them.”).

³⁸ CX3168 at -001 (PDCO00028046).

³⁹ CX3128 at -001 (PDCO00026075).

⁴⁰ CX3004 at -001 (PDCO00025893).

⁴¹ CX3045 at -001 (PDCO00026110).

⁴² *See, e.g.*, CX3342 at -001 (PDCO00026303) (“I wanted to make sure that GPO’s are not something we as a company are choosing to partner with at this point. I know Dave [Misiak] has been clear about this in the past and I wanted to verify that this still is the case.”); *see also* CX3084 at -001 (PDCO00029940) (“Patterson Corporate has concluded ‘we will NOT be entertaining [or] participating in any buying group of this nature.’”).

⁴³ *See, e.g.*, CX3057 at -001-002 (PDCO00050312) (“I think we just say the company has chosen not to participate in GPOs at this time.”); CX3121 at -001 (PDCO00021242) (“I will respond to Dr[.] Graham . . . with a polite pass on this request [from] a co op buying group”); CX3059 at -001 (PDCO00055012) (“[W]e do not have a separate discount program for group buyers.”); CX3341 at -001 (PDCO00027048) (“I was wondering if this is a buying group? . . . We have taken a stance to protect both the territory rep and the branches and not participate.”); [REDACTED]

Patterson claims that it did business with two buying groups—Orthosynetics and Jackson Health. (Resp. Br. at 13.) Neither of these organizations are buying groups. Orthosynetics is a management service organization (“MSO”) for orthodontists. Patterson’s Statement of Facts cites a document that confirms Orthosynetics is not a buying group. *See, e.g.*, Resp. SOF ¶ 65 [REDACTED]. Jackson Health is an academic medical system in Miami-Dade County. Jackson Health System Website, available at <http://www.jacksonhealth.org/about.asp> (last visited Sept. 23, 2018).

times.⁴⁴ Despite Smile Source’s growth and its members’ \$14 million dental supplies spend, Patterson declined the opportunity because Smile Source was a buying group.⁴⁵ In 2015, a Patterson Special Markets territory manager believed that Dentistry Unchained’s “vision and goals . . . align[ed] with [Patterson’s] values of Patient Experience/Practice Lifestyle.”⁴⁶ Despite a promise of converting 80% of its 226 members to Patterson, the Territory Manager was “honest with [Dentistry Unchained] that [Patterson has] not elected to participate [with buying groups].”⁴⁷

In 2013, Patterson created a Special Markets division to manage large accounts. Neal McFadden, President of Special Markets, { [REDACTED] }⁴⁸ McFadden wanted to explore working with buying groups;⁴⁹ { [REDACTED] }⁵⁰ To ensure compliance with this strategy, Patterson sent a memo to all branches explaining that Special Markets would not work with buying groups.⁵¹

B. Patterson’s Course Reversal on Atlantic Dental Care

Atlantic Dental Care (“ADC”) approached Patterson’s Chesapeake, Virginia branch manager seeking a bid in February 2013. The branch manager feared Patterson would lose

⁴⁴ See, e.g., CX0147 at -001 (PDCO00021163); CX0297 at -001 (PDCO00021213).

⁴⁵ See CX3009 at -001 (PDCO00027968) (“[W]e have said no to smile source. It is a direct competition [sic] to our sales reps. They are [a] buying club . . .”). Notably, Benco and Schein also refused to do business with Smile Source during this period. See, e.g., CX0019 at -001 (BDS-FTC00002808) (Benco’s Patrick Ryan reporting that he and Schein’s Randy Foley specifically talked about Smile Source, allowing him to arrive at the ominous pronouncement: “Buh-bye”).

⁴⁶ CX3006 at -001 (PDCO00026351).

⁴⁷ *Id.* at -001-002. In response to the same request from Dentistry Unchained, Benco’s Ryan bragged: “The best part about calling these guys is I already KNOW that Patterson and Schein have said NO.” CX0012 at -001 (BDS-FTC00003405).

⁴⁸ { [REDACTED] }

⁴⁹ { [REDACTED] }; see also CX0106 at -001 (PDCO00027980) (“I know in the past we have said no. Is it worth it to explore GPO?????”).

⁵⁰ { [REDACTED] }

⁵¹ CX0158 at -002 (PDCO00031277).

customers and sales if it did not win the bid.⁵² Misiak, however, directed the region to reject ADC, saying: “[C]urrently we do [not] participate with group purchasing organizations. . . . Confidential and not for discussion . . . [.] our 2 largest competitors stay out of these as well. If you hear differently and have specific proof please send that to me.”⁵³ At the same time, Misiak emailed Guggenheim: “I’m concerned that Schein and Benco sneak into these co-op bids and deny it.”⁵⁴

Upon learning that Benco bid on ADC and won the account, Guggenheim (Patterson) emailed Cohen (Benco) in June 2013 about the seeming departure from Benco’s prior assurance that it would not pursue buying groups. Notably, Guggenheim (Patterson) replied to Cohen’s (Benco) February 2013 email where Cohen had communicated Benco’s no-buying group policy, and asked:

Reflecting back on our conversation earlier this year, could you shed some light on your business agreement with Atlantic Dental Care? . . . I’m wondering if your position on buying groups is still as you articulated back in February? Let me know your thoughts. . . . Sometimes these things grow legs without our awareness.⁵⁵

Cohen (Benco) replied with a lengthy email reaffirming, “As we’ve discussed, we don’t recognize buying Groups.”⁵⁶ Guggenheim (Patterson) responded, “Just wanted to clarify where you guys stand.”⁵⁷ And then { [REDACTED]

⁵² CX0093 at -001 (PDCO00051886).

⁵³ *Id.* (emphasis added).

⁵⁴ CX0092 at -001 (PDCO00051878) (emphasis added).

⁵⁵ CX0095 at -001 (PDCO00010955).

⁵⁶ CX3412 at -001 (PDCO00010959) (emphasis added).

⁵⁷ CX3301 at -001 (PATTERSON0001594).

[REDACTED] }⁵⁸ [REDACTED]

[REDACTED]⁵⁹

IV. TEXAS STATE DENTAL ASSOCIATION BUYING GROUP

In October 2013, the Texas Dental Association (“TDA”) created the TDAPerks buying group. Respondents communicated with one another about how to respond to this new buying group threat.⁶⁰ They knew that TDA depended on Respondents’ attendance at the annual TDA trade show as a large source of income.⁶¹

In January 2014, Patterson’s Misiak and Schein VP & General Manager Dave Steck had a 14-minute phone call about attendance at the upcoming TDA trade show.⁶² Steck (Schein) emailed Misiak (Patterson) two weeks later saying, *“I’ll be calling you to let you know about our decision on the matter we recently discussed in the next couple of days,”* referring to a decision on whether to pull out of the TDA annual meeting.⁶³ Misiak (Patterson) forwarded Steck’s (Schein) email to his colleague Tim Rogan (Patterson): *“He already told me they were out. Full*

⁵⁸ { [REDACTED] }

⁵⁹ [REDACTED]

⁶⁰ See, e.g., CX0110 at -004 (PDCO 00028064) (Patterson “discussed this TDAPerks site . . . with our dealer competitors at the local San Antonio & Houston level.”); CX1289 at -001 (BDS00809245) (Benco’s Texas regional manager discussing a call with his Patterson counterpart: “[l]ast time I spoke with him, about three weeks ago, they were out, but considering options.”); { [REDACTED]

⁶¹ CX2306 at -003 (Henry Schein-000005422) (“The bulk of their revenue comes from their state meetings. Without exhibitors though, they have no meeting and lose huge revenue generator.”).

⁶² CX6027 (Communications Summary Exhibit).

⁶³ CX0112 at -001 (PDCO00013330) (emphasis added). Prior to this email, Schein emails confirm active discussions between Schein and Patterson regarding a response to TDAPerks. See CX2884 at -001 (HS-00016523) (Steck: “I have to get back to PDCO on whether or not we are attending the TDA.”).

blown!”⁶⁴ Rogan responded: “*That sucks. You should call him,*” and suggested a “[t]hought I could trust you’ type of conversation.”⁶⁵

A few weeks before TDA’s annual meeting, Cohen (Benco) emailed Sullivan (Schein) and Guggenheim (Patterson) on the same email chain, forwarding an article promoting TDAPerks.⁶⁶ Cohen (Benco) and Sullivan (Schein) spoke by phone that day, and Guggenheim (Patterson) created a calendar entry to call Cohen (Benco) about the article.⁶⁷

V. POST-CONSPIRACY

The FTC began its investigation into Respondents’ agreement in July 2015. The Texas Attorney General settled related charges with Benco in April 2015 and Schein in August 2017. In 2016, Patterson’s stance changed; it began to pursue buying groups.⁶⁸ For example, { [REDACTED] }⁶⁹ And less than a year after it refused Dentistry Unchained, Patterson offered discounted pricing, reasoning: “[W]e must start stretching—This seems to be the only way for now to insert ourselves into the mix with these GPO’s.”⁷⁰ Indeed, Patterson provided discounts to Dentistry Unchained on a non-exclusive basis, knowing it would have to share preferred vendor status and sales with Benco.⁷¹ Patterson’s no-buying group posture changed at the same time that Benco and Schein began discounting to buying groups.

⁶⁴ CX0112 at -001 (PDCO00013330) (emphasis added).

⁶⁵ *Id.* (emphasis added). Schein continued to weigh internally whether to withdraw from TDA’s annual meeting. *See* CX2106 at -001 (Henry Schein-000165416) (“The good thing here is that PDCO, Benco and us are on the same page regarding these buying groups/consortiums. Checking to see if we should join the TDA boycott.”).

⁶⁶ CX1062 at -001 (BDS-FTC00001789).

⁶⁷ CX6027 (Communications Summary Exhibit); CX0101 at -001 (PDCO00011057).

⁶⁸ *See* CX3265 at -001 (PDCO00175497) (“Normally I would . . . stat[e] that we do not participate in buying groups for multiple reasons Given our recent discussion with Smile Source are we looking at talking with Buying Groups now?”).

⁶⁹ { [REDACTED] }

⁷⁰ CX3018 at -001-002 (PDCO00059919).

⁷¹ CX3103 at -001 (PDCO00170921).

LEGAL STANDARD

A motion for summary decision under Commission Rule of Practice 3.24(a)(2), the analogue to FRCP 56, should be denied where there is a genuine issue of material fact to be resolved at trial.⁷² Here, the Commission must construe the evidence and make any inferences in the light most favorable to Complaint Counsel.⁷³ The evidence must be considered as a whole to determine whether it was more likely than not that Respondents conspired not to discount to or compete for buying groups.⁷⁴ And, the Commission should be wary of falling into the “trap” of presuming that “if no single item of evidence presented by the plaintiff points unequivocally to conspiracy, the evidence as a whole cannot defeat summary judgment.”⁷⁵

ARGUMENT

I. DIRECT AND UNAMBIGUOUS EVIDENCE THAT PATTERSON PARTICIPATED IN RESPONDENTS’ ILLEGAL AGREEMENT CREATES A GENUINE ISSUE FOR TRIAL

An agreement that violates Section 1 of the Sherman Act⁷⁶ requires “a conscious commitment to a common scheme designed to achieve an unlawful objective.”⁷⁷ Express agreement is not required, and “any conformance to an agreed or contemplated pattern of

⁷² *In the Matter of Polygram Holding, Inc.*, Docket No. 9298, 2002 FTC LEXIS 137, at *1-2 (ALJ Op. Feb. 26, 2002), *aff’d by* 2003 FTC LEXIS 120 (Comm’n Op. July 24, 2003), *and Polygram Holding, Inc. v. FTC*, 416 F.3d 29 (D.C. Cir. 2005).

⁷³ *Id.*, 2002 FTC LEXIS 137, at *4-5 (citing *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986)).

⁷⁴ *In re High Fructose Corn Syrup Antitrust Litig.*, 295 F.3d 651, 655 (7th Cir. 2002).

⁷⁵ *Id.* (plaintiff’s absence of sworn testimony to rebut defendants’ sworn conspiracy denials does not dictate summary judgment, especially where defendants’ self-serving testimony is inconsistent with the overall evidence of conspiracy).

⁷⁶ Section 5 of the FTC Act prohibits unfair methods of competition, including conduct that violates Section 1 of the Sherman Act. A Section 1 violation requires proof of (1) a contract, combination, or conspiracy among two or more separate entities that (2) unreasonably restrains trade. *Realcomp II, Ltd. v. FTC*, 635 F.3d 815, 827 (6th Cir. 2011).

⁷⁷ *Monsanto Co. v. Spray-Rite Serv. Corp.*, 465 U.S. 752, 764 (1984); *see also FTC v. Lukens Steel Co.*, 454 F. Supp. 1182, 1189 (D.D.C. 1978) (“An inference of concerted action is warranted where the totality of circumstances reveals a “unity of purpose or a common design and understanding, or a meeting of the minds in an unlawful arrangement.”).

conduct will warrant an inference of conspiracy . . . [a]n exchange of words is not required . . . even a lack of action, may be enough.”⁷⁸ A “tacit” agreement is just as much an antitrust violation as an “express” agreement.⁷⁹ In evaluating an alleged antitrust conspiracy, courts must consider the “totality of the evidence,”⁸⁰ which may include direct or circumstantial evidence, or a combination of the two.

Patterson’s arguments that Complaint Counsel lacks evidence of an agreement are unavailing. Patterson relies on inapposite cases involving allegations of solely parallel conduct, and lacking direct evidence of agreement or coordination among high-level executives;⁸¹ whereas Complaint Counsel’s case rests on direct and unambiguous conspiracy evidence, as well as corroborating plus-factor evidence, from Patterson’s senior executives. Claims that Patterson acted in its own economic interest do not make its illegal agreement legal;⁸² moreover, the evidence negates these claims. Finally, Patterson’s argument that Complaint Counsel must produce evidence by “affidavit or deposition” to avoid summary judgment is contrary to FRCP 56. This fundamental precept was applied in *Celotex Corp. v. Catrett*, where the Supreme Court confirmed that non-moving parties may use any part of the evidentiary record, “except the mere

⁷⁸ *Esco Corp. v. United States*, 340 F.2d 1000, 1008 (9th Cir. 1965).

⁷⁹ *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 553 (2007).

⁸⁰ *In re Publ’n Paper Antitrust Litig.*, 690 F.3d 51, 64 (2d Cir. 2012).

⁸¹ Patterson relies heavily on *City of Moundridge v. Exxon Mobil Corp.*, 429 F. Supp. 2d 117 (D.D.C. 2006), which was not a summary judgment decision. In a subsequent opinion, the court granted summary judgment because plaintiffs could not show that defendants discussed pricing or made pricing decisions based on information exchanges. *City of Moundridge v. Exxon Mobil Corp.*, No. 04-940, 2009 WL 5385975, at *9 (D.D.C. Sept. 30, 2009); see also *In re Baby Food Antitrust Litig.*, 166 F.3d 112, 137 (3d Cir. 1999) (no evidence of communications among executives with price-fixing authority); *Williamson Oil Co. v. Philip Morris USA*, 346 F.3d 1287, 1304 (11th Cir. 2003) (noting the “lack of direct evidence of a price fixing conspiracy”); *Blomkest Fertilizer, Inc. v. Potash Corp. of Saskatchewan*, 203 F.3d 1028, 1035 (8th Cir. 2000) (only inter-firm communications were calls after prices were announced).

⁸² *United States v. Apple Inc.*, 791 F.3d 290, 317-18 (2d Cir. 2015) (“[T]he fact that [defendant’s] conduct was in its own economic interest in no way undermines the inference that it entered an agreement to raise . . . prices.”).

pleadings themselves,” to oppose summary judgment.⁸³ In any event, Patterson’s self-serving testimony only illustrates the presence of disputed material facts ripe for trial.

A. Direct and Unambiguous Evidence That Patterson Participated in a *Per Se* Price-Fixing Agreement Creates Disputed Issues of Fact for Trial

Substantial evidence demonstrates Patterson participated in a price-fixing conspiracy not to compete for or discount to buying groups. At the forefront are communications among Respondents exchanging mutual assurances that they would not compete for buying groups. Patterson acted in reliance on these assurances: it refused to bid on buying groups and confronted competitors it suspected of cheating. Taken together, this evidence of an agreement creates triable issues of fact that preclude summary decision.

1. Patterson Reached a Meeting of the Minds on Buying Groups

Prior to February 2013, Patterson was { [REDACTED] }⁸⁴ Upon learning about NMDC, Cohen’s (Benco) February 2013 email invited Patterson to join an agreement not to “recognize, work with, or offer discounts to buying groups,” while specifically excluding corporate groups from the agreement’s purview.⁸⁵ { [REDACTED] }⁸⁶ A few hours later, Guggenheim (Patterson) accepted Cohen’s (Benco) invitation to join the conspiracy: “we feel the same way about these.”⁸⁷ Indeed, { [REDACTED] }

⁸³ 477 U.S. 317, 324 (1986); Fed R. Civ. P. 56(c)(1)(A) (listing the types of evidence that may be used to combat a motion for summary judgment: “depositions, documents, electronically stored information, affidavits or declarations, stipulations . . . , admissions, interrogatory answers, or other materials”).

⁸⁴ { [REDACTED] }

⁸⁵ CX0056 at -001 (BDS-FTC00009442).

⁸⁶ { [REDACTED] }

⁸⁷ CX0090 at -001 (PDCO00010912) (emphasis added).

[REDACTED] }⁸⁸ Within three days, Patterson's potential partnership with NMDC was dead.⁸⁹ As a Patterson executive later confirmed: "[W]e've signed an agreement that we won't work with GPO's."⁹⁰

In *In re Plywood Antitrust Litigation*, communications among competing high-level executives regarding their pricing policies constituted direct evidence of an agreement.⁹¹ Additionally, in *In re High Fructose Corn Syrup Antitrust Litigation*, the Seventh Circuit found evidence of "an explicit agreement to fix prices" after rival manufacturers admitted to having an "understanding" in the industry not to undercut competitors' prices for high fructose corn syrup.⁹² Similarly, the evidence here is sufficient to establish an agreement where Benco and Patterson's senior leaders discussed their buying group pricing policies, followed by another Patterson senior executive admitting to an agreement not to work with buying groups. This direct evidence creates an issue of fact ripe for trial.⁹³

2. Patterson Complied With the Agreement Because of its Conscious Commitment to Benco and Schein

Following this meeting of the minds, Patterson conformed its conduct to, and acted in reliance on, the agreement. In *United States v. Foley*, the Fourth Circuit found tacit agreement among real estate brokers to raise commissions from 6% to 7%.⁹⁴ Foley announced to his

⁸⁸ { [REDACTED] }

⁸⁹ See *supra* note 30.

⁹⁰ CX0164 at -002 (PDCO00062511). { [REDACTED] }

Moreover, this explanation creates a triable issue of fact.

⁹¹ 655 F.2d 627, 634 (5th Cir. 1981).

⁹² 295 F.3d 651, 662-63 (7th Cir. 2002).

⁹³ *In re Publ'n Paper Antitrust Litig.*, 690 F.3d 51, 63 (2d Cir. 2012) ("[U]nambiguous evidence of an agreement [such as] 'an admission by the defendants that they agreed to fix their prices is all the proof a plaintiff needs'" to establish a Section 1 violation.) (citation omitted).

⁹⁴ 598 F.2d 1323, 1327, 1332, 1334 (4th Cir. 1979).

competitors that his firm would raise commissions, and claimed not to “care what the others did.”⁹⁵ Following this announcement, each co-conspirator raised its commissions to 7% for a substantial number of (though not all) listings.⁹⁶ Like the *Foley* co-conspirators, Patterson acted on the agreement.

Despite NMDC believing it was close to partnering with Patterson, after the Cohen-Guggenheim exchange, Patterson refused to provide discounted pricing.⁹⁷ Patterson’s refusal to bid for ADC was also pursuant to a conscious commitment to Benco and Schein. Misiak instructed the salesforce not to bid, relying on assurances that Benco and Schein likewise would not bid: “Confidential and not for discussion . . . [.] our 2 largest competitors stay out of these as well. If you hear differently and have specific proof please send that to me.”⁹⁸ Similarly, in August 2013, Rogan responded to a buying group inquiry: “We don’t need GPO’s in the dental business. Schein, Benco, and Patterson have always said no.”⁹⁹ Just as the *Foley* co-conspirators acted consistent with their agreement, Patterson refused to compete for buying groups during the conspiracy consistent with its agreement.¹⁰⁰ These actions motivated by the conspiracy are unambiguous evidence of Respondents’ illegal agreement and a factual dispute appropriate for trial.

3. Patterson Monitored its Co-Conspirators’ Compliance With the Agreement

Patterson actively monitored and enforced cheating on Respondents’ no-buying group agreement. In *United States v. Beaver*, the Seventh Circuit refused to overturn a price-fixing conviction where the co-conspirators enforced their agreement to limit discounts by confronting

⁹⁵ *Id.* at 1332.

⁹⁶ *Id.*

⁹⁷ CX8035 (Mason Dep. Tr. 51:14-16, 52:3-6, 53:23-55:19).

⁹⁸ CX0093 at -001 (PDCO00051886).

⁹⁹ CX0106 at -001 (PDCO00027980).

¹⁰⁰ *See supra* note 43.

competitors they believed were cheating.¹⁰¹ Similarly, in *Foley*, the Fourth Circuit found compelling evidence of agreement where real estate brokers confronted each other when they discovered commissions below the agreed-upon rate.¹⁰² As in *Beaver* and *Foley*, Guggenheim (Patterson) confronted Cohen (Benco) about cheating on the ADC account.¹⁰³ { [REDACTED] }¹⁰⁴ Likewise, Misiak worried about the other Respondents cheating on the agreement: “I’m concerned that Schein and Benco sneak into these co-op bids and deny it.”¹⁰⁵ He asked the salesforce to inform him if they discovered Schein or Benco working with buying groups.¹⁰⁶ In the same vein, fearing the conspiracy might fall apart in late 2013, Benco’s Ryan urged Cohen: “CHUCK - - maybe what you should do is make sure you tell Tim [Sullivan] and Paul [Guggenheim] to hold their positions as we are.”¹⁰⁷ These concerns about cheating and the conspiracy’s collapse are direct evidence of agreement, and present a genuine issue for a factfinder.

II. PLUS-FACTOR EVIDENCE CONFIRMS PATTERSON PARTICIPATED IN RESPONDENTS’ ILLEGAL AGREEMENT AND CREATES A GENUINE ISSUE FOR TRIAL

Plus factors are required when plaintiffs rely solely on parallel conduct to prove an agreement.¹⁰⁸ Here, direct and unambiguous evidence substantiates Patterson’s role in

¹⁰¹ 515 F.3d 730, 738 (7th Cir. 2008).

¹⁰² 598 F.2d at 1332, 1334.

¹⁰³ CX0095 at -001 (PDCO00010955).

¹⁰⁴ { [REDACTED] }

¹⁰⁵ CX0092 at -001 (PDCO00051878).

¹⁰⁶ CX0093 at -001 (PDCO 00051886).

¹⁰⁷ CX0023 at -001 (BDS-FTC00009881). { [REDACTED] }

{ [REDACTED] } demonstrating Respondents’ conscious commitment to a common course of conduct. { [REDACTED] }

¹⁰⁸ *Petruzzi’s IGA Supermkts. v. Darling-Del. Co.*, 998 F.2d 1224, 1232 (3d Cir. 1993).

Respondents' conspiracy; plus-factor evidence is unnecessary.¹⁰⁹ Nonetheless, substantial plus-factor evidence corroborates Patterson's involvement in the illegal agreement and creates a genuine dispute for trial.

The presence of plus factors "tends to ensure that courts punish 'concerted action'—an actual agreement—instead of the 'unilateral, independent conduct of competitors.'"¹¹⁰ "The most relevant plus factors include: (1) a motive to conspire . . . ; (2) noncompetitive behavior, i.e., evidence that the defendants acted contrary to their economic self-interest; and (3) evidence of a traditional conspiracy, such as a high level of inter-firm communications that would suggest that the defendants consciously agreed not to compete."¹¹¹ Evidence in this case satisfies each of these categories, as well as others (e.g., changes in conduct). Some of this evidence taken alone is rich enough to support a finding of agreement. And when all the evidence is considered together, as courts must do,¹¹² there is ample support to find that Patterson joined Respondents' no-buying group agreement.

A. Patterson's Motive to Conspire

Buying groups threatened to drive down Respondents' margins, while simultaneously providing an opening for Respondents to gain sales at each other's expense.¹¹³ As such, Patterson

¹⁰⁹ *See id.* at 1233 ("[I]f a plaintiff provided direct evidence of a conspiracy, then the strictures of *Matsushita* did not apply . . . for no inferences are required from direct evidence to establish a fact and thus a court need not be concerned about the reasonableness of the inferences to be drawn from such evidence.") (internal citations omitted).

¹¹⁰ *In re Flat Glass Antitrust Litig.*, 385 F.3d 350, 360 (3d Cir. 2004).

¹¹¹ *In re Ethylene Propylene Diene Monomer (EPDM) Antitrust Litig.*, 681 F. Supp. 2d 141, 166-67 (D. Conn. 2009).

¹¹² *Cont'l Ore Co. v. Union Carbide & Carbon Corp.*, 370 U.S. 690, 699 (1962), *superseded by statute on other grounds*, Foreign Trade Antitrust Improvement Act of 1982, 15 U.S.C. § 6a ("[P]laintiffs should be given the full benefit of their proof without tightly compartmentalizing the various factual components and wiping the slate clean after scrutiny of each. The character and effect of a conspiracy are not to be judged by dismembering it and viewing its separate parts, but only by looking at it as a whole.") (internal ellipses omitted).

¹¹³ *See* { [REDACTED] }

saw buying groups as both a threat and an opportunity, providing it a motive to conspire with its biggest competitors.¹¹⁴ Courts recognize motive to conspire as a crucial plus factor. In *Toys “R” Us v. FTC*, the advent of low-priced warehouse stores threatened Toys “R” Us, which orchestrated a boycott among toy manufacturers, despite warehouse stores being a profitable sales channel for the manufacturers.¹¹⁵ This motive to conspire was instructive in finding an agreement.¹¹⁶

Like the threat from warehouse stores, Patterson viewed buying groups as a threat.¹¹⁷ The threat was particularly acute because buying groups were growing in popularity and could disrupt Patterson’s largest and most profitable customer segment.¹¹⁸ And while buying groups were a threat, they also represented a profitable customer segment, driving Patterson to monitor for potential cheating.¹¹⁹ Patterson’s motive to act collectively against the rise of buying groups is an important plus factor that supports its part in the illegal agreement, and creates an issue for trial.

¹¹⁴ *Id.* ¶¶ 333, 339.

¹¹⁵ 221 F.3d 928, 931-32, 935-36 (7th Cir. 2000).

¹¹⁶ *Id.* at 936; *see also Interstate Circuit, Inc. v. United States*, 306 U.S. 208, 222 (1939) (noting a “strong motive for concerted action” where film distributor defendants sought to increase ticket prices for first- and second-run theaters, but needed agreement by all distributors because they were otherwise actively competing with one another).

¹¹⁷ *See, e.g.,* [REDACTED]

see also

¹¹⁸ *See* [REDACTED]

(Resp. Br. at

5) (“Even today, . . . solo and small practices account for the vast majority of Patterson’s customer base.”).

¹¹⁹ [REDACTED] } *see supra* § I(A)(3) at 17-18.

B. Patterson Acted Against Its Economic Self-Interest

Patterson refused to deal with buying groups against its unilateral self-interest.

“Ordinarily, [actions against self-interest] will consistently tend to exclude the likelihood of independent conduct.”¹²⁰ In *Petruzzi’s IGA Supermarkets v. Darling-Delaware Co.*, the defendants’ failure to bid on each other’s accounts was indicative of an agreement, as not competing was clearly against their self-interest.¹²¹ “[A]bsent an agreement it does not make economic sense for defendants not to bid on an account, unless they have some problem like capacity or they know that the existing price is too high.”¹²² Similar to the *Petruzzi’s* defendants, not discounting to buying groups caused Patterson to lose customers and sales and was against its self-interest in ways not attributable to independent conduct.¹²³ In a competitive market, each player has an incentive to take customers and market share.¹²⁴ Buying groups offered Patterson the opportunity to secure multiple customers and garner higher market share with one efficient

¹²⁰ *Re/Max Int’l v. Realty One*, 173 F.3d 995, 1009 (6th Cir. 1999).

¹²¹ 998 F.2d 1224, 1244-46 (3d Cir. 1993).

¹²² *Id.* at 1245; *see also Toys “R” Us*, 221 F.3d at 935 (calling it is “suspicious” to deprive oneself of a profitable sales outlet).

¹²³ *See, e.g.,* [REDACTED]

[REDACTED] CX3089 at -001-002 (PDCO00021959) (Patterson losing “high quality / high producing clients” to Kois, “the cut is deep to us all,” “many of our best doctors are Kois followers, so I think this is a precarious situation for us as a company”); CX0164 at -001 (PDCO00062511) (“Unfortunately [Smile Source is] growing and getting the attention of some big hitters of mine and some Birmingham accounts. And it’s spreading into the Atl[anta] market too.”); [REDACTED]

[REDACTED] } CX0093 at -001 (PDCO00051886) (noting a concern that Patterson may lose “a big chunk of business” by not bidding on a GPO RFP); CX3043 at -001 (PDCO00019914) (Re: Smile Source: “Don’t underestimate the impact they can have . . . scary. . . I totally agree. We’re already suffering under that Synergy Dental Partners buying group here and Smile Source will only make it worse.”).

¹²⁴ *In re Flat Glass*, 385 F.3d at 360-61 (“Evidence that the defendant acted contrary to its interests means evidence of conduct that would be irrational assuming that the defendant operated in a competitive market. In a competitive industry, for example, a firm would cut its price with the hope of increasing its market share if its competitors were setting price above marginal costs.”); *see also* [REDACTED]

contract.¹²⁵ Indeed, after the conspiracy, Patterson changed its strategy to pursue buying groups. Yet, during the conspiracy period, testimony and documentary evidence,¹²⁶ as well as Dr. Marshall's conclusions,¹²⁷ confirm that Patterson lost sales through its adherence to the no-buying group agreement.

It was also against Patterson's self-interest to discuss its bidding strategies and to reveal its no-buying group policy with its biggest competitors.¹²⁸ In *Ross v. Bank of America*, credit card defendants "arguably acted against their unilateral interests by . . . providing competitors with certain sensitive business information" about their plans to change contract arbitration clauses.¹²⁹ The *Ross* court identified such evidence as a plus factor supporting an agreement. Here, Patterson disclosed its no-buying group policy to its competitors,¹³⁰ as well as its planned competitive response to specific buying groups.¹³¹

¹²⁵ See, e.g., CX0321 (Kois, Jr. IH Tr. 139:20-23) (Kois brought new customers to Burkhardt); CX0149 at -001 (PDCO00021432) (Smile Source has "seen a 93% conversion to [its] vendors and ha[s] been able to prove that [it] can shift share.").

¹²⁶ See *supra* note 123.

¹²⁷ { [REDACTED] }

¹²⁸ See *In re Coordinated Pretrial Proceedings in Petrol. Prods. Antitrust Litig.*, 906 F.2d 432, 450 (9th Cir. 1990) (disclosure of "sensitive price information might be considered contrary to a firm's self-interest," and support a finding of "common understanding" among firms sharing this information); *Ross v. Bank of Am.*, No. 05-7116, 2012 U.S. Dist. LEXIS 19760, at *17-18 (S.D.N.Y. Feb. 8, 2012) (providing competitors with sensitive business information is against unilateral interests); *In re High Pressure Laminates Antitrust Litig.*, No. 00-MDL-1368, 2006 U.S. Dist. LEXIS 29431, at *11 (S.D.N.Y. May 15, 2006) (sharing confidential information with competitors was against individual economic self-interest and probative of conspiracy).

¹²⁹ 2012 U.S. Dist. LEXIS 19760, at *17; *accord id.*, at *18, 26.

¹³⁰ See, e.g., CX0090 at -001 (PDCO 00010912) (Guggenheim telling Cohen that Patterson feels the same way about not working with buying groups).

¹³¹ See, e.g., CX1289 at -001 (BDS00809245) (Benco's Ron Fernandez explaining that when he last spoke with Patterson's Texas Regional Manager, he learned that Patterson was withdrawing from the TDA annual meeting after the creation of TDA's buying group); CX2757 at -001-002 (Henry Schein-000034707) (Schein internal email reporting past conversations with Patterson revealing Patterson was planning on withdrawing from the Arizona Dental Association annual meeting because of AzDA's buying group); CX3300 at -001 (PattersonDental00001249) (Patterson disclosing to Benco that it will pull its sponsorship of AzDA's meeting in response to AzDA's new buying group); CX1331 at -001 (BDS00020270) (Benco internal email reporting that Schein, Patterson, and Benco have all exchanged assurances that they will not support the Arizona Dental Association meeting in response to AzDA's

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

¹³² A

conspiratorial agreement explains why a profit-seeking company like Patterson might share sensitive business information with its biggest rivals—a disputed issue to explore at trial.

C. Patterson’s Unexplained Communications with Competitors

Unexplained communications among horizontal competitors is a plus factor that strongly points towards a conspiratorial agreement.¹³³ With ambiguous circumstantial evidence, courts are cautious to infer conspiracy, fearing deterrence of pro-competitive conduct. But “permitting an inference of conspiracy from direct competitor contacts will not have significant anticompetitive effects.”¹³⁴ In *Gainsville Utilities Department v. Florida Power & Light Co.*, the Fifth Circuit inferred a conspiracy between utility systems not to compete in each other’s territories after unexplained communications between the rivals’ high-level executives.¹³⁵

Although the refusal to serve certain cities may have been influenced by valid economic considerations, the inferences are irresistible that “concerted action was contemplated and invited” by the correspondence. Indeed, if solid economic reasons existed for refusing service to these cities, there was no reason for communicating with a competitor about the refusal, and certainly not for expressing such decisions in terms of hopeful, if not expected, reciprocity.¹³⁶

buying group); CX3332 at -001 (PattersonDental00001251) (Benco and Patterson exchange assurances that they will withdraw from AzDA’s annual meeting).

¹³² See, e.g., { [REDACTED] }

¹³³ *In re Flat Glass*, 385 F.3d at 361.

¹³⁴ *In re Petrol. Prods. Antitrust Litig.*, 906 F.2d 432 at 453.

¹³⁵ 576 F.2d 292, 299 (5th Cir. 1978).

¹³⁶ *Id.* at 300-01.

Here too, there is no explanation for Patterson’s inter-firm communications.¹³⁷ And just as in *Gainsville Utilities*, Respondents exchanged sensitive business information, divulging their buying group strategies, as well as discussing specific buying groups.¹³⁸ Respondents’ communications reveal a similar tone of “hopeful, if not expected reciprocity” as in *Gainsville Utilities*. In many instances, the reciprocal response was immediately communicated.¹³⁹

The record of horizontal communications between Patterson and the other Respondents is troubling.¹⁴⁰ Patterson’s attempts to discount these communications one-by-one is contrary to case law.¹⁴¹ While Patterson attributes parallel activity to innocent independent conduct, the *Gainsville Utilities* court recognized, “if solid economic reasons existed for [the parallel conduct], there was no reason for communicating with a competitor about the refusal.”¹⁴² This is particularly true where Patterson made an effort not to put its communications in writing and otherwise protected its agreement from disclosure.¹⁴³ Patterson’s inter-firm communications are

¹³⁷ See, e.g., { [REDACTED] }

¹³⁸ See, e.g., *supra* notes 130-131.

¹³⁹ See, e.g., CX0090 at -001 (PDCO00010912) (Cohen explaining Benco’s no-buying group policy and Guggenheim confirming that Patterson has the same policy).

¹⁴⁰ Compare *In re EPDM*, 681 F. Supp. 2d at 173 (“Indeed whether competing executives view one another as friends and colleagues first, and competitors second, is a factor in determining the plausibility of the conspiracy’s mechanics.”), with [REDACTED]

¹⁴¹ *Cont’l Ore Co.*, 370 U.S. at 699.

¹⁴² *Gainsville Utils. Dep’t*, 573 F.2d at 301.

¹⁴³ Compare *In re Petrol. Prods. Antitrust Litig.*, 906 F.2d at 450-51 (instructions not to document competitor contacts is probative of an illegal agreement) and *In re Polyurethane Foam Antitrust Litig.*, 152 F. Supp. 3d 968, 989 (N.D. Ohio 2015) (attempts to keep inter-firm communications secret is a plus factor that made the inference of concerted action stronger than that of interdependent action), with [REDACTED]

more consistent with a *per se* agreement than independent action and should be weighed by a factfinder at trial.

D. Patterson's Change of Conduct

Patterson's changes in conduct further evidence its part in Respondents' illegal agreement. In *Toys "R" Us*, the toy manufacturers' abrupt shift from dealing with warehouse clubs to boycotting them was indicative of an agreement and inconsistent with independent action.¹⁴⁴ Similarly, in *In re Domestic Drywall Antitrust Litigation*, the defendants' decision to eliminate job quotes, which were a feature in the drywall industry for decades, was a radical and abrupt shift in behavior sufficient to "qualify as traditional conspiracy evidence to avoid summary judgment."¹⁴⁵

Patterson's No-Buying Group Strategy: When Cohen (Benco) emailed Guggenheim (Patterson) in February 2013, { [REDACTED] }¹⁴⁶ After Patterson accepted the invitation to join the conspiracy, it instructed its salesforce to reject buying groups.¹⁴⁷ For example, Patterson was negotiating with NMDC in 2013, and NMDC believed a partnership with Patterson was imminent.¹⁴⁸ After Cohen (Benco) emailed Guggenheim (Patterson) about this buying group,¹⁴⁹ Patterson rebuffed NMDC.¹⁵⁰ As noted

CX3300 at -001 (PattersonDental00001249) ("Please discuss live and no further emails.") and CX3168 at -001 (PDCO 00028046) ("We don't sell to buying groups. Let's talk live.").

¹⁴⁴ 221 F.3d at 936; *see also United States v. Apple Inc.*, 952 F. Supp. 2d 638, 690 (S.D.N.Y. 2013), *aff'd* by 791 F.3d 290 (2d Cir. 2015) ("An abrupt shift from defendants' past behavior and near-unanimity of action by several defendants may also strengthen the inference. For instance, a 'complex and historically unprecedented change[] in pricing structure made at the very same time by multiple competitors, and made for no other discernible reason,' may provide sufficient evidence of an illegal conspiracy.") (internal citations omitted).

¹⁴⁵ 163 F. Supp. 3d 175, 255-56 (E.D. Pa. 2016).

¹⁴⁶ { [REDACTED] }

¹⁴⁷ *See supra* notes 36-41.

¹⁴⁸ CX8035 (Mason Dep. Tr. 86:17-88:7).

¹⁴⁹ CX0056 at -001 (BDS-FTC00009442).

¹⁵⁰ CX8035 (Mason Dep. Tr. 54:15-55:19).

above, after the February 2013 exchange, Patterson regularly rejected potential buying group customers.¹⁵¹

Atlantic Dental Care: The ADC example represents multiple course changes demonstrating Patterson participated in the conspiracy. From the start, Patterson's salesforce wanted to compete for ADC, fearing it would lose sales if unsuccessful in the bid process.¹⁵² The first change in conduct occurred when Misiak instructed the salesforce not to bid, reasoning that ADC was a buying group and Respondents did not work with buying groups.¹⁵³ The second change in conduct occurred after Cohen (Benco) explained that ADC fell outside the conspiracy target criteria,¹⁵⁴ which prompted Guggenheim (Patterson) to direct his salesforce to { [REDACTED] }¹⁵⁵ These multiple course changes could have been avoided had Patterson acted according to its economic interests in the first instance.

Patterson tries to make much of the fact that Benco and Patterson initially classified ADC differently, leading Benco to bid for ADC while Patterson did not.¹⁵⁶ [REDACTED]

[REDACTED] just as Benco did. It is irrelevant that Patterson reached this conclusion months after Benco and Schein, but highly relevant that Patterson changed its conduct

¹⁵¹ See *supra* notes 45, 47.

¹⁵² CX0093 at -001 (PDCO00051886).

¹⁵³ *Id.*

¹⁵⁴ CX3301 at -001 (Patterson0001594).

¹⁵⁵ { [REDACTED] }

¹⁵⁶ (Resp. Br. at 18-19.)

¹⁵⁷ See { [REDACTED] }

immediately following a communication with its second biggest rival. This speaks to Patterson’s involvement in Respondents’ agreement, and creates a factual dispute for trial.

Post-Conspiracy: Patterson argues that any decision not to discount to or otherwise compete for buying groups was based on independent assessments of its business interests. That all three Respondents began competing for buying groups after the conspiracy belies this claim.

{ [REDACTED] },¹⁵⁸ while summarily refusing Smile Source during the conspiracy period.¹⁵⁹ Similarly, it offered discounts to Dentistry Unchained, despite rejecting it outright only months before because it was a buying group.¹⁶⁰

Taken together, Patterson’s radical course changes throughout the conspiracy period cannot be mere coincidence. Especially when placed into context with unexplained competitor communications, Patterson’s changes in conduct are more probative of a *per se* agreement than of independent conduct, and constitute evidence that creates a dispute of material fact.

III. PATTERSON’S CLAIMS ABOUT COMPETITION FOR CORPORATE AND INDEPENDENT DENTISTS IS AN ATTEMPT TO CONFUSE THE ISSUES, AND ACTUALLY SUPPORT COMPLAINT COUNSEL’S CLAIM

To sidestep the direct and circumstantial evidence of its role in Respondents’ illegal scheme, Patterson’s so-called “mountain of undisputed evidence”¹⁶¹ describes its competition for corporate (also known as dental service organizations or “DSOs”) and independent dentists—customer segments outside the scope of the Complaint’s allegation regarding a conspiracy targeting buying groups. While most of these facts are undisputed as they are immaterial to the

¹⁵⁸ { [REDACTED] }

¹⁵⁹ See, e.g., *id.* { [REDACTED] } CX0147 at -001 (PDCO00021163) (informing Smile Source that Patterson is “currently not interested”).

¹⁶⁰ See *supra* notes 47, 71.

¹⁶¹ (Resp. Br. at 1.)

claims at issue, these red herrings deserve mention only because they comprise the majority of Patterson’s Motion.¹⁶² As explained above, when Benco invited Patterson to join the agreement, it explicitly carved out DSOs.¹⁶³ Patterson itself acknowledges that DSOs are distinct from buying groups: “[b]uying groups were a very different type of customer from the corporate DSOs.”¹⁶⁴ Similarly, Patterson’s exaggerated focus on vigorous competition with Benco and Schein for independent dentists distracts from the issue. Buying groups aggregate individual dentists’ buying power to negotiate and achieve *greater* discounts and lower prices than they would as individuals.¹⁶⁵

Moreover, Patterson’s focus on Respondents’ price competition undermines the basis of its purported independent rationale for refusing to work with buying groups. Patterson explains that lower prices from competition among Respondents drove independent dentists’ purchasing behavior, while inexplicably claiming that lower prices negotiated by buying groups would not similarly drive purchasing behavior.¹⁶⁶ In fact, the evidence shows that providing discounts to buying groups influenced their members’ purchases and resulted in new customers and sales that increased profitability for distributors.¹⁶⁷ Stripped of immaterial facts and contradictions, there remains facts and inferences pointing to Patterson’s anticompetitive agreement not to compete for buying groups—the actual material facts here that are ripe for trial.

¹⁶² See *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) (“Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted.”).

¹⁶³ CX0056 at -001 (BDS-FTC00009442) (“though we do work with corporate accounts”).

¹⁶⁴ (Resp. Br. at 2.)

¹⁶⁵ See { [REDACTED] }

¹⁶⁶ (See, e.g., Resp. Br. at 1-2, 24-25.)

¹⁶⁷ { [REDACTED] } CX0149 at -001 (PDCO00021432) (Smile Source has “seen a 93% conversion to [its] vendors and ha[s] been able to prove that [it] can shift share.”); CX0321 (Kois, Jr. IH Tr. 139:20-23) (Kois brought new customers to Burkhart).

CONCLUSION

For the reasons set for above, the Commission should deny Patterson's Motion for Summary Decision.

Dated: October 10, 2018

Respectfully submitted,

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UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: **Joseph J. Simons, Chairman**
 Noah Joshua Phillips
 Rohit Chopra
 Rebecca Kelly Slaughter
 Christine S. Wilson

In the Matter of

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

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

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

DOCKET NO. 9379

PUBLIC

**COMPLAINT COUNSEL'S STATEMENT OF DISPUTED MATERIAL FACTS
AS TO WHICH THERE IS A GENIUNE ISSUE FOR TRIAL**

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Pursuant to Rule 3.24(a)(2) of the Commission’s Rules of Practice, 16 C.F.R. 3.24(a)(2), Complaint Counsel submits this Statement of Disputed Materials Facts As to Which There Is a Genuine Issue for Trial. Part I of this submission sets forth those material facts as to which there is a genuine issue. Part II of this submission sets forth each statement of material fact to which Respondent asserts there is no genuine issue and Complaint Counsel’s response to each statement.

**PART 1: STATEMENT OF MATERIAL FACTS
AS TO WHICH THERE EXISTS A GENUINE ISSUE FOR TRIAL**

I. BUYING GROUPS DRIVE DOWN PRICES FOR INDEPENDENT DENTISTS AND ALLOW DISTRIBUTORS TO INCREASE SALES

1. { [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] }¹

2. Independent dentists, seeking lower prices on dental products, join buying groups to take advantage of these lower prices.²

3. Independent dentist are able to get lower prices from joining a buying group than they can negotiate on their own.³

4. While buying groups typically do not force members to purchase from their supplier partners, their members drive sales towards the buying group’s preferred vendors.⁴

¹ [REDACTED]

² See { [REDACTED] }

³ See { [REDACTED] }

⁴ See, e.g., [REDACTED]; cf. (Resp. Br. In Supp. of Mot. for Summ. Decision at 1-2, 24-25) (noting Patterson could win business from Schein and Benco through price concessions); CX0149 at -001 (PDCO00021432) (Smile Source has “seen a 93% conversion to [its] vendors and ha[s] been able to prove that [it] can shift share.”).

5. Buying groups benefit distributors by amassing potential customers and enabling the distributor to win market share and increase profits efficiently through a single contract.⁵

6. { [REDACTED] }
[REDACTED]
[REDACTED] }⁶

7. { [REDACTED] }
[REDACTED] }⁷

8. { [REDACTED] }
[REDACTED] }⁸

9. { [REDACTED] }
[REDACTED] }⁹

10. { [REDACTED] }
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] }¹⁰

⁵ See, e.g., CX0149 at -001 (PDCO00021432) (Smile Source has “seen a 93% conversion to [its] vendors and ha[s] been able to prove that [it] can shift share.”); CX0321 (Kois, Jr. IH Tr. 139:20-23) (Kois brought new customers to Burkhart); [REDACTED]

[REDACTED]
[REDACTED] }.

⁶ [REDACTED]
[REDACTED] }

⁷ [REDACTED] }

⁸ [REDACTED] }

⁹ [REDACTED] }

¹⁰ [REDACTED] }

11. While buying groups can increase distributors' sales and profitability, Respondents feared that they could also slash margins and change the full-service distribution model,¹¹ as occurred in the medical supply distribution market.¹²

12. { [REDACTED] }¹³ and { [REDACTED] }¹⁴ { [REDACTED] }¹⁵

II. BENCO: [REDACTED] WITH A NO-BUYING GROUP PHILOSOPHY

13. After learning that Schein was providing discounts to buying groups, Chuck Cohen communicated with Tim Sullivan, President of Henry Schein Dental. Over the course of 2011 alone, the rivals exchanged scores of phone calls and text messages.¹⁶

14. [REDACTED] and Sullivan admit that on at least one occasion, they discussed Benco's competitive position on buying groups.¹⁷

¹¹ See, e.g., { [REDACTED] } ; CX1233 at -001 (BDS-FTC00024159) (buying groups are "death to dealers").

¹² See, e.g., CX1156 at -001 (BDS-FTC00017053) ("GPOs are why medical works at the margins they do."); CX0165 at -001 (Henry Schein-000004705) ("Dealing with GPOs is incredibly risky on many fronts . . . as soon as we start doing this we will turn into medical, margins will go down . . ."); CX3419 at -001 (PDCO00021240) (referring to GPOs in medical as a "necessary evil"); CX3115 at -001 (PDCO00165969) ("Medical doctors screwed up their industry and [GPOs] should stay out of ours."); CX1149 at -002 (BDS00181723) ("GPOs are what [ruined] the medical supply business . . . [i]f this door is ever opened in dental it[']s all over for all of us").

¹³ See, e.g., { [REDACTED] }.

¹⁴ { [REDACTED] }

¹⁵ { [REDACTED] }

¹⁶ See CX6027 (Communications Summary Exhibit).

15. Following inter-firm communications, Schein shifted its pro-buying group strategy to match Benco’s no-buying group policy by refusing to discount to new buying groups¹⁸ and terminating existing buying group relationships.¹⁹

16. Schein also repeatedly instructed its salesforce not to do business with buying groups.²⁰

17. { [REDACTED] }.²¹

18. Throughout the conspiracy (at least 2012 through 2015), Cohen and Sullivan—and other Benco and Schein executives—continued to discuss potential buying group customers, particularly when Benco suspected that Schein might be discounting to buying groups again.²²

¹⁷ { [REDACTED] }; CX0311 (Sullivan IH Tr. 260:25-263:24, 269:2-8); CX8025 (Sullivan Dep. Tr. 344:15-345:13).

¹⁸ See, e.g., CX2062 at -001 (Henry Schein-000176969) (“[U]nless you have some ‘ownership’ of your practices Henry Schein considers your business model as a Buying Group, and we no longer participate in Buying Groups.”).

¹⁹ See, e.g., CX2107 at -002 (Henry Schein-000104677) (“We ended the Smile Source relationship when they became more of a GPO th[a]n a ‘management company.’”); CX2216 at -001 (Henry Schein-000034704) (“GPO’s are popping up like crazy so it is nice when we can shut one down . . .”).

²⁰ See, e.g., CX0170 at -001 (Henry Schein-000045132) (a decision to discount to a buying group was “against what Tim Sullivan has directed us to do in regards to supporting Buying groups”); CX0169 at -001 (Henry Schein-000075749) (“The [Dental Co-op of Utah, a buying group] is exactly what we are trying to avoid.”); { [REDACTED] }

{ [REDACTED] }; CX0174 at -001 (Henry Schein-000011439) (“From Tim [Sullivan], HSD does not want to enter the GPO world.”).

²¹ See { [REDACTED] }

²² CX6027 (Communications Summary Exhibit).

III. PATTERSON: “WE’VE SIGNED AN AGREEMENT THAT WE WON’T WORK WITH GPO’S”

19. In early 2013, Patterson’s New Mexico regional office was working on a partnership with the New Mexico Dental Coop (“NMDC”), a local buying group. The two sides were “well on their way” to finalizing their partnership.²³

20. In February 2013, Benco learned that Patterson was planning to discount to the buying group New Mexico Dental Cooperative (“NMDC”). As soon as Chuck Cohen (Benco’s Managing Director) received this news, he wrote, “*We don’t recognize buying groups I’ll reach out to my counterpart at Patterson to let him know what’s going on in NM.*”²⁴

21. On February 8, 2013, Cohen emailed Paul Guggenheim (President of Patterson Dental at the time) and invited Patterson to join a conspiracy not to discount to or compete for buying groups:

*Just wanted to let you know about some noise I’ve picked up from New Mexico. FYI: Our policy at Benco is that we do not recognize, work with, or offer discounts to buying groups (though we do work with corporate accounts) and our team understands that policy.*²⁵

22. { [REDACTED] }
[REDACTED]
[REDACTED] }²⁶

23. { [REDACTED] }
[REDACTED] }²⁷ Indeed, Patterson had on occasion discounted to buying groups prior to 2013.²⁸

²³ CX8035 (Mason Dep. Tr. 51:14-16, 52:3-6, 53:23-55:19).

²⁴ CX0055 at -001 (BDS00028207) (emphasis added).

²⁵ CX0056 at -001 (BDS-FTC00009442) (emphasis added).

²⁶ { [REDACTED] }.

²⁷ { [REDACTED] }

²⁸ See, e.g., RX0037 at -001 (PDCO 00027971); { [REDACTED] }

24. Guggenheim immediately forwarded Cohen’s email to his Vice Presidents of Sales (Dave Misiak) and Marketing (Tim Rogan).²⁹
25. A few hours later, Guggenheim replied to Cohen: “*Thanks for the heads up. I’ll investigate the situation. We feel the same way about these.*”³⁰
26. { [REDACTED] }³¹
27. Just three days later, Patterson informed NMDC it would not be partnering with the buying group.³²
28. Guggenheim’s response to Cohen reflected a meeting of the minds. His response —“We feel the same way about these”³³—was a departure from Patterson’s attitude toward buying groups up until that point.
29. Patterson’s own documents confirm its understanding that Benco and Schein would not do business with buying groups. For example, in August 2013, Patterson’s VP of Marketing Tim Rogan stated, “*We don’t need GPO’s in the dental business. Schein,*

²⁹ CX0091 at -001 (PDCO00010908).

³⁰ CX0090 at -001 (PDCO00010912) (emphasis added).

³¹ { [REDACTED] }

³² Citing CX4090, Patterson argues that a local branch manager ended the relationship with NMDC the day before the Cohen-Guggenheim exchange. (Resp. Br. at 16.) That is not what CX4090 reveals. On February 7, 2013, the branch manager suggested cancelling a scheduled meeting with NMDC, but stated his intention to schedule a different meeting, as well as to continue partnering with NMDC: “This has the opportunity to be huge and is moving fast and I want to make sure we are doing this right from the beginning. . . . I am hoping Patterson can be a partner you trust and that will always do the right thing for you. . . . I definitely want to keep this moving forward.” CX4090 at -001-002 (PDCO00151225). The parties agreed to a dinner meeting scheduled for February 11. CX8035 (Mason Dep. Tr. 53:24-54:2). The Cohen-Guggenheim exchange occurred on February 8. With no contact since the February 7 email, Dr. Mason was surprised to discover at the dinner meeting that Patterson refused to work with NMDC, as NMDC was “well on our way” to partnering with Patterson. *Id.* 51:14-16, 52:3-6, 53:24-55:19.

³³ CX0090 at -001 (PDCO00010912).

Benco, and Patterson have always said no. I believe it is our duty to uphold this and protect this great industry.”³⁴

30. In June 2014, Neal McFadden, Patterson’s President of Special Markets, sent a text message to a former colleague who was working for a buying group: “[W]e’ve signed an agreement that we won’t work with GPO’s.”³⁵ Internal Benco documents demonstrate Benco’s understanding that it had reached a “meeting of the minds” with Patterson, and Benco’s confidence that Patterson would not compete for buying group customers. For example, on May 19, 2015, Benco executive Patrick Ryan turned down a buying group called Dentistry Unchained, boasting internally: “*The best part about calling these [buying groups] is I already KNOW that Patterson and Schein have said NO.*”³⁶
31. Two months later, Ryan reassured a Benco sales representative who feared losing a \$1 million account to a buying group, saying, “*We don’t allow [volume discount] pricing unless there is common ownership. Neither Schein nor Patterson do either.*”³⁷
32. And when Benco was concerned that the agreement might collapse upon news that another distributor, Burkhart, was discounting to buying groups, Ryan implored Cohen: “*CHUCK – maybe what you should do is make sure you tell Tim [Sullivan] and Paul [Guggenheim] to hold their positions as we are.*”³⁸

³⁴ CX0106 at -001 (PDCO00027980) (emphasis added).

³⁵ CX0164 at -002 (PDCO00062511) (emphasis added).

³⁶ CX0012 at -001 (BDS-FTC00003405) (emphasis added).

³⁷ CX0011 at -003 (BDS-FTC00014984) (emphasis added).

³⁸ CX0023 at -001 (BDS-FTC00009881) (emphasis added). Notably, this email followed Benco VP of Sales’ report that he spoke to Jeff Reece (Burkhart) “at length . . . about buying groups. JEFF DOES NOT GET IT!!!” *Id.* This was the first of three unsuccessful attempts by Benco to convince Burkhart to stop discounting to buying groups. { [REDACTED] }.

A. Patterson Instructs Its Sales Team Not to Do Business with Buying Groups

33. Following the February 2013 communications with Benco, Patterson executives instructed its sales force not to do business with buying groups. For example, Misiak told his Chesapeake branch manager:

“These co op [sic] situations can be very challenging so stay connected. You may have to help [Patterson branch manager] at the meeting communicate our position verbally to the reps. It’s in their best interest long term as well not to take our business in that direction. When I get these calls directly I politely say that I appreciate the opportunity, but currently we do [not] participate with group purchasing organizations. Be cautious so that reps don’t mis[communicate our position. Continue to help Devon stay out of this with grace. . . . *Confidential and not for discussion ..[.] our 2 largest competitors stay out of these as well. If you hear differently and have specific proof please send that to me.*”³⁹

34. On September 3, 2013, Misiak explained in an email among Patterson executives: “My guidance has been to politely say no [to buying groups] and w[ea]ther the storm with these.”⁴⁰

35. On November 20, 2013, Tim Rogan (VP of Marketing) instructed a Patterson employee: “We don’t sell to buying groups. Let’s talk live.”⁴¹

36. On October 23, 2014, Neal McFadden (President of Special Markets) directed: “As a rule we are trying our best to steer clear of all buying groups.”⁴²

37. On May 19, 2014, McFadden explained: “For now – I am electing to not participate with [buying groups] – we have said no to several already”⁴³

³⁹ CX0093 at -001 (PDCO00051886) (bold in original); *see also* CX0092 at -001 (PDCO00051878) (“I’ve coached Anthony on how to stay out of this [co-op RFP process] with grace.”).

⁴⁰ CX3074 at -001 (PDCO00021091); *see also* CX3115 at -001 (PDCO00165969) (“Different guy, same answer NO. We do not recognize these groups nor do we want to do business with them.”).

⁴¹ CX3168 at -001 (PDCO00028046).

⁴² CX3128 at -001 (PDCO00026075).

⁴³ CX3004 at -001 (PDCO00025893).

38. On January 14, 2015, McFadden instructed: “[D]oes he own all these offices—if not then he is a GPO—we don’t deal with GPOs.”⁴⁴

39. On September 4, 2013, McFadden explained: “[W]e are choosing to forgo this route [working with GPOs] as it is both anti rep, manufacturer and distributor.”⁴⁵

40. Not only was the “no-buying groups” guidance consistently delivered to the field, Patterson’s salesforce believed that guidance to be “clear.”⁴⁶

41. As a result, Patterson routinely rejected buying groups.⁴⁷

B. Patterson’s Course Reversal on Atlantic Dental Care

42. Atlantic Dental Care (“ADC”) approached Patterson’s Chesapeake, Virginia branch manager seeking a bid in February 2013. The branch manager feared Patterson would lose customers and sales if it did not win the bid.⁴⁸

43. Misiak, however, directed the region to reject ADC, saying: “[C]urrently we do [not] participate with group purchasing organizations. . . . Confidential and not for discussion . . . [.] our 2 largest competitors stay out of these as well. If you hear differently and have specific proof please send that to me.”⁴⁹

⁴⁴ CX3045 at -001 (PDCO00026110).

⁴⁵ CX0145 at -001 (PDCO00021095).

⁴⁶ See, e.g., CX3342 at -001 (PDCO00026303) (“I wanted to make sure that GPO’s are not something we as a company are choosing to partner with at this point. I know Dave [Misiak] has been clear about this in the past and I wanted to verify that this still is the case.”); see also CX3084 at -001 (PDCO00029940) (“Patterson Corporate has concluded ‘we will NOT be entertaining [or] participating in any buying group of this nature.’”).

⁴⁷ See, e.g., CX3057 at -001-002 (PDCO00050312) (“I think we just say the company has chosen not to participate in GPOs at this time.”); CX3121 at -001 (PDCO00021242) (“I will respond to Dr[.] Graham . . . with a polite pass on this request [from] a co op buying group”); CX3059 at -001 (PDCO00055012) (“[W]e do not have a separate discount program for group buyers.”); CX3341 at -001 (PDCO00027048) (“I was wondering if this is a buying group? . . . We have taken a stance to protect both the territory rep and the branches and not participate.”); [REDACTED]

⁴⁸ CX0093 at -001 (PDCO00051886).

⁴⁹ *Id.* (emphasis added).

44. At the same time, Misiak expressed concerns about Benco and Schein cheating on the agreement. He emailed Guggenheim: “*I’m concerned that Schein and Benco sneak into these co-op bids and deny it.*”⁵⁰

45. Upon learning that Benco bid on ADC and won the account, Guggenheim (Patterson) emailed Cohen (Benco) in June 2013 about the seeming departure from Benco’s prior assurance that it would not pursue buying groups. Notably, Guggenheim (Patterson) replied to Cohen’s (Benco) February 2013 email where Cohen had communicated Benco’s no-buying group policy, and asked:

Reflecting back on our conversation earlier this year, could you shed some light on your business agreement with Atlantic Dental Care? . . . I’m wondering if your position on buying groups is still as you articulated back in February? Let me know your thoughts. . . Sometimes these things grow legs without our awareness.⁵¹

46. Cohen (Benco) replied with a lengthy email reaffirming, “*As we’ve discussed, we don’t recognize buying Groups.*”⁵² Guggenheim (Patterson) responded, “Just wanted to clarify where you guys stand.”⁵³

47. { [REDACTED] }
[REDACTED] }⁵⁴

48. { [REDACTED] }
[REDACTED] }⁵⁵

⁵⁰ CX0092 at -001 (PDCO00051878) (emphasis added).

⁵¹ CX0095 at -001 (PDCO00010955).

⁵² CX3412 at -001 (PDCO00010959) (emphasis added).

⁵³ CX3301 at -001 (PATTERSON0001594).

⁵⁴ { [REDACTED] }

⁵⁵ { [REDACTED] }

C. Texas State Dental Association Buying Group

49. In October 2013, the Texas Dental Association (“TDA”) created the TDAPerks buying group.

50. Respondents’ executives communicated with one another about how to respond to this new buying group threat.⁵⁶ They knew that TDA depended on Respondents’ attendance at the annual TDA trade show as a large source of income.⁵⁷

51. In January 2014, Patterson’s Misiak and Schein VP & General Manager Dave Steck had a 14-minute phone call about attendance at the upcoming TDA trade show.⁵⁸ Steck (Schein) emailed Misiak (Patterson) two weeks later saying, *“I’ll be calling you to let you know about our decision on the matter we recently discussed in the next couple of days,”* referring to a decision on whether to pull out of the TDA annual meeting.⁵⁹ Misiak (Patterson) forwarded Steck’s (Schein) email to his colleague Tim Rogan (Patterson): *“He already told me they were out. Full blown!”*⁶⁰ Rogan responded: *“That sucks. You should call him,”* and suggested a *“[t]hought I could trust you’ type of conversation.”*⁶¹

⁵⁶ See, e.g., CX0110 at -004 (PDCO 00051886) (Patterson “discussed this TDAPerks site . . . with our dealer competitors at the local San Antonio & Houston level.”); CX1289 at -001 (BDS00809245) (Benco’s Texas regional manager discussing a call with his Patterson counterpart: “[l]ast time I spoke with him, about three weeks ago, they were out, but considering options.”); { [REDACTED]

⁵⁷ CX2306 at -003 (Henry Schein-000005422) (“The bulk of their revenue comes from their state meetings. Without exhibitors though, they have no meeting and lose huge revenue generator.”).

⁵⁸ CX6027 (Communications Summary Exhibit).

⁵⁹ CX0112 at -001 (PDCO00013330) (emphasis added). Prior to this email, Schein emails confirm active discussions between Schein and Patterson regarding a response to TDAPerks. See CX2884 at -001 (HS-00016523) (Steck: “I have to get back to PDCO on whether or not we are attending the TDA.”).

⁶⁰ CX0112 at -001 (PDCO00013330) (emphasis added).

⁶¹ *Id.* (emphasis added). Schein continued to weigh internally whether to withdraw from TDA’s annual meeting. See CX2106 at -001 (Henry Schein-000165416) (“The good thing here is that PDCO, Benco and us are on the same page regarding these buying groups/consortiums. Checking to see if we should join the TDA boycott.”).

52. A few weeks before TDA’s annual meeting, Cohen (Benco) emailed Sullivan (Schein) and Guggenheim (Patterson) on the same email chain, forwarding an article promoting TDAPerks.⁶² Cohen (Benco) and Sullivan (Schein) spoke by phone that day, and Guggenheim (Patterson) created a calendar entry to call Cohen (Benco) about the article.⁶³

IV. NO BARRIERS TO DISCOUNTING TO BUYING GROUPS

53. { [REDACTED] }
[REDACTED]
[REDACTED]
[REDACTED] }⁶⁴

54. Patterson routinely provides discounts to independent dentists and other customer segments.⁶⁵

55. { [REDACTED] }
[REDACTED] }⁶⁶

56. { [REDACTED] }
[REDACTED]
[REDACTED] }⁶⁷

⁶² CX1062 at -001 (BDS-FTC00001789).

⁶³ CX6027 (Communications Summary Exhibit); CX0101 at -001 (PDCO00011057).

⁶⁴ { [REDACTED] }

⁶⁵ (Resp. Br. at 1, 24-25) (describing discounting to win independent dentist customers from Schein and Benco).

⁶⁶ { [REDACTED] }

57. Moreover, manufacturers were providing discounts to buying groups during the conspiracy period.⁶⁸ Patterson was aware of these discounts⁶⁹ and nonetheless refused to discount to buying groups.

58. Indeed, during the conspiracy period, Patterson viewed manufacturer discounts to buying groups as a concern.⁷⁰

V. PATTERSON DID NOT DISCOUNT TO NEW BUYING GROUPS DURING THE CONSPIRACY

59. Patterson routinely rejected buying groups during the conspiracy.⁷¹

60. Patterson rejected buying groups even when it would have made sense for it to discount to them. For example, in 2013, Smile Source sought a partnership with Patterson multiple times.⁷² Despite Smile Source's growth and its members' \$14 million dental supplies spend, Patterson declined the opportunity because Smile Source was a buying group.⁷³

⁶⁷ See { [REDACTED]

⁶⁸ See, e.g., CX0008 at -001 (BDS-FTC00017131) (vendor partners providing discounts to Smile Source); CX0272 at -003 (Henry Schein-000006943) (Oral B/P&G discounting to the New Mexico Dental Coop);

{ [REDACTED] CX8008 (Kois, Jr. Dep. Tr. 67:24-68:11) (28 manufacturers provide discounts to Kois's members).

⁶⁹ See, e.g., CX3042 at -002 (PDCO00019568) (Smile Source members earn cash rebates for volume purchases from Dentsply and possibly other manufacturers); CX3054 at -001 (PDCO00044079) (Dentsply explaining its rebate program for Smile Source and encouraging Patterson to take advantage of the rebates in selling to Smile Source).

⁷⁰ See, e.g., CX3165 at -002 (PDCO00044076) ("I am highly concerned that our [supplier] partners support these buying groups and what it will do to erode our relationship at the street level.").

⁷¹ See, e.g., CX3057 at -001-002 (PDCO00050312) ("I think we just say the company has chosen not to participate in GPOs at this time."); CX3121 at -001 (PDCO00021242) ("I will respond to Dr[.] Graham . . . with a polite pass on this request [from] a co op buying group . . ."); CX3059 at -001 (PDCO00055012) ("[W]e do not have a separate discount program for group buyers."); CX3341 at -001 (PDCO00027048) ("I was wondering if this is a buying group? . . . We have taken a stance to protect both the territory rep and the branches and not participate."); [REDACTED]

⁷² See, e.g., CX0147 at -001 (PDCO00021163); CX0297 at -001 (PDCO00021213).

⁷³ See CX3009 at -001 (PDCO00027968) ("[W]e have said no to smile source. It is a direct competition [sic] to our sales reps. They are [a] buying club . . ."). Notably, Benco and Schein also refused to do business with Smile Source during this period. See, e.g., CX0019 at -001 (BDS-FTC00002808) (Benco's

61. At the same time, Patterson was losing business because its customers were joining Smile Source and switching their supply purchases to Smile Source's preferred vendors.⁷⁴

62. { [REDACTED] }⁷⁵ { [REDACTED] }
 [REDACTED]
 [REDACTED] }⁷⁶

63. { [REDACTED] }
 [REDACTED]
 [REDACTED] }⁷⁷ Yet, that did not deter Patterson from competing for Smile Source's business after the conspiracy ended.⁷⁸

64. Similarly, during the conspiracy, a Patterson Special Markets territory manager believed that Dentistry Unchained's "vision and goals . . . align[ed] with [Patterson's] values of Patient Experience/Practice Lifestyle."⁷⁹

65. Despite a promise of converting 80% of its 226 members to Patterson, the Territory Manager was "honest with [Dentistry Unchained] that [Patterson has] not elected to participate [with buying groups]."⁸⁰

Patrick Ryan reporting that he and Schein's Randy Foley specifically talked about Smile Source, allowing him to arrive at the ominous pronouncement: "Buh-bye").

⁷⁴ CX0164 at -001 (PDCO00062511) ("Unfortunately [Smile Source is] growing and getting the attention of some big hitters of mine and some Birmingham accounts. And it's spreading into the Atl[anta] market too."); CX3043 at -001 (PDCO00019914) (Re: Smile Source: "Don't underestimate the impact they can have . . . scary. . . . I totally agree. We're already suffering under that Synergy Dental Partners buying group here and Smile Source will only make it worse.").

⁷⁵ See, e.g., { [REDACTED] }

⁷⁶ { [REDACTED] }

⁷⁷ { [REDACTED] }

⁷⁸ See { [REDACTED] }

⁷⁹ CX3006 at -001 (PDCO00026351).

⁸⁰ *Id.* at -001-002. In response to the same request from Dentistry Unchained, Benco's Ryan bragged: "The best part about calling these guys is I already KNOW that Patterson and Schein have said NO." CX0012 at -001 (BDS-FTC00003405).

66. Less than a year after it refused Dentistry Unchained—and after the conspiracy ended—Patterson offered discounted pricing, reasoning: “[W]e must start stretching—This seems to be the only way for now to insert ourselves into the mix with these GPO’s.”⁸¹

67. Indeed, Patterson provided discounts to Dentistry Unchained on a non-exclusive basis, knowing it would have to share preferred vendor status and sales with Benco.⁸²

68. Patterson claims that it did business with two buying groups—Orthosynetics and Jackson Health (Resp. Br. at 13). However, neither of these two these organizations are buying groups. Orthosynetics is a management service organization (“MSO”) for orthodontists. This is distinct from a buying group, as it provides centralized management services to practices.⁸³

69. Jackson Health is not a buying group, but an academic medical system in Miami-Dade County.⁸⁴

70. Patterson does not argue that it did business with any other buying groups during the conspiracy period.

71. [REDACTED]
[REDACTED]
[REDACTED]⁸⁵

⁸¹ CX3018 at -001-002 (PDCO00059919).

⁸² CX3103 at -001 (PDCO00170921).

⁸³ Patterson’s Statement of Facts cites a document that confirms Orthosynetics is not a buying group. Resp. SOF ¶ 65 citing { [REDACTED]

}; see also { [REDACTED]

}. [REDACTED]

⁸⁴ Jackson Health System Website, available at <http://www.jacksonhealth.org/about.asp> (last visited Sept. 23, 2018).

⁸⁵ { [REDACTED] }.

72. McFadden wanted to explore working with buying groups.⁸⁶ { [REDACTED] }
[REDACTED]
[REDACTED] }⁸⁷

73. To ensure compliance with this strategy, Patterson sent a memo to all branches explaining that Special Markets would not work with buying groups.⁸⁸

VI. PATTERSON LOST SALES AND PROFITS BY NOT DISCOUNTING TO BUYING GROUPS

74. Patterson’s contemporaneous documents evidence that it lost customers and sales by refusing to discount to buying groups during the conspiracy.⁸⁹

75. { [REDACTED] }
[REDACTED] }⁹⁰

VII. PATTERSON’S PARTICIPATION IN THE PRICE-FIXING CONSPIRACY HARMED DENTISTS

76. { [REDACTED] }⁹¹

⁸⁶ [REDACTED]; *see also* CX0106 at -001 (PDCO00027980) (“I know in the past we have said no. Is it worth it to explore GPO????????”).

⁸⁷ { [REDACTED] }.

⁸⁸ CX0158 at -002 (PDCO00031277).

⁸⁹ *See, e.g.*, { [REDACTED] }
[REDACTED]; CX3089 at -001-002 (PDCO00021959) (Patterson losing “high quality / high producing clients” to Kois, “the cut is deep to us all,” “many of our best doctors are Kois followers, so I think this is a precarious situation for us as a company”); CX0164 at -001 (PDCO00062511) (“Unfortunately [Smile Source is] growing and getting the attention of some big hitters of mine and some Birmingham accounts. And it’s spreading into the Atl[anta] market too.”); [REDACTED]

[REDACTED]; CX0093 at -001 (PDCO0005186) (noting a concern that Patterson may lose “a big chunk of business” by not bidding on a GPO RFP); CX3043 at -001 (PDCO00019914) (Re: Smile Source: “Don’t underestimate the impact they can have . . . scary. . . I totally agree. We’re already suffering under that Synergy Dental Partners buying group here and Smile Source will only make it worse.”).

⁹⁰ { [REDACTED] }.

⁹¹ { [REDACTED] }.

77. [REDACTED]⁹²

{ [REDACTED] }⁹³

78. Competing for independent dentists is not a substitute for competing for buying groups—a customer segment that focuses on leveraging increased purchasing power for lower prices—as the evidence shows that buying groups in fact secure lower prices for their members than the individual dentists can obtain on their own.⁹⁴

79. If competition for independent dentists was as effective as competition for buying groups, one would not expect to see prices decrease to dentists when distributors discount to buying groups. { [REDACTED]

[REDACTED] }⁹⁵

80. { [REDACTED]

[REDACTED] }⁹⁶

81. { [REDACTED]

[REDACTED] }⁹⁷

82. { [REDACTED]

[REDACTED] }⁹⁸

⁹² [REDACTED];

⁹³ See, e.g., { [REDACTED] }.

⁹⁴ { [REDACTED] }; see also CX1156 (BDS-FTC00017053) (A buying group would “obligate us to [the same] pricing to EVERY entity that is in their system. No thanks.”); CX1234 at -001 (BDS-FTC00024261) (“Chuck Cohen is adamantly against buying groups. He will not let us participate because he doesn’t think everyone should get the same price. It’s one of the only times I have seen him really get fired up.”).

⁹⁵ { [REDACTED] }.

⁹⁶ Id. { [REDACTED] }.

⁹⁷ Id. { [REDACTED] }.

83. { [REDACTED]

[REDACTED] }⁹⁹

84. { [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] }¹⁰⁰

⁹⁸ *Id.* { [REDACTED] }.
⁹⁹ *Id.* { [REDACTED] }.
¹⁰⁰ *Id.* { [REDACTED] }.

**PART II: COMPLAINT COUNSEL’S RESPONSE TO
RESPONDENT PATTERSON’S STATEMENT OF UNDISPUTED FACTS**

Pursuant to Rule 3.24, Complaint Counsel respond to each of Patterson’s assertions of undisputed material facts, and in doing so demonstrates that there are numerous material factual issues as to which there is a genuine issue for trial.

General Objections

1. Complaint Counsel object to Patterson’s Statement of Material Facts As to Which There Is No Genuine Dispute (Patterson’s “SOF”) on the grounds that Patterson regularly characterizes as “undisputed” the fact that a witness (or group of witnesses) gave certain deposition testimony. *E.g.*, Patterson’s SOF ¶¶ 69-71, 98. Generally, we do not dispute that the excerpt of the witness’ testimony appears to be accurately excerpted, but the issue for the purposes of Patterson’s Motion is whether the underlying factual issue itself is undisputed, not whether a particular witness offered particular testimony, which in and of itself is not dispositive of the issue.
2. Complaint Counsel reserves the right to introduce evidence and testimony at trial to controvert each fact set forth in Patterson’s SOF even if we do not contest that fact for the purposes of our present opposition to Patterson’s Motion for Summary Decision.

Specific Objections

Complaint Counsel incorporates its General Objections into each Response and makes the following specific objections:

Complaint Counsel does not dispute Patterson’s SOF ¶¶ 1-15, 21, 33-36, 44-46, 52-54, 68, 86-87, 90-92, 95, 101-103, 106, 114, and 116.

16. As a result, “buying groups” provide no centralized purchasing or other services, and purchasing decisions remain with each member dentist—who often has strong individual preferences about the products they buy, and, in particular, which distributor they want to

provide them with service and support—and they are free to buy from their preferred distributor regardless of which distributor(s) the “buying group” endorses.

Response to SOF ¶ 16: Disputed in part. Complaint Counsel dispute that buying groups do not provide “other services” to their members. Buying groups aggregate their members’ purchasing power to secure lower prices on dental products. Buying groups may also offer a variety of other services to help their members save money, grow their business; assist with running their practice, and/or to provide education to their members.¹⁰¹

Complaint Counsel also dispute that buying groups’ members do not purchase through contracted distributors to take advantage of lower pricing negotiated by the buying group. Distributors who have discounted to buying groups have increased their market share, revenues, and profitability, and have gained sales and customers from competitors.¹⁰² { [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] }¹⁰³ { [REDACTED]

[REDACTED]

¹⁰¹ See, e.g., [REDACTED]; CX8006 (Puckett Dep. Tr. 46:15-48:14) (Dental Gator offered its members value-added services, including but not limited to dental lab services, marketing, direct mailing, legal, and billing services); CX8029 (Johnson Dep. Tr. 24:19-23) (In addition to supply discounts for member dentists, KlearImpakt provides coaching, front office training, credit card processing, patient financing, and marketing support).

¹⁰² See, e.g., CX0149 at -001 (PDCO00021432) (Smile Source has “seen a 93% conversion to [its] vendors and ha[s] been able to prove that [it] can shift share.”); CX0321 (Kois, Jr. IH Tr. 139:20-23) (Kois brought new customers to Burkhart); [REDACTED]

[REDACTED]; CX0321 (Kois, Jr. IH Tr. 139:20-23) (Kois brought new customers to Burkhart).

¹⁰³ { [REDACTED] }.

[REDACTED] }¹⁰⁴ { [REDACTED]

[REDACTED]

[REDACTED] }¹⁰⁵ After the

conspiracy ended, Patterson began bidding on buying groups.¹⁰⁶ Therefore, Complaint Counsel contend there is a genuine issue of material fact for trial.

17. Unlike corporate DSOs, the “buying groups” thus do not (and cannot) make any commitment on behalf of their member dentists to buy a set volume of any equipment or supplies; they simply ask distributors for bigger discounts for their members than for other dentists who are not in their buying group and say they will promote that distributor’s products to their members, but they do not (and cannot) commit).

Response to SOF ¶ 17: Disputed in Part. Complaint Counsel dispute that buying groups cannot make commitments or drive volume to contracted distributors. Complaint Counsel reiterate the response to Patterson’s SOF ¶ 16. Buying groups whose members do not contractually commit to purchase certain volumes of dental products from a distributor nonetheless purchase from a buying group’s preferred suppliers, delivering new business and customers, and leading to incremental volume increases to that distributor.¹⁰⁷ Distributors who have discounted to buying groups have increased their market share, revenues, and profitability, and have gained sales and customers from competitors.¹⁰⁸ Therefore, Complaint Counsel contend there is a genuine issue of material fact for trial.

¹⁰⁴ [REDACTED]
[REDACTED] }.

¹⁰⁵ [REDACTED]
[REDACTED] }.

¹⁰⁶ See, e.g., [REDACTED]
[REDACTED] }.

¹⁰⁷ See Complaint Counsel’s Statement of Disputed Material Facts ¶¶ 4-10.

¹⁰⁸ *Id.*

18. Because the “buying group” makes no volume commitment, the distributor cannot generally secure better pricing from its equipment and merchandise suppliers to justify the lower prices demanded.

Response to SOF ¶ 18: Disputed. Complaint Counsel dispute that distributors cannot justify lower prices to buying groups. Complaint Counsel reiterate the response to Patterson’s SOF ¶ 16-17. Complaint further dispute Patterson’s claims about equipment and merchandise suppliers offering “better pricing.” Distributors are not reliant on equipment and merchandise manufacturers to determine pricing and discounts to customers, and can discount to buying groups without special pricing from manufacturers. Manufacturer discounts are not necessary for Patterson to provide discounts to buying groups, and Patterson could have provided discounts to buying groups during the conspiracy absent any manufacturer discounts.¹⁰⁹ Indeed, Patterson claims to provide such discounts to independent dentists without securing better pricing from equipment and merchandise manufacturers.¹¹⁰ Contrary to Patterson’s claims, manufacturers were providing discounts to buying groups during the conspiracy period.¹¹¹ Patterson was aware of these discounts¹¹² and nonetheless refused to discount to buying groups. In fact, during the conspiracy period, Patterson viewed manufacturer discounts to buying groups as a concern.¹¹³ Therefore, Complaint Counsel contend there is a genuine issue of material fact for trial.

19. And “buying groups” pose another obvious risk: if a distributor accedes to their demand and provides significantly lower prices to the members of the “buying group” than to its other, non-member customers, it risks aggravating—and losing—its much-larger pool of non-member dentists.

Response to SOF ¶ 19: Disputed. Complaint Counsel dispute Paragraph 19 of Patterson’s Statement of Facts. There is no evidence in the record, and Patterson has cited none,

¹⁰⁹ See *id.* ¶ 56.

¹¹⁰ Patterson SOF ¶¶ 22-32.

¹¹¹ See Complaint Counsel’s Statement of Disputed Material Facts ¶ 58.

¹¹² *Id.*

¹¹³ See *id.*

of a distributor losing customers because of its decision to sell to buying groups. { [REDACTED]

[REDACTED]

[REDACTED] } Further, Patterson’s contemporaneous documents evidence that it lost customers and sales by refusing to discount to buying groups during the conspiracy.¹¹⁵ After the conspiracy, Patterson began bidding on buying group business.¹¹⁶ Therefore, Complaint Counsel contend there is a genuine issue of material fact for trial.

20. For these reasons, Patterson historically viewed “buying groups” very skeptically, and did not generally sell to them, long before Complaint Counsel alleges it joined the alleged Benco-Schein conspiracy in February 2013.

Response to SOF ¶ 20: Disputed. Complaint Counsel dispute Paragraph 20 of

[REDACTED]

[REDACTED]¹¹⁷ Indeed, Patterson had on occasion discounted to buying groups prior to 2013.¹¹⁸ Therefore, Complaint Counsel contend there is a genuine issue of material fact for trial.

Response to SOF ¶¶ 22-32: Disputed in Part. Complaint Counsel do not dispute that Patterson provided discounts to or competed for certain customer segments at certain times, such as dental service organizations. Complaint Counsel dispute that Patterson competed for buying group customers during the conspiracy period—the only relevant and material customer segment in this case.¹¹⁹ To the extent that Patterson’s assertions in SOF ¶¶ 22-32 suggest that Patterson

¹¹⁴ { [REDACTED] }

¹¹⁵ See Complaint Counsel’s Statement of Disputed Material Facts ¶ 74.

¹¹⁶ See, e.g., *id.* ¶ 62-63, 66-67.

¹¹⁷ See *id.* ¶ 23.

¹¹⁸ *Id.*

¹¹⁹ See Administrative Complaint, Docket No. 9379, *In the Matter of Benco Dental Supply Co., et al.*

competed for buying groups, Patterson’s documents and executives’ testimony demonstrate otherwise.¹²⁰ Therefore, Complaint Counsel contend there is a genuine issue of material fact for trial.

Response to SOF ¶¶ 37-43: Disputed in Part. Complaint Counsel dispute that Patterson’s creation of its Special Markets Division in 2013 was to focus solely on DSOs. In fact, Patterson created Special Markets to pursue other large group customers that it previously had not pursued, including “government, military, community and Indian health, schools, and institutions,”¹²¹ while ruling out the possibility that Special Markets work with buying groups.¹²²

[REDACTED]

[REDACTED]¹²³ McFadden wanted to explore working with buying groups;¹²⁴ [REDACTED]

[REDACTED]¹²⁵ Therefore, Complaint Counsel contend there is a genuine issue of material fact for trial.

47. So to safeguard Patterson’s investment—and to meet internal commitments made to the board of directors to secure the green light for the new business segment—management told McFadden and Patterson Special Markets to be “laser focused” on corporate DSOs—and only those DSOs that owned at least 15 practices and purchased more than \$600,000 in equipment and supplies annually.

Response to SOF ¶ 47: Disputed in Part. Complaint Counsel dispute that Patterson’s creation of its Special Markets Division in 2013 was to focus solely on DSOs. Complaint Counsel reiterate the response to Patterson’s SOF ¶¶ 37-43. Buying groups that approached

¹²⁰ See Complaint Counsel’s Statement of Disputed Material Facts ¶¶ 27, 29-30, 33-44, 59-65; see also [REDACTED].

¹²¹ CX3014 at -004 (PDCO00033886); [REDACTED].

¹²² CX0158 at -001 (PDCO00031277).

¹²³ [REDACTED]

¹²⁴ See Complaint Counsel’s Statement of Disputed Material Facts ¶ 72.

¹²⁵ *Id.*

Patterson during the conspiracy otherwise fit the criteria that Patterson set for Special Markets: more than 15 practices exceeding \$600,000 in annual purchases.¹²⁶ Therefore, Complaint Counsel contend there is a genuine issue of material fact for trial.

48. Smaller DSOs, community health centers, “buying groups,” and solo practices were distractions that Patterson Special Markets should leave in the capable hands of its regions, branches, and 1,600+ territory representatives and equipment specialists.

Response to SOF ¶ 48: Disputed in Part. Complaint Counsel dispute that Patterson’s creation of its Special Markets Division in 2013 was to focus solely on DSOs. Complaint Counsel reiterate the response to Patterson’s SOF ¶ 37-43, 47. Therefore, Complaint Counsel contend there is a genuine issue of material fact for trial.

49. Patterson Special Market’s express mission in 2013-14 was to keep its efforts focused on only the biggest DSOs.

Response to SOF ¶ 49: Disputed in Part. Complaint Counsel dispute that Patterson’s creation of its Special Markets Division in 2013 was to focus solely on DSOs. Complaint Counsel reiterate the response to SOF ¶¶ 37-43, 47-48. Therefore, Complaint Counsel contend there is a genuine issue of material fact for trial.

50. In contrast to corporate DSOs, the loosely-affiliated “buying groups” were generally not attractive customers to Patterson because they were not under common ownership, had no corporate entity, did not commit to any volume of purchases, and left each member free to buy from any distributor it wanted.

Response to SOF ¶ 50: Disputed in Part. Complaint Counsel also dispute that buying groups’ members do not purchase through contracted distributors to take advantage of lower pricing negotiated by the buying group. Complaint Counsel reiterate the response to Patterson’s SOF ¶¶ 16-17. Buying groups whose members do not contractually commit to purchase certain volumes of dental products from a distributor nonetheless purchase from a buying group’s

¹²⁶ See, e.g., [REDACTED]

preferred suppliers, delivering new business and customers, leading to incremental volume increases to that distributor.¹²⁷ Therefore, Complaint Counsel contend there is a genuine issue of material fact for trial.

51. Patterson generally saw little value in being endorsed by these groups, and the record shows Patterson repeatedly meeting with and evaluating “buying groups,” but declining to sign a contract with them, for years before Complaint Counsel alleges it joined the Benco-Schein conspiracy.

Response to SOF ¶ 51: Disputed in Part. Complaint Counsel dispute that Patterson repeatedly met with and evaluated buying group customers during the conspiracy. During the conspiracy period, Patterson summarily and routinely rejected all buying groups on the basis that they were buying groups.¹²⁸ Therefore, Complaint Counsel contend there is a genuine issue of material fact for trial.

55. “Buying groups” were simply less attractive as customers than corporate DSOs: “So let’s compare a buying group to a dental service organization. A dental service organization has one bill to and multiple ship-tos. They have a strict formulary, of which the manufacturers recognize The DSOs provide that formulary to all of their offices and they state we are ordering all of these products from Patterson Dental or our competition. The buying groups, on the other hand, have multiple bill-tos and multiple ship-tos. There is no ownership structure at all involved. . . . [T]here was no volume guarantees.”

Response to SOF ¶ 55: Disputed in Part. Complaint Counsel reiterate its response to Patterson’s SOF ¶¶ 16, 17, 37-43, 48-49, 50-51. Complaint Counsel dispute that buying groups were not attractive customers, or that Patterson had to choose between pursuing DSOs and buying groups.¹²⁹ Therefore, Complaint Counsel contends there is a genuine issue of material fact for trial.

56. Still, Patterson regions, branches, and 800+ territory representatives were always free to consider “buying groups” and regularly met with them in the 2013-16 period, heard their proposals, and evaluated whether to seek an appointment as their endorsed distributor. Patterson’s President, Paul Guggenheim, explained that the company “had a nuanced position

¹²⁷ See Complaint Counsel’s Response to Patterson SOF ¶¶ 16-17.

¹²⁸ See Complaint Counsel’s Statement of Disputed Material Facts ¶¶ 27, 29-30, 33-44, 59-65.

¹²⁹ See *id.* ¶¶ 4-10.

on ‘buying groups’ to evaluate them individually in each market based on whether or not they made sense.”

Response to SOF ¶ 56: Disputed. Complaint Counsel dispute Paragraph 56 of Patterson’s Statement of Facts. Complaint Counsel reiterate its response to Patterson’s SOF ¶¶ 22-32, 51. During the conspiracy period, Patterson summarily and routinely rejected all buying groups on the basis that they were buying groups.¹³⁰ Moreover, Patterson executives instructed its sales force of its policy not to work with and to avoid buying groups.¹³¹ Therefore, Complaint Counsel contend there is a genuine issue of material fact for trial.

Response to SOF ¶¶ 57-58: Disputed. Complaint Counsel dispute Paragraphs 57-58 of Patterson’s Statement of Facts. While the testimony appears to be properly excerpted, Complaint Counsel reiterate its response to Patterson’s SOF ¶ 22-32, 51, 56. During the conspiracy period, Patterson summarily and routinely rejected all buying groups on the basis that they were buying groups.¹³² { [REDACTED] }¹³³ Therefore, Complaint Counsel contend there is a genuine issue of material fact for trial.

Response to SOF ¶¶ 59-63: Disputed. Complaint Counsel dispute Paragraphs 59-63 of Patterson’s Statement of Facts. While the testimony appears to be properly excerpted, Complaint Counsel reiterate its response to Patterson’s SOF ¶ 22-32, 51, 56, 57-58. During the conspiracy period, Patterson summarily and routinely rejected all buying groups on the basis that they were buying groups.¹³⁴ Therefore, Complaint Counsel contend there is a genuine issue of material fact for trial.

¹³⁰ See *id.* ¶¶ 27, 29-30, 33-44, 59-65.

¹³¹ See, e.g., *id.* ¶¶ 33-39; { [REDACTED] }

¹³² See Complaint Counsel’s Statement of Disputed Material Facts ¶¶ 27, 29-30, 33-44, 59-65.

¹³³ { [REDACTED] }

¹³⁴ See Complaint Counsel’s Statement of Disputed Material Facts ¶¶ 27, 29-30, 33-44, 59-65.

64. *Since many of the “buying groups” that contacted Patterson had those unattractive characteristics, it was often skeptical.*

Response to SOF ¶ 64: Disputed. Complaint Counsel dispute Paragraph 64 of Patterson’s Statement of Facts. Complaint Counsel reiterate its response to Patterson’s SOF ¶¶ 16, 17, 50-51, 56. Indeed, Patterson rejected some of the same buying groups during the conspiracy period that it later pursued after the conspiracy ended.¹³⁵ Therefore, Complaint Counsel contend there is a genuine issue of material fact for trial.

65. *But, when a “buying group” presented different characteristics—for example, by committing to buy a set volume of equipment or merchandise—Patterson considered pursuing its endorsement and selling to its members. For example, Patterson’s branches in Florida sold to both OrthoSynetics and Jackson Health in 2014 and afterwards.*

Response to SOF ¶ 65: Disputed in Part. Complaint Counsel dispute that Patterson provided discounts to buying groups during the conspiracy period. Complaint Counsel further dispute that Orthosynetics and Jackson Health are buying groups. Orthosynetics is a management service organization (“MSO”), and is distinct from buying group, because it provides centralized management services and controls its affiliates’ business and administrative operations. Patterson’s own documents ██████████ support this conclusion.¹³⁶ Similarly, Jackson Health is a “system of hospitals and clinics” that Patterson began selling to 10 years before 2014.¹³⁷ Therefore, Complaint Counsel contend there is a genuine issue of material fact for trial.

66. *And as the company started to see some “buying groups,” like Smile Source, sign up a hundred or more members across multiple locales, it weighed whether Patterson Special Markets might be better positioned to evaluate them, rather than leaving them to a single local territory representative. In 2015, Patterson thus appointed Wesley Fields as Director Business Development in its corporate office and instructed him to evaluate larger “buying groups” within Special Markets (and still left regions and branches free to handle smaller “buying groups” as they saw fit).*

¹³⁵ See *id.* ¶¶ 60-67.

¹³⁶ See *id.* ¶ 68.

¹³⁷ See *id.* ¶ 69.

Response to SOF ¶ 66: Disputed in Part. Complaint Counsel dispute that Patterson encountered attractive buying group opportunities only after the conspiracy. Complaint Counsel reiterate its response to Patterson’s SOF ¶¶ 16, 50-51, 64. Indeed, Patterson rejected some of the same buying groups during the conspiracy period that it later pursued after the conspiracy ended.¹³⁸ For example, Patterson declined to work with Smile Source in 2013, but submitted a bid for its business after the conspiracy ended.¹³⁹ Therefore, Complaint Counsel contend there is a genuine issue of material fact for trial.

67. And, it also hired McKinsey & Company to analyze its strategy with regard to DSOs and buying groups; McKinsey’s December 2015 report concluded that Patterson was rightly focused on GPOs [sic] but should also keep an eye on “buying groups” to see whether they might continue to grow their membership, centralize their purchases, and become attractive customers.

Response to SOF ¶ 67: Disputed in Part. Complaint Counsel dispute that Patterson hired McKinsey & Company specifically to analyze the opportunity of buying groups. { [REDACTED] }¹⁴⁰ Therefore, Complaint Counsel contend there is a genuine issue of material fact for trial.

Response to SOF ¶¶ 69-71: Disputed. Complaint Counsel dispute Paragraphs 69-71 of Patterson’s Statement of Facts. While the testimony appears to be properly excerpted, the evidence supports an agreement among Respondents’ executives not to discount to or compete for buying groups, which conflicts with self-serving testimony by Respondents’ executives.¹⁴¹ Therefore, Complaint Counsel contend there is a genuine issue of material fact for trial.

Response to SOF ¶¶ 72-77: Disputed. Complaint Counsel dispute Paragraphs 72-77 of Patterson’s Statement of Facts. The cited documents reveal a pattern of inter-firm

¹³⁸ See Complaint Counsel’s Response to Patterson’s SOF ¶ 64.

¹³⁹ *Id.*

¹⁴⁰ [REDACTED]

¹⁴¹ See, e.g., Complaint Counsel’s Statement of Disputed Material Facts ¶¶ 13-32.

communications, opportunities to collude, as well as the Respondents' friendly relations, which is inconsistent with their status as competitors.¹⁴² Moreover, some of the cited documents reveal suspicious information exchanges about confidential business matters and competitive threats, which are not consistent with discussing legitimate personal and business topics.¹⁴³ Therefore, Complaint Counsel contend there is a dispute of material fact for trial.

78. Cohen did not ask Guggenheim to do anything, let alone ask Patterson to commit that it would never sell to "buying groups."

Response to SOF ¶ 78: Disputed. Complaint Counsel dispute Paragraph 78 of Patterson's Statement of Facts. The February 2013 communications between Cohen and Guggenheim represented a "meeting of the minds" in an agreement not to "recognize, work with, or offer discounts to" buying groups.¹⁴⁴ Guggenheim's response to Cohen reflected a meeting of the minds. His response—"We feel the same way about these"—was a departure from Patterson's attitude toward buying groups up until that point.¹⁴⁵ Therefore, Complaint Counsel contend there is a genuine issue of material fact for trial.

79. Guggenheim said he did not know anything about the New Mexico Dental Cooperative but would look into it. He noted that Patterson people "feel the same way" about "buying groups," i.e., he expressed the view Patterson already held.

Response to SOF ¶ 79: Disputed in Part. Complaint Counsel dispute that Guggenheim was expressing Patterson's pre-determined, pre-held views that Patterson would "not recognize, work with, or offer discounts to buying groups." { [REDACTED]

¹⁴² See, e.g., Patterson's SOF Exhibits 89, 91, 125-126.

¹⁴³ See, e.g., Patterson's SOF Exhibits 102 (coordinating product selection with Benco to discipline a vendor), 112 (coordinating a response to a manufacturer's pricing promotion that is unfavorable to distributors), 151 (Benco task to "Discuss Amazon Response re Distributors . . . Work with Schein & Patterson").

¹⁴⁴ Complaint Counsel's Statement of Disputed Material Facts ¶¶ 20-52.

¹⁴⁵ *Id.* ¶¶ 23, 25.

[REDACTED] }¹⁴⁶ Indeed, Patterson had on occasion discounted to buying groups prior to 2013.¹⁴⁷ Therefore, Complaint Counsel contend there is a genuine issue of material fact for trial.

80. Guggenheim did not look into the situation, however, and never got back to Cohen about the New Mexico Dental Cooperative meeting—and Mr. Cohen did not expect a response.

Response to SOF ¶ 80: Disputed. Complaint Counsel dispute Paragraph 80 of Patterson’s Statement of Facts. Guggenheim immediately forwarded Cohen’s email to his Vice Presidents of Sales (Dave Misiak) and Marketing (Tim Rogan).¹⁴⁸ A few hours later, Guggenheim replied to Cohen: “*Thanks for the heads up. I’ll investigate the situation. We feel the same way about these,*”¹⁴⁹ providing all the response that Cohen needed. Moreover, Guggenheim testified that he does not recall whether he in fact looked into the NMDC situation—contradicting to Patterson’s SOF ¶ 80. Following these communications, Patterson began rejecting buying groups.¹⁵⁰ [REDACTED]

[REDACTED].¹⁵¹ Therefore, Complaint Counsel contend there is a genuine issue of material fact for trial.

81. In fact, unbeknownst to Mr. Guggenheim (and to Mr. Cohen, obviously) Patterson’s local branch manager, Scott Belcheff, had already told the New Mexico dentists the day before—on February 7th—that Patterson would not host their meeting for his own reasons.

Response to SOF ¶ 81: Disputed as Misleading. Complaint Counsel dispute the assertion that Scott Belcheff had already severed ties with NMDC prior to the Cohen-Guggenheim exchange. Instead, the cited email reveals that Belcheff suggested cancelling a scheduled meeting with NMDC, but stated his intention to schedule a different meeting, as well

¹⁴⁶ [REDACTED]

¹⁴⁷ See, e.g., RX0037 at -001 (PDCO 00027971); [REDACTED]

¹⁴⁸ CX0091 at -001 (PDCO00010908).

¹⁴⁹ CX0090 at -001 (PDCO00010912) (emphasis added).

¹⁵⁰ Complaint Counsel’s Statement of Disputed Material Facts ¶ 41.

¹⁵¹ *Id.* ¶ 26.

as to continue partnering with NMDC: “This has the opportunity to be huge and is moving fast and I want to make sure we are doing this right from the beginning. . . . I am hoping Patterson can be a partner you trust and that will always do the right thing for you. . . . I definitely want to keep this moving forward.”¹⁵² This email was sent on February 7, 2013, and the meeting was rescheduled as a dinner meeting on February 11.¹⁵³ The Cohen-Guggenheim exchange occurred the day after Belcheff’s email, February 8. Belcheff did not have any other communication with NMDC before the dinner meeting on the February 11. Dr. Mason of NMDC was surprised to discover at the dinner meeting that Patterson refused to work with NMDC, as NMDC was “well on our way” to partnering with Patterson.¹⁵⁴ Therefore, Complaint Counsel contend there is a genuine issue of material fact for trial.

82. Nor did Guggenheim subsequently instruct his regions, branches or 800+ territory sales representatives that he’d committed the company would never sell “buying groups.” In fact, a few weeks after the email, a Patterson territory manager was negotiating with a “buying group” and forwarded an internal discussion regarding the request for proposals to his supervisor, David Misiak. Misiak told the manager that his personal response when approached by a “buying group” was to politely decline. Misiak testified that he gave this advice in the absence of a corporate policy at Patterson—he certainly did not mention Patterson having an agreement to boycott “buying groups.” Misiak further explained that he passed along market intelligence he had heard that Schein and Benco also did not work with “buying groups” while asking the manager to correct him if he heard otherwise, showing Misiak’s uncertainty and his desire to make sure his intelligence was accurate (he was wrong about Schein). Misiak said he would have supported working with a “buying group” if he thought it could organize and deliver volume commitments—he just did not believe that they could.”

Response to SOF ¶ 82: Disputed. Complaint Counsel dispute Paragraph 82 of Patterson’s Statement of Facts. Following these communications, Guggenheim, Misiak, and other Patterson executives began enforcing a strategy against buying groups, consistent with the agreement.¹⁵⁵ Moreover, Complaint Counsel dispute the characterization of Misiak’s statement

¹⁵² CX4090 at -001-002 (PDCO00151225).

¹⁵³ CX8035 (Mason Dep. Tr. 53:24-54:2).

¹⁵⁴ *Id.* 51:14-16, 52:3-6, 53:24-55:19.

¹⁵⁵ Complaint Counsel’s Statement of Disputed Material Facts ¶¶ 27, 30-43, 59-62, 64-65.

as passing along market intelligence. A subsequent Misiak email reveals the intent behind his email to the territory representative: “*I’m concerned that Schein and Benco sneak into these co-op bids and deny it.*”¹⁵⁶ Therefore, Complaint Counsel contend there is a genuine issue of material fact for trial.

83. Mr. Cohen and Mr. Guggenheim never discussed the New Mexico Dental Cooperative again, and the email exchange had no impact on the New Mexico Dental Cooperative. Nor did Mr. Guggenheim take any act that suggested he considered himself to have committed Patterson to a boycott of “buying groups.” Instead, he testified that he did not view Cohen’s unsolicited comment as a commitment from Benco; he simply considered it a piece of market intelligence that was “old news” in his opinion because he believed “buying groups” were widely seen as unattractive customers.

Response to SOF ¶ 83: Disputed in Part. Complaint Counsel dispute Patterson’s assertion that Guggenheim did not act in reliance on the agreement after February 2013.

{ [REDACTED] }¹⁵⁷ Following these inter-firm communications, Patterson acted in accordance with the agreement by rejecting buying groups.¹⁵⁸ In instructing the sales force against bidding, Patterson executives relied on assurances that Benco and Schein likewise would not bid, and expressed concerns about cheating.¹⁵⁹ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]¹⁶⁰ Within three days of Cohen and Guggenheim’s February 2013 exchange, Patterson’s potential partnership with NMDC was dead.¹⁶¹ Therefore, Complaint Counsel contend there is a genuine issue of material fact for trial.

¹⁵⁶ *Id.* ¶ 44.

¹⁵⁷ { [REDACTED] }

¹⁵⁸ Complaint Counsel’s Statement of Disputed Material Facts ¶¶ 27, 41, 59-61, 64-65.

¹⁵⁹ *Id.* ¶¶ 33-40, 43-45.

¹⁶⁰ *Id.* ¶ 23; CX8035 (Mason Dep. Tr. 51:14-16, 52:3-6, 53:24-55:19).

¹⁶¹ Complaint Counsel’s Statement of Disputed Material Facts ¶ 27.

84. Indeed, he only forwarded Cohen’s email to two people, Misiak and Rogan, and he did that without any comment at all: he did not draw any particular attention at any aspect of Cohen’s email, let alone to Cohen’s statement about Benco’s policy with regard to “buying groups,” nor instruct Misiak or Rogan to tell the 800+ territory sales reps to boycott “buying groups.” Indeed, Rogan and Misiak were unsure what to even make of Cohen’s email.

Response to SOF ¶ 84: Disputed. Complaint Counsel dispute Paragraph 84 of Patterson’s Statement of Facts. While Guggenheim did not given any written instruction when forwarding this email to Misiak and Rogan, there was no need for such instructions: the entire email chain was concerning buying groups, and Guggenheim’s response (that he forwarded) stated clearly, “we feel the same way about these.” Misiak and Rogan immediately acted in accordance with an agreement not to pursue buying groups.¹⁶² When Guggenheim confronted Cohen about cheating in June 2013, he “blind” copied Misiak and Rogan on the email exchange.¹⁶³ Therefore, Complaint Counsel contend there is a genuine issue of material fact for trial.

85. The only other communication between Benco and Patterson that Complaint Counsel cited in its Interrogatory Response as supporting its claim that Patterson joined the alleged Benco-Schein conspiracy is a June 2013 email exchange. Again, it shows no such thing. Instead, it shows that Benco and Patterson had different views of about whether ADC was a “buying group” or a DSO and acted differently (Patterson did not seek ADC’s endorsement, while Benco apparently, did).

Response to SOF ¶ 85: Disputed. Complaint Counsel dispute Paragraph 85 of Patterson’s Statement of Facts. The evidence as a whole supports a finding of an agreement, as do further communications between Cohen and Guggenheim regarding the TDA buying group.¹⁶⁴ Nor did Patterson and Benco act differently. Instead, the record reveals that Patterson actively monitored and enforced cheating on the agreement; that Guggenheim confronted Cohen

¹⁶² CX0093 at -001 (PDCO00051886); CX0106 at -001 (PDCO00027980).

¹⁶³ CX0095 at -001 (PDCO00010955).

¹⁶⁴ CX1062 at -001 (BDS-FTC00001789); CX0101 at -001 (PDCO00011057); Complaint Counsel’s Statement of Disputed Material Facts ¶¶ 19-52, 59-75.

about perceived cheating;¹⁶⁵ and that Cohen reaffirmed the agreement, explaining that ADC was a DSO.¹⁶⁶ [REDACTED]

[REDACTED]¹⁶⁷ While Benco and Patterson may have initially viewed ADC differently, Patterson and Benco exchanged assurances and conformed their conduct following inter-firm communications. Therefore, Complaint Counsel contend there is a genuine issue of material fact for trial.

88. Patterson was skeptical of this proposal—the group would not commit to a set volume, each dentist was free to buy from whoever it wanted, and the cost of handling and delivering product and service to each of the separate practices was exactly the same as serving the individual practices.

Response to SOF ¶ 88: Disputed in Part. Complaint Counsel dispute that Patterson was skeptical of ADC and its ability to drive sales. ADC approached Patterson’s Chesapeake, Virginia branch manager seeking a bid in February 2013. The branch manager sought permission to bid, and feared Patterson would lose customers and sales if it did not win the bid.¹⁶⁸ [REDACTED]

[REDACTED]

[REDACTED]¹⁶⁹

Therefore, Complaint Counsel contend there is a genuine issue of material fact for trial.

89. Patterson’s branch manager and territory rep were also concerned it might aggravate their other customers.

Response to SOF ¶ 89: Disputed. Complaint Counsel dispute Paragraph 89 of Patterson’s Statement of Facts. Complaint Counsel reiterate its response to Patterson’s SOF ¶ 88. There is no evidence in the record, and Patterson has cited none, of a distributor losing customers because of its decision to sell to buying groups. [REDACTED]

¹⁶⁵ Complaint Counsel’s Statement of Disputed Material Facts ¶ 45.

¹⁶⁶ CX3412 at -001 (PDCO00010959).

¹⁶⁷ Complaint Counsel’s Statement of Disputed Material Facts ¶ 48.

¹⁶⁸ *Id.* ¶ 42.

¹⁶⁹ *Id.* ¶ 48.

[REDACTED] }¹⁷⁰

Further, there is evidence that Patterson lost customers to fringe distributors by refusing to contract with buying groups.¹⁷¹ After the conspiracy, Patterson began bidding on buying group business.¹⁷² Therefore, Complaint Counsel contend there is a genuine issue of material fact for trial.

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

Response to SOF ¶ 93: Disputed. Complaint Counsel dispute Paragraph 93 of Patterson’s Statement of Facts. Prior to June 2013, Patterson refused to bid for ADC’s business, believing it be a buying group.¹⁷³ [REDACTED]

[REDACTED] ¹⁷⁴

Therefore, Complaint Counsel contend there is a genuine issue of material fact for trial.

94. Guggenheim did attempt to gather additional market intelligence relating to ADC in June 2013, though, after being contacted by Chesapeake branch manager Devon Nease. Guggenheim sent a new reply to Cohen’s February 2013 email and asked a question: was Benco’s policy against selling “buying groups” still in place and did Benco consider ADC a “buying group.”

Response to SOF ¶ 94: Disputed in Part. Complaint Counsel dispute the characterization of Guggenheim’s email to Cohen as an attempt to gather market intelligence.

[REDACTED]

¹⁷⁰ [REDACTED]

¹⁷¹ Complaint Counsel’s Statement of Disputed Material Facts ¶ 74-75.

¹⁷² *Id.* ¶ 62, 66.

¹⁷³ *Id.* ¶ 43.

¹⁷⁴ *Id.* ¶ 48.

98. *There are literally no communications between Patterson and Schein related to “buying groups” in 2013, and every Schein and Patterson witness has sworn under oath they did not agree to boycott “buying groups.”*]

Response to SOF ¶ 98: Disputed in part. Complaint Counsel disputes Patterson’s assertion that Patterson and Schein did not communicate about buying groups during the conspiracy. Complaint Counsel does not dispute that, in 2013, there were no known inter-firm communications relating specifically to buying groups directly between Patterson and Schein executives. Patterson and Schein executives communicated about the TDAPerks buying group in 2014.¹⁷⁸ Moreover, Patterson’s own documents confirm its understanding that it was not alone in adhering to a no-Buying Group policy, but that there was an overarching understanding among all three Respondents not to do business with buying groups.¹⁷⁹

Complaint Counsel also does not dispute that Patterson and Schein executives have offered sworn denials of an agreement. The evidence showing an agreement among Respondents’ executives not to discount to or compete for buying groups, however, conflicts with self-serving testimony by Respondents’ executives.¹⁸⁰ { [REDACTED] }¹⁸¹ there was also no need for direct communications between Schein and Patterson’s executives. Therefore, Complaint Counsel contend there is a genuine issue of material fact for trial.

99. *Indeed, Complaint Counsel’s Interrogatory Response cites no communications between Patterson and Schein regarding the New Mexico Dental Cooperative, ADC, Kois, Smile Source or any other “buying groups” in 2013.*

¹⁷⁸ *Id.* ¶¶ 51-52.

¹⁷⁹ *Id.* ¶¶ 29, 31, 33, 43-44.

¹⁸⁰ *See, e.g., id.* ¶¶ 13-32.

¹⁸¹ { [REDACTED] }

Response to SOF ¶ 99: Disputed in Part. Complaint Counsel disputes that the absence of inter-firm communications between Patterson and Schein about the referenced groups is exculpatory in any way. Complaint Counsel reiterates its response to Patterson SOF ¶ 98. Therefore, Complaint Counsel contend there is a genuine issue of material fact for trial.

100. Instead, Complaint Counsel cites a single phone call and subsequent email from January 2014[,] which, on its face, relates only to Schein’s decision—made on its own—about whether it was going to attend the Texas Dental Association (“TDA”) meeting in May 2014.

Response to SOF ¶ 100: Disputed in Part. Complaint Counsel dispute that the “single call and subsequent email” between Schein’s Steck and Patterson’s Misiak are the only inter-firm contacts between Schein and Patterson.¹⁸² Complaint Counsel reiterates its response to Patterson’s SOF ¶ 98. Therefore, Complaint Counsel contend there is a genuine issue of material fact for trial.

104. In January 2014, Schein’s David Steck told Patterson’s David Misiak that Schein still had not made its decision regarding whether to attend, but he would let Misiak know after Schein decided. But he never did.

Response to SOF ¶ 104: Disputed in Part as Misleading. Complaint Counsel disputes as misleading Patterson’s assertion that Schein approached Patterson regarding the TDA buying group. Rather, Patterson’s Misiak called Schein’s Steck in January 2014 to inform Schein that Patterson was withdrawing from the TDA annual meeting.¹⁸³ Therefore, Complaint Counsel contend there is a genuine issue of material fact for trial.

105. Indeed, as late as April 2014[,] Patterson still did not know whether Benco was attending the TDA and in fact thought that Benco might be attending.

Response to SOF ¶ 105: Disputed in Part. Complaint Counsel dispute that the cited document contained a serious question about whether Benco might attend TDA’s meeting.¹⁸⁴

¹⁸² See, e.g., Complaint Counsel’s Statement of Disputed Material Facts ¶¶ 50, 52.

¹⁸³ CX0310 (Steck IH Tr. 176:2-5).

¹⁸⁴ CX1062 at -001 (BDS-FTC00001789).

Moreover, the cited document is an example of an inter-firm communication among all three Respondents' executives, Cohen (Benco), Guggenheim (Patterson), and Sullivan (Schein) about TDA's buying group, and this communication supports Complaint Counsel's allegations. The issue of whether Patterson knew that Benco would not be attending the TDA trade show in April 2014 is not directly relevant to Complaint Counsel's allegations that Patterson, Benco, and Schein communicated about buying groups, and agreed not to compete for or bid on buying group business. Therefore, Complaint Counsel contend there is a genuine issue of material fact for trial.

Response to SOF ¶¶ 107, 109: Disputed. Complaint Counsel dispute Paragraphs 107 and 109 of Patterson's Statement of Facts. For example, the record contains sworn testimony from Dr. Mason from the New Mexico Dental Cooperative,¹⁸⁵ as well as the Respondents' own documents describing how the 18 buying groups were victims of the Respondents' conspiracy.

[REDACTED]

[REDACTED]¹⁸⁶ Therefore, Complaint Counsel contend there is a genuine issue of material fact for trial.

108. Complaint Counsel's expert makes little or no mention of those "buying groups" in his opinion on market definition, the conspiracy, or market impact.

Response to SOF ¶ 108: Disputed. [REDACTED]

[REDACTED]

¹⁸⁵ CX8035 (Dr. Mason Dep., NMDC).

¹⁸⁶ See [REDACTED] CX8007 (Kois, Sr. Dep., Kois Buyers Group); CX8008 (Kois, Jr. Dep., Kois Buyers Group); CX0321 (Kois, Jr. IH, Kois Buyers Group); CX8006 (Puckett Dep., Dental Gator); [REDACTED]

[REDACTED]

[REDACTED] }¹⁸⁷ { [REDACTED]

[REDACTED] }¹⁸⁸ { [REDACTED]

[REDACTED] }¹⁸⁹ Therefore,

Complaint Counsel contend there is a genuine issue of material fact for trial.

110. Instead, the evidence shows that Patterson evaluated each of these four “buying groups” and made its own, independent business decision that each of them did not make sense to work with. Specifically, Patterson met with a representative from Kois Buyers Group in late 2014, but after conducting some diligence found that the “buying group” “didn’t even exist” and was just “an idea” with no members, no vendors, no buying power, and little structure or direction, despite its claim of having more than 2,000 members.

Response to SOF ¶ 110: Disputed. Complaint Counsel dispute Paragraph 110 of Patterson’s Statement of Facts. Complaint Counsel dispute that Patterson’s rejection of Kois Buyers Group was pursuant to an independent business decision, as well as Patterson’s characterizations of the Kois Buyers Group. { [REDACTED]

[REDACTED]

[REDACTED] }¹⁹⁰ { [REDACTED]

[REDACTED] }¹⁹¹ Kois Buyers Group was founded in

October 2014 by Dr. John C. Kois.¹⁹² Dentists are eligible to join the Kois Buyers Group if they have completed at least one course at the Kois Center,¹⁹³ a teaching facility that conducts

¹⁸⁷ [REDACTED]

¹⁸⁸ See, e.g., { [REDACTED] }

¹⁸⁹ See, e.g., { [REDACTED] }

¹⁹⁰ [REDACTED] see also CX0321 (Kois, Jr. IH Tr. 139:20-23) (Kois brought new customers to Burkhart).

¹⁹¹ See, e.g., { [REDACTED] }

¹⁹² CX0321 (Kois, Jr. IH Tr. 11:5-6).

¹⁹³ Id. 25:3-11; CX0287 at -002 (KOIS001622) (defining “Buyers Group Members”).

continuing education courses for dentists, usually general dentists.¹⁹⁴ The Kois Center was founded around 1994.¹⁹⁵ It has 15 employees.¹⁹⁶ There were approximately 170 members in October 2015.¹⁹⁷ There were approximately 515 members in July 2017.¹⁹⁸ Therefore, Complaint Counsel contend there is a genuine issue of material fact for trial.

111. Patterson declined to work with Kois, and Kois never approached Patterson again.

Response to SOF ¶ 111: Disputed as Misleading. Complaint Counsel dispute Patterson’s assertion that the Kois Buyers Group did not approach Patterson after 2014 as misleading. Patterson refused to work with the Kois Buyers Group and did not submit a bid, not the other way around.¹⁹⁹ { [REDACTED] }²⁰⁰ Therefore, Complaint Counsel contend there is a genuine issue of material fact for trial.

112. Smile Source approached Patterson in late 2013 and was invited for an in-person meeting at Patterson’s headquarters in Minnesota. After the meeting, Patterson evaluated the opportunity but concluded that Smile Source had few members and was not attractive. Patterson met with Smile Source again several years later—after Smile Source hired a new and more experienced CEO—and thought it presented a potentially viable business opportunity. Patterson submitted what Smile Source’s CEO characterized as “a very competitive bid” but lost the bid to Schein.

Response to SOF ¶ 112: Disputed in Part. Complaint Counsel dispute Patterson’s asserted reasons for rejecting Smile Source in 2013. Patterson rejected Smile Source in 2013, during the conspiracy, because it was a buying group.²⁰¹ { [REDACTED] }

¹⁹⁴ CX0321 (Kois, Jr. IH Tr. 7:10-15).

¹⁹⁵ *Id.* 7:21-24.

¹⁹⁶ *Id.* 7:25-8:8.

¹⁹⁷ *Id.* 27:17-20.

¹⁹⁸ *Id.* 27:14-16.

¹⁹⁹ *Id.* 76:15-77:7; CX3084 at -001 (PDCO00029940).

²⁰⁰ { [REDACTED] }

²⁰¹ Complaint Counsel’s Statement of Disputed Material Facts ¶ 60.

[REDACTED] }²⁰² { [REDACTED]
[REDACTED] }²⁰³

Therefore, Complaint Counsel contend there is a genuine issue of material fact for trial.

113. Patterson likewise made its own independent decision with Dental Gator, which Patterson found out during its evaluation was really just the arm of a Texas-based DSO (MB2) with the sole purpose of “lur[ing] potential dentists so MB2 could purchase them for their DSO.”

Response to SOF ¶ 113: Disputed in Part. Complaint Counsel dispute Patterson’s characterization of having made an “independent decision” regarding Dental Gator, a buying group. During the conspiracy period, Patterson summarily and routinely rejected all buying groups on the basis that they were buying groups.²⁰⁴ Therefore, Complaint Counsel contend there is a genuine issue of material fact for trial.

115. KlearImpakt, did not reach out to Patterson or afford it the opportunity to compete for its business at any time during Complaint Counsel’s alleged “conspiracy” period.

Response to SOF ¶ 115: Disputed in Part as Misleading. Complaint Counsel disputes Patterson’s characterization that KlearImpakt did not “afford [Patterson] the opportunity” to compete for its business. As with all buying groups, Patterson may choose to compete for its business. It did not do so during the conspiracy period. Therefore, Complaint Counsel contend there is a genuine issue of material fact for trial.

²⁰² [REDACTED]

²⁰³ See, e.g., { [REDACTED] }

²⁰⁴ See, e.g., Complaint Counsel’s Statement of Disputed Material Facts ¶¶ 59-62, 64-65.

Dated: October 10, 2018

Respectfully submitted,
/s/ Lin W. Kahn
Lin W. Kahn
Federal Trade Commission
Bureau of Competition – Western Region
901 Market Street, Suite 570
San Francisco, CA 94103
Telephone: (415) 848-5100
Facsimile: (415) 848-5184
Electronic Mail: lkahn@ftc.gov

CX0008

From: Patrick Ryan
Sent: Wednesday, October 02, 2013 1:12 PM
To: Brian Evans
Subject: Re: SmileSource

I still don't believe Adec is discounting.

Sent from my iPhone

On Oct 2, 2013, at 9:04 AM, "Brian Evans" <bevans@benco.com> wrote:

Thru Burkhart to get the discount, so that would explain the adec involvement?

Brian Evans

Director of Sales - West | **Benco Dental Company** | USA
CenterPoint West | 3590 Harbor Gateway N. Costa Mesa, CA 92626
Cell: 480-335-5516 | Fax: 480-323-2422 | BEvans@Benco.com
www.Benco.com

We deliver success *smile after smile.*

From: Patrick Ryan
Sent: Wednesday, October 02, 2013 5:50 AM
To: Brian Evans
Subject: RE: SmileSource

This is a buying group supported by Burkhart

Patrick Ryan
Director Of Sales, Equipment & Special Markets
Benco Dental Company
295 Centerpoint Blvd
Pittston, PA 18640
570-602-6816

From: Brian Evans
Sent: Tuesday, September 24, 2013 6:52 PM
To: Patrick Ryan
Subject: SmileSource

Heard of this group? Apparently our vendor partners (mostly eq) giving discounts to members of this group when making purchases.

www.smilesource.com

Brian Evans

Director of Sales - West | **Benco Dental Company** | USA
CenterPoint West | 3590 Harbor Gateway N. Costa Mesa, CA 92626
Cell: 480-335-5516 | Fax: 480-323-2422 | BEvans@Benco.com
www.Benco.com

We deliver success *smile after smile.*

CX0011

From: Scott Jack
Sent: Monday, July 13, 2015 9:33 PM
To: Pat Ryan
Subject: RE: Large Group

That's' nothing ...guess it all comes down to if the insurance reimbursement is worth it then.

Thank you,

Scott Jack
C: 703-401-2810
F: 703-327-6917
E: sjack@benco.com



From: Pat Ryan
Sent: Monday, July 13, 2015 5:27 PM
To: Scott Jack
Subject: Re: Large Group

5% maybe

Sent from my iPhone

On Jul 13, 2015, at 4:57 PM, Scott Jack <sjack@benco.com> wrote:

Great I'll see how they are planning to set it up. Honestly I'd rather not do it but don't want to lose that much business.

What's the estimated savings over Partnersharing?

Thank you,

Scott Jack
C: 703-401-2810
F: 703-327-6917
E: sjack@benco.com



From: Pat Ryan
Sent: Monday, July 13, 2015 4:55 PM

To: Scott Jack
Subject: Re: Large Group

Depends on how it's structured. We have one in Blue Ridge where all the practices "sold" themselves to a new corporation. Now all 40 former practice owners own the corporation.

After seeing and vetting their incorporation papers, we decided it met our requirements.

Sent from my iPhone

On Jul 13, 2015, at 4:43 PM, Scott Jack <sjack@benco.com> wrote:

Ok thanks and I know Kois Center went with Burkhardt as they did a buying group.

What if they form a new corporation under one umbrella?

Thank you,

Scott Jack
C: 703-401-2810
F: 703-327-6917
E: sjack@benco.com



From: Pat Ryan
Sent: Monday, July 13, 2015 4:42 PM
To: Scott Jack
Subject: Re: Large Group

I've seen Darby do occasionally.

Sent from my iPhone

On Jul 13, 2015, at 4:41 PM, Scott Jack <sjack@benco.com> wrote:

Burkhardt is the only one that does then?

Thank you,

Scott Jack
C: 703-401-2810
F: 703-327-6917
E: sjack@benco.com



.....
From: Pat Ryan
Sent: Monday, July 13, 2015 4:41 PM
To: Scott Jack
Cc: Richard Varipapa; Chuck Cohen
Subject: Re: Large Group

It wouldn't. We don't allow LG pricing unless there is common ownership.

Neither Schein nor Patterson do either.

Sent from my iPhone

On Jul 13, 2015, at 4:00 PM, Scott Jack <sjack@benco.com> wrote:

Hi Pat,

Hope all is well and you had a good weekend.

I have about 50-75 doctors that are in the process of starting a "buying group" / new corporation where they will negotiate with insurance companies, malpractice companies, retirement plans and of course dental suppliers.

Could you explain to me how the large group practices work and what the pricing difference is compared to Partnersharing? I'd rather not deal with a group like this but also need to keep about \$1M in current business from joining.

Thank you,

Scott Jack
C: 703-401-2810
F: 703-327-6917
E: sjack@benco.com

<image001.jpg>

CX0012

From: Pat Ryan
Sent: Tuesday, May 19, 2015 2:04 PM
To: Chuck Cohen
Subject: Re: ShoreTel voice message from Denver CO, +17202460496 for mailbox 6813

The best part about calling these guys is I already KNOW that Patterson and Schein have said NO.

So I get something like this....."We really wanted to give you this opportunity first" or "We can really help Benco grow"

It amuses me to a certain point.

Sent from my iPhone

On May 19, 2015, at 9:54 AM, Chuck Cohen <ccohen@benco.com> wrote:

Funny!

I have 226 dentists also...

cfc

From: Pat Ryan
Sent: Tuesday, May 19, 2015 9:10 AM
To: Chuck Cohen
Subject: Fwd: ShoreTel voice message from Denver CO, +17202460496 for mailbox 6813

"Next up in The Tank"

Sent from my iPhone

Begin forwarded message:

From: Kevin Dillon <KDillon@benco.com>
Date: May 19, 2015 at 8:28:12 AM EDT
To: Pat Ryan <pryan@benco.com>
Subject: FW: ShoreTel voice message from Denver CO, +17202460496 for mailbox 6813

<http://www.dentistryunchained.com/>

17202460496 Dr David Bennett

Can you take this? Dr. has 226 Dentist the want to do a buying group. They are say 15% discount on merch for all DSS that join. They want to use Benco

-----Original Message-----

From: ShoreWare Voice Mail [<mailto:shoretel@benco.com>]

Sent: Monday, May 18, 2015 5:54 PM

To: Kevin Dillon

Subject: ShoreTel voice message from Denver CO, +17202460496 for mailbox 6813

You have received a voice mail message from Denver CO, +17202460496 for mailbox 6813.

Message length is 00:01:35. Message size is 745 KB.

CX0019

From: Patrick Ryan
Sent: Monday, January 27, 2014 12:50 AM
To: Chuck Cohen
Subject: Re: SmileSource...

Very familiar. Talked to them three times. Nothing is different. Randy at Schein and I talked specifically about them. Buh-bye.

Sent from my iPhone

On Jan 26, 2014, at 7:28 PM, "Chuck Cohen" <ccohen@benco.com> wrote:

<http://www.smilesource.com/contact.html>

cfc

.....
Charles Cohen
Managing Director ▪ Benco Dental Company ▪ 'We deliver success, smile after smile.'
295 Centerpoint Boulevard ▪ Pittston, PA 18640
Phone: 570.602.6811 ▪ Fax: 570.602.4901 ▪ e-mail: ccohen@benco.com
Administrative Assistant: Nancy McCarroll (nmccarroll@benco.com)

CX0023

From: Patrick Ryan
Sent: Monday, September 16, 2013 1:05 PM
To: Mike McElaney; Chuck Cohen; Paul Jackson
Subject: RE: Burkhart

Maybe we should discuss with Lori as well.

CHUCK---maybe what you should do is make sure you tell Tim and Paul to hold their positions as we are

Patrick Ryan
Director Of Sales, Equipment & Special Markets
Benco Dental Company
295 Centerpoint Blvd
Pittston, PA 18640
570-602-6816

From: Mike McElaney
Sent: Monday, September 16, 2013 8:21 AM
To: Chuck Cohen; Patrick Ryan; Paul Jackson
Subject: Burkhart

I spoke with Jeff Reece at length late Friday about buying groups.

JEFF DOES NOT GET IT!!! I also feel Laurie Paulson is pushing this approach at the NDC.
I will be meeting Jeff at the ADA meeting to continue the discussion.
Sincerely,

Mike McElaney
Vice President of Sales
Benco Dental
295 CenterPoint Blvd.
Pittston, PA 18640

Office: 570-602-6826
Cell: 817-907-4354
mmcelaney@benco.com

CX0037



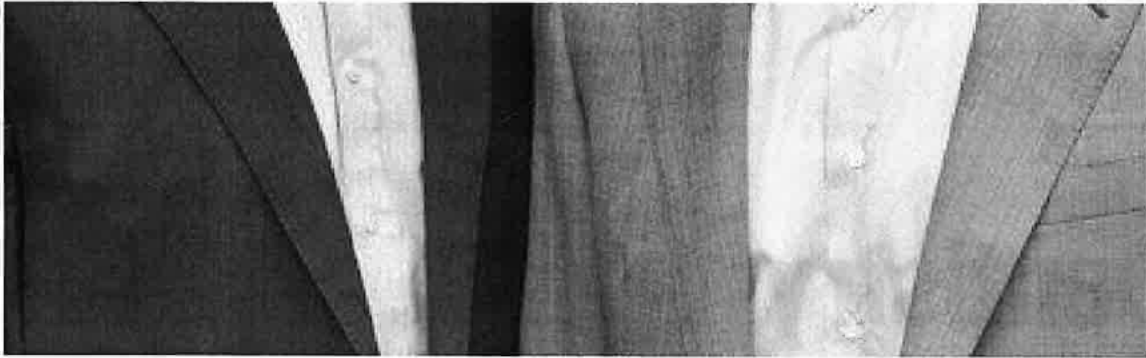
The Web's Most Comprehensive Resource for Dental Professionals

Sitting down with Benco Dental managing directors Chuck and Rick Cohen

By Kevin Henry

Editor, Proofs





I recently had the chance to sit down with Chuck (pictured, left) and Rick Cohen (pictured, right), managing directors for Benco Dental.

Kevin Henry: How has your company fared and changed in recent months?

Chuck Cohen: We are seeing good growth. We've grown geographically and we're growing in areas where we've been for a while. We've seen a lot of changes and business is good. We like our position. We feel like we have a good story to share.

Our numbers in the first quarter were up but not a lot. We're seeing more improvement in the second quarter. Our numbers are trending along with the economy. We are anticipating a strong push to the end of the year.

Henry: Speaking of geographic growth, talk to me about Benco's "Westward Expansion" and how it has affected your business.

Rick Cohen: When we opened the distribution center in Reno in 2011, it was the culmination of 10 to 12 years of westward expansion. On one hand, things haven't changed for our company a bit. We still have the same culture and the same values. On the other hand, we've opened up new areas and stretched our business in a very good way. We're still offering good value to our customers and vendor partners. We've made a lot of investments to ensure that.

Henry: With your company's growth, how do you ensure your reps across the country are getting the same message?

Chuck Cohen: It's a constant challenge to push the right message to sales reps, whether you have 10 or 100. Communicating with the reps is one of the most important parts of our business. We use an Internet-based system to make sure we get the right information to the right person at the right time. It's always a challenge to make sure the reps can walk in armed and ready with the right information to have a conversation with the customer.

Henry: What challenges do you see for your company during the next year?

Rick Cohen: One of our top-of-mind challenges currently is CAD/CAM, which is an area that we haven't played in at all prior to this year. It's a new product segment we are very focused on.

Henry: I know one of the biggest things that separates Benco from other dealers is the lack of exclusive partnerships with manufacturers. Why is that?

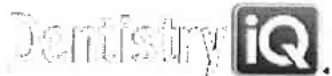
Chuck Cohen: We firmly believe in competition, not exclusivity. We offer multiple manufacturers with multiple products. Competition built our company, and we are glad to keep that tradition going. Customers want the opportunity to buy what they want from whomever they want. We try to add value for the customer, and we believe that exclusive partnerships restrict our customers.

Henry: Finally, can you talk to me about your company's current view of dental trade shows?

Rick Cohen: What we're seeing now are expensive trade shows with fewer and fewer dentists attending. Granted, that doesn't apply to every show, but it is getting worse overall. However, not attending trade shows is not an option for us. We just have to try to influence better outcomes to justify our expenses.

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CX0055

From: Chuck Cohen
Sent: Friday, February 08, 2013 5:52 PM
To: Don Taylor
Cc: Brian Evans; Patrick Ryan
Subject: Re: New Mexico Dental Cooperative purchasing.

We don't recognize buying groups, happy to discuss if you've got other ideas. I'll reach out to my counterpart at Patterson to let him know what's going on in NM.

Thanks.

cfc

Charles F. Cohen
Benco Dental Company
'We deliver success, smile after smile.'
295 Centerpoint Boulevard
Pittston, PA. 18640
Phone: 570.602.6811
Cell: 570.407.1340
E-mail: ccohen@benco.com
Administrative Assistant: Nancy McCarroll (nmccarroll@benco.com)

On Feb 7, 2013, at 9:22 AM, "Don Taylor" <dtaylor@benco.com> wrote:

Gents, will you please read the bottom if this e-mail? I'd like to connect for just a couple if minutes to get your feedback and coaching on this. Thank you.

All the Best,

Don Taylor
303 548 9475
datylor@benco.com

Begin forwarded message:

From: Mike Trimble <mtrimble@benco.com>
Date: February 6, 2013, 11:36:03 AM PST
To: Don Taylor <dtaylor@benco.com>
Subject: Fwd: New Mexico Dental Cooperative purchasing.

Sent from my iPhone

Begin forwarded message:

From: Stewart Hanley <shanley@benco.com>
Date: February 6, 2013, 9:59:05 AM PST

To: Mike Trimble <mtrimble@benco.com>
Subject: Fwd: New Mexico Dental Cooperative purchasing.

Sent from my iPhone

Begin forwarded message:

From: "Bergman, Brandon"
<Brandon.Bergman@henryschein.com>
Date: February 6, 2013 9:54:15 AM GMT-08:00
To: Stewart Hanley <SHanley@benco.com>
Subject: FW: New Mexico Dental Cooperative purchasing.

Did you see this? Call me.

Brandon Bergman

Henry Schein Dental

Regional Manager

Albuquerque Office 505-856-3384

Cell Phone 505-385-1934

brandon.bergman@henryschein.com



From: Michael Stanislawski
[<mailto:MStanislawski@midmark.com>]
Sent: Monday, February 04, 2013 7:10 PM
To: ARCHULETA, CHRIS; Bergman, Brandon
Subject: FW: New Mexico Dental Cooperative purchasing.

Is he joking?

Wow.....

Because we care.

Mike Stanislowski

Territory Manager

Dental Sales Division - Rocky Mountains

(303) 601-6493 - Cell

mstanislowski@midmark.com

Customer Service: Melissa Oakley - (937) 526-8302

Technical Support: Dave Magoteaux - (937) 526-8443



From: brenton mason
[<mailto:txdelphia@gmail.com>]
Sent: Monday, February 04, 2013 1:18 PM
To: John Shernock; clhoss@mmm.com;
Marquita.Mason@dentsply.com;
Adam.Ternan@sybrondental.com;
Marni.StoneWalsh@voco.com;
Todd_Cretors@gcamerica.com;
Windi.Vigil@ivoclarvivadent.com;
Reagan.Wheeler@sybrondental.com;

JWeyenberg@hu-friedy.com;
ruby.howley@us.sunstar.com;
cherie.borer@rockymountainsalesassociates.com;
JZaneis@PREMUSA.com;
Mark.Rohan@us.acteongroup.com;
Bob.Gess@sirona.com; dolsen5065@aol.com;
Mike.Wilson@a-dec.com;
Steven.Griffith@planmecausa.com;
gmorton@dentalez.com; sconnolly@digi-doc.com;
jpdmonuco@aol.com; BrianDillonSales@Q.com;
jamiehsacks@gmail.com;
msherman@meisingerusa.com;
dknoxpsa@gmail.com; lanid@crosstex.com;
rbehbahani@septodonta.com;
Sterling.Parker@sirona.com; wright.mc.1@pg.com;
 jason chapman; Frank Montoya;
lisa.franks@ultradent.com; Charles Goodis;
Jeff.Katt@pattersondental.com;
Scott.Belcheff@pattersondental.com; robert lehm;
 Michael Stanislawski; plowe@axisdental.com;
HJBinfo@bosworth.com;
info@coltenewhaledent.com;
Crosstex@crosstex.com;
gca_sales@gcamerica.com; info@hu-friedy.com;
info@jmoritausa.com; info@parkell.com;
akegerise@premusa.com;
domestic@sswhiteburs.com; customer-service@shofu.com; infousa@voco.com;
customerservice@youngdental.com; brenton mason
Subject: New Mexico Dental Cooperative purchasing.

To All,

Frank Montoya, Jason Chapman and I are in the process of starting a dental Cooperative. Thus we are working together with our local private practice dental office owners to compete with the national large corporations in the dental field. We as small businesses are well aware of the studies showing the corporate dentistry role over the next 10 years. Furthermore, Walmart has provided us with a case study to evaluate the survival of the independent dental offices. Thus we have partnered with Patterson Dental to provide the individual office the same opportunities as the larger corporations. We as a group of 17 offices currently are expanding on weekly basis; Furthermore, we have doctors in our group from every specialty participating in the co op.

We are inviting all dental manufactures and representative to a our vendors meeting March 13, 2013 at 6:00 pm. The location is Patterson Dental Branch in Albuquerque, NM. During this meeting we will do the following:

- I) explain our philosophies
- II) Have an open forum question and answer, I will take any and all questions and be available however long needed.
- III) Explain our bid seeking for the next 12 months.

April 1st our co op will start to formulate the Preferred Vendor list for dental supplies. Our Preferred Vendor list will be update annually following our annual vendor meeting. We highly encourage our co op members to support the manufactures whom best support our co op. At the present moment we have begun formulating the Preferred Vendor list for all aspect of running a dental office. Upon conclusion of this process we will have a Preferred Vendor List for everything from cotton rolls to credit card processing fees to janitorial services and everything in the middle.

Our goal was 50 dental offices. However, that will have to change, we just started this co op and have added 17 offices without any effort. We have changed our goal to 75 dental offices in Albuquerque and then will expand to all areas of New Mexico. Furthermore, we are putting together a doctors meeting to have a discussion about the co op to increase our current enrollment.

If you have any questions please feel free to contact me at this email (personal email address) or my office, 505-821-1430. If you call the office I will need to set up a time to have a phone conversation due to patient care. As many of you know from the past, I have not been easy accessible b/c of the amount of sales persons that have wanted to work with our 3 to 5 offices. For the Co-op I will be 100% available to anyone wishing communicate and our personal corporations will only purchase with Preferred CO-OP Vendors.

--

Brenton Mason DMD

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<image002.png>

<image001.jpg>

<image003.jpg>

CX0056

From: Chuck Cohen
Sent: Friday, February 08, 2013 5:57 PM
To: Paul Guggenheim
Subject: Fwd: New Mexico Dental Cooperative purchasing.
Attachments: image002.png; image001.jpg; image003.jpg

Greetings, Paul...

Hope things are going well at Patterson. Just saw Sirona's strong results, good sign for you.

Just wanted to let you know about some noise I've picked up from New Mexico. FYI: Our policy at Benco is that we do not recognize, work with, or offer discounts to buying groups (though we do work with corporate accounts) and our team understands that policy.

Thanks, best for success in 2013!

cfc

Charles F. Cohen
Benco Dental Company
'We deliver success, smile after smile.'
295 Centerpoint Boulevard
Pittston, PA. 18640
Phone: 570.602.6811
Cell: 570.407.1340
E-mail: ccohen@benco.com
Administrative Assistant: Nancy McCarroll (nmccarroll@benco.com)

Begin forwarded message:

From: Don Taylor <dtaylor@benco.com>
Date: February 7, 2013, 9:22:27 AM PST
To: Brian Evans <bevans@benco.com>, Chuck Cohen <ccohen@benco.com>, Patrick Ryan <pryan@benco.com>
Subject: Fwd: New Mexico Dental Cooperative purchasing.

Gents, will you please read the bottom of this e-mail? I'd like to connect for just a couple of minutes to get your feedback and coaching on this. Thank you.

All the Best,

Don Taylor
303 548 9475
datylor@benco.com

Begin forwarded message:

From: Mike Trimble <mtrimble@benco.com>
Date: February 6, 2013, 11:36:03 AM PST

To: Don Taylor <dtaylor@benco.com>
Subject: Fwd: New Mexico Dental Cooperative purchasing.

Sent from my iPhone

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From: Stewart Hanley <shanley@benco.com>
Date: February 6, 2013, 9:59:05 AM PST
To: Mike Trimble <mtrimble@benco.com>
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Sent from my iPhone

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<Brandon.Bergman@henryschein.com>
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Subject: FW: New Mexico Dental Cooperative purchasing.

Did you see this? Call me.

Brandon Bergman

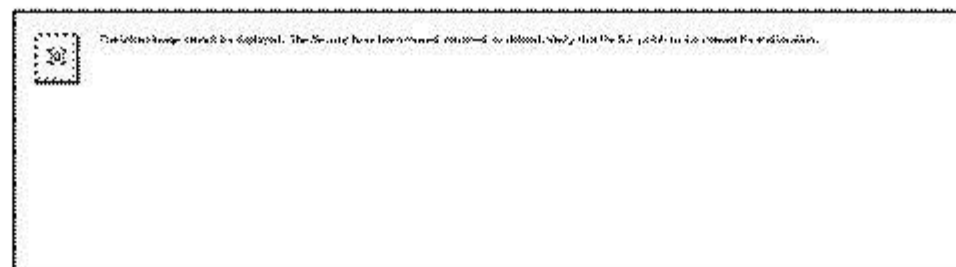
Henry Schein Dental

Regional Manager

Albuquerque Office 505-856-3384

Cell Phone 505-385-1934

brandon.bergman@henryschein.com



From: Michael Stanislawski
[mailto:MStanislawski@midmark.com]
Sent: Monday, February 04, 2013 7:10 PM
To: ARCHULETA, CHRIS; Bergman, Brandon
Subject: FW: New Mexico Dental Cooperative purchasing.

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Mike Stanislawski

Territory Manager

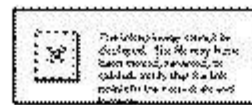
Dental Sales Division - Rocky Mountains

(303) 601-6493 - Cell

mstanislawski@midmark.com

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Technical Support: Dave Magoteaux - (937) 526-8443



From: brenton mason
 [mailto:txdelphia@gmail.com]
Sent: Monday, February 04, 2013 1:18 PM
To: John Shernock; clhoss@mmm.com;
Marquita.Mason@dentsply.com;
Adam.Ternan@sybrondental.com;
Marni.StoneWalsh@voco.com;
Todd.Cretors@gcamerica.com;
Windi.Vigil@ivoclarvivadent.com;
Reagan.Wheeler@sybrondental.com;
JWeyenberg@hu-friedy.com;
ruby.howley@us.sunstar.com;
cherie.borer@rockymountainsalesassociates.com;
JZaneis@PREMUSA.com;
Mark.Rohan@us.acteongroup.com;
Bob.Gess@sirona.com; dolsen5065@aol.com;
Mike.Wilson@a-dec.com;
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gmorton@dentalez.com; sconnolly@digi-doc.com;
ipdmonuco@aol.com; BrianDillonSales@Q.com;
jamiehsacks@gmail.com;
msherman@meisingerusa.com;
dknoxpsa@gmail.com; lanid@crosstex.com;
rbehbahani@septodonta.com;
Sterling.Parker@sirona.com; wright.mc.1@pg.com;
 jason chapman; Frank Montoya;
lisa.franks@ultradent.com; Charles Goodis;
Jeff.Katt@pattersondental.com;
Scott.Belcheff@pattersondental.com; robert lehm;
 Michael Stanislawski; plowe@axisdental.com;
HJBinfo@bosworth.com;
info@coltenewhaledent.com;
Crosstex@crosstex.com;
gca_sales@gcamerica.com; info@hu-friedy.com;
info@jmoritausea.com; info@parkell.com;
akegerise@premusa.com;
domestic@sswhiteburs.com; customer-service@shofu.com; infousa@voco.com;
customerservice@youngdental.com; brenton mason
Subject: New Mexico Dental Cooperative purchasing.

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100% available to anyone wishing communicate and our personal corporations will only purchase with Preferred CO-OP Vendors.

--
Brenton Mason DMD

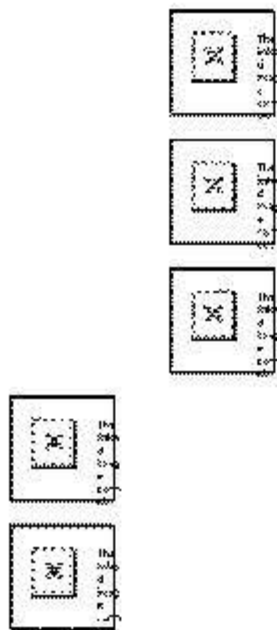
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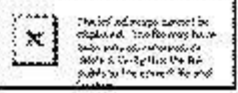
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CX0057

Redacted in Entirety

CX0066

Redacted in Entirety

CX0082

Redacted in Entirety

CX0090

From: Guggenheim, Paul
Sent: Friday, February 08, 2013 2:46 PM
To: Chuck Cohen
Subject: Re: Fwd: New Mexico Dental Cooperative purchasing.

Chuck,

Thanks for the heads up. I'll investigate the situation. We feel the same way about these.

Best to you and the family.

Paul

Paul A. Guggenheim
President
Patterson Dental Supply

From: Chuck Cohen <ccohen@benco.com>
To: Paul Guggenheim <paul.guggenheim@pattersondental.com>
Date: 02/08/2013 11:57 AM
Subject: Fwd: New Mexico Dental Cooperative purchasing.

Greetings, Paul...

Hope things are going well at Patterson. Just saw Sirona's strong results, good sign for you.

Just wanted to let you know about some noise I've picked up from New Mexico. FYI: Our policy at Benco is that we do not recognize, work with, or offer discounts to buying groups (though we do work with corporate accounts) and our team understands that policy.

Thanks, best for success in 2013!

cfc

Charles F. Cohen
Benco Dental Company
'We deliver success, smile after smile.'
295 Centerpoint Boulevard
Pittston, PA. 18640
Phone: 570.602.6811
Cell: 570.407.1340
E-mail: ccohen@benco.com
Administrative Assistant: Nancy McCarroll (nmccarroll@benco.com)

Begin forwarded message:

From: Don Taylor <dtaylor@benco.com>
Date: February 7, 2013, 9:22:27 AM PST
To: Brian Evans <bevans@benco.com>, Chuck Cohen <ccohen@benco.com>, Patrick Ryan <pryan@benco.com>
Subject: Fwd: New Mexico Dental Cooperative purchasing.

Gents, will you please read the bottom if this e-mail? I'd like to connect for just a couple if minutes to get your feedback and coaching on this. Thank you.

All the Best,

Don Taylor
303 548 9475
dataylor@benco.com

Begin forwarded message:

From: Mike Trimble <mtrimble@benco.com>
Date: February 6, 2013, 11:36:03 AM PST
To: Don Taylor <dtaylor@benco.com>
Subject: Fwd: New Mexico Dental Cooperative purchasing.

Sent from my iPhone

Begin forwarded message:

From: Stewart Hanley <shanley@benco.com>
Date: February 6, 2013, 9:59:05 AM PST
To: Mike Trimble <mtrimble@benco.com>
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Begin forwarded message:

From: "Bergman, Brandon" <Brandon.Bergman@henryschein.com>
Date: February 6, 2013 9:54:15 AM GMT-08:00
To: Stewart Hanley <SHanley@benco.com>
Subject: FW: New Mexico Dental Cooperative purchasing.

Did you see this? Call me.

Brandon Bergman

Henry Schein Dental

Regional Manager

Albuquerque Office 505-856-3384

Cell Phone 505-385-1934

brandon.bergman@henryschein.com

From: Michael Stanislawski [<mailto:MStanislawski@midmark.com>]

Sent: Monday, February 04, 2013 7:10 PM

To: ARCHULETA, CHRIS; Bergman, Brandon

Subject: FW: New Mexico Dental Cooperative purchasing.

Is he joking?

Wow.....

Because we care.

Mike Stanislawski

Territory Manager

Dental Sales Division - Rocky Mountains

(303) 601-6493 - Cell

mstanislawski@midmark.com

Customer Service: Melissa Oakley - (937) 526-8302

Technical Support: Dave Magoteaux - (937) 526-8443

From: brenton mason [<mailto:txdelphia@gmail.com>]
Sent: Monday, February 04, 2013 1:18 PM
To: John Shernock; clhoss@mmm.com; Marquita.Mason@dentsply.com;
Adam.Ternan@sybrondental.com; Marni.StoneWalsh@voco.com;
Todd_Cretors@gcamerica.com; Windi.Vigil@ivoclarvivadent.com;
Reagan.Wheeler@sybrondental.com; JWeyenberg@hu-friedy.com;
ruby.howley@us.sunstar.com; cherie.borer@rockymountainsalesassociates.com;
IJancis@PREMUSA.com; Mark.Rohan@us.acteongroup.com;
Bob.Gess@sirona.com; dolsen5065@aol.com; Mike.Wilson@a-dec.com;
Steven.Griffith@planmecausa.com; gmorton@dentalez.com; sconnolly@digidoc.com;
jpdmonuco@aol.com; BrianDillonSales@Q.com;
jamiehsacks@gmail.com; msherman@meisingerusa.com; dknoxpsa@gmail.com;
lanid@crosstex.com; rbehbahani@septodonta.com; Sterling.Parker@sirona.com;
wright.mc.1@pg.com; jason chapman; Frank Montoya;
lisa.franks@ultradent.com; Charles Goodis; Jeff.Katt@pattersondental.com;
Scott.Belcheff@pattersondental.com; robert lehm; Michael Stanislawski;
plowe@axisdental.com; HJBinfo@bosworth.com; info@coltenewhaledent.com;
Crosstex@crosstex.com; gca_sales@gcamerica.com; info@hu-friedy.com;
info@jmoritusa.com; info@parkell.com; akegerise@premusa.com;
domestic@sswhiteburs.com; customer-service@shofu.com; infousa@voco.com;
customerservice@youngdental.com; brenton mason
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Brenton Mason DMD

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CX0091

From: Guggenheim, Paul
Sent: Friday, February 08, 2013 12:18 PM
To: Misiak, David;Rogan, Tim
Subject: Fw: New Mexico Dental Cooperative purchasing.

Paul A. Guggenheim
 President
 Patterson Dental Supply

----- Forwarded by Paul Guggenheim/PDCO/PDCO on 02/08/2013 12:17 PM -----

From: Chuck Cohen <ccohen@benco.com>
To: Paul Guggenheim <paul.guggenheim@pattersondental.com>
Date: 02/08/2013 11:57 AM
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 295 Centerpoint Boulevard
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 Phone: 570.602.6811
 Cell: 570.407.1340
 E-mail: ccohen@benco.com
 Administrative Assistant: Nancy McCarroll (nmccarroll@benco.com)

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Brenton Mason DMD

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image001.jpg



image003.jpg

CX0092

From: Misiak, David
Sent: Wednesday, February 27, 2013 4:58 PM
To: Guggenheim, Paul
Subject: Fw: Scanned image from Patterson Dental

Paul,

Attached is an RFP from a dentist who's formed a Co-op. I've coached Anthony on how to stay out of this with grace. I'm concerned that Schein and Benco sneak into these co-op bids and deny it. Let's discuss if you are in tomorrow.

Dave

Dave Misiak
Vice President, Sales
Patterson Dental
Phone 651.686.1652

----- Forwarded by David Misiak/PDCO/PDCO on 02/27/2013 04:54 PM -----

From: Anthony Fruehauf/PDCO/PDCO
To: David Misiak/PDCO/PDCO@PDCO
Date: 02/27/2013 10:02 AM
Subject: Fw: Scanned image from Patterson Dental

Dave

I have attached an RFP that the GPO in Chesapeake will be sending out. I have had numerous discussions with Devon about our position and what it could mean if we set a precedent of offering lower prices to groups such as this. Devon is on board and understands our position. His concern was more of how he would be judged if we lost a big chunk of business. I assured him we were behind his efforts to maintain our Value Add strategy and to use this as an opportunity to deliver the best service, sundries and equipment to our customers that are aligned with our "Why".

If you can think of any guidance I can offer it would be appreciated. We will continue to tell our story and focus on profitable growth in our region. Thanks

Anthony Fruehauf
Mid-Atlantic Region Manager
Patterson Dental
919-877-8434 office
919-523-4335 cell
919-876-4153 fax

----- Forwarded by Anthony Fruehauf/PDCO/PDCO on 02/27/2013 10:56 AM -----

From: Devon Nease/PDCO/PDCO
To: "Anthony Fruehauf" <louis.fruehauf@pattersondental.com>
Date: 02/27/2013 10:07 AM
Subject: Fwd: Scanned image from Patterson Dental

Devon Nease
Patterson Dental

Begin forwarded message:

From: "767.Branch@pattersondental.com" <767.Branch@pattersondental.com>
To: devon.nease@pattersondental.com
Subject: Scanned image from Patterson Dental

Reply to: 767.Branch@pattersondental.com <767.Branch@pattersondental.com>
Device Name: Patterson Dental
Device Model: MX-4110N
Location: Not Set

File Format: PDF (Medium)
Resolution: 200dpi x 200dpi

Attached file is scanned image in PDF format.

Use Acrobat(R)Reader(R) or Adobe(R)Reader(R) of Adobe Systems Incorporated to view the document.

Adobe(R)Reader(R) can be downloaded from the following URL:

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<http://www.adobe.com/>



767.Branch@patter
sondental.com...

- [767.Branch@pattersondental.com_20130227_095445.pdf](#)

- I. General Overview
 - a. Introduction to Atlantic Dental Care, PLC
 - b. Goals and Objectives
 - c. Purpose of the Request for Proposal (RFP)

- II. Proposal Requirements
 - a. General Requirements
 - b. Point of Contact
 - c. Confidentiality
 - d. Timeline and Deadlines
 - e. Proposal Format
 - f. Innovation
 - g. Billing and Delivery
 - h. Account Representation
 - i. Presentations

QUESTIONS

- 1) How will final decisions be made, by who, what's the process?

Supply

Patterson - 650,000

Schein - 450,000

Dr Fernandez wants top 90-100 products sold by Patterson by category with 2-3 options for popular items. format in excell spread sheet.

need to outline what changes will affect these practices if they do all business w/ competitor

I. General Overview

a. Introduction to Atlantic Dental Care, PLC

Atlantic Dental Care, PLC (ADC) was formed in 2012 by a group of general dentists in the Southeastern region of Virginia. These dentists were looking to preserve their autonomy and independent practice and take advantage of the economy of scale that a large corporate or group practice enjoys.

ADC is composed of 53 member and associate dentists practicing in 32 separate locations (divisions.) These dentists are leaders of the profession on local and state levels and membership is closely regulated to ensure that the highest standards of care are maintained.

ADC divisions purchased more than 3.5 million dollars' worth of supplies, equipment, and repair orders from dental distributors in 2012.

b. Goals and Objectives

The primary goals and objectives of the Procurement Committee (PC) of ADC are to: (1) Obtain dental supplies, equipment, and services for the absolute lowest cost and the highest quality, (2) establish a strategic sourcing partnership with selected distributor(s), and (3) ensure our division's supply and operations needs are met by our contracted partners.

c. Purpose of the Request for Proposal (RFP)

The purpose of this RFP is to establish a cost effective agreement which satisfies our divisions' procurement requirements and provides a vehicle to acquire dental supplies, equipment and repair services. ADC reserves the right to make a single agreement or multiple agreements when in the best interest of our divisions.

II. Proposal Requirements

a. General Requirements

The PC has identified the following factors that are important in evaluating the merits of an agreement:

1. On time delivery and related services - i.e. repair, maintenance, etc.
2. Aggressively priced solutions that provide increased discounts and lower overall cost.
3. Value-added services, availability of on-line catalogs, availability of E-commerce options, advanced billing options, inventory control options, rebate programs, etc.
4. Quality of products and services.

b. Point of Contact

All questions and correspondence relating to this RFP should be directed to:

Under no circumstances should any division be contacted without prior approval from the point of contact.

c. Confidentiality

All documents submitted to ADC and discussions relating to pricing are considered confidential according to the agreement (Appendix I.)

d. Timeline and Deadlines

Proposals must be returned by March 15, 2013.

e. Proposal Format

Proposal documents should be submitted by email to the point of contact. The respondent should provide specific pricing for popular brand items listed in Appendix II, to include manufacturer and delivery quantity structure. This should be provided in a Microsoft Excel spreadsheet listing the manufacturer, part or product number, list price, and extended price. ADC recommends that a respondent's initial proposal reflect its most favorable terms. ADC reserves the right to negotiate with any respondent(s) before its final decision and/or to request additional information or clarification on any matter included in the proposal. Pricing discounts and structure for all dental supplies not specifically listed should be addressed as completely as possible. The PC recommends that list price be included for discussion and no price offered be greater than any current price currently paid by any division. The proposal should also provide equipment repair rates (all applicable fees including visit charges and hourly rates), pricing structure for parts, repair time guarantees, major equipment purchase considerations and any other information the respondent believes should be considered for review.

f. Innovation

Innovative ideas, new concepts, and alternative partnership arrangements are encouraged to be presented. For example, these might include unique business features, special services, discounts or terms and conditions unique to each respondent.

- g. **Billing and Delivery**
Each Division must be billed separately and supplies delivered to their address of choice.
- h. **Account Representation**
Every attempt should be made to maintain current account representation to service each division.

APPENDIX I

APPENDIX II

1. Gloves
2. Paper towels
3. Bracket table covers
4. Plastic cups
5. Suction tips
6. Three way syringe tips
7. Patient napkins
8. Local anesthesia
9. Burs (carbide and diamond)
10. Disinfecting wipes
11. Hand soap
12. Disposable Prophylaxis angles
13. Plastic x-ray holders for digital
14. Plastic x-ray covers / sleeves for x-rays
15. Alginate
16. Impregum and PVS impression materials
17. Temporary restoration material
18. Composite
19. Bonding system
20. Cement / bonding for C&B
21. Endo hand files
22. Triple trays
23. Needles
24. 2 x 2 gauze pads
25. Cotton swabs

CX0093

From: Misiak, David
Sent: Wednesday, February 27, 2013 5:26 PM
To: Fruehauf, Louis
Subject: *Confidential: Re: Fw: Scanned image from Patterson Dental

BCC : Guggenheim, Paul

Anthony,

Let's have Chesapeake be a beta branch for the Game Changer program. It's a new, aggressive program to help the Drs. grow their business with new patients and increased cases acceptance in return for incremental merchandise business. Please call Jenny McNamara and set up a 90 minute webinar for you and Devon with Tim Rogan. He will review the program then you and Devon can launch it in the branch. It's a lucrative program for the office and leadership and accountability are the keys for it to work.

These co op situations can be very challenging so stay connected. You may have to help him at the meeting communicate our position verbally to the reps. It's in their best interest long term as well not to take our business in that direction. When I get these calls directly I politely say that I appreciate the opportunity, but currently we do participate with group purchasing organizations. Be cautious so that reps don't miss communicate our position.

Continue to help Devon stay out of this with grace. Adding value is the absolute key. Regarding his concern, Devon will be judged very kindly if he leads through this and helps the customers and reps grow their business.

Confidential and not for discussion ..our 2 largest competitors stay out of these as well. If you hear differently and have specific proof please send that to me.

Dave

Dave Misiak
 Vice President, Sales
 Patterson Dental
 Phone 651.686.1652

From: Anthony Fruehauf/PDCO/PDCO
To: David Misiak/PDCO/PDCO@PDCO
Date: 02/27/2013 10:02 AM
Subject: Fw: Scanned image from Patterson Dental

Dave

I have attached an RFP that the GPO in Chesapeake will be sending out. I have had numerous discussions with Devon about our position and what it could mean if we set a precedent of offering lower prices to groups such as this. Devon is on board and understands our position. His concern was more of how he would be judged if we lost a big chunk of business. I assured him we were behind his efforts to maintain our Value Add strategy and to use this as an opportunity to deliver the best service, sundries and equipment to our customers that are aligned with our "Why".

If you can think of any guidance I can offer it would be appreciated. We will continue to tell our story and focus on profitable growth in our region. Thanks

Anthony Fruehauf
Mid-Atlantic Region Manager
Patterson Dental
919-877-8434 office
919-523-4335 cell
919-876-4153 fax

— Forwarded by Anthony Fruehauf/PDCO/PDCO on 02/27/2013 10:56 AM —

From: Devon Nease/PDCO/PDCO
To: "Anthony Fruehauf" <louis.fruehauf@pattersondental.com>
Date: 02/27/2013 10:07 AM
Subject: Fwd: Scanned image from Patterson Dental

Devon Nease
Patterson Dental

Begin forwarded message:

From: "767.Branch@pattersondental.com" <767.Branch@pattersondental.com>
To: devon.nease@pattersondental.com
Subject: Scanned image from Patterson Dental

Reply to: 767.Branch@pattersondental.com <767.Branch@pattersondental.com>
Device Name: Patterson Dental
Device Model: MX-4110N
Location: Not Set

File Format: PDF (Medium)
Resolution: 200dpi x 200dpi

Attached file is scanned image in PDF format.
Use Acrobat(R)Reader(R) or Adobe(R)Reader(R) of Adobe Systems Incorporated to view the document.
Adobe(R)Reader(R) can be downloaded from the following URL:
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<http://www.adobe.com/>



767.Branch@patter
sondental.com...

- 767.Branch@pattersondental.com_20130227_095445.pdf

CX0095

From: Guggenheim, Paul
Sent: Thursday, June 06, 2013 6:03 PM
To: Chuck Cohen
Subject: Re: Fwd: New Mexico Dental Cooperative purchasing.

BCC : Nease, Devon;Misiak, David;Rogan, Tim

Chuck,

I hope all is going well with you and the Family. Summer is upon us although in Minnesota it still seems like winter was in California. Reflecting back on our conversation earlier this year, could you shed some light on your business agreement with Atlantic Dental Care? I understand they are a group of 55 dentists in and around Chesapeake Va. being led by a practice management consultant that your team has signed a supply agreement with. I'm wondering if your position on buying groups is still as you articulated back in February?

Let me know your thoughts....Sometimes these things grow legs without our awareness!

Best to you, Rick and Larry.

Sincerely,

Paul.

Paul A. Guggenheim
 President
 Patterson Dental Supply

From: Chuck Cohen <ccohen@benco.com>
To: Paul Guggenheim <paul.guggenheim@pattersondental.com>,
Date: 02/08/2013 11:57 AM
Subject: Fwd: New Mexico Dental Cooperative purchasing.

Greetings, Paul...

Hope things are going well at Patterson. Just saw Sirona's strong results, good sign for you.

Just wanted to let you know about some noise I've picked up from New Mexico. FYI: Our policy at Benco is that we do not recognize, work with, or offer discounts to buying groups (though we do work with corporate accounts) and our team understands that policy.

Thanks, best for success in 2013!

cfc

Charles F. Cohen
 Benco Dental Company

'We deliver success, smile after smile.'

295 Centerpoint Boulevard

Pittston, PA. 18640

Phone: 570.602.6811

Cell: 570.407.1340

E-mail: ccohen@benco.com

Administrative Assistant: Nancy McCarroll (nmccarroll@benco.com)

Begin forwarded message:

From: Don Taylor <dtaylor@benco.com>

Date: February 7, 2013, 9:22:27 AM PST

To: Brian Evans <bevans@benco.com>, Chuck Cohen <ccohen@benco.com>, Patrick Ryan <pryan@benco.com>

Subject: Fwd: New Mexico Dental Cooperative purchasing.

Gents, will you please read the bottom if this e-mail? I'd like to connect for just a couple if minutes to get your feedback and coaching on this. Thank you.

All the Best,

Don Taylor

303 548 9475

datylor@benco.com

Begin forwarded message:

From: Mike Trimble <mtrimble@benco.com>

Date: February 6, 2013, 11:36:03 AM PST

To: Don Taylor <dtaylor@benco.com>

Subject: Fwd: New Mexico Dental Cooperative purchasing.

Sent from my iPhone

Begin forwarded message:

From: Stewart Hanley <shanley@benco.com>

Date: February 6, 2013, 9:59:05 AM PST

To: Mike Trimble <mtrimble@benco.com>

Subject: Fwd: New Mexico Dental Cooperative purchasing.

Sent from my iPhone

Begin forwarded message:

From: "Bergman, Brandon" <Brandon.Bergman@henryschein.com>

Date: February 6, 2013 9:54:15 AM GMT-08:00

To: Stewart Hanley <SHanley@benco.com>
Subject: FW: New Mexico Dental Cooperative purchasing.

Did you see this? Call me.

Brandon Bergman

Henry Schein Dental

Regional Manager

Albuquerque Office 505-856-3384

Cell Phone 505-385-1934

brandon.bergman@henryschein.com

From: Michael Stanislowski [<mailto:MStanislowski@midmark.com>]
Sent: Monday, February 04, 2013 7:10 PM
To: ARCHULETA, CHRIS; Bergman, Brandon
Subject: FW: New Mexico Dental Cooperative purchasing.

Is he joking?

Wow.....

Because we care.

Mike Stanislowski

Territory Manager

Dental Sales Division - Rocky Mountains

(303) 601-6493 - Cell

mstanislawski@midmark.com

Customer Service: Melissa Oakley - (937) 526-8302

Technical Support: Dave Magoteaux - (937) 526-8443

From: brenton mason [<mailto:txdelphia@gmail.com>]
Sent: Monday, February 04, 2013 1:18 PM
To: John Shernock; clhoss@mmm.com; Marquita.Mason@dentsply.com;
Adam.Ternan@sybrondental.com; Marni.StoneWalsh@voco.com;
Todd.Cretors@gcamerica.com; Windi.Vigil@ivoclarvivadent.com;
Reagan.Wheeler@sybrondental.com; JWeyenberg@hu-friedy.com;
ruby.howley@us.sunstar.com; cherie.borer@rockymountainsalesassociates.com;
JZaneis@PREMUSA.com; Mark.Rohan@us.acteongroup.com;
Bob.Gess@sirona.com; dolsen5065@aol.com; Mike.Wilson@a-dec.com;
Steven.Griffith@planmecausa.com; gmorton@dentalez.com; sconnolly@digidoc.com;
jpdmonuco@aol.com; BrianDillonSales@Q.com;
jamiehsacks@gmail.com; msherman@meisingerusa.com; dknoxpsa@gmail.com;
lanid@crosstex.com; rbehbahani@septodonta.com; Sterling.Parker@sirona.com;
wright.mc.1@pg.com; jason chapman; Frank Montoya;
lisa.franks@ultradent.com; Charles Goodis; Jeff.Katt@pattersondental.com;
Scott.Belcheff@pattersondental.com; robert lehm; Michael Stanislawski;
plowe@axisdental.com; HJBinfo@bosworth.com; info@coltenewhaledent.com;
Crosstex@crosstex.com; gca_sales@gcamerica.com; info@hu-friedy.com;
info@jmoritauusa.com; info@parkell.com; akegerise@premusa.com;
domestic@sswhiteburs.com; customer-service@shofu.com; infousa@voco.com;
customerservice@youngdental.com; brenton mason
Subject: New Mexico Dental Cooperative purchasing.

To All,

Frank Montoya, Jason Chapman and I are in the process of starting a dental Cooperative. Thus we are working together with our local private practice dental office owners to compete with the national large corporations in the dental field. We as small businesses are well aware of the studies showing the corporate dentistry role over the next 10 years. Furthermore, Walmart has provided us with a case study to evaluate the survival of the independent dental offices. Thus we have partnered with Patterson Dental to provide the individual office the same opportunities as the larger corporations. We as a group of 17 offices currently are expanding on weekly basis; Furthermore, we have doctors in our group from

every specialty participating in the co op.

We are inviting all dental manufactures and representative to a our vendors meeting March 13, 2013 at 6:00 pm. The location is Patterson Dental Branch in Albuquerque, NM. During this meeting we will do the following:

- I) explain our philosophies
- II) Have an open forum question and answer, I will take any and all questions and be available however long needed.
- III) Explain our bid seeking for the next 12 months.

April 1st our co op will start to formulate the Preferred Vendor list for dental supplies. Our Preferred Vendor list will be update annually following our annual vendor meeting. We highly encourage our co op members to support the manufactures whom best support our co op. At the present moment we have begun formulating the Preferred Vendor list for all aspect of running a dental office. Upon conclusion of this process we will have a Preferred Vendor List for everything from cotton rolls to credit card processing fees to janitorial services and everything in the middle.

Our goal was 50 dental offices. However, that will have to change, we just started this co op and have added 17 offices without any effort. We have changed our goal to 75 dental offices in Albuquerque and then will expand to all areas of New Mexico. Furthermore, we are putting together a doctors meeting to have a discussion about the co op to increase our current enrollment.

If you have any questions please feel free to contact me at this email (personal email address) or my office, 505-821-1430. If you call the office I will need to set up a time to have a phone conversation due to patient care. As many of you know from the past, I have not been easy accessible b/c of the amount of sales persons that have wanted to work with our 3 to 5 offices. For the Co-op I will be 100% available to anyone wishing communicate and our personal corporations will only purchase with Preferred CO-OP Vendors.

--

Brenton Mason DMD

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image001.jpg



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CX0101

Subject: Call Chuck Cohen Re: TDA Perks letter
Categories: Calls
Priority: Normal
Status: Completed
Percent Complete: 100%
Start Date: Tue 4/22/2014 6:00:00 PM
Due Date: Tue 4/22/2014 6:00:00 PM
Owner: Guggenheim, Paul
FW: TDA Perks letter

CX0106

From: Rogan, Tim
Sent: Sunday, August 04, 2013 11:08 AM
To: McFadden, M
Cc: Misiak, David; Killian, Josh
Subject: Re: Fw: GPO Request

Neal,

We don't need GPO's in the dental business. Schein, Benco, and Patterson have always said no. I believe it is our duty to uphold this and protect this great industry.

My two cents...

Sincerely,

Tim E. Rogan
Vice President of Marketing, Merchandise
Patterson Dental

From: Neal McFadden/PDCO/PDCO
To: David Misiak/PDCO/PDCO@PDCO, Tim Rogan/PDCO/PDCO@PDCO, Josh Killian/PDCO/PDCO@PDCO,
Date: 08/02/2013 10:46 AM
Subject: Fw: GPO Request

I know in the past we have said no

Is it worth it to explore GPO???????

Should we ask the RM's the amount of request they get? - I used to get 1 per month in the SE

just wondering

Hope the fishing was good

Isabel and I scoured the whole area for housing - got it narrowed down to St. Paul area - Minneapolis is not conducive for us - grocery store, etc..... I am back up the 12th.

Have a good weekend

Neal McFadden
President Special Markets
105-G Ben Hamby Drive
Greenville, SC 29681
O- 864-676-0333
F- 864-676-0041

----- Forwarded by Neal McFadden/PDCO/PDCO on 08/02/2013 11:33 AM -----

From: Craig Marian/PMED/PDCO
To: Neal McFadden/PDCO/PDCO@PDCO,
Cc: tom.barton@pattersonmedical.com
Date: 08/01/2013 09:53 PM
Subject: GPO Request

Hi Neal,

First off let me congratulate you on your new position! We met just over a year ago with Alain Carles at the Dental Branch in Fort Lauderdale (he was nice enough to let us deliver some equipment there for University of Miami) I now work with the National Accounts department in Patterson Medical and was told you would be a good contact to reach out to when I get request from my large groups within a GPO. Just this week I was meeting with a customer in Ashville NC. called the Western North Carolina Health Network and they are under the GPO Premier.

Tim Bugg is their SVP of contracting and during my meeting the subject of Dental was brought up, he claims they have a large amount of dentist in their group and currently are doing business with Patterson. He would like to have a contact that he can reach out to and setup a formal agreement as Henry Schein has been in his office looking to sign an agreement with them. His contact information is below. Please let me know if you have any questions and congratulations again!!

Tim Bugg
SVP Contracting
Western NC Health Network
828-418-5025
tim.bugg@wnchn.org

Craig Marian
Corporate Account Manager, East Region
Patterson Medical
305-807-4121 Cell
786-522-8071 Fax
craig.marian@pattersonmedical.com

CX0110

From: Edens, Clint
Sent: Saturday, November 30, 2013 1:51 PM
To: Rogan, Tim
Cc: Misiak, Dave; Bettencourt, John
Subject: Re: Fw: Texas Supply Grey market and the TDA

Tim,

I agree totally. Thank you for the help!

I will get a presentation to you by the 9th or 10th. My meeting is on the 18th.

Clint

Clint K. Edens
South Central Region Manager
Patterson Dental

Tim Rogan --- Re: Fw: Texas Supply Grey market and the TDA ---

From: "Tim Rogan" <tim.rogan@pattersondental.com>
To "Clint Edens" <Clint.Edens@pattersondental.com>
Cc "David Misiak" <david.misiak@pattersondental.com>, "John Bettencourt" <john.bettencourt@pattersondental.com>
Date: Sat, Nov 30, 2013 8:59 AM
Subject: Re: Fw: Texas Supply Grey market and the TDA

Clint,

This one has royally p...ed me off.

Okay, so let's get busy fixing it. They say the average dental practice spends 30% of their revenue on supplies. (No way) Later they say the average dental practice spends 55k per year in supplies. (Probably close to accurate)

If their 30% were correct and using the 55k number, they are saying the average practice revenue is about 200k. (30% x 200k = 60k in supplies.) Obviously totally not true. The ADA says the average practice is about \$1,000,000. So 55k is about 5.5%.

Margins..., I would take the gloves off. We don't work at a 45 margin. Tell them our margins are closer to 35k at the top side, but we actually only make 9.5 pennies on a dollar of sales (Distribution is very expensive and not easy to do.) Their dental offices work at a 100 margin and drop 35% to bottom line.

I. Now the list of what I think you should put together:

- * All things Patterson does in the state. Representation at all state shows for x years at x expense.
- * All things industry does to advance dentistry. DTA stuff, Two times Twice a Day, etc, etc.
- * Most Trustworthy company

II. Talk about the gray market and counterfeit stuff getting in the channel. It could hurt a patient and the dentists

who buy it are subject to not getting their malpractice insurance payouts.

III. Then spin it to our mantra about helping our customers grow and not trying to decrease their supply bill. Then end with Patient Experience Practice Lifestyle.

Those are my thoughts. When you get a core powerpoint put together, get it up to me and we'll get the best in Creative to make it pretty and powerful.

Sincerely,

Tim E. Rogan
Vice President of Marketing, Merchandise
Patterson Dental

Clint Edens---11/26/2013 04:18:33 PM---Tim, Dave & John, Here is the article from the November TDA journal and an advertisement from the ba

From: Clint Edens/PDCO/PDCO
To: Tim Rogan/PDCO/PDCO@PDCO,
Cc: David Misiak/PDCO/PDCO@PDCO, John Bettencourt/PDCO/PDCO@PDCO
Date: 11/26/2013 04:18 PM
Subject: Re: Fw: Texas Supply Grey market and the TDA

Tim, Dave & John,

Here is the article from the November TDA journal and an advertisement from the back cover. Notice on the ad (pdf is easier to see) an ADA number is required. I am sure TDAPerksSupplies.com would happily process orders in other states.

The last two attachments are an "FYI" of two quotes I've seen from the field (many items near or below wholesale).

- Clint

[attachment "TDAPerks Article in Nov TDA Journal.pdf" deleted by Tim Rogan/PDCO/PDCO] [attachment "TDA perks ad in TDA magazine.JPG" deleted by Tim Rogan/PDCO/PDCO] [attachment "TDA perks ad in TDA magazine.pdf" deleted by Tim Rogan/PDCO/PDCO] [attachment "Burns TDA PERKS PRICE COMP.pdf" deleted by Tim Rogan/PDCO/PDCO] [attachment "TDA Perks Comparison Pricing066.pdf" deleted by Tim Rogan/PDCO/PDCO]

Clint K. Edens
South Central Region Manager
Patterson Dental Company
405 S. Nolen Drive, Ste. 100
Southlake, TX

Tim Rogan---11/26/2013 01:23:39 PM---Clint, Here is the list again.

From: Tim Rogan/PDCO/PDCO
To: Clint Edens/PDCO/PDCO@PDCO
Cc: David Misiak/PDCO/PDCO@PDCO
Date: 11/26/2013 01:23 PM
Subject: Re: Fw: Texas Supply Grey market and the TDA

Clint,

Here is the list again.

Sincerely,

Tim E. Rogan
Vice President of Marketing, Merchandise
Patterson Dental

Clint Edens---10/23/2013 03:36:42 PM---Dave & Tim, Just an FYI on the TDA "selling supplies" website. This has caused a big distraction lo

From: Clint Edens/PDCO/PDCO
To: David Misiak/PDCO/PDCO@PDCO,
Cc: Tim Rogan/PDCO/PDCO@PDCO
Date: 10/23/2013 03:36 PM
Subject: Re: Fw: Texas Supply Grey market and the TDA

Dave & Tim,

Just an FYI on the TDA "selling supplies" website. This has caused a big distraction locally as the TDA has flooded the market with advertisements offering 35% savings. Upon further research, a few of our major manufacturers are listed as selling on this site:

SybronEndo
Axis
Ivoclar Vivadent
Hu-Friedy
Coltene Whaledent
& some others (full list at the bottom of my email)

I have contacted the ones listed above (except Coltene), and asked them for perspective on their selling through this TDA site. None approved and only SybronAxis was aware. SybronAxis (Matt Hansen and Todd Lester) have been very aggressive in finding out information. Since my bringing it up, Hu Friedy and Ivoclar has also been researching this. What we all have found out is that the source is a company called One Source Dental (<http://www.sourceonedental.com>) that is based in Arizona. The TDAPerks website and One Source are identical. One Source is not an authorized dealer but is an "eCommerce site". SybronAxis, Ivoclar, nor Hu

Friedy have agreements with this company.

Each manufacturer is trying to find out who is selling to One Source. I was told "confidentially" by SybronAxis that it looks to be SmartPractice (<http://www.smartpractice.com/>) &/or a company called Arnold Dental (<http://www.arnold-dental.com/>). They said that once confirmed, they will discountine their distribution agreements. *I will stay on them about that.*

As for Patterson, we have briefly discussed this TDAPerks site (not the source) with our dealer competitors at the local San Antonio & Houston level and unofficially with some TDA customers. I have yet to contact the TDA formally as we are still gathering information, however our payment for the TDA booths is due by the end of October/early November. I am committed to pulling from the TDA if they do not discountinue competing with us via TDAPerks. We will not pay until this is resolved.

I will keep you all updated, but please let me know if you have any information, advice, or perspective.

- Clint

Clint K. Edens
South Central Region Manager
Patterson Dental Company
405 S. Nolen Drive, Ste. 100
Southlake, TX

- • [Home](#) »
- • [Products](#) »
- • [Brand](#)

Direct Brands

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- • [AD2](#)
- • [AHP](#)
- • [Apex Dental Materials](#)
- • [Appliance Therapy Group](#)
- • [Arnold](#)
- • [BH Dental Implants](#)
- • [BioMat Sciences](#)
- • [ClearChem](#)
- • [Common Sense Dental](#)
- • [ContacEZ](#)
- • [DazzlePro](#)
- • [Denali Corporation](#)
- • [Dental Burs USA](#)

- • Dental Elite
- • Dentalree
- • Dentazon
- • DiaGold
- • DIATECH
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- • Endo Technic
- • EXACTA Dental Direct
- • Galaxy Manufacturing
- • GlasSpan
- • High-Q Dental
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- • Oral32
- • Ortho Traction Pads
- • OrthoSource
- • Osung
- • Oxford Scientific
- • PHB
- • Polaroid
- • ProphyMagic
- • RGP Inc.
- • Ribbon
- • Russman DeBubblizer
- • Sabra Dental Products
- • SAFETZ Eyewear
- • Splintek Health Products
- • Sterngold Dental
- • Supersmile
- • SW Gloves
- • The Simple One
- • Tri Hawk Inc.
- • Ultra Light Optics
- • Viade Products

- • Whiten
- • Whiter Image Dental
- • Zosseo

Dealer Brands

- • A.Titan
- • Accutron
- • Ada Products
- • Advanced Sterilization (A J&J Co.)
- • Air Techniques
- • All Dental Prodx
- • AllPro
- • Alpha ProTech
- • AM-Touch
- • Amneal Pharmaceuticals
- • Angiotech
- • Ansell Healthcare Products
- • ATI
- • Axis Dental
- • Bausch
- • Baxter Healthcare
- • Becton Dickinson
- • Beutlich
- • Biotrol
- • Bosworth
- • Buffalo
- • Cardinal Health
- • Carestream (Kodak)
- • Centrix
- • Certol
- • Cetylite
- • Chattem
- • Coltene Whaledent
- • Columbia Dentoform
- • Confirm Monitoring Systems
- • Cooke-Waite (Kodak)
- • Covidien
- • Cranberry USA
- • Crest
- • Crosstech
- • Crosstex

- • Danville Materials
- • Dash Medical
- • DDS Dental Supplies
- • Deepak Products
- • Dental Creations
- • Dental Health Products
- • Dental Resources
- • Dentamerica
- • Dentatus
- • Denticator
- • Dial Corporation
- • DMG America
- • Dr. Fresh
- • Dux
- • Enzyme Industries
- • EPR Industries
- • Erskine Dental
- • Essential Dental Systems
- • Ethicon
- • Fixodent
- • Flow Dental
- • GC America
- • Geri-Care Pharmaceuticals
- • Gingi-Pak
- • Gojo Industries
- • Hager Worldwide
- • Heraeus
- • High Five Gloves
- • Hu-Friedy
- • Ivoclar Vivadent
- • J&J Instruments
- • J. Morita
- • Johnson & Johnson
- • Johnson-Promident
- • Jordco Inc
- • Jota Swiss
- • JP Solutions
- • JS Dental
- • Kavo
- • Kerr TotalCare
- • KerrLab
- • Keystone Industries

- • Kimberly-Clark
- • Kromopan USA
- • Kuraray
- • L & R
- • Lafferty's Pharmacy
- • Lang Dental
- • Maxximum Dental
- • Maytex
- • MCMP
- • Medicom
- • Medline Industries
- • Microbrush
- • Microcopy
- • Microflex
- • Miltex
- • Minimax
- • Mizzy
- • Molnlycke
- • Myco Medical
- • Mydent International
- • Nordent
- • Nu Radiance
- • Op-d-Op
- • Oral-B
- • OraLine
- • Pac-Dent Intl
- • Palisades Dental
- • Palmero
- • Parkell
- • Pascal
- • PDI
- • PDT
- • Pelton & Crane
- • Pentron
- • Pfizer
- • Plasdent
- • Platypus
- • Premier
- • Preventech
- • Preventive Care
- • Proedge
- • Professional Results

- • Pulpdent
- • ORP
- • Quala
- • Richmond
- • Ross Healthcare
- • Roydent
- • Safe-Vac
- • Sci-Pharma
- • SciCan
- • Scican Inc
- • Scope
- • SDS
- • Sempermed
- • Septodont
- • Shofu
- • Silmet
- • SourceOne Dental
- • Southern Dental Industries (SDI)
- • SS White
- • StarDental
- • Starz Inc.
- • Steri-Shield
- • Sterisil
- • Sultan Healthcare
- • Sunstar
- • Supermax
- • Surgical Specialties
- • Sybron Endo
- • Temrex
- • Thornton International
- • TIDI
- • Tokuyama
- • Total Source
- • Tuttnauer
- • ValuMax
- • Vector USA
- • Vista Dental
- • Waterpik
- • Westside Resources
- • Whip Mix
- • Winner Medical
- • Xttrium Laboratories

- • Young Dental
- • Zhermack
- • Zirc

David Misiak---10/12/2013 10:27:46 AM---Guys, While at the DFW branch for PattStrat this "storefront" with low pricing reflective of grey mk

From: David Misiak/PDCO/PDCO
To: Tim Rogan/PDCO/PDCO@PDCO, Mike Smurr/PDCO/PDCO@PDCO
Cc: Clint Edens/PDCO/PDCO@PDCO
Date: 10/12/2013 10:27 AM
Subject: Fw: Texas Supply Grey market and the TDA

Guys,

While at the DFW branch for PattStrat this "storefront" with low pricing reflective of grey mkt. was a hot topic from the TR's.

Let's discuss with these mfgs. at the DTA meeting this week.

Dave

Dave Misiak
Vice President, Sales
Patterson Dental
Phone 651.686.1652

----- Forwarded by David Misiak/PDCO/PDCO on 10/12/2013 10:20 AM -----

From: Clint Edens/PDCO/PDCO
To: David Misiak/PDCO/PDCO@PDCO
Date: 10/11/2013 11:18 AM
Subject: Texas Supply Grey market and the TDA

Dave,

This is the one that has the storefront and is selling grey market in Dallas area:
<http://txdentalsupply.3dcartstores.com/>

This site is one out of New York that sells grey market into DFW:
<http://www.dental4savings.com/>

A good test for both of these is to enter TPH and look at the pricing. From both items have been confirmed grey

market in the past.

One big recent issue is with the TDA (Texas Dental Association) - TDA Perks. Last week (October 1st) they opened a website and a line of supplies with "over 40,000 products". The promise is to "save more than 35%". They are aggressively marketing this in direct competition with all dealers. I am just finding out about it and have talked to Tim Wagstaff and will talk to John Hyden next week. Once we address the TDA, an outcome may be no longer supporting the TDA meeting:

<http://www.tda.org/displaycommon.cfm?an=1&subarticlenbr=109>

- Clint

Clint K. Edens
South Central Region Manager
Patterson Dental Company
405 S. Nolen Drive, Ste. 100
Southlake, TX

CX0112

From: Rogan, Tim
Sent: Tuesday, January 21, 2014 9:48 PM
To: Misiak, David
Subject: Re: Texas

That sucks. You should call him. "Thought I could trust you" type of conversation.

Sent from my iPhone

On Jan 21, 2014, at 8:59 PM, "David Misiak" <david.misiak@pattersondental.com> wrote:

He already told me they were out. Full blown!

Sent from my iPhone

Begin forwarded message:

From: "Steck, Dave" <Dave.Steck@henryschein.com>
Date: January 21, 2014 at 5:23:34 PM CST
To: "Dave Misiak" <david.misiak@pattersondental.com>
Subject: Texas

Hi Dave, I'll be calling you to let you know about our decision on the matter we recently discussed in the next couple of days.

Hope all is well with you,

Dave

Vice President & General Manager
Henry Schein Dental
10920 West Lincoln Ave
West Allis, WI 53227
414.290.2568

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CX0145

From: Anderson, Scott
Sent: Wednesday, September 04, 2013 11:17 AM
To: Misiak, David;Guggenheim, Paul
Subject: Re: GPO/Burkhart Relationship

We need to watch this...Jeff Reece's quote shows how weak BuRkhardt is.

----- Original Message -----

From: David Misiak
Sent: 09/03/2013 07:22 PM CDT
To: Scott Anderson; Paul Guggenheim
Subject: Fw: GPO/Burkhart Relationship

I would not currently classify these as a big threat to the business but the GPO noise has been pretty loud from the field. We have said no at every turn, including to Delta dental. Benco has also crept into few of these.

My guidance has been to politely say no and whether the storm with these.

Incredible to me how Burkhardt bit this apple and that they are broadcasting it. Proves they have no other value to add for customers.

Dave

Dave Misiak
Vice President, Sales
Patterson Dental
Phone 651.686.1652

----- Forwarded by David Misiak/PDCO/PDCO on 09/03/2013 07:11 PM -----

From: Neal McFadden/PDCO/PDCO
To: Bill Neal/PDCO/PDCO@PDCO
Cc: John Soderberg/PDCO/PDCO@PDCO
Date: 09/03/2013 07:00 PM
Subject: Re: GPO/Burkhart Relationship

Thanks Bill - - I cannot believe Burkhardt is joining with a GPO like this - -It seems they are cutting off their nose to spite their face?? Offering ancillary services like lower cell phone bills, medical gasses, etc while dropping merchandise prices does not benefit them nor their reps..... We are choosing to forgo this route as its both anti rep, manufacturer and distributor.

Thanks

Neal McFadden
President Special Markets
105-G Ben Hamby Drive
Greenville, SC 29681
O- 864-676-0333
F- 864-676-0041

From: Bill Neal/PDCO/PDCO
 To: John Soderberg/PDCO/PDCO@PDCO, Neal McFadden/PDCO/PDCO@PDCO,
 Date: 09/03/2013 03:46 PM
 Subject: GPO/Burkhart Relationship

I was aware that Burkhart had joined Amerinet but this provides some insight into who they are working with & what there strategy seems to be.

Bill

----- Forwarded by Bill Neal/PDCO/PDCO on 09/03/2013 01:31 PM -----

From: 458.Branch@pattersondentai.com <458.Branch@pattersondentai.com>
 To: Bill.Neal@pattersondentai.com,
 Date: 09/03/2013 01:30 PM
 Subject: Scanned image from MX-4111N
 Sent by: <458.Branch@pattersondentai.com>

Reply to: 458.Branch@pattersondentai.com <458.Branch@pattersondentai.com>
 Device Name: Not Set
 Device Model: MX-4111N
 Location: Not Set

File Format: PDF (Low)
 Resolution: 200dpi x 200dpi

Attached file is scanned image in PDF format.

Use Acrobat(R)Reader(R) or Adobe(R)Reader(R) of Adobe Systems Incorporated to view the document.

Adobe(R)Reader(R) can be downloaded from the following URL:

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<http://www.adobe.com/>

[attachment "458.Branch@pattersondentai.com 20130903 132921.pdf" deleted by Scott Anderson/PDCO/PDCO]

CX0147

From: Misiak, David
Sent: Wednesday, November 20, 2013 2:03 PM
To: Andy Goldsmith
Cc: McFadden, M
Subject: RE: Smile Source

BCC : Guggenheim, Paul

Hi Andy,

Thanks for stopping in to see us and following up. Your organization and story is impressive.

We are currently not interested but will keep the strategy and Smile Source on the "idea board" and get back to you should things change.

Regards,

Dave

Dave Misiak
Vice President, Sales
Patterson Dental
Phone 651.686.1652

From: Andy Goldsmith <agoldsmith@smilesource.com>
To: neal.mcfadden@pattersondental.com, david.misiak@pattersondental.com
Date: 11/19/2013 03:37 PM
Subject: RE: Smile Source

Gentlemen-
Checking-in where are we on potentially working together?
Thanks!
Andy

ANDREW M. GOLDSMITH, DDS, DICOI, FIALD
Chief Dental Officer/ VP Vendor Relations

1849 Kingwood Dr., Ste. 102
Kingwood, Texas 77339
T: 281-359-2344
C: 719-201-0705
F: 281-312-1153
agoldsmith@smilesource.com
www.smilesource.com
Watch this video to learn about Smile Source®





Smile Source

From: neal.mcfadden@pattersondental.com [mailto:neal.mcfadden@pattersondental.com]
Sent: Monday, September 30, 2013 3:59 PM
To: Andy Goldsmith
Subject: Re: Smile Source

Andy - -thanks for the email. I would loved to talk with you about Smile Source. I am travelling currently. I will try and reach out to you Wednesday if that's OK. Thanks

Neal McFadden
President Special Markets
1031 Mendota Heights Road
St. Paul, MN 55120
direct: 651-686-1945
cell: 864-346-7209
fax: 651-686-0288

From: Andy Goldsmith <agoldsmith@smilesource.com>
To: neal.mcfadden@pattersondental.com,
Date: 09/30/2013 02:41 PM
Subject: Smile Source

Neal-
I was referred to you by Mike Smurr.
I represent a group called Smile Source®. We have a unique business proposition whereby we have a federal franchise and offer marketing, training, education and buying power for practices but we allow them to remain autonomous. We currently work with Burkhart and have a great relationship with them. Unfortunately, they do not have a national footprint and we are growing rapidly. We have added 87 locations in the last 10 months. I would love to have some sort of conversation with you about possibilities for a partnership.

Let me know if we can schedule a time to discuss in the next few weeks – preferably before the ADA.

Thanks!

Andy

ANDREW M. GOLDSMITH, DDS, DICOI, FIALD

Chief Dental Officer/ EVP Vendor Relations

1849 Kingwood Dr., Ste. 102
Kingwood, Texas 77339

T: 281-359-2344

C: 719-201-0705

F: 281-312-1153

agoldsmith@smilesource.com

www.smilesource.com

[Watch this video to learn about Smile Source®](#)



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CX0149

From: McFadden, Neal
Sent: Tuesday, August 05, 2014 2:28 PM
To: Misiak, Dave;Guggenheim, Paul
Subject: Fwd: Smile Source Press Release
Attachments: image001.jpg; image002.jpg; image003.jpg; image004.jpg; image005.jpg; image006.png

FYI

Neal McFadden
 President Special Markets
 Patterson Dental
 Cell 864-346-7209

Sent from my iPhone

Begin forwarded message:

From: Dentalsalespro <dentalsalespro@gmail.com>
Date: August 5, 2014 at 2:20:27 PM CDT
To: Elliott Carson <elliott.carson@pattersondental.com>
Cc: Neal McFadden <neal.mcfadden@pattersondental.com>
Subject: Fwd: Smile Source Press Release

Here you go. Pretty much what you thought. A lot like Orthosynthetics

Bill Neumann
 Sent from my iPad protected by iBarrier

Begin forwarded message:

From: Andy Goldsmith <agoldsmith@smilesource.com>
Date: August 5, 2014 at 11:13:37 AM CDT
To: Dentalsalespro <dentalsalespro@gmail.com>
Subject: RE: Smile Source Press Release

Thanks Bill

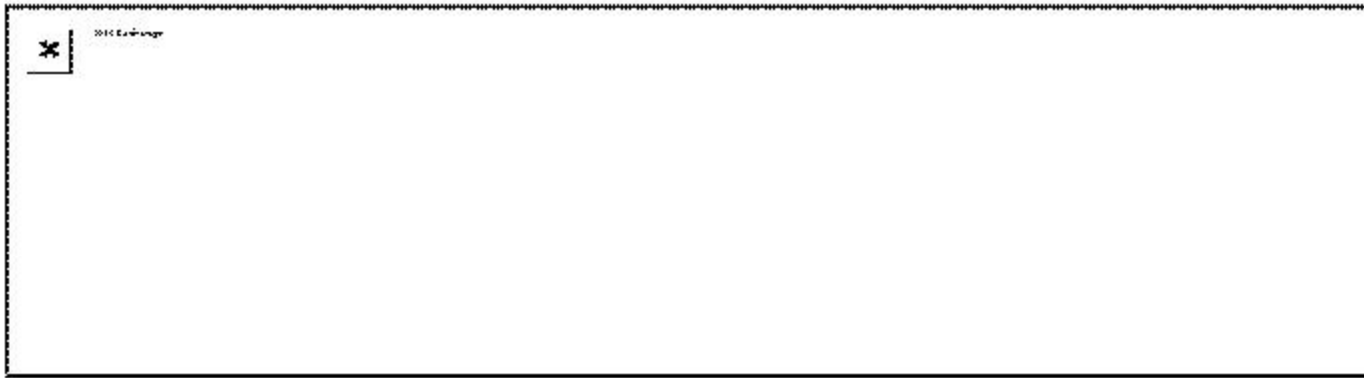
We are structured as a franchise.

We do some buying but in general we drive a formulary of specific products, manufacturers and dealers and then the doctor chooses – so far we have seen a 93% conversion to our vendors and have been able to prove that we can shift share.

Now with 300 more locations we are going to continue to shift share.

Hope you enjoy the lovely weather in Minnesota - Andy

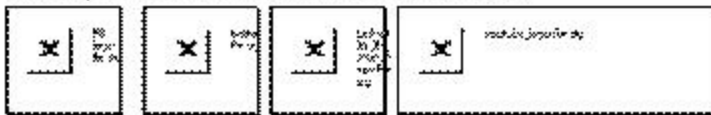
Enriching lives by enabling independent dentists to reach their full potential



ANDREW M. GOLDSMITH, DDS, DICOI, FIALD
Chief Dental Officer/ VP Vendor Relations



Smile Source® Member Support Center
23824 Highway 59 North
Kingwood, Texas 77339
T: 281-359-2344
C: 719-201-0705
F: 281-312-1153
agoldsmith@smilesource.com
www.smilesource.com
Click here for more information



From: Dentalsalespro [mailto:dentalsalespro@gmail.com]
Sent: Tuesday, August 05, 2014 11:11 AM
To: Andy Goldsmith
Subject: Re: Smile Source Press Release

Hey

At Patterson.

Do you guys purchase as SmileSource or do you negotiate and the. Or does individual's office buys.

Bill Neumann
Sent from my iPad protected by iBarrier

On Aug 4, 2014, at 12:19 PM, Andy Goldsmith <agoldsmith@smilesource.com> wrote:

FYI...

Enriching lives by enabling independent dentists to reach their full potential

<image001.jpg>

ANDREW M. GOLDSMITH, DDS, DICOI, FIALD
Chief Dental Officer/ VP Vendor Relations

<image002.jpg>

Smile Source® Member Support Center
23824 Highway 59 North
Kingwood, Texas 77339
T: 281-359-2344
C: 719-201-0705
F: 281-312-1153

agoldsmith@smilesource.com

www.smilesource.com

Click here for more information

<image003.jpg> <image004.jpg> <image005.jpg> <image006.png>

From: Smile Source [mailto:cjoshua@smilesource.com]
Sent: Monday, August 04, 2014 11:28 AM
To: agoldsmith@smilesource.com
Subject: Smile Source Press Release



Media Contact:
Bryan D. Pinciario
SVP and CMO - Smile Source®
904-631-7833
bpinciario@visionsource.com

FOR IMMEDIATE RELEASE

Smile Source Joins Forces with The Academy of Comprehensive Esthetics (A.C.E.) to Provide More Patients with Innovative Dental Care

Growing needs of independent dental clinicians demands strategic alliance & growth

Kingwood, TX. August 4, 2014: Texas-based dental alliance, Smile Source, has signed an agreement with The Academy of Comprehensive Esthetics (A.C.E.). In this agreement Smile Source will continue to offer strategic marketing, growth tools and services to empower independent dentists to reach their full potential, and now has increased their offering to member dentists with a more robust educational platform and an extensive online community. Both organizations are dedicated to sharing best practices and providing signature dental care to their patients by some of the top, independent dental clinicians around the country. Smile Source and A.C.E. will collectively account for an online community of over 11,000 dentists, dental professionals, and dental auxiliaries with over 400 dental locations in the United States, making them the largest independent alliance of dentists.

"Our mission at ACE has always been to bring together a community of dedicated dental professionals who strive to provide excellent patient care and who, through education, camaraderie, sharing of information & mentoring both in person & online, help each other succeed in the business of dentistry and life. Our partnership with Smile Source allows us to continue that mission with increased resources and value to our members," Dr. Mike Maroon, A.C.E. co-founder noted.

Smile Source President, Trevor Maurer commented, "At Smile Source, one of the key factors in the success of our members is access to more patients through strategic marketing and to offer the most relevant and cutting-edge education, staff training, practice management and lowest cost of goods in the industry allowing our members to better compete and to remain independent. A.C.E. members will now be able to leverage another strategic advantage by bringing them together with even more of the most influential dentists in the country. By doing so, we will have a world class environment focused on innovation, collaboration and managing health care through industry leading dental care."

Smile Source member, Clinical Advisor and A.C.E. Board member Dr. Gary Radz commented, "This is a historic day in dentistry as the largest, independent alliance of dentists in the U.S. is

formally announced, as both groups collectively operate together. This group of industry leaders, in unison, will continue to thrive and innovate dentistry by preserving independent dentistry with innovative dental care to more patients, who rely on their smiles each and every day."

A.C.E. Chief Operating Officer, Dr. Tom Hedge stated, "Now that A.C.E. has affiliated with Smile Source, together we will be one of the most influential communities of dedicated dental professionals in the world who strive to provide excellent patient care through world class marketing, staff training and education, camaraderie, best practice sharing, mentoring both in person & online, will help each other to succeed as independent doctors of dentistry for many years to come."

In addition to working together daily the rest of 2014 ensuring smooth transitions for all members, the first co-branded national meeting will be in Phoenix in April 2015. This event called the Smile Source Exchange meeting, will feature speakers such as Ross Nash D.D.S., Omer Reed D.D.S., Gary Radz D.D.S., and Trent Smallwood D.D.S., among others.

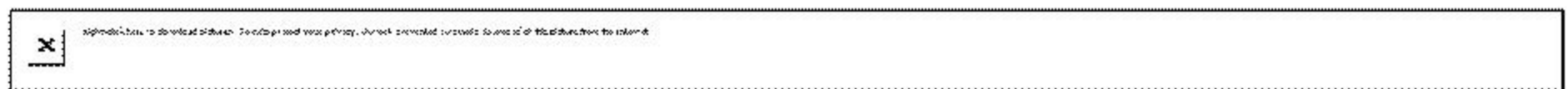
ABOUT SMILE SOURCE

Founded in 2006, Smile Source is a network of signature dental care providers who are some of the most elite and progressive dentists in the country. The clinicians in the Smile Source network enjoy a wide range of marketing strategies and tools, innovative technologies, practice management systems and unsurpassed purchasing power. Leveraging these tools, the clinicians offer comprehensive oral examinations to their patients delivering an industry leading patient experience. For more information, call 888-890-9990 or visit www.smilesource.com.

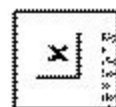
ABOUT THE ACADEMY OF COMPREHENSIVE ESTHETICS (A.C.E.)

The Academy of Comprehensive Esthetics (A.C.E.) was founded in 2003. The company provides educational seminars and events for the entire dental team. They also provide an extensive dental online community for dental professionals. Doctors, hygienists, all team members, technicians and service professionals communicate on a daily basis, sharing information on cases, techniques, products and services among others. This network has grown to over 11,000 members worldwide and is consistently growing.

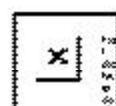
###



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Vision Source | 23824 Highway 59 North | Kingwood | TX | 77339

CX0152

Redacted in Entirety

CX0158

From: Desportes, Perrin
Sent: Friday, September 06, 2013 5:13 AM
To: Trexler, Matthew
Subject: Fw: Special Markets Announcement

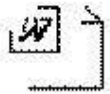
Read the attachment and let's try to catch up at some point today. i don't think this is anything to worry about at this point.

Perrin DesPortes
 Branch Sales Manager, Charlotte NC
 Patterson Dental Company
 (P) 704.849.4520
 (F) 704.844.1097

----- Forwarded by Perrin Desportes/PDCO/PDCO on 09/06/2013 06:11 AM -----

From: Neal McFadden/PDCO/PDCO
To: Roy Fruehauf/PDCO/PDCO@PDCO, Marc Holsborg/PDCO/PDCO@PDCO, Theodore Vlamis/PDCO/PDCO@PDCO, Jeffrey I Wiseman/PDCO/PDCO@PDCO, James Weeks/PDCO/PDCO@PDCO, Shandra Martinez/PDCO/PDCO@PDCO, Dan Crawford Fruehauf/PDCO/PDCO@PDCO, Perrin Desportes/PDCO/PDCO@PDCO, Tom McGuire/PDCO/PDCO@PDCO, Stephen Bartl Nease/PDCO/PDCO@PDCO, Bob Muniz/PDCO/PDCO@PDCO, Michelle Wilson/PDCO/PDCO@PDCO, Christian Fehling/PDCO/PDCO@PDCO, Scott Belcheff/PDCO/PDCO@PDCO, Chad Bushman/PDCO/PDCO@PDCO, Dan Reinhardt/ Goldman/PDCO/PDCO@PDCO, Rick Cacciatore/PDCO/PDCO@PDCO, Scott Fossen/PDCO/PDCO@PDCO, Nicholas Abruzzo O'Donnell/PDCO/PDCO@PDCO, Rex Plamann/PDCO/PDCO@PDCO, Darlene Files/PDCO/PDCO@PDCO, Josh Goldschmidt Lunaas/PDCO/PDCO@PDCO, George Aube/PDCO/PDCO@PDCO, John Kusnarowis/PDCO/PDCO@PDCO, Glenn Frank/PI Stewart/PDCO/PDCO@PDCO, Ernesto Figueroa/PDCO/PDCO@PDCO, Cory Hanks/PDCO/PDCO@PDCO, Trevor Long/PDCO/PDCO@PDCO, Landon Parker/PDCO/PDCO@PDCO, John Soderberg/PDCO/PDCO@PDCO, Mindy Montoya/PDCO/PDCO@PDCO, Michael Blake/PDCO/PDCO@PDCO, Cameron Elrod/PDCO/PDCO@PDCO, Danial Redifer/PDCO/PDCO@PDCO, Pat Crowley/PDCO/PDCO@PDCO, VanAntwerp/PDCO/PDCO@PDCO, David Ferguson/PDCO/PDCO@PDCO, Dick Ruder/PDCO/PDCO@PDCO, Bob Ingersoll/ Earnhart/PDCO/PDCO@PDCO, Terry Gilchrest/PDCO/PDCO@PDCO, Chris Counce/PDCO/PDCO@PDCO, Jon Fidler/PDCO/PDCO@PDCO, Ben Guinn/PDCO/PDCO@PDCO, Clint Edens/PDCO/PDCO@PDCO, Deborah Munlin/PDCO/PDCO@PDCO, Matthew Schwab Lawrence/PDCO/PDCO@PDCO, Alain Carles/PDCO/PDCO@PDCO, Michael Brack/PDCO/PDCO@PDCO, Eric Hanson/PDCO/PDCO@PDCO, Melton/PDCO/PDCO@PDCO, Joseph Blalock/PDCO/PDCO@PDCO, John Bradley/PDCO/PDCO@PDCO, Jeffrey Nordstrom, BranchMgr@PDCO, James Ryan-SACTO_BM/PDCO/PDCO@PDCO, Sean Sullivan/PDCO/PDCO@PDCO, Craig Holbrook/PI Scotti/PDCO/PDCO@PDCO
Cc: Tim Rogan/PDCO/PDCO@PDCO, John Bettencourt/PDCO/PDCO, David Misiak/PDCO/PDCO, Josh Killian/PDCO/PDCO@PDCO, Lien/PDCO/PDCO@PDCO, Shelley Beckler/PDCO/PDCO@PDCO, Brooke Hilzendager/PDCO/PDCO@PDCO, Timothy Shafiq
Date: 09/04/2013 10:18 AM
Subject: Special Markets Announcement

Please see attached an important announcement from the new Patterson Special Markets division.



Special Markets
 Definition.doc...

Thanks,

Neal McFadden
 President Special Markets
 105-G Ben Hamby Drive
 Greenville, SC 29681
 O- 864-676-0333
 F- 864-676-0041

PATTERSON
DENTAL

Special
Markets

Memorandum

Corporate Office
1031 Mendota Heights Road
Saint Paul, Minnesota 55120
Main 651.686.1600
Fax 651.686.0288
pattersoncompanies.com

DATE: SEPTEMBER 4, 2013

TO: REGION MANAGERS, BRANCH MANAGERS

FROM: NEAL MCFADDEN, PRESIDENT, SPECIAL MARKETS; DAVE MISIAK, VICE PRESIDENT, SALES

RE: PATTERSON SPECIAL MARKETS (PSM) DEFINITION

In June we announced the formation of our new Patterson Special Markets (PSM) Division. While we are still in the process of building out the infrastructure, we wanted to give you some guiding principles around our definition of this "special market" and how it will affect current and future business.

Effective immediately, current dental corporations with 15 or more owner operated/affiliated locations and a minimum of \$600,000 in potential merchandise will qualify. Government, institutions and schools could also qualify to work with PSM. These high volume accounts are asking for a single-source contact for all of their needs, including reporting, rebates and formulary updates. It is our goal to accommodate these requests and aggressively grow our business within this space. This definition will not include group purchasing organizations (GPOs).

While all new business will flow directly through PSM, we understand that several branches have current relationships with dental entities inside this definition. It is our desire to keep that business within the branches for the foreseeable future. A deviation from this may occur if the existing customer chooses to work with PSM.

We are aware that some territory representatives have relationships within a few of these current accounts, in which case all current business will continue to flow through the branches as stated. If a current account chooses to do business with PSM for reasons indicated above, merchandise commissions to the assigned territory representative may be reduced. A new commission matrix is being developed to manage this arrangement.

PSM may request the assistance of a local equipment specialist regarding equipment and technology sales. In this case we will pay commission rates based on gross margins via commission adjustment. No commission will be paid to the territory representative on equipment or technology for new Special Markets business.

(Continued on next page)

When a service technician is requested for repairs or installs, PSM will supplement the branch service department at the gold rate per hour on new accounts only (current accounts remain the same for now). The branch must submit an invoice at the proper billing rate to the customer, then email that invoice to PSM through

Tammy.Brand@pattersondental.com with the subject line "Special Markets Invoice" to receive the rebate via journal entry. Ultimately, our intention is to automate this process.

We are excited about PSM and look forward to growing and protecting our core business within this space. The development of this new business will ultimately create growth and opportunity for the entire dental organization. Please communicate this definition at your next region and branch meeting. It's important that you lead and set expectations for these successful partnerships as we move into this space.

Communication is paramount so do not hesitate to contact us with any questions.

CX0164

STROZ FRIEDBERG

Neal McFadden iMessage Report

Briggs and Morgan PA (Patterson Dental - Gov't Investigation)

Evidence Number: ES0006 - Time Zone: UTC

PRIVILEGED AND CONFIDENTIAL

Chat	Participants	Instant Message	From	Body	Status	Date/Time
49	+18643467209 Neal McFadden +13109262444 Paul Guggenheim niamcfadden@charter.net Izzy Cell	45	+18643467209 Neal McFadden	I met with a schein special markets rep today. Two hour conversation. I uncovered a lot of Intel. Can't wait to tell you about it.	Sent	08/28/2013 03:46:49 PM
237	niamcfadden@charter.net Izzy Cell +14782560645 Gregory Earls	1	niamcfadden@charter.net Izzy Cell	I did meet with smile source. Quite frankly they're very sleazy. It is simply a buying group. I see no advantage for Patterson or the reps to be involved in it. All their doing is trying to give the illusion that there are big group. Basically giving small dentist better buying power. Most dealers are not working with them except small desperate ones. I'm sorry your experiencing this.	Sent	05/07/2014 08:03:12 PM
237	niamcfadden@charter.net Izzy Cell +14782560645 Gregory Earls	2	+14782560645 Gregory Earls	Yeah Thanks for the input. That was my take on it also. Unfortunately they are growing and getting the attention of some big hitters of mine and some Birmingham accounts	Read	05/08/2014 01:58:06 PM
237	niamcfadden@charter.net Izzy Cell +14782560645 Gregory Earls	3	+14782560645 Gregory Earls	And it's spreading into the Atl market too. Thanks for your help	Read	05/08/2014 01:58:24 PM
77	+18643467209 Neal McFadden +16512367552 David Misiak niamcfadden@charter.net Izzy Cell	306	niamcfadden@charter.net Izzy Cell	<p>Dave, this is just an FYI from an Atlanta rep. Greg Earls. Regarding smile source.</p> <p>Hey Neal. This Smile Source is really growing in Columbus. Hv we taken any direction towards it? Greg</p> <p>I did meet with smile source. Quite frankly they're very sleazy. It is simply a buying group. I see no advantage for Patterson or the reps to be involved in it. All their doing is trying to give the illusion that there are big group. Basically giving small dentist better buying power. Most dealers are not working with them except small desperate ones. I'm sorry your experiencing this.</p> <p>Yeah Thanks for the input. That was my take on it also. Unfortunately they are growing and getting the attention of some big hitters of mine and some Birmingham accounts</p> <p>And it's spreading into the Atl market too. Thanks for your help</p>	Sent	05/08/2014 01:59:53 PM

PUBLIC

Chat	Participants	Instant Message	From	Body	Status	Date/Time
77	+18643467209 Neal McFadden +16512367552 David Misiak niamcfadden@charter.net Izzy Cell	307	+16512367552 David Misiak	Thx Neal. A lot of slippery accounts in this arena!	Read	05/08/2014 03:00:16 PM
248	+18643467209 Neal McFadden +14046640550 David McIntosh niamcfadden@charter.net Izzy Cell	1	niamcfadden@charter.net Izzy Cell	Dave, yes I did get a place in St. Paul Minnesota. I will check with my calendar and get back with you. I just want to get some clarity. Is choice one a GPO or are you all actually acquiring practices? The reason I'm asking is we've signed an agreement that we won't work with GPO's. Just wondering thank you	Sent	06/12/2014 01:06:37 PM
248	+18643467209 Neal McFadden +14046640550 David McIntosh niamcfadden@charter.net Izzy Cell	2	+14046640550 David McIntosh	Congrats on the new place! I pray that it all works for you and the family! We are acquiring practices. As I had said we are at 6 with the goal to get to around 400. The COO Bill Brigham helped Kook Smiles go from 3 to about 350 or 400 offices. We are not looking to change the Docs brand just help him with the business side. The website gives a pretty good overview of what we are looking to do . Look it over and holla with any questions. Thanks so much for your willingness to let us talk with you! Hopefully you will see enough value there and our philosophy fits the Patterson wheelhouse! It would be great to be able to put my old friends and family into the mix! Look forward to hearing for you! Have a great day!	Read	06/12/2014 02:38:56 PM
248	+18643467209 Neal McFadden +14046640550 David McIntosh niamcfadden@charter.net Izzy Cell	3	niamcfadden@charter.net Izzy Cell	Thanks Dave. I am traveling a ton over the next few weeks. Maybe we can shoot for mid July?	Sent	06/12/2014 02:55:15 PM
248	+18643467209 Neal McFadden +14046640550 David McIntosh niamcfadden@charter.net Izzy Cell	4	+14046640550 David McIntosh	I spoke with Bill and he said that's cool. We would certainly be open mid July say the week of the 15th. Just hit me back with some possible dates and we will confirm with you! Thanks again Neal! I look forward to catching up and discussing moving forward! Have a great rest of the week!	Read	06/12/2014 04:40:32 PM

CX0165

From: Cavaretta, Joe
Sent: Tuesday, February 01, 2011 6:30 PM
To: MCCARROLL, BRET
Subject: Re: Business Intelligence Group

Thanks Bret:)

From: MCCARROLL, BRET
Sent: Tuesday, February 01, 2011 07:10 PM
To: Cavaretta, Joe; Titus, Kathleen; McCulloch, Tom
Subject: Re: Business Intelligence Group

Hi Joe,

Thank you for following up. I will let them know that we only deal with dental practices directly.

Thank you, Bret McCarroll Sent from my Verizon Wireless BlackBerry

From: "Cavaretta, Joe" <Joe.Cavaretta@henryschein.com>
Date: Tue, 1 Feb 2011 14:31:17 -0500
To: Titus, Kathleen<kathleen.titus@henryschein.com>; MCCARROLL, BRET<BRET.MCCARROLL@henryschein.com>;
McCulloch, Tom<Tom.McCulloch@henryschein.com>
Subject: RE: Business Intelligence Group

Hey Bret,

Dealing with GPOs is incredibly risky on many fronts. We can discuss live but as soon as we start doing this we will turn into medical, margins will go down and commissions of course will follow. This is a bad deal all the way around. This is the very abbreviated version and if you would like to talk live please let me know. Thanks.

Joe

From: Titus, Kathleen
Sent: Tuesday, February 01, 2011 1:00 PM
To: MCCARROLL, BRET; McCulloch, Tom

Cc: Cavaretta, Joe
Subject: RE: Business Intelligence Group

Hey Bret,

Wow... the world is changing isn't it?

I can tell you that with authority that is not something SM would be interested in. The participants are Private Practice customers which rules SM out. Food for thought though... their targets are invariably going to be existing HSD customers. I think we have to stick with our core competencies and this is not one of them.

I'm copying Joe Cav... perhaps he will have a different take, but SM declines.

Many Thanks!

Kathleen Titus

Western Zone Manager

Henry Schein Corporate Accounts Group

Email: kathleen.titus@henryschein.com

Office: 916 772-0424

Cell: 916 765-2778

From: MCCARROLL, BRET
Sent: Tuesday, February 01, 2011 8:36 AM
To: Titus, Kathleen; McCulloch, Tom
Subject: Business Intelligence Group

Good morning Kathleen and Tom,

I have a marketing and consulting group called Business Intelligence Group that is interested in forming a buying group for dentists. They

have over 150 Dental clients and run different marketing campaigns for these clients. For example, if they want to run a whitening campaign for \$49.00 through Groupon or another Social Media Platform they may get 20 new patients in each of their clients practices. (These are probably conservative numbers considering I have a client that ran a Groupon ad 6 months ago and got 150 patients in 2 days.) Each of the dental practices will need to get their supplies from somewhere. Their goal is to supply the whitening product to the dentists and/or any other product for any campaign they run.

Do we have any interest in opening an account for a group like this? As I mentioned they have 150 clients and they plan on growing to 500 clients by year end. I met with their founder and CEO last week and he is very interested in setting up a meeting with us to discuss his ideas. Please let me know if we would like to pursuit something with this company.

Thank you,

Bret McCarroll

Henry Schein Dental

Cell: 949-929-7553

Fax: 949-548-9673

CX0169

From: BINGHAM, MELANIE
Sent: Monday, September 24, 2012 7:43 PM
To: Cavaretta, Joe
Subject: Re: Intermountain Dental Associates RFP

I think the Rich she was talking about is a Henry Schein person. Richard Erwin that you've spoken to before is the one you've spoken to.

On Sep 24, 2012, at 6:11 PM, "Cavaretta, Joe"
<Joe.Cavaretta@henryschein.com> wrote:

The Co-op is exactly what we are trying to avoid. Is this the same Rich that was trying to extend the IDA pricing to other doctors not part of the IDA?

From: BINGHAM, MELANIE
Sent: Monday, September 24, 2012 06:20 PM
To: Harmon, Jeff (RM); Cavaretta, Joe
Subject: Fwd: Intermountain Dental Associates RFP

Everyone keeps saying we don't do GPO's. so what is the dental co-op of Utah?

Begin forwarded message:

From: "Hight, Andrea" <Andrea.Hight@henryschein.com>
Date: September 24, 2012, 4:07:14 PM MDT
To: "BINGHAM, MELANIE"
<MELANIE.BINGHAM@henryschein.com>, "Kofron, Randall"
<Randall.Kofron@henryschein.com>, "Boras, Richard"
<Richard.Boras@henryschein.com>, "Vega, Caroline"
<Caroline.Vega@henryschein.com>
Cc: "Page, Lisa" <Lisa.Page@henryschein.com>
Subject: Intermountain Dental Associates RFP

Hi,

I took a stab at the written response for IDA today.
Here it is along with the RFP for your reference. We are definitely competing against Benco. I don't know what they will do though. I therefore asked Rich (with the help of Lisa Page) to price out the 56 items on the pricing file aggressively as

CX0169-001

these will be compared to Benco's pricing. The fact is a lot of the items on the RFP are low volume so if pricing is a little lower it will not hurt us. Farish gave me the service rates so those are good.

Note: I also defined what qualifies for IDA as a member.

We need to make sure they are clear we don't do GPOs as that subject keeps coming up. Especially note what was said in the second paragraph of the RFP about who they want to include.

Action Items:

1. Rich is going to price a file I sent to him today to show IDA what they pay for what they buy. He will include the items on the rfp at the rfp prices we established.
2. Randy K. please do your equipment pricing and then in areas labeled for equipment on the draft document, add your piece.
3. Please everyone review what I had to say and please, please make any recommendations. I want this response to be very strong.
4. Especially please think of any value adds that make sense.

Thanks,

A

Andrea Hight

Regional Mgr/Community Health Liaison

Special Markets

Ph: 801-829-3146 Cell: 801-317-7148

Fax: 800-664-4832

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<<http://bit.ly/SMTelesales>>

<<http://bit.ly/SMTelesalesFB>>

CX0170

From: Meadows, Jake
Sent: Tuesday, July 17, 2012 10:19 AM
To: Delikat, Patty
Subject: RE: Few questions! AND AN APOLOGY!

Patty,

We can talk about this. I have to tell you Ron and Dan made a decision that is against what Tim Sullivan has directed us to do in regards to supporting Buying groups. We do not want our customers organizing and creating what are known as GPOs it takes the value away from the distributor. Let's talk.

Jake

Jake Meadows | Northwest Zone General Manager | Henry Schein Dental
 10920 West Lincoln Ave West Allis, WI 53227 | 414.290.2591 Our Mission: To improve the lives of those we touch by focusing on practice care, so dental professionals can focus on patient care.

-----Original Message-----

From: Delikat, Patty
Sent: Monday, July 16, 2012 4:01 PM
To: Meadows, Jake
Subject: Re: Few questions! AND AN APOLOGY!

Hi Jake!

drs Minou Karbakhsh and debi Enneking are the leaders. We are looking at approx 25 to 30 offices. This program has been presented to the leaders. The discounts were approved by Ron Brown and Dan Stalford. Our goal is at least 20k.

Let me know!

Sent from my iPad
 Patty Delikat
 Henry Schein Dental

On Jul 16, 2012, at 6:14 AM, "Meadows, Jake" <JAKE.MEADOWS@henryschein.com> wrote:

> Patty,
 >
 > Couple of questions.
 >
 > Whois the leader here with his group? How many offices is this? Has it been presented? Were the service discounts approved, by who? How much will each office buy?
 >
 > Jake Meadows
 > Zone General Manager
 > Henry Schein Dental

> 414-290-2591

>

> On Jul 9, 2012, at 10:24 PM, "Delikat, Patty" <Patty.Delikat@henryschein.com> wrote:

>

>> Good evening Jake!

>>

>> I hope you had a wonderful 4th of July with your family!

>>

>> First, let me apologize for missing the 3M conference call at 5pm. I had an opportunity to meet with a new doctor who just relocated from Texas, Dr Brian Womack.

>> I did contact my 3m Rep, Dan, and he and I are meeting at 7am tomorrow morning to go over what I missed.

>>

>> Ron and I have been working on putting a buying group together since March. I have attached the information and ask that you review it and give me the BIG YEAH OR NEY.

>>

>> I just want to run it by you to make sure this will be do~able! The baseline is \$500k for the group. I have the names of the "group" that have expressed interest.. I ask Colleen to see who they are assigned to as most are assigned to other reps. If you approve of the buying group, I will then reach out to the other reps and ask them if they would like to grow their business as they are getting very little from these drs at this point.

>>

>> Let me know you thoughts!

>>

>> Have a SUPER evening!

>>

>> Patty Delikat

>> Henry Schein Dental

>> (253) 208-3736

>>

>> "the best way to protect your future, is to create it"

>> ~unknown

>>

>> <GROUP INSTRUCTIONS LETTER 1 OF 4.jpg> <GROUP PAGE 2 OF 4.jpg> <GROUP

>> 3 OF 4.jpg> <GROUP 4 OF 4.jpg>

CX0174

From: Upchurch, Kevin
Sent: Friday, July 18, 2014 10:22 AM
To: Cavaretta, Joe
Cc: Titus, Kathleen; Harmon, Jeff (RM)
Subject: RE: Co-Op summary of conference call

Jeff will present to Andy face to face, letting him know that although we have had a long relationship with each other with their newest decision to add partnerships with companies like P&G and Komet and their desire to develop competitive relationships to HSD that at this time it looks as if we are going down two different paths. " I'm hoping that we will learn that our dentists will continue to change their buying habits as currently demonstrated with our short term agreements with Komet and P&G." (KT asked Andy if they were willing to sign an exclusive with HSD and the answer was a definitive No, they have full expectation to seek competitive companies to HSD to bring to their group.)

They are probably going to align with a Darby over a PDCO but Benco might also jump at the opportunity. The Co-Op is turning into a GPO (even if they don't think they are one now), from what KT has observed in Texas, NM and from Tim S, HSD does not want to enter the GPO world.

Wm. Kevin Upchurch

Zone General Manager

Western Pacific Zone

Henry Schein Dental

Cell (480) 215.5409

Office (602) 414.9705

From: Cavaretta, Joe
Sent: Friday, July 18, 2014 7:24 AM
To: Upchurch, Kevin
Cc: Titus, Kathleen; Harmon, Jeff (RM)
Subject: RE: Co-Op summary of conference call

OK...the team will not to act with urgency on this. How are we presenting to Andy?

The formal arrangement will end and seems like we are lining up to compete against each other? After 8 years of working together I'm not sure how healthy it is for either party to talk poorly about this other.

Will they go to Darby or is this something PDCO or Benco will jump on?

From: Upchurch, Kevin
Sent: Thursday, July 17, 2014 1:11 PM
To: Cavaretta, Joe
Cc: Titus, Kathleen; Harmon, Jeff (RM)
Subject: Co-Op summary of conference call

Joe

We had a good call today with Jeff and KT about the Utah (soon to be multi state) Co-Op and here are the bullet points:

- We will no longer be a part of the Utah Co-Op (KT will send Andy from the Co-Op a note letting him know that we are discussing the proposal at an executive level, this should buy us a few days to get our ducks in a row)
- Jeff will work on a separation letter (KT provided one that we used to separate from the Texas Co-Op last month), he will send it to KT and I to review once he has completed it.
- We are going to Grandfather the existing Co-Op accounts on the VPA they are currently on which gives them a 8%/9%/10% rebate back each quarter depending on supply purchase volume.
- Before Jeff has a face to face with Andy letting him know of our decision not to be aligned with the Co-Op we will have a plan and information ready for each FSC to take into their accounts.

It was a good call, KT is awesome to have on our team.

KT or Jeff please add on if you feel I missed anything.

Wm. Kevin Upchurch

Zone General Manager

Western Pacific Zone

Henry Schein Dental

Cell (480) 215.5409

Office (602) 414.9705

CX0272

From: Bergman, Brandon
Sent: Monday, June 16, 2014 12:36 PM
To: Kyle, Dean
Subject: RE: Oral B NM state meeting

Thanks Dean. I will keep this in mind in the future.

Also, I did speak with Kathleen Titus and updated her as I heard that she was meeting with Andy at the Co-op. She was aware of the Oral B development already.

Brandon Bergman
Regional Manager New Mexico
Cell 505-385-1934
Office 505-856-3384
Brandon.Bergman@HenrySchein.com

When you put good will out there it is amazing what can be accomplished.
Paul Walker

-----Original Message-----

From: Kyle, Dean
Sent: Monday, June 16, 2014 10:44 AM
To: Bergman, Brandon
Subject: RE: Oral B NM state meeting

Just an FYI. If confronted with this type of circumstance in the future always do your best to pick up marketing material just so we can scan and send a copy to our leadership team. Makes it easier for them to see what the other company is doing and gives them speaking points when dealing with it.

-----Original Message-----

From: Bergman, Brandon
Sent: Monday, June 16, 2014 11:40 AM
To: Kyle, Dean; Cavaretta, Joe
Subject: RE: Oral B NM state meeting

I did not. They also had the Dental Co-op brochures at the Oral B booth.

Brandon Bergman
Regional Manager New Mexico
Cell 505-385-1934
Office 505-856-3384
Brandon.Bergman@HenrySchein.com

When you put good will out there it is amazing what can be accomplished.
Paul Walker

-----Original Message-----

From: Kyle, Dean
Sent: Monday, June 16, 2014 10:35 AM
To: Cavaretta, Joe; Bergman, Brandon
Subject: RE: Oral B NM state meeting
Importance: High

Brandon did you save one of the flyers that Oral B was handing out?

-----Original Message-----

From: Cavaretta, Joe
Sent: Monday, June 16, 2014 9:43 AM
To: Kyle, Dean
Subject: FW: Oral B NM state meeting

Do you have the flyer from the NM meeting?

-----Original Message-----

From: Sullivan, Tim
Sent: Monday, June 16, 2014 9:38 AM
To: Cavaretta, Joe
Subject: RE: Oral B NM state meeting

Is it more than they are simply supporting a buying group? Do you have copy of the flyer? I already sent a message to Bob.

-----Original Message-----

From: Cavaretta, Joe
Sent: Monday, June 16, 2014 9:37 AM
To: Sullivan, Tim
Subject: RE: Oral B NM state meeting

Do you want a quick 10 min recap before you call?

-----Original Message-----

From: Sullivan, Tim
Sent: Monday, June 16, 2014 9:35 AM
To: Hinsch, Paul; Cavaretta, Joe
Cc: Walsh, Marguerite
Subject: RE: Oral B NM state meeting

I'll send him a message and discuss with him.

-----Original Message-----

From: Hinsch, Paul

Sent: Monday, June 16, 2014 9:31 AM
To: Cavaretta, Joe
Cc: Walsh, Marguerite; Sullivan, Tim
Subject: RE: Oral B NM state meeting

I think this is something that Tim should talk with Bob Straka about. It seems like something very strategic requiring communication between us at that level.

-----Original Message-----

From: Cavaretta, Joe
Sent: Monday, June 16, 2014 9:59 AM
To: Hinsch, Paul; Walsh, Marguerite
Subject: Oral B NM state meeting

Hey Paul,

Who handles the P&G relationship now? We have a Dental Co-op that is teaming up with P&G in New Mexico. It is a long story but this Co-Op started out very small in Utah about 7 years ago and have wanted to expand to other regions. We have declined to do this as HSD.

The co-op recently switched business from Colgate to P&G and because we wouldn't support the Co-op in NM they were asking the P&G team to promote them at the NM show.

I have never experienced a mfg partner promote a co-op on the past especially at a state show. I know our relationship with P&G is not what it once was but I would still like to speak to someone about this.

Thanks for the help.

Joe

-----Original Message-----

From: Kyle, Dean
Sent: Friday, June 13, 2014 9:25 AM
To: Cavaretta, Joe
Subject: Oral B NM state meeting

Oral B has marketing material for the Utah co op in their booth and obviously encouraging dentist to join. I know our relationship with Oral B is strained but this move on their part is ridiculous. We can discuss at 10.

CX0287

Exclusive Supplier Agreement

This Master Service Agreement ("Agreement") is entered into on the 4th day of January, 2016 ("Effective Date") by and between Burkhart Dental Supply Company, on behalf of itself and the subsidiary, affiliate, division and/or business unit ("Burkhart"), and Kois Tribal Management, Inc., a Washington state corporation ("Buyers Group") to set forth the terms and conditions pursuant to which Burkhart shall provide to Members certain discounts. The entire contract between the parties shall consist of this Agreement. Unless otherwise agreed to, in writing, by both parties, will be bound by the Agreement and unless otherwise specified, this agreement will take precedence over conflicting language found in all other agreements.

In consideration of the mutual promises and upon the terms and conditions set forth below, the parties agree as follows:

Definitions:

Buyers Group Members ("Members")

Dentists that meet the following criteria:

- Currently Subscribed to the Kois Buyers Group
- Abide by the rules of the Tribal Membership Program.
- Completed one (1) or more Kois Center courses.

Full Service Dental Distribution ("Full Service")

- Burkhart Account Managers will make routine office visits to take orders, pick up credits, manage inventory, and provide product advice.
- Burkhart will accept product orders via telephone call or fax to Burkhart's Customer Service Department, or online at Burkhart's website store.

Limited Service Dental Distribution ("Limited Service")

- Burkhart will accept product orders via telephone call or fax to Burkhart's Customer Service Department, or online at Burkhart's website store.
- Three day or better guaranteed delivery of product orders.

1. Exclusivity

- 1.1. **Buyers Group** agrees that Burkhart will be the exclusive supplier for dental supplies in the United States of America ("USA")
- 1.2. **Members** are not required to participate with Burkhart exclusively for any product or service except as needed when participating in a Burkhart Supply Savings Guarantee.

2. Service Levels

- 2.1. **Full Service** Burkhart agrees to provide full service dental supply and equipment distribution, sales and support with Account Managers, Equipment Specialists, Equipment Service Technicians, and branch support associates to Members with offices in support areas designated as Full Service on Burkhart's website.
- 2.2. **Limited Service** Burkhart agrees to provide limited service dental supply and equipment distribution sales phone support to Members with offices in support areas designated as Limited Service on Burkhart's website.

3. Dental Supply Margins

Burkhart agrees to limit its margins to 28% on any and all brand dental supplies and 39% on any Burkhart Private Label dental supplies sold to Buyers Group provided that the volume of purchases exceeds the current pace of \$5.3 million annually.

- 3.1 **Growth Incentive.** Should the sales growth be in excess of 25% over 2015 levels, (i.e. a target of \$6.6 million per year) , Burkhart agrees to limit margins to 26% on any and all brand dental

supplies and 37% on any Burkhart Private Label Dental supplies sold to the Buyers Group. Performance will be checked 12/31/16 and the margin limit changed beginning 1/1/17. Sales must be maintained in excess of \$6.6 million annually for the margins to be limited at this level.

4. Written Guarantee of Savings

Burkhart will provide a written guarantee to Members who participate in Burkhart's Supply Savings Guarantee program stating that Burkhart can document a reduction in the dental supply costs of Buyers Group.

5. Manufacturer Discounts

Burkhart will negotiate manufacturer discounts for Buyers Group with manufacturers. Burkhart agrees to apply all manufacture discounts to Members by lowering the price of products sold to Members. Burkhart also agrees to be transparent about how manufacture discounts are applied.

6. New Member Incentives

Burkhart will provide a merchandise credit of \$299 to new Kois Tribe Member. The credit will be applied to their account once they have become a Tribe Member and they have completed a meeting with their Burkhart Account Manager or Customer Service agent introducing them to the Kois Buying Program, Kois Select manufacturers' benefits, Burkhart Dental Supply benefits, and Better Value program. This meeting will typically take about 30 minutes and includes the dentist/owner/manager and lead dental assistant who is responsible for ordering supplies. This credit is for new Tribe Members only.

7. Product Shipment

Orders will be shipped via standard United Parcel Service of America, Inc. ("UPS") ground transportation unless otherwise requested by Member. Flat rate shipping charge of \$8.65 per original order for orders less than \$750. There is no additional freight charge for any back order shipments. Additional carrier charges related to special delivery services and hazardous material shipments may also be applied.

8. Payment

Payment by Check, Visa, MasterCard, American Express, and Discover Card are accepted for payment by Burkhart.

9. Returns

Burkhart shall accept the return of a product sold by Burkhart to Member per Burkhart's product return policy. ("Returned Products").

10. Terms and Renewal Terms

10.1. **Terms** This agreement shall be in effect for 24 months from the Effective date. Terms contained in Sections 3, 5, 6 and 7 will be reviewed annually on the anniversary date of this agreement.

10.2. **Renewal** This agreement will automatically renew for the terms set forth above

11. Termination

11.1. **Termination Upon Default.** Either party may terminate this Agreement in the event that the other party materially defaults in performing any obligation under this Agreement and such default continues unremedied for a period of thirty (30) days following written notice of default.

11.2. **Termination Upon Insolvency.** This Agreement shall terminate, effective upon delivery of written notice by a party, (i) upon the institution of insolvency, receivership or bankruptcy proceedings or any other proceedings for the settlement of debts of the other party; (ii) upon the making of an assignment for the benefit of creditors by the other party; or (iii) upon the dissolution of the other party.

12. **Cumulative Remedies, No Waiver.** Buyers Group's rights and remedies hereunder are cumulative in nature, and pursuit of any particular remedy shall not be deemed an election of remedies or a waiver of any other remedies available hereunder or otherwise available in law. No waiver or forbearance of

a default of this Agreement shall be construed as a waiver or forbearance of any other or subsequent breach, and the acceptance of any performance hereunder, or the payment of any amount after the same has become due or at a time when any other default exists shall not constitute a waiver of the right to demand payment of all other amounts owed or a waiver of any other default then or thereafter existing.

13. Confidential Information

All information identified disclosed by either party ("Disclosing Party") to the other party ("Receiving Party"), if disclosed in writing, labeled as proprietary or confidential, or if disclosed and labeled within thirty (30) days as proprietary or confidential ("Confidential Information"), or if under the circumstances surrounding the disclosure the Receiving Party knew or should have known such information was proprietary or confidential, shall remain the sole property of Disclosing Party. Except for the specific rights granted by this Agreement, Receiving Party shall not use any Confidential Information of Disclosing Party for its own account. Receiving Party shall use the highest commercially reasonable degree of care to protect Disclosing Party's Confidential Information. Receiving Party shall not disclose confidential information to any third party without the express written consent of Disclosing Party (except solely for Receiving Party's internal business needs, to employees or consultants who are bound by a written Agreement with Receiving Party to maintain the confidentiality of such Confidential Information in a manner consistent with this Agreement). Confidential Information shall exclude information (i) available to the public other than by a breach of this Agreement; (ii) rightfully received from a third party not in breach of an obligation of confidentiality; (iii) independently developed by Receiving Party without access to Confidential Information; (iv) known to Receiving Party at the time of disclosure; or (v) produced in compliance with applicable law or a court order, provided Disclosing Party is given reasonable notice of such law or order and an opportunity to attempt to preclude or limit such production. Subject to the above, Receiving Party agrees to cease using any and all materials embodying Confidential Information, and to promptly return such materials to Disclosing Party upon request.

14. Limitation of Liability

BUYERS GROUP'S LIABILITY FOR ALL CLAIMS ARISING OUT OF THIS AGREEMENT SHALL BE LIMITED TO THE AMOUNT OF FEES PAID BY BURKHART TO BUYERS GROUP. IN NO EVENT SHALL BUYERS GROUP BE LIABLE FOR ANY LOSS OF DATA, LOSS OF PROFITS, COST OF COVER OR OTHER SPECIAL, INCIDENTAL, CONSEQUENTIAL OR INDIRECT DAMAGES ARISING FROM OR IN RELATION TO THIS AGREEMENT OR THE USE OF THE SERVICES, HOWEVER CAUSED AND REGARDLESS OF THEORY OF LIABILITY. THIS LIMITATION WILL APPLY EVEN IF BUYERS GROUP HAS BEEN ADVISED OR IS AWARE OF THE POSSIBILITY OF SUCH DAMAGES.

15. Disclaimer of Warranties

EXCEPT AS OTHERWISE STATED HEREIN, BUYERS GROUP SPECIFICALLY DISCLAIMS ALL WARRANTIES EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE.

16. Miscellaneous

16.1. Notices. Any notice required or permitted hereunder shall be in writing and shall be given by registered or certified mail addressed to the addresses first written above or by email. Such notice shall be deemed to be given upon the earlier of actual receipt or three (3) days after it has been sent, properly addressed and with postage prepaid. Either party may change its address for notice to the other party given in accordance with this Section.

16.2. Assignment. Neither party may assign this Agreement, in whole or in part, without express written consent of the other party, and any attempt to do so shall be a material default of this Agreement and shall be void.

16.3. Governing Law. This Agreement shall be interpreted according to the laws of the State of Washington without regard to or application of choice-of-law rules or principles. Each party (i) agrees that any litigation or other dispute resolution proceeding relating to this Agreement shall

take place in the Pierce County, Washington; (ii) consents to personal jurisdiction of, and venue in, the state and federal courts of that county; and (iii) waives to the fullest extent permitted by law any defense that maintenance of the proceeding in any such court is inconvenient.

16.4. **Entire Agreement and Waiver.** This agreement, including all appendices, attachments and Service Orders, shall constitute the entire Agreement between Buyers Group, and Burkhart with respect to the subject matter hereof and all prior Agreements, representations, and statement with respect to such subject matter are superseded hereby. This Agreement may be changed only by written consent signed by both Buyers Group and Burkhart. No failure of either party to exercise or enforce any of its rights under this Agreement shall act as a waiver of subsequent breaches; and the waiver of any breach shall not act as a waiver of subsequent breaches.

16.5. **Attorneys' Fees.** If any dispute relating to this Agreement occurs, the prevailing party shall be reimbursed by the other for all costs incurred in connection therewith, including without limitation reasonable attorneys' fees.

16.6. **Severability.** In the event any provision of this Agreement is held by a court of other Tribunal of competent jurisdiction to be unenforceable, that provision will be enforced to the maximum extent permissible under applicable law, and the other provisions of this Agreement will remain in full force and effect.

IN WITNESS WHEREOF, the parties hereby execute this Agreement as of the date first written above.

Kois Tribal Management, Inc. ,

Burkhart Dental Supply Company

Signed

Signed

Name

Name

Title

Title

CX0297

From: Misiak, David
Sent: Monday, December 30, 2013 4:13 PM
To: Guggenheim, Paul; Killian, Josh
Subject: Fwd: Monday
Attachments: image001.jpg; image002.jpg; image003.jpg; image004.jpg; image005.png

Put this on the list for Friday.

Sent from my iPhone

Begin forwarded message:

From: "Trevor Maurer" <tmaurer@smilesource.com>
Date: December 30, 2013 at 3:50:44 PM CST
To: david.misiak@pattersondental.com
Cc: neal.mcfadden@pattersondental.com
Subject: RE: Monday

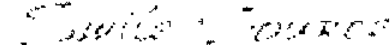
Dave,

I never heard back from you and I find that odd. We purchase over \$14MM annually in supplies, and that number continues to double every year. Dr. Goldsmith advised me that you are not interested in working with us.

All the best.

TREVOR C MAURER

President



C: 678-472-4001

www.smilesource.com



[Watch this video to learn about Smile Source®](#)

From: Trevor Maurer [<mailto:tmaurer@smilesource.com>]
Sent: Thursday, October 10, 2013 7:09 PM
To: Andy Goldsmith
Cc: david.misiak@pattersondental.com
Subject: Re: Monday

Andy is too kind!

David, I heard about your meeting and am interested in learning more. I'm visiting my parents in Calgary (I'm Canadian) hence the connection through MPLS Monday. Let me know if it works. I'm looking forward to meeting you.

Trevor Maurer
Vice President
tmaurer@smilesource.com
678-472-4001

Sent from my iPhone so please excuse my brevity and typos. Either my thumbs are typing feverishly or I am using the cool new SIRI Voice recognition but in either case, it isn't perfect!!!

On Oct 10, 2013, at 3:33 PM, Andy Goldsmith <agoldsmith@smilesource.com> wrote:

David-

After briefing our executive team about our meeting, our VP of Business Development, Trevor Maurer, mentioned that he would be in Minneapolis next Monday. Any chance for a meeting on that day with Trevor?

Trevor offers a unique perspective having worked at the executive level for Novartis and also with Vision Source®, he is also the star of our organization and responsible for our amazing growth.

Thanks!

Andy

ANDREW M. GOLDSMITH, DDS, DICOI, FIALD

Chief Dental Officer/ VP Vendor Relations

<image002.jpg>

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[Watch this video to learn about Smile Source®](#)

<image003.jpg> <image004.jpg> <image005.jpg> <image006.png>

CX0301

Redacted in Entirety

CX0304

Redacted in Entirety

CX0310

In the Matter of:

Henry Schein, Inc., et al.

May 26, 2017

David A. Steck

Condensed Transcript with Word Index



For The Record, Inc.
(301) 870-8025 - www.ftrinc.net - (800) 921-5555

1

FEDERAL TRADE COMMISSION

1 HENRY SCHEIN, INC., PATTERSON)
 2 COMPANIES, INC., AND BENCO DENTAL) MATTER NO.
 3 SUPPLY COMPANY) 151090
 4 -----)
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 8
 9
 10
 11 INVESTIGATIONAL HEARING OF DAVID A. STECK
 12 Chicago, Illinois
 13 Friday May 26, 2017

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 16
 17
 18
 19
 20
 21
 22 REPORTED BY:
 23 Stephanie A. Battaglia, CSR, RMR, CRR
 24
 25

3

1 APPEARANCES OF COUNSEL:
 2
 3 FOR THE FEDERAL TRADE COMMISSION:
 4 Federal Trade Commission
 5 BY: MR. RONNIE SOLOMON
 6 901 Market Street
 7 Suite 570
 8 San Francisco, California 94103
 9 (415) 848-5115
 10 e-mail: rsolomon@ftc.gov
 11 kgoff@ftc.gov
 12
 13 FOR HENRY SCHEIN, INC.:
 14 LOCKE LORD, LLP
 15 BY: MR. JOHN P. McDONALD
 16 2200 Ross Avenue
 17 Suite 2800
 18 Dallas, Texas 75201
 19 (214) 740-8758
 20 e-mail: jpmcdonald@lockelord.com
 21
 22
 23
 24
 25

2

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 6
 7 Investigational Hearing of DAVID A. STECK, at
 8 the Federal Trade Commission, 55 West Monroe Street,
 9 Suite 1825, Chicago, Illinois, 60603, commencing at
 10 7:53 a.m., Friday May 26, 2017, before STEPHANIE A.
 11 BATTAGLIA, CSR, RMR, CRR, pursuant to notice.
 12
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<p>1 (Cont'd):</p> <p>2 Exhibit 236 E-mail 222</p> <p>3 Subject: Texas</p> <p>4 PDCO 00013330</p> <p>5 Exhibit 237 Spreadsheet 225</p> <p>6 Henry Schein-0000012169 -</p> <p>7 Henry Schein-0000012343</p> <p>8 Exhibit 238 Text Message 230</p> <p>9 HSD-AZ0136566</p> <p>10 Exhibit 239 Text Messages 235</p> <p>11 HSD-AZ0136290</p> <p>12 Exhibit 240 E-mail 241</p> <p>13 Subject: TDA Perks Program</p> <p>14 HSD0057543 - HSD0057544</p> <p>15 Exhibit 241 E-mail 275</p> <p>16 Subject: Dentsply</p> <p>17 HS-00015015</p> <p>18 Exhibit 242 E-mail 287</p> <p>19 Subject: Buying Group Meeting</p> <p>20 Tomorrow at 2:30</p> <p>21 HS-00131947 - HS-00131948</p> <p>22 Exhibit 243 E-mail 292</p> <p>23 Subject: Why wholesale vs retail</p> <p>24 is getting more important -</p> <p>25 Georgia Dental Association buying</p> <p>cooperative</p> <p>Henry Schein-000024459 -</p> <p>Henry Schein-000024464</p> <p>Exhibit 244 Text Message 295</p> <p>Henry Schein-000060287</p> <p>Exhibit 245 GPO Strategy - Tab 297</p> <p>Henry Schein-000128721</p> <p>Henry Schein-000128740</p> <p>Henry Schein-000128753 -</p> <p>Henry Schein-000128755</p>	<p>1 Yes.</p> <p>2 Q. My apologies.</p> <p>3 A. That is all right.</p> <p>4 (Document identified as Exhibit 228 for</p> <p>5 identification.)</p> <p>6 BY MR. SOLOMON:</p> <p>7 Q. I am handing you Exhibit 228.</p> <p>8 Do you understand that to be a copy of</p> <p>9 the subpoena compelling your testimony here today?</p> <p>10 A. I don't know that I have actually seen it</p> <p>11 prior to this.</p> <p>12 Okay.</p> <p>13 Q. Is that a yes?</p> <p>14 A. It looks authentic, yes.</p> <p>15 Q. Today's proceeding is being conducted</p> <p>16 pursuant to the Federal Trade Commission's rules and</p> <p>17 is called an investigational hearing.</p> <p>18 Mr. Steck, do you understand that you are</p> <p>19 testifying under oath today and you are obligated to</p> <p>20 provide truthful and accurate information?</p> <p>21 A. I do.</p> <p>22 Q. And do you understand the consequences</p> <p>23 under federal perjury laws of providing untruthful</p> <p>24 information while testifying under oath?</p> <p>25 A. I do.</p>
<p>1 MR. SOLOMON: Good morning, Mr. Steck.</p> <p>2 THE WITNESS: Good morning.</p> <p>3 MR. SOLOMON: Thank you for being here</p> <p>4 today.</p> <p>5 My name is Ronnie Solomon. I am an</p> <p>6 attorney with the Federal Trade Commission. With me</p> <p>7 this morning is my colleague, Karen Goff, who is also</p> <p>8 an attorney with the Federal Trade Commission.</p> <p>9 This investigational hearing is being</p> <p>10 conducted as part of the Commission's investigation of</p> <p>11 Henry Schein in Matter No. 1510190.</p> <p>12 For the record would counsel please state</p> <p>13 their appearance.</p> <p>14 MR. McDONALD: John McDonald.</p> <p>15 DAVID A. STECK,</p> <p>16 called as a witness herein, having been first duly</p> <p>17 sworn was examined and testified as follows:</p> <p>18 EXAMINATION</p> <p>19 BY MR. SOLOMON:</p> <p>20 Q. Mr. Rogan, you are appearing today</p> <p>21 pursuant to a subpoena issued by the Federal Trade</p> <p>22 Commission, is that correct?</p> <p>23 A. My name is not Mr. Rogan.</p> <p>24 Q. I am sorry. Mr. Steck.</p> <p>25 A. Yes.</p>	<p>1 Q. Mr. Steck, I understand you have given</p> <p>2 sworn testimony before, is that correct?</p> <p>3 A. It is true, yes.</p> <p>4 Q. So you probably understand how this</p> <p>5 works, but I just want to go over a few ground rules</p> <p>6 just for the record.</p> <p>7 First, we need to make sure not to</p> <p>8 interrupt each other and to provide clearly verbal</p> <p>9 answers so no head nods, no gestures or anything like</p> <p>10 that, okay?</p> <p>11 A. Yes.</p> <p>12 Q. Secondly, I will do my best to ask you</p> <p>13 clear questions, but if something I ask you is not</p> <p>14 clear or you don't understand, feel free to let me</p> <p>15 know and I will do my best to rephrase it, okay?</p> <p>16 A. Okay.</p> <p>17 Q. We will take breaks today throughout the</p> <p>18 day. If for any reason you feel you need a break,</p> <p>19 just let me know and we can go ahead and take a break</p> <p>20 as long as there is no question pending. And</p> <p>21 obviously if you need to confer with your counsel on</p> <p>22 privilege issues before you answer a question you can</p> <p>23 take a break for that reason, okay?</p> <p>24 A. Okay.</p> <p>25 Q. Mr. Steck, is there any reason why you</p>

9

1 cannot provide complete and truthful testimony here
 2 today?
 3 A. No.
 4 **Q. How did you prepare for today's**
 5 **testimony?**
 6 A. I met yesterday with another counsel and
 7 talked to them about --
 8 MR. McDONALD: Do not reveal what you
 9 talked about.
 10 THE WITNESS: Right, okay.
 11 BY MR. SOLOMON:
 12 **Q. So you said you met with counsel**
 13 **yesterday?**
 14 A. Yes.
 15 **Q. And did you review any documents?**
 16 A. Yes.
 17 **Q. How many documents would you say you**
 18 **reviewed?**
 19 A. I don't recall exactly.
 20 **Q. Mr. Steck, do you have a general sense of**
 21 **what the FTC's investigation of Henry Schein Dental is**
 22 **about?**
 23 A. I really don't.
 24 **Q. The purpose of today's hearing is for me**
 25 **to get information from you and help us understand**

10

1 some of the facts so that the FTC can determine how to
 2 proceed with this investigation in this case, do you
 3 understand that?
 4 A. Yes.
 5 **Q. So you said you don't have a general**
 6 **sense of what the investigation is about.**
 7 A. No, I don't.
 8 **Q. Have you spoken with your counsel**
 9 **generally about the nature of the investigation?**
 10 MR. McDONALD: And I don't want you to
 11 reveal communications you had with counsel.
 12 He has answered your question, Ronnie,
 13 that he doesn't understand what the investigation is
 14 about. And, I will be perfectly honest, I don't
 15 either.
 16 MR. SOLOMON: I just want to make sure
 17 before we start he generally -- we know why we are
 18 here today.
 19 BY MR. SOLOMON:
 20 **Q. So you don't understand what the**
 21 **investigation is about. I wanted to ask if you had**
 22 **any personal views on the merits of the FTC's**
 23 **investigation.**
 24 A. Well, since I don't really understand it,
 25 no, I don't.

11

1 **Q. Mr. Steck, what is your highest level of**
 2 **education?**
 3 A. Well, I attended MBA classes,
 4 master's-level classes at San Diego State, but I
 5 didn't finish my MBA.
 6 **Q. Do you have a bachelor's degree?**
 7 A. I do.
 8 **Q. Where is your degree from?**
 9 A. University of San Diego.
 10 **Q. When did you graduate?**
 11 A. 1979.
 12 **Q. You are currently employed by Henry**
 13 **Schein Dental, is that correct?**
 14 A. Correct.
 15 **Q. And Henry Schein Dental is a distributor**
 16 **of dental supplies, equipment, and a provider of**
 17 **dental service, is that correct?**
 18 A. Yes.
 19 **Q. What is your current title at Henry**
 20 **Schein Dental?**
 21 A. Vice president and general manager.
 22 **Q. And when did you start in that position?**
 23 A. I started in this position in January
 24 of 2005.
 25 **Q. And prior to that what position did you**

12

1 hold?
 2 A. I was a zone general manager on the west
 3 coast managing part of the United States.
 4 **Q. And what states were a part of your**
 5 **region as west coast zone manager?**
 6 A. Southern California, Arizona, Hawaii,
 7 Nevada, and Colorado.
 8 **Q. And where were you based when you were a**
 9 **west coast zone manager?**
 10 A. San Diego.
 11 **Q. Prior to serving as a west coast zone**
 12 **manager, what was your position at Henry Schein?**
 13 A. I was in charge of -- I was vice
 14 president of marketing for Sullivan Dental Products.
 15 **Q. And when did you begin in that position?**
 16 A. That would have been '95, sometime in
 17 '95.
 18 **Q. Did you hold any other positions at**
 19 **Sullivan Dental?**
 20 A. That was -- yes, to answer your question,
 21 yes. But titles were kind of fluid at Sullivan Dental
 22 so you kind of changed a lot, but I went from
 23 marketing into equipment and then after Sullivan was
 24 purchased by Schein I served in an equipment capacity
 25 for a while there, too, before I went to the zone

3 (Pages 9 to 12)

13

1 position.

2 **Q. When you say you served in an equipment**
3 **capacity, what do you mean?**

4 A. I was vice president of the equipment
5 business in charge of the equipment business.

6 **Q. What were your duties and**
7 **responsibilities in that position?**

8 A. Pretty much working with the equipment
9 manufacturers that we represented at that time and,
10 you know, working with our sales team and trying to
11 grow equipment sales and pretty much anything that
12 involved that.

13 **Q. Did you ever serve as a sales rep at**
14 **Sullivan Dental?**

15 A. I have served as a sales rep, but not
16 with Sullivan Dental.

17 **Q. And how long were you a sales rep?**

18 A. Ten years.

19 **Q. When did you start in that role?**

20 A. Well, I started right after college, so
21 it would have been the fall of 1979 until about 1989,
22 and it was for a family business at the time. It was
23 in the dental business.

24 **Q. What was the name of that company?**

25 A. Coast Dental Supplies.

15

1 **the corporate headquarters or throughout the country**
2 **in the field?**

3 A. Most of them are where we are at in
4 Wisconsin, one is in New York, one is in Baltimore.

5 **Q. Can you name -- can you -- strike that.**
6 **Who are your direct reports?**

7 A. Joe Cavaretta, Jake Meadows, Don Hobbs,
8 John Cox, Brian Brady, Kevin Burniston, Mackenzie
9 Richter, is that eight?

10 **Q. I think that is less than eight.**

11 MR. McDONALD: It is seven.

12 THE WITNESS: Seven. Well, my assistant,
13 Tay Mitchell, she is one of my direct reports.

14 There is one in there I am forgetting.

15 Oh, Eric Nuss is in charge of our
16 business solutions.

17 BY MR. SOLOMON:

18 **Q. Who is Joe Cavaretta?**

19 A. Joe is vice president of sales for the
20 western half the United States.

21 **Q. How about Jake Meadows?**

22 A. He is the vice president of sales for the
23 eastern part of the United States.

24 **Q. And Brian Brady?**

25 A. He is the director of group practices.

14

1 **Q. Coast Dental, did that later become a**
2 **part of Sullivan Dental?**

3 A. Yes.

4 **Q. So you have been in the dental business**
5 **for most of your life?**

6 A. Yes, a long time.

7 **Q. So in your current position as vice**
8 **president and general manager of Henry Schein Dental**
9 **what are your current duties and responsibilities?**

10 A. My primary responsibility is for the
11 sales group which consists of, you know, three
12 different types of salespeople that we have field
13 sales consultants, we have equipment specialists, and
14 we have technology specialists. And then there are
15 heads of each of those groups that I supervise, along
16 with sales -- we have a sales development individual
17 and also the middle market part of the business as
18 well.

19 **Q. How many people do you manage in that**
20 **role?**

21 A. I have right now nine direct reports.
22 But -- speaking direct or indirect?

23 **Q. Direct.**

24 A. Direct.

25 **Q. Are your direct reports all located at**

16

1 **Q. And I am guessing one of the employees**
2 **you named would be the sales lead for the central part**
3 **of the United States?**

4 A. No, just east and west.

5 **Q. Just east and west, okay.**

6 **Can you walk me through what a typical**
7 **day looks like for you in your current position?**

8 A. Well, you know, obviously every day is a
9 little different. There are days that are very
10 meetings heavy where I am having meetings with direct
11 reports and then also group meetings with either some
12 of them, all of them, or some other parts of the
13 business. I would say a typical day for me has at
14 least four to five meetings in it as well as phone
15 calls and projects that I am working on.

16 **Q. How many people would you say you meet**
17 **with on a daily basis from within Henry Schein?**

18 A. That would vary. Anywhere from two to
19 three to twenty, depending on the day.

20 **Q. Do you consider yourself to be a part of**
21 **Schein's dental leadership team?**

22 A. Yes.

23 **Q. In what sense?**

24 A. Well, I am sort of the face of the sales
25 group.

4 (Pages 13 to 16)

17	<p>1 Q. Do you have any decision-making</p> <p>2 responsibility?</p> <p>3 A. Yes.</p> <p>4 Q. What kind of decision-making</p> <p>5 responsibility do you have?</p> <p>6 A. Well, you know, I help put together the</p> <p>7 compensation plans for the salespeople, I make</p> <p>8 decisions on strategic initiatives that we do in terms</p> <p>9 of marketing programs with customers, and I pretty</p> <p>10 much -- pretty much am involved in anything involving</p> <p>11 sales in the dental business.</p> <p>12 Q. Are there any decisions that you would</p> <p>13 have to clear with someone who is in a position above</p> <p>14 you?</p> <p>15 A. Plenty of them, sure.</p> <p>16 Q. Can you give me some examples?</p> <p>17 A. Anything that involves spending money up</p> <p>18 over a certain number or in a certain range, anything</p> <p>19 that would involve a policy change from things we have</p> <p>20 done in the past, anything that would involve a</p> <p>21 particular employee of a certain level in the company,</p> <p>22 and that would be the most common ones anyway.</p> <p>23 Q. Anything else?</p> <p>24 A. There is all kinds of things, it is, you</p> <p>25 know, it is obviously it is a group of people.</p>	19	<p>1 different going forward, I would talk to him about</p> <p>2 those, assuming they were large enough.</p> <p>3 Q. Understood.</p> <p>4 Do you have any special areas of</p> <p>5 responsibility or oversight in your current position</p> <p>6 outside of sales?</p> <p>7 A. Well, there is some marketing obviously.</p> <p>8 Sales in our definition includes some marketing</p> <p>9 responsibilities closely connected to we have a</p> <p>10 marketing group that handles equipment and technology</p> <p>11 that I am indirectly related to and then the same</p> <p>12 thing with the consumables part of our business in New</p> <p>13 York.</p> <p>14 Q. And can you give me an example of how</p> <p>15 marketing would fit into your area of oversight?</p> <p>16 A. Well, again, picking what products, what</p> <p>17 categories we want to emphasize, how we want to go to</p> <p>18 market with them, constructing promotions, anything</p> <p>19 like that.</p> <p>20 Q. Has your role changed over time?</p> <p>21 A. I don't think my role has changed as much</p> <p>22 as the company has just gotten larger.</p> <p>23 Q. How has the company grown over time?</p> <p>24 A. Well, it is, you know, we have gone from</p> <p>25 -- Henry Schein, Inc., obviously has grown faster than</p>
18	<p>1 Q. And who would you need to declare --</p> <p>2 strike that.</p> <p>3 With who would you need to clear those</p> <p>4 type of decisions?</p> <p>5 A. Tim Sullivan generally my boss.</p> <p>6 Q. What is Tim Sullivan's position?</p> <p>7 A. He is the president of Henry Schein</p> <p>8 Dental. Actually, he is the president of North</p> <p>9 American Dental Group, which includes Henry Schein</p> <p>10 Dental and Henry Schein Canada.</p> <p>11 Q. You mentioned one type of decision making</p> <p>12 -- one type of decision you would need to clear with</p> <p>13 Mr. Sullivan is, for example, a policy change. Can</p> <p>14 you give me an example of what that would be?</p> <p>15 A. I think mostly around compensation policy</p> <p>16 I can think would be the bulk of what we would</p> <p>17 discuss. If there are certain classes of product that</p> <p>18 we paid our sales force one way and wanted to change</p> <p>19 it to something different, that would be a policy</p> <p>20 change I would talk to him about. How we handle a</p> <p>21 particular manufacturer who we may not have had good</p> <p>22 relations with in the past and we want to give them</p> <p>23 some opportunities or the other way around where they</p> <p>24 have been for whatever reason haven't been as what we</p> <p>25 hoped they would be we might handle them a little</p>	20	<p>1 Henry Schein Dental, so I don't know if you are</p> <p>2 talking about Henry Schein, Inc., or Henry Schein</p> <p>3 Dental.</p> <p>4 Q. I am referring specifically to Henry</p> <p>5 Schein Dental.</p> <p>6 A. It has grown significantly. I don't know</p> <p>7 what the average rate of growth has been over the last</p> <p>8 12 years that I have been involved in this job, but,</p> <p>9 you know, it is probably in the four or five percent</p> <p>10 range a year.</p> <p>11 Q. And, just so I understand, your areas of</p> <p>12 responsibility are only over or within the Henry</p> <p>13 Schein Dental business, right?</p> <p>14 A. Yes.</p> <p>15 Q. You mentioned Henry Schein has -- Henry</p> <p>16 Schein Dental has experienced some growth over the</p> <p>17 years. Has that presented any unique challenges?</p> <p>18 MR. McDONALD: Object to the form.</p> <p>19 THE WITNESS: I guess I need to know what</p> <p>20 you mean by unique challenges.</p> <p>21 BY MR. SOLOMON:</p> <p>22 Q. I don't have anything in mind, I am just</p> <p>23 generally trying to get a sense for changes at the</p> <p>24 company that you witnessed as a result of growth.</p> <p>25 A. I think obviously we have had to</p>

21	<p>1 restructure our management group a couple of times in 2 order to meet the needs of the market and the needs of 3 the sales team. 4 For example, the technology side of our 5 business didn't exist when I took this job. It was 6 all considered equipment. We kind of broke that out 7 and made that a special -- we actually had two sales 8 forces there at one time, we now only have one. So 9 that has been probably the most dynamic area of the 10 business that has required the most time. 11 Q. Anything else? 12 A. The only other changes, you know, I think 13 that we have done is just continuing to really 14 emphasize recruiting and bringing in really good 15 people. Especially we recruit a lot out of college 16 now, we didn't used to do that. And we are always 17 trying to find top, quality people to represent the 18 company, and that is a big and very difficult job. I 19 mean, not me personally doing it, but I am obviously 20 very closely attached to it. 21 Q. How did you land in your current 22 position? 23 A. I was promoted from my prior role. You 24 can ask Tim why, I guess, but obviously they felt I 25 was the best candidate for this.</p>	23	<p>1 A. Yes, sure. 2 Q. How often? 3 A. You know, it is hard to say. Sometimes I 4 go through periods of time where they are in the 5 office a lot for whatever reasons and I am able to sit 6 down with them, other times I have to go to them. But 7 I would say I directly speak to somebody at least once 8 a week even on the phone. It is certainly sometimes 9 more than that. 10 Q. How many sales representatives does Henry 11 Schein Dental have? 12 A. Of the three different types put together 13 about 1200. 14 Q. Do you ever meet with dentists? 15 A. Yes, sure. 16 Q. How often? 17 A. Not often. Usually at conventions. 18 Q. And do you ever do co-travel with vendors 19 to visit dentists? 20 A. I co-travel with our salespeople to visit 21 dentists. I have never co-traveled with a 22 manufacturer, I did when I was in sales, I don't now. 23 And, again, that might be once or twice a year. 24 Q. And, tell me if I am correct, that 25 involves actually going into the office of a dentist</p>
22	<p>1 Q. So Mr. Sullivan promoted you? 2 A. Yes. 3 Q. And how long have you known Mr. Sullivan? 4 A. Since 1992 when Sullivan bought Coast 5 Dental Supply, the company I had with my 6 father-in-law. 7 Q. How would you describe your professional 8 relationship with Mr. Sullivan? 9 A. Very good. I mean, we have been together 10 now 25 years, known each other pretty well. 11 Q. Would you describe yourselves as friends? 12 A. Friends in a business sense, yes. We are 13 not -- we don't do things personally together. 14 Q. Is traveling a part of your position at 15 all? 16 A. Yes. 17 Q. How so? 18 A. Well, we have to travel to different 19 things, events, conventions, meetings specifically, 20 usually in New York, that is where Henry Schein's 21 corporate headquarters are; occasionally out to the 22 field just to visit operations in the field; a little 23 bit of everything. 24 Q. Do you ever meet with Henry Schein Dental 25 sales representatives?</p>	24	<p>1 and talking about onsite challenges and kind of seeing 2 how a dentist practices sort of in an everyday 3 environment, is that right? 4 A. Yes. You go in there, you talk about 5 their practice. Obviously somewhere in there you talk 6 about where they buy from or how they buy or whether 7 there are things we can help them with that they would 8 like to have that we provide. Obviously we are always 9 trying to adapt ourselves to the client. 10 Q. Why do you attend those trips? 11 A. I learn something every time I talk to a 12 dentist. 13 Q. Can you give me an example of something 14 you learned recently? 15 A. You learn all kinds of things. 16 Primarily they want to talk about their 17 economic challenges they are struggling with and 18 different insurance reimbursement changes that have 19 happened. But they also want to talk about 20 technology, what is happening in the technology world 21 because they are also not very -- most of them are not 22 as technology-aware, they do dentistry for a living 23 and they are busy doing that. 24 So those are generally the two areas that 25 most customers want to talk about.</p>

25

1 **Q. So the dentists that you visit during**
2 **these trips are usually private practice dentists,**
3 **right?**

4 A. Yes, generally, yes.

5 **Q. Do you ever visit corporate practices?**

6 A. I have never met -- never gone into a
7 corporate dental practice personally. I have met some
8 corporate dental executives at trade shows and at
9 meetings.

10 **Q. Do you ever visit any other types of**
11 **dental practices that are not considered private**
12 **practice?**

13 A. Well, I mean, a couple years ago we
14 created this business called the mid market and so I
15 have met a couple of those individuals in their office
16 and met several of them, other events as well.

17 **Q. Can you tell me what mid market refers**
18 **to?**

19 A. Well, mid market was something we created
20 I think three years ago because the special markets,
21 which is the larger customer part of our business,
22 wanted to really focus on its top 50 or so clients.

23 So that top 50 or so they obviously kept
24 and then there is -- they had other people and other
25 types of customers on their list and then we also had

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1 of POs and different purchasing methods that are
2 outside private practice dentistry.

3 It is just larger organizations I guess
4 is the best way to put it, prisons and large
5 government, some state government. State government
6 can kind of go either way depending on how they want
7 to operate.

8 **Q. Are you responsible for special markets?**

9 A. No.

10 **Q. Who is?**

11 A. Hal Muller is the name of the gentleman
12 who is the president of special markets.

13 **Q. So am I correct in -- let me know if my**
14 **understanding is correct, that Henry Schein Dental and**
15 **special markets focus on different customers?**

16 A. That is correct, 95 percent of the time.
17 There is this middle market area that is never as
18 clean as you want it to be, as I said, sometimes there
19 is going to be some overlap, generally speaking that
20 is right.

21 **Q. Is it the case that special markets and**
22 **Henry Schein Dental sometimes service the same**
23 **clients?**

24 A. No, generally, no, they go one way or the
25 other.

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1 private practice dentists who were going in together
2 and forming group practices, two areas were sort of
3 starting to grow together. And so they were starting
4 to grow together. And because of special markets'
5 desire to want to focus on that top group we decided
6 to create a middle group.

7 **Q. Is there a specific definition of middle**
8 **market that Henry Schein uses?**

9 A. I can give you general guidelines, but I
10 will tell you that they -- because the market is
11 evolving very quickly, those change, too, generally it
12 is a dentist who has between 3 and 20 locations,
13 community health centers, and, what else, local
14 hygiene and assisting schools, and then also buying
15 organizations.

16 **Q. Would that include any institutional**
17 **customers such as the federal government?**

18 A. Those are still in special markets.

19 **Q. Those are still in special markets.**

20 A. Uh-huh.

21 **Q. So special markets focuses on what type**
22 **of customer?**

23 A. Generally more than 20 locations,
24 generally doing upwards of a million dollars a year in
25 purchases, generally, again, things that require a lot

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1 **Q. So there is sort of a gray area where it**
2 **is unclear whether it falls into special markets or**
3 **would be mid market, is that right?**

4 A. Yes.

5 **Q. And how are decisions made as to whether**
6 **a customer should fall under special markets or mid**
7 **market when the definition is not as clear?**

8 A. Generally we sit down and talk to, you
9 know, our team talks to Hal about it and Hal and his
10 team about it and we generally come to an
11 understanding.

12 **Q. Got it.**

13 **Do you ever attend dental conferences or**
14 **trade shows?**

15 A. Yes.

16 **Q. How often?**

17 A. At least six a year.

18 **Q. Are there any trade shows or conferences**
19 **that you regularly attend?**

20 A. Yes, most of them are annual conferences.

21 **Q. Which ones?**

22 A. It is the Chicago midwinter meeting,
23 happens here every February, the California Dental
24 Association meeting which happens in May, the American
25 Dental Association meeting, which moves around every

29

1 year, that is normally in October, and the greater New
2 York, which is in New York over Thanksgiving weekend.

3 **Q. And how do you choose which conferences**
4 **to attend?**

5 A. The larger ones I go to all of them.
6 Some of the smaller ones I will try to rotate, I will
7 go to one one year and then another another year just
8 to kind of -- so I can be visible to the sales group.

9 **Q. Which smaller ones do you attend?**

10 A. Boston and Atlanta and sometimes. I am
11 trying to think, sometimes northern California has a
12 meeting, I have gone to that one before.

13 Those are generally the ones that I am
14 probably -- I am probably forgetting one, but those
15 are the ones that are most common.

16 **Q. How do you decide which of the smaller**
17 **conferences and trade shows to attend?**

18 A. There usually has to be a reason. Again,
19 I try to go to one or two a year to be out there so I
20 can try and see the team. If there is a new manager,
21 we have a new manager in that market, I will usually
22 try to go to support them. It is -- there is a
23 variety of reasons.

24 **Q. Other than seeing a new manager what are**
25 **some reasons why you attend conferences and trade**

30

1 **shows?**

2 A. Generally to talk to the salespeople is
3 the single, most important thing and kind of find out
4 what their life is like these days in that particular
5 area of the business, because the geography is
6 different, California is different than New York, et
7 cetera.

8 So generally my number one reason is to
9 talk to the salespeople, and that is always helpful
10 for me.

11 The second reason is typically to meet
12 with our larger suppliers that always want to have
13 meetings at those shows because everybody is there.

14 Those are the primary.

15 Sometimes there is a local dental
16 association that wants to have some kind of connection
17 with us and I will meet with them as well.

18 **Q. Any other reasons?**

19 A. Those are the primary ones.

20 **Q. Are there any other parts of the Henry**
21 **Schein business outside of dental that you are**
22 **familiar with?**

23 A. Well, what do you mean by familiar?
24 Where we are in certain businesses, yes.

25 **Q. Which businesses?**

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1 A. Well, we have a medical business and we
2 have an animal health business.

3 **Q. And how familiar are you with the animal**
4 **health and medical business?**

5 A. Very minimal.

6 **Q. What can you tell me about those segments**
7 **of the Henry Schein business?**

8 A. Again, I am not very familiar with them.
9 I mean, I know the sales heads for -- sales heads for
10 medical, I do not know those for animal health.

11 But we don't really -- I mean, we talk
12 every two, three years, it is not a regular meeting or
13 anything like that. I am not part of that.

14 **Q. Who would be a part of those meetings?**

15 A. Senior management above me.

16 **Q. So Mr. Sullivan, for example?**

17 A. Probably not as much anymore. It used to
18 be organized, Mr. Breslawski, who is the president of
19 Henry Schein Dental and the CEO of the dental group
20 worldwide is Mr. Sullivan's boss, he used to have
21 medical as well. When he had medical Tim was probably
22 being more exposed to medical. Now it is strictly
23 dental worldwide.

24 **Q. When you say he used to have medical, who**
25 **are you referring to?**

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1 A. Jim Breslawski.

2 **Q. Just to be clear so we have a clean**
3 **record, today when I say Henry Schein or Schein I am**
4 **referring to Henry Schein Dental --**

5 A. Okay.

6 **Q. -- unless I say otherwise. I will be**
7 **sure to say Henry Schein Medical or Henry Schein**
8 **Animal Health if I am referring to those segments.**

9 A. Got it.

10 **Q. And feel free to stop if something is**
11 **confusing.**

12 A. Sure.

13 **Q. I understand currently you report to**
14 **Mr. Sullivan in your current role, that's correct?**

15 A. Yes.

16 **Q. And has that changed over time?**

17 A. No.

18 **Q. So you have always reported to**
19 **Mr. Sullivan while working for Henry Schein Dental?**

20 MR. McDONALD: Object to form.

21 THE WITNESS: As long as I have been in
22 this role, yes.

23 BY MR. SOLOMON:

24 **Q. Got it.**

25 **And in your prior roles did you report to**

33

1 anyone else?
 2 A. Yes.
 3 Well, when I was -- when I was in Coast
 4 Dental I reported to my father-in-law. When I was
 5 first with Sullivan Dental I reported to a fellow
 6 named Kevin Ackeret, who was the VP of sales. He is
 7 retired now. And then I reported to Jim Breslawski
 8 for a while because he was president of Henry Schein
 9 Dental. And then I reported to Tim.
 10 **Q. Does Mr. Sullivan keep you apprised of**
 11 **certain things going on in the business from time to**
 12 **time?**
 13 A. Yes.
 14 **Q. What kinds of things?**
 15 MR. McDONALD: Object to the form.
 16 THE WITNESS: You know, again, if there
 17 is -- he and I have monthly sit-down meetings and he
 18 kind of catches me up and if something comes up in the
 19 meantime, if we are in negotiations with a supplier to
 20 bring them on, if they are -- something happened more
 21 broader within the company, you know, that is
 22 developmentally related or if there is new resources
 23 out there that we can utilize to help train people or
 24 develop people, you know, generally that kind of
 25 thing. Most of it is just reviewing what I am doing

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1 so he is familiar with what I am working on.
 2 BY MR. SOLOMON:
 3 **Q. Do you keep Mr. Sullivan apprised**
 4 **generally of what you are working on?**
 5 A. I believe I do. You would have to ask
 6 him.
 7 **Q. How often do you meet with Mr. Sullivan?**
 8 A. As I said, formally once a month, but
 9 informally it could be two, three times a day
 10 depending on the day.
 11 **Q. Do you and Mr. Sullivan sit in the same**
 12 **office?**
 13 A. We are in the same building. We have
 14 different offices in the same building.
 15 **Q. How about how far are your two offices**
 16 **from each other?**
 17 A. I don't know, maybe 20 yards, maybe not
 18 even that far, I don't know.
 19 **Q. Would you say that most of your meetings**
 20 **with Mr. Sullivan are in-person rather than by phone**
 21 **or by e-mail?**
 22 A. Yes.
 23 **Q. And how often do you and Mr. Sullivan**
 24 **exchange e-mails?**
 25 MR. McDONALD: Object to the form.

35

1 THE WITNESS: We are both copied on a lot
 2 of e-mails, too, which is, you know, if they are
 3 direct e-mails from me to him or him to me that is, I
 4 don't know, it depends on the day, usually maybe two
 5 or three a day maybe, maybe even not that many.
 6 BY MR. SOLOMON:
 7 **Q. How often do you and Mr. Sullivan speak**
 8 **on the phone?**
 9 A. Only when we are out of the office. If
 10 we are in the office we will always talk live.
 11 **Q. Do you and Mr. Sullivan ever communicate**
 12 **via text message?**
 13 A. Yes, occasionally.
 14 **Q. How often?**
 15 A. It could be months, sometimes we will do
 16 it two or three times as just the back-and-forth. It
 17 is rarely about business, but it is -- it could be
 18 once a month, it could be once every three or
 19 four months.
 20 **Q. Does Mr. Sullivan ever copy you on**
 21 **e-mails?**
 22 A. Yes.
 23 **Q. And would you say that you are copied on**
 24 **e-mails by Mr. Sullivan when it relates to something**
 25 **that the two of you have discussed?**

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1 MR. McDONALD: Object to the form.
 2 THE WITNESS: Sometimes, yes, sometimes
 3 it is just he wants my input on something.
 4 BY MR. SOLOMON:
 5 **Q. Are there any other reasons why**
 6 **Mr. Sullivan generally copies you on e-mails?**
 7 MR. McDONALD: Object to form.
 8 THE WITNESS: You would have to ask him.
 9 BY MR. SOLOMON:
 10 **Q. Do other Schein employees regularly copy**
 11 **you on e-mails along with Mr. Sullivan?**
 12 A. Sure.
 13 MR. McDONALD: Object to the form.
 14 THE WITNESS: Yes.
 15 BY MR. SOLOMON:
 16 **Q. Do you know why they do that?**
 17 A. Just to keep us informed as to whatever
 18 is happening, we have an employee who has cancer, if
 19 we somebody we know who has issues, if somebody is --
 20 something has happened in the business that they think
 21 we should both be aware of they usually copy both of
 22 us.
 23 **Q. Are there any instances when an employee**
 24 **would only copy you rather than Mr. Sullivan?**
 25 A. If he felt it was something I needed to

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1 know, yes.
 2 **Q. How about the reverse, are there any**
 3 **reasons why an employee would only copy Mr. Sullivan**
 4 **than you on an e-mail?**
 5 MR. McDONALD: Object to the form.
 6 THE WITNESS: Again, you have to ask the
 7 person sending it. Sometimes they feel they have a
 8 better connection with Tim than they do with me,
 9 sometimes it is the other way around.
 10 BY MR. SOLOMON:
 11 **Q. Would you say that employees generally**
 12 **copy both you and Mr. Sullivan on e-mails?**
 13 MR. McDONALD: Object to the form.
 14 THE WITNESS: I would say more often than
 15 not, yes.
 16 BY MR. SOLOMON:
 17 **Q. Are there any areas of Mr. Sullivan's**
 18 **responsibility that you would say you are not**
 19 **generally kept apprised of?**
 20 A. Well, I am not apprised of anything going
 21 on in Canada, he has Canada. Yeah, that would be
 22 probably the biggest single one.
 23 **Q. Anything within Henry Schein Dental's US**
 24 **business?**
 25 MR. McDONALD: Object to the form.

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1 THE WITNESS: Generally nothing of
 2 significance, no.
 3 BY MR. SOLOMON:
 4 **Q. Mr. Steck, are you a part of any dental**
 5 **industry organizations?**
 6 A. Yes, I am part of two.
 7 **Q. And what are those organizations?**
 8 A. One is the Dental Trade Alliance and the
 9 other is the Dental Lifeline Network.
 10 **Q. What is the Dental Trade Alliance?**
 11 A. That is our trade association for the
 12 dental business, companies join that, a lot of
 13 companies are members of it, and I currently sit on
 14 the board for that for Henry Schein.
 15 **Q. What is -- so your title is board member?**
 16 A. Yes.
 17 **Q. And how long have you held that position?**
 18 A. A year.
 19 **Q. And prior to sitting on the board did you**
 20 **hold any positions with the Dental Trade Alliance?**
 21 A. No.
 22 **Q. So you mentioned that there are companies**
 23 **within the dental business that join the Dental Trade**
 24 **Alliance, right?**
 25 A. Yes.

39

1 **Q. What kind of companies would you say are**
 2 **a part of the Dental Trade Alliance?**
 3 A. Other distributors and manufacturers,
 4 both.
 5 **Q. So do you attend any meetings as part of**
 6 **your role as a board member of the DTA?**
 7 A. Yes. You are generally going to -- we
 8 have an annual meeting which is in the fall, usually
 9 in November, that everybody goes to and there is a
 10 board meeting associated with that. And then there is
 11 generally one other one during the year and sometimes
 12 phone meetings.
 13 **Q. How many other members of the board are**
 14 **there?**
 15 A. If I had to guess I would say 12 to 15.
 16 **Q. And those board members are all employees**
 17 **of other dental distributors and manufacturers?**
 18 A. Yes.
 19 **Q. How long are the board meetings usually?**
 20 MR. McDONALD: Object to the form.
 21 THE WITNESS: Well, it depends. A board
 22 meeting can be a couple hours, a short one, or they
 23 can be a couple of days, depending on what you are
 24 talking about.
 25

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1 BY MR. SOLOMON:
 2 **Q. What are your duties and responsibilities**
 3 **as a member of the board of the DTA?**
 4 A. I am on the nominating committee and the
 5 audit committee.
 6 **Q. And what do you do in those positions?**
 7 A. Well, I am still pretty new to it, but
 8 you generally -- the nominating committee is
 9 nominating new board members or new officers for the
 10 company -- or the association. And the audit
 11 committee is obviously just looking at the financials.
 12 **Q. You also mentioned you are a member of**
 13 **the Dental Lifeline Network?**
 14 A. Correct.
 15 **Q. And what is that?**
 16 A. That is an organization that provides
 17 dental services to special needs and mentally
 18 challenged and poor people who can't afford dental
 19 services.
 20 **Q. And do you have a position within that**
 21 **organization?**
 22 A. I am on the board there as well.
 23 **Q. How long have you been on the board of**
 24 **that organization?**
 25 A. Four years.

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1 **Q. And what do you do as a board member**
 2 **within that organization?**
 3 A. Attend meetings, help to raise money, and
 4 listen to where the challenges are within that
 5 community and try to see if you can be helpful at all.
 6 **Q. How often do those meetings occur?**
 7 A. Those are twice a year, too, generally at
 8 trade meetings, like the Chicago midwinter there is a
 9 meeting and usually one at the ADA as well.
 10 **Q. And how many members are a part of the**
 11 **board of that organization?**
 12 A. There is on the trade side probably maybe
 13 six of us. On the professional side, meaning the
 14 dentists, the providers themselves, there is probably
 15 another six. And then there is staff that they have
 16 that are senior staff members, and I would guess that
 17 is about six as well, but those are all very
 18 approximate numbers.
 19 **Q. When you say trade side, do you mean**
 20 **dental distributors and manufacturers?**
 21 A. Yes.
 22 **Q. My apologies if you already answered**
 23 **this, but how long have you been a board member of**
 24 **that organization, the Dental Lifeline Network?**
 25 A. Four years.

1 So typically trade meetings I will meet with them as
 2 well, as I mentioned.
 3 **Q. What is a key opinion leader?**
 4 A. That is a term that we use in the dental
 5 business for somebody who influences dentists
 6 clinically, usually clinically, that they would have a
 7 discussion, for example, on digital dentistry and how
 8 they are utilizing it in their practice and how they
 9 think other dentists can utilize it to be successful
 10 and will sponsor them and pay an honorarium fee for
 11 them to come talk to groups of dentists.
 12 **Q. Would you say that key opinion leaders**
 13 **influence the decisions that dentists make in their**
 14 **practice?**
 15 MR. McDONALD: Object to the form.
 16 THE WITNESS: They certainly can, yes.
 17 BY MR. SOLOMON:
 18 **Q. In what ways?**
 19 A. You know, they are dentists usually whose
 20 people know their name and they are interested in what
 21 they have to say; whether it is relevant to an
 22 individual dentist is their own decision.
 23 **Q. In what ways can key opinion leaders**
 24 **influence dentists?**
 25 MR. McDONALD: Object to the form.

42

44

1 **Q. In the last five years have you been a**
 2 **member of any other dental industry or organizations**
 3 **that we haven't already talked about?**
 4 A. I don't believe so, no.
 5 **Q. Do you ever have the occasion to work**
 6 **alongside others within the dental industry?**
 7 MR. McDONALD: Object to the form, vague.
 8 THE WITNESS: Can you be a little more
 9 specific there?
 10 BY MR. SOLOMON:
 11 **Q. Sure.**
 12 **Do you ever interact with other members**
 13 **of the dental industry, which can include thought**
 14 **leaders, representatives of other distributors,**
 15 **manufacturers? I am just giving you a hypothetical**
 16 **list.**
 17 A. Well, occasionally, you know, dental
 18 KOLs, or key opinion leaders, those are dentists that
 19 lecture and try to have events for dentists, we
 20 interact with them because in some cases we will hire
 21 them to be at events we have for dentists so we will
 22 interact with them. Obviously I mentioned earlier I
 23 interact with a lot of the manufacturers on the dental
 24 side because they always want to have access to the
 25 sales channel, both in equipment and in merchandise.

1 THE WITNESS: You know, again, if they
 2 are talking about a particular technology, for
 3 example, and they are talking about how it has worked
 4 for them it might influence a doctor to buy that
 5 technology.
 6 BY MR. SOLOMON:
 7 **Q. So do key opinion leaders go out in the**
 8 **field and meet with dentists?**
 9 A. Generally, no. Generally they look for
 10 people like us to sponsor them.
 11 **Q. And would they give talks at meetings?**
 12 A. Yes.
 13 **Q. How else would they interact with**
 14 **dentists?**
 15 A. Sometimes they will through the Internet
 16 they will have social networks or they will have
 17 people call them on the phone.
 18 I mean, dentistry is a fairly casual
 19 industry in that most dentists will talk to another
 20 dentist for any reason, if a guy called with a
 21 question I am sure most key opinion leaders would
 22 answer it.
 23 **Q. How many key opinion leaders would you**
 24 **say that Henry Schein Dental sponsors?**
 25 A. I honestly have no idea, I would have to

<p style="text-align: right;">45</p> <p>1 look.</p> <p>2 Q. Would you say it is a large number?</p> <p>3 MR. McDONALD: Object to the form, vague.</p> <p>4 THE WITNESS: What do you define as a</p> <p>5 large number?</p> <p>6 BY MR. SOLOMON:</p> <p>7 Q. Is it more than ten?</p> <p>8 A. I would say probably more than ten, yes.</p> <p>9 Q. Would you say it is more than twenty?</p> <p>10 A. I don't really know. It is -- it is less</p> <p>11 than fifty.</p> <p>12 Q. Who would know?</p> <p>13 A. You would have to go to various --</p> <p>14 different areas of Henry Schein sponsor different key</p> <p>15 opinion leaders for various reasons and nobody I think</p> <p>16 has a complete master list.</p> <p>17 Q. Do you know how much Henry Schein pays</p> <p>18 key opinion leaders?</p> <p>19 MR. McDONALD: Object to the form.</p> <p>20 THE WITNESS: Well, it depends on what</p> <p>21 their honorarium is, we always pay the expenses to go</p> <p>22 someplace and what their honorarium is.</p> <p>23 BY MR. SOLOMON:</p> <p>24 Q. What is an honorarium?</p> <p>25 A. Normally a speaking fee.</p>	<p style="text-align: right;">47</p> <p>1 A. I have been to a couple, it is not</p> <p>2 something I do a lot of.</p> <p>3 Q. Are there any key opinion leaders who</p> <p>4 Henry Schein has sponsored multiple times over the</p> <p>5 years?</p> <p>6 A. Yes, sure.</p> <p>7 Q. Can you think of any?</p> <p>8 A. Sure.</p> <p>9 Dr. Gordon Christiansen is a clinician in</p> <p>10 Utah, we sponsor him usually twice a year.</p> <p>11 Dr. Mark Morrin who is a dentist in</p> <p>12 Detroit who lectures on digital dentistry, we</p> <p>13 typically sponsor him I would say four to six times a</p> <p>14 year.</p> <p>15 And then there are a bunch of others, Ed</p> <p>16 Suh, who is a dentist in Raleigh, North Carolina,</p> <p>17 speaks on digital dentistry speaks three, four times a</p> <p>18 year.</p> <p>19 There is a group of them, I can name five</p> <p>20 or six of them, and they generally all do some kind of</p> <p>21 a series that they will fly around and do.</p> <p>22 Q. A few minutes ago you mentioned that the</p> <p>23 dental business is you said fairly casual I believe</p> <p>24 was the word -- were the words you used?</p> <p>25 A. Between dentists.</p>
<p style="text-align: right;">46</p> <p>1 Q. Do you have an idea of what the -- strike</p> <p>2 that.</p> <p>3 Do you have an idea of the amount of</p> <p>4 honorariums that Henry Schein usually pays?</p> <p>5 MR. McDONALD: Object to the form, vague,</p> <p>6 overly broad.</p> <p>7 THE WITNESS: So, you want to give me an</p> <p>8 example and I can --</p> <p>9 BY MR. SOLOMON:</p> <p>10 Q. I wish I could. I don't even know what</p> <p>11 an honorarium is, I am trying to explore.</p> <p>12 A. It is just a fee they charge to speak, it</p> <p>13 is the reason they are going. Generally between two</p> <p>14 and ten thousand dollars would be normal.</p> <p>15 Q. And that would be for a one-time speaking</p> <p>16 engagement or would that involve multiple speaking</p> <p>17 engagements?</p> <p>18 A. Generally one time, but if it is multiple</p> <p>19 then we will negotiate a fee for a series or</p> <p>20 something.</p> <p>21 Q. And does someone from Henry Schein</p> <p>22 usually attend the speaking engagements which Henry</p> <p>23 Schein sponsors?</p> <p>24 A. Always, yes.</p> <p>25 Q. Do you ever attend those?</p>	<p style="text-align: right;">48</p> <p>1 Q. Between dentists.</p> <p>2 Would you say that also applies to the</p> <p>3 dental industry -- the larger dental industry as well?</p> <p>4 MR. McDONALD: Object to the form, vague.</p> <p>5 THE WITNESS: I would say it is casual</p> <p>6 between ourselves and our manufacturing partners.</p> <p>7 BY MR. SOLOMON:</p> <p>8 Q. How so?</p> <p>9 A. They call me on the phone for any reason.</p> <p>10 I have never refused an appointment from another</p> <p>11 dental manufacturing company in my career, it doesn't</p> <p>12 matter how small they are, we will see them. It is a</p> <p>13 fairly small industry.</p> <p>14 Q. The dental manufacturing industry is</p> <p>15 fairly small?</p> <p>16 A. No, the whole dental industry is fairly</p> <p>17 small.</p> <p>18 Q. How would you quantify it?</p> <p>19 A. Well, I think estimates has about</p> <p>20 \$6 billion a year in the US.</p> <p>21 Q. So you said that the relationship between</p> <p>22 Henry Schein Dental and manufacturers is casual.</p> <p>23 A. Generally so. I would say, yes.</p> <p>24 Q. Do you know who at Henry Schein is</p> <p>25 primarily responsible for relations with</p>

49	<p>1 manufacturers?</p> <p>2 A. Well, it would be the head of those</p> <p>3 particular -- whatever group the manufacturer falls</p> <p>4 in, if they are a consumables manufacturer it would be</p> <p>5 a gentleman named Paul Hinsch, if it was an equipment</p> <p>6 manufacturer Don Hobbs, and if it was technology</p> <p>7 manager it would be John Cox.</p> <p>8 Q. Do you know how many manufacturers Henry</p> <p>9 Schein Dental does business with?</p> <p>10 A. No, I don't.</p> <p>11 Q. Do you have an approximate number that</p> <p>12 you can think of?</p> <p>13 A. I know -- at our national sales meeting</p> <p>14 people will come, manufacturers will come to exhibit</p> <p>15 at that, it is a little over 100 total that show up.</p> <p>16 Q. Would you say that Henry Schein Dental</p> <p>17 does business with more than 100 manufacturers?</p> <p>18 A. Oh, sure, yes.</p> <p>19 Q. Does Henry Schein Dental have -- strike</p> <p>20 that.</p> <p>21 Are there certain manufacturers who are</p> <p>22 Henry Schein Dental's largest manufacturer partners?</p> <p>23 MR. McDONALD: Object to the form.</p> <p>24 THE WITNESS: Companies that we sell more</p> <p>25 of their products than others, yes.</p>	51	<p>1 consumables there is a lot.</p> <p>2 But in equipment a company like A-dec,</p> <p>3 which manufactures dental equipment, a company like</p> <p>4 Planmeca, which makes dental imaging equipment.</p> <p>5 There are some other ones as well, Midmark is</p> <p>6 a company we do business with that manufacturers</p> <p>7 equipment, a company called Air Techniques.</p> <p>8 These are the top ones. After that it</p> <p>9 drops off pretty significantly.</p> <p>10 BY MR. SOLOMON:</p> <p>11 Q. What about on the consumables side of the</p> <p>12 business?</p> <p>13 A. Well, I mentioned the three largest.</p> <p>14 There is some others, Hu-Friedy is the</p> <p>15 name of a company that is here in Chicago that</p> <p>16 manufacture dental instruments.</p> <p>17 A company called Kulzer, is a</p> <p>18 manufacturer that is -- they are German but they</p> <p>19 manufacture -- they sell in the United States.</p> <p>20 Again, there are a number of other ones</p> <p>21 that I can think of.</p> <p>22 A company called VOCO.</p> <p>23 And, again, I could -- GC is another</p> <p>24 company, a Japanese company.</p> <p>25 I mean, I could go on probably for an</p>
50	<p>1 BY MR. SOLOMON:</p> <p>2 Q. Would you say that there are a group of</p> <p>3 manufacturers who are Henry Schein's top manufacturer</p> <p>4 partners?</p> <p>5 MR. McDONALD: Object to the form, vague.</p> <p>6 THE WITNESS: There are ones that are</p> <p>7 larger than others, yes.</p> <p>8 BY MR. SOLOMON:</p> <p>9 Q. Can you give me some examples?</p> <p>10 A. The largest dental supplier -- dental</p> <p>11 manufacturing company, I believe, in the world is</p> <p>12 Dentsply Sirona.</p> <p>13 Then there is a group called KaVo Kerr,</p> <p>14 which is part of a company called Danaher.</p> <p>15 And then 3M has its own dental division,</p> <p>16 we do a lot of business with 3M.</p> <p>17 And then there is some equipment</p> <p>18 companies as well that are fairly large.</p> <p>19 Q. So you mentioned 3M, Dentsply, KaVo Kerr.</p> <p>20 Who else would you say would fall into</p> <p>21 the category of a top manufacturer or partner for</p> <p>22 Schein Dental?</p> <p>23 MR. McDONALD: Object to the form, vague.</p> <p>24 THE WITNESS: Well, it is easier on the</p> <p>25 equipment side because it is more concentrated, where</p>	52	<p>1 hour if you want me to just keep naming dental</p> <p>2 companies. I don't know if that is -- they are all</p> <p>3 fairly small at this point.</p> <p>4 Q. Would you say we have talked about some</p> <p>5 of the larger ones?</p> <p>6 A. Yes, they are all in there.</p> <p>7 Q. So Henry Schein Dental is a distributor</p> <p>8 of dental supplies and equipment, is that right?</p> <p>9 A. Yes.</p> <p>10 Q. And Schein Dental is sometimes referred</p> <p>11 to as a dealer?</p> <p>12 A. Yes, dealer or distributor.</p> <p>13 Q. Sometime throughout today I may refer to</p> <p>14 Henry Schein Dental as a dealer or distributor, and</p> <p>15 you will understand that I am referring to the same</p> <p>16 thing there?</p> <p>17 A. Yes.</p> <p>18 Q. Would you say that Schein is a full-line</p> <p>19 distributor?</p> <p>20 A. Yes.</p> <p>21 Q. Would you say that Schein is a</p> <p>22 full-service distributor?</p> <p>23 A. Yes.</p> <p>24 Q. And would you say that Schein is a</p> <p>25 national distributor?</p>

53	<p>1 A. Yes.</p> <p>2 Q. Are you familiar at all with Schein's</p> <p>3 gross margins?</p> <p>4 A. Yes.</p> <p>5 Q. What is Schein's gross margin for</p> <p>6 consumables?</p> <p>7 THE WITNESS: It is okay to answer this?</p> <p>8 MR. McDONALD: It is.</p> <p>9 THE WITNESS: Well, it varies.</p> <p>10 MR. McDONALD: If you know.</p> <p>11 THE WITNESS: I can give you -- it is a</p> <p>12 range.</p> <p>13 What it adds up to, I am not exactly</p> <p>14 sure, but generally speaking it is somewhere in the 25</p> <p>15 to 35 percent margin.</p> <p>16 BY MR. SOLOMON:</p> <p>17 Q. And are you also familiar with the gross</p> <p>18 margins for equipment?</p> <p>19 A. Yes.</p> <p>20 Q. And what would that number be?</p> <p>21 A. They are almost the same.</p> <p>22 Q. Have Schein's gross margins changed over</p> <p>23 the last five years?</p> <p>24 A. Not measurably, no.</p> <p>25 Q. Do you have a sense for Schein's national</p>	55	<p>1 BY MR. SOLOMON:</p> <p>2 Q. Sure.</p> <p>3 Does it compete with Patterson for those</p> <p>4 accounts based on price?</p> <p>5 A. Yes, sure.</p> <p>6 Q. How else?</p> <p>7 A. Salespersons, relationship, and services</p> <p>8 and scope of services. That is why hiring people is</p> <p>9 so critical, hiring the right people. Most of the</p> <p>10 time the single biggest influence of where a dentist</p> <p>11 does business is the salesperson and their</p> <p>12 relationship with the salesperson.</p> <p>13 Q. How would a salesperson influence those</p> <p>14 relationships?</p> <p>15 A. Well, they do a good job of making sure</p> <p>16 they got the right products, making sure they didn't</p> <p>17 get too much of the right products, they would also</p> <p>18 look in to having an interest in the customer's</p> <p>19 overall business, how they are doing, giving</p> <p>20 suggestions, advice as if they want that, they would</p> <p>21 certainly be interested in where they are going from a</p> <p>22 technology standpoint what their plan is, trying to</p> <p>23 become an extended member of the dentist's team.</p> <p>24 Q. Does Schein compete with Benco in the</p> <p>25 same manner?</p>
54	<p>1 market share today?</p> <p>2 MR. McDONALD: Object to the form.</p> <p>3 THE WITNESS: Only based on what</p> <p>4 manufacturers tell us, large ones that sell to</p> <p>5 everybody. They tell us what our share of their</p> <p>6 business is. So based on what we hear and kind of</p> <p>7 triangulate, it is somewhere in the high 30's.</p> <p>8 BY MR. SOLOMON:</p> <p>9 Q. Who are Schein Dental's competitors?</p> <p>10 A. Well, our largest competitor is Patterson</p> <p>11 Dental. The second largest competitor would be Benco</p> <p>12 Dental. And then there is a host of independent</p> <p>13 dealers across the country. These are all</p> <p>14 full-service dealers. Then there are a number --</p> <p>15 literally hundreds of Internet dealers that sell</p> <p>16 product on the Internet.</p> <p>17 Q. Does Schein compete against Patterson</p> <p>18 Dental for private practice accounts?</p> <p>19 A. Yes.</p> <p>20 Q. And how does Schein compete against</p> <p>21 Patterson for those accounts?</p> <p>22 MR. McDONALD: Object to the form.</p> <p>23 THE WITNESS: Can you be specific about</p> <p>24 how? I mean, can you give me an example?</p> <p>25</p>	56	<p>1 A. Yes.</p> <p>2 Q. Would you say that Schein, Patterson, and</p> <p>3 Benco ever try to outbid each other on price in order</p> <p>4 to gain business?</p> <p>5 A. All day every day.</p> <p>6 Q. How important of a factor is price in</p> <p>7 competition?</p> <p>8 MR. McDONALD: Object to the form.</p> <p>9 THE WITNESS: It depends on the dentist.</p> <p>10 Some dentists it is everything. Everything I just</p> <p>11 talked about, the professionalism, the salesperson,</p> <p>12 the services don't matter, and in some cases they</p> <p>13 matter more. So it depends on the customer. It is</p> <p>14 certainly an important factor.</p> <p>15 BY MR. SOLOMON:</p> <p>16 Q. What other factors might influence</p> <p>17 dentists in choosing a distributor?</p> <p>18 MR. McDONALD: Object to the form.</p> <p>19 THE WITNESS: I think I just answered</p> <p>20 that, the services and the salesperson provide in the</p> <p>21 relationship.</p> <p>22 BY MR. SOLOMON:</p> <p>23 Q. Anything else?</p> <p>24 A. Timeliness of delivery, completeness of</p> <p>25 delivery of products, so logistics.</p>

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1 **Q. How would you say Schein's prices compare**
2 **to those of Patterson and Benco?**

3 MR. McDONALD: Object to the form.

4 THE WITNESS: Well, again, we all have
5 catalogues, but the catalogues rarely are used, in
6 fact never used rarely with customers who buy in any
7 volume, they are more reference guides. So if we are
8 competing for a specific customer who has so much
9 volume -- you know, it really depends on the
10 situation, the company, and the salesperson has a high
11 level of independence in setting pricing. So some
12 cases the salesperson is the person. But, you know,
13 again, we are within -- we all have similar overhead
14 structure and so our prices are going to be within a
15 range.

16 BY MR. SOLOMON:

17 **Q. Does Schein compete with Patterson and**
18 **Benco for corporate accounts on the basis of price?**

19 A. Yes.

20 **Q. Are there any other ways in which Schein**
21 **competes with Patterson and Benco for corporate**
22 **accounts?**

23 MR. McDONALD: Object to form.

24 THE WITNESS: You would need to speak to
25 Mr. Muller about that one, I am not involved in those.

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1 BY MR. SOLOMON:

2 **Q. Sure.**
3 **That would be the president of special**
4 **markets, Mr. Muller, right?**

5 A. Yes.

6 **Q. How about corporate accounts that fall**
7 **within the middle market segment?**

8 A. I typically am not the one involved with
9 the direct negotiations, but we certainly -- is the
10 question are we competing on price for those, too, is
11 that what you are asking?

12 **Q. Right.**

13 A. Absolutely, absolutely.

14 **Q. Does Schein compete with Burkhardt? I**
15 **guess we should establish are you familiar with**
16 **Burkhardt?**

17 A. Yes, sure.

18 **Q. Who is Burkhardt?**

19 A. They are one of the independents I
20 mentioned that happen to be on the west coast.

21 **Q. Would you say Burkhardt is a competitor of**
22 **Schein?**

23 A. Yes.

24 **Q. Is Burkhardt a full-service distributor?**

25 A. Yes.

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1 **Q. Are they a national distributor?**

2 A. No.

3 **Q. Does Burkhardt offer value-added services**
4 **in the same way that Patterson, Benco, and Schein do?**

5 MR. McDONALD: Object to the form.

6 THE WITNESS: I believe, yes, they do.

7 BY MR. SOLOMON:

8 **Q. Would you describe them as a regional**
9 **distributor?**

10 A. I think that is fair, yes.

11 **Q. What region of the country would you say**
12 **they cover?**

13 A. They are based in Tacoma, Washington so
14 their strongest is the northwest, they are on the west
15 coast and they have some associations which has taken
16 them into the midwest. They may have a couple offices
17 in the midwest now, too, I am not exactly sure.

18 **Q. Would you say their primary areas of**
19 **coverage are the west coast and the midwest?**

20 A. Yes --

21 MR. McDONALD: Object to form.

22 THE WITNESS: Primarily the west coast
23 and a little bit in the midwest, yes.

24 BY MR. SOLOMON:

25 **Q. Are you familiar with a distributor**

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1 **called Darby?**

2 A. Yes.

3 **Q. What is Darby?**

4 A. Darby is an Internet and phone
5 distributor. They have no sales force, so they have
6 no salesperson calling in the office, they have no
7 local offices, they have no equipment or service
8 business. So they are definitely not a full-service
9 distributor, they are a different model.

10 **Q. Would you say they are a full-line**
11 **distributor?**

12 A. Can you define what full line is? Does
13 that mean they carry a wide variety of brands or what
14 does it mean?

15 **Q. Yes, I guess what does full line**
16 **generally mean?**

17 A. Typically means they have access to all
18 the major brands of consumables and, yes, they do.

19 **Q. Does Schein compete with Darby?**

20 A. Yes.

21 **Q. On price?**

22 A. Yes.

23 **Q. Any other ways that Schein competes with**
24 **Darby?**

25 A. Again, if I had a customer that wanted to

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1 buy from Darby I would go in and try to be as
2 competitive as I could with what they were paying, but
3 I would also tell them they have to pay little extra
4 because of the services I am going to provide for them
5 and try to get a feeling of what was important to
6 them.

7 **Q. As you mentioned, Darby is not a
8 full-service distributor, right?**

9 A. That's correct.

10 **Q. So Schein would not compete with Darby in
11 the provision of value-added services, is that right?**

12 A. We would compete with them because they
13 don't have them, we would use them as a method of
14 trying to get the customer, but, yes.

15 **Q. Are you familiar with a company called
16 Safco?**

17 A. Yes.

18 **Q. And what is Safco?**

19 A. They are another company like Darby that
20 is smaller and -- they are smaller version, but they
21 operate pretty much the same way.

22 **Q. And they don't have a sales force or
23 offer value-added services?**

24 A. Not that I am aware of.

25 **Q. So Schein would compete with Safco in the**

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1 **same way that it competes with a company like Darby,
2 correct?**

3 A. Correct.

4 **Q. What does Schein Dental do to learn about
5 its competitors' pricing and offerings?**

6 A. The only thing we ever hear really is --
7 again, these companies have websites so sometimes
8 their prices are on their websites.

9 As I mentioned, Patterson, Schein, and
10 Benco and other full-service dealers typically are
11 working from some sort of a list price, which is
12 pretty much meaningless, so it typically is a
13 negotiated situation with each individual dentist in a
14 particular area. So in those cases we learn just from
15 feedback from the salesperson, you know, where they
16 are at.

17 Again, with companies like Safco and
18 Darby and others that are not full-service companies
19 it is usually, again, they are published, the prices
20 are usually published.

21 **Q. So focusing on Patterson and Benco, other
22 full-service distributors, you mentioned that their
23 prices are listed online?**

24 A. They are, sometimes requires a password
25 to get at them so you can't see them. Usually they

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1 only list list prices, which is what we list as well.

2 **Q. Do you ever take a look at the prices and
3 offerings that Patterson and Benco have?**

4 MR. McDONALD: Object to the form.

5 THE WITNESS: Personally, no, I don't.

6 BY MR. SOLOMON:

7 **Q. Do people within Schein's organization
8 ever provide you with information they have learned
9 about Patterson and Benco's pricing and offerings?**

10 A. Only from their catalogue price.

11 **Q. How often do you get that information?**

12 A. Generally once a year because that is
13 when people publish.

14 **Q. Would you say that the number of
15 competitors for large group accounts is smaller than
16 the number of competitors for private accounts?**

17 MR. McDONALD: Object to the form.

18 THE WITNESS: I wouldn't say smaller, but
19 generally the larger accounts want to do business with
20 somebody who can provide technical service in the
21 office, which reduces down the number of potential
22 companies quite a bit.

23 BY MR. SOLOMON:

24 **Q. We talked a little bit about different
25 customer segments today, I think we talked about**

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1 **middle market customers, private practice customers,
2 and then larger customers that fall within the special
3 markets purview. Do you recall that?**

4 A. Yes.

5 **Q. Would you say that those segments
6 accurately define the various customer segments that
7 Henry Schein Dental focuses on?**

8 A. It is as best a general description, yes,
9 that I think we can come up with. There are segments
10 within each of those, yes, but those are the general
11 umbrellas.

12 **Q. So each of those customer segments have
13 subcategories?**

14 A. Yes.

15 **Q. Can you walk me through them starting
16 with private practice accounts?**

17 A. Well, private practice accounts you have
18 segments of private -- there is ones who do business
19 primarily with government reimbursement, like in lower
20 income areas, and they are operating in a very
21 different way than someone who is on the North Shore
22 of Chicago and seeing professional patients that want
23 a wider scope of services. So a lot is determined by
24 the patient -- within private practice is determined
25 by the patient base that they are seeing and the

65	<p>1 economic patient base of what they are seeing. And 2 there is everything in between somebody who is working 3 in an impoverished area and somebody working in an 4 affluent area.</p> <p>5 Also, as I mentioned, there is ones that 6 have more than one location. Typically when they get 7 to more than three we start kind of moving them into a 8 middle market capacity, but that is not a hard, firm 9 line either.</p> <p>10 So that is a very big part of the 11 business, over -- I think 70 or 10 percent of the 12 business is still private practice. And, again, there 13 is variations.</p> <p>14 A lot of it is the dentist's 15 personalities themselves, many are very techie and 16 want to do, you know, cosmetic dentistry, whatever 17 their inclination or wherever they have gone to dental 18 school, some are more interested in specialty 19 procedures like oral surgery and orthodontics, et 20 cetera, keeping those within a practice, others refer 21 them out. It is a wide range of different approaches 22 to the business within the private practice segment.</p> <p>23 In the mid market segment it is a 24 conglomeration, as I mentioned earlier, community 25 health services -- health centers, I am sorry, CHCs,</p>	67	<p>1 and also how they go to practice, they are 2 specialists.</p> <p>3 Q. Are there any other categories of private 4 practice dentists that Henry Schein refers to? 5 A. Not that I can think of.</p> <p>6 Q. How about within the middle market 7 segment? 8 A. Well, I mentioned the major ones.</p> <p>9 Q. When did Henry Schein Dental first 10 establish its special markets group? 11 A. I can't tell you exactly. It was before 12 I was in this position.</p> <p>13 Q. So it would have been more than ten years 14 ago? 15 A. Yes.</p> <p>16 Q. Do you know how a customer or potential 17 customer qualifies to become a special markets 18 customer? 19 MR. McDONALD: Object to the form, lack 20 of foundation. 21 THE WITNESS: I think I kind of mentioned 22 the different categories within special markets. If a 23 customer falls into it they would qualify to be a 24 special markets customer, size being one of them. 25</p>
66	<p>1 buying groups, hygiene and assisting schools, and 2 mid-sized customers with usually less than 20 3 locations and less than a million dollars a year in 4 consumable purchases.</p> <p>5 And then I mentioned the larger ones.</p> <p>6 And, again, what makes dentistry 7 different is both the mid market and the larger 8 special markets group are morphing every day, there is 9 different models being developed, different people are 10 buying different people, there is consolidation going 11 on, there is private equity is involved, there is a 12 lot of different models being constructed in both 13 those segments that make it interesting to go to work 14 every day.</p> <p>15 Q. Within private practice the subcategories 16 of customers does Henry Schein use any terms to refer 17 to those subcategories of customers? 18 A. Nothing that is specific and widely used. 19 Sometimes we will call a practice that 20 does a lot of specialty work within it and is very 21 technologically grounded we will call that like a 22 super GP, a super general practitioner. Obviously 23 specialists, you know, orthodontists, periodontists, 24 endodontists, whatever, are their own categories and 25 typically those are defined within our computer system</p>	68	<p>1 BY MR. SOLOMON: 2 Q. Are there any other factors that go into 3 that analysis besides size? 4 MR. McDONALD: Object to the form, lack 5 of foundation. 6 THE WITNESS: I mentioned, you know, 7 again, prisons, federal, state governments, that is 8 primarily the biggest part of the group. 9 BY MR. SOLOMON: 10 Q. Is there a specific definition of special 11 markets somewhere within Schein Dental that describes 12 specifically the types of customers that fall within 13 the special markets? 14 A. I am not sure of that. We just -- I am 15 just -- I just kind of know what is in there. I don't 16 believe there is a specific definition in there. 17 The reason it is called special markets 18 is because it is customers that were not traditional. 19 Q. Have customer segments changed over time? 20 A. Yes, sure. 21 There is no doubt that, as I mentioned, 22 we think about 70 percent of the business, the overall 23 business, is still in private practice dentistry. 24 That used to be 80 to 90 percent a couple of years 25 ago, probably ten years ago. To me that seems like</p>

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1 one or two years ago, but it is probably ten years
2 ago.

3 So it has moved more and more towards
4 larger -- at a small rate, but, so there is definitely
5 a trend towards either group practices or large
6 special markets-type practices.

7 **Q. Do you know when that trend began?**

8 A. No.

9 **Q. Do you have any sense for why that trend
10 exists?**

11 A. Generally it is economically driven.

12 **Q. What do you mean by that?**

13 A. The majority of dental overhead for a
14 dentist is fixed and it is the actual cost of the
15 facility, the rent they have in the facility, the
16 staff they have in the facility, the equipment they
17 have in the facility, which is usually a monthly note,
18 right, they have a lot of fixed overhead.

19 And as a result of it the more efficient
20 they can make that facility by having multiple
21 dentists working in it over multiple hours the more
22 they can spread the overhead over a wider base of
23 production.

24 That has caused some dentists to go in
25 together and form group practices where they can --

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1 multiple dentists, sometimes those are just
2 partnerships, like a small law firm, and then they
3 sometimes become larger, depending on the situation.

4 **Q. Does Henry Schein Dental ever conduct any
5 studies to keep track of trends like group practices?**

6 MR. McDONALD: Object to the form, lack
7 of foundation.

8 THE WITNESS: I don't believe we have
9 done a study that I am aware of, it is primarily just
10 market intelligence.

11 BY MR. SOLOMON:

12 **Q. And when you say market intelligence,
13 what do you mean?**

14 A. It is coming from the sales field.

15 MR. SOLOMON: I think now would be a good
16 time for a quick break.

17 THE WITNESS: Okay.

18 (Recess taken.)

19 BY MR. SOLOMON:

20 **Q. Mr. Steck, welcome back.**

21 **Before the break we talked a little bit
22 about Schein Dental's pricing, and you mentioned there
23 is something called a catalogue price that Schein
24 Dental uses. Do you recall that?**

25 A. Yes.

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1 **Q. How are the catalogue prices set?**

2 A. Well, I don't do it. It is done by our
3 marketing group in New York and so you would have to
4 ask them, but I think there is a number of factors
5 they look at, including competitiveness of the
6 product, what its list price is, et cetera.

7 **Q. Do you know who is in charge of the
8 marketing department?**

9 A. That would be Paul Hinsch.

10 **Q. Do you know whether Patterson and Benco's
11 prices are taken into consideration when Patterson
12 sets its catalogue prices?**

13 MR. McDONALD: Object to the form.

14 You might want to read your question.

15 BY MR. SOLOMON:

16 **Q. Strike that.**

17 **Do you know whether Patterson and Benco's
18 prices are taken into consideration when Schein sets
19 its catalogue prices?**

20 MR. McDONALD: Object to the form, lack
21 of foundation.

22 THE WITNESS: I really don't know. You
23 would have to ask whoever does it.

24 BY MR. SOLOMON:

25 **Q. Does Schein have different pricing plans**

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1 **for its different customer segments?**

2 A. Yes.

3 **Q. And what are those different pricing
4 plans called?**

5 A. They are either called volume purchase
6 agreements, they used to be called sales plans, but
7 they are effectively the same thing.

8 **Q. So volume purchase agreements or sales
9 plans?**

10 A. Uh-huh.

11 **Q. And does Schein have different price
12 categories that it uses to price its products?**

13 A. I am not sure I understand the question.

14 **Q. Are there different tiers of pricing that
15 Schein Dental uses when it prices its products?**

16 A. Well --

17 MR. McDONALD: Object to the form.

18 THE WITNESS: There is many different
19 types of these.

20 Typically the salesperson is the one that
21 is allowed to make a choice of which one they want to
22 offer their customer. There is ones that are flat
23 discount-type plans that offer a flat discount off the
24 catalogue, there is ones that offer different types of
25 discounts off the catalogue, there is ones that are

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1 more price list formulary-type plans. Yes, there are
2 a number of different ones.

3 BY MR. SOLOMON:

4 **Q. Do you know whether these different plans**
5 **have names?**

6 A. Sure they do.

7 **Q. What are they called?**

8 A. Again, there is a lot of them, I couldn't
9 give you a list from my head here.

10 One of them is called Best Rate, that
11 takes the best price in the catalogue quantity rate
12 regardless of quantity purchased, so if there is 100
13 rate and you buy one you get the 100 rate.

14 One is called Custom Quote. Custom Quote
15 is a plan that you use to come in and sit down with
16 the doctor and give them a customized price list.

17 Then there is Custom Quote Plus which is
18 used as an add-on to another VPA, so if you have a
19 different line purchase agreement and you want to add
20 a customized pricing component to it you use Custom
21 Quote Plus and that can take you up to so many
22 different products.

23 As I said, there is a number of different
24 levels of discount on catalogue and three or four
25 different formularies.

1 **those?**

2 A. Well, for actual customers that have some
3 kind of a commitment it is probably somewhere in the
4 30 -- it is probably around where our market share is,
5 somewhere in the 30 percent range.

6 Of the volume we have how much of that is
7 from committed customers it is probably in the 80s.

8 **Q. So you would say 30 percent of your**
9 **private practice customers commit to purchasing a**
10 **certain volume from Schein Dental?**

11 A. I said somewhere in the 30s, yes.

12 **Q. Somewhere in the 30 percent range?**

13 A. 30 -- where our market share is, which is
14 in the high 30s, right.

15 **Q. So the remaining 60 to 70 percent of**
16 **Schein's customers in the private practice segment do**
17 **not commit to purchasing a certain volume from Schein,**
18 **is that right?**

19 A. Yes.

20 **Q. So does Schein offer discounts to those**
21 **customers?**

22 A. Typically.

23 MR. McDONALD: Object to form.

24 Go ahead.

25 THE WITNESS: Typically not.

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1 **Q. What are the different discount levels?**

2 A. They start as low as 5 percent off and go
3 up as high as 15 to 20.

4 **Q. And how -- strike that.**

5 **How do customers qualify for different**
6 **discount levels?**

7 A. It is generally up to the salesperson and
8 how they want to go for it. I mean, there is
9 guidelines in terms of volume, amount committed, they
10 should qualify for this, but a salesperson and a local
11 manager can override that.

12 **Q. And do those discount levels apply both**
13 **to private practice accounts and middle market**
14 **accounts?**

15 A. Typically these are just private practice
16 we are talking about.

17 **Q. How often do private practices commit to**
18 **purchasing a certain volume from Schein?**

19 A. All the time.

20 **Q. What percentage of your private practice**
21 **customer base would you say commits to purchasing a**
22 **certain volume from Schein?**

23 A. Well, of our actual customer base or of
24 our sales volume? Two different numbers.

25 **Q. Do you have a number in mind for both of**

1 You know, again, they typically are
2 buying small volumes. As I mentioned, a very high
3 percentage of our volume is from committed customers.
4 So typically, no, they are paying catalogue price.

5 BY MR. SOLOMON:

6 **Q. So 70 -- strike that.**

7 **The majority of private practice accounts**
8 **pay catalogue price?**

9 MR. McDONALD: Object to the form.

10 THE WITNESS: I would state it as this,
11 the majority of people who do business with us in a
12 non-committed way pay catalogue price.

13 BY MR. SOLOMON:

14 **Q. What do you mean by non-committed way?**

15 A. They are not committing any volume.

16 **Q. And that would represent what percentage**
17 **of your customer base?**

18 MR. McDONALD: Object to the form, vague.

19 THE WITNESS: As I said, a high -- if we
20 are saying 30 something commit, obviously 60 to 70
21 doesn't.

22 BY MR. SOLOMON:

23 **Q. And just so I am clear then, would you**
24 **say that 60 to 70 percent of your customer base pays**
25 **catalogue price?**

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1 A. That may not be right. I would have to
2 look to see.
3 I am just giving you my guess as to where
4 -- how the business falls, but you can ask other
5 people would have a better knowledge of it than I
6 would.
7 **Q. I guess I am just a little bit confused
8 because I think you mentioned earlier that most
9 customers don't pay catalogue price.**
10 A. Committed customers almost zero do.
11 **Q. So you were just referring to committed
12 customers who agree to purchase a certain volume from
13 Schein Dental?**
14 A. Right.
15 **Q. Are you familiar with a pricing plan
16 called the G Plan?**
17 A. Yes.
18 **Q. What is the G Plan?**
19 A. G Plan is a formulary plan, which means
20 it is a plan that has certain products listed on it.
21 I mean, we carry 30 or 40,000 different products, this
22 will have several hundred on it. And they tend to be
23 the more popular ones, but they are not -- there is no
24 one dentist who typically buys everything on the plan,
25 they are going to buy a few things. And the G Plan is

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1 typically a mid market plan.
2 **Q. When you say it is typically a mid market
3 plan, what do you mean?**
4 A. Well, your question prior to this was
5 about private practice, you have now moved into mid
6 markets. I want to just delineate between the two.
7 So the ones I talked about prior to this
8 were private practice plans. The G Plan is a mid
9 market plan.
10 **Q. Do the private practice plans have a
11 name?**
12 A. Well, I mentioned some of them already.
13 **Q. Okay.**
14 **Are you familiar with the term vendor
15 chargebacks?**
16 A. Yes.
17 **Q. And what does that term refer to?**
18 A. Vendor chargebacks are typically used in
19 special markets, that is kind of where they originated
20 in the dental business, where a customer would -- we
21 would visit a customer with a manufacturer, let's use
22 3M, it is a name everyone knows. And the customer
23 wants to buy this product that 3M makes through us but
24 they want to pay so much for it. Well, we can't sell
25 at that price and be profitable. So 3M makes a

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1 decision, all right, on customers of this type of this
2 size we will give you X percent as a charge back in
3 order to make up the margin you are giving up in order
4 to sell it at that price. It is a way of
5 supplementing the price to large volume customers.
6 **Q. So 3M gives a special price to the
7 distributors, is that right?**
8 A. Actually, no. It is a chargeback to the
9 distributor. We are buying at regular wholesale
10 prices and selling at whatever we agree to sell it at.
11 They are supplementing our margins because the prices
12 we have agreed to sell it at together, that they are
13 involved in this, is considerably less than what we
14 would sell it at without their help.
15 **Q. And so the vendor or manufacturer would
16 provide a refund or a chargeback to the distributor
17 when those products are shipped, is that right?**
18 MR. McDONALD: Object to the form.
19 THE WITNESS: When the way -- the way it
20 works, yes, is at the end of the month we would send
21 them a detailed listing of the products that were
22 shipped and how many of them were shipped and what
23 they had agreed to chargeback or in this case pay us,
24 so it is effectively a charge to the vendor and then
25 they would pay us that amount.

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1 BY MR. SOLOMON:
2 **Q. Would you say the vendor is lowering its
3 wholesale price in that instance?**
4 MR. McDONALD: Object to the form.
5 THE WITNESS: Effectively they are
6 lowering their wholesale price by supplementing us,
7 yes.
8 BY MR. SOLOMON:
9 **Q. Are accounts under the G Plan eligible
10 for vendor chargebacks?**
11 A. I don't believe they are, no.
12 **Q. And why not?**
13 A. Because they are not special markets
14 customers, G Plan is typically a mid market.
15 **Q. And why would mid market customers not be
16 eligible for vendor chargebacks?**
17 MR. McDONALD: Object to the form.
18 THE WITNESS: Can you repeat that again?
19 BY MR. SOLOMON:
20 **Q. Sure.**
21 **Why would vendor chargebacks not be
22 available to customers in the mid market segment?**
23 MR. McDONALD: Object to the form.
24 THE WITNESS: Because the manufacturers
25 don't want to do that, it is really up to them. We

20 (Pages 77 to 80)

<p style="text-align: right;">81</p> <p>1 will take all the vendor chargebacks we can get. It 2 is really up to the manufacturer. And they are trying 3 to keep those kinds of things concentrated amongst the 4 very large dental customers. 5 BY MR. SOLOMON: 6 Q. Do you know why manufacturers do not want 7 to offer vendor chargebacks for middle market 8 customers? 9 MR. McDONALD: Object to the form, lack 10 of foundation. 11 THE WITNESS: No, you would have to ask 12 them. 13 I think it is because they are concerned 14 about getting out -- they want to just be -- have that 15 available within the larger customers. 16 BY MR. SOLOMON: 17 Q. Are you familiar with the term free 18 goods? 19 A. Sure. 20 Q. What does that term refer to? 21 A. Typically free goods are run by 22 manufacturers at different times during the year as 23 promotions where if you buy six of something you will 24 get something free so that the free goods is six plus 25 one, for example, the one is considered the free good.</p>	<p style="text-align: right;">83</p> <p>1 discounts that fall under that plan? 2 A. There are typically -- what is on the G 3 Plan is a formulary, those are already discounted. 4 There is many cases a discount on top of the things 5 that are not on the formulary for the non-formulary 6 items, and I believe there is several different levels 7 of that. 8 Q. Do you know what those different levels 9 are? 10 A. No. 11 Q. Who would know? 12 A. Well, people who deal with it everyday. 13 You know, Brian Brady would probably know, you know, 14 maybe the group practice team would know, but I don't 15 off the top of my head. 16 Q. Are you familiar with the PG Pricing 17 Plan? 18 A. Yes. 19 Q. What is the PG Pricing Plan? 20 A. The PG Plan is another formulary, it is 21 slightly more aggressive than the G Plan. The special 22 markets formulary is called the P Plan. And so we 23 created the G Plan and then the PG Plan is in between 24 the two plans in terms of level of pricing. 25 Q. When you say it is more aggressive, do</p>
<p style="text-align: right;">82</p> <p>1 Q. Do the free goods get shipped directly 2 from a manufacturer? 3 A. They can go either way. They can either 4 -- either there is a coupon, which is the most common 5 way, where they have to redeem it and they have to 6 send it in to the manufacturer and they get sent a box 7 of something, whatever the one free good was. In some 8 cases the free goods are run through us, depends on 9 the situation. 10 Q. And what cases would the free goods be 11 shipped by Schein Dental? 12 A. I can't really answer that, that is kind 13 of outside what I do. That, again, you would have to 14 go to the marketing team for that. 15 Q. Do customers who qualify for G Plan 16 pricing ever receive discounts? 17 A. Well -- 18 MR. McDONALD: Object to the form. 19 THE WITNESS: The G Plan is a discount 20 plan. 21 BY MR. SOLOMON: 22 Q. What are the discounts offered under that 23 plan? 24 A. I can't tell you, I don't know. 25 Q. Do you know whether there is a range of</p>	<p style="text-align: right;">84</p> <p>1 you mean lower prices? 2 A. Yes, a couple/three percent, it is not a 3 lot. I just don't know exactly the number. 4 Q. You said three percent. 5 A. I said -- 6 MR. McDONALD: Object to form. 7 THE WITNESS: I said a couple or three. 8 I am not sure exactly the number, I don't want to say 9 because I am not sure. 10 BY MR. SOLOMON: 11 Q. And what type of customers qualify for PG 12 Plan pricing? 13 A. Typically larger mid market customers. 14 Q. So is there a certain number of offices a 15 mid market customer would need to have to qualify for 16 PG Plan pricing? 17 MR. McDONALD: Object to the form, lack 18 of foundation. 19 THE WITNESS: It is not that cut and dry. 20 It depends a lot on the situation and the individual 21 customer. 22 Typically we would offer the G Plan up to 23 a customer who buys maybe 250 to \$300,000 a year and 24 then once they get north of that they probably would 25 move into PG territory. It is not quite that clean.</p>

85	<p>1 That is a general guideline and then once they get up 2 obviously closer to a million dollars they would move 3 into the P Plan or the special markets plans. 4 BY MR. SOLOMON: 5 Q. Are vendor chargebacks available under 6 the PG Plan? 7 A. I don't believe so, no. 8 Q. What about free goods? 9 A. I believe they are. 10 Q. Do customers who qualify for PG Plan 11 pricing receive more free goods than those who qualify 12 for G Plan pricing? 13 MR. McDONALD: Object to the form, lack 14 of foundation. 15 THE WITNESS: I really can't speak 16 definitively, but I believe the free good offers are 17 universal so I don't think it matters. 18 BY MR. SOLOMON: 19 Q. Are you familiar with the terms PG10, 20 PG15, and PG18? 21 A. I can guess what those are. 22 MR. McDONALD: Don't guess. If you know 23 tell him. 24 THE WITNESS: I think I know, but I don't 25 -- I am not for sure.</p>	87	<p>1 foundation. 2 THE WITNESS: Again, I am not that 3 familiar with the P Plan, that is their pricing plan. 4 BY MR. SOLOMON: 5 Q. So someone in special markets like 6 Mr. Muller would be more familiar with that, right? 7 A. Yes. 8 Q. We talked about some of the pricing plans 9 for mid market customers, and then you told me a 10 little bit about pricing with private practice 11 accounts and you mentioned that some private practice 12 customers who commit volume receive certain levels of 13 discounts, do you recall that? 14 A. Yes, but I believe I said all -- pretty 15 much anybody who commits a certain level of volume 16 gets a discount. 17 Q. Do you know who determines whether a 18 private practice dentist -- strike that. 19 Who would determine the level of discount 20 that a private practice dentist would receive? 21 A. Generally the salesperson. 22 Q. And what would the salesperson take into 23 consideration when making that determination? 24 MR. McDONALD: Object to the form, overly 25 broad.</p>
86	<p>1 BY MR. SOLOMON: 2 Q. Do you know whether they are various 3 levels of discounted pricing? 4 A. My suspicion is they would be discounts 5 on the non-formulary items, the actual PG Plan items 6 are the same. 7 Q. We have talked a little bit about 8 discounts. 9 My question is do the discounts come out 10 of Schein's margins or the manufacturer's margins? 11 A. Almost all are out of Schein's margins. 12 Q. Are you familiar with the P Plan? 13 A. Yes. 14 Q. Refresh my memory, I think you just 15 mentioned a moment ago, what is the P Plan? 16 A. The P Plan is the special markets 17 formulary. 18 Q. Do you know how the P Plan prices 19 compared to catalogue prices? 20 A. No. 21 MR. McDONALD: Object to form. 22 BY MR. SOLOMON: 23 Q. Are you familiar with the terms P10, P15, 24 and P20? 25 MR. McDONALD: Objection to form,</p>	88	<p>1 THE WITNESS: We have 850 salesperson 2 that would do that so it is hard to say. But it is 3 usually the amount of committed volume, the history of 4 the customer, what other things they are doing for the 5 customer, you know, there is a number of different 6 elements to it. 7 BY MR. SOLOMON: 8 Q. So do sales representatives have 9 discretion in determining the level of discount to 10 provide to a private practice customer? 11 A. Yes, they do. They have discretion up to 12 cost, they can sell down to cost. 13 Q. When you say they can sell down to cost 14 that would mean that Schein would not make a profit on 15 that particular sale, is that right? 16 A. Potentially, yes. 17 Q. In what instances would a sales 18 representative be allowed to sell down to cost? 19 MR. McDONALD: Object to the form. 20 THE WITNESS: Well, we try to discourage 21 that, of course, but there are cases where there are 22 certain types of products, the best example is gloves, 23 that the margin on is very thin. And occasionally in 24 order to try to get a customer to buy everything else 25 from you you have to get their glove business and the</p>

89	<p>1 glove business could be at near cost. 2 BY MR. SOLOMON: 3 Q. Are there any other products that are 4 sold at or near cost by Schein sales representatives? 5 MR. McDONALD: Object to the form, overly 6 broad. 7 THE WITNESS: I am sure there are, but I 8 can't tell you what they are. 9 BY MR. SOLOMON: 10 Q. Do you know how often sales 11 representatives would sell a product at or near the 12 cost of the product? 13 MR. McDONALD: Object to the form, overly 14 broad. 15 THE WITNESS: No, I can't tell you that. 16 BY MR. SOLOMON: 17 Q. Is it common? 18 MR. McDONALD: Object to the form. 19 THE WITNESS: How would you define 20 common? It is a very small percentage of our 21 business. 22 BY MR. SOLOMON: 23 Q. What percentage would you say? 24 A. I have no idea. 25 Q. What are the range of discounts -- strike</p>	91	<p>1 number of different elements to it. 2 Q. So we have talked about the G Plan, the 3 PG Plan, the P Plan, we have talked a little bit about 4 pricing for private practice accounts, which I 5 understand does not have a specific name. 6 Are there any other pricing plans that 7 Schein uses for its customers that I missed? 8 MR. McDONALD: Object to the form, overly 9 broad. 10 THE WITNESS: Not plans. We negotiate on 11 individual items, as I said. 12 You know, obviously a customer can get a 13 flier from Safco or someone like that advertising a 14 low price on something that the plan they are on 15 wouldn't be that low for that particular item so the 16 salesperson can override the price of that case and 17 sell it at the lower price. 18 BY MR. SOLOMON: 19 Q. What is a price override? 20 A. That is what I just said. 21 Q. How often do price overrides occur? 22 A. I can't speak to it exactly. It depends 23 on the salesperson, it depends on the area of the 24 company. It is significant. 25 Q. When you say significant, can you be more</p>
90	<p>1 that. 2 Do you have a sense for the gross margin 3 that Schein receives for each customer segment that we 4 have talked about today? 5 MR. McDONALD: Object to the form, overly 6 broad, lack of foundation. 7 THE WITNESS: Well, within private 8 practice there is a wide range of gross profits on 9 customers. As I mentioned they aggregate up somewhere 10 in the 32, 33 percent range all rolled into one. In 11 mid market it is probably going to be a couple of 12 points less than that, in special markets it may be 13 less than that. Again, I don't deal in special 14 markets so I am not familiar with that. 15 BY MR. SOLOMON: 16 Q. Would you say that gross margins for 17 larger customers are smaller than for private practice 18 accounts? 19 A. Yes. 20 Q. Do you know why that is? 21 A. Yes, volume, sure, they are buying a 22 higher level of volume. 23 Usually when they get to special markets 24 the model is very different, they are not paying a 25 commission to the salesperson, for example, there is a</p>	92	<p>1 specific? 2 A. I am not going to give you a number 3 because I don't know, I am just speculating. 4 Q. You are responsible for the sales 5 organization of Schein Dental, right? 6 A. Yes. 7 Q. Do you ever receive information about 8 price overrides by sales representatives in the field? 9 A. Yes. We had a report, I think it is run 10 monthly, I generally see it quarterly, but it is given 11 to all the field management. 12 Q. And does -- strike that. 13 Do those reports provide information 14 about the number of price overrides that have 15 occurred? 16 A. Yes. 17 Q. From your review of those reports what 18 would you say is the typical occurrence of price 19 overrides by sales representatives? 20 A. It -- 21 MR. McDONALD: Hang on, object to the 22 form, overly broad. 23 THE WITNESS: It varies widely by area of 24 the country. 25</p>

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1 BY MR. SOLOMON:
 2 **Q. So are certain areas of the country more**
 3 **likely to provide price overrides than others?**
 4 A. Yes.
 5 **Q. Do you know what that depends on?**
 6 MR. McDONALD: Object to the form.
 7 THE WITNESS: I don't know what the
 8 depends is. But every area of the United States's
 9 market is slightly different, as I mentioned there are
 10 different independents around the country, some in
 11 some markets and some in others. The makeup of a
 12 dentist population socioeconomically in any area can
 13 be very different from one area to another.
 14 The two most common areas for price
 15 overrides are Los Angeles and New York.
 16 BY MR. SOLOMON:
 17 **Q. Do you know why that is the case?**
 18 A. Much more competitive areas.
 19 **Q. How often do sales representatives in Los**
 20 **Angeles and New York typically provide price overrides**
 21 **for customers?**
 22 MR. McDONALD: Object to the form, overly
 23 broad.
 24 THE WITNESS: I can't give you a number,
 25 I haven't studied the reports enough where I can say.

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1 BY MR. SOLOMON:
 2 **Q. Apart from a number can you just give me**
 3 **a ballpark estimate?**
 4 MR. McDONALD: He is not going to guess.
 5 You gave him a warning at the beginning about giving
 6 perjured testimony, he told you he doesn't know so he
 7 is not going to guess, he is not here to guess.
 8 BY MR. SOLOMON:
 9 **Q. I am not asking you to guess, I am**
 10 **just --**
 11 MR. McDONALD: Yes, you are.
 12 BY MR. SOLOMON:
 13 **Q. I am not asking you to guess, I am trying**
 14 **to ask if you know certain information. You told me**
 15 **you can't think of an exact number, I am asking if you**
 16 **have a ballpark estimate, I think that is a fair**
 17 **question.**
 18 MR. McDONALD: I think ballpark estimate
 19 is the same as guess.
 20 MR. SOLOMON: I think ballpark estimate
 21 can be used in the absence of a specific number. He
 22 receives the reports quarterly, I am asking if he has
 23 a ballpark estimate, it is a fair question.
 24 MR. McDONALD: You probably have the
 25 reports that we produced to you.

95

1 MR. SOLOMON: He should --
 2 MR. McDONALD: No, he shouldn't. He is
 3 not here -- if you have a document then give it to
 4 him.
 5 Ronnie, I don't know what in the world
 6 this has to do with your investigation, but you use
 7 your time however you want to.
 8 MR. SOLOMON: I will.
 9 MR. McDONALD: At the end of the day
 10 don't complain when you run out of time when you are
 11 spending all your time on this stuff. He is not going
 12 to guess.
 13 BY MR. SOLOMON:
 14 **Q. Mr. Steck, I am not asking you to guess,**
 15 **I am just asking you for information that you have**
 16 **access to.**
 17 MR. McDONALD: Ask your question.
 18 BY MR. SOLOMON:
 19 **Q. Let's move on.**
 20 **Do -- strike that.**
 21 **Does the price a private practice**
 22 **customer receives ever depend on how the private**
 23 **practice dentist negotiates with the sales**
 24 **representative?**
 25 MR. McDONALD: Object to the form.

96

1 THE WITNESS: So what I am understanding
 2 you to say is does the price that they are actually
 3 paying is that influenced by their discussions with
 4 the salesperson?
 5 BY MR. SOLOMON:
 6 **Q. Right.**
 7 A. Absolutely. I have already said that,
 8 yes.
 9 **Q. Can you give me some examples of how a**
 10 **dentist can negotiate a price with a sales**
 11 **representative?**
 12 A. I just did.
 13 **Q. So you talked a little bit about Safco**
 14 **showing a flier to a sales representative.**
 15 A. To a dentist. It usually goes to the
 16 dentist, it is mailed to them.
 17 **Q. So a dentist would provide a copy of the**
 18 **flier to the sales representative and ask for a price**
 19 **match, is that right?**
 20 A. Yes.
 21 **Q. Any other ways in which a private**
 22 **practice dentist can negotiate price other than by**
 23 **showing what a competitor's price is?**
 24 A. Well, that is generally how it is done,
 25 it is either that or they look at the Internet or they

24 (Pages 93 to 96)

97

99

1 look at -- they get prices from somewhere and they are
2 sitting down with the rep and talking to the rep about
3 it.

4 **Q. Mr. Steck, are you familiar with the term**
5 **group purchasing organization?**

6 A. Yes.

7 **Q. What is a group purchasing organization?**

8 A. My understanding is that a group
9 purchasing organization is a medical term that is used
10 in the medical industry and actually goes out and
11 negotiates with manufacturers similar to what we
12 talked about with the vendor chargeback system to get
13 product to large customers, so they are negotiating
14 and getting particular pricing for their members, and
15 then distributors can either accept that or they can't
16 or they have the option to, that is my understanding.

17 **Q. What is your understanding based on?**

18 A. Just what I heard from the medical team.

19 **Q. Who have you heard that from in the**
20 **medical team?**

21 A. My counterpart is Brad Connett, again,
22 very insulated from medical, I don't know a lot about
23 it, what I told you is pretty much what I know.

24 **Q. Have you ever used the term group**
25 **purchasing organization or GPO to refer to an entity**

1 -- people sign up, buy memberships in them.

2 **Q. And what is your understanding of buying**
3 **groups based on?**

4 A. Just market intelligence that I get from
5 people on my team and people on their teams.

6 **Q. You referred to in your prior answer a**
7 **study club.**

8 A. Yes.

9 **Q. What is a study club?**

10 A. Dentists often will group together
11 sometimes in a geography, sometimes across the
12 country, with a leader who teaches them clinical
13 aspects of dentistry, new techniques, things that
14 happening in the business, continuing education
15 related, that they will do. And then this in some
16 cases, at least in a couple I am aware of, has been
17 added as a component of being part of the study club
18 you get this potential benefit.

19 **Q. What kind of benefits are you referring**
20 **to?**

21 A. Well, it would be a pricing list or
22 pricing discount.

23 **Q. What in your mind is the difference**
24 **between a GPO and a buying group?**

25 A. I already just said that I thought,

98

100

1 **within the dental industry?**

2 A. It has been -- the term has been used
3 loosely and because it is so well established in
4 medical it has kind of found its way over.

5 But the way that groups function in
6 dental would be more properly called a buying group or
7 a buying club. The vast majority were not out
8 negotiating prices with manufacturers, they are trying
9 to negotiate with distributors on behalf of their
10 members.

11 **Q. What is a buying group?**

12 A. Well, it can be a lot of things. As I
13 mentioned, that part of the business is very dynamic,
14 it is moved -- changing quite often. And it can be
15 anything from a group of four or five dentists that
16 get together and say let's buy as a group because we
17 are friends and whatever and they make that decision,
18 and those have been going on for years. Or it can be
19 more formal, sometimes it is a study group where there
20 is a group of dentists that belong to a study group.
21 There are even some state dental societies that have
22 tried to get into the business and tried to allow some
23 kind of plan for their members. And then there is
24 more recently there have been actual organizations
25 that have been formed that, you know, perform that for

1 didn't I, in terms of -- GPO in my understanding
2 negotiates with manufacturers, where a buying group
3 typically negotiates with distributors.

4 **Q. And you formed that understanding during**
5 **your discussions with someone on the medical side of**
6 **Henry Schein, is that right?**

7 A. Yes.

8 **Q. Are you aware of any specific**
9 **characteristics that would define a buying group?**

10 A. Only that they would represent a group of
11 dentists. As I said, it can happen in a lot of
12 different ways, but they would represent a group of
13 dentists and ask for a program or a plan or a VPA or
14 whatever for a group of customers or potential
15 customers.

16 **Q. Do you know how buying groups form within**
17 **the dental industry?**

18 A. As I said, it can happen a lot of
19 different ways.

20 **Q. Are you -- strike that.**

21 **Have you ever met with representatives of**
22 **any buying groups?**

23 A. The only ones I have personally met with
24 is the California Dental Association.

25 **Q. What is the California Dental**

101	103
<p>1 Association?</p> <p>2 A. Well, California Dental Association or</p> <p>3 CDA is the largest dental association in the United</p> <p>4 States in that it is dentists from the state of</p> <p>5 California that belong to it.</p> <p>6 I assume it is like the bar association,</p> <p>7 there should be state bar associations, it is --</p> <p>8 although there is a difference, in that dentists have</p> <p>9 to pay dues to join the dental association to be part</p> <p>10 of the CDA. If I am a practicing dentist and I have a</p> <p>11 license to practice in the state of California I have</p> <p>12 to pay dues annually to belong to the ADA, the</p> <p>13 American Dental Association and the CDA.</p> <p>14 And so the CDA is basically the -- they</p> <p>15 do lobbying work for customers, they hold the</p> <p>16 conventions that we talked -- that I mentioned</p> <p>17 earlier, they do a number of different things for</p> <p>18 their members.</p> <p>19 Q. So CDA itself is not a buying group.</p> <p>20 A. No. It is a dental association of</p> <p>21 dentists that they belong to. It has been around</p> <p>22 forever.</p> <p>23 Q. I asked you if ever met with</p> <p>24 representatives of a buying group. Are you referring</p> <p>25 to --</p>	<p>1 Buying groups are typically individual</p> <p>2 dental offices that join a club and/or an association</p> <p>3 or a study club or whatever it happens to be, and this</p> <p>4 is one of the benefits of that, that they have access</p> <p>5 to discounted pricing.</p> <p>6 Q. Are there any other characteristics that</p> <p>7 you would look at to determine whether an entity is a</p> <p>8 buying group or a corporate account?</p> <p>9 A. Not that I can recall. The most</p> <p>10 important one is common ownership and single</p> <p>11 purchasing, single account receivable.</p> <p>12 Q. Does Schein view buying groups as</p> <p>13 competitors or potential customers of Schein?</p> <p>14 A. That is a difficult question. We do</p> <p>15 business with a lot of buying groups today. We</p> <p>16 wouldn't be doing business with them if we felt they</p> <p>17 were competitors. So, you know, buying groups</p> <p>18 typically do not have direct access to the product,</p> <p>19 they need to work through a distributor partner.</p> <p>20 Q. Why is that?</p> <p>21 A. Because they don't -- they are not</p> <p>22 authorized distributors, they don't have their own</p> <p>23 warehouses typically, they don't have their own</p> <p>24 warehouses, their own sales channels, their own</p> <p>25 service departments, kind of thing, so they are pretty</p>
102	104
<p>1 A. CDA wanted to form its own buying group.</p> <p>2 Q. Who did you meet with from the CDA?</p> <p>3 A. I met with the head of their business</p> <p>4 services, I met with the head of the CDA, and I met</p> <p>5 with the person -- actually it was a couple of</p> <p>6 different people in charge of that particular aspect</p> <p>7 of the business.</p> <p>8 Q. And what are their names?</p> <p>9 A. The head of the CDA's name is Peter</p> <p>10 DuBois. The head of the Business Solutions name is</p> <p>11 Bob Spinelli. And I honestly can't remember the names</p> <p>12 of the purchasing people.</p> <p>13 Q. Any other buying groups with whom you</p> <p>14 have met?</p> <p>15 A. Not personally, no.</p> <p>16 Q. How does Schein determine whether a group</p> <p>17 is a buying group or a corporate account?</p> <p>18 A. Well, a corporate account would be, I</p> <p>19 think, pretty easily distinguished because of the fact</p> <p>20 it is under one ownership, there is one person or one</p> <p>21 group of people that are negotiating for that group of</p> <p>22 -- typically multiple location practices, and in many</p> <p>23 cases the purchase orders themselves come from one</p> <p>24 location and then we ship to the different locations</p> <p>25 within the practice. That is a wholly owned model.</p>	<p>1 much working with people that do.</p> <p>2 Q. Do you know whether buying groups ever</p> <p>3 approach manufacturers directly to purchase products?</p> <p>4 A. I believe that has happened, yes.</p> <p>5 Q. How do you know that?</p> <p>6 A. Just from talking to manufacturers.</p> <p>7 Q. Which manufacturers have told you that?</p> <p>8 A. Dentsply has told me that, 3M has told me</p> <p>9 that.</p> <p>10 Q. Have Dentsply and 3M told you that they</p> <p>11 have sold products to buying groups?</p> <p>12 A. They do not to my knowledge sell to any</p> <p>13 buying group, they sell to distributors that sell to</p> <p>14 buying groups or dealers.</p> <p>15 Q. Do you know whether 3M and Dentsply have</p> <p>16 ever told products directly to buying groups?</p> <p>17 MR. McDONALD: Object to the form, lack</p> <p>18 of foundation.</p> <p>19 THE WITNESS: I am not aware of any.</p> <p>20 MS. REPORTER: Are you saying Dentist</p> <p>21 Supply?</p> <p>22 THE WITNESS: Dentsply is</p> <p>23 D-e-n-t-s-p-l-y. It started as Dentist Supply and</p> <p>24 they shortened it.</p> <p>25 MR. McDONALD: It is one word.</p>

105

1 BY MR. SOLOMON:

2 **Q. Does Schein ever request any information**
3 **to determine whether a potential customer is a buying**
4 **group?**

5 A. Request information? Well, I am having a
6 hard time understanding the question. Usually they
7 present themselves as a buying group. I mean, we
8 would ask them how many members they had, you know --

9 **Q. Any --**

10 A. -- how they organize themselves. There
11 is questions we ask them about how their
12 going-to-business strategy is.

13 **Q. Anything else that Schein would ask a**
14 **potential customer to determine whether they are a**
15 **corporate account or a buying group other than what**
16 **you have just mentioned?**

17 A. Not that I can think of.

18 **Q. Okay.**

19 **When did you first hear about buying**
20 **groups in the dental industry?**

21 A. Well, as I said earlier, they have been
22 around in some form for many, many years. And more
23 recently they have become more organized in a bigger
24 part of the business, but I can't speak exactly when
25 that would be. Probably Coast Dental. I mean,

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1 THE WITNESS: Can you say that again,
2 just maybe a little different?

3 BY MR. SOLOMON:

4 **Q. Sure.**

5 **Do buying groups ever approach Schein to**
6 **purchase supplies?**

7 A. Yes, sure.

8 **Q. How often would you say that happens?**

9 A. I can't -- it depends -- again, it could
10 be once a month, it could be once every few months, it
11 depends on how many are forming, and not all of them
12 want to do business with Schein, some of them want to
13 do business with other people.

14 **Q. Has that changed over the last five**
15 **years?**

16 MR. McDONALD: Object to the form, vague.

17 THE WITNESS: I would say it has become
18 more prevalent, but I can't give you any contrasting
19 numbers.

20 BY MR. SOLOMON:

21 **Q. Was there ever a time when Schein did not**
22 **work with buying groups?**

23 A. I believe we have always had buying
24 groups in various forms.

25 I would say there was a time when I

106

1 obviously -- so.

2 **Q. So sometime in the 1990s?**

3 A. I don't want to say. I have been in
4 sales -- most of my sales career was in the 1980s, so
5 I know I heard of dentists that had gotten together
6 and formed little mini groups during that time.

7 **Q. You mentioned in your previous answer**
8 **that more recently they have become more organized in**
9 **a bigger part of the business. What did you mean by**
10 **that?**

11 A. Well, I think, you know, again, our
12 history shows that in the last several years that they
13 have become -- they are either more of them forming or
14 they are adding more members or they are becoming more
15 able to commit volume of customers, and that is what I
16 would suggest by organized.

17 **Q. And what is your understanding based on?**

18 A. Market intelligence, what I hear from
19 people.

20 **Q. Would that be from people in the field?**

21 A. Yes, generally, yes.

22 **Q. Do you know whether buying groups ever**
23 **approached Schein to establish supply agreements for**
24 **dental products?**

25 MR. McDONALD: Object to the form, vague.

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1 mentioned before they started becoming more organized
2 where we weren't -- a lot of them were what I would
3 call ordering aggregators where they basically just
4 signed up dentists as members for a very low fee but
5 couldn't commit any volume so they would basically
6 say, all right, we have 20 or 3 members, whatever
7 members, and those customers have access to this
8 pricing.

9 But it doesn't mean they are going to buy
10 from you, it just means that they have access to the
11 pricing, which to us is no different than mailing them
12 a catalogue. So those kinds of groups we still don't
13 like doing business with because if they can't commit
14 volume there is really no reason to give them a
15 discount because all we are doing is kind of
16 negotiating against ourselves.

17 **Q. And what is your understanding of whether**
18 **a buying group can commit volume based on?**

19 A. Based on what the buying group's rules
20 are with its members.

21 **Q. So you understand that certain buying**
22 **groups have rules surrounding volume?**

23 A. Yes.

24 **Q. And how do you know that?**

25 A. Based on intelligence I have gotten from

27 (Pages 105 to 108)

109	<p>1 my direct reports.</p> <p>2 Q. Have you ever discussed rules surrounding</p> <p>3 volume directly with a representative of a buying</p> <p>4 group?</p> <p>5 A. I mentioned the only group I ever</p> <p>6 personally discussed it with was CDA.</p> <p>7 Q. And did you discuss volume commitments</p> <p>8 when you met with CDA?</p> <p>9 A. Yes, yes, we did.</p> <p>10 Q. So you talked a little bit about the</p> <p>11 difference between buying groups that can commit</p> <p>12 volumes and those that you believe cannot.</p> <p>13 A. Uh-huh.</p> <p>14 Q. And you said that Henry Schein Dental</p> <p>15 still doesn't like to work with those buying groups</p> <p>16 that you believe can't commit volume, is that right?</p> <p>17 A. That is generally, yes, that's right.</p> <p>18 Q. Did Henry Schein Dental ever have a</p> <p>19 policy not to work with buying groups that it believed</p> <p>20 could not commit volume?</p> <p>21 A. We certainly had discussions discouraging</p> <p>22 doing business with people that were simply looking to</p> <p>23 substantiate themselves. Whether that was</p> <p>24 characterized in e-mails or communication as we are</p> <p>25 not going to be doing business with buying groups,</p>	111	<p>1 that right?</p> <p>2 A. I believe, yes, I believe we have had</p> <p>3 discussions about doing business with certain types of</p> <p>4 buying groups that we don't believe bring value to</p> <p>5 their members.</p> <p>6 Q. So those discussions, those were</p> <p>7 internally, is that right?</p> <p>8 A. Yes.</p> <p>9 Q. And who were you trying to discourage</p> <p>10 from doing business with buying groups?</p> <p>11 MR. McDONALD: Object to the form.</p> <p>12 THE WITNESS: Well, it would be anybody</p> <p>13 on our team.</p> <p>14 BY MR. SOLOMON:</p> <p>15 Q. And why were you discouraging people on</p> <p>16 your team from doing business with certain types of</p> <p>17 buying groups?</p> <p>18 A. I thought I just answered that. The</p> <p>19 buying group is not providing any value to its</p> <p>20 customers, they are simply trying to insert themselves</p> <p>21 between us and the customer and we just didn't see any</p> <p>22 reason to do that if they couldn't commit volume.</p> <p>23 Q. How would you discourage members of</p> <p>24 Schein's team from doing business with those entities?</p> <p>25 A. Well, any time they are coming up in the</p>
110	<p>1 that would be labeling that group as a buying group,</p> <p>2 that type of customer as a buying group. As I said,</p> <p>3 we have done business with buying groups for years.</p> <p>4 Q. You mentioned you had discussions</p> <p>5 discouraging doing business with people that were</p> <p>6 simply looking to substantiate themselves. Who are</p> <p>7 those discussions with?</p> <p>8 A. You mean internally? I don't know quite</p> <p>9 what you mean by that, who are those discussions with,</p> <p>10 within Schein?</p> <p>11 Q. I don't know, that is why I am asking</p> <p>12 you, you mentioned you had discussions --</p> <p>13 A. We had talk between Tim, myself, Joe,</p> <p>14 different people within the sales groups about what is</p> <p>15 kind of bubbling up out there, we want to be active in</p> <p>16 the market and we want to compete in the market. We</p> <p>17 are always aware of what is happening. I think the</p> <p>18 term buying group and the term GPO sometimes get used</p> <p>19 loosely.</p> <p>20 Q. You mentioned those discussions were</p> <p>21 surrounding discouraging doing business with certain</p> <p>22 buying groups.</p> <p>23 Is that --</p> <p>24 A. Certain types.</p> <p>25 Q. Certain types of buying groups, do I have</p>	112	<p>1 marketplace of one form, it would go to management and</p> <p>2 management would go to management and talk about it</p> <p>3 and that is how we would say, okay, what is this, this</p> <p>4 is nothing more than a buying club or a buying group,</p> <p>5 as I said the term is used a little loosely, and</p> <p>6 doesn't really bring any value to the customer, cannot</p> <p>7 commit value, doesn't meet certain criteria, and we</p> <p>8 choose not to bid on the business.</p> <p>9 Q. And what criteria are you referring to?</p> <p>10 A. If they can't commit volume, I mention</p> <p>11 that, another thing we look for do they provide a</p> <p>12 value to the customer other than just aggregating</p> <p>13 their purchases. In the role of the CDA they provide</p> <p>14 a number of value to their customers, to their</p> <p>15 members, as do other buying groups.</p> <p>16 Q. What do you mean by value?</p> <p>17 A. Do they do something for them that is</p> <p>18 helpful, do they help them with continuing education,</p> <p>19 do they do something in helping negotiate insurance</p> <p>20 benefits, do they do -- there is a variety of</p> <p>21 different elements they can take.</p> <p>22 Q. Why are those aspects important to</p> <p>23 Schein?</p> <p>24 A. Well, we want to do business with people</p> <p>25 that if they are belonging to a particular -- if a</p>

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1 dentist belongs to a certain group, you know, we
 2 believe that that group should probably provide some
 3 value to the customer other than just -- otherwise the
 4 doctor can get a better deal on their own from us.
 5 **Q. Why do you -- why is that important to**
 6 **Schein?**
 7 MR. McDONALD: Object to the form.
 8 THE WITNESS: I am still -- I don't quite
 9 understand the question.
 10 MR. SOLOMON: Court reporter, can you
 11 repeat the question?
 12 (Record read as requested.)
 13 MR. McDONALD: Same objection.
 14 THE WITNESS: I don't understand the form
 15 of the question.
 16 BY MR. SOLOMON:
 17 **Q. Sure.**
 18 **I think you just mentioned a few**
 19 **different things, you want to do business with people**
 20 **belonging to a certain group, they should provide some**
 21 **value to the customer other than just getting a better**
 22 **deal.**
 23 A. Uh-huh.
 24 **Q. Does that accurately sum up what you just**
 25 **stated?**

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1 A. Yes, I think so. Except -- let me just
 2 qualify the better deal.
 3 The better deal issue is that in almost
 4 every case we have looked at a dentist can do better
 5 negotiating with us on their own committing volume
 6 than they can working through a buying group.
 7 **Q. How do you know that?**
 8 A. Experience.
 9 **Q. Can you be more specific what you mean by**
 10 **experience?**
 11 MR. McDONALD: Objection, form.
 12 THE WITNESS: I mean, a doctor who buys
 13 \$40,000 a year in dental supplies and sits down with
 14 us and says I am going to buy \$40,000 from you, I am
 15 going to do this, I am going to do this, and I am
 16 going to do this will get a better deal than we can
 17 give to a buying group which can't commit that.
 18 BY MR. SOLOMON:
 19 **Q. How do you know that?**
 20 MR. McDONALD: Object to the form.
 21 THE WITNESS: It is based on basic
 22 business, I think.
 23 BY MR. SOLOMON:
 24 **Q. Have you personally been involved in any**
 25 **of those discussions that you just referred to?**

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1 A. I just mentioned the only one I have been
 2 involved with is the CDA.
 3 **Q. What do you mean by a better deal for**
 4 **customers?**
 5 A. Larger discount or lower pricing.
 6 **Q. Have you ever looked at the types of**
 7 **pricing or discounts that buying groups provide to**
 8 **their members?**
 9 A. Let me understand that. You are saying
 10 have I ever looked at what buying groups provide to
 11 their members in terms of pricing?
 12 **Q. Right.**
 13 A. I am only familiar with the ones we have
 14 negotiated with and, again, I have only personally
 15 been involved with one of them.
 16 **Q. You also talked a little bit about value,**
 17 **I think you used that term a few times, and I just**
 18 **want to understand what would be encompassed in the**
 19 **term value.**
 20 **What do you mean by the term value?**
 21 A. Well, we believe that customers buy based
 22 on what a perceived value is from a particular place,
 23 the reason some people go to Nordstrom and other
 24 people go to Wal-Mart, there is reasons why, there is
 25 services you get, there is elements of what you do,

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1 and so we believe the value of putting in a
 2 professional salesperson and the service support
 3 behind that salesperson that is expensive to provide
 4 that we do, and others do, is a value to the customer.
 5 If we didn't we wouldn't do it. It is a very
 6 expensive thing to do. So that is why we put that in,
 7 we believe that is a value to the customer, along with
 8 the prices we sell at.
 9 **Q. And you also talked about the fact that**
 10 **you think buying groups don't provide value to their**
 11 **members, is that right?**
 12 A. It is not what I said.
 13 MR. McDONALD: Object to form.
 14 BY MR. SOLOMON:
 15 **Q. Do you think that buying groups provide**
 16 **value to their members?**
 17 A. I think some do.
 18 **Q. In what ways?**
 19 A. I already mentioned, some of them
 20 negotiate insurance rates, some provide continuing
 21 education, some provide an atmosphere of regular
 22 meetings, some provide clinical work, some have their
 23 own KOLs, there is a lot of different elements of
 24 that.
 25 **Q. Forgive me if I asked a question and you**

29 (Pages 113 to 116)

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1 already mentioned it, I appreciate you letting me
2 know, it is probably because I just want a little more
3 clarity, apologies in advance.

4 A. All right.

5 **Q. Did Schein ever -- strike that.**

6 So you talk a little about internal
7 discussions discouraging team members from doing
8 business with certain types of buying groups, do you
9 recall that discussion?

10 A. Yes.

11 **Q. And you talked a little bit about
12 management would take a look at certain buying groups
13 and determine whether or not Schein should do business
14 with those groups.**

15 A. Yes.

16 **Q. Do you know who made those decisions
17 within Henry Schein Dental's management?**

18 A. It could be a variety of people along the
19 chain. The regional manager is the lowest level -- I
20 shouldn't say lowest, they are the closest to the
21 field, they supervise the actual field salespeople.
22 They can say, no, this isn't what I really want to
23 pursue. They go to the zone manager who is their boss
24 who also has the authority to say no and then it would
25 go to a Joe or his counterpart and they could say no

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1 **business with certain buying groups?**

2 MR. McDONALD: Object to the form,
3 misstates the testimony.

4 THE WITNESS: If they made it up that
5 far, yes, we would. As I said, they could be objected
6 to anywhere along the line.

7 BY MR. SOLOMON:

8 **Q. Did you ever provide guidance to
9 employees who were below you regarding whether Schein
10 should do business with certain buying groups?**

11 A. I think the word ever is what bothers me.
12 You know, ever is a long time.

13 Have we ever said we don't like buying
14 groups or we don't like buying clubs, yes, I am sure
15 we said that along the line.

16 As I said, we have been doing business
17 with them in one form or another for years so that
18 statement in itself contradicts what is actually
19 happening, so if I am saying that it is actually not
20 true because in some cases we are already doing
21 business with somebody. I am sure there have been
22 discussions where we have said let's not do business
23 with buying groups. But, as I said, we have already
24 been doing business with buying groups.

25 **Q. Do you know how often you would have**

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1 and then it would come to me or Tim.

2 **Q. Have you ever looked at a buying group
3 and determined that Schein should not do business with
4 it?**

5 A. Yes.

6 **Q. On how many occasions have you made those
7 determinations?**

8 A. I have no idea.

9 **Q. Have you made -- strike that.**

10 **Would you discuss those buying groups
11 with Mr. Sullivan?**

12 MR. McDONALD: Object to the form.

13 THE WITNESS: On some occasions if they
14 made it up to me, yes.

15 BY MR. SOLOMON:

16 **Q. You said if they made it up to me. Who
17 is the they that you are referring to?**

18 A. If the buying group decision made its way
19 up to my desk I would probably talk to Mr. Sullivan
20 about it before we would do anything. I mean, he was
21 very well aware of the CDA and what was going on
22 there, for example.

23 **Q. Got it.**

24 **So you and Mr. Sullivan would have a
25 discussion about whether or not Schein should do**

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1 **those discussions?**

2 MR. McDONALD: Object to the form.

3 THE WITNESS: Whenever one came up to me
4 would be the only time I would be involved.

5 BY MR. SOLOMON:

6 **Q. Do you believe that GPO's -- strike that.
7 Do you believe that buying groups can be
8 a risk to Schein's business?**

9 MR. McDONALD: Object to the form, overly
10 broad, vague.

11 THE WITNESS: The word can is a little --
12 it could -- could they be? Potentially they could be
13 a risk, but they also can be an opportunity, they can
14 provide an opportunity to grow the business because a
15 buying group, for example, we just signed on with a
16 company called Smile Source, that gave us access to
17 customers that we didn't have, so that was an
18 opportunity.

19 Where it can be a risk is if they come in
20 and are taking Schein accounts and then we are
21 basically -- we could be losing business in that
22 sense.

23 It really is both.

24 BY MR. SOLOMON:

25 **Q. You mentioned a company called Smile**

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<p>1 Source. When did Schein first form a relationship 2 with Smile Source? 3 MR. McDONALD: Object to the form, lack 4 of foundation. 5 THE WITNESS: I believe it was late '90s, 6 early 2000s because they were originally a special 7 markets account. 8 BY MR. SOLOMON: 9 Q. Did they ever become a Henry Schein 10 Dental account? 11 A. Yes. 12 Q. When was that? 13 A. I don't exactly remember the year it 14 happened. 15 But special markets made the 16 determination that Smile Source really was -- since it 17 was private practice dentists that were members of it, 18 it belonged with Henry Schein Dental and then it went 19 to Henry Schein Dental, and I believe we subsequently 20 lost the business. 21 Q. Do you know when Schein lost that 22 business? 23 A. No. 24 Q. And so you mentioned in your prior answer 25 we just signed on with a company called Smile Source,</p>	<p>1 don't know who would be on the list, we have -- I 2 guess we would have to go to Brian Brady or someone in 3 the mid market group. 4 Q. Are buying groups an important part of 5 Schein's business? 6 MR. McDONALD: Object to the form, vague. 7 THE WITNESS: Well, I think everything is 8 an important part of Schein's business. It is a 9 growing part of Schein's business. 10 BY MR. SOLOMON: 11 Q. Have buying groups historically been an 12 important part of Schein's business? 13 MR. McDONALD: Object to the form, vague. 14 THE WITNESS: Well, I think I already 15 testified that they -- we have been doing business 16 with them for years in a more casual basis and it has 17 become more formal in the last couple of years as they 18 become -- they have kind of become some different 19 types of entities. 20 BY MR. SOLOMON: 21 Q. When you say that Schein has been doing 22 business with buying groups in a more casual basis, 23 what do you mean? 24 A. Maybe that is a bad term. 25 What I mean was that they were smaller</p>
122	124
<p>1 do you know when that was? 2 A. It was very recent, I want to say early 3 this year. 4 Q. Do you know who was responsible for 5 bringing Smile Source back into Henry Schein's 6 business as a customer? 7 A. There were a number of people. I was not 8 one of them, but there were a number of people that 9 did it. Joe Cavaretto was sort of the main person, 10 but there were others, Brian Brady was involved, Tim 11 was involved. And a couple other people, too. 12 Q. You mentioned that Schein has done 13 business with buying groups. Can you name any buying 14 groups that Schein has done business with other than 15 Smile Source? 16 A. Well, there is Dental Gator that I know 17 is out there. 18 There is a long list of them and, no, I 19 don't recall off the top of my head a lot of names 20 that are on that list. 21 Q. Do you know how many names would be on 22 that list? 23 A. I can't tell you, no. 24 Q. Do you know who would know? 25 A. We could certainly compile a list, I</p>	<p>1 and they were more localized, and usually that 2 decision was made by the local manager. 3 MR. SOLOMON: I think we can take a quick 4 break. 5 (Recess taken.) 6 BY MR. SOLOMON: 7 Q. Mr. Steck, I just want to circle back on 8 a couple quick things we discussed before the break. 9 You talked about GPOs not existing within 10 the dental industry to your understanding. Do I have 11 that correct? 12 A. As they exist in medical, yes, I would 13 say that. 14 Q. Do GPOs exist at all in the dental 15 industry? 16 MR. McDONALD: Object to the form. 17 THE WITNESS: Well, again, as I 18 understand the definition of GPO, buying clubs 19 certainly exist, buying groups exist, but GPOs as I 20 understand the definition, no, they don't currently. 21 BY MR. SOLOMON: 22 Q. And when did you form that understanding? 23 MR. McDONALD: Object to the form. 24 THE WITNESS: I guess the last three or 25 four years, whenever we -- they first -- the names</p>

125	<p>1 started coming up, I can't tell exactly when that was.</p> <p>2 BY MR. SOLOMON:</p> <p>3 Q. Have you ever used the term GPO to refer</p> <p>4 to a buying group?</p> <p>5 A. Yes, I am sure we have. As I said</p> <p>6 earlier, the definition of the two gets a little loose</p> <p>7 sometimes.</p> <p>8 Q. So you understood the difference between</p> <p>9 GPOs and buying groups, but you used the term GPO</p> <p>10 because you were just conflating the two?</p> <p>11 MR. McDONALD: Object to the form.</p> <p>12 THE WITNESS: Yeah, I probably was and</p> <p>13 others probably were as well.</p> <p>14 BY MR. SOLOMON:</p> <p>15 Q. Also before the break I think a little</p> <p>16 bit earlier today we discussed corporate accounts,</p> <p>17 some of them fall within mid market, others are part</p> <p>18 of special markets. Do you normally refer to</p> <p>19 corporate accounts as corporate accounts or DSOs or</p> <p>20 something else?</p> <p>21 A. That is an interesting question because</p> <p>22 there is a number of different elements.</p> <p>23 Corporate account typically refers to</p> <p>24 something that is in special markets, it is a large</p> <p>25 entity, the term.</p>	127	<p>1 A. Yes, larger ones would be part of that,</p> <p>2 yes.</p> <p>3 Q. And the middle market accounts, which are</p> <p>4 smaller corporate accounts, would those also be called</p> <p>5 DSOs or something else?</p> <p>6 A. They could be called DSOs, small DSOs.</p> <p>7 Q. Also before the break we talked a little</p> <p>8 bit about the difference between certain types of</p> <p>9 buying groups that you have encountered, and you</p> <p>10 talked a little bit about ones that you believe</p> <p>11 offered value and ones that can offer volume</p> <p>12 commitment. Do you recall that discussion?</p> <p>13 A. Yes.</p> <p>14 Q. What does Schein do to learn about what a</p> <p>15 buying group's rules are with respect to volume</p> <p>16 commitments?</p> <p>17 A. Well, whoever is the contact at Schein</p> <p>18 presumably would ask that question as part of kind of</p> <p>19 getting to know whoever.</p> <p>20 Most cases the buying groups, at least up</p> <p>21 until now, have approached us rather than us</p> <p>22 approaching them. Now, maybe that is changing now</p> <p>23 with some of the market dynamics, but when they</p> <p>24 approach us we typically ask questions like how are</p> <p>25 you organized, how do your members buy in, what are</p>
126	<p>1 Then they changed -- they decided they</p> <p>2 wanted to be referred to as DSOs, I am not sure</p> <p>3 exactly when that was, but it was a number of years</p> <p>4 ago.</p> <p>5 So then we have large DSOs and small</p> <p>6 DSOs.</p> <p>7 And so large DSOs are typically what I</p> <p>8 would call a corporate account, and those would be in</p> <p>9 the special market groups.</p> <p>10 Smaller DSOs would be in either the</p> <p>11 bottom end of the special markets group or the high</p> <p>12 end of what we call mid market.</p> <p>13 Q. And what is a DSO?</p> <p>14 A. Dental service organization.</p> <p>15 Q. What is a dental service organization?</p> <p>16 A. It is the name they have chosen to refer</p> <p>17 to themselves as.</p> <p>18 Q. So it is a term used to refer to</p> <p>19 corporate accounts?</p> <p>20 A. Yes, multi, I would say, yes, it is a</p> <p>21 term that they have chosen to refer to multi-location</p> <p>22 dental offices under a single ownership.</p> <p>23 Q. And apologies if I don't have this</p> <p>24 correct. So DSOs would fall under the special markets</p> <p>25 purview, the larger ones would, is that right?</p>	128	<p>1 their commitments to you, how does it all happen, how</p> <p>2 many do you have. Those are all qualifying questions.</p> <p>3 There is not a formal process that I am aware of.</p> <p>4 Q. Mr. Steck, we are just going to take a</p> <p>5 look at some documents.</p> <p>6 A. Okay.</p> <p>7 (Document identified as Exhibit 229 for</p> <p>8 identification.)</p> <p>9 BY MR. SOLOMON:</p> <p>10 Q. Mr. Steck, the court reporter has handed</p> <p>11 you Exhibit 229. Can you please just take a look at</p> <p>12 that and let me know when you have had a chance to</p> <p>13 read it.</p> <p>14 A. Okay.</p> <p>15 Q. Mr. Steck, did you prepare this document?</p> <p>16 A. Yes.</p> <p>17 Q. Do you recall preparing this document?</p> <p>18 A. No. It was four years ago, five years</p> <p>19 ago, but I don't recall -- definitely I wrote it.</p> <p>20 Q. So this would have been in the 2012/2011</p> <p>21 timeframe?</p> <p>22 A. I am not sure. It says other projects</p> <p>23 2012, so I would guess that is when it was.</p> <p>24 Q. How often do you prepare reports such as</p> <p>25 these?</p>

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1 A. Well, it goes on and off. I would like
2 to say every month or every six weeks or so we do
3 different types of reports, but this one I have never
4 been as consistent with it as I would like to be.
5 **Q. Do you prepare these reports for your own**
6 **personal reference?**
7 A. No. These are usually sent to Tim.
8 **Q. Does Tim ask that you prepare these on**
9 **any regular basis?**
10 A. He will say please start sending them
11 again, I will send them, things happen and we start
12 sending them again, it is just -- it is off and on.
13 **Q. Why does Tim -- strike that.**
14 **Do you know why Mr. Sullivan asks you to**
15 **prepare reports such as these?**
16 A. I think two reasons, one is that, again,
17 you need to ask him, but I believe it is so, A, he has
18 a good document to when we meet personally to kind of
19 go through and kind of tick off things that discuss
20 order of review; and the other is the event he is
21 asked by his superiors what is going on so he can
22 forward the document.
23 **Q. Do you recall meeting with Mr. Sullivan**
24 **to discuss this particular activity report?**
25 A. No.

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1 **Q. Turning to the first bullet point of this**
2 **report, I think it says FMM preparation, do you see**
3 **that?**
4 A. Yes.
5 **Q. What is FMM?**
6 A. Field management meeting.
7 **Q. What is that?**
8 A. That is a meeting we have every January
9 in Wisconsin and it is typically we bring in all our
10 regional and zone managers, it is a sales manager
11 meeting.
12 **Q. And who is in charge of leading that**
13 **meeting?**
14 A. I am.
15 **Q. What is the purpose of those meetings?**
16 A. Well, it is the only time we get our
17 managers together all year by themselves and so it is
18 to try to help them be successful throughout the year,
19 help them put together a business plan for the year,
20 help them to talk about the initiatives going within
21 the company. Mostly information sharing.
22 **Q. And where do these meetings usually take**
23 **place?**
24 A. I mentioned already in Milwaukee.
25 **Q. Thank you.**

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1 **Turning to the last bullet point on this**
2 **page, it begins with FDA partnership, do you see that?**
3 A. Yes.
4 **Q. Do you understand the FDA to be the**
5 **Florida Dental Association?**
6 A. Yes.
7 **Q. And is the Florida Dental Association a**
8 **state association similar to the California Dental**
9 **Association?**
10 A. Yes, it is.
11 **Q. Reading this paragraph here, you wrote**
12 **"Have had two internal calls and one external call on**
13 **partnering with the Florida Dental Association." Do**
14 **you see that?**
15 A. Yes.
16 **Q. With whom did you speak internally about**
17 **partnering with the FDA?**
18 A. It would have been with our zone manager
19 who at the time I believe was Jeff Reichardt and also
20 probably with director of sales who I am not sure who
21 that was at the time, that might have been Michael
22 Porro and perhaps even a regional manager, but there
23 were two or three internal people I was talking to
24 about that.
25 **Q. Do you recall those discussions?**

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1 A. Generally.
2 **Q. And do you -- can you tell me what you**
3 **discussed?**
4 A. Well, yes, you know, we had been
5 approached by the Florida Dental Association to put
6 together a program for its members.
7 They initially came in and asked us for a
8 large discount across the board for all FDA members on
9 everything they buy regardless of whether they
10 committed volume or anything and we refused because it
11 is not within the parameters that we dealt with. But
12 we said we would be willing to work with them on some
13 other things. And so that is what we started working
14 on and that is what that was about.
15 **Q. Did the Florida Dental Association tell**
16 **you that members would not be able to commit volume as**
17 **part of this proposed or arrangement?**
18 A. They told us that the customers or their
19 members would all make their own individual buying
20 decisions so that is effectively saying, no, they
21 would not be able to commit volume.
22 **Q. You go on to write -- actually, just**
23 **turning, let's stay on that same sentence there, you**
24 **also talk about an external call that you had. Can**
25 **you tell me who that call was with?**

33 (Pages 129 to 132)

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1 A. It was with two or three members of the
 2 FDA.
 3 **Q. Do you recall their names?**
 4 A. No. It was whoever the president of the
 5 FDA was at the time and two or three of their board
 6 members.
 7 **Q. And turning to the next sentence you**
 8 **write "this is the classic 'buying group' approach**
 9 **that we aren't buying into." Do you see that?**
 10 A. Yes.
 11 **Q. Does "we" refer to Schein Dental?**
 12 A. Yes.
 13 **Q. Why was Schein Dental not interested in**
 14 **working with buying groups such as the one started by**
 15 **the Florida Dental Association?**
 16 A. Well, we would have -- we were interested
 17 or we wouldn't have been talking to them.
 18 The issue was that they were not able to
 19 commit volume for their members or give us any kind of
 20 minimum purchase levels that would allow a discount to
 21 take place or a reduced pricing arrangement. So we
 22 ultimately did make them an offer, but they chose to
 23 go with someone different.
 24 **Q. And what was the offer that Schein made**
 25 **to the FDA?**

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1 A. Well, I think it refers to it in here, we
 2 are going to pull together some special speaking
 3 arrangements or seminars for them around the state in
 4 terms of trying to survive the current economic
 5 climate because that was really the genesis of the
 6 entire discussion started from them because they felt
 7 their members were under undue economic stress because
 8 of a number of variety of things that had happened.
 9 And so we offered that if a customer signed up on a
 10 plan we would normally offer a \$25,000 customer that
 11 they could get that same plan with a \$15,000
 12 commitment. So we gave them a reduced commitment to
 13 get the pricing, but it still required a commitment
 14 and call that an FDA benefit.
 15 **Q. You mentioned that the FDA ultimately**
 16 **decided to work with a different distributor, is that**
 17 **right?**
 18 A. Yes.
 19 **Q. Do you recall which distributor that was?**
 20 A. I am not sure, but it wasn't us.
 21 **Q. Turning back to the last sentence we**
 22 **focused on, you referred to classic buying group**
 23 **approach.**
 24 A. Uh-huh.
 25 **Q. What did you mean by that term?**

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1 A. Well, I think what I kind of said
 2 earlier, it was just a group of dentists that there
 3 was no -- they were just looking for a group discount
 4 for no particular reason and no particular commitment.
 5 That to me is what a classic buying group as I
 6 mentioned earlier is.
 7 **Q. Would you say that classic -- the term --**
 8 **strike that.**
 9 **Would you say that the term classic**
 10 **buying group as you use it in this sentence would**
 11 **apply to all state dental association buying groups?**
 12 MR. McDONALD: Object to the form, overly
 13 broad, lack of foundation.
 14 THE WITNESS: Not necessarily. There are
 15 clearly some that wanted to take the same approach and
 16 then there is others like the CDA that was not that
 17 was looking for a different type of arrangement.
 18 BY MR. SOLOMON:
 19 **Q. And how did the CDA arrangement differ**
 20 **from the FDA arrangement?**
 21 A. They required the doctor to purchase an
 22 additional membership into their own what they called
 23 The Dental Solutions Company, which was a subsidiary
 24 of the CDA. And at that time they were supposed to
 25 commit so much of their volume by doing that if they

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1 were going to take advantage of it.
 2 **Q. Are you aware any other buying group**
 3 **approaches apart from the classic buying group**
 4 **approach that you referred to here?**
 5 MR. McDONALD: Object to the form, overly
 6 broad.
 7 THE WITNESS: Well, I mentioned, there
 8 are once, again, that have always existed that could
 9 commit volume. There were a couple in the CHC space
 10 that have existed for a long time that we do business
 11 with. As I mentioned, there were others that were out
 12 there, too, that were more smaller.
 13 BY MR. SOLOMON:
 14 **Q. So has Schein worked with buying groups**
 15 **that are in the CHC space?**
 16 A. Yes.
 17 **Q. And do the buying groups in the CHC space**
 18 **commit to volume purchasing requirements with Schein?**
 19 A. Yes, they normally can commit -- I don't
 20 know if they -- I shouldn't say that. I don't know
 21 that they -- I have not been directly conversational,
 22 I know those numbers go back a number of years and
 23 that virtually all the CHCs follow them.
 24 **Q. Do you know who would know that**
 25 **information?**

34 (Pages 133 to 136)

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1 A. Whoever negotiates those agreements, and
 2 I am not even sure who that is right now.
 3 **Q. So turning back to your discussion with**
 4 **Mr. Sullivan I think you testified you discussed this**
 5 **particular opportunity with Mr. Sullivan after you**
 6 **prepared this report, is that right?**
 7 A. Yes.
 8 **Q. And do you recall your discussion with**
 9 **Mr. Sullivan?**
 10 A. No.
 11 **Q. Turning to the last sentence in this**
 12 **paragraph, I will read the whole sentence but then I**
 13 **will just focus on one part of it. "We are presenting**
 14 **this on Wednesday and they may choose to look**
 15 **elsewhere, but this is as far as we can go in**
 16 **everyone's estimation."**
 17 **I just want to focus on the last part,**
 18 **"but this is as far as we can go in everyone's**
 19 **estimation," do you see that?**
 20 A. Yes.
 21 **Q. What does that refer to?**
 22 A. The group of people internally that were
 23 discussing it felt that the approach we were taking
 24 with them was fair and was as far as we should go
 25 given the fact it was a non-committed relationship.

1 A. Yes.
 2 **Q. And I want to focus on the middle of the**
 3 **page, your e-mail to Mr. Hinsch, at 11:59 a.m., you**
 4 **say "here is the best I can explain it," and you write**
 5 **"there are three types of buying groups," and kind of**
 6 **want to walk through what you wrote here, the three**
 7 **different types.**
 8 **You write "The first type we don't want**
 9 **anything to do with as they are short-lived and not**
 10 **well funded."**
 11 **What type of buying group were you**
 12 **referring to in that sentence?**
 13 A. A number of people who have tried to go
 14 into the space have gone out of business and they
 15 typically are just trying to get a piece of the
 16 dentist, their whole purpose is to try to get
 17 membership fees in the dentist and a rebate from us.
 18 And so in some cases they have not been able to
 19 survive because they have never been able to do a
 20 value to the customer and also, you know, just we are
 21 not on good financial, sound bases so we just don't
 22 want to be doing business with people like that.
 23 **Q. What is your understanding of that type**
 24 **of buying group based on?**
 25 A. Based on history, we have seen a number

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1 **Q. Apart from yourself and Mr. Sullivan and**
 2 **the two salespeople in Florida, was there anyone else**
 3 **that was a part of this discussion surrounding working**
 4 **with the FDA?**
 5 A. I don't remember.
 6 (Document identified as Exhibit 230 for
 7 identification.)
 8 BY MR. SOLOMON:
 9 **Q. Mr. Steck, the court reporter has handed**
 10 **you Exhibit 230, if you would mind just taking a look**
 11 **and let me know if you have had a chance to read it.**
 12 A. Okay.
 13 **Q. Mr. Steck, do you recall this e-mail**
 14 **discussion?**
 15 A. Yes.
 16 **Q. This is an e-mail chain between yourself**
 17 **and Mr. Hinsch and some other Schein employees in**
 18 **September of 2015, is that right?**
 19 A. The beginning of it was several
 20 employees, and after that it became just Paul and me
 21 going back and forth.
 22 **Q. Thanks for that clarification.**
 23 **So on the first page it looks like this**
 24 **is -- this is where it just dropped off to a**
 25 **discussion between you and Mr. Hinsch, right?**

1 of them that didn't make it.
 2 **Q. Have you discussed that type of buying**
 3 **group with sales representatives at any point?**
 4 A. Not that I remember, but I may have.
 5 **Q. Does Schein use a term internally to**
 6 **refer to those types of buying groups?**
 7 A. Not that I remember, not that I am aware
 8 of.
 9 **Q. Turning to the second type, you write**
 10 **"The second type are things like dental associations**
 11 **which are really affiliate buying groups." Do you see**
 12 **that?**
 13 A. Yes.
 14 **Q. And then you write "that was what we**
 15 **discussed today."**
 16 **Why did you categorize state dental**
 17 **associations as a separate type of buying group?**
 18 A. Because they are ones that people are
 19 members of already that want to add in a buying group
 20 component.
 21 **Q. And how does that differ from other types**
 22 **of buying groups?**
 23 A. Because other buying groups are trying to
 24 sell memberships to join the group, these people are
 25 already members of this group.

35 (Pages 137 to 140)

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1 **Q. Are there any other ways in which dental**
2 **associations are different from other types of buying**
3 **groups?**

4 MR. McDONALD: Object to the form, overly
5 broad.

6 THE WITNESS: Lots of ways. Dental
7 associations present all kinds of benefits for their
8 members whereas a buying group of first order simply
9 has one benefit, they think they are trying to get
10 their customers a better deal.

11 BY MR. SOLOMON:

12 **Q. And what is your understanding of that**
13 **difference based on?**

14 A. Experience.

15 **Q. Any personal experience?**

16 A. Well, I mentioned I have already
17 testified I was involved with the CDA and well before
18 that with the FDA in that sense. I have very little
19 experience with the first type of buying group
20 personally.

21 **Q. Turning to -- I want to move on to the**
22 **next sentence, you write "The third ones like Smile**
23 **Source, ADP, Kois, Dental Gator and a few others can**
24 **commit business. This third type are the ones we**
25 **don't want our customers to join." Do you see that**

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1 **sentence?**

2 A. Yes.

3 **Q. So I just want to start, my first**
4 **question is how is this third type of buying group**
5 **distinct from other types of buying groups in your**
6 **mind?**

7 A. Well, this is the type of group that I
8 mentioned earlier that provide a value beyond just
9 aggregating dental purchases and can commit a volume.

10 **Q. So is it fair to say that the type of**
11 **buying groups you list here, Smile Source, ADP, Kois,**
12 **Dental Gator, are ones that you think can commit**
13 **volume?**

14 A. Yes.

15 **Q. Why did Schein not want its customers to**
16 **join this type of buying group?**

17 MR. McDONALD: Object to the form.

18 THE WITNESS: Well, I mean, as you can
19 see we do business with Gator, we now do business with
20 Smile Source, so this is one of those things as I
21 mentioned as part of the business is somewhat
22 evolving. The issue with them joining that is that
23 the loyalty of the customer in some cases we are
24 concerned transfers to the buying group and not to us
25 and so we want to make sure the customer's primary

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1 loyalty is to Henry Schein so that they consider
2 themselves a Schein customer and not necessarily a
3 Dental Gator customer.

4 BY MR. SOLOMON:

5 **Q. And how do you know that a customer's**
6 **loyalty would shift from Henry Schein to a buying**
7 **group?**

8 A. We don't know that. We were fearful of
9 that. So -- in fact, we have seen in some cases that
10 wasn't the case, but we were fearful of the fact that
11 if Dental Gator then or somebody decided they didn't
12 want to do business with Schein anymore as their
13 distributor they could move a large block of business.

14 **Q. Did that fear stem from anything that**
15 **buying groups told you in particular?**

16 A. Not really, no, just knowing how they
17 work.

18 **Q. What about buying groups that had**
19 **customers who were not previously Henry Schein**
20 **customers, would that fear still apply?**

21 A. Not to the same degree, no, because it is
22 new business.

23 **Q. Was Schein interested in gaining new**
24 **business from buying groups?**

25 A. We are always interested in gaining new

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1 business, yes.

2 **Q. Did Schein do anything to determine**
3 **whether buying groups such as the ones listed here as**
4 **the third type did Schein ever do anything to**
5 **determine whether those buying groups had customers**
6 **who were already working with Henry Schein?**

7 A. I believe -- again, I wasn't involved in
8 any of these particular discussions, but I believe
9 typically when we get into a negotiation with a group
10 we do -- if they will furnish us their member source
11 we do see how many are currently doing business with
12 Schein.

13 **Q. At the time of this e-mail do you know**
14 **whether Henry Schein Dental was working with Smile**
15 **Source?**

16 A. I can't speak to the time of this e-mail.
17 As I said, we had them originally, we lost them, we
18 tried to get them back, I was involved in that, and we
19 didn't get them back, and then this happened. Again,
20 I was referring to obviously recently we got involved
21 with them again.

22 **Q. At the time of this e-mail is it fair to**
23 **assume that Schein did not want its customers to work**
24 **with or join Smile Source?**

25 A. Yes, because at that time we were not

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1 authorized to work with Smile Source.

2 **Q. The same question but for ADP.**

3 A. Yes, except -- I can't even remember what
4 ADP is.

5 **Q. And then the same question for Kois.**

6 A. It is Kois. Yes, they are with Burkhart,
7 they were a different distributor, so we wouldn't want
8 them to join the group because we would lose the
9 business.

10 **Q. And then the same question for Dental
11 Gator.**

12 A. Dental Gator we did have the business
13 with already so that is not as big a problem.

14 **Q. I would like to back up a little bit and
15 ask, do you know why Mr. Hinsch was asking about
16 buying groups in this e-mail?**

17 A. I think it was if you will read the
18 e-mail it goes back to what the G Plan is, which we
19 discussed earlier, and his concern was that the G Plan
20 would be widely distributed as an effective pricing
21 arrangement for anybody who joined a buying club
22 whether they were committed to the business or not.

23 **Q. And why was he concerned about that?**

24 MR. McDONALD: Object to the form.

25 THE WITNESS: Because we preferred to

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1 A. No, typically not.

2 **Q. Do you know whether the Select program
3 was ever launched?**

4 A. It really wasn't.

5 **Q. Do you know why?**

6 A. I think a couple of things. One is that
7 we began getting much more active and found out that
8 some of these buying groups were -- actually could be
9 decent customers and there really wasn't a reason to
10 have to try to take customers out of them. And I
11 think we are -- you know, it just never kind of took
12 wings. We have plenty of other pricing plans that we
13 reviewed earlier and customer loyalty programs which
14 we have not talked about that keep a customer with
15 Schein that are intended to keep a customer with
16 Schein and we just ultimately decided we didn't need
17 anything like this.

18 **Q. You just mentioned in your prior answer
19 that Schein found out that some of these buying groups
20 could actually be decent customers and there really
21 wasn't a reason to have to try to take customers out
22 of them. How did Schein learn that information?**

23 A. By doing business with some of them.

24 **Q. Do you have any examples of buying groups
25 you have done business with that you learned that**

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1 offer that to people who have committed business.

2 BY MR. SOLOMON:

3 **Q. You go on to write "This is why Brady is
4 developing the Select Program as a back pocket method
5 of keeping customers from joining when they are
6 considering it." Do you see that?**

7 A. Yes.

8 **Q. What is the Select Program?**

9 A. Well, Select is what we now call the mid
10 market small DSOs so we call large ones Elite, we call
11 mid market ones Select.

12 But the Select program initially was
13 intended as a special pricing plan, which in this case
14 was the G Plan, as well as other benefits that we were
15 going to package into a particular plan that we would
16 offer to customers if they were interested in joining
17 a buying group.

18 **Q. And how would Schein determine whether
19 its customers were interested in joining a buying
20 group?**

21 A. Usually the doctor would tell a
22 salesperson, otherwise we wouldn't know.

23 **Q. Would sales representatives normally ask
24 dentists whether they were interested in joining
25 buying groups?**

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1 **information?**

2 A. Well, there is -- I do not personally,
3 there is a long schedule of buying groups we do
4 business with that you probably have.

5 **Q. So the Select program never was
6 established, right?**

7 A. Not -- the word Select was then changed
8 and used to define smaller DSOs. It was never
9 established into a program for private practice
10 dentists to try to keep them from joining the buying
11 groups.

12 **Q. Did Schein do anything else to try to
13 prevent its customers from joining the third type of
14 buying group mentioned in your e-mail?**

15 A. Not --

16 MR. McDONALD: Hang on, object to form.

17 THE WITNESS: Not in an organized way. I
18 am sure individual salespeople found out doctors were
19 going to join a buying group and tried to give them a
20 better individual price, but not anything on a large
21 scale.

22 (Document identified as Exhibit 231 for
23 identification.)

24 BY MR. SOLOMON:

25 **Q. Mr. Steck, the court reporter has handed**

37 (Pages 145 to 148)

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1 **you Exhibit 231. Have you had a chance to take a look**
2 **at it?**

3 A. I have looked at the e-mail. I have seen
4 this before, the PowerPoint.

5 **Q. Do you want me to give you a chance to**
6 **look it over or are you ready to discuss it?**

7 MR. McDONALD: It is long, Ronnie, do you
8 want to be efficient about this, do you want to direct
9 him to certain pages to look at?

10 BY MR. SOLOMON:

11 **Q. You recall this presentation?**

12 A. I recall seeing it, yes. I was not there
13 at the meeting when it was presented.

14 **Q. You were not at the meeting?**

15 A. No.

16 **Q. Do you know who prepared this**
17 **presentation?**

18 A. Yes, Brad Connett.

19 **Q. And Mr. Connett --**

20 A. At the time he was my equivalent of
21 medical.

22 **Q. Do you know why Mr. Connett prepared this**
23 **presentation?**

24 MR. McDONALD: Object to form.

25 THE WITNESS: I do not.

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1 A. Yes.

2 **Q. Are you familiar at all with the Georgia**
3 **Dental Association?**

4 A. Not much beyond what is in this e-mail
5 but, yes.

6 **Q. Are you familiar with the buying group**
7 **that the Georgia Dental Association established?**

8 A. I am familiar with they established one,
9 but I am not familiar with it specifically.

10 **Q. Do you know whether the Georgia Dental**
11 **Association asked Schein Dental to bid for purposes of**
12 **the buying group it was forming?**

13 A. I believe we did.

14 **Q. Do you know when that happened?**

15 A. I believe they did. I assume it was the
16 timeframe of the documents here.

17 **Q. And did Schein -- I think you said I**
18 **believe they did. Did Schein actually bid to enter**
19 **into a supply agreement with the Georgia Dental**
20 **Association?**

21 A. I am not sure. My memory is we
22 eventually withdrew.

23 **Q. Do you know when that took place?**

24 A. Sometime in this timeframe.

25 **Q. When did Schein withdraw?**

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1 BY MR. SOLOMON:

2 **Q. Were you asked to attend the meeting that**
3 **corresponded to this presentation?**

4 A. Yes, but I wasn't able to make it.

5 **Q. Do you know whether anyone within Henry**
6 **Schein Dental had asked for information about GPOs**
7 **from Henry Schein Medical?**

8 A. I do not know that.

9 **Q. Do you know whether that was the purpose**
10 **of this presentation?**

11 A. I don't know the reason the presentation
12 of the meeting was called.

13 **Q. You can put that document aside for now.**
14 **(Document identified as Exhibit 232 for**
15 **identification.)**

16 BY MR. SOLOMON:

17 **Q. Mr. Steck, the court reporter has handed**
18 **you Exhibit 232. Would you let me know when you have**
19 **looked it over?**

20 A. Okay.

21 **Q. This is an e-mail between or among**
22 **yourself, Mr. Meadows, and Mr. Sullivan internally**
23 **from January of 2015, and it looks like it relates to**
24 **an earlier e-mail regarding the Georgia Dental**
25 **Association, is that right?**

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1 MR. McDONALD: Object to the form.

2 THE WITNESS: It was similar to the
3 Florida arrangement, they wanted a blanket low price
4 list for anybody in the Georgia Dental Association
5 without committing any volume and we just weren't
6 going to do that.

7 BY MR. SOLOMON:

8 **Q. And you discussed volume commitments with**
9 **the Georgia Dental Association, is that right?**

10 A. I was not involved in the discussions, I
11 am not sure what was discussed. I would think it was
12 but I don't know.

13 **Q. Do you know who was involved in those**
14 **discussions?**

15 A. Jake is one and whoever else was involved
16 at that time, I am not sure.

17 **Q. I kind of want to -- strike that.**

18 I want to take a look at your e-mail in
19 the second page at the top, January 18, 2015 at
20 7:47 a.m., I think you are referring to Mr. Meadows,
21 and you write "Thanks, Jake. We will definitely not
22 be the low bid, but I like our chances with the
23 individual members. Interesting news and
24 unfortunately a trend." So let's just take this
25 sentence by sentence.

38 (Pages 149 to 152)

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1 "Thanks, Jake," what were you thanking
2 Mr. Meadows here?
3 A. Just providing information.
4 **Q. Had you asked Mr. Meadows to provide**
5 **information on the GDA?**
6 A. No.
7 **Q. The next sentence "We will definitely not**
8 **be the low bid, but I like our chances with the**
9 **individual members." What did you mean when you said**
10 **"we will definitely not be the low bid"?**
11 A. Well, companies that don't have similar
12 overhead structures to ours, you mentioned a couple
13 earlier that were not full-service distributors, bid
14 on these things as well. And, honestly, these type of
15 arrangements that are non-committed typically work
16 better for them than they do for us and I knew they
17 would probably underbid us because their overhead is
18 lower.
19 **Q. Who would underbid Schein?**
20 A. Didn't we already discuss who those were?
21 **Q. That is what I am just trying to**
22 **understand.**
23 A. Darby we talked about. Safco locally.
24 And there is probably 20 other ones out there that
25 would bid on something like this.

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1 **Q. So is it your understanding that Schein**
2 **did not ultimately bid for the GDA --**
3 A. My memory is we did not, but I am not
4 sure that is right.
5 **Q. And then you write "but I like our**
6 **chances with the individual members." What are you**
7 **referring to by individual members?**
8 A. We have market share in Georgia now and
9 if the GDA was going to put out a price list for all
10 members I felt we could probably compete with it with
11 individual members who were willing to make a
12 commitment.
13 **Q. You referred to individual members who**
14 **were willing to make a commitment. Did you know**
15 **whether the Georgia Dental Association dentists were**
16 **willing to make a commitment to Henry Schein in the**
17 **event that they worked with Henry Schein?**
18 A. I did not know that. I suspect that was
19 the case and I believe that is why we didn't bid.
20 **Q. What was your suspicion based on?**
21 A. "The way most of them have gone, you can
22 see this unfortunately a trend."
23 **Q. And what were you referring to there?**
24 A. Florida.
25 **Q. So -- I am just trying to understand.**

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1 "The way most of them have gone, you can see
2 unfortunately this is a trend," meaning that most
3 dentists could not commit volume?
4 A. Most dental associations could not get
5 their members to commit their volume. Dentists do
6 what they are going to do, independent businesses,
7 just because I am a member doesn't mean I am going to
8 necessarily follow the plan you put out as the
9 administrator of that association.
10 **Q. When you write "I like our chances with**
11 **the individual members," did you mean that Schein**
12 **could get those individual dentists to commit volume?**
13 A. Yes, we do today.
14 **Q. How would that happen?**
15 MR. McDONALD: Object to the form.
16 THE WITNESS: Individual conversation
17 with the field salesperson.
18 BY MR. SOLOMON:
19 **Q. And based on your earlier testimony I**
20 **understand that is a small percentage, not a majority,**
21 **of your customer base, is that right?**
22 MR. McDONALD: Object to the form.
23 THE WITNESS: I have to point out is a
24 very large part of our volume though. You keep trying
25 to say small number of customers, but the volume that

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1 we actually do it is a high percentage of our volume,
2 big difference.
3 BY MR. SOLOMON:
4 **Q. Did you have any discussions with**
5 **Mr. Sullivan about the Georgia Dental Association's**
6 **buying group?**
7 A. Again, he was copied on this e-mail for a
8 while, I think, yes, he was on this one, so I may have
9 mentioned it in a follow-up discussion with him, but I
10 don't recall the conversation.
11 (Document identified as Exhibit 233 for
12 identification.)
13 BY MR. SOLOMON:
14 **Q. Mr. Steck, the court reporter has handed**
15 **you Exhibit 233. This is an e-mail from December --**
16 **an e-mail chain from December 11, 2015 --**
17 A. Yes.
18 **Q. -- among several different it looks like**
19 **Schein employees both from the medical and the dental**
20 **side, is that correct?**
21 A. That is the way I am reading it, yes.
22 **Q. Who is Bill Barr?**
23 A. He is on the medical side of the
24 business.
25 **Q. How do you know Mr. Barr?**

39 (Pages 153 to 156)

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1 A. He was recommended me by Mr. McKinley.
 2 **Q. Who is Mr. McKinley?**
 3 A. He was the president of the medical
 4 business at that time.
 5 **Q. Why did Mr. McKinley recommend Mr. Barr**
 6 **to you?**
 7 A. Because Mr. McKinley and I are friendly,
 8 we get along well, and had had a discussion
 9 particularly around technology and trying to get
 10 dentists to buy expensive pieces of equipment when
 11 sometimes it economically didn't make sense for them
 12 and how could we find another method to go to market
 13 and they were talking about something that he had been
 14 previously before in the medical group, Mr. McKinley
 15 and our medical group had been at Olympus and they had
 16 come up with a methodology for getting their customers
 17 to buy expensive pieces of their equipment called a
 18 cost per procedure and Bill Barr was familiar with it
 19 so he asked me to sit there and talk to Bill about it.
 20 **Q. What is Olympus?**
 21 A. Olympus is a big company that makes
 22 cameras and things like that.
 23 **Q. Are --**
 24 A. They are not in dental.
 25 **Q. I want to just take a look at the top of**

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1 **the third page, Henry Schein-000006269, it looks to be**
 2 **an exchange between yourself, Mr. Barr, Mr. Muller, a**
 3 **few others including Brad Connert, Dave McKinley.**
 4 **Who is Rachelle Belloit?**
 5 A. I don't know.
 6 **Q. Who is Allen Kim?**
 7 A. That is Kim Allen.
 8 **Q. Kim Allen.**
 9 A. She was the president at the time of our
 10 animal health business.
 11 **Q. So the subject of this e-mail is GPO**
 12 **activity.**
 13 **Do you know why Mr. Barr would be**
 14 **e-mailing you about GPO activity?**
 15 MR. McDONALD: Object to the form.
 16 THE WITNESS: I don't. He might have
 17 been asked to send it to me, I don't know.
 18 BY MR. SOLOMON:
 19 **Q. You respond to Mr. Barr's e-mail "Thanks,**
 20 **Bill. This isn't much of a surprise, but appreciate**
 21 **the information. No doubt organized buying is coming**
 22 **to the dental business in one form or another. We**
 23 **continue to internally debate how best to deal with**
 24 **this."**
 25 **Just focusing on the last sentence there,**

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1 **is it fair to say that at the time of this e-mail**
 2 **Schein had not formed a policy with respect to buying**
 3 **groups?**
 4 MR. McDONALD: Object to the form.
 5 THE WITNESS: We were already doing
 6 business with buying groups. The policy was we were
 7 individually looking at them. The statement was
 8 really about the belief this would become a bigger
 9 part of the marketplace.
 10 BY MR. SOLOMON:
 11 **Q. Where do you say that here?**
 12 A. I don't. That was my -- that was my
 13 point when I was saying this.
 14 **Q. That buying groups would become a bigger**
 15 **part of the market?**
 16 A. We believed that that would be the case.
 17 I mean, obviously some of the things we have already
 18 looked at show that.
 19 **Q. And did you think that that would be a**
 20 **good thing for Henry Schein Dental?**
 21 A. I don't know whether it is a good thing
 22 or not. As I said, it could be a threat, it could be
 23 an opportunity.
 24 **Q. "No doubt organized buying is coming to**
 25 **the dental business in one form or another," I just**

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1 **want to focus on that sentence.**
 2 **Again, what did you mean when you say it**
 3 **was coming to the dental business?**
 4 A. We felt that it would become a bigger
 5 part of the dental business. Obviously it was already
 6 there in some respects because we were already doing
 7 business with some.
 8 **Q. What did you mean by organized buying in**
 9 **that sentence?**
 10 A. Another way of saying buying group or
 11 whatever. An organization other than the dentists
 12 themselves making purchasing negotiations with us.
 13 **Q. You go on to write "all information and**
 14 **advice is appreciated."**
 15 **Why were you seeking information and**
 16 **advice from Mr. Barr regarding GPOs and buying groups?**
 17 A. He had experience with them and if there
 18 is anything he could tell us that would help us it
 19 would be appreciated.
 20 **Q. Did you ever have a conversation with**
 21 **Mr. Barr about GPOs and buying groups?**
 22 A. No. We had a conversation about cost per
 23 procedure.
 24 **Q. And when did that conversation take**
 25 **place?**

40 (Pages 157 to 160)

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1 A. I don't remember, but it was somewhere
2 shortly after this was, as I said, could you set up
3 30 minutes with Bill, that was my assistant at the
4 time, I am sure that happened.
5 **Q. So you never had a conversation with**
6 **Mr. Barr about GPOs and buying groups?**
7 A. Not that I can recall, no.
8 **Q. The same question but for Mr. Connett.**
9 A. No, not that I can recall.
10 **Q. The same question for Mr. Hal Muller.**
11 A. Yes, we -- Hal is part of the dental
12 group and because of that we -- he reports to
13 Mr. Breslawski, as does Tim Sullivan, so we have
14 regular meetings with Hal, buying groups have come up,
15 we don't discuss it at length, but we have discussed
16 Smile Source, we have discussed Dental Gator, a number
17 of other ones, some which were part of special markets
18 and then brought down to Henry Schein Dental.
19 **Q. How often have you discussed buying**
20 **groups and GPOs with Mr. Muller?**
21 A. I couldn't even begin to guess, I don't
22 know.
23 **Q. Would that mean it was pretty often?**
24 MR. McDONALD: Object to the form.
25 THE WITNESS: I don't believe we have

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1 discussed them much at all in the last couple of
2 years, but during the transitional phase we discussed
3 them fairly regularly, but I wouldn't want to guess on
4 a number, I don't know.
5 BY MR. SOLOMON:
6 **Q. Do you recall any specific discussions**
7 **with Mr. Muller surrounding GPOs and buying groups?**
8 A. No.
9 **Q. Do you know whether Mr. Muller has a**
10 **specific opinion regarding GPOs or buying groups?**
11 A. I do not.
12 MR. SOLOMON: I think this would be a
13 natural point for a quick break.
14 (Recess taken.)
15 BY MR. SOLOMON:
16 **Q. Mr. Steck, welcome back.**
17 **Mr. Steck, are you familiar with the**
18 **Texas Dental Association?**
19 A. Yes.
20 **Q. What is the Texas Dental Association?**
21 A. It is the state association for dentists
22 similar to the FDA, the GDA, or the CDA.
23 **Q. Is it sometimes referred to as the TDA?**
24 A. Yes.
25 **Q. Does the TDA have an annual trade show?**

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1 A. Yes.
2 **Q. Have you ever attended the TDA's annual**
3 **trade show?**
4 A. I have.
5 **Q. Which years did you attend?**
6 A. I don't remember exactly.
7 **Q. Do you attend every year?**
8 A. No.
9 **Q. Do you -- have you attended more than**
10 **once?**
11 A. I think I have been twice, but couldn't
12 tell you which years.
13 **Q. Who from Schein usually attends those**
14 **meetings?**
15 MR. McDONALD: Object to the form.
16 THE WITNESS: Well, whomever is -- sales
17 team, from the local sales team, of course, and the
18 local management, and sometimes one of us from
19 corporate will go down.
20 BY MR. SOLOMON:
21 **Q. And what instances would someone from**
22 **corporate attend the TDA meeting?**
23 A. It could be for a variety of reasons,
24 there is a local issue or I mentioned earlier a new
25 manager could be coming on, a variety of reasons, just

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1 to kind of get out and see salespeople.
2 **Q. Who else apart from yourself from**
3 **corporate attends the TDA trade shows?**
4 A. Well, again, you are speaking
5 specifically to the TDA, I am speaking more broadly
6 that it could be the FDA, I have been to the Florida
7 meeting, you can go anywhere, it is not just me,
8 others go, too. Tim I think has been to the TDA. Joe
9 goes probably more often than I do.
10 **Q. Has Mr. Breslawski ever attended the TDA**
11 **trade show?**
12 A. I don't know.
13 **Q. Why does Schein attend trade shows such**
14 **as the TDA?**
15 A. To sell stuff generally, interact with
16 customers, but the intention of either selling stuff
17 at the meeting or afterwards.
18 **Q. Does it also result in goodwill from**
19 **Schein's customers?**
20 A. I believe to some degree, yes, it does.
21 **Q. In what ways?**
22 A. Well, I think they like having us there,
23 being able to talk to us, talk about what they are
24 interested in.
25 **Q. Does Schein pay to attend the TDA trade**

41 (Pages 161 to 164)

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1 **show annually?**
 2 A. Yes.
 3 **Q. Do you know how much Schein usually pays**
 4 **for that?**
 5 A. I have no idea. There is a fee for the
 6 booth rental and then there is a much larger fee to
 7 bring in booth properties, set them up, and that type
 8 of thing.
 9 **Q. Do you know whether it is several**
 10 **thousand dollars?**
 11 A. It is more than that.
 12 **Q. Does Schein provide funds to the TDA**
 13 **apart from the fees paid for the annual trade show?**
 14 MR. McDONALD: Object to the form, lack
 15 of foundation.
 16 THE WITNESS: I am not sure.
 17 BY MR. SOLOMON:
 18 **Q. Do you know who would know?**
 19 A. I am presuming Joe Cavaretta, but I would
 20 not know for sure whether he would know either.
 21 **Q. Do you know whether Schein has ever**
 22 **donated money to the TDA?**
 23 MR. McDONALD: Object to form, lack of
 24 foundation.
 25 THE WITNESS: I do not know.

1 as almost a virtual warehouse.
 2 **Q. What is your understanding of Source One**
 3 **based on?**
 4 A. Based on just familiarity -- just knowing
 5 a little bit about who they are and what they do in
 6 the market.
 7 **Q. Have you ever done any research to learn**
 8 **more about Source One?**
 9 A. Well, I have been deposed by one of their
 10 attorneys, so I was exposed to it that way. But I
 11 haven't done a great amount of personal research, no.
 12 **Q. When did you first learn about the TDA**
 13 **Perks Supply program?**
 14 A. I honestly can't tell you, shortly after
 15 it came into being, I guess, whenever that was.
 16 **Q. Do you recall how you learned about it?**
 17 A. No.
 18 **Q. Do you recall what your reaction was when**
 19 **you learned about the program?**
 20 A. I don't remember exactly what it was, I
 21 can imagine it probably wasn't positive.
 22 **Q. When you say it probably wasn't positive,**
 23 **were you upset?**
 24 A. I can't remember.
 25 **Q. Were you happy?**

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1 BY MR. SOLOMON:
 2 **Q. Are you familiar with the Texas Dental**
 3 **Association's Supply Perks program?**
 4 A. Yes, I am, it is.
 5 MR. McDONALD: It is Perks Supplies.
 6 MR. SOLOMON: Perks Supplies, thank you.
 7 BY MR. SOLOMON:
 8 **Q. What is the TDA Perks Supplies program?**
 9 A. My understanding of the program is they
 10 have endorsed a company that is not an annual
 11 distributor, but a buying group-type company, and they
 12 offer their pricing schedule to their customers. It
 13 is not a full-service distributor, and customer -- my
 14 understanding, it also goes beyond dental supplies,
 15 there are other things that customers can buy that are
 16 not -- through the TDA that are supposed benefits to
 17 the customer, a better deal than they can get
 18 themselves.
 19 **Q. Do you know the name of the distributor**
 20 **who works with the TDA Perks Supplies program?**
 21 A. I want to be distinctive here, that the
 22 people they work with is actually a buying
 23 organization called Source One, they are not an actual
 24 authorized distributor themselves to my knowledge. I
 25 believe they send orders to various places, they act

1 A. No.
 2 **Q. Did you think it was a good idea**
 3 **generally for the TDA to create a Perks Supply**
 4 **program?**
 5 A. No.
 6 **Q. How did Schein respond to the creation of**
 7 **the TDA Perks Supply program?**
 8 MR. McDONALD: Object to the form, overly
 9 broad.
 10 THE WITNESS: Again, I wasn't personally
 11 involved in it.
 12 My understanding is that our local what
 13 we call zone manager, one level up from regional
 14 manager, had pretty close ties with a lot of the TDA
 15 governing body and met with them on multiple occasions
 16 trying to see if we could have a role in the program.
 17 BY MR. SOLOMON:
 18 **Q. Did you have any involvement with respect**
 19 **to Schein's response to the TDA Perks Supply program?**
 20 A. No, I was not personally involved.
 21 **Q. Do you know whether Schein -- strike**
 22 **that.**
 23 **You referred to the zone manager one**
 24 **level up from regional manager who was involved with**
 25 **that. Who was that?**

169	<p>1 A. Dean Kyle is his name.</p> <p>2 Q. And Dean Kyle is a zone manager, is that</p> <p>3 right?</p> <p>4 A. He was, he is retired now.</p> <p>5 Q. And what zone was Mr. Kyle responsible</p> <p>6 for?</p> <p>7 A. The southwest zone, which included the</p> <p>8 state of Texas.</p> <p>9 Q. Did you ever communicate internally with</p> <p>10 anyone at Schein regarding the TDA Perks Supply</p> <p>11 program?</p> <p>12 A. I may have, I don't recall.</p> <p>13 Q. How about externally, have you ever</p> <p>14 communicated with anyone externally regarding the TDA</p> <p>15 Perks Supply program?</p> <p>16 A. I believe I received an e-mail or two</p> <p>17 from manufacturers about it, but I have not -- I</p> <p>18 didn't seek anything out.</p> <p>19 Q. Do you recall which manufacturers those</p> <p>20 were?</p> <p>21 A. One was Ivoclar and one was Dentsply, I</p> <p>22 believe.</p> <p>23 Q. Were those the only two manufacturers</p> <p>24 that you communicated with about the TDA Perks supply</p> <p>25 program?</p>	171	<p>1 sold through authorized distributors.</p> <p>2 Q. When you say set the record straight,</p> <p>3 what do you mean by that?</p> <p>4 A. Well, that they felt that the company</p> <p>5 that the TDA Perks program was using, Source One</p> <p>6 Dental, Inc., was having products sent to customers</p> <p>7 from non-authorized distributors.</p> <p>8 Q. Did Dentsply tell you that?</p> <p>9 A. I believe they did.</p> <p>10 Q. Do you recall who from Dentsply told you</p> <p>11 that specifically?</p> <p>12 A. You just asked me that, no, I don't.</p> <p>13 Q. Do you have any understanding as to why</p> <p>14 Dentsply would want to set the record straight with</p> <p>15 Schein concerning the distribution of their products</p> <p>16 through unauthorized dealers?</p> <p>17 A. They do it quite frequently in other</p> <p>18 situations, too, is that they want to be clear about</p> <p>19 who their authorized distributors are and that they</p> <p>20 want products sold to Dentsply to authorized</p> <p>21 distributors, so any time there is a complaint or some</p> <p>22 kind of a note that ends up in the marketplace about</p> <p>23 activity and for dentists getting their products they</p> <p>24 are concerned about it and in some cases they will</p> <p>25 approach us.</p>
170	<p>1 A. I believe that is true, yes, I believe</p> <p>2 that is right.</p> <p>3 Q. And why did Dentsply contact you</p> <p>4 surrounding the TDA program?</p> <p>5 MR. McDONALD: Object to the form.</p> <p>6 THE WITNESS: I believe they felt that</p> <p>7 the -- the same thing with Ivoclar, they felt that</p> <p>8 their products were being sold through the TDA Perks</p> <p>9 program by an unauthorized distributor.</p> <p>10 BY MR. SOLOMON:</p> <p>11 Q. What were your communications with</p> <p>12 Dentsply about?</p> <p>13 A. That was it.</p> <p>14 Basically they contacted me, not the</p> <p>15 other way around.</p> <p>16 Q. Who from Dentsply contacted you?</p> <p>17 A. I don't even remember. It may have been</p> <p>18 -- I don't remember exactly.</p> <p>19 Q. Why would -- strike that.</p> <p>20 Do you have any understanding as to why</p> <p>21 someone from Dentsply contacted you surrounding the</p> <p>22 TDA Perks program?</p> <p>23 A. I do not know why they contacted me,</p> <p>24 except I think they wanted to set the record straight</p> <p>25 that they were not -- their product should only be</p>	172	<p>1 Q. Do you recall what you told Dentsply when</p> <p>2 it contacted you about the TDA?</p> <p>3 A. No, I don't.</p> <p>4 Q. You also mentioned a company called</p> <p>5 Ivoclar?</p> <p>6 A. Right.</p> <p>7 Q. Is Ivoclar a manufacturer?</p> <p>8 A. Yes.</p> <p>9 Q. One of the manufacturers with whom Schein</p> <p>10 Dental works with, right?</p> <p>11 A. Yes.</p> <p>12 Q. Do you recall who from Ivoclar contacted</p> <p>13 you surrounding the TDA Perks supply program?</p> <p>14 A. I believe it was John Stack.</p> <p>15 Q. Who is John stack?</p> <p>16 A. He works for Ivoclar. He, I believe, is</p> <p>17 either director or vice president of marketing or</p> <p>18 something like that.</p> <p>19 Q. How well do you know Mr. Stack?</p> <p>20 A. Reasonably well.</p> <p>21 Q. How do you know Mr. Stack?</p> <p>22 A. Just from industry events and meetings,</p> <p>23 et cetera. He has been there a while.</p> <p>24 Q. Do you recall when Mr. Stack contacted</p> <p>25 you?</p>

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1 A. I do not.
 2 **Q. Do you recall how many times Mr. Stack**
 3 **contacted you?**
 4 A. I believe it was only once, but that is
 5 all I can recall.
 6 **Q. Do you recall what Mr. Stack told you**
 7 **when he contacted you?**
 8 A. Similar message, I believe it was, that
 9 Source One was getting product from -- it was selling
 10 product in there that was non-authorized.
 11 **Q. Do you recall what your reaction to his**
 12 **communication was?**
 13 A. I think probably the same as it was with
 14 Dentsply, I think that was it.
 15 **Q. Is it your testimony that other**
 16 **manufacturers had not reached out to you concerning**
 17 **the TDA Perks Supply program apart from Dentsply and**
 18 **Ivoclar?**
 19 MR. McDONALD: Object to the form, asked
 20 and answered.
 21 THE WITNESS: I don't recall any of
 22 those.
 23 BY MR. SOLOMON:
 24 **Q. So we talked a little bit about**
 25 **manufacturers, Dentsply and Ivoclar.**

174

1 A. Ivoclar, right.
 2 **Q. Have you ever communicated with any other**
 3 **entities apart from manufacturers such as a**
 4 **distributor regarding the TDA Perks Supply program?**
 5 A. Regarding specifically around the TDA
 6 Perks Supply program, is that the question?
 7 **Q. That is my question.**
 8 A. I have not specifically talked to any
 9 distributor of specifically about the TDA Perks
 10 program.
 11 **Q. How about generally?**
 12 MR. McDONALD: Object to the form.
 13 THE WITNESS: I had contact with the
 14 distributor with one of our competitors who called me
 15 to let me know that they were withdrawing from the TDA
 16 meeting.
 17 BY MR. SOLOMON:
 18 **Q. Which competitor are you referring to?**
 19 A. Patterson Dental.
 20 **Q. Patterson Dental.**
 21 **Who from Patterson Dental contacted you?**
 22 A. Dave Misiak is his name.
 23 **Q. Who is Dave Misiak?**
 24 A. I think at the time he was their vice
 25 president of sales.

175

1 **Q. Do you know Mr. Misiak?**
 2 A. We have shook hands at a couple of trade
 3 meetings, but not on any kind of intimate level, no.
 4 **Q. How many times would you say you have**
 5 **communicated with Mr. Misiak in total?**
 6 A. Over the last several years or so,
 7 probably three or four.
 8 **Q. Does Mr. Misiak have your phone number?**
 9 A. Apparently so because he called me on it.
 10 **Q. Do you know how he got your phone number?**
 11 A. No idea.
 12 **Q. Did he call your office phone?**
 13 A. I don't remember whether it was my office
 14 or my cell number.
 15 **Q. Would you be surprised to know that**
 16 **Mr. Misiak had your cell phone number?**
 17 A. I would not be surprised because he can
 18 easily get it from the manufacturing community.
 19 **Q. Do you know whether he got it from**
 20 **someone in the manufacturing community?**
 21 A. I don't. I don't.
 22 **Q. So Mr. Misiak contacted you, do you**
 23 **recall when?**
 24 A. No. It was -- no, I don't recall exactly
 25 when it was, what year or whatever. It was -- I would

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1 have to look, I don't know.
 2 **Q. Why did Mr. -- I believe you stated that**
 3 **he called you to let you know that Patterson was**
 4 **withdrawing from the TDA meeting, is that right?**
 5 A. That's right.
 6 **Q. Is that all you discussed with**
 7 **Mr. Misiak?**
 8 A. Yes.
 9 **Q. Why did Mr. Misiak call you to provide**
 10 **that information?**
 11 MR. McDONALD: Object to the form.
 12 THE WITNESS: And I don't honestly know.
 13 BY MR. SOLOMON:
 14 **Q. How long was your discussion with**
 15 **Mr. Misiak?**
 16 A. Not very long, two, three minutes.
 17 **Q. Do you recall what else you discussed**
 18 **during that discussion with Mr. Misiak?**
 19 A. No, I don't.
 20 **Q. Were you surprised that Mr. Misiak was**
 21 **calling you to provide that information?**
 22 A. Yes.
 23 **Q. Why?**
 24 A. Because he has never called me before.
 25 **Q. Did you think it was out of the ordinary**

44 (Pages 173 to 176)

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1 **for Mr. Misiak to call you and provide you that**
2 **information?**

3 A. I would say, yes, he has never called me
4 before for any other reason so, yes.

5 **Q. Did you convey your surprise to**
6 **Mr. Misiak during your discussion?**

7 A. Surprise that he had called me?

8 **Q. Right.**

9 A. Is that what the question is?
10 No, I don't believe I did.

11 **Q. What did you tell Mr. Misiak?**

12 A. I told him we hadn't made a decision what
13 we were going to do with the TDA yet.

14 **Q. What else --**

15 MR. McDONALD: To be clear he said had
16 not.

17 THE WITNESS: We had not made a decision
18 what we were going to do with the TDA yet.

19 BY MR. SOLOMON:

20 **Q. And why did you tell that to Mr. Misiak?**

21 A. Just to let him know on our side we
22 hadn't made any decisions.

23 **Q. Why?**

24 A. Well, he was -- he may have asked, I
25 don't even remember.

179

1 had made a decision? I would say it was irrelevant in
2 our decision, yes.

3 **Q. Did you tell anyone else about your**
4 **conversation with Mr. Misiak?**

5 A. Yes.

6 **Q. Who did you tell?**

7 A. Tim Sullivan.

8 **Q. Anyone else?**

9 A. Not that I can remember.

10 **Q. Is it possible that you told anyone else**
11 **about your discussion?**

12 A. At some point I probably did tell Joe
13 Cavaretta as well.

14 **Q. Anyone else?**

15 A. Not that I can remember.

16 **Q. Just so we have a clean record,**
17 **Mr. Steck, I just want to be able to finish my**
18 **question before you provide an answer.**

19 A. Sure.

20 **Q. So you communicated with Mr. Sullivan and**
21 **Mr. Cavaretta. But you can't recall anyone else with**
22 **whom you communicated about your conversation with**
23 **Mr. Misiak, is that right?**

24 A. I cannot recall. Dean may have been
25 copied on an e-mail that I sent, I don't know.

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1 **Q. So you told him because he asked you for**
2 **that information?**

3 A. I don't remember the exact conversation,
4 the nature of the conversation, but I did tell him
5 during the conversation that we had not made a
6 decision.

7 **Q. Did Mr. Misiak ask for that information?**

8 A. I don't recall.

9 **Q. Were you interested in whether Patterson**
10 **was attending the TDA trade show?**

11 A. Not really.

12 **Q. Did you tell Mr. Misiak that you weren't**
13 **interested in that information?**

14 A. No.

15 **Q. Why not?**

16 A. I felt it would be insulting.

17 **Q. Why would that be insulting?**

18 A. Well, I just didn't -- I didn't want to
19 -- he called me to tell me what they had already
20 communicated to the TDA so it was somewhat public
21 information, I just didn't really feel the need to say
22 anything other than we hadn't made a decision yet
23 ourselves.

24 **Q. Would you say it was irrelevant?**

25 A. That they weren't going or -- that they

180

1 **Q. What did you tell Mr. Sullivan regarding**
2 **your conversation with Mr. Misiak?**

3 A. Exactly what I just told you, that he had
4 called me to inform me they weren't going.

5 **Q. What did Mr. Sullivan say in response to**
6 **that?**

7 A. Oh, I mean, it wasn't -- it wasn't a big
8 deal from our perspective because it wasn't going to
9 affect what we were going to do.

10 **Q. Why not?**

11 A. Because we make our decisions ourselves.

12 **Q. Why did you tell Mr. Sullivan about the**
13 **call with Mr. Misiak?**

14 A. I would tell Mr. Sullivan about any
15 contact from a competitor that involved the business
16 issue.

17 **Q. Why?**

18 A. Because we are not supposed to talk about
19 business issues with our competitors.

20 **Q. Why not?**

21 MR. McDONALD: Object to form.

22 THE WITNESS: It is not supposed to be
23 discussed, that is all, it is part of our policies.

24 BY MR. SOLOMON:

25 **Q. What policies are you referring to?**

45 (Pages 177 to 180)

181

1 A. There is antitrust, anti -- there is all
 2 kinds of different policies we have to take the state
 3 up to, but anything like that that is significantly
 4 competitive or talks about a competitive issue I would
 5 have reported it.
 6 **Q. You would report it to who?**
 7 A. Mr. Sullivan.
 8 **Q. How long after you spoke with Mr. Misiak**
 9 **did you tell Mr. Sullivan about the conversation?**
 10 A. No idea. It wasn't long, no idea.
 11 **Q. Do you recall anything else Mr. Sullivan**
 12 **said in response to you telling him about your**
 13 **conversation with Mr. Misiak?**
 14 A. No.
 15 **Q. Did you tell Mr. Sullivan that you would**
 16 **be speaking with Mr. Misiak again?**
 17 A. I can't remember whether I told him or
 18 Joe that I would let him -- I would let Mr. Misiak
 19 know once we made a decision and informed the TDA, but
 20 I never did that.
 21 **Q. So you may have told Mr. Sullivan that**
 22 **you were getting back to Mr. Misiak about Schein's**
 23 **decision regarding the TDA?**
 24 A. That is possible.
 25 **Q. Do you recall --**

182

1 A. I don't remember it, but it is possible.
 2 **Q. Did you and Mr. Sullivan discuss anything**
 3 **else surrounding the call with Mr. Misiak?**
 4 MR. McDONALD: Object to the form.
 5 THE WITNESS: Not that I remember.
 6 BY MR. SOLOMON:
 7 **Q. Did you report the call to anyone else**
 8 **within Schein?**
 9 MR. McDONALD: Object to the form, asked
 10 and answered.
 11 THE WITNESS: Not that I have not already
 12 stated.
 13 BY MR. SOLOMON:
 14 **Q. You said you also spoke to Mr. Cavaretta**
 15 **surrounding your call with Mr. Misiak. What did you**
 16 **discuss with Mr. Cavaretta?**
 17 A. The same thing I discussed with
 18 Mr. Sullivan.
 19 **Q. Was this a phone call with Mr. Cavaretta?**
 20 A. No. He works in the same office as we
 21 do, I think it was a personal conversation.
 22 **Q. So you had an in-person conversation with**
 23 **Mr. Cavaretta surrounding your call with Mr. Misiak?**
 24 A. Yes, and the TDA situation in general,
 25 yes, right.

183

1 **Q. How many in-person conversations did you**
 2 **have with Mr. Cavaretta surrounding that topic?**
 3 A. I could --
 4 MR. McDONALD: Object to the form.
 5 Which topic, TDA or the phone call?
 6 BY MR. SOLOMON:
 7 **Q. Let's focus on the phone call first. How**
 8 **many conversations did you have with Mr. Cavaretta**
 9 **surrounding your phone call with Mr. Misiak?**
 10 A. I don't recall, but I can't imagine it
 11 was more than one.
 12 **Q. What else did you discuss with**
 13 **Mr. Cavaretta surrounding the phone call from**
 14 **Mr. Misiak?**
 15 A. That was it.
 16 **Q. Did Mr. Cavaretta have any reaction to**
 17 **you telling him that Mr. Misiak called you?**
 18 A. I don't remember.
 19 **Q. Did Mr. Misiak mention any other**
 20 **Patterson employees during your phone call with him?**
 21 A. No, I don't believe so.
 22 **Q. You don't recall whether he --**
 23 A. I don't recall, but I don't think he did.
 24 **Q. You testified earlier that you believe**
 25 **you discussed the TDA with Mr. Misiak for about two or**

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1 **three minutes, is that right?**
 2 A. That is what I said, yes.
 3 **Q. So was your whole phone call longer than**
 4 **two or three minutes?**
 5 MR. McDONALD: Object to the form.
 6 THE WITNESS: I already said it was a
 7 two- or three-minute call.
 8 BY MR. SOLOMON:
 9 **Q. So the entire call was two or three**
 10 **minutes?**
 11 A. Yes.
 12 **Q. And during that whole time you discussed**
 13 **the TDA Perks Supply program?**
 14 A. That was it. It was actually about the
 15 TDA meeting, not specifically about the perks.
 16 **Q. Thanks for that clarification.**
 17 **Have you discussed the TDA or the TDA**
 18 **Perks Supply program with any other distributors?**
 19 A. No.
 20 **Q. No one from Benco, right?**
 21 A. No, not myself, no.
 22 **Q. Schein ultimately did withdraw from the**
 23 **TDA trade show following the endorsement of Source**
 24 **One, is that right?**
 25 MR. McDONALD: Object to the form.

46 (Pages 181 to 184)

185

1 THE WITNESS: We did withdraw after a
 2 series of meetings I was not part of with TDA, tried
 3 to come to a middle ground, but we weren't able to.
 4 BY MR. SOLOMON:
 5 **Q. Do you know who was a part of those**
 6 **meetings?**
 7 A. It was Joe, it was Dean Kyle, and it was
 8 our regional manager who just happened to be my son at
 9 that time.
 10 **Q. For the record, who is your son?**
 11 A. Kyle Steck.
 12 **Q. Do you know when the decision was made to**
 13 **withdraw from the TDA trade show?**
 14 A. I don't know the exact date.
 15 **Q. Did you have any involvement in that**
 16 **decision?**
 17 A. Not really, no.
 18 **Q. When you say not really --**
 19 A. I was aware of the fact they were
 20 discussing it, but I was not involved in making the
 21 decision.
 22 **Q. How did you know that they were**
 23 **discussing it?**
 24 A. Because they told me they were going to
 25 go meet with the TDA.

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1 **Q. Mr. Cavaretta and Mr. Kyle Steck and**
 2 **Mr. Dean Kyle told you that?**
 3 A. Mr. Cavaretta told me that.
 4 **Q. When did he tell you that, do you recall?**
 5 A. I don't. Before the meeting.
 6 **Q. Whose decision was it ultimately to**
 7 **withdraw?**
 8 MR. McDONALD: Object to the form and
 9 foundation.
 10 THE WITNESS: The decision to withdraw is
 11 made by -- was made by Tim after a recommendation from
 12 Joe and Dean and presumably Kyle that we shouldn't go
 13 because they weren't able to come to any kind of
 14 agreement with them.
 15 BY MR. SOLOMON:
 16 **Q. Do you know when that recommendation was**
 17 **given to Mr. Sullivan?**
 18 A. Immediately after the meeting.
 19 **Q. Do you know when that meeting happened?**
 20 A. No.
 21 **Q. Do you have an approximate timeframe that**
 22 **you can think of?**
 23 A. It is all in the e-mail chains. It is
 24 all in the evidence. I don't know, a month, two
 25 weeks, three weeks before the meeting, I don't exactly

187

1 remember.
 2 MR. McDONALD: If you know tell him, but
 3 don't guess.
 4 THE WITNESS: Okay.
 5 BY MR. SOLOMON:
 6 **Q. What was your personal opinion the**
 7 **decision to withdraw from the TDA?**
 8 A. I agreed with it.
 9 **Q. Why?**
 10 A. Because I think we didn't approve of what
 11 the TDA was doing and felt that they had taken -- by
 12 endorsing a full line or full access, I should say,
 13 non-full-service source they were -- we didn't feel
 14 that was a good practice for a state association that
 15 really has always been politically somewhat neutral
 16 between distributor loyalties and obviously all the
 17 distributors were going to the meeting and we were
 18 putting money in their pocket by going to the meeting,
 19 we didn't like that.
 20 **Q. Why didn't Patterson like that -- strike**
 21 **that.**
 22 **Why didn't Schein like that?**
 23 A. Because, again, we are contributing to
 24 this meeting.
 25 Meetings as they stand alone sometimes

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1 aren't really profitable, in some cases they are loss
 2 leaders, you don't make a lot of money at them, they
 3 are expensive to go to. We felt we were supporting
 4 them by going.
 5 And then they decided -- they didn't even
 6 give us an opportunity to try to work with them after
 7 attempts on our side.
 8 **Q. How did Schein try to work with the TDA?**
 9 A. I wasn't part of those direct
 10 discussions, you would have to ask the people that
 11 were there.
 12 **Q. Do you know whether -- strike that.**
 13 **Do you know whether their withdrawal from**
 14 **the TDA was based on anything other than the**
 15 **endorsement of Source One?**
 16 MR. McDONALD: Object to the form.
 17 THE WITNESS: I do not. I know that was
 18 part of the issue.
 19 BY MR. SOLOMON:
 20 **Q. Did you communicate with any third**
 21 **parties who are not manufacturers or distributors**
 22 **about the TDA's Perks Supply program?**
 23 A. Can you restate that?
 24 **Q. Sure.**
 25 **Did you communicate with any third**

47 (Pages 185 to 188)

189

1 **parties apart from manufacturers or distributors about**
2 **the TDA's Perks Supply program?**

3 A. I did communicate with a contact at the
4 ADA, I was here at the ADA's request for a meeting,
5 and I brought that up to one of the ADA officials, and
6 she asked me to send her information so I did.

7 **Q. What is the ADA?**

8 A. American Dental Association.

9 **Q. Who did you communicate with from the**
10 **ADA?**

11 A. I don't recall. It is in the e-mails.
12 But she was the person that was in charge of that at
13 the time, she had the position of being the liaison to
14 the state associations.

15 **Q. And you said -- you testified that the**
16 **ADA requested a meeting with you?**

17 A. With me and with one of our business
18 solutions executives because the ADA was interested in
19 having us help them find content for their members and
20 rebuilding their own website so we could be of help to
21 them.

22 **Q. Did the ADA ask you for a meeting to**
23 **specifically discuss the TDA?**

24 MR. McDONALD: Object to the form.

25 THE WITNESS: No, they did not.

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1 MR. McDONALD: Object to the form.
2 THE WITNESS: Not that I can recall.

3 BY MR. SOLOMON:

4 **Q. Are you aware of any communications**
5 **between someone from Schein and one of Schein's**
6 **competitors about the TDA Perks Supply program?**

7 A. Yes. I am aware that a regional manager
8 in the area had had a conversation or a phone call
9 from a member of the Benco team.

10 **Q. Do you recall who that regional manager**
11 **was?**

12 A. I believe it was Glenn Showgren.

13 **Q. Is Glenn Showgren still an employee of**
14 **Schein Dental?**

15 A. Yes.

16 **Q. Do you know when Mr. Showgren spoke to a**
17 **member of the Benco team?**

18 A. I do not.

19 **Q. Do you recall who the Benco employee**
20 **Mr. Showgren spoke with was?**

21 A. Yes.

22 **Q. Who was it?**

23 A. Ron Fernandez.

24 **Q. Do you know Ron Fernandez?**

25 A. I have met him. I don't know him, but I

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1 BY MR. SOLOMON:

2 **Q. When did you meet with someone from the**
3 **ADA -- strike that.**

4 **When did you meet with someone from the**
5 **ADA?**

6 A. I don't remember the exact meeting and
7 time of that meeting, but it was obviously before all
8 the TDA decisions were made about the TDA meeting.

9 **Q. Okay.**

10 **Would you say that Schein took some time**
11 **to come to a decision surrounding its attendance at**
12 **the TDA trade show?**

13 A. Yes.

14 **Q. Do you know why that was the case?**

15 A. It took us a while to get a meeting with
16 the TDA for one thing, that was one issue. We wanted
17 to be sure before we made a decision.

18 **Q. And why was that?**

19 A. You want to be sure about a decision like
20 that before you did it, it was worth it to continue to
21 discuss it.

22 **Q. Any other reasons why -- strike that.**

23 **Any other reasons why Schein took a long**
24 **time to come to a decision regarding its attendance at**
25 **the TDA trade show?**

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1 met him once.

2 **Q. Did Mr. Fernandez -- strike that.**

3 **Is Mr. Fernandez a former Schein**
4 **employee?**

5 A. Yes.

6 **Q. And do you know what Mr. Showgren**
7 **discussed with Mr. Fernandez?**

8 A. My recollection is it was around Benco's
9 -- whether Benco was going to participate in the TDA
10 as well and some other manufacturers who were not
11 happy with the TD decision as well.

12 **Q. How did you learn about the communication**
13 **between Mr. Showgren and Mr. Fernandez from Benco?**

14 A. An e-mail was showed to me at a
15 deposition.

16 **Q. Did you know about that communication**
17 **prior to the deposition you just referred to?**

18 A. Something may have been said to me, I
19 don't recall though.

20 **Q. When you say something may have been said**
21 **to you, what do you mean by that?**

22 A. Well, somebody may have said that Glenn
23 got a call from Ron Fernandez of Benco, it is possible
24 somebody said that to me, I just don't remember.

25 **Q. Are you aware of anyone else from Schein**

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1 **communicating with a competitor about the TDA Perks**
 2 **Supply program?**
 3 A. I am not aware, no, I can't remember, no.
 4 **Q. Is it possible that those communications**
 5 **took place?**
 6 MR. McDONALD: Object to the form.
 7 If you know tell him, but don't guess.
 8 THE WITNESS: I don't know.
 9 BY MR. SOLOMON:
 10 **Q. Who would know?**
 11 MR. McDONALD: Object to the form.
 12 THE WITNESS: You would have to talk to
 13 people who are managing that area because there was a
 14 lot of communication going on at that time about that,
 15 I wasn't part of it.
 16 BY MR. SOLOMON:
 17 **Q. Who would I need to speak with to learn**
 18 **that information?**
 19 A. Whoever the managers were at the time of
 20 that area.
 21 **Q. Do you know who those people are?**
 22 A. Glenn Showgren is one and my son was
 23 another.
 24 **Q. Anyone else?**
 25 A. Dean Kyle.

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1 **Q. Anyone else?**
 2 MR. McDONALD: Object to form.
 3 THE WITNESS: Probably Joe Cavaretta.
 4 BY MR. SOLOMON:
 5 **Q. Anyone else?**
 6 A. That is all I know.
 7 **Q. Are you aware of anyone else from Schein**
 8 **communicating with a competitor about Schein's**
 9 **decision to withdraw from the 2014 TDA trade show?**
 10 MR. McDONALD: Object to the form,
 11 mischaracterizes his testimony.
 12 THE WITNESS: I am not aware, no, not
 13 that I can remember, no.
 14 BY MR. SOLOMON:
 15 **Q. Are you aware of anyone else from Schein**
 16 **communicating with a manufacturer about the TDA Perks**
 17 **Supply program for the decision to withdraw from the**
 18 **TDA in 2014?**
 19 MR. McDONALD: Other than what he has
 20 already testified to?
 21 MR. SOLOMON: Right.
 22 THE WITNESS: No.
 23 (Document identified as Exhibit 234 for
 24 identification.)
 25

195

1 BY MR. SOLOMON:
 2 **Q. Mr. Steck, you have Exhibit 234 in front**
 3 **of you. Do you recall this e-mail?**
 4 A. Yes.
 5 **Q. This is an e-mail chain about the TDA**
 6 **Perks Supply program, is that right?**
 7 A. Yes, it appears to be.
 8 **Q. I want to direct your attention to Page 2**
 9 **of the e-mail, Bates numbered HS-00005653. And for**
 10 **the record this is an e-mail from December of 2013.**
 11 **Focusing on the top there is an e-mail**
 12 **from Mr. Dean Kyle and he says "FYI, Patterson pulled**
 13 **out of the convention. I firmly believe they made the**
 14 **move expecting us to follow suit." Do you see that**
 15 **sentence I am referring to?**
 16 A. At the very top of the page?
 17 **Q. Right.**
 18 A. Yes, I see that.
 19 **Q. Do you know how Mr. Dean knew that**
 20 **Patterson was withdrawing from the TDA convention as**
 21 **referenced in this e-mail?**
 22 MR. McDONALD: Mr. Kyle, not Mr. Dean.
 23 THE WITNESS: It is Dean Kyle.
 24 MR. SOLOMON: I will reask it.
 25

196

1 BY MR. SOLOMON:
 2 **Q. Do you know how Mr. Kyle knew that**
 3 **Patterson was withdrawing from the TDA convention as**
 4 **referenced in this e-mail?**
 5 A. I believe it was public information.
 6 **Q. What do you mean by it was public**
 7 **information?**
 8 A. They notified the TDA, it was public, it
 9 was out there, everybody knew they weren't going.
 10 **Q. How did you form that understanding?**
 11 A. Because any time a company makes a
 12 decision like that it gets around, they tell their
 13 people they are not going and they tell other people.
 14 **Q. Do you know whether Patterson's decision**
 15 **regarding the TDA trade show attendance was public**
 16 **information when you spoke with Mr. Misiak on the**
 17 **telephone?**
 18 A. I believe it was.
 19 **Q. How do you know it was public at that**
 20 **time?**
 21 A. Because I believe they had already
 22 informed them.
 23 **Q. And how did you learn that?**
 24 A. I think it was afterwards that I had
 25 learned that they had already informed them.

49 (Pages 193 to 196)

197

1 **Q. Do you know whether it was public**
 2 **information at the time you spoke with Mr. Misiak?**
 3 A. You just asked that question and I said I
 4 assumed it was, yes.
 5 **Q. But you don't know for sure?**
 6 MR. McDONALD: Object to the form, asked
 7 and answered.
 8 THE WITNESS: I am pretty sure it was.
 9 BY MR. SOLOMON:
 10 **Q. And Mr. Misiak told you it was public**
 11 **information during your conversation?**
 12 MR. McDONALD: Object to the form.
 13 THE WITNESS: I don't remember the exact
 14 words he said, but I believe it was he said we have
 15 informed the TDA we are not going.
 16 BY MR. SOLOMON:
 17 **Q. Did that mean it was public information**
 18 **in your mind?**
 19 A. Yes, pretty much, yes.
 20 **Q. Did you do anything else to determine**
 21 **whether that information was actually public?**
 22 A. No, not that I can remember.
 23 **Q. Turning to the first page of the e-mail,**
 24 **you forward this to Mr. Sullivan. Rather the e-mail**
 25 **is forwarded to Mr. Sullivan and then at some point it**

198

1 **looks like at 8:33 a m. you say "I talked to the ADA**
 2 **about this when I was there and sent them the info,"**
 3 **do you see that?**
 4 A. Yes.
 5 **Q. Do you recall what information you**
 6 **provided to the ADA?**
 7 A. I just testified to that, it was the
 8 information on the TDA Perks.
 9 **Q. What information specifically did you**
 10 **provide?**
 11 A. I think it was an ad that they had had in
 12 a magazine or something.
 13 **Q. And why did you provide that information**
 14 **to the ADA?**
 15 A. I was making them aware of the fact that
 16 one of their state associations was doing that.
 17 **Q. Why?**
 18 A. Because it was a new development at the
 19 time.
 20 **Q. And why did you want the ADA to know**
 21 **about that?**
 22 A. Because I thought it was relevant.
 23 **Q. Relevant to what?**
 24 A. Relevant to the fact that their state
 25 associations, which they mutually collect dues for,

199

1 was trying to endorse people who typically didn't
 2 support them. I mean, the ADA had a petition to us
 3 for our support in terms of constructing business
 4 solutions, that is why I was there.
 5 I was just making them aware of it, that
 6 is all, she asked to see it.
 7 **Q. Who is she?**
 8 A. The person who I have already referred to
 9 several times at the ADA meeting that I had, I can't
 10 remember her name. If you look in the e-mails I am
 11 sure it is in there.
 12 **Q. How many times did you meet with someone**
 13 **from the ADA surrounding the TDA Perks Supply program?**
 14 A. I only came to the ADA once.
 15 **Q. Did you have any conversations apart from**
 16 **your meeting at the ADA with someone from the ADA**
 17 **about the TDA Perks Supply program?**
 18 A. I had a conversation with an old client
 19 of mine who was about to become ADA president and told
 20 her about the situation.
 21 **Q. Who is the client you are referring to?**
 22 A. Carol Summerhays.
 23 **Q. Who is Carol Summerhays?**
 24 A. She is a dentist in San Diego.
 25 **Q. You said she is a former client?**

200

1 A. I used to be her salesperson, she was a
 2 client, she is retired now.
 3 **Q. So Carol Summerhays was the ADA president**
 4 **at the time of this e-mail?**
 5 A. No. She was about to become ADA
 6 president.
 7 **Q. And what did you discuss with**
 8 **Ms. Summerhays?**
 9 A. I told her about the CDA -- excuse me,
 10 the TDA's decision to go into this business and that
 11 it was causing issues with the dealer community.
 12 **Q. Is it fair to say that you wanted**
 13 **Ms. Summerhays to take some sort of action in response**
 14 **to the information you provided her?**
 15 MR. McDONALD: Object to the form.
 16 THE WITNESS: I wanted her to be aware of
 17 it if she was going to be the ADA president.
 18 BY MR. SOLOMON:
 19 **Q. Why?**
 20 A. I have already answered why I thought it
 21 was relevant to the ADA, same reason.
 22 **Q. Did you want her to do something about**
 23 **it?**
 24 A. I would not have been upset had she
 25 talked to the TDA to find out why they were doing it,

50 (Pages 197 to 200)

201	<p>1 but I didn't ask for any action.</p> <p>2 Q. Did you want her to do something about</p> <p>3 it?</p> <p>4 MR. McDONALD: Object to form.</p> <p>5 THE WITNESS: I didn't expect her to do</p> <p>6 anything about it.</p> <p>7 BY MR. SOLOMON:</p> <p>8 Q. So you just provided the information to</p> <p>9 her so she knew about it?</p> <p>10 A. Yes.</p> <p>11 Q. But you didn't want her to take any</p> <p>12 action in response?</p> <p>13 A. No, I did not ask her for any action.</p> <p>14 Q. Turning to the next e-mail here,</p> <p>15 Mr. Sullivan -- actually, let's stay on that e-mail</p> <p>16 from 8:33 a m., just kind of turning to the next</p> <p>17 sentence, you say "personally I think we should get</p> <p>18 together with a group of other dealers and</p> <p>19 manufacturers and send them a petition." Do you see</p> <p>20 that?</p> <p>21 A. Yes.</p> <p>22 Q. Is it fair to say that you were proposing</p> <p>23 that Schein and other dealers stop the TDA Perks</p> <p>24 Supply program through a petition?</p> <p>25 MR. McDONALD: Object to the form.</p>	203	<p>1 would be?</p> <p>2 MR. McDONALD: Object to the form.</p> <p>3 THE WITNESS: Who exhibits at their</p> <p>4 meeting is a public record, Patterson, Benco, it is</p> <p>5 Midway Dental, Midwest Dental, it is a bunch of other</p> <p>6 independents in Texas, it is manufacturers all up and</p> <p>7 do you know the line large and small.</p> <p>8 BY MR. SOLOMON:</p> <p>9 Q. You say a few individual letters have</p> <p>10 already gone out -- strike that.</p> <p>11 A few individual letters have already</p> <p>12 gone to them. Letters from who were you referring to</p> <p>13 there?</p> <p>14 A. I think several people had written -- my</p> <p>15 understanding was a few manufacturers or other people</p> <p>16 had written letters to them but I had not seen them.</p> <p>17 Q. How did you know about them?</p> <p>18 A. I was told about them by somebody, I am</p> <p>19 not sure who.</p> <p>20 Q. You said letters from other manufacturers</p> <p>21 and other people, what did you mean by other people?</p> <p>22 A. Other companies that would have exhibited</p> <p>23 at the TDA.</p> <p>24 Q. Other distributors?</p> <p>25 A. Possibly.</p>
202	<p>1 THE WITNESS: First of all, I regret</p> <p>2 writing that.</p> <p>3 Secondly is the TDA need to know they</p> <p>4 were upsetting people, that is the way I chose to put</p> <p>5 it.</p> <p>6 I regret writing it the way I did.</p> <p>7 BY MR. SOLOMON:</p> <p>8 Q. Why do you regret writing it?</p> <p>9 A. Because we were never to get together</p> <p>10 with a group of other dealers and manufacturers, we</p> <p>11 would have sent our own letter, that just isn't</p> <p>12 realistic.</p> <p>13 Q. Why did you write it?</p> <p>14 MR. McDONALD: Object to the form.</p> <p>15 THE WITNESS: As I said, I regret writing</p> <p>16 it.</p> <p>17 BY MR. SOLOMON:</p> <p>18 Q. What other dealers were you referring to</p> <p>19 when you wrote this e-mail?</p> <p>20 A. I wasn't referring to anybody</p> <p>21 specifically.</p> <p>22 Q. Were you referring to anyone generally?</p> <p>23 A. I was referring to anybody who exhibits</p> <p>24 at their meeting.</p> <p>25 Q. Can you give me some examples of who that</p>	204	<p>1 MR. McDONALD: Object to form.</p> <p>2 BY MR. SOLOMON:</p> <p>3 Q. Did you know specifically about any</p> <p>4 letters from any other distributors?</p> <p>5 A. No.</p> <p>6 Q. Did you think that the TDA would be more</p> <p>7 receptive to Schein's position if it worked with</p> <p>8 Patterson and Benco?</p> <p>9 MR. McDONALD: Object to the form.</p> <p>10 THE WITNESS: I don't think I thought</p> <p>11 about that at all, I just was -- felt we should</p> <p>12 express the fact we weren't happy with the decision</p> <p>13 they had made.</p> <p>14 BY MR. SOLOMON:</p> <p>15 Q. And I know you say you regret writing</p> <p>16 this sentence regarding working with other dealers and</p> <p>17 manufacturers, but I am trying to understand, you</p> <p>18 know, back then at the time of this e-mail on</p> <p>19 December, 2013 why you thought it was a good idea?</p> <p>20 MR. McDONALD: Object to form.</p> <p>21 THE WITNESS: I simply thought the more</p> <p>22 they heard from people they weren't happy with the way</p> <p>23 they were going about the TDA Perks program the better</p> <p>24 chance they would reconsider it.</p> <p>25</p>

205

1 BY MR. SOLOMON:

2 **Q. Had you discussed this idea with anyone**
3 **prior to writing this e-mail in December of 2013?**

4 A. No.

5 **Q. And that would apply both internally to**
6 **Schein as well as externally from Schein?**

7 A. Yes, I didn't discuss it with anybody.

8 **Q. Okay.**

9 **And then turning to a few individual**
10 **letters have already gone out to them, what does them**
11 **refer to in this sentence?**

12 A. The TDA.

13 **Q. It looks like Mr. Sullivan responds to**
14 **your e-mail and he says "don't think we can do the**
15 **petition idea... lawyers call that collusion." Do you**
16 **see where I am referring to?**

17 A. Yes.

18 **Q. Do you have any understanding as to what**
19 **Mr. Sullivan meant in his statement?**

20 MR. McDONALD: Object to the form.

21 THE WITNESS: Yes. He meant that when
22 you get together with other people for that kind of a
23 thing that people can say you were colluding with one
24 another.

25 As I said, I regret writing the

207

1 **statement that organized dentistry is a mess?**

2 A. Organized dentistry is under stress
3 because a lot of younger dentists are not joining the
4 state and dental associations and so they are trying
5 to find anyway they can to make themselves more
6 relevant including a buying program like this.

7 **Q. You also respond to Mr. Sullivan's**
8 **earlier e-mail "Can ADA influence TDA?" Do you see**
9 **that?**

10 A. That was his e-mail to me.

11 **Q. Right.**

12 **Do you know why Mr. Sullivan was asking**
13 **whether the ADA could influence the TDA?**

14 A. Just wanted to know. I explained it in
15 the next paragraph.

16 **Q. Did you think at the time of writing this**
17 **e-mail that the ADA could influence the TDA?**

18 A. I didn't know.

19 **Q. So you had no opinion one way or the**
20 **other?**

21 A. Not really.

22 **Q. Was it your intent to provide information**
23 **to the ADA so that it can influence the TDA?**

24 MR. McDONALD: Object to the form.

25 THE WITNESS: I had no expectation of

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1 statement.

2 BY MR. SOLOMON:

3 **Q. Did you agree with his assessment that**
4 **the petition idea might be considered collusion?**

5 A. No.

6 MR. McDONALD: Object to the form.

7 THE WITNESS: I am not a lawyer so I
8 don't have an opinion on that. It wasn't a good idea.
9 BY MR. SOLOMON:

10 **Q. Did you tell Mr. Sullivan after this**
11 **e-mail that you thought it wasn't a good idea?**

12 A. I don't think we discussed it after this
13 e-mail.

14 **Q. Were you surprised that Mr. Sullivan**
15 **suggested that the petition idea might be collusion?**

16 MR. McDONALD: Object to the form.

17 THE WITNESS: I don't remember whether I
18 was surprised or not.

19 BY MR. SOLOMON:

20 **Q. Turning to the top of this e-mail, you**
21 **respond to Mr. Sullivan. Also Joe Cavaretta is copied**
22 **on this e-mail. "They asked for the info after I**
23 **explained the conflict... organized dentistry is a**
24 **mess."**

25 **What were you referring to in your**

208

1 anything. I just simply had mentioned it in a meeting
2 and they asked for information.

3 BY MR. SOLOMON:

4 **Q. Did you have any other follow-up**
5 **communications with either Ms. Summerhays or someone**
6 **from the ADA regarding the TDA following this e-mail?**

7 A. Not that I can remember.

8 MR. SOLOMON: We have been going a little
9 while now, it is almost 20 after, we can take a break
10 now because I think if we get into some more documents
11 we might be going a little while.

12 MR. McDONALD: That is fine.

13 MR. SOLOMON: Let's break for lunch.

14 (Lunch recess taken.)
15
16
17
18
19
20
21
22
23
24
25

209

1 AFTERNOON SESSION
 2 BY MR. SOLOMON:
 3 **Q. Before the break we talked about a phone**
 4 **conversation you had with Mr. Misiak in which he told**
 5 **you that Patterson would not be attending the TDA**
 6 **annual trade show. Do you recall that discussion?**
 7 A. Yes.
 8 **Q. My question to you is about whether he**
 9 **told you or asked that Schein take any action in**
 10 **response to him telling you about that information, so**
 11 **let me ask the question, did Mr. Misiak ask or**
 12 **encourage Schein to take any action with respect to**
 13 **the TDA or the TDA Perks Supply program during your**
 14 **phone conversation with him?**
 15 A. I don't believe so, no.
 16 **Q. We also talked about you mentioned a**
 17 **Schein policy, Schein antitrust policy that you**
 18 **thought was implicated by your conversation with**
 19 **Mr. Misiak. Do you recall that?**
 20 A. Not really. It wasn't confidential
 21 information. At least I didn't believe it to be
 22 confidential information.
 23 But if I was contacted by my member of a
 24 competitive company I would tell my boss.
 25 **Q. Right.**

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1 **My question, I am not as interested in**
 2 **whether or not it is confidential information, but I**
 3 **think you mentioned that -- you mentioned an antitrust**
 4 **policy that you thought was implicated. Do you recall**
 5 **that?**
 6 A. Yes, sure.
 7 **Q. Is that a written policy?**
 8 A. It is a Corpedia practice that we take
 9 through -- there is a written policy, but it is part
 10 of a training program we go through every year.
 11 **Q. What is the training program called?**
 12 A. It is called Corpedia, it is an online
 13 program.
 14 **Q. How long does the training take to**
 15 **complete?**
 16 MR. McDONALD: Object to the form.
 17 THE WITNESS: There are different modules
 18 in the Corpedia and they take different times, I
 19 believe this one is about an hour.
 20 BY MR. SOLOMON:
 21 **Q. And you have taken this training on more**
 22 **than one occasion?**
 23 A. Every year.
 24 **Q. Do you recall when you started taking the**
 25 **training?**

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1 A. I do not.
 2 **Q. Do you know who else at Schein is**
 3 **required to take the Corpedia training?**
 4 A. I believe everybody above a certain
 5 level, and I am not certain what that level is.
 6 **Q. So how does that Corpedia training relate**
 7 **to your conversation on the phone with Mr. Misiak?**
 8 MR. McDONALD: Object to form.
 9 THE WITNESS: Again, the training deals
 10 primarily with confidential information, whether it is
 11 -- you are not allowed to talk about confidential
 12 information obviously with a competitor of the
 13 company, and I don't believe I did.
 14 BY MR. SOLOMON:
 15 **Q. Do you believe that what Mr. Misiak told**
 16 **you was public, right?**
 17 A. I did.
 18 **Q. And so why did you think that one of**
 19 **Schein's antitrust policies was implicated by your**
 20 **phone call with Mr. Misiak?**
 21 MR. McDONALD: Object to the form.
 22 THE WITNESS: I don't know that I said
 23 that.
 24 What I said was that I would report
 25 anything to my boss that I thought would be

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1 potentially even related to that.
 2 BY MR. SOLOMON:
 3 **Q. Potentially related to what?**
 4 A. To anything involving competitors or
 5 potentially antitrust.
 6 **Q. Did you think that your phone call with**
 7 **Mr. Misiak potentially involved an antitrust**
 8 **violation?**
 9 A. No.
 10 **Q. Why not?**
 11 A. Because I believed it to be public
 12 information.
 13 **Q. I think we are going to take a look at**
 14 **another document.**
 15 **(Document identified as Exhibit 235 for**
 16 **identification.)**
 17 BY MR. SOLOMON:
 18 **Q. Mr. Steck, the court reporter has handed**
 19 **you Exhibit 235. Please let me know when you have had**
 20 **a chance to take a look.**
 21 A. Okay, I am familiar with it.
 22 **Q. Do you recall this e-mail?**
 23 A. Yes.
 24 **Q. This is an e-mail chain between yourself,**
 25 **Mr. Cavaretta, Mr. Dean, and Mr. Kyle Steck, is that**

53 (Pages 209 to 212)

213

1 right?
 2 A. Yes.
 3 **Q. I would like to just focus your attention**
 4 **on the first page of the e-mail, let's see -- it is**
 5 **actually the second page of the e-mail, my apologies.**
 6 **You tell Mr. Dean Kyle, Mr. Kyle Steck, and**
 7 **Mr. Cavaretta, "Guys, I have to get back to PDCO on**
 8 **whether or not we are attending the TDA." Do you see**
 9 **that?**
 10 A. Yes.
 11 **Q. Does PDCO refer to Patterson?**
 12 A. Yes.
 13 **Q. Why did you need to get back to Patterson**
 14 **about whether Schein was attending the TDA?**
 15 A. I must have said during the conversation
 16 I would let Dave Misiak know once we made a decision
 17 and gotten to the TDA, I assume that is what I said.
 18 **Q. Do you know why you would have told**
 19 **Mr. Misiak that?**
 20 A. Just as courtesy for him telling me.
 21 **Q. Any other reason why you would have told**
 22 **Mr. Misiak what Schein was doing --**
 23 A. No.
 24 **Q. -- with respect to the TDA?**
 25 A. No.

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1 **Q. So it was just a courtesy?**
 2 A. That is the way I saw it, yes.
 3 **Q. Did Mr. Misiak ask you to get back to**
 4 **him?**
 5 A. I don't remember.
 6 **Q. Is it possible that he did?**
 7 MR. McDONALD: Object to the form.
 8 THE WITNESS: I wouldn't want to
 9 speculate, I can't remember whether he asked me to or
 10 not.
 11 BY MR. SOLOMON:
 12 **Q. And this e-mail is from January 21, 2014.**
 13 A. Right.
 14 **Q. Do you recall how much time after you**
 15 **wrote this e-mail your call -- strike that.**
 16 **Do you recall when you spoke to**
 17 **Mr. Misiak in relation to this January 21, 2014**
 18 **e-mail?**
 19 A. I never spoke to Mr. Misiak after that.
 20 **Q. How much -- strike that.**
 21 **You spoke to Mr. Misiak prior to this**
 22 **e-mail, right?**
 23 A. Yes.
 24 **Q. You recall when that was?**
 25 A. No, late -- no. Sometime in December, I

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1 think, but I am not sure.
 2 **Q. So it would have been within a few weeks**
 3 **to a month of writing this e-mail?**
 4 A. Possibly.
 5 **Q. Okay.**
 6 **Did you feel any obligation to get back**
 7 **to Mr. Misiak regarding Schein's plans with respect to**
 8 **the TDA trade show?**
 9 A. I think this e-mail says I felt it was
 10 courtesy to get back, obligation, courtesy, you know,
 11 take your pick.
 12 **Q. Did Patterson's decision not to attend**
 13 **the TDA influence your opinion as to whether Schein**
 14 **should attend the TDA trade show?**
 15 A. No.
 16 **Q. Why not?**
 17 A. Because I knew we had what we believed to
 18 be a good relationship with the TDA and we were
 19 willing to try to meet with them and talk to them
 20 about it before we made any final decisions.
 21 **Q. Did you tell Mr. Misiak -- do you recall**
 22 **whether you told Mr. Misiak that their decision not to**
 23 **attend the TDA was not material to you?**
 24 A. I don't recall saying anything.
 25 **Q. Just kind of turning to the first page**

216

1 **here, Mr. Misiak -- I am sorry, Mr. Cavaretta responds**
 2 **to your e-mail, and he says, "Sorry, Dave, I thought**
 3 **we had a phone conversation about this prior to the**
 4 **FMM confirming our direction." Do you see that?**
 5 A. Yes.
 6 **Q. And I think you mentioned previously that**
 7 **FMM refers to the field management meeting?**
 8 A. Correct.
 9 **Q. Do you recall a phone conversation with**
 10 **Mr. Cavaretta about Patterson's -- strike that.**
 11 **Do you recall a phone conversation with**
 12 **Mr. Cavaretta about Patterson's decision not to attend**
 13 **the TDA?**
 14 A. I don't remember.
 15 **Q. Do you have any idea as to what**
 16 **Mr. Cavaretta is referring to here?**
 17 A. He is saying he thought we had a phone
 18 conversation, obviously I forgot we had a phone
 19 conversation or we didn't have a phone conversation, I
 20 am not sure.
 21 **Q. And that phone conversation, according to**
 22 **Mr. Cavaretta in this e-mail, was part of a field**
 23 **management meeting, right?**
 24 A. It was prior to that.
 25 **Q. My apologies, it was prior to the field**

54 (Pages 213 to 216)

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219

1 management meeting.
 2 Do you know whether anyone else would
 3 have been a part of that phone conversation other than
 4 Mr. Cavaretta and yourself?
 5 A. I would doubt it, but I don't remember.
 6 Q. Let's move on to the next e-mail, you
 7 respond to Mr. Cavaretta and you say "We did. I just
 8 wanted to be double sure before telling PDCO
 9 anything."
 10 So my question to you is why did you want
 11 to be doubly sure before telling Patterson about
 12 Schein's plans?
 13 A. I wanted to give him accurate
 14 information. At this time we were still going back
 15 and forth whether we were going to go or not. If you
 16 read the e-mail it says we were going to go and then
 17 not go in years coming. I wasn't sure where we stood.
 18 Q. Why were you interested in giving
 19 Patterson accurate information?
 20 A. Well, he had given me accurate
 21 information. Again, I felt courtesy to call him back
 22 and to let him know what we were doing, but I didn't
 23 want to tell him something wrong.
 24 Q. Why not?
 25 A. Just wouldn't be good. I try to be

1 Q. Specifically Mr. Misiak?
 2 MR. McDONALD: Object to the form.
 3 THE WITNESS: Yes.
 4 BY MR. SOLOMON:
 5 Q. Were you concerned about Mr. Misiak's
 6 opinion of you if you provided him with inaccurate
 7 information?
 8 MR. McDONALD: Object to the form.
 9 THE WITNESS: I didn't really think about
 10 it.
 11 BY MR. SOLOMON:
 12 Q. Were you concerned about Patterson's
 13 reaction to what Schein decided with respect to the
 14 TDA?
 15 A. No, no, we make our own decision.
 16 Q. What do you mean by that?
 17 A. Well, they might agree with it, they
 18 might disagree with it, it doesn't really bother me at
 19 all.
 20 Q. Do you know whether anyone else at Schein
 21 was concerned about providing accurate information to
 22 Patterson regarding the TDA trade show?
 23 MR. McDONALD: Object to the form,
 24 mischaracterizes the testimony.
 25 THE WITNESS: I don't recall.

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1 accurate with everybody.
 2 Q. So you were concerned about providing
 3 inaccurate information to a competitor?
 4 MR. McDONALD: Object to the form.
 5 THE WITNESS: I was concerned about
 6 providing inaccurate information to anybody. I wanted
 7 to tell him the truth when I knew what I knew, I
 8 didn't know at that point.
 9 BY MR. SOLOMON:
 10 Q. Did you think there would be any
 11 consequence to providing inaccurate information to
 12 Mr. Misiak?
 13 A. Never thought about it.
 14 MR. McDONALD: Object to form.
 15 BY MR. SOLOMON:
 16 Q. Did providing inaccurate information to
 17 Patterson concern you in any way?
 18 A. Not really, no.
 19 Q. You say not really.
 20 A. I mean -- no, I just -- I wouldn't -- I
 21 wouldn't knowingly provide inaccurate information to
 22 anyone.
 23 Q. So you wanted to make sure that you
 24 provided Patterson with correct information?
 25 A. Yes, that's right.

1 Somebody else talking to Patterson, is
 2 that what you are saying?
 3 BY MR. SOLOMON:
 4 Q. Well, my question was specifically about
 5 whether anyone else at Schein was concerned about
 6 providing accurate information to Patterson about
 7 Schein's plans with respect to the TDA trade show.
 8 A. I have no idea.
 9 MR. McDONALD: Hang on, please pause.
 10 Object to the form.
 11 THE WITNESS: No idea.
 12 BY MR. SOLOMON:
 13 Q. Did you ever get back to Mr. Misiak after
 14 writing this e-mail on January 21, 2014?
 15 A. No.
 16 Q. So you never called Mr. Misiak after
 17 this?
 18 A. No.
 19 Q. Did you ever e-mail him after this?
 20 A. I --
 21 MR. McDONALD: Object to the form,
 22 mischaracterizes the document. This is not an e-mail.
 23 THE WITNESS: No, I had e-mailed him and
 24 telling him I would get back to him, but I did not get
 25 back to him.

221

1 BY MR. SOLOMON:
 2 **Q. Why did you not get back to Mr. Misiak?**
 3 A. Because when we chose to withdraw it was
 4 public information very quickly and got every
 5 everywhere, everybody knew, there was no reason to get
 6 back.
 7 **Q. And that would have been in the April,**
 8 **2014 timeframe when Schein made a decision, right?**
 9 MR. McDONALD: Object to the form.
 10 THE WITNESS: I believe so.
 11 BY MR. SOLOMON:
 12 **Q. Mr. --**
 13 MR. McDONALD: What is redacted, do you
 14 know, did you all do that?
 15 MR. SOLOMON: Yes, we did.
 16 MR. McDONALD: What is it?
 17 MR. SOLOMON: This was a document
 18 produced by Patterson, it has a Patterson Bates number
 19 on it, so that would have been an internal e-mail that
 20 took place at Patterson.
 21 MR. McDONALD: Okay.
 22 MR. SOLOMON: It is possible that one of
 23 the witnesses might have seen that in one of the other
 24 litigations, I don't know, but we redacted it just to
 25 be careful.

222

1 MR. McDONALD: Okay.
 2 (Document identified as Exhibit 236 for
 3 identification.)
 4 BY MR. SOLOMON:
 5 **Q. Mr. Steck, have you had a chance to look**
 6 **at Exhibit 236?**
 7 A. Yes.
 8 **Q. Do you recall this e-mail?**
 9 A. I recall sending it, yes.
 10 **Q. And this is from you to Mr. Misiak on**
 11 **January 21, 2014, and the subject is Texas.**
 12 A. Uh-huh.
 13 **Q. When you say "Hi, Dave. I will be**
 14 **calling you to let you know about our decision on the**
 15 **matter we recently discussed in the next couple of**
 16 **days."**
 17 **What does the matter we recently**
 18 **discussed referred to in your e-mail?**
 19 A. It refers to the fact that he had called
 20 me to let me know he wouldn't be attending the TDA.
 21 **Q. You said you would be getting back to him**
 22 **about Schein's decision, right?**
 23 A. Yes.
 24 **Q. So that would refer to Schein's decision**
 25 **about whether or not to attend the TDA?**

223

1 A. Yes.
 2 **Q. Did you tell anyone else at Schein apart**
 3 **from Mr. Cavaretta that you would be contacting**
 4 **Mr. Misiak as you have in this e-mail, Exhibit 236?**
 5 A. I don't recall.
 6 **Q. Did you ever discuss this e-mail with**
 7 **Mr. Sullivan?**
 8 A. I don't know that I discussed this e-mail
 9 with Mr. Sullivan, no, I don't recall if I did or not.
 10 **Q. You say that you would be getting back to**
 11 **Patterson in the next couple of days.**
 12 **What did you plan to tell Mr. Steck --**
 13 **strike that.**
 14 **What did you plan to tell Mr. Misiak when**
 15 **you got back to him?**
 16 A. I would tell him if we made a decision,
 17 that is what the e-mail says.
 18 **Q. And why did you want to get back to him**
 19 **within a couple of days?**
 20 MR. McDONALD: Object to the form.
 21 THE WITNESS: I thought that we were
 22 going to be making a decision in the next couple of
 23 days. It turned out it took several -- a couple of
 24 months.
 25

224

1 BY MR. SOLOMON:
 2 **Q. So this e-mail in January, 2014 at**
 3 **5:23 p.m., was this the last time you communicated**
 4 **with Mr. Misiak?**
 5 A. Yes.
 6 **Q. And you -- is it your testimony that you**
 7 **never communicated with Mr. Misiak again after this**
 8 **e-mail?**
 9 A. I am going to qualify that, I never
 10 communicated with Mr. Misiak about the TDA since then.
 11 **Q. Mr. Steck, as you can see this e-mail was**
 12 **produced to us by it has a Bates number that**
 13 **represents it originated from Patterson Dental.**
 14 A. Yes.
 15 **Q. We didn't find a corresponding copy of**
 16 **this e-mail in Henry Schein's production.**
 17 **I am wondering if do you know whether**
 18 **this is something that would have stayed in your**
 19 **e-mail records after the sending of this e-mail.**
 20 A. I can't imagine why it wouldn't, a lot of
 21 other ones were in there, I don't know why this wasn't
 22 in there.
 23 **Q. Do you recall ever deleting this e-mail?**
 24 A. Not specifically, no.
 25 **Q. Generally?**

56 (Pages 221 to 224)

225

1 A. No.
 2 **Q. Is it possible that you did at some point**
 3 **after writing this e-mail?**
 4 MR. McDONALD: Object to the form, don't
 5 speculate.
 6 THE WITNESS: No, I don't know.
 7 BY MR. SOLOMON:
 8 **Q. Would you have expected this to have been**
 9 **in Schein's document production?**
 10 A. Yes.
 11 (Document identified as Exhibit 237 for
 12 identification.)
 13 BY MR. SOLOMON:
 14 **Q. Mr. Steck, the court reporter has handed**
 15 **you Exhibit 237. Please let me know when you have had**
 16 **a chance to look it over.**
 17 A. Okay.
 18 **Q. This document is Bates labeled Henry**
 19 **Schein-000012343. Strike that.**
 20 **Henry Schein-000012169 is the first page**
 21 **and the second page is Henry Schein 0000012343. And**
 22 **these two pages represent excerpts that were taken**
 23 **from a document that was produced to us by Henry**
 24 **Schein.**
 25 A. Okay.

226

1 **Q. I would just like to direct your**
 2 **attention to Page 2 of the document, about six lines**
 3 **from the top. There is an entry from January 6, 2014**
 4 **at 12:42 p m. Do you see that, Mr. Steck?**
 5 A. I do.
 6 **Q. And I would just like to confirm the**
 7 **left-hand most column in this document has a phone**
 8 **number there (414) 688-1925. Am I correct that that**
 9 **is your cell phone number?**
 10 A. Yes, it is.
 11 **Q. And turning to a few columns over there**
 12 **is a To line and there is another number**
 13 **(651) 686-1652. Do you see that?**
 14 A. I do.
 15 **Q. Do you recognize that number?**
 16 A. No.
 17 **Q. Do you have any doubt that this -- strike**
 18 **that.**
 19 **Is it possible that this is Mr. Misiak's**
 20 **cell phone number?**
 21 A. I have no idea, I don't have his cell
 22 phone number.
 23 **Q. You have no reason to doubt that would be**
 24 **Mr. Misiak's cell phone number, right?**
 25 MR. McDONALD: Object to form.

227

1 THE WITNESS: I don't know. It could be,
 2 could not be, I talked to other people in St. Paul,
 3 too.
 4 BY MR. SOLOMON:
 5 **Q. And as you just mentioned, the phone**
 6 **number is associated with a St. Paul, Minnesota**
 7 **address, do you see that?**
 8 A. Yes.
 9 **Q. And then one line over from direction, it**
 10 **says incoming, do you see that?**
 11 A. Yes.
 12 **Q. Does that represent that this was an**
 13 **incoming call to your cell phone?**
 14 MR. McDONALD: Object to the form.
 15 THE WITNESS: I have not seen this report
 16 before, but I will presume that that is what that
 17 means.
 18 BY MR. SOLOMON:
 19 **Q. According to the duration column of this**
 20 **document the call that we are focusing on lasted for**
 21 **about 14 minutes, do you see that?**
 22 A. Yes.
 23 **Q. Does this refresh your recollection about**
 24 **a conversation you had with Mr. Misiak in January**
 25 **of 2014?**

228

1 A. Again, I am not sure this is his phone
 2 number, this phone number, then I guess it was 14
 3 minutes, but I don't know that that is the case. I
 4 get calls from other places, too.
 5 **Q. And assuming this is Mr. Misiak's phone**
 6 **number --**
 7 MR. McDONALD: Are you representing that?
 8 MR. SOLOMON: I will represent that this
 9 is Mr. Misiak's office phone number.
 10 MR. McDONALD: We can cut through this if
 11 we just make that representation to him.
 12 BY MR. SOLOMON:
 13 **Q. So my question again is does this refresh**
 14 **your recollection about a conversation with Mr. Misiak**
 15 **in early January, 2014 about the TDA?**
 16 A. Yes.
 17 **Q. And this would have been the phone**
 18 **conversation you earlier testified about with**
 19 **Mr. Misiak, is that right?**
 20 A. Yes.
 21 **Q. And you previously testified that it was**
 22 **only two or three minutes, do you recall that?**
 23 MR. McDONALD: Object to the form.
 24 THE WITNESS: That was my recollection.
 25

57 (Pages 225 to 228)

229

1 BY MR. SOLOMON:

2 **Q. According to this document your**
3 **conversation with Mr. Misiak was 14 minutes long, is**
4 **that right?**

5 A. That is what it says.

6 **Q. You also testified earlier that your**
7 **entire phone call was dedicated to talking about the**
8 **TDA and whether or not Patterson and Schein would be**
9 **attending the TDA, that you didn't discuss any other**
10 **topics, do you recall that?**

11 MR. McDONALD: Object to the form,
12 mischaracterizes the testimony.

13 THE WITNESS: I don't recall discussing
14 anything other than the TDA situation.

15 BY MR. SOLOMON:

16 **Q. Would it be fair to say that you**
17 **discussed the TDA situation with Mr. Misiak for 14**
18 **minutes?**

19 A. Possibly.

20 **Q. Would it be typical for you to speak to**
21 **Mr. Misiak by phone for 14 minutes?**

22 MR. McDONALD: Object to the form.

23 THE WITNESS: I don't know that I have
24 ever received another call from Mr. Misiak, before or
25 since.

231

1 A. Yes.

2 **Q. And then the next phone number listed**
3 **under Source App: IMessage is (414) 688-1925, and I**
4 **believe you just testified that is your cell phone**
5 **number, is that right?**

6 A. Yes, it is.

7 **Q. So this is -- this represents a text**
8 **message communication between yourself and your son**
9 **Kyle Steck, right?**

10 A. It was Kyle sending it to me, but yes.

11 **Q. I will just kind of walk through the**
12 **substance of it, Mr. Steck he "just walked out of our**
13 **TDA meeting" -- strike that. "Just walked out of our**
14 **meeting with TDA."**

15 **Would you agree that this text message is**
16 **about a meeting Mr. Kyle Steck had with the TDA in**
17 **April of 2014?**

18 A. Yes. I don't believe he was there by
19 himself, I believe he was there with others, too.

20 **Q. And what was the purpose of this meeting?**

21 MR. McDONALD: Object to the form.

22 THE WITNESS: I believe it was about
23 trying to decide whether we are going to go to the TDA
24 and if there was something to try to work with them on
25 to try to stay part of the meeting and then become

230

1 BY MR. SOLOMON:

2 **Q. Before this instance here?**

3 A. Yes.

4 **Q. You can put that document aside. We may**
5 **refer to it again.**

6 **(Document identified as Exhibit 238 for**
7 **identification.)**

8 BY MR. SOLOMON:

9 **Q. Mr. Steck, the court reporter has handed**
10 **you Exhibit 238. Please let me know what you have a**
11 **chance to review it. For the record it bears Bates**
12 **Nos. HSD-AZ0136566.**

13 A. I see it.

14 **Q. Do you recall this communication?**

15 A. I believe I do.

16 **Q. This appears to be a text message between**
17 **two phone numbers, starting at the top there is a**
18 **number it is (512) 221-8968.**

19 **Mr. Steck, do you recognize that number?**

20 A. I don't recognize the number, but -- no,
21 I don't recognize that number specifically, but I do
22 believe I know who it is from.

23 **Q. Who is it from?**

24 A. I believe it is from my son.

25 **Q. Would that be Mr. Kyle Steck?**

232

1 part of the program.

2 BY MR. SOLOMON:

3 **Q. Mr. Kyle Steck goes on to say "tough**
4 **decision to make." Do you see that?**

5 A. Yes.

6 **Q. Is it fair to say that Schein had not yet**
7 **made up its mind as to whether it was attending the**
8 **TDA 2014 trade show at the time of this communication?**

9 A. Yes, that is what I would infer from
10 this, yes.

11 **Q. I want to turn to the sentence before**
12 **last of this communication, Mr. Kyle Steck writes**
13 **"Nonetheless, it invites the possibility that**
14 **Patterson will come back and they can stick it to us."**
15 **Do you see that?**

16 A. Yes.

17 **Q. Is it fair to say that Mr. Kyle Steck was**
18 **referring to Patterson retaliating against Schein for**
19 **cooperating with the TDA?**

20 MR. McDONALD: Object to form.

21 THE WITNESS: That is not the way I would
22 read it.

23 BY MR. SOLOMON:

24 **Q. How would you read that sentence?**

25 A. That we were choosing not to go, that

233

1 Patterson could decide to come back and then be at the
2 meeting without us.

3 **Q. Meaning Patterson would change its mind
4 and it would attend the meeting?**

5 A. Yes.

6 **Q. How do you know that is what Mr. Kyle
7 Steck was referring to here?**

8 MR. McDONALD: Object to the form. You
9 asked his understanding and he gave it to you.

10 MR. SOLOMON: I am just asking
11 understanding how he knows that.

12 MR. McDONALD: You can also read Kyle's
13 EUO, which you have in your possession, where he
14 testifies about this.

15 MR. SOLOMON: I don't know what you are
16 referring to.

17 MR. McDONALD: Kyle Steck's examination
18 under oath from the Texas Attorney General that has
19 been provided to you.

20 MR. SOLOMON: I am just talking to --
21 trying to get Mr. Dave Steck's understanding.

22 MR. McDONALD: Again, you asked him for
23 his understanding and he gave it to you.

24 MR. SOLOMON: And I am asking what that
25 understanding is based on. I think that is a proper

235

1 **you had with Mr. Kyle Steck about this text message
2 represented in this document in front of you?**

3 A. I don't recall anything specific to this
4 text message, no.

5 **Q. Do you recall whether or not you
6 responded to Mr. Kyle Steck?**

7 A. With the text message back?

8 **Q. Uh-huh, right.**

9 A. I don't recall.

10 **Q. Did you follow-up with Mr. Kyle Steck by
11 phone or e-mail?**

12 A. I don't remember.

13 Are we done with this one?

14 **Q. You can put it aside for now.**

15 A. Okay.

16 (Document identified as Exhibit 239 for
17 identification.)

18 BY MR. SOLOMON:

19 **Q. Mr. Steck, do you recall the text message
20 conversation represented in Exhibit 239?**

21 A. I do now, yes.

22 **Q. And this appears to be another text
23 message conversation between yourself and your son,
24 Mr. Kyle Steck, right?**

25 A. Yes.

234

1 question.

2 MR. McDONALD: Okay.

3 THE WITNESS: I am just speculating that
4 is what he intended, that is what he meant by this.

5 BY MR. SOLOMON:

6 **Q. So it is not based on any follow-up
7 conversation you had with Mr. Kyle Steck about what he
8 meant here?**

9 A. No.

10 **Q. The next sentence Mr. Kyle Steck writes
11 "I am sure Joe or Dean will call you..." and I think
12 Joe refers to Mr. Cavaretta and Dean refers to
13 Mr. Dean Kyle, is that right?**

14 A. Yes, I believe that is right.

15 **Q. Did Mr. Cavaretta or Mr. Kyle in fact
16 call you?**

17 A. I don't remember. They certainly might
18 have.

19 **Q. Do you recall what you might have
20 discussed with Mr. Cavaretta or Mr. Kyle?**

21 MR. McDONALD: Object to the form.

22 THE WITNESS: We would have discussed the
23 meeting I had with the TDA.

24 BY MR. SOLOMON:

25 **Q. Do you recall any follow-up conversations**

236

1 **Q. So I just kind of want to start at the
2 top here, the first message in this chain, the text
3 says "Planmeca out of TDA," do you see that?**

4 A. Yes.

5 **Q. That is from Mr. Kyle Steck, right?**

6 A. Yes.

7 **Q. And Planmeca is a manufacturer, is that
8 right?**

9 A. Yes.

10 **Q. Do you know how Mr. Kyle Steck learned
11 that Planmeca was not attending the TDA?**

12 A. I do not.

13 **Q. Do you know whether Planmeca ultimately
14 attended the TDA in 2014?**

15 A. I do not.

16 **Q. Do you know why Mr. Kyle Steck was
17 sending you a text message about Planmeca's plans with
18 respect to attendance at the TDA trade show?**

19 A. He was just relating news relative to the
20 TDA.

21 **Q. Why?**

22 A. It is a hot topic.

23 **Q. Was this information of interest to you
24 at the time?**

25 A. Yes.

237

1 **Q. Why?**
 2 A. I just wanted -- it was interesting to
 3 know.
 4 **Q. Had you ever communicated with anyone at**
 5 **Planmeca about the TDA Perks Supply program?**
 6 A. No, I didn't.
 7 **Q. Did you ever communicate with anyone at**
 8 **Planmeca about whether they were attending TDA in**
 9 **2014?**
 10 A. No.
 11 **Q. You don't know how Mr. Kyle Steck learned**
 12 **this information, right?**
 13 A. I do not.
 14 **Q. It looks like the next message in this**
 15 **chain is a response in which you say "Awesome... What**
 16 **about Midmark?" Do you see that?**
 17 A. Yes.
 18 **Q. And Midmark is another manufacturer,**
 19 **right?**
 20 A. Of dental equipment, yes.
 21 **Q. And why were you asking Mr. Kyle about**
 22 **Midmark -- strike that.**
 23 **Why were you asking Mr. Kyle Steck about**
 24 **Midmark?**
 25 A. Just asking because they were another

238

1 equipment company if they had made any decisions as
 2 well.
 3 **Q. Did you expect that Mr. Kyle Steck would**
 4 **know that information?**
 5 A. Maybe.
 6 **Q. Why?**
 7 A. Because he is the local manager and he is
 8 aware of that kind of stuff.
 9 **Q. Was it of interest to you whether Midmark**
 10 **was attending the 2014 TDA trade show?**
 11 A. It would have been interesting to know
 12 one way or the other, but it wasn't affecting me one
 13 way or the other.
 14 **Q. Why not?**
 15 A. Because we had already made a decision.
 16 **Q. At the time of this e-mail April 21, 2014**
 17 **Schein had made a decision about the TDA, is that what**
 18 **you are testifying?**
 19 MR. McDONALD: Object to the form.
 20 If you know tell him.
 21 THE WITNESS: I believe we had, but I am
 22 not sure.
 23 BY MR. SOLOMON:
 24 **Q. If Schein had already made a decision at**
 25 **the time of this text message why were you interested**

239

1 **to know about the plans of other manufacturers?**
 2 A. We weren't the only ones who had issues
 3 with the TDA in this program.
 4 **Q. I think my question is a little bit**
 5 **different.**
 6 **I am just curious why you wanted to know**
 7 **what other manufacturers were doing if Schein had**
 8 **already made the decision to pull out of the show.**
 9 A. It is just interesting to know how
 10 everybody is looking at the situation, that is all.
 11 **Q. Why is that?**
 12 A. I don't think there is anything more to
 13 add to that.
 14 **Q. Why not?**
 15 A. Because there isn't. I mean, it was
 16 interesting to know somebody else had made that
 17 decision, they all made it independently.
 18 **Q. How do you know that?**
 19 A. I had no conversations with them.
 20 **Q. Who are you referring to by them in your**
 21 **last answer?**
 22 A. Any of the manufacturers that are listed
 23 here.
 24 **Q. And then just turning to the next message**
 25 **in this conversation, Mr. Steck writes "I think it was**

240

1 **safe for Planmeca in that they only do small business**
 2 **with Burkhart and Sirona is already out with**
 3 **Patterson." Do you see that?**
 4 A. Yes.
 5 **Q. Do you know how Mr. Kyle Steck knew that**
 6 **Sirona was already out with Patterson?**
 7 A. No.
 8 **Q. Do you know why he provided that**
 9 **information to you?**
 10 A. Again, just he thought it would be of
 11 interest.
 12 **Q. Why?**
 13 A. Just to understand what was going on with
 14 the meeting.
 15 **Q. Did you tell anyone at Schein's corporate**
 16 **office about this conversation you had with Mr. Kyle**
 17 **Steck?**
 18 A. I don't recall.
 19 MR. McDONALD: The text message, is that
 20 what you are talking about?
 21 MR. SOLOMON: That's right.
 22 THE WITNESS: I don't recall, but I very
 23 well might have.
 24 BY MR. SOLOMON:
 25 **Q. Who would you have told?**

60 (Pages 237 to 240)

241	<p>1 A. Probably Tim Sullivan.</p> <p>2 Q. What would you have told Tim Sullivan?</p> <p>3 A. That these manufacturers had elected not</p> <p>4 to come.</p> <p>5 Q. Why would you tell Mr. Sullivan that</p> <p>6 information?</p> <p>7 A. It is of interest to him, too, as much as</p> <p>8 it was to me.</p> <p>9 Q. How do you know that?</p> <p>10 MR. McDONALD: Object to the form.</p> <p>11 THE WITNESS: Just it just was, we had</p> <p>12 made a decision to pull out and other people -- I</p> <p>13 believe we had made a decision to pull out. If other</p> <p>14 people had come to a similar decision it was their</p> <p>15 decision to make.</p> <p>16 (Document identified as Exhibit 240 for</p> <p>17 identification.)</p> <p>18 BY MR. SOLOMON:</p> <p>19 Q. Mr. Steck, you have Exhibit 240 in front</p> <p>20 of you. Would you let me know when you had a chance</p> <p>21 to review it?</p> <p>22 A. I read it.</p> <p>23 Q. Do you recall this e-mail?</p> <p>24 A. Yes.</p> <p>25 Q. What is this e-mail?</p>	243	<p>1 BY MR. SOLOMON:</p> <p>2 Q. Do you know why Mr. Stack was providing</p> <p>3 that information to you?</p> <p>4 A. No idea.</p> <p>5 Q. Mr. Stack writes, the sentence before the</p> <p>6 last, "just wanted to drop you a quick note to</p> <p>7 confirm..." Do you see where I am referring to?</p> <p>8 A. Yes.</p> <p>9 Q. Do you know what Mr. Stack was</p> <p>10 confirming?</p> <p>11 A. No idea.</p> <p>12 Q. Had you asked Mr. Stack to confirm</p> <p>13 Ivoclar was pulling its authorized dealer to selling</p> <p>14 at the TDA to the Perks Supply program?</p> <p>15 A. No, I was not.</p> <p>16 Q. So you have no understanding as to what</p> <p>17 Mr. Stack is confirming here?</p> <p>18 A. No.</p> <p>19 Q. Were you surprised by his reference to</p> <p>20 confirming something when you read this e-mail?</p> <p>21 A. I didn't get that into the wording of it,</p> <p>22 he was just letting me know that they had made a</p> <p>23 distribution decision. It is not that uncommon for</p> <p>24 manufacturers to let us know they made particular</p> <p>25 distribution decisions after they make them.</p>
242	<p>1 A. This is the one I referred to earlier in</p> <p>2 my testimony.</p> <p>3 Q. That would be a conversation between</p> <p>4 yourself and Mr. John Steck who was from Ivoclar?</p> <p>5 A. Right.</p> <p>6 Q. I kind of just want to walk through this</p> <p>7 e-mail here.</p> <p>8 Is it fair to say Mr. Steck was e-mailing</p> <p>9 you regarding Ivoclar's discontinuing its authorized</p> <p>10 products?</p> <p>11 MR. McDONALD: Objection to form.</p> <p>12 MR. SOLOMON: I hadn't finished my</p> <p>13 question.</p> <p>14 MR. McDONALD: Sorry, I thought you had</p> <p>15 paused.</p> <p>16 BY MR. SOLOMON:</p> <p>17 Q. Is it fair to say that Mr. Steck was</p> <p>18 e-mailing you regarding Ivoclar discontinuing its</p> <p>19 authorized distribution of products through the TDA?</p> <p>20 MR. McDONALD: Object to the form.</p> <p>21 THE WITNESS: I would characterize it as</p> <p>22 the Ivoclar had requested at the west coast that was</p> <p>23 featuring the products through Source One, which was</p> <p>24 the TDA Perks supplier, and let us know that.</p> <p>25</p>	244	<p>1 Q. Did you discuss this e-mail with</p> <p>2 Mr. Sullivan?</p> <p>3 A. I don't believe I did.</p> <p>4 Q. And at the top you say, "Thanks, John."</p> <p>5 Do you see that?</p> <p>6 A. Yes.</p> <p>7 Q. Why were you thanking Mr. Stack in your</p> <p>8 e-mail here?</p> <p>9 A. Thank you for sending an e-mail, for</p> <p>10 giving you information. There was nothing to it.</p> <p>11 Q. Did you think this information was</p> <p>12 helpful?</p> <p>13 A. Not really.</p> <p>14 Q. So you were just thanking John for</p> <p>15 providing it in any case?</p> <p>16 A. We have a good relationship.</p> <p>17 Q. How many times have you met with Mr. John</p> <p>18 Stack?</p> <p>19 A. Half a dozen, maybe more.</p> <p>20 Q. On what occasions do you meet with</p> <p>21 Mr. Stack?</p> <p>22 A. Well, Ivoclar is a large manufacturer, we</p> <p>23 are a large distributor for them. I don't know,</p> <p>24 couple times a year maybe for one reason or another.</p> <p>25 Q. My apologies if you testified about this</p>

245

1 earlier, I don't recall, but where would you normally
2 meet with Mr. Stack?

3 A. It is hard to say. Our meetings have not
4 been regular, so they have been whenever he has asked
5 for them or his boss who is copied in the e-mail has
6 asked for them. Again, it tends to be a couple times
7 a year and usually it is at conventions.

8 **Q. Who is Mr. Stack's boss that you are
9 referring to?**

10 A. Pierre Lamoure.

11 **Q. Do you know what Mr. Lamoure's title is
12 at Ivoclar?**

13 A. I believe he was VP of sales.

14 **Q. And how well do you know Mr. Lamoure?**

15 A. Pretty well.

16 **Q. How often do you meet with Mr. Lamoure?**

17 A. I just mentioned, it is not regular, it
18 is whatever he asks for it. It is probably a couple
19 of times a year, they would come together.

20 **Q. So Mr. Stack and Mr. Lamoure would be at
21 the meetings together?**

22 A. Correct.

23 **Q. Is there anyone else at Ivoclar with whom
24 you regularly communicate?**

25 MR. McDONALD: Object to the form.

247

1 **Q. Does Schein ever hold any offsite
2 meetings or retreats from manufacturers?**

3 A. Yes.

4 **Q. Which ones?**

5 A. It varies.

6 We do an annual meeting offsite with
7 Dentsply Sirona, Dentsply, prior to the merger. We
8 have done them with 3M, we have done them with KaVo
9 Kerr. I don't believe I have ever been one with
10 Ivoclar. We have done them with some of the equipment
11 companies as well.

12 **Q. Why does Schein participate in those
13 meetings?**

14 A. We talk about what we can do to grow the
15 business together, what opportunities there are in the
16 marketplace for us to work together.

17 **Q. Do these meetings typically have an
18 agenda?**

19 A. Yes.

20 **Q. Do you know who prepares those agendas?**

21 A. Usually the company.

22 **Q. So the manufacturer would prepare the
23 agenda in advance of the meeting?**

24 A. Yes.

25 **Q. Do you know how long these meetings**

246

1 THE WITNESS: Not regularly, no.

2 BY MR. SOLOMON:

3 **Q. How about irregularly?**

4 A. They all change people occasionally from
5 time to time, it is hard to tell. I can't think of
6 anybody. There may be someone else, but I can't think
7 of them right now.

8 **Q. Would you say that Mr. Stack and
9 Mr. Lamoure are your primary points of contact at
10 Ivoclar?**

11 A. Mr. Lamoure is my primary contact,
12 Mr. Stack is somebody who works for him and I come in
13 contact with and seen at a few meetings, et cetera.

14 **Q. Does Schein ever hold joint meetings with
15 manufacturers?**

16 MR. McDONALD: Object to the form.

17 If you understand you can answer.

18 THE WITNESS: I was going to ask for
19 clarification.

20 You mean a meeting where we sit down with
21 the manufacturer to talk about business or something,
22 is that what you are asking?

23 BY MR. SOLOMON:

24 **Q. Yes.**

25 A. All the time, sure.

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1 usually last for?

2 MR. McDONALD: Object to the form.

3 THE WITNESS: It varies. The actual
4 business meetings are usually a few hours and normally
5 if they are offsite there is some kind of recreation
6 involved.

7 BY MR. SOLOMON:

8 **Q. So that would be a golf outing or dinner
9 or something along those lines?**

10 A. Yes.

11 **Q. About how many people from Schein usually
12 attend those meetings?**

13 A. It depends. It can be as few as two or
14 three, it can be as many as eight or nine probably.

15 **Q. Do you usually attend -- strike that.**

16 **Do you try to attend all of the offsite
17 meetings with manufacturers?**

18 A. I think to, yes.

19 **Q. What about Mr. Sullivan?**

20 A. He does most of the time, he can't make
21 all of them.

22 **Q. Who else usually attends these types of
23 meetings from Henry Schein Dental?**

24 A. Normally someone from our New York team,
25 marketing team, and usually Joe or Jake, our two VPs

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1 of sales, or both, and usually someone on my team that
2 is in a position to handle relations with that
3 company, whoever that is.

4 **Q. Can you give me an example of something**
5 **that a manufacturer would want to discuss as part of**
6 **an agenda at one of these meetings?**

7 A. Sure. You know, how can we grow our
8 business together, what segments of the market do we
9 want to go after together, what products do we sell we
10 can make we can do a better job with, how do we work
11 more closely with your sales team, those are all
12 things we talked about.

13 **Q. Does Schein ever provide the manufacturer**
14 **with a topic of discussion at these types of meetings?**

15 A. We could, we have, yes, we have.

16 **Q. Can you give me an example.**

17 A. If we felt that, for example, with an
18 equipment company, if we felt they had a product that
19 was underdeveloped or category was underdeveloped that
20 we thought we would do a better job with some help
21 from them we would probably put that on the agenda.

22 **Q. Does Schein ever discuss customers with**
23 **manufacturers at these types of meetings?**

24 A. Not generally, no.

25 **Q. Has that ever happened in your**

250

1 **experience?**

2 A. The only ones I believe have ever been
3 discussed were large DSOs, could make a significant
4 impact in the marketplace if the business was lost or
5 gained.

6 **Q. What kind of discussions would those be?**

7 A. Hey, we are really excited, we have
8 Heartland down or insert a name of a DSO to sell our
9 product or buy our product or what can we do, in which
10 case I am usually not the person to ask that question
11 because my group doesn't deal with those.

12 **Q. Who would be the person who would have**
13 **those discussions with a manufacturer?**

14 A. Hal Muller and Paul Burke, Paul Burke, he
15 works for Hal Muller.

16 **Q. I am not sure if we discussed him at all**
17 **today, can you -- do you know what his title is?**

18 A. No. It is somewhere around there, he
19 handles a lot of the vendor relations for special
20 markets.

21 **Q. Do any of Schein's top manufacturing**
22 **partners sell directly to customers?**

23 A. Well, Dentsply has direct divisions that
24 sell directly to customers that are not -- they are
25 mostly specialized products like implants and things

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1 like that.

2 **Q. Go you --**

3 A. Things not traditionally that we don't
4 traditionally sell that much.

5 **Q. Do those divisions ever sell merchandise**
6 **or consumables to customers directly?**

7 A. I would --

8 MR. McDONALD: Object to the form.

9 THE WITNESS: I would be careful of the
10 word ever.

11 I believe they sell to dental schools
12 direct, but to dentists themselves, private practicing
13 dentists, which is what I am most familiar with, I am
14 not familiar with them selling direct.

15 BY MR. SOLOMON:

16 **Q. Are you aware of any products that**
17 **manufacturers sell directly which Schein also sells?**

18 A. Yes, sure.

19 **Q. Can you give me some examples?**

20 A. Well, there are a couple of brands that
21 sell both direct and through Schein.

22 **Q. Can you give -- name those brands?**

23 A. One that came to mind is a company called
24 Centrix and they sell both through us and through
25 distribution -- through us and directly.

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1 **Q. Do you know why the manufacturer sells**
2 **directly?**

3 MR. McDONALD: Object to the form.

4 THE WITNESS: I don't know why each of
5 them make that decision, no.

6 BY MR. SOLOMON:

7 **Q. Does Schein have an opinion about that**
8 **decision?**

9 MR. McDONALD: Object to the form.

10 He is not here as a corporate rep, you
11 can ask him if he has an opinion.

12 BY MR. SOLOMON:

13 **Q. Do you have an opinion about**
14 **manufacturers selling directly the same products which**
15 **Schein also sells?**

16 A. I think they would limit the level of
17 support they would get from the salesperson by doing
18 that.

19 **Q. What do you mean by that?**

20 A. Because these products are consumables,
21 so if I were to sell a product from a brand like
22 Centrix that was in a dental office, I am a Schein
23 rep, and then they can call and order direct I
24 wouldn't be commissioned or get credit for it after
25 that.

253	<p>1 Q. So would a sales representative be 2 disincentivized to sell products which manufacturers 3 also sell directly to customers? 4 A. We don't disincentivize them, but I 5 believe they would believe that the fact that the 6 customer could buy it without them and being involved 7 in it would be reason not to promote it. 8 Q. What do you mean by promote it? 9 A. Doctors ask for product advice all the 10 time. 11 Q. Any other -- strike that. 12 Would a Schein sales representative do 13 anything to steer manufacturers away from products 14 that manufacturers sell directly? 15 MR. McDONALD: Object to the form. 16 You ought to read your question, Ronnie, 17 you might want to restate it. 18 BY MR. SOLOMON: 19 Q. Thank you, I appreciate that. 20 Would a Schein sales representative do 21 anything to steer a customer away from a product which 22 a manufacturer sells directly? 23 A. They very well might. 24 Q. What could a sales representative do in 25 that instance?</p>	255	<p>1 Q. What kind of discussions have you had? 2 A. Well, generally they want to know what 3 our opinion is on them so we generally share with them 4 what we have been talking about with them today. 5 Q. Have you spoken with all of Schein's top 6 manufacturing partners about buying groups? 7 A. No. 8 Q. Which ones have you spoken with? 9 A. Dentsply, they are the most interested. 10 There may be one or two others, but I can't really 11 remember specifically. 12 What happened, I believe, with the 13 Dentsply case, is that they already had an agreement 14 with Smile Source so when we took over or were 15 authorized as a Smile Source distributor that they 16 just let us know what that was. 17 Q. You said -- you mentioned that Dentsply 18 -- you said Dentsply they are the most interested, 19 referring to buying groups. What did you mean by 20 that? 21 A. Dentsply of all the companies we do 22 business with is the most aggressive in terms of 23 trying to find new parts of the market that they can 24 sell to. 25 Q. Have representatives of Dentsply ever</p>
254	<p>1 A. Promote a competing product that did not 2 self direct. 3 Q. Are you aware of that ever happening in 4 the field? 5 A. I can't cite a specific instance, but I 6 am sure it happens. 7 Q. So we talked a little about Dentsply has 8 certain divisions that sell direct. Do you know 9 whether there are any other manufacturers which Schein 10 works that also sell directly to customers? 11 A. Yes. KaVo Kerr has some direct 12 companies. 13 Almost all of these are what I call 14 specialty businesses, in other words, they sell to 15 orthodontists, endodontists, they don't sell to 16 general practitioners, which is a little different. 17 The -- I am just thinking who else. 18 There might be one or two others. 19 Like I said, most manufacturers sell 20 direct to dental schools just because the products are 21 discounted so low. 22 That is the only ones I can think of. 23 Q. Do you ever discuss buying groups with 24 manufacturers? 25 A. We have had discussions about them, sure.</p>	256	<p>1 encouraged Schein to work with a specific buying group 2 or GPA? 3 A. Not to my knowledge. 4 Q. Have you ever asked a manufacturer 5 whether they would support Schein working with a 6 buying group or GPO? 7 A. Not that I can remember. 8 Q. Do you know whether anyone else at Schein 9 has had those types of conversations with a 10 representative of a manufacturer? 11 A. No. 12 I know there was some discussion when we 13 did the Smile Source thing earlier this year with 14 A-Dec who was approached by Smile Source and they 15 asked us what we thought, but that was the extent of 16 it. 17 Q. Have you or anyone else at Schein ever 18 suggested that Schein would not be in favor of a 19 manufacturer selling directly to a buying group or 20 GPO? 21 MR. McDONALD: Object to the form. 22 THE WITNESS: I don't remember ever 23 having a conversation like that, but I think it would 24 be obvious to the manufacturing community that if they 25 started selling directly to a buying group, which is</p>

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1 effectively selling directly to the dentist, same
2 thing, that we wouldn't view it positively, but I
3 don't believe they have ever asked the question.

4 BY MR. SOLOMON:

5 **Q. Why do say it would be rather obvious to
6 the manufacturing community?**

7 A. Because we make money selling products.
8 And so if they are bypassing us then we are not going
9 to have access to the products.

10 **Q. And so in that instance or in that
11 scenario Schein would lose sales?**

12 A. Yes, sure.

13 **Q. But you are not aware of any specific
14 conversations you or anyone else at Schein has had
15 with the manufacturer about that topic?**

16 A. I can't recall any, no.

17 **Q. Did you ever have the sense that
18 manufacturers were interested in directly selling to a
19 GPO or a buying group?**

20 MR. McDONALD: Object to form.

21 THE WITNESS: Did I ever -- can you
22 restate that, ever have the sense that --

23 BY MR. SOLOMON:

24 **Q. Sure.**

25 **Did you ever have the sense that**

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1 THE WITNESS: Where they refused to
2 provide special pricing, meaning they were not giving
3 us or the GPO any kind of special pricing other than
4 their normal wholesale is what you are asking?

5 BY MR. SOLOMON:

6 **Q. Right. That would be one instance of
7 that.**

8 A. Yeah, no, I am not aware of that.

9 MR. SOLOMON: I think we can take a short
10 break.

11 (Recess taken.)

12 BY MR. SOLOMON:

13 **Q. Mr. Steck, apart from Mr. Misiak -- apart
14 from a call you had with Mr. Misiak in January of 2014
15 have you communicated with anyone from Patterson in
16 the past ten years?**

17 A. Communicated is a wide term. I mean,
18 saying hello at a trade show, sure.

19 **Q. Have you had communications with anyone
20 from Patterson other than saying hello at a trade
21 show?**

22 A. Well, I work on a committee with Tim
23 Rogan on Dental Lifeline Network, he is on that as
24 well.

25 **Q. Who is Tim Rogan?**

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1 **manufacturers were interested in directly selling to a
2 GPO or buying group?**

3 MR. McDONALD: Object to the form.

4 THE WITNESS: No.

5 BY MR. SOLOMON:

6 **Q. Do dental manufacturers offer chargebacks
7 or discounts specific to buying groups or GPOs?**

8 MR. McDONALD: Object to the form, lack
9 of foundation.

10 THE WITNESS: I am not aware of any
11 personally with buying groups. We talked about it
12 earlier with corporate accounts. I am not aware of
13 any specific to buying groups. But there may be --
14 Smile Source which, again, I am not that familiar
15 with, there may be some kind of arrangement like that
16 and I am not familiar with that.

17 BY MR. SOLOMON:

18 **Q. Do you know whether that would be with
19 Dentsply?**

20 A. I don't know.

21 **Q. Are you aware of any instances in which a
22 manufacturer refused to provide special pricing for a
23 GPO or buying group customer?**

24 MR. McDONALD: Object to the form, lack
25 of foundation.

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1 A. Well, I believe he is works for Misiak,
2 but he is -- he and I are on the same board together.

3 **Q. Is Mr. Rogan an employee of Patterson?**

4 A. Yes.

5 **Q. So Mr. Rogan is a part of the Dental
6 Lifeline Network board, is that right?**

7 A. Yes.

8 **Q. Do you attend meetings for that
9 organization at which Mr. Rogan is also present?**

10 A. Generally he attends the same meetings I
11 do, yes.

12 **Q. About how many times a year do those
13 meetings occur?**

14 A. I already testified to this, but it is
15 twice a year usually.

16 **Q. Thank you.**

17 **Do you speak with Mr. Rogan at these
18 meetings?**

19 A. Generally about Dental Lifeline Network
20 matters, yes.

21 **Q. About anything else?**

22 A. Not really.

23 **Q. How long do those meetings usually last?**

24 A. They can be as long as a day, sometimes
25 usually a couple -- usually a couple hours.

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- 1 **Q. About how many people would you say**
 2 **attend those meetings?**
 3 A. We went through that earlier, I think
 4 there is about -- from the trades, dealers, and
 5 manufacturers probably six or so and then there is
 6 another six from the dental profession that are
 7 dentists and about six that are staff. Again, these
 8 are all approximate numbers, I can't give you exact.
 9 **Q. Have you ever discussed business other**
 10 **than business relating to the Dental Lifeline Network**
 11 **at one of those meetings?**
 12 A. No.
 13 **Q. Are there any other employees of**
 14 **distributors that are a part of that organization's**
 15 **board?**
 16 A. In the last year Chuck Cohen has joined
 17 the board as well.
 18 **Q. Who is Chuck Cohen?**
 19 A. Chuck is I believe his title is managing
 20 director of Benco.
 21 **Q. How many times have you -- strike that.**
 22 **Have you ever met Mr. Chuck Cohen?**
 23 A. Sure, yes.
 24 **Q. How many times?**
 25 A. Well, I met him before, just, again,

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- 1 saying hello, meetings, we are part of the same Dental
 2 Lifeline Network team, we used to do videos for the
 3 Dental Lifeline Network together. I don't know, maybe
 4 a dozen.
 5 **Q. A dozen over --**
 6 A. Ten years.
 7 **Q. Are you aware of any communications**
 8 **between Mr. Sullivan and Mr. Cohen?**
 9 A. Not currently, no.
 10 **Q. What about in the past?**
 11 A. I know they had had a conversation in the
 12 past about recruiting each other's salespeople.
 13 **Q. And how do you know about that**
 14 **conversation?**
 15 A. Because we had had an agreement with them
 16 that we would have so many days that the salesperson
 17 would be out of the territory if we recruited them and
 18 it was mutual.
 19 **Q. Did Mr. Sullivan ever tell you about a**
 20 **conversation he had with Mr. Cohen?**
 21 A. Related to the point I just made, yes.
 22 **Q. So he talked to you about a specific**
 23 **conversation he had with Mr. Cohen?**
 24 A. Yes.
 25 **Q. Was that a conversation by phone or in**

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- 1 **person or by e-mail?**
 2 A. I believe it was by phone, I don't know.
 3 **Q. Did Mr. Sullivan -- strike that.**
 4 **Do you know why Mr. Sullivan told you**
 5 **about that conversation?**
 6 A. Well, because I am involved with
 7 recruiting competitive salespeople from other places
 8 and so he just wanted me to be aware.
 9 **Q. Did Mr. Sullivan ever tell you about a**
 10 **conversation he had with Mr. Cohen about an entity**
 11 **called Atlantic Dental Care?**
 12 A. No, I don't believe so.
 13 **Q. Have you ever communicated with anyone**
 14 **else from Benco over the last ten years?**
 15 A. No.
 16 **Q. Have you ever spoken with Mr. Chuck Cohen**
 17 **about anything unrelated to the business of the Dental**
 18 **Lifeline Network?**
 19 A. Other than personal how are you doing,
 20 stuff, he had cancer, I probably asked how he was
 21 feeling and things like that.
 22 **Q. Anything else?**
 23 A. No.
 24 **Q. Have you ever met with Mr. Rogan where**
 25 **others were not present?**

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- 1 A. No.
 2 **Q. The same question for Mr. Chuck Cohen.**
 3 A. No.
 4 **Q. Have you ever spoken with Mr. Cohen by**
 5 **telephone?**
 6 A. Yes, related to a Dental Lifeline
 7 Network, I believe, last year, related to a Dental
 8 Lifeline Network fundraiser.
 9 **Q. So that would have been in 2016?**
 10 A. Yes, I think so.
 11 **Q. Do you know when Mr. Cohen joined the**
 12 **Dental Lifeline Network?**
 13 A. I think it was in 2016, earlier.
 14 **Q. Early 2016?**
 15 A. Yes, I think so.
 16 **Q. Would you say -- do you have an**
 17 **approximate month in mind, or is that something you**
 18 **recall?**
 19 A. I am not sure, I am not sure. If I had
 20 to guess I would say last spring, but I don't know.
 21 **Q. So the spring of 2016.**
 22 A. Maybe, yes.
 23 **Q. Have you ever communicated with anyone**
 24 **from Patterson about buying groups?**
 25 A. No.

66 (Pages 261 to 264)

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1 **Q. Have you ever communicated with anyone**
 2 **from Benco about buying groups?**
 3 A. No.
 4 **Q. Are you aware of anyone else from Schein**
 5 **communicating with Patterson about buying groups?**
 6 A. No.
 7 **Q. Are you aware of anyone else from Schein**
 8 **communicating with Benco about buying groups?**
 9 A. No.
 10 **Q. Mr. Steck, I would like to just have you**
 11 **look at Exhibit 237 again. And this time we are just**
 12 **going to look at the first page of that document.**
 13 **About 19 lines down, about 12 lines from**
 14 **the bottom, there is an entry on November 9, 2015 at**
 15 **2:01 p m. Do you see that?**
 16 A. Yes.
 17 **Q. And just to go over this again on the**
 18 **left-hand column under device, is that your phone**
 19 **number (415) 688-1925?**
 20 A. (414) 688, yes, that is my number.
 21 **Q. That is your cell phone number, right?**
 22 A. Yes.
 23 **Q. According to this record here you had a**
 24 **phone call with a number that is listed as**
 25 **(570) 407-1340. Do you see that?**

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1 A. Yes.
 2 **Q. And the number is associated with**
 3 **Pittston, Pennsylvania, right?**
 4 A. Yes.
 5 **Q. Do you recognize that phone number?**
 6 A. No.
 7 **Q. I will represent you to you that that is**
 8 **the cell phone number for Mr. Chuck Cohen. Do you**
 9 **have any reason to doubt that?**
 10 A. No.
 11 **Q. Does this phone record refresh your**
 12 **recollection about a conversation you had with**
 13 **Mr. Cohen of Benco on November 9, 2015 by telephone?**
 14 A. No, it does not.
 15 The only thing I could think is maybe I
 16 am off on my timing on Dental Lifeline Network, but,
 17 no, I can't -- I don't remember it.
 18 **Q. So you have no recollection of this phone**
 19 **call?**
 20 A. No.
 21 **Q. Apart from your communications with**
 22 **Mr. Cohen relating to the Dental Lifeline Network**
 23 **would it be typical for you to speak with Mr. Cohen by**
 24 **telephone?**
 25 MR. McDONALD: Object to the form.

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1 THE WITNESS: It could be, I mean, not --
 2 we don't speak regularly, you can check the phone
 3 records. I remember a phone conversation with chuck
 4 about the Dental Lifeline Network, that is about the
 5 only thing I can remember.
 6 BY MR. SOLOMON:
 7 **Q. Do you recall what you and Mr. Cohen**
 8 **discussed during that phone call?**
 9 A. Well, we were -- wanted to put together
 10 some additional ways to raise money.
 11 The other thing this could be potentially
 12 was when he was trying to decide if he wanted to go on
 13 the Dental Lifeline Network board, that would make
 14 sense, too. I do remember a conversation with him now
 15 about that when he wanted to see if it is something he
 16 should do.
 17 **Q. Did Mr. Cohen call you at any point to**
 18 **ask you about his decision to join the Dental Lifeline**
 19 **Network?**
 20 A. We did speak, yes, I just didn't know if
 21 it was on cell, we did speak at some point. He called
 22 to see what I thought about the organization.
 23 **Q. Do you know how Mr. Cohen got your phone**
 24 **number?**
 25 A. No.

268

1 **Q. And what did you discuss with Mr. Cohen**
 2 **during that conversation?**
 3 A. I remember talking about the organization
 4 why I thought the organization was a good
 5 organization, why I got involved with it, and, you
 6 know, that I thought he would be good if he wanted to
 7 be involved with it.
 8 **Q. Do you know why Mr. Cohen was asking you**
 9 **for that kind of advice?**
 10 MR. McDONALD: Object to form.
 11 THE WITNESS: I just wanted to know about
 12 -- he didn't know a lot about it, I think it was just
 13 naturally he wanted to reach out to somebody who was
 14 in a similar capacity and see what they thought of
 15 that organization.
 16 BY MR. SOLOMON:
 17 **Q. Do you know whether anyone else from**
 18 **Henry Schein is a part of the Dental Lifeline Network**
 19 **board?**
 20 A. No one else from Henry Schein is part of
 21 the board.
 22 **Q. Do you know whether Mr. Cohen reached out**
 23 **to anyone else from the Dental Lifeline board to**
 24 **discuss this his potential membership on the**
 25 **organization?**

67 (Pages 265 to 268)

269

1 A. I don't know for a fact that he did. He
2 said he was going to reach out to some other people
3 but I don't know if he did.

4 **Q. Did he tell you who he was going to reach**
5 **out to?**

6 A. Most likely it would have been Brett -- I
7 can't think of the last name, he is the CEO of
8 Dentsply. I will think of it. I am blanking on his
9 last name. You can look it up, it is on the Internet,
10 he was the CEO of Dentsply prior to the merger, and
11 then became -- Wise, W-i-s-e -- then he became like an
12 associate chairman because the guy that was the Sirona
13 chair became the CEO.

14 **Q. Do you recall whether you discussed**
15 **anything else with Mr. Cohen apart from his potential**
16 **membership on the Dental Lifeline Network board?**

17 A. I do not recall, no.

18 **Q. Did you discuss this phone call with**
19 **Mr. Cohen with anyone else at Henry Schein?**

20 A. I seriously doubt it, no, I don't think
21 so.

22 **Q. So you didn't tell Mr. Sullivan about**
23 **this phone call?**

24 A. No, because it was about a charity board
25 position.

271

1 **Q. Does someone record minutes of those**
2 **meetings?**

3 A. Yes.

4 **Q. Do you know who records those?**

5 A. Yes, the secretary of Dental Lifeline
6 Network.

7 **Q. What is his or her name?**

8 A. I believe -- I believe it is Steve -- I
9 think his last name is very long and very Polish, I
10 can't remember the name, it begins with a W. I can't
11 remember.

12 **Q. If you think of it you let me know?**

13 A. I will let you know, yes.
14 There are minutes for all the meetings.

15 **Q. So we talked a little bit today about the**
16 **California Dental Association, which you have also**
17 **referred to as the CDA.**

18 A. Yes.

19 **Q. And you also referred to an organization**
20 **called the Dentist Service Company, do I have that**
21 **right?**

22 A. That is part of the CDA company, yes,
23 Dental Solutions Company.

24 **Q. Dental Solutions Company.**

25 **Is that -- TDSC would be the acronym for**

270

1 **Q. I kind of want to just turn back to the**
2 **annual meetings we just talked about for the Dental**
3 **Lifeline Network.**

4 **I think you mentioned, obviously correct**
5 **me if I am wrong, I think you mentioned that these**
6 **meetings take place at annual trade shows or annual**
7 **DTA meetings?**

8 A. They are based in Denver, they will try
9 to do a meeting a year in Denver. I made it twice in
10 the amount of time I have been on the board. They are
11 hard because they are -- it is a long way and they are
12 stand-alone meetings. Typically they have a meeting
13 at the Chicago midwinter, at the ADA, and sometimes
14 will have one, although I don't think we did this
15 year, at the DTA meeting.

16 **Q. And physically speaking where do these**
17 **meetings take place, is it in a conference room?**

18 A. Usually.

19 **Q. Or restaurant?**

20 A. Usually conference room.

21 **Q. Where else would these kinds of meetings**
22 **take place?**

23 A. That is the only place they would be.

24 **Q. Just in a conference room?**

25 A. Yes.

272

1 **that, correct?**

2 A. Yes.

3 **Q. Did Henry Schein have any relationship**
4 **with TDSC?**

5 A. TDSC was just recently formed in the last
6 couple of years and so we didn't have any relationship
7 specifically with them, no.

8 **Q. Do you have an approximate date that you**
9 **can recall as to when it was formed?**

10 A. No.

11 **Q. But in the last two years it was formed?**

12 A. I think so.

13 **Q. So sometime in mid 2015 or early 2015 or**
14 **after?**

15 A. It would be my -- I don't know.
16 Somewhere in there, yes, it is fairly recent.

17 **Q. Do you recall whether Schein responded to**
18 **an RFP for the TDSC?**

19 A. Yes, we did.

20 **Q. And what happened with that RFP?**

21 A. We bid on the items that were on the
22 proposal and submitted it.

23 **Q. And what happened?**

24 A. They looked at the RFP and decided that
25 we had won a number of them. My memory says about

273

1 40 percent of the items that we won were the low bid
2 on.
3 **Q. What do you mean by we were the low bid?**
4 A. They had several other people bid on it,
5 too.
6 **Q. So did Schein form a relationship with**
7 **the TDSC as a result of that RFP process?**
8 A. No.
9 **Q. Why not?**
10 A. Because the way they structured it was
11 not the way when we first started negotiations. They
12 changed how they were going to structure this. We are
13 still interested in doing something with TDSC. In
14 fact, I met with them recently, but they set it up so
15 the dentist would order from their website and place
16 an order and that order would be then sent to the
17 appropriate distributor who was the low bid on that
18 particular item, and that wasn't what we agreed to.
19 **Q. What had you agreed to with the TDSC?**
20 A. That they would place the orders through
21 us and that we would be able to then match other
22 prices, whatever the lowest bid was we would be able
23 to match that price for the customer.
24 **Q. And when did Schein form that agreement**
25 **with the TDSC?**

274

1 MR. McDONALD: Object to the form.
2 THE WITNESS: It was during the early
3 negotiation process.
4 BY MR. SOLOMON:
5 **Q. Who was a part of that negotiation**
6 **process from Schein?**
7 A. Primarily Glenn Showgren.
8 **Q. Anyone else?**
9 A. Not that I know of.
10 **Q. How about from the CDA?**
11 A. Well, Bob Spinelli, as I mentioned
12 earlier is the head of it, and then whoever they had
13 hired to do this part of the business.
14 **Q. Do you recall the name of that person?**
15 A. No.
16 **Q. Do you recall whether special markets was**
17 **involved in that RFP?**
18 A. They were not.
19 **Q. So am I correct in understanding that**
20 **Henry Schein has never entered into a formal**
21 **relationship with the CDA or TDSC for the sale of**
22 **dental products and services?**
23 A. To my knowledge we had never been in any
24 kind of formal relationship.
25 **Q. And I think you mentioned just a few**

275

1 **moments ago that you recently talked to the CDA again,**
2 **is that right?**
3 A. Yes.
4 **Q. Do you know who from Schein recently**
5 **talked to the CDA?**
6 A. It was myself and Glenn.
7 **Q. What were those discussions about?**
8 A. Just asking if there had been any change
9 in their plan or structure.
10 **Q. And what did you learn?**
11 A. They said no.
12 **Q. And why were you interested in -- strike**
13 **that.**
14 **Why did you ask CDA for that information?**
15 A. Because we don't think their current
16 structure is going to work.
17 **Q. Why not?**
18 A. Because dentists hate getting things from
19 five different places.
20 **Q. Did you hope to renew discussions with**
21 **the CDA about working with Henry Schein?**
22 A. Yes.
23 (Document identified as Exhibit 241 for
24 identification.)
25

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1 BY MR. SOLOMON:
2 **Q. Just let me know when you have had a**
3 **chance to read Exhibit 241, which is Bates labeled**
4 **HS-00015015.**
5 A. I am familiar with this.
6 **Q. And this is an e-mail chain between --**
7 **strike that.**
8 **This is an e-mail chain among yourself,**
9 **Mr. Sullivan, Mr. Cavaretta, Mr. Dean Kyle, and**
10 **Mr. Kyle Steck, is that right?**
11 A. Yes.
12 **Q. The subject is Dentsply, right?**
13 A. Yes.
14 **Q. Who is -- you refer to a Keith from**
15 **Dentsply in the bottom e-mail of this document. Who**
16 **is Keith from Dentsply?**
17 A. He is their VP of sales.
18 **Q. What is Keith's last name?**
19 A. Clements.
20 **Q. Do you know why Mr. Clements called you**
21 **regarding the TDA?**
22 A. He called to tell me they were going to
23 be staying in the TDA. I did not ask him to call me.
24 **Q. Do you have any understanding as to why**
25 **he told you that information?**

69 (Pages 273 to 276)

277

1 A. I think because he had heard we pulled
2 out.
3 **Q. Did Mr. Clements tell you anything else**
4 **apart from what you just stated?**
5 A. No, I don't remember.
6 **Q. Had you previously communicated with**
7 **Mr. Clements about the TDA?**
8 A. No.
9 **Q. Had you previously communicated with**
10 **anyone else from Dentsply about the TDA?**
11 A. I don't believe so, no.
12 **Q. Turning to the second sentence of that**
13 **e-mail, Mr. -- you write "They will be informing them**
14 **that they feel the TDA has put all manufacturers in a**
15 **very difficult place and that going forward that they**
16 **won't participate if their dealers don't." Do you see**
17 **that sentence?**
18 A. I do.
19 **Q. My question -- my first question is what**
20 **is your understanding of how the TDA put manufacturers**
21 **in a difficult place?**
22 A. Those were his words. He felt that
23 because his dealers were not at the convention and
24 that he was that they were in a difficult place, but
25 that was his term.

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1 **Q. And who were his dealers?**
2 A. Patterson, Schein and Benco.
3 **Q. Do you have any understanding as to why**
4 **it was important to Dentsply that their dealers attend**
5 **the TDA?**
6 MR. McDONALD: Object to form.
7 MR. SOLOMON: I will rephrase it.
8 BY MR. SOLOMON:
9 **Q. Do you have any understanding as to why**
10 **it was important to Dentsply that Patterson, Benco and**
11 **Schein attend the TDA?**
12 MR. McDONALD: Object to the form.
13 THE WITNESS: Typically at a show we will
14 bring doctors to their booth and they will buy things.
15 BY MR. SOLOMON:
16 **Q. Any other reasons?**
17 A. It is really the only one I can think of.
18 **Q. So his reference to dealers in that**
19 **sentence that we just read, that refers to Patterson,**
20 **Schein, and Benco, is that right?**
21 A. I believe that is right.
22 **Q. And how do you know that?**
23 A. Because it was already known that Benco
24 and Patterson weren't coming.
25 **Q. Do you recall whether Mr. Clements told**

279

1 **you or referred to Schein -- Patterson and Benco**
2 **during your call?**
3 A. I believe he did, but I don't recall.
4 **Q. You don't recall what he told you about**
5 **Patterson and Benco?**
6 A. No.
7 **Q. Do you recall how long your conversation**
8 **with Mr. Clements lasted?**
9 A. No.
10 **Q. Just moving along to the next sentence in**
11 **the e-mail, "Not exactly what we were hoping for, but**
12 **I understood their rational" is what you say. Do you**
13 **see that?**
14 A. Yes.
15 **Q. So my question is was Schein hoping that**
16 **Dentsply would withdraw from the 2014 TDA annual**
17 **meeting?**
18 A. Again, to put in context a time, at the
19 time this was going on, we saw it if somebody would
20 withdraw it was showing they also had issues with the
21 way the TDA was going to market. It wasn't so much
22 about the meeting as it was about the fact that they
23 had this buying arrangement, this TDA Perks
24 arrangement, that we weren't really comfortable with.
25 **Q. Were you hoping that Dentsply would**

280

1 **withdraw from the TDA?**
2 A. I suppose I was.
3 **Q. Why?**
4 A. Just validated our opinion.
5 **Q. Any other reasons?**
6 A. No.
7 **Q. Did you ever communicate that hope to**
8 **someone from Dentsply?**
9 A. No.
10 **Q. Did you ever tell that to Mr. Clements**
11 **during your phone call with him?**
12 A. Not that I remember.
13 **Q. Is it possible you did?**
14 A. I don't remember. I don't think so.
15 They had already made a decision.
16 **Q. Did you tell Mr. Clements that you hoped**
17 **Dentsply would pull out before your phone call with**
18 **him?**
19 A. No.
20 **Q. Turning to the next paragraph you go on**
21 **to explain in the last paragraph of this e-mail that**
22 **you plan to reach out to Carol Summerhays, who I think**
23 **we talked about previously, and I believe she says**
24 **here that she is the 2012 CDA president. Do you see**
25 **that?**

70 (Pages 277 to 280)

281	<p>1 A. Yes.</p> <p>2 Q. Did you ever -- strike that.</p> <p>3 You go on to say "I will also make clear</p> <p>4 that if the state dental associations go this route</p> <p>5 they better be prepared for economic losses on their</p> <p>6 shows and that we will organize and start competing</p> <p>7 conventions." Do you see that sentence?</p> <p>8 A. I do.</p> <p>9 Q. Is it fair to say that you wanted the CDA</p> <p>10 to know that Schein would work to organize against</p> <p>11 state association buying groups?</p> <p>12 A. This is another comment that I regret</p> <p>13 putting in here because the way it reads is much</p> <p>14 harsher than it was intended.</p> <p>15 But when I talked to Carol I made it</p> <p>16 clear that this was not -- it wasn't good that the</p> <p>17 dental associations were endorsing competitors and</p> <p>18 that people who weren't endorsed were not going to</p> <p>19 view that well.</p> <p>20 Q. Why do you regret writing this sentence?</p> <p>21 A. Well, because we weren't going to start</p> <p>22 competing conventions, that just wasn't going to</p> <p>23 happen.</p> <p>24 Q. Do you know why you wrote that you would</p> <p>25 in this e-mail?</p>	283	<p>1 it.</p> <p>2 Q. Did you change your mind on the idea of</p> <p>3 starting a competing convention at any point?</p> <p>4 MR. McDONALD: Object to the form.</p> <p>5 THE WITNESS: I never had the idea of</p> <p>6 starting a competing convention, I just wrote it in</p> <p>7 there. I never really did anything about it and</p> <p>8 wasn't serious about it.</p> <p>9 BY MR. SOLOMON:</p> <p>10 Q. You also referred to state associations</p> <p>11 and economic losses. Do you see that?</p> <p>12 A. Yes.</p> <p>13 Q. What did you mean by that statement?</p> <p>14 A. Dental associations make money on the</p> <p>15 trade shows, they use them to raise money.</p> <p>16 Q. And so how would state associations</p> <p>17 suffer economic losses on their shows?</p> <p>18 A. If we and anyone else stops -- any time</p> <p>19 anyone decides not to come to a convention if they</p> <p>20 cannot be replaced there is an economic loss to the</p> <p>21 dental society.</p> <p>22 Q. Did you ever tell a state association</p> <p>23 that it would suffer economic losses as a result of</p> <p>24 starting a buying group?</p> <p>25 A. No.</p>
282	<p>1 A. Well, in Europe they do. In Europe the</p> <p>2 trade runs all the shows, not the dental associations,</p> <p>3 it is very unique in the United States that the</p> <p>4 dentists themselves run their own trade shows.</p> <p>5 Q. Had you considered starting a competing</p> <p>6 convention at any point?</p> <p>7 A. No.</p> <p>8 Q. Did you discuss starting a competing</p> <p>9 convention with Mr. Sullivan?</p> <p>10 A. No.</p> <p>11 Q. Had you envisioned starting a competing</p> <p>12 convention with other distributors?</p> <p>13 A. No.</p> <p>14 Q. Had you ever had any conversations with</p> <p>15 other distributors about putting together a competing</p> <p>16 convention?</p> <p>17 A. No.</p> <p>18 Q. So apart from I think you just mentioned</p> <p>19 that they do it in Europe, apart from that, is there</p> <p>20 any other reason why you suggested starting a</p> <p>21 competing convention in this e-mail here?</p> <p>22 A. No. It is just basically if we were</p> <p>23 going to become at odds with the dental associations</p> <p>24 that we still need to see dentists and have events.</p> <p>25 But, as I said it, reads much harsher than I intended</p>	284	<p>1 Q. I want to take a look at Mr. Sullivan's</p> <p>2 response, he says "just to be clear... we are not</p> <p>3 contacting other exhibitors and asking them to pull</p> <p>4 out of any shows."</p> <p>5 What is your understanding of why</p> <p>6 Mr. Sullivan wanted to be clear on that point?</p> <p>7 A. Because of the fact that he understood</p> <p>8 from reading it that it could be interpreted</p> <p>9 differently than I intended it.</p> <p>10 Q. How do you know that?</p> <p>11 A. That is my intention, you have to ask</p> <p>12 him.</p> <p>13 Q. Did you ever discuss this e-mail with</p> <p>14 Mr. Sullivan?</p> <p>15 A. I don't believe we did, no.</p> <p>16 Q. Is it your understanding that</p> <p>17 Mr. Sullivan believed that you wanted to contact other</p> <p>18 exhibitors to ask about pulling out of state</p> <p>19 association shows?</p> <p>20 MR. McDONALD: Object to the form.</p> <p>21 THE WITNESS: Can you ask the question</p> <p>22 again?</p> <p>23 BY MR. SOLOMON:</p> <p>24 Q. Sure.</p> <p>25 Is it your understanding that</p>

285

1 **Mr. Sullivan believed that you wanted to contact other**
 2 **exhibitors to ask about pulling out of state**
 3 **association shows?**

4 MR. McDONALD: Object to the form.

5 THE WITNESS: I don't think he believed
 6 it, I think he just thought I was angry.

7 BY MR. SOLOMON:

8 **Q. And what is your understanding of that**
 9 **based on?**

10 A. Well, again, you have to ask him.

11 I mean, if I was going to start
 12 contacting other people and making any kind of a trade
 13 show of our own he would have known about it and I
 14 would have asked permission before I did it.

15 **Q. Do you think he would have supported**
 16 **that?**

17 A. No.

18 **Q. Why not?**

19 A. Because he would only want to do it as
 20 our own Henry Schein.

21 **Q. Why is that?**

22 MR. McDONALD: Object to the form.

23 THE WITNESS: For a lot of reasons, just
 24 makes sense to do it by ourselves, that way the
 25 customers who come are ours.

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1 trade show that I attended in Georgia is the Hinman
 2 meeting, I don't know whether it is their trade show
 3 or it is run by a different association.

4 **Q. Do you recall whether that was a**
 5 **particularly large trade show?**

6 A. Midsize.

7 **Q. Did you understand the GDA to have**
 8 **established a group purchasing organization for its**
 9 **members at some point?**

10 MR. McDONALD: Object to the form.

11 THE WITNESS: Based on the prior stuff,
 12 yes, we knew they were interested in doing that.

13 BY MR. SOLOMON:

14 **Q. Do you recall whether they ever succeeded**
 15 **in that endeavor?**

16 A. I don't know. I believe we chose not to
 17 bid. Okay.

18 (Document identified as Exhibit 242 for
 19 identification.)

20 BY MR. SOLOMON:

21 **Q. Mr. Steck, Exhibit 242 is an e-mail Bates**
 22 **labeled HS-00131947 dated September 14, 2015.**

23 **Mr. Steck, do you recall this e-mail?**

24 A. Yes, I believe I do, yes.

25 **Q. And the subject of this e-mail is Buying**

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1 BY MR. SOLOMON:

2 **Q. At the time of this e-mail did you in**
 3 **fact want to contact other exhibitors to ask them to**
 4 **pull out of state association trade shows?**

5 A. No.

6 **Q. He also writes the next sentence in this**
 7 **e-mail "also, let's not inform CDA or others that we**
 8 **will start to 'organize' other manufacturers and**
 9 **dealers to create competing conventions." Do you see**
 10 **that --**

11 A. Yes.

12 **Q. -- excerpt I just referred to?**

13 A. Yes.

14 **Q. Do you know why Mr. Sullivan made that**
 15 **statement?**

16 A. I think it was just what we said a few
 17 minutes ago, he didn't think it was a good idea. As I
 18 said, it was not a good idea.

19 **Q. Are you familiar, Mr. Steck, with the**
 20 **Georgia Dental Association, I think we talked about**
 21 **that earlier today, sometimes it is referred to as the**
 22 **GDA, do you recall that discussion?**

23 A. I do.

24 **Q. Did you ever attend a GDA trade show?**

25 A. They -- I don't know that -- the only

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1 **Group Meeting Tomorrow at 2:30, do you see that?**

2 A. Yes.

3 **Q. Do you know whether you attended that**
 4 **meeting?**

5 A. I believe I did, yes.

6 **Q. Do you know who else was at that meeting?**

7 A. I do not.

8 **Q. Do you know what was discussed at that**
 9 **meeting?**

10 A. Well, the things that were on this
 11 e-mail. Tim obviously was coming to me, that is why I
 12 sent him the e-mail.

13 **Q. Did you discuss the Georgia Dental**
 14 **Association's buying group at this meeting?**

15 A. I believe we did.

16 **Q. Was Henry Schein Dental interested in**
 17 **working with the Georgia Dental Association buying**
 18 **group at the time of this e-mail?**

19 A. Again, I wasn't personally involved. I
 20 believe that we showed interest and had conversations
 21 with him and ultimately decided not to.

22 **Q. Just turning to the middle of this**
 23 **e-mail, there is a paragraph starting with Georgia**
 24 **Dental Association, colon, do you see that?**

25 A. Yes.

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1 **Q. Just directing your attention to the**
 2 **sentence beginning with obviously, you state**
 3 **"obviously whatever we do here will go national so we**
 4 **are on scary grounds with a short timeframe to**
 5 **respond. They are looking for our proposal asap, Jake**
 6 **is going to ask for more time." Do you see that?**

7 A. Yes.

8 **Q. What were you referring to in that**
 9 **sentence?**

10 A. What specifically are you talking about?

11 **Q. What did you mean by go national?**

12 A. It was our belief that if we made an
 13 alliance with a dental association, a state dental
 14 association, that other dental associations would see
 15 it and want to do something similar.

16 **Q. Was that concerning to you at the time of**
 17 **this e-mail?**

18 A. Not if the terms were right, no.

19 **Q. And as part of the proposal to the**
 20 **Georgia Dental Association you list a few bullet**
 21 **points at the bottom of this e-mail, do you see that?**

22 A. Yes.

23 **Q. And one of them is an NDA to obtain the**
 24 **list of names who have pledged their business to their**
 25 **buying group and you write "we will analyze the list**

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1 **to determine 'risk' with our offer." Do you see that?**

2 A. Yes.

3 **Q. What did you mean by analyzing risk in**
 4 **that sentence?**

5 A. Well, as we mentioned earlier, there are
 6 risks and there are opportunities with any buying
 7 group because a risk would be if the customers were
 8 already all doing business with Schein. If we didn't
 9 do business with them then we have the risk of losing
 10 that business. It is an opportunity if they are not
 11 doing business with Schein to gain the business.

12 **Q. How would Henry Schein analyze that list**
 13 **of customers?**

14 A. Just look it up and see how much business
 15 they were doing.

16 **Q. And does Henry Schein normally request**
 17 **such lists from buying groups that approach it to do**
 18 **business?**

19 MR. McDONALD: Object to the form.

20 THE WITNESS: I don't know. I am not
 21 comfortable with the word normally. I know it has
 22 happened, I don't believe it happens every day.

23 BY MR. SOLOMON:

24 **Q. How do you know it has happened?**

25 A. Well, I believe it happened to Smile

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1 Source, but, again, I wasn't disclosed to them.

2 **Q. Do you know whether that has happened**
 3 **with respect to other buying groups?**

4 A. I do not.

5 **Q. Do you know when the decision was made**
 6 **within Schein not to respond to the Georgia Dental**
 7 **Association's RFP?**

8 A. No, I don't.

9 **Q. Do you recall who would have made that**
 10 **decision?**

11 A. I do not recall, no.

12 **Q. Do you recall whether it was discussed at**
 13 **this September, 2015 meeting referenced in the e-mail?**

14 A. I believe it was.

15 **Q. Do you recall any specifics surrounding**
 16 **that discussion?**

17 A. I do not.

18 **Q. Did Schein ever have any communications**
 19 **with Patterson regarding the Georgia Dental**
 20 **Association's buying group?**

21 A. Not to my knowledge.

22 **Q. How about with Benco?**

23 A. Not to my knowledge.

24 **Q. Did anyone at Schein ever look at whether**
 25 **Patterson was bidding on the GDA's buying group?**

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1 A. I don't know, but typically they don't
 2 tell us who else is bidding.

3 **Q. Is that something someone from Schein**
 4 **would have looked into?**

5 A. I don't know. We could have.

6 **Q. Do you know who would have looked into**
 7 **it?**

8 A. No.

9 **Q. Do you know whether someone did look into**
 10 **that?**

11 A. I do not.

12 **Q. The same question but for Benco.**

13 A. Same answer.

14 (Document identified as Exhibit 243 for
 15 identification.)

16 BY MR. SOLOMON:

17 **Q. Mr. Steck, please take a look at**
 18 **Exhibit 243 and just let me know when you have had a**
 19 **chance to review it. Mr. Steck, have you reviewed**
 20 **Exhibit 243?**

21 A. I have reviewed the first page of it.

22 The rest of it I have read before, but if you want me
 23 to spend time reading through it I can.

24 **Q. I think that is all right, we can go**
 25 **ahead.**

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1 **So, Mr. Steck, this is an October,**
 2 **2015-e-mail conversation between yourself and Keith**
 3 **Clements from Dentsply and the document is Bates**
 4 **labeled Henry Schein-000024459.**
 5 **We talked about Mr. Clements earlier from**
 6 **Dentsply, and in this e-mail here, Exhibit 243, it**
 7 **looks like Mr. Clements forwards you an e-mail from**
 8 **Frank Capaldo regarding the Georgia Dental**
 9 **Association's buying cooperative, and then he asks to**
 10 **speak with you. Would you agree with that**
 11 **characterization of this e-mail?**
 12 A. That Keith would like to speak with me.
 13 **Q. Right.**
 14 A. Yes.
 15 **Q. He says, "Dave, call me on my cell when**
 16 **you have a moment, need to speak with you about this**
 17 **group."**
 18 **Do you recall speaking with Mr. Clements**
 19 **about this group?**
 20 A. Very vaguely.
 21 **Q. What do you recall?**
 22 A. He just asked me if we were -- I think he
 23 asked me if we were going to do something with it at
 24 the point, I don't think I knew.
 25 **Q. Do you recall what he asked you**

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1 **specifically?**
 2 A. No.
 3 **Q. Do you know why Mr. Clements was curious**
 4 **as to what Henry Schein thought about this GDA buying**
 5 **group?**
 6 A. You would have to ask him, I don't know.
 7 **Q. What did you tell Mr. Clements in your**
 8 **phone call with him?**
 9 A. As I said, I don't remember exactly.
 10 **Q. Do you recall generally?**
 11 A. I think he simply asked us whether we
 12 were going to be involved with this and I believe I
 13 said I didn't know at that point in time.
 14 **Q. And you have no understanding as to why**
 15 **Mr. Clements wanted to know that information, is that**
 16 **right?**
 17 A. Well, no, I don't.
 18 **Q. Do you have any understanding as to why**
 19 **Mr. Clements wanted to know that information?**
 20 MR. McDONALD: Object to the form.
 21 THE WITNESS: I do not.
 22 MR. SOLOMON: I think we can take a quick
 23 break.
 24 (Recess taken.)
 25

295

1 (Document identified as Exhibit 244 for
 2 identification.)
 3 BY MR. SOLOMON:
 4 **Q. Mr. Steck, the court reporter has handed**
 5 **you Exhibit 244, which is a document Bates labeled**
 6 **Henry Schein-000060287. Have you seen this**
 7 **communication before?**
 8 A. Yes. I don't really remember it very
 9 well, but I have seen it.
 10 **Q. And it appears that this is a**
 11 **communication between yourself and Mr. Kyle Steck, is**
 12 **that right?**
 13 A. Yes.
 14 **Q. And in the from line it says Dad Steck,**
 15 **that would be you?**
 16 A. Yes.
 17 **Q. And that is your phone number there right**
 18 **next to it?**
 19 A. Yes.
 20 **Q. The body of the message says, "Okay...**
 21 **PDCO leaked last night to their team, we are calling**
 22 **suppliers all morning and confirming it. We will tell**
 23 **the sales team via internal memo later today."**
 24 **In that excerpt I just read you does PDCO**
 25 **refer to Patterson?**

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1 A. Yes.
 2 **Q. What is this text message about?**
 3 A. I really don't know. I believe -- I
 4 believe it was about A-Dec.
 5 **Q. And how do you know that?**
 6 A. Because of the timing.
 7 **Q. What was happening with A-Dec at the time**
 8 **of this document?**
 9 A. A-Dec had been selling through Patterson
 10 but not through Schein and then made the decision in
 11 late 2014 to open to Schein in 2015.
 12 **Q. And A-Dec is a manufacturer?**
 13 A. They are the largest manufacturer of
 14 dental equipment in the United States.
 15 **Q. How did Schein learn that Patterson**
 16 **leaked that information to its team?**
 17 A. It came from the investment community.
 18 **Q. What do you mean by investment community?**
 19 A. The CEO of Patterson addressed a group of
 20 managers with investors in the room and told them that
 21 they expect that Schein would be getting opened by
 22 A-Dec in the next few months.
 23 **Q. And how did you learn about that meeting?**
 24 A. Because it was all over the investment
 25 community Internet that night.

74 (Pages 293 to 296)

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1 **Q. So you learned that information from a**
 2 **website on the Internet?**
 3 A. Yes, from one of the investors that
 4 follows both companies.
 5 **Q. Do you recall which investors that was?**
 6 A. Jeff Johnson.
 7 **Q. And Jeff Johnson is a part of what**
 8 **organization?**
 9 A. RW Baird.
 10 **Q. Is that an investment firm?**
 11 A. Yes.
 12 (Document identified as Exhibit 245 for
 13 identification.)
 14 BY MR. SOLOMON:
 15 **Q. Mr. Steck, the court reporter has handed**
 16 **you Exhibit 245, which is a document beginning with**
 17 **Bates number Henry Schein-0000128721.**
 18 A. Okay.
 19 **Q. Let me know when you have had a chance to**
 20 **look it over.**
 21 MR. McDONALD: Do you know where this
 22 came from?
 23 MR. SOLOMON: I don't.
 24 MR. McDONALD: The custodian?
 25 MR. SOLOMON: Thank you for the

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1 clarification.
 2 MR. McDONALD: I know we produced it.
 3 MR. SOLOMON: I was just about to say.
 4 BY MR. SOLOMON:
 5 **Q. So this was Dave Steck was listed as the**
 6 **custodian on this particular version of the document.**
 7 **There was no metadata associated with it in terms of a**
 8 **date.**
 9 MR. McDONALD: Okay.
 10 MR. SOLOMON: It is sort of what I would
 11 like to learn a little bit about.
 12 THE WITNESS: Okay.
 13 Do you want me to read through it
 14 completely or just --
 15 BY MR. SOLOMON:
 16 **Q. Whenever you are comfortable enough that**
 17 **you are able to just discuss the document.**
 18 A. I think I am comfortable enough to
 19 discuss it.
 20 **Q. Okay.**
 21 **So this appears to me to be a document**
 22 **that was a hard copy document that was copied or**
 23 **scanned. Is that your understanding as well?**
 24 A. I don't know. I have seen it before, I
 25 don't know where it came from.

299

1 **Q. If you look at the first page of this**
 2 **document there appears to be a tab folder on top that**
 3 **says GPO Strategy.**
 4 **Does that appear to you to be a file that**
 5 **you -- strike that.**
 6 **Does this appear to be something from**
 7 **your files?**
 8 A. No. It appears to be a tab in a binder.
 9 **Q. And this is not a binder that you own or**
 10 **have made or that is a part of your own records?**
 11 A. It may be. I didn't create it.
 12 **Q. Do you know who would have created it?**
 13 A. I do not.
 14 **Q. And you said you have seen these**
 15 **documents before.**
 16 A. Yes.
 17 **Q. Do you recall in what context you have**
 18 **seen these documents before?**
 19 A. I think it was part of a meeting we had,
 20 but I don't know who actually did this. I am having a
 21 hard time figuring out by reading it either.
 22 Are you waiting for me to say something?
 23 **Q. Whenever you are ready to discuss the**
 24 **document.**
 25 A. I think I am ready to discuss it, I can't

300

1 be a master of all of it.
 2 **Q. Sure.**
 3 **Do you recall who prepared these**
 4 **documents?**
 5 A. No.
 6 **Q. The third page of this document begins**
 7 **with a sentence that says Objective, do you see that?**
 8 A. Yes.
 9 **Q. And it appears to be a study about Smile**
 10 **Source, it says "identify details on the Smile Source**
 11 **(SS) offering."**
 12 A. Yes.
 13 **Q. Do you have any idea who would have**
 14 **prepared that document or report?**
 15 A. I would be guessing, I don't know. It is
 16 well done, whoever did it, did a good job with it. I
 17 am trying to think of who that could be. I don't
 18 know.
 19 **Q. Do you have any understanding as to when**
 20 **this report would have been prepared?**
 21 A. No, no -- there is no date on it?
 22 **Q. There does not appear to be a date on it.**
 23 A. I don't know.
 24 **Q. Do you recall whether anyone within Henry**
 25 **Schein's dental organization was conducting a study on**

75 (Pages 297 to 300)

301

1 **Smile Source at any point?**
 2 A. Not a study.
 3 I know a lot of us -- different people
 4 were in conversations with them, but I don't know
 5 anybody that actually did a study like this.
 6 **Q. You can put that document aside unless**
 7 **you have any other information you would like to share**
 8 **about it.**
 9 A. No.
 10 I don't know. I wish I could help you,
 11 but I don't.
 12 **Q. Do you keep any files in hard copy at**
 13 **your office that relate to buying groups or GPOs?**
 14 A. I keep lots of files in my office in hard
 15 copy. I am sure there is things like this in them, I
 16 can't speak specifically. They are organized by time
 17 period.
 18 **Q. Do you organize your files by topic?**
 19 A. Usually by topic by year.
 20 **Q. Do you recall whether you have a file**
 21 **that is specific to buying groups or GPOs?**
 22 A. I do not recall.
 23 **Q. Does Henry Schein Dental ever hold**
 24 **internal meetings from time to time to discuss buying**
 25 **groups or GPOs?**

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1 A. I can't recall any meeting we have had
 2 that was specifically for that reason. As you saw in
 3 some of the other we have had meetings where it was
 4 discussed.
 5 **Q. So you are not aware of any regular**
 6 **meetings internally, the purpose of which is to**
 7 **discuss buying groups or GPOs?**
 8 A. The only areas -- I am not aware of them,
 9 the only areas that would take place would be within
 10 the mid market group.
 11 **Q. Do you know who would be a part of those**
 12 **meetings?**
 13 A. Brian Brady and whoever else on his team
 14 was involved.
 15 **Q. Were you a part of any of those meetings**
 16 **at any point?**
 17 A. No.
 18 **Q. I have no further questions today about**
 19 **the documents we have looked at.**
 20 **Before we finish today I would just like**
 21 **to ask you if you have any other information you would**
 22 **like to provide us with that you would like us to**
 23 **consider in our investigation of this matter.**
 24 A. Not that I am aware of. But I am happy
 25 to -- you mean verbal information or written

303

1 documents?
 2 **Q. Both.**
 3 A. Written documents I would have to look, I
 4 don't know as I sit here.
 5 Verbal information, no, I think I have
 6 told you everything I know.
 7 **Q. Okay.**
 8 **WELL, thank you very much for your time,**
 9 **we really appreciate it.**
 10 MS. REPORTER: Signature?
 11 MR. McDONALD: Yes.
 12 (WHICH WERE ALL OF THE PROCEEDINGS HAD OR
 13 TAKEN PLACE IN THE ABOVE-ENTITLED MATTER.)
 14
 15
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1
 2 FEDERAL TRADE COMMISSION
 3 HENRY SCHEIN, INC , PATTERSON)
 4 COMPANIES, INC , AND BENCO DENTAL) MATTER NO
 5 SUPPLY COMPANY) 151090
 6)
 7 -----)
 8 I, DAVID A. STECK, being first duly sworn, on
 9 oath say that I am the deponent in the aforesaid
 10 deposition taken on May 26, 2017; that I have read the
 11 foregoing transcript of my deposition, consisting of
 12 pages No 1 through No 304, inclusive, and affix my
 13 signature to same
 14
 15 -----
 16 DAVID A. STECK
 17
 18 Subscribed and sworn to
 19 before me this day of
 20 , 2017
 21
 22 Notary Public
 23
 24
 25

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1 STATE OF ILLINOIS)
) SS.
 2 COUNTY OF DUPAGE)
 3 I, STEPHANIE A. BATTAGLIA, CSR and Notary
 4 Public in and for the County of DuPage and State of
 5 Illinois, do hereby certify that on May 26, 2017, at
 6 7:53 a.m., at 55 West Monroe Street, Suite 1825,
 7 Chicago, Illinois, the deponent DAVID A. STECK
 8 personally appeared before me.
 9 I further certify that the said DAVID A.
 10 STECK was by me first duly sworn to testify and that
 11 the foregoing is a true record of the testimony given
 12 by the witness.
 13 I further certify that the deposition was
 14 terminated at 3:31 p m.
 15 I further certify that I am not counsel for
 16 nor related to any of the parties herein, nor am I
 17 interested in the outcome hereof.
 18 In witness whereof, I have hereunto set my
 19 hand and seal of office this ____ of June, 2017.
 20
 21 Notary Public
 22 CSR No. 084-003337 - Expiration Date: May 31, 2019.
 23
 24
 25

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CX0311

In the Matter of:

Henry Schein, Inc., et al.

May 25, 2017

Tim Sullivan

Condensed Transcript with Word Index



For The Record, Inc.
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2	NUMBER	DESCRIPTION	2	NUMBER	DESCRIPTION
3	Exhibit 212	Series of e-mails sent on 198	3	Exhibit 222	Group exhibit, text messages, 284
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17		November 3, 2015, Bates labeled	17		000164456
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23		000024467	23		2014, Bates labeled
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1	DEPOSITION EXHIBITS (CONTINUED)		1	(Witness sworn.)	
2	NUMBER	DESCRIPTION	2	TIM SULLIVAN	
3	Exhibit 217	Series of e-mails sent on 234	3	after being first duly sworn, testified as follows:	
4		Tuesday, November 3, 2015,	4	EXAMINATION	
5		Bates labeled	5	BY MS. KAHN:	
6		Henry Schein-000004474 through	6	Q. Good morning, Mr. Sullivan.	
7		000004475	7	A. Good morning.	
8	Exhibit 218	E-mails sent in July 2012, 239	8	Q. Thank you for being here today. My name	
9		Bates labeled	9	is Lin Kahn. I'm an attorney with the Federal Trade	
10		Henry Schein-000045132 through	10	Commission, and I'm here today with Ronnie Solomon	
11		000045133	11	and Karen Goff, also attorneys with the FTC.	
12	Exhibit 219	E-mails sent on Wednesday 246	12	Today's investigational hearing is being	
13		September 9, 2015, Bates	13	conducted as part of the Commission's investigation	
14		labeled Henry Schein-000086916	14	of Henry Schein, Matter Number 1510190.	
15		through 000086920	15	For the record, would counsel please state	
16	Exhibit 220	E-mails sent on Tuesday, 249	16	their appearance.	
17		September 17, 2013, with	17	MR. McDONALD: John McDonald.	
18		attachments, Bates labeled	18	BY MS. KAHN:	
19		HSD0067484, and HSD-AZ0067485 1	19	Q. Mr. Sullivan, you are appearing today	
20		through 20	20	pursuant to subpoena issued by the FTC; is that	
21	Exhibit 221	Meeting announcement, Subject: 249	21	correct?	
22		Educational Overview of GPO's,	22	A. Correct.	
23		Bates labeled	23	Q. I'm going to ask the court reporter to	
24		Henry Schein-000093215	24	mark this as Exhibit 208.	
25			25		

9	11
<p>1 (Exhibit 208 was marked for 2 identification.) 3 BY MS. KAHN: 4 Q. Do you understand that this is the 5 subpoena compelling your testimony today, 6 Exhibit 208? 7 A. Yes. 8 Q. Okay. You can put that aside. 9 You have provided sworn testimony before, 10 correct? 11 A. Correct. 12 Q. How many times? 13 A. Twice in this for this circumstance; once 14 was in Dallas and another time in Milwaukee for the 15 Source One case and the class action. 16 Q. And you understand that those cases are 17 separate from the FTC's investigation? 18 A. Correct, yes. 19 Q. Okay. I'm sure you're familiar with the 20 rules, but let me just take a few minutes to go over 21 them with you again. 22 Our conversation is being transcribed by a 23 court reporter today, so there are a couple of basic 24 ground rules. 25 Let's try not to interrupt one another.</p>	<p>1 To the extent you have a sense and it's based upon 2 communications with counsel, then I don't want you 3 revealing those communications, okay? 4 BY MS. KAHN: 5 Q. And just to be clear, I'm just asking yes 6 or no if you have a sense of what the investigation 7 is about. 8 A. Through the communication I had with 9 counsel, yes. 10 Q. Okay. Do you have a personal view of the 11 merits of the FTC's investigation? 12 A. No. 13 Q. You're employed by Henry Schein, correct? 14 A. Yes. 15 Q. Your current title is? 16 A. President of our North American dental 17 group. 18 Q. How many years have you had that title? 19 A. I've been with Henry Schein 20 years. I 20 started out as president of the U.S. dental 21 business. I was executive vice president for four 22 or five years; I've been president of North America 23 for about eight years now. 24 Q. And you started to do this a little bit, 25 but can you run through all of your prior positions</p>
10	12
<p>1 I'll let you finish, and please let me finish my 2 questions as well. 3 Please verbalize your answers instead of 4 nodding or using gestures. 5 Is that okay? 6 A. Okay. 7 Q. I'll do my best to ask clear questions, 8 but if you don't understand something, just let me 9 know and I will try to rephrase or clarify. 10 Okay? 11 A. Okay. 12 Q. We will take breaks from time to time, but 13 if you need a break at a certain point, just let me 14 know and we can go off the record. The only thing 15 that I ask is that you answer any pending questions 16 before you leave the room. 17 Okay? 18 A. Okay. 19 Q. Is there any reason why you cannot provide 20 complete and truthful testimony today? 21 A. No. 22 Q. And before we get started, I'm wondering 23 if you have a general sense of what the FTC's 24 investigation of Henry Schein is about. 25 MR. McDONALD: Well, I'll instruct you.</p>	<p>1 at Henry Schein? 2 A. Sure. So we merged with Henry Schein in 3 1997, and at that time I was president of our U.S. 4 dental business. And around '99-2000 I became 5 executive vice president of our U.S. dental business 6 and I believe it was around 2004 became president of 7 the U.S. dental business once again, and then took 8 responsibility for Canada about four years ago, and 9 that's when the North America dental group title was 10 added. 11 So between U.S. and North America, it's 12 been the last about eight to twelve years. 13 Q. Got it. And you mentioned executive VP of 14 U.S.? 15 A. Correct. 16 Q. What was that? What did that title 17 entail? 18 A. I was responsible for the field sales 19 organization and marketing team of the U.S. dental 20 business. 21 Q. Prior to Schein you worked for Sullivan 22 Dental; is that correct? 23 A. Correct. 24 Q. And that was your family business? 25 A. It started out as that. My father started</p>

13

1 in 1980. I joined the company in 1989, but we went
2 public in 1990 and a secondary offering in '92. And
3 by then my father brought on other partners into the
4 business, so it was never really run as a family
5 business, per se. Then we joined with Henry Schein
6 in 1997.

7 **Q. Sullivan Dental was a distributor of**
8 **dental supplies and equipment; is that right?**

9 A. That's correct.

10 **Q. And did they provide services as well?**

11 A. Yes.

12 **Q. Did you help out in the business before**
13 **you started officially working for Sullivan Dental?**

14 A. One summer.

15 **Q. And what did you do?**

16 A. I helped drive -- drove around with our
17 service technicians and helped install dental
18 equipment in dental offices.

19 **Q. Who was your first position at Sullivan**
20 **Dental?**

21 A. That's interesting. I was the assistant
22 controller. There was no controller. When he came
23 into business my father thought the title of
24 controller was too big for a young college brat, and
25 so I was assistant controller for a couple of years;

15

1 salespeople, service technicians, sales and service
2 centers, you know, branches across the country.
3 Henry Schein was going through the process of
4 transitioning from this mail order telesales
5 organization to full service.

6 So Henry Schein had an excellent brand
7 name from a marketing standpoint, innovative company
8 technology standpoint. Those are areas that we were
9 struggling in from the Sullivan Dental perspective.

10 So the combination of the direction they
11 were heading and the direction -- and our need on
12 the telesales side, overall marketing, technology,
13 was an area that from my perspective, you know, we
14 needed help with.

15 So the timing of putting the two companies
16 together was just -- it just felt right.

17 **Q. Got it. And at the time, around the time**
18 **of the merger, what was the largest full-service**
19 **dental distributor in the U.S.?**

20 A. Patterson Dental.

21 **Q. Patterson, okay. Since joining Schein,**
22 **have you personally been involved in the process of**
23 **acquiring other companies?**

24 A. Yes, some, yes, for -- within the U.S.
25 dental business, yes.

14

1 and I became controller vice president of operations
2 and then chief financial officer and ultimately
3 president of Sullivan Dental in 1997, which I only
4 held that title for about six months because six
5 months later we merged with Henry Schein.

6 **Q. Got it. And at the time of the merger, do**
7 **you have a sense of what the approximate market**
8 **share was for Sullivan Dental?**

9 MR. McDONALD: Object to the form.

10 THE WITNESS: Boy.

11 MR. McDONALD: Vague as to scope.

12 THE WITNESS: It's 5 percent maybe.

13 BY MS. KAHN:

14 **Q. And that's nationally?**

15 A. Correct, in the U.S.

16 **Q. And why did you decide to merge with**
17 **Henry Schein?**

18 A. We were, Sullivan Dental, we were
19 historically a full-service dental organization. We
20 started the business that way; my father started the
21 business that way. Henry Schein was historically a
22 mail order, if you would, telesales/marketing
23 company.

24 They were making the transition into full
25 service. We already had a national footprint with

16

1 **Q. Okay. Is that part of your job duties and**
2 **responsibilities?**

3 A. To get involved, yes, but I don't lead the
4 discussions. I don't lead the negotiations. We
5 have a business development team led by Mark Mlotek,
6 who is the primary person that we worked with during
7 our merger discussions; and he has a gentleman by
8 the name of Scott Sanders that focuses strictly on
9 the dental business.

10 **Q. Got it.**

11 A. So he takes the lead in negotiations. I
12 get involved just, you know, talking to the owners,
13 you know, kind of telling them my experience going
14 through the process, you know, here I am 20 years
15 later, it's a great company, and then helping to
16 answer any questions from a transitional standpoint
17 from them so they'll feel comfortable to join the
18 organization.

19 **Q. And would you say Mr. Sanders is the**
20 **primary contact person with the companies that**
21 **Henry Schein are trying to acquire in the U.S. on**
22 **the dental side?**

23 A. On the dental side, yes.

24 **Q. Henry Schein has three divisions; is that**
25 **correct?**

17	<p>1 A. Correct.</p> <p>2 Q. And can you just name them for us?</p> <p>3 A. Sure. We have a global dental business, a</p> <p>4 global animal health business, the vet business,</p> <p>5 companion pet business, and then it's a global</p> <p>6 medical, which is primarily the U.S. There's not</p> <p>7 much on a global standpoint, so dental, vet and</p> <p>8 medical.</p> <p>9 Q. Henry Schein Dental is a distributor of</p> <p>10 dental supplies, equipment and service, correct?</p> <p>11 A. Correct.</p> <p>12 Q. As president of Henry Schein Dental, have</p> <p>13 you had interactions with the medical division?</p> <p>14 A. Interactions, yes.</p> <p>15 Q. In what context?</p> <p>16 A. I don't sit in any of their meetings; they</p> <p>17 don't sit in on any of our meetings. We report to</p> <p>18 the executive management committee of the company.</p> <p>19 Excuse me, a little head cold I'm dealing with.</p> <p>20 So monthly we present to the EMC. We</p> <p>21 don't sit in in each others' meetings, so I'm not in</p> <p>22 depth in their meetings; but Dave McKinley used to</p> <p>23 be the president of the medical division. I'd see</p> <p>24 him from time to time at various functions and</p> <p>25 meetings.</p>	19	<p>1 Q. Right. And who was in charge of Canada</p> <p>2 before you were in charge?</p> <p>3 A. Rich Miranda.</p> <p>4 Q. What would you say are your general duties</p> <p>5 and responsibilities for U.S., for the U.S. dental</p> <p>6 business?</p> <p>7 A. Really set the strategy, the tones around</p> <p>8 the culture and our, you know, just really</p> <p>9 going-to-market strategy for the U.S. dental.</p> <p>10 So the primary responsibility I have is</p> <p>11 the single office space practitioner. We have a</p> <p>12 segment we call our mid market space, which is where</p> <p>13 customers are joining together themselves owning</p> <p>14 multiple locations; and then there's a complete</p> <p>15 separate what we call our elite dental support</p> <p>16 organization, DSO. That's run separately by a</p> <p>17 gentleman by the name of Hal Muller. So I have</p> <p>18 responsibility for that mid market and single office</p> <p>19 space practitioner segment.</p> <p>20 We do sell equipment and service to the</p> <p>21 elites as well, but from a customer relationship</p> <p>22 standpoint that's owned by Hal Muller.</p> <p>23 Q. And do you see -- oversee Hal Muller at</p> <p>24 all?</p> <p>25 A. No. We both report in to Jim Breslawski.</p>
18	<p>1 Q. What is the EMC?</p> <p>2 A. Executive management committee.</p> <p>3 Q. And there's a monthly presentation to the</p> <p>4 EMC?</p> <p>5 A. Correct.</p> <p>6 Q. That involves all three divisions?</p> <p>7 A. Well, I'm not sure how often the others do</p> <p>8 it, but we -- presenting to the EMC, I'm sorry. So</p> <p>9 it's a meeting we call it. It's just an executive</p> <p>10 review with Stan Bergman, as our chairman and CEO,</p> <p>11 and Jim Breslawski, who I report to.</p> <p>12 Q. And I don't think I quite have it clear in</p> <p>13 my head. Is that just with dental?</p> <p>14 A. Yes, that's just dental.</p> <p>15 Q. Got it. Are there any meetings where all</p> <p>16 three divisions are presenting information about</p> <p>17 their division?</p> <p>18 A. No.</p> <p>19 Q. Would you say you have any insight into</p> <p>20 the medical distribution market?</p> <p>21 A. No.</p> <p>22 Q. And you've been responsible for both U.S.</p> <p>23 and Canada for four years you said?</p> <p>24 A. Yeah, Canada was just added four years</p> <p>25 ago.</p>	20	<p>1 Q. I guess in my mind that structure is a</p> <p>2 little unclear because you do oversee all of</p> <p>3 North America dental, right?</p> <p>4 A. Yes. Well, in Henry Schein.</p> <p>5 Q. So you oversee all of it except for the</p> <p>6 elite DSO portion?</p> <p>7 A. So not quite. So we have -- so the single</p> <p>8 office space practitioner and as they grow into this</p> <p>9 mid market segment; the elites are Hal. We have a</p> <p>10 lab division within -- so when I said there's three</p> <p>11 divisions within Henry Schein, Inc., those are the</p> <p>12 three main divisions. Within each division there</p> <p>13 are other subdivisions, if you would.</p> <p>14 So in the U.S. market, for example, our</p> <p>15 lab business, Zahn, that is run separately. That's</p> <p>16 not part of the U.S. dental business that I'm</p> <p>17 responsible for.</p> <p>18 So when we talk about Henry Schein Dental</p> <p>19 that does not include special markets. That does</p> <p>20 not include our lab business. We have a division</p> <p>21 called Henry Schein Practice Solutions, so that's a</p> <p>22 team that runs -- manages our practice management</p> <p>23 systems. Dentrax is the primary brand there on the</p> <p>24 dental side. That team is run out of Utah by a</p> <p>25 gentleman named Kevin Bunker. There is a dental</p>

21

23

1 specialty group. We have folks on the specialists
2 in the market that there's a different go-to-market
3 strategy for specialists versus the primary general
4 practitioner.

5 So there's divisions within the U.S.
6 market that don't all report in to me.

7 **Q. Got it.**

8 A. And there's presidents of each of those
9 divisions as well.

10 **Q. Got it. And does Hal Muller oversee
11 special markets for Canada as well?**

12 A. No, no.

13 **Q. And who oversees that?**

14 A. Peter Jugoon, J-u-g-o-o-n, is the
15 gentleman responsible for that; and he reports in to
16 Cy Elborne, E-l-b-o-r-n-e, who is the president of
17 Canada.

18 **Q. And how would you describe the dynamic of
19 your division versus Hal Muller's division?**

20 MR. McDONALD: Object to the form.

21 THE WITNESS: It's structured really
22 completely differently. The customers are
23 structured differently. They're more centralized in
24 decision making. Even in the mid-market space where
25 they have multiple locations, in most cases the

1 my team that works in partnership with Hal and his
2 team when, you know, going to propose, you know, to
3 one of these customers.

4 And then once that happens, our team is
5 responsible for installing, servicing, you know. So
6 the day-to-day operations of a dental practice, we
7 still help manage that.

8 **Q. How often would you say you interact with
9 Mr. Muller?**

10 A. A couple times a month.

11 **Q. Okay. Would you say you have a general
12 sense of special markets and Mr. Muller's division?**

13 A. Yes.

14 If I can go back to the question you asked
15 about medical.

16 **Q. Sure.**

17 A. You asked about do I have a general -- can
18 you just repeat that?

19 **Q. Yes. The earlier question was do you have
20 any insight into the medical distribution market.**

21 A. Yeah, so, I mean, I understand the
22 differences between, you know, how we go to market
23 and dental versus medical, so I have a general
24 insight. In other words, they don't have any
25 equipment and service division. They sell equipment

22

24

1 individual locations are still making their own, you
2 know, buying decisions; or, you know, there might be
3 some primary decision maker, but they're still --
4 the role of what we call our field sales consultant
5 is critical, FSC -- Acronyms R' Us at
6 Henry Schein -- so whereas in this elite special
7 markets group, the role of a field sales consultant,
8 the territory rep, a salesperson, is for the most
9 case not needed. It's a corporate buyer that's
10 funded differently; there's venture capital money
11 involved. So it's a different sales process,
12 different decision-making process.

13 **Q. And in running your division, do you have
14 to confer with Mr. Muller's division from time to
15 time?**

16 A. We don't have to and we do. It just makes
17 sense.

18 **Q. Sure.**

19 A. Because those customers, the large
20 customers in his space, he really primarily focuses
21 on the sundries, the merchandise side of the
22 business, you know. Part of the -- you know, the
23 proposals and contracts that they have including
24 pricing on equipment and service, but that's -- we
25 have a special markets equipment team that's part of

1 there, but it's operated and managed completely
2 different than how we do things on the dental side.

3 So in that sense I have a sense of the
4 differences between, you know, our dental division
5 and our medical division, but as far as the medical
6 industry I'm not as attuned to that.

7 So I just want to -- you asked something
8 that later triggered. I wanted to make sure I
9 answered that clearly.

10 **Q. Sure. I appreciate that.**

11 **And what's -- your understanding of the
12 differences, what's that based on?**

13 A. Meetings that I've had with Dave McKinley
14 and their folks in medical. There's a segment of
15 the medical division that can cross over a little
16 bit with dental. Oral surgeons, for example, oral
17 surgeons are dentists, they're D.D.S.s, but they
18 might also be a part of a group or an organization
19 within the medical side.

20 So we work closely to make sure there's
21 clarification on how to approach oral surgeons as an
22 example, but in general understanding how -- we've
23 attempted to figure out is there a way that we can
24 work -- use our service technician team to help on,
25 you know, installs on medical equipment.

25

1 We've tried some pilots. It's just a
2 completely different strategy, a different
3 go-to-market. The equipment is sold differently
4 from the manufacturers on the equipment side. They
5 take care of the installation and service, so we
6 don't really need to get involved.

7 So it's a different cost structure, a
8 different go-to-market structure.

9 **Q. What meetings have you had with
10 Mr. McKinley?**

11 A. Just, I mean, in most cases they're not
12 meetings that we have set up together, but we might
13 see each other at a function, you know, sidebar
14 discussions. We've had some meetings set up to
15 specifically talk through, you know, the
16 go-to-market strategy with oral surgeons.

17 There's a group of what we call community
18 health centers, and community health centers have
19 both a medical and a dental aspect within there, so
20 we want to make sure we're aligned how we approach
21 the community health centers.

22 So there's -- I mean, there's meetings,
23 scheduled meetings. I'm not sure when you say what
24 type of meetings. I'm not sure how to --

25 **Q. Sure. That's -- I appreciate your answer.**

26

1 **So would you say that you have a good
2 understanding of the medical division limited to
3 oral surgeons and CHCs?**

4 MR. McDONALD: Object to the form.

5 THE WITNESS: Well, yes, but also how they
6 go to market with the rest of the physician space,
7 again, it's no different than how we do in dental.

8 BY MS. KAHN:

9 **Q. And in terms of the how to go-to-market
10 strategy, what's that understanding of yours based
11 on?**

12 A. Just, again, based on how we offer -- I
13 consider us a full-service distributor. We do
14 basically anything and everything within the dental
15 office and dental practice. I don't believe that's
16 the case on the medical side.

17 Or what they do do is, again, it's the
18 equipment that's required in the medical office that
19 we, you know, participate in is the tables and
20 chairs. The big, huge, you know, exam, things that
21 they -- I think that's sold separately and sold
22 directly; we don't get involved in that.

23 **Q. And that understanding, what you just
24 testified to, that's based on discussions with
25 Mr. McKinley?**

27

1 A. Correct.

2 **Q. Has Henry Schein considered entering other
3 healthcare distribution markets?**

4 MR. McDONALD: Object to the form, lack of
5 foundation.

6 THE WITNESS: Such as?

7 BY MS. KAHN:

8 **Q. Such as vision.**

9 A. Not that I know of, no.

10 **Q. For today when I say "Henry Schein" or
11 "Schein," I'm referring just to the dental division
12 unless I say otherwise.**

13 A. Okay.

14 **Q. Okay.**

15 A. Then on dental for sure we have not
16 discussed going into vision.

17 **Q. Sure. No, my earlier question was with
18 respect to Henry Schein, Inc.**

19 **So going back to your duties and
20 responsibilities as president of Schein Dental, what
21 do you spend most of your time doing as president?**

22 A. E-mails, really just analyzing what's
23 happening, you know, how our results compared to our
24 budget; working with Dave Steck, who is our general
25 manager, he's responsible for the field

28

1 organization; understanding where we're performing
2 well in some markets versus others and what can we
3 do to help turn around in the markets that maybe
4 we're not performing so well in.

5 Paul Hinsch is on the marketing side.

6 He's working a little closer with most of our
7 suppliers, so making sure our supplier relationships
8 are intact and strong.

9 Michele Filiault handles all of our
10 operations team, the service technicians. We have
11 750 service techs across the country, and so she's
12 responsible for the teams that manage those service
13 technicians and all the facilities.

14 So just really focused on is the business
15 running smoothly, and there's always fires
16 somewhere, and I spend too much of my time on fires
17 versus sitting back and having the opportunity to
18 really think strategically.

19 **Q. You mentioned suppliers earlier.**

20 **Are you referencing manufacturer,
21 manufacturers that you -- that Schein partners with?**

22 A. Correct.

23 **Q. And the person that's in charge of that
24 relationship is Paul Rich you said?**

25 A. Pull Hinsch, H-i-n-s-c-h. He's

29

1 responsible for the supplier relationships on our
2 merchandise side of the business. We have other
3 relationships as well on the equipment and
4 technology side.

5 Don Hobbs is responsible for what we call
6 our traditional equipment suppliers, chairs, units
7 and lights. John Cox helps manage our product
8 solutions group, which is, you know, CAD/CAM and
9 digital integration, digital technologies.

10 **Q. Do you set the overall strategy and**
11 **direction for Schein?**

12 A. Well, again, for Schein Dental?

13 **Q. Yes.**

14 A. I'm sorry, you said that. Yes. So we
15 have a team of folks; we get together twice a year,
16 and that's -- usually the latter one, the winter one
17 is typically around, excuse me, you know, our
18 budgets are set, and now what's our strategy to
19 help, you know, make sure we execute and perform to
20 the budget. But ultimately that is my
21 responsibility, yes.

22 MR. McDONALD: And as further
23 clarification, when you're saying "Henry Schein"
24 means Henry Schein Dental, it's Henry Schein Dental
25 North America. You're not referring to global?

30

1 MS. KAHN: That's correct.

2 MR. McDONALD: Okay. Just to be sure.

3 MS. KAHN: I appreciate the clarification,
4 but please just state an objection.

5 MR. McDONALD: Well, we want to have a
6 clear record. I'm not being obstructive.

7 MS. KAHN: I understand.

8 MR. McDONALD: I want to make sure that
9 we're clear that he doesn't have knowledge of the
10 strategy on global and he's talking North America.

11 MS. KAHN: I understand.

12 MR. McDONALD: Thank you.

13 BY MS. KAHN:

14 **Q. Is part of your job to try to maximize**
15 **Schein's profits?**

16 A. I don't know if I'd use the word
17 "maximize." Part of my job is to make sure that I
18 achieve the budget that we set for the year.

19 **Q. And would you say part of your job is to**
20 **try to increase Schein's market share?**

21 A. Yes.

22 **Q. Are you familiar with the term "margin**
23 **management"?**

24 A. Yes.

25 **Q. What does that term mean?**

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1 A. So we have a gross margin, operating
2 margin and our net margin in the business.
3 Paul Hinsch, as I mentioned before, he's primarily
4 responsible for the margin management, if you would,
5 on our merchandise side of our business to work with
6 our manufacturers, to make sure we're buying as good
7 as anyone in the marketplace, that we have a good
8 rebate program that's aligned with our suppliers for
9 achieving the goals that they set for us; and then
10 from there how do we use that and figure out the
11 end-user pricing to our customers.

12 **Q. You oversee Paul Hinsch; is that right?**

13 A. Correct.

14 **Q. Is margin management part of your job?**

15 A. I mean, I definitely am ultimately
16 responsible for it, but I -- it's in very good hands
17 with Paul Hinsch.

18 **Q. I'm not sure if you can quantify this, but**
19 **what portion of your time would you say is devoted**
20 **to margin management?**

21 A. Very little.

22 **Q. Is there a certain margin that Schein**
23 **tries to maintain?**

24 MR. McDONALD: Object to the form, vague.

25 THE WITNESS: As our budgets are set each

32

1 year, our goal is to -- you know, part of the
2 overall mix is our gross margin. So yes, there's a
3 margin budget, operating expense budget right on
4 down through -- there's line items for each P&L, our
5 P&L line item that has budgets and targets for.

6 BY MS. KAHN:

7 **Q. Who sets the budget?**

8 A. Ultimately Steve Paladino, who is our
9 chief financial officer, sets it for the overall
10 organization. From there he is -- again, I believe
11 how it works is he kind of breaks it out between
12 dental, medical and animal health.

13 Jim Breslawski is responsible for the
14 global dental, so he is provided the overall target
15 from Steve there. And then from there he had Graham
16 Stanley, who is the chief financial officer for our
17 global dental business, and he breaks it down by
18 geography as far as, you know, setting targets.

19 **Q. Do you have any involvement?**

20 A. Not in setting the targets, no.

21 **Q. Would you say part of your job is to watch**
22 **for market developments that may impact Schein's**
23 **margins?**

24 A. Yes, overall market conditions, yes.

25 **Q. And is part of your job to prepare Schein**

33

35

1 **for risks in the marketplace?**

2 A. Yes.

3 **Q. Do you spend any time on specific customer**
4 **accounts?**

5 A. Rarely. The only time I really get
6 involved, if there's a customer complaint of some
7 sort; and even in those cases it's only if the
8 customer for whatever reason just wants to send a
9 letter or an e-mail to the president of the company
10 about they're upset about something, and I'll get
11 involved and help get things resolved.

12 But I don't negotiate pricing with
13 customers; I don't meet with them on how their
14 business is doing in particular.

15 **Q. Do you get involved in determining whether**
16 **or not to try to go after a certain customer to**
17 **acquire them as a customer?**

18 A. To be clear, we don't acquire customers,
19 okay.

20 **Q. Sure.**

21 A. Typically no. I mean, so like the big
22 ones Hal gets directly involved, and I don't meet
23 with those customers. If I'm at a dental convention
24 and one of our sales reps is working on a client and
25 says, hey, would you mind meeting Dr. Jones, I'd

1 A. Yes.

2 **Q. Your compensation is comprised of base**
3 **salary and annual incentives and long-term incentive**
4 **awards; is that right?**

5 A. Correct.

6 **Q. And what are the factors that determine**
7 **the incentive portions of your compensation?**

8 A. There's three pieces that make up the
9 bonus, what we call the PIP program, Performance
10 Incentive Plan. There's -- don't hold me to the
11 percentages -- like 25 percent is on functional
12 financial goals. So that basically is set how do we
13 do versus hitting our budget. So the budget that I
14 am responsible for, the U.S. dental business, makes
15 up about a third of my PIP.

16 There's a middle section that is on how
17 does overall Henry Schein, Inc. do, so I have no
18 control over that. That's overall Henry Schein
19 global results.

20 And then another portion is based on what
21 we call MBOs, the management by objectives. And
22 there's typically four or five of those more
23 activity-based type things, things like, you know,
24 working with our -- a couple of key suppliers,
25 things that are going on, you know, this year. Like

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1 like to introduce him to the president, I'll say hi,
2 shake hands, stand there for five or ten minutes,
3 and then -- so but I don't ever get involved in
4 sitting down in-depth and setting -- negotiating
5 price or anything with the customers. That's all
6 happened at the local level.

7 **Q. Do you ever get involved in saying yes,**
8 **we're going to try to bid for a certain customer?**

9 A. Not customer-specific, no.

10 **Q. Okay. And why not?**

11 A. We have -- all that is handled by our
12 local leadership team.

13 **Q. Got it. Would you say you've been**
14 **successful in leading Schein?**

15 A. I'd like to think so.

16 **Q. And what would you say has been the key to**
17 **your success?**

18 A. The people around me. Just hire right.

19 **Q. You surround yourself with good people?**

20 A. Amazing people, yeah.

21 **Q. Would you say that you know Schein's**
22 **business very well?**

23 A. Yes.

24 **Q. Would you say you understand the dental**
25 **industry very well?**

1 last year, for example, A-dec was a new supplier of
2 ours, so there was a specific MBO around, you know,
3 managing the relationship with A-dec.

4 One of our largest partners is KaVo Kerr,
5 part of the Danaher organization, and so there's a
6 specific MBO about managing that through some of the
7 complexities of that relationship.

8 So there's functional, financial,
9 Henry Schein, Inc. financial and then activity-based
10 pieces.

11 **Q. And who evaluates you to determine what**
12 **your incentive compensation would be each year?**

13 A. Jim Breslawski.

14 **Q. And in 2016 were you able to hit budget**
15 **for the dental division?**

16 A. No.

17 **Q. What about 2015?**

18 A. No.

19 **Q. And 2014?**

20 A. I think -- I don't know which years it
21 was, but I think somewhere like two of the last ten
22 years the U.S. dental business has achieved budget.

23 **Q. And how, if you can quantify it, how**
24 **far -- how much were you off by last year?**

25 A. Last year might have been one of our

37

1 biggest misses. We were probably at 91, 92 percent
2 of target.

3 **Q. And was it higher the years before?**

4 A. Yeah. The misses are usually within 2 to
5 5 percent of target.

6 **Q. Have you -- has it been a larger and
7 larger gap in recent years?**

8 A. No. Last year was a unique year.

9 **Q. Why do you think that was?**

10 A. It was just a challenging year. It's one
11 of the toughest years we've had in forecasting. We
12 don't know if it was overall election related. Who
13 knows. The whole market we felt was -- it wasn't
14 necessarily just Henry Schein Dental's performance.
15 The overall market was much softer than we had
16 anticipated going into the year.

17 So part of it is it's not that we perform
18 badly. It's that we missed -- you know, you
19 estimate the market is going to do something and the
20 market doesn't. That's going to drive our -- in
21 most cases that drives our miss.

22 **Q. Sure. And how are you guys doing this
23 year so far?**

24 A. So far we're pretty close to the plan, so
25 we're within [indicating] -- I'm sorry, I can't use

38

1 hands. We're close.

2 **Q. Who are your current direct reports?**

3 A. Paul Hinsch, VP of merchandising and
4 marketing; Michele Filiault, the VP of operations,
5 and she's spelled F-i-l-a-u-l-t [sic]. There is no
6 O, but it's Filiault; Ciprian, C-i-p-r-i-n [sic],
7 Tamas, T-a-m-a-s. Those are the three based in
8 New York.

9 Cy Elborne is the president of Canada.
10 Dave Steck is our vice president and general
11 manager. Chris Peterson is our director of
12 administration. Rodi Rozin, R-o-d-i, R-o-z-i-n,
13 director of business analytics.

14 I believe that is -- well, Wendy Rouse,
15 R-o-u-s-e, is my administrative assistant.

16 **Q. And what about Murray Stamer?**

17 A. He's no longer with the company. Ciprian
18 Tamas replaced him as our VP of finance, chief
19 financial officer.

20 **Q. What about John Chatham?**

21 A. He retired last fall.

22 **Q. What was his title before he retired?**

23 A. VP of -- well, still had the global
24 leadership title but he wasn't doing anything
25 global, but VP of leadership and team development.

39

1 **Q. And are you in the same office building as
2 most of your direct reports?**

3 A. I'm in -- I work out of West Allis,
4 Wisconsin, so three of those, Paul, Michele and
5 Ciprian are all in Melville, New York. The rest of
6 us are in -- well, Cy is up in Canada, and the
7 others are here in Wisconsin.

8 **Q. And of your direct reports, would you say
9 any one of them is sort of your right-hand man?**

10 A. Not really, no. I mean, Dave Steck is
11 responsible for the field organization. So
12 ultimately we are a sales-driven organization, and
13 Dave is responsible for sales.

14 So marketing is a key component of that
15 which Paul is a part of. Michele, you know, is part
16 of our operations. I mean, that marketing,
17 operations and service really drive our overall
18 results and sales, but ultimately Dave is the one
19 that's held the most accountable for sales results,
20 but, you know, they're all, you know, critical to
21 the success of the business.

22 **Q. Sure. Do you communicate frequently with
23 Mr. Steck?**

24 A. Yes.

25 **Q. How frequently would you say?**

40

1 A. Daily. We work in the same office.

2 **Q. And do you communicate to the same
3 frequency with your other direct reports?**

4 A. It's a little more challenging with those
5 in New York simply because you don't see each other
6 just walking to the restroom even. But, you know, I
7 have regular calls set up with them. Most meetings
8 that we have, it's either a videoconference,
9 teleconference. It doesn't matter where people are
10 at, you know; they're involved in the meetings.

11 So from a face-to-face standpoint, it's
12 definitely more frequently with those in Wisconsin.

13 **Q. Do you have regularly-scheduled one-on-one
14 meetings with your direct reports?**

15 A. I do.

16 **Q. How frequently?**

17 A. Once a month.

18 **Q. Together or individually?**

19 A. One on one.

20 **Q. One on one, got it. And do you have any
21 meetings where you meet with all of your direct
22 reports?**

23 A. Yes. That also is monthly.

24 **Q. Would you say you trust Mr. Steck?**

25 A. I do.

10 (Pages 37 to 40)

41	<p>1 Q. Has he been a good employee?</p> <p>2 A. Excellent.</p> <p>3 Q. Are there any other direct reports in the</p> <p>4 last ten years that we haven't discussed?</p> <p>5 A. John, Murray. Brian Watson, he was a dual</p> <p>6 direct report to both myself and Jim Breslawski. He</p> <p>7 left the organization about three years ago.</p> <p>8 Q. What was his title?</p> <p>9 A. VP of equipment.</p> <p>10 Those are the only ones that come to mind.</p> <p>11 Q. Okay. Do you Jake Meadows and</p> <p>12 Joe Cavaretta?</p> <p>13 A. I do.</p> <p>14 Q. And who are they?</p> <p>15 A. Jake is our vice president of the east,</p> <p>16 and -- area, and Joe is VP of the western area.</p> <p>17 Q. They don't directly report to you; is that</p> <p>18 right?</p> <p>19 A. Correct.</p> <p>20 Q. They report to Mr. Steck?</p> <p>21 A. Correct.</p> <p>22 Q. So I've seen a number of e-mails from</p> <p>23 Mr. Meadows and/or Mr. Cavaretta to you directly.</p> <p>24 Would it be fair to say that you</p> <p>25 communicate directly with them fairly regularly?</p>	43	<p>1 A. Not regularly, no.</p> <p>2 Q. How often would you say those instances</p> <p>3 come about?</p> <p>4 MR. McDONALD: Object to the form, vague,</p> <p>5 overly broad.</p> <p>6 THE WITNESS: Very rare.</p> <p>7 BY MS. KAHN:</p> <p>8 Q. Can you think of any circumstances where</p> <p>9 you've communicated with a zone manager?</p> <p>10 A. Sure. If there's, again, one with a</p> <p>11 customer complaint like I mentioned before, I'll</p> <p>12 make sure if it's in the east that Jake is involved;</p> <p>13 if it's in the west Joe is involved, typically copy</p> <p>14 the zone general manager, the regional manager, you</p> <p>15 know, ask for insights or input.</p> <p>16 If there's an employee issue for whatever</p> <p>17 reason that's bubbled up to me, I want to make sure</p> <p>18 the zone and regional managers are aware; a customer</p> <p>19 issue, same thing, typically, you know, that type of</p> <p>20 level of involvement.</p> <p>21 We get our entire field management team</p> <p>22 together twice a year, once in January in Wisconsin</p> <p>23 and then once at our national sales meeting in June;</p> <p>24 and we have just -- so it's our field managers, zone</p> <p>25 managers, regional managers, operations managers.</p>
42	<p>1 A. Yes.</p> <p>2 Q. And under what circumstances do those</p> <p>3 communications usually come about?</p> <p>4 MR. McDONALD: Object to the form, vague,</p> <p>5 overly broad.</p> <p>6 THE WITNESS: Occasionally -- you know,</p> <p>7 Jake used to be in the West Allis office also. He</p> <p>8 now relocated to the Baltimore area but, again, same</p> <p>9 type of thing; they're just in the office walking</p> <p>10 by, stick their head in, hey, give me a quick heads</p> <p>11 up. Sometimes it would be a scheduled meeting. If</p> <p>12 they can't get ahold of Dave on something they might</p> <p>13 come and ask me.</p> <p>14 So there's no rhyme or reason really just</p> <p>15 to -- you know, why we'd have direct communication</p> <p>16 versus -- sometimes they're sending the message to</p> <p>17 both Dave and I.</p> <p>18 BY MS. KAHN:</p> <p>19 Q. And would you say that Mr. Meadows and</p> <p>20 Mr. Cavaretta are good employees?</p> <p>21 A. Yes.</p> <p>22 Q. And do you trust them?</p> <p>23 A. Very much.</p> <p>24 Q. As a general matter do you communicate</p> <p>25 regularly with zone managers?</p>	44	<p>1 So I'll see them there and interact. But I'm</p> <p>2 rarely, you know, really sitting one on one with any</p> <p>3 of them unless they ask for time with me, which I'm</p> <p>4 happy to give.</p> <p>5 Q. Sure. As a general matter do you</p> <p>6 communicate regularly with the regional managers?</p> <p>7 A. Same --</p> <p>8 MR. McDONALD: Objection, same objection.</p> <p>9 THE WITNESS: Same thing with zone</p> <p>10 managers, when I just happen to see them at these</p> <p>11 situations that I just outlined as well as the FMM,</p> <p>12 or field manager meeting.</p> <p>13 BY MS. KAHN:</p> <p>14 Q. Who do you currently report to?</p> <p>15 A. Jim Breslawski.</p> <p>16 Q. Has that been the case for the last ten</p> <p>17 years?</p> <p>18 A. 20, yes.</p> <p>19 Q. And what about Mr. Stanley Bergman, do you</p> <p>20 report to him?</p> <p>21 A. Indirectly, so that's who Jim reports to.</p> <p>22 Q. Do you communicate often with Mr. Bergman?</p> <p>23 MR. McDONALD: Object to the form.</p> <p>24 THE WITNESS: Yes.</p> <p>25</p>

45	<p>1 BY MS. KAHN:</p> <p>2 Q. What about Mr. Breslawski?</p> <p>3 A. Yes.</p> <p>4 Q. Do you have regularly-scheduled meetings</p> <p>5 with Mr. Breslawski?</p> <p>6 A. Yes.</p> <p>7 Q. How often are those?</p> <p>8 A. On the calendar at least once a month, but</p> <p>9 there's -- that's our -- for our one on one; and we</p> <p>10 have our monthly, the exec review, so that's the</p> <p>11 entire team, and then, you know, scattered meetings</p> <p>12 throughout the month on various topics.</p> <p>13 Q. And how often do you communicate with</p> <p>14 Mr. Bergman?</p> <p>15 A. It could be -- it depends on the day, the</p> <p>16 topic, you know. So at least once or twice a week</p> <p>17 I'd say on -- you know, and most of that is</p> <p>18 e-mail-type communication.</p> <p>19 Q. Earlier you used the term "full-service</p> <p>20 distributor."</p> <p>21 A. Uh-huh.</p> <p>22 Q. What does that term mean to you?</p> <p>23 A. An organization that provides -- basically</p> <p>24 can answer any and all of the needs of a dental</p> <p>25 practice, so from the sundries, the merchandise,</p>	47	<p>1 THE WITNESS: Yeah, I don't have it. I</p> <p>2 could guess at the number, but I don't have it in</p> <p>3 front of me.</p> <p>4 MR. McDONALD: And you're not here to</p> <p>5 speculate or guess. You're here to tell the truth,</p> <p>6 as you know.</p> <p>7 MS. KAHN: Counsel, please just state an</p> <p>8 objection.</p> <p>9 MR. McDONALD: Hey, you know what, I'm</p> <p>10 going to do what I need to do. If you don't like it</p> <p>11 we can stop and leave, okay. I'm going to tell him</p> <p>12 not to speculate. I'm not obstructing. You don't</p> <p>13 want him to speculate; the rules don't require him</p> <p>14 to speculate; he's not going to speculate.</p> <p>15 Ask your question, please.</p> <p>16 MS. KAHN: And for the record, please</p> <p>17 state "objection" and we can move on from there.</p> <p>18 That's all that the FTC's rules and regulations</p> <p>19 allowed.</p> <p>20 MR. McDONALD: I will do what I think I</p> <p>21 need to do to protect the record and my client.</p> <p>22 Thank you.</p> <p>23 BY MS. KAHN:</p> <p>24 Q. Mr. Sullivan, do you have a general sense</p> <p>25 of Schein's gross margin today?</p>
46	<p>1 equipment, installation, repair, the service that's</p> <p>2 involved, warranty work. Really when you walk into</p> <p>3 a dental office there's virtually -- once you walk</p> <p>4 through that door, including the waiting room, we</p> <p>5 can help design and sell office furniture, we can do</p> <p>6 anything and everything in that dental practice.</p> <p>7 Q. And Schein is a full-service distributor,</p> <p>8 right?</p> <p>9 A. Correct.</p> <p>10 Q. And is distributor sometimes referred to</p> <p>11 as a dealer?</p> <p>12 A. Yes.</p> <p>13 Q. Are you familiar with the term "national</p> <p>14 distributor"?</p> <p>15 A. Yes.</p> <p>16 Q. What does that term mean to you?</p> <p>17 A. Someone who sells coast to coast.</p> <p>18 Q. And Schein is a national distributor</p> <p>19 today?</p> <p>20 A. Correct.</p> <p>21 Q. What is Schein's U.S. gross margin for</p> <p>22 today?</p> <p>23 MR. McDONALD: Object to the form.</p> <p>24 THE WITNESS: I don't know. We're --</p> <p>25 MR. McDONALD: Don't speculate.</p>	48	<p>1 A. I do.</p> <p>2 Q. What's your general sense?</p> <p>3 A. Meaning what's the percentage, what's</p> <p>4 the --</p> <p>5 Q. A range, whatever your sense is.</p> <p>6 A. 32 to 34 percent range.</p> <p>7 Q. And is that an average of all the dental</p> <p>8 products?</p> <p>9 A. Yes. So our full -- it's the complete</p> <p>10 average from merchandise to equipment.</p> <p>11 Q. Do you have a sense of the margins if we</p> <p>12 were to break it up by equipment and merchandise?</p> <p>13 A. Yes.</p> <p>14 Q. And what's your sense of the two?</p> <p>15 A. Merchandise is in the 37 to 38 percent</p> <p>16 range; equipment is in the 28 to 30 percent range.</p> <p>17 Q. And Schein has private-label products as</p> <p>18 well, right?</p> <p>19 A. Correct.</p> <p>20 Q. And do you have a sense of -- and strike</p> <p>21 that.</p> <p>22 Private-label products only for</p> <p>23 merchandise?</p> <p>24 A. Correct.</p> <p>25 Q. Do you have a sense of Schein's margin if</p>

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1 we were to break it up for merchandise between
2 private label and branded products?

3 A. I know the percentage is higher but in
4 many cases GP dollars are lower. It's a
5 lower-priced item at a higher margin.

6 **Q. When you said "GP," what are you referring
7 to?**

8 A. I'm sorry, gross profit.

9 **Q. And the margin is higher for the
10 private-label products; is that right?**

11 A. The GP -- the gross profit percentage,
12 sorry, is higher. In some cases the GP dollars can
13 actually be lower with the price point.

14 **Q. Has Schein's gross margin increased,
15 decreased or stayed the same in the last five years?**

16 A. It's remained fairly steady.

17 **Q. What about in the last ten years?**

18 A. Fairly steady.

19 **Q. Has there been any changes?**

20 MR. McDONALD: Object to the form.

21 THE WITNESS: I'd have to go back and
22 look.

23 BY MS. KAHN:

24 **Q. You can't say one way or the other whether
25 it's gone down a little bit or up a little bit?**

1 **Q. Has the operating margin stayed fairly
2 consistent for the last five years?**

3 A. Yes, it has.

4 **Q. And what about the net margin?**

5 A. Again, so I'm not held responsible. We
6 don't actually calculate it, so I don't know what it
7 is. I just -- in my own mind I calculate it, you
8 know, knowing tax rates and things like that.

9 **Q. What's Schein's national market share
10 today?**

11 MR. McDONALD: Object to the form.

12 THE WITNESS: It is really hard to say.
13 We don't know for sure. There's really no good
14 reporting on this. There's a company called
15 Strategic Dental Marketing; SDM is the acronym we
16 always use for them. And that reporting has
17 become we believe less and less valuable, less
18 accurate, less consistent, and there's a lot of
19 things it does not include.

20 But we estimate our market share in total
21 to be somewhere around 36 to 38 percent.

22 BY MS. KAHN:

23 **Q. And that includes all of the services,
24 supplies and equipment?**

25 A. Correct.

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1 A. I think over this period of time it's
2 stayed fairly consistent.

3 **Q. You mentioned earlier three types of
4 margins: Gross, operating and net. Is that right?**

5 A. Correct.

6 **Q. Do you have a sense of Schein's net
7 margins today?**

8 A. For the dental business, again, we
9 don't -- so you have our gross margin, which is the
10 cost of goods and what we sell to the customer.
11 Then we have our operating expenses; that gets us
12 our operating margin.

13 From there, at the divisional level, you
14 know, the interest and taxes and things like that
15 are not applied to that at the divisional level.
16 That's handled at the corporate level.

17 So I'm really held responsible for
18 ultimately our operating margin. The net margin
19 after tax would be in the 5 to 6 percent range if
20 you applied the tax rates and everything else to
21 that, but we don't typically -- I'm not held
22 accountable to that. That's managed at corporate.

23 **Q. Sure. And what's your sense of the
24 operating margin?**

25 A. 10, roughly 10 percent.

1 **Q. Do you have a sense of market share if we
2 were to focus solely on supplies?**

3 A. Based on these reports it's -- we believe
4 it's roughly 40 percent.

5 **Q. And do you know, are these percentages
6 that you're approximating, do these account for
7 manufacturers that sell direct to dentists?**

8 A. No. So this is what SDM reports on, and
9 they don't get the information from the direct
10 sellers.

11 **Q. Got it. So this is only the market for
12 the distributors?**

13 A. Correct.

14 **Q. Do you have a sense of how large the
15 direct manufacturer to dentist part of the market
16 is?**

17 A. No, and if you could find that for us,
18 that would be helpful.

19 **Q. Is Schein the largest dental distributor
20 in the U.S.?**

21 A. We believe so, yes.

22 **Q. What was Schein's market share about five
23 years ago?**

24 MR. McDONALD: Object to the form.

25 THE WITNESS: It really hasn't changed a

53	<p>1 lot over this period of time. We believe we've</p> <p>2 incrementally taken anywhere from, you know, 20 to</p> <p>3 50 basis points of share a year. So five years it</p> <p>4 might have been in the 34 to 36 range; now we're in</p> <p>5 the 36 to 38 range.</p> <p>6 BY MS. KAHN:</p> <p>7 Q. What about ten years ago, do you know?</p> <p>8 A. I'd be speculating. Similar type</p> <p>9 increments, we believe.</p> <p>10 Q. But as a general matter the market share</p> <p>11 has been increasing slightly over time?</p> <p>12 A. Correct.</p> <p>13 Q. Who are Schein's competitors?</p> <p>14 A. Other full-service dental dealers, other</p> <p>15 direct sellers, others -- you know, maybe a</p> <p>16 merchandise-only type company, you know. Some of</p> <p>17 our manufacturers we partner with, but they also</p> <p>18 have a direct selling component to their business,</p> <p>19 and it's primarily on the specialty side of our</p> <p>20 business. So there's components even within our</p> <p>21 partners that, you know, sell direct, so those</p> <p>22 segments we view as competitors.</p> <p>23 Q. Would you say Patterson and Benco are</p> <p>24 Schein's primary competitors?</p> <p>25 A. I would say -- I would say they're our</p>	55	<p>1 market. It will vary.</p> <p>2 So they're our largest national</p> <p>3 competitors, but every market is unique.</p> <p>4 BY MS. KAHN:</p> <p>5 Q. Sure. And I'm just trying to understand</p> <p>6 if you disagree with the statement that Patterson</p> <p>7 and Benco are Schein's primary competitors in the</p> <p>8 U.S. dental market.</p> <p>9 MR. McDONALD: Object to the form, asked</p> <p>10 and answered.</p> <p>11 THE WITNESS: I don't disagree with the</p> <p>12 statement, but I would refer to them as our largest.</p> <p>13 BY MS. KAHN:</p> <p>14 Q. Patterson and Benco are also full-service</p> <p>15 dealers; is that right?</p> <p>16 A. Correct.</p> <p>17 Q. And are they both national dealers?</p> <p>18 A. Patterson for sure. Benco, I would call</p> <p>19 them quasi national. I don't know that they're in</p> <p>20 every market across the country. They've expanded</p> <p>21 over the last, you know, five to ten years and</p> <p>22 become more national; so Patterson for sure and</p> <p>23 Benco mostly, yes.</p> <p>24 Q. Is Patterson the second largest U.S.</p> <p>25 dental distributor?</p>
54	<p>1 largest competitors, yes.</p> <p>2 Q. Would you say they're Schein's primary</p> <p>3 competitors?</p> <p>4 MR. McDONALD: Object to the form, asked</p> <p>5 and answered.</p> <p>6 THE WITNESS: They're our largest. It</p> <p>7 varies by market even within the U.S. dental</p> <p>8 business.</p> <p>9 BY MS. KAHN:</p> <p>10 Q. The reason that I ask is that Schein's</p> <p>11 2016 10-K filing identifies Patterson and Benco as</p> <p>12 the primary competitors in the dental market. I'm</p> <p>13 just curious if you agree with that.</p> <p>14 MR. McDONALD: Object to the form.</p> <p>15 THE WITNESS: I'm not responsible for --</p> <p>16 MR. McDONALD: If you have a document you</p> <p>17 can show him, you should do it.</p> <p>18 Go ahead.</p> <p>19 THE WITNESS: I'm not responsible for</p> <p>20 filing the 10-K.</p> <p>21 So I view them as our largest competitor.</p> <p>22 They're in every market that we're in. But when I'm</p> <p>23 talking with, say, our manager in Memphis or in</p> <p>24 Knoxville, you know, Nashville Dental, they might be</p> <p>25 a bigger player than Patterson or Benco in that</p>	56	<p>1 A. Yes.</p> <p>2 Q. And do you have a general sense of their</p> <p>3 market share?</p> <p>4 A. Just based on public reporting and knowing</p> <p>5 where we're at, we think they're in the 32 to 34</p> <p>6 range.</p> <p>7 Q. And is Benco the third largest U.S. dental</p> <p>8 distributor?</p> <p>9 A. Correct.</p> <p>10 Q. Do you have a general sense of Benco's</p> <p>11 market share?</p> <p>12 A. No.</p> <p>13 Q. Do you have a sense of who comes in</p> <p>14 fourth?</p> <p>15 A. No. There's a multitude of other regional</p> <p>16 players that we don't know their volume.</p> <p>17 Q. You're familiar with Burkhart Dental?</p> <p>18 A. Yes.</p> <p>19 Q. And Burkhart is a competitor of Schein's?</p> <p>20 A. Yes.</p> <p>21 Q. Are they full-service as well?</p> <p>22 A. Yes.</p> <p>23 Q. And they're regional rather than national,</p> <p>24 right?</p> <p>25 A. Correct.</p>

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1 **Q. Is Darby a competitor?**
 2 A. Yes.
 3 **Q. They're not full-service?**
 4 A. No.
 5 **Q. How would you describe them?**
 6 A. Telesales organization.
 7 **Q. Do they have value-added services?**
 8 MR. McDONALD: Object to the form, vague.
 9 THE WITNESS: Not that I'm aware of. I'm
 10 sure they would claim they have some but not in the
 11 full-service sense.
 12 BY MS. KAHN:
 13 **Q. Would you consider Darby a national**
 14 **distributor?**
 15 A. Yes.
 16 **Q. And do you have a general sense of Darby's**
 17 **market share?**
 18 A. No, I do not.
 19 **Q. Are there other telesales distributors in**
 20 **the U.S.?**
 21 A. Yes, yes.
 22 **Q. Can you name any off the top of your head?**
 23 A. I knew you were going to ask.
 24 Safco, S-a-f-c-o. That's really the only
 25 significant one that comes to mind.

1 And that statement says, you know, we believe in
 2 improving the lives of those we touch. It goes on
 3 to talk about by focusing on practice care so our
 4 customers can focus on patient care. And there's
 5 true meaning behind it. We have what we call our
 6 practice care wheel and all the things that we
 7 provide.
 8 And I'll say, you know, dental schools do
 9 a fantastic job of teaching kids, you know, how to
 10 look into an oral cavity and become a good
 11 healthcare provider. They do a terrible job of
 12 reminding them when they look up, oh, by the way,
 13 you're a small business owner, right; and so the
 14 practice side of dentistry is where we believe our
 15 role comes in.
 16 And so we train our team differently than
 17 our competitors. We go to market differently than
 18 our competitors. Our advertising is different. We
 19 really are focused on the practice side of
 20 dentistry.
 21 And so we do -- most of our competitors
 22 provide a lot of the services that we do, the
 23 merchandise, the equipment. Patterson, as an
 24 example, has a practice management company,
 25 Eaglesoft like our Dentrax. All the others refer to

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1 **Q. Would it be accurate to say that Patterson**
 2 **and Benco are Schein's only full-service national**
 3 **competitors?**
 4 A. Yes, again with the exception I mentioned
 5 earlier on Benco. They're I call them quasi
 6 national, but in essence, yes.
 7 **Q. Okay. How does Schein compete against**
 8 **Patterson?**
 9 MR. McDONALD: Object to the form, it's
 10 overly broad, vague.
 11 THE WITNESS: No different than we compete
 12 with any of our competitors. We go to market with a
 13 strategy for our customers. We talk about
 14 everything that we provide and what differentiates
 15 us from our competitors.
 16 We don't have a Patterson-specific plan, a
 17 Benco-specific plan, a National Dental-specific
 18 plan.
 19 BY MS. KAHN:
 20 **Q. Sure. And what would you say**
 21 **distinguishes you from other full-service**
 22 **competitors?**
 23 A. Well, we have a couple things. Our
 24 mission statement, it's not just a tagline; it's not
 25 just a marketing thing. There's meaning behind it.

1 someone else's so they can provide practice
 2 management services. Everyone has some level of
 3 digital impressioning, you know, CAD/CAM, you know,
 4 offering. Full-service dealers all have service
 5 technicians that provide service.
 6 The one piece that we believe is uniquely
 7 ours is what we call our business solution segment
 8 of our practice care wheel, and that's a team of
 9 folks that are just solely focused on the practice.
 10 When you go in to meet with your dentist,
 11 you probably sit down with them and you go through
 12 and he provides you a patient treatment plan after
 13 doing an oral exam. We sit with our customers. We
 14 do a business development meeting with them, and out
 15 of that comes a practice analysis. That practice
 16 analysis is like their practice treatment plan. So
 17 just like they're not going to do all that dentistry
 18 on your next visit, we're not going to do all this
 19 on your practice the next time we're here, but it's
 20 a plan over the next three to five years how we can
 21 help them to achieve their goals and dreams.
 22 And, you know, it all sounds great from --
 23 you know, like motherhood and apple pie, and if
 24 you're sitting on -- there's real meaning and
 25 strategy that supports all of that. That is what we

61	<p>1 believe makes us unique versus any of our 2 competitors.</p> <p>3 Q. You mentioned a number of services and 4 products that Schein offers its customers. I'm 5 wondering if there's -- can we use the term 6 "value-added services" to sort of account for all of 7 these various types of services that you just 8 described?</p> <p>9 A. You could, but from our perspective it's 10 too generic --</p> <p>11 Q. Sure.</p> <p>12 A. -- because everyone, you know, Darby 13 included I'm sure, has what they call their 14 value-added services.</p> <p>15 Our unique segment that is different than 16 just a typical value-added service is our business 17 solutions, and that business solutions offering is 18 unique. It would fall under an overall value-added 19 service for sure, but it's a segment that we don't 20 believe anyone in the market does like we do.</p> <p>21 Q. Including Patterson and Benco?</p> <p>22 A. Correct.</p> <p>23 Q. Would you agree that Schein, Patterson and 24 Benco try to outbid each other on price from time to 25 time?</p>	63	<p>1 THE WITNESS: It certainly happens from 2 time to time. I don't know how often it happens. 3 It's definitely not in every scenario.</p> <p>4 Our salespeople call on our customers, you 5 know, 10 to 15 calls a day. Most times they're not 6 dealing with price. There are times they walk in 7 there might be a price-related issue. It could be 8 they saw a price online; it could be Darby called or 9 something; it might be the Patterson rep was just 10 in, who knows. But they're not dealing with that on 11 a day-to-day basis typically.</p> <p>12 BY MS. KAHN:</p> <p>13 Q. Schein publishes its prices for all of its 14 dental products; is that right?</p> <p>15 A. Yes.</p> <p>16 Q. Does it do that for the services as well?</p> <p>17 A. I mean, for our service technicians, like 18 our hourly rate for a service tech?</p> <p>19 Q. Yes.</p> <p>20 A. We don't publish it because it varies by 21 market. So it's published internally, but we don't 22 put that like in a catalog or it's not online 23 anywhere, no.</p> <p>24 Q. Okay. And just focusing back on the 25 products, the merchandise, is the published price</p>
62	<p>1 MR. McDONALD: Object to the form.</p> <p>2 THE WITNESS: I think we compete with all 3 of our competitors, you know, so if it's -- it could 4 be we're up against Patterson; it could be up 5 against Benco; it could be up against Burkhardt; it 6 could be up against Darby; it could be up against 7 fill in the blank.</p> <p>8 BY MS. KAHN:</p> <p>9 Q. Sure. And you compete on price to gain 10 business from time to time?</p> <p>11 A. Yes, we do.</p> <p>12 Q. If we're focusing just on Schein, 13 Patterson and Benco, how frequent of an occurrence 14 is it when the three of you try to outbid each other 15 on price?</p> <p>16 MR. McDONALD: Object to the form, overly 17 broad, vague.</p> <p>18 THE WITNESS: Yeah, I wouldn't know. I'm 19 not involved in price negotiations with customers.</p> <p>20 BY MS. KAHN:</p> <p>21 Q. Sure. Do you have any general sense of 22 whether that happens at all?</p> <p>23 MR. McDONALD: Object to the form, vague.</p> <p>24 THE WITNESS: It certainly --</p> <p>25 MR. McDONALD: Go ahead.</p>	64	<p>1 also referred to as the catalog price?</p> <p>2 A. Yes.</p> <p>3 Q. Do you know if Patterson also publishes 4 its dental product prices?</p> <p>5 MR. McDONALD: Object to the form. And to 6 be clear, when you say "products," you're referring 7 to merchandise only?</p> <p>8 MS. KAHN: I am right now, and then we can 9 broaden it.</p> <p>10 THE WITNESS: Okay. So we believe -- I 11 believe we're the only ones that publish an annual 12 catalog with the prices in it. Patterson, Benco, 13 Darby, you know, all of our competitors publish 14 fliers from time to time that will have prices 15 included. Most of them will have something online, 16 but in most cases like even with ours you have to 17 have a password for your account specifically to see 18 your pricing. But general pricing is typically 19 available online.</p> <p>20 BY MS. KAHN:</p> <p>21 Q. So I'm just trying to understand your 22 answer. 23 You're not sure if Patterson publishes a 24 catalog of prices for all of its merchandise? 25 A. No, I know they don't. We are the only</p>

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1 ones that publish an annual catalog that is fully
2 priced.

3 **Q. Okay.**

4 A. Others, other competitors, I don't know
5 what Patterson does relative to pricing, you know,
6 but I know that they have fliers from time to time
7 with a special or promotion. How often they come
8 out with that I don't know.

9 **Q. And what about Benco?**

10 A. I think it's the same thing, from time to
11 time. They do not have an annual catalog that's
12 listing prices.

13 **Q. And you were mentioning prices being
14 available online.**

15 **Do you know if Patterson has prices for
16 all of their dental merchandise online?**

17 A. I have not looked. I don't know that
18 it's -- I believe you have to have a password to
19 have -- you know, the dentist has to have it for
20 their pricing. They can see their pricing online.
21 It's not available for anyone else to see that I'm
22 aware of.

23 **Q. Got it. And do you have an understanding
24 of how it works with Benco?**

25 A. I don't. I think it's very similar to

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1 Patterson's and others.

2 **Q. And why does -- you mentioned that Schein
3 is the only one that publishes an annual catalog.**

4 **Why does Schein do that?**

5 A. That's an excellent question, and we --
6 it's just historic. We've always been the -- it
7 goes back to the foundation and the roots of, you
8 know, Henry Schein. You know, as it expanded, it
9 was a catalog mail-order-type organization. Our
10 sales reps -- we know our customers really do like
11 the catalog. It has a lot of, you know, other
12 things included in it. But we are going through
13 the, you know, does it make sense to paper print
14 versus digital review every year.

15 **Q. Do you have a general sense of how
16 Schein's prices compare to those of Patterson?**

17 MR. McDONALD: Object to the form, vague.

18 THE WITNESS: So Paul Hinsch and team do
19 as best as possible to analyze our pricing. When we
20 go to price the catalog every year, you know, we
21 want to make sure that we're competitively priced.
22 We're -- we believe we're very competitively priced
23 with all the full-service dealers.

24 BY MS. KAHN:

25 **Q. And when you say "competitively priced,"**

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1 **what do you mean exactly?**

2 A. Within a range of, you know, 2 to 5 to
3 8 percent.

4 **Q. And do you have a general sense of whether
5 Patterson -- excuse me.**

6 **Do you have a sense of whether Schein is a
7 couple of percentage points higher than the other
8 full-service distributors?**

9 MR. McDONALD: Object to the form.

10 THE WITNESS: I don't.

11 BY MS. KAHN:

12 **Q. You made a distinction of being
13 competitively priced with all full-service dealers.**

14 **Do you have a sense of how Schein's prices
15 compare to non-full-service dealers?**

16 A. I don't.

17 **Q. Is it fair to say that the
18 non-full-service dealers are cheaper for
19 merchandise?**

20 MR. McDONALD: Object to the form.

21 THE WITNESS: It really would -- I don't
22 know. It would vary on -- I'd have to see the
23 pricing. I don't know.

24 BY MS. KAHN:

25 **Q. And why is it that you have an**

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1 **understanding for the full-service dealer
2 competitors but not the non-full-service dealer
3 competitors?**

4 MR. McDONALD: Object to the form.

5 THE WITNESS: Just through the process
6 that I know Paul Hinsch goes through. I'm not
7 exactly sure what that process is and how, you know,
8 he manages it.

9 Again, I just -- there's a big piece of me
10 that just has an emphatic trust with someone like
11 Paul, but he does -- he goes through analysis of
12 where we are, you know, how we are priced within the
13 full-service segment.

14 BY MS. KAHN:

15 **Q. Got it.**

16 A. I don't know that we have access to anyone
17 else's pricing or how he gets it from -- I'm not
18 exactly sure how he comes up with the analysis, to
19 tell you the truth.

20 So that's only -- we're concerned about
21 our primary competitive space in the full-service
22 dealer network.

23 **Q. Just so I understand, Mr. Hinsch in
24 pricing Schein's products considers the full-service
25 distributor market pricing, is that --**

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1 A. That's correct.

2 **Q. -- fair to say?**

3 A. That's fair to say, yes.

4 **Q. And do you have an understanding of why he**
5 **doesn't take into account the non-full-service**
6 **market?**

7 MR. McDONALD: Object to the form, lack of
8 foundation.

9 THE WITNESS: We know our strategy. We
10 know the market that we're approaching, and we're
11 interested in how we compare as compared to those
12 others that have provided similar services that we
13 do.

14 BY MS. KAHN:

15 **Q. Sure. In your mind is that a different**
16 **market segment than the full-service dealer market?**

17 A. From the standpoint of just from a --
18 excuse me -- market segmentation standpoint, yes. I
19 mean, there's the full-service dealers and then the
20 non-full-service dealers. We're all going, you
21 know, approaching the same customer, but our
22 go-to-market strategies are different.

23 So that's that where we know we need to be
24 structured differently. Our cost structure is
25 different; the services that we provide is

1 where does price rank for you, Doctor. So if price
2 is a significant concern for the dentist, we will
3 then want to talk to them about, you know, your
4 profitability of practice must be a concern for you,
5 right; and in most cases they say yes. Well, let me
6 show you where I can help you in your overall
7 profitability for your practice, and it's not
8 necessarily just about saving 10 percent off your
9 supplies. If you're buying 35 grand a year in
10 supplies, 10 percent would be \$3,500. That's a lot
11 of money, but we know if we go through this practice
12 analysis with you we can help you generate more
13 revenue in your practice that falls to the bottom
14 line than 10 percent off supplies.

15 So we will work with them in that capacity
16 from a full-service offering standpoint. That
17 doesn't mean we won't also then, by the way, still
18 have to do the price matching and still, you know,
19 giving the 10 percent off on the supply side, but we
20 want to make sure that we give the full basket of
21 our offering.

22 BY MS. KAHN:

23 **Q. Sure. From time to time does Schein**
24 **analyze its competitors' business models?**

25 MR. McDONALD: Object to the form.

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1 different. So our cost structure is higher in order
2 to provide all the services that we provide, so we
3 want to make sure, you know, customers that are
4 interested in that type of service are -- we're
5 priced competitively to provide those services.

6 **Q. How would you say Schein competes against**
7 **the non-full-service dealers?**

8 A. Well, again, let me go back to the wheel,
9 the practice care wheel. We want to make sure our
10 customers understand that we are competitively
11 priced. We won't necessarily be the lowest, you
12 know, at all times.

13 But for the services that we provide, you
14 know, the basket of everything, the price is a
15 component of value. So the total value we believe
16 we are the best offering to the marketplace. And
17 price is a component, but it's not necessarily
18 number one in everyone's category.

19 **Q. And do you have a sense of when Schein is**
20 **competing against a non-full-service distributor**
21 **whether price is less important because you're**
22 **trying to sell the value and the value-added**
23 **services?**

24 MR. McDONALD: Object to the form.

25 THE WITNESS: We don't ask specifically

1 THE WITNESS: Yes, in the extent from the
2 standpoint of knowing who our competitors are and,
3 you know, and understanding are they full-service or
4 not. But beyond that, we wouldn't have access to
5 what their, you know, their structure, their
6 go-to-market strategy or model would be.

7 BY MS. KAHN:

8 **Q. Does Schein try to analyze what**
9 **competitors are offering customers?**

10 MR. McDONALD: Object to the form, vague.

11 THE WITNESS: Yes.

12 BY MS. KAHN:

13 **Q. And why is that?**

14 A. It's important to know who your
15 competitors are.

16 **Q. And why is that?**

17 A. So we know who we're competing against.

18 **Q. Does Schein conduct strategic planning?**

19 A. Yes.

20 **Q. Is that done every three years or more**
21 **frequently?**

22 A. So back to Henry Schein, Inc.,
23 Henry Schein, Inc. goes through a three-year
24 strategic planning process, and we're just in the
25 process of -- we're wrapping up our third year of

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1 that plan, and we're launching the strategic
2 planning process for the next three-year strat.
3 plan.

4 At the divisional level we don't have a
5 specific three-year strat. plan, but we want to make
6 sure our operating structure and our go-to-market
7 strategy matches, you know, much of what we're doing
8 from a Henry Schein, Inc. strategic plan
9 perspective. But there may be some things in the
10 global plan, like international growth; okay, that's
11 not part of my plan in the U.S. But human capital
12 is a very important one and, you know, how do we
13 work with our team members; that will make its way
14 into our plan.

15 **Q. And for the -- focusing on the three-year
16 strat. plan, what's the purpose of doing the
17 three-year strat. plan?**

18 A. Understanding what's happening in the
19 marketplace; are we organized in a way to address
20 what's happening in the marketplace, you know. The
21 market is evolving; it has been evolving, you know,
22 and the pace of change is even faster today than it
23 was five years ago and ten years ago, you know, so
24 understanding what's happening in the marketplace so
25 then we can structure ourselves appropriately to win

1 **Are you familiar with a situational
2 analysis focused solely on competitors?**

3 A. Yes.

4 **Q. And what's the purpose of doing that
5 analysis?**

6 A. To understand what the competitive
7 landscape is.

8 **Q. Is it fair to say that the purpose of that
9 in part is to gain insight into your competitors'
10 business models and value propositions?**

11 A. Well, we -- again, in that process we're
12 not going to understand what their business -- how
13 did you word it again?

14 **Q. To gain insight into your competitors'
15 business models and value propositions.**

16 MR. McDONALD: Object to the form.

17 THE WITNESS: I don't know that we
18 necessarily analyze their value propositions. We
19 may judge it ourselves. We wouldn't understand what
20 theirs specifically is, but it's more in the
21 understanding of are they a full-service
22 organization, non-full-service, nontraditional type
23 competitors, you know, new entrants into the
24 marketplace, understanding those dynamics.
25

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1 in the market.

2 **Q. And do you know if Schein does something
3 called a situational analysis as part of the strat.
4 plan?**

5 A. Yes, it does.

6 **Q. Can you tell me what that is?**

7 A. It's -- so kind of what I just outlined.
8 So the situation analysis would say -- would talk
9 about the competitive landscape, industry dynamics,
10 general economic conditions.

11 **Q. Anything else?**

12 A. Those are the big three that come to mind
13 right now.

14 **Q. And are there specific situational
15 analyses for different topics, or is it all lumped
16 together?**

17 MR. McDONALD: Objection to the form.

18 THE WITNESS: Meaning we do one
19 specifically for dental. There's -- I believe
20 there's a separate one for medical and animal
21 health.

22 BY MS. KAHN:

23 **Q. Sure.**

24 A. So I don't know what you mean by "topics."

25 **Q. Sorry. Let me ask you a better question.**

1 BY MS. KAHN:

2 **Q. And is part of the reason for doing the
3 situational analysis for competitors to try to
4 understand threats posed by competitors?**

5 A. Correct.

6 MR. McDONALD: Object to the form.

7 THE WITNESS: Yes.

8 BY MS. KAHN:

9 **Q. And why does Schein try to understand
10 threats posed by competitors?**

11 A. I think it's smart.

12 **Q. I'm sorry?**

13 A. It's smart. I mean, if we have to adjust
14 our model to address, you know, what's coming, we
15 need to maybe have to adjust how we go to market.
16 We might have to -- you know, there's more and more
17 information available online today. We want to make
18 sure our e-commerce platform is as good as anyone's
19 out there and ease of doing business, you know.

20 So understanding what our competitors are
21 doing, we want to make sure we're doing something
22 more and better.

23 **Q. Would it be fair to say that Schein may
24 adjust its own model based on what it's seeing from
25 competitors and threats in the marketplace?**

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1 A. More so adjusting to see what customer
2 needs are, what the economic environment is like,
3 you know, technological changes. Some of that will
4 be driven by what competitors are doing and making
5 sure that we can complete effectively in the
6 marketplace.

7 **Q. Does Schein -- strike that.**

8 **Does Schein try to gather market**
9 **intelligence on Patterson and Benco from time to**
10 **time?**

11 A. Yes.

12 **Q. Can you tell me about that?**

13 A. So we have a number of representatives
14 that have joined us this year alone that have come
15 from Patterson. So we will ask them questions and
16 understanding -- you know, so tell us a little bit
17 about what's the environment like, what's the
18 culture, you know. We -- there has been a shift
19 from -- you know, in suppliers. Was A-dec important
20 to you and we didn't have A-dec here; yes, it was
21 important. Then we did our best to make sure we
22 added A-dec to our lineup.

23 We're great partners with Dentsply. We
24 didn't have Sirona here in the U.S. market. We just
25 were able to negotiate a deal to add Sirona, you

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1 know, coming up with that this year, so
2 understanding -- Patterson reps in particular, was
3 having CEREC important; yeah, okay. Let's do our
4 best to make sure we can provide that type of
5 service.

6 So understanding from that perspective, we
7 will gain some of that intelligence from current
8 employees who used to be employed there.

9 **Q. Any other ways aside from getting**
10 **information from current employees who are former**
11 **Patterson employees?**

12 A. Just from time to time meeting with
13 suppliers, asking them, you know, how are we doing
14 versus any of our competitors, so we're not
15 necessarily asking Patterson, you know, anyone
16 specific. And they'll tell us how we're performing
17 in their portfolio versus others. And then we will
18 ask them, you know, if we're getting beat, you know,
19 why is it, what do you see, is there something we
20 can be doing different and talk about how we can
21 work with you differently and better. It's not
22 necessarily about -- we don't ask specific questions
23 about any of our competitors in that light but
24 understanding how we can perform better with them.

25 **Q. Any other ways that Schein tries to gather**

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1 **market intelligence?**

2 A. So Patterson as an example is a public
3 company, so we will go to the public filings.

4 That's all that comes to mind right now.

5 **Q. And you mentioned Patterson a lot through**
6 **this, but I wanted to clarify for Benco as well.**

7 **Are there any other ways that Schein tries**
8 **to gather market intelligence about Benco aside from**
9 **what you've already talked about?**

10 A. Not that I'm aware of.

11 MR. McDONALD: When you get to a break,
12 why don't we stop. We've been going for like an
13 hour and 15 or so.

14 MS. KAHN: I've got a quick segment, and
15 then we can break.

16 BY MS. KAHN:

17 **Q. Are you okay to go for a few more minutes?**

18 A. Yes.

19 **Q. How would you describe the competition**
20 **between Schein, Patterson and Benco?**

21 A. Again, no different than any of our
22 competitors. It's a competitive market out there.
23 We welcome the competition.

24 And, again, I've outlined our strategy
25 before. So our go-to-market strategy we believe is

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1 different; we think it's unique. That's how we
2 differentiate ourselves.

3 **Q. Would you say it's fierce or strong?**

4 A. I would say it's fierce.

5 **Q. Is it fair to say that Schein's loss of a**
6 **sale can mean a Patterson or Benco gain?**

7 A. I don't care whose gain it is. If it's
8 our loss, I don't care whose gain it is.

9 **Q. And is it fair to say that a Patterson or**
10 **Benco loss can mean a Schein gain?**

11 A. Again, I don't care whose loss it is as
12 long as it's our gain.

13 **Q. Would you agree that competition between**
14 **Schein, Patterson and Benco for certain accounts has**
15 **driven down prices?**

16 A. I wouldn't -- I wouldn't specifically cull
17 out Patterson or Benco to the price competitiveness
18 in the marketplace. It's a competitive market,
19 always has been, always will be, and it's been --
20 it's driven by a number of factors. Patterson and
21 Benco are part of that, but we do not focus solely
22 on those two organizations.

23 **Q. Okay. Let me broaden up the question a**
24 **little bit.**

25 **Would you agree that competition between**

20 (Pages 77 to 80)

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1 **Schein and other competitors in the dental market**
2 **for certain accounts has driven down prices paid by**
3 **dentists?**

4 MR. McDONALD: Object to the form.

5 THE WITNESS: I think it's kept -- it's a
6 competitive landscape, you know, and I mentioned our
7 margins haven't changed significantly over the
8 years, you know. The mix of that has.

9 So, you know, some categories have come
10 down while others have gone up, and, you know, the
11 overall blend has been, you know, fairly consistent.

12 BY MS. KAHN:

13 **Q. So you don't think competition has driven**
14 **down prices in the dental market?**

15 A. I don't know if it's driven them down. I
16 mean, prices are a component of value, there's no
17 question, always has been, always will be.

18 **Q. Sorry, I just -- I don't want to belabor**
19 **it too much, but I just want to get a sense of**
20 **whether you think competition in the dental market**
21 **has driven down prices.**

22 MR. McDONALD: Object to the form, asked
23 and answered.

24 THE WITNESS: I don't know how -- I don't
25 know. I don't know, you know. Prices have been

1 you know, 3D cone beam technology, that's probably
2 going to be a 22 or 24 percent gross profit versus a
3 chair unit likely you would see in a dental office,
4 those are typically going to be in the 32 to
5 34 percent gross profit range.

6 So the blend, the digital segment is
7 growing faster than the core equipment, so,
8 therefore, the margin percentage has been driven
9 down. But GP dollars overall have been growing
10 because sales have grown in those segments.

11 **Q. Got it. But the prices, and shifting back**
12 **to merchandise or supplies, there hasn't been any**
13 **changes in prices that you're generally aware of in**
14 **the last five years?**

15 MR. McDONALD: Object to the form, vague.

16 Go ahead.

17 THE WITNESS: It's been significantly
18 stable.

19 BY MS. KAHN:

20 **Q. And do you have a sense of whether**
21 **Schein's catalog prices have stayed the same in the**
22 **last five years?**

23 A. They haven't stayed the same, you know.
24 Typically what happened, you know, whatever --
25 again, our suppliers set the prices, so they're the

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1 fairly consistent over this period of time that
2 we're talking about.

3 BY MS. KAHN:

4 **Q. What period are you referring to?**

5 A. You've been asking about the last five to
6 ten years, so in that period is what I'm in my mind
7 talking about.

8 **Q. So in the last five to -- let's just stay**
9 **with five for now so we can be clear.**

10 **In the last five years prices for dental**
11 **merchandise or supplies have stayed fairly constant,**
12 **is that what you're saying?**

13 A. Correct, yes.

14 **Q. Is that true for the last ten years?**

15 A. I'd have to go back and look, but I
16 believe so, yes.

17 **Q. And what about for equipment?**

18 A. Very similar. Our margins have actually
19 come down on equipment in the last five to ten
20 years, but part of that is driven by mix; and the
21 mix has been driven by what we call, you know, the
22 digital radiography, 2D and 3D, large cone beam
23 machines. It's a high-ticket item, but it's a lower
24 gross margin. The gross margin dollars are still
25 significant. But, you know, if you buy a \$100,000,

1 ones who determine our cost. So if they have a
2 price increase of 1 percent, we're most likely going
3 to raise our prices by 1 or, you know, what's
4 needed; if they raise them by 2, we're going to be
5 sometimes 1.8, sometimes 2.2 depending on -- part of
6 our margin management team will be analyzing the
7 mix.

8 So it will typically follow what's
9 happening with our suppliers relative to their price
10 increases, and that will determine what we're doing
11 in the marketplace in a significant way.

12 **Q. And aside from instances where the**
13 **supplier has increased the price that they sell**
14 **products to you by a certain percentage, has Schein**
15 **increased prices in other instances in the last five**
16 **years?**

17 MR. McDONALD: Object to the form, overly
18 broad.

19 THE WITNESS: We are primarily focused on
20 the price changes from our suppliers. So if they
21 don't have a price change, most likely we will not
22 either.

23 MS. KAHN: Got it. All right. We can
24 take a break.
25

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<p>1 (Whereupon, a recess was taken 2 from 9:17 p m. to 9:31 a.m.) 3 BY MS. KAHN: 4 Q. We are back on the record. 5 I want to spend a couple minutes and talk 6 about Schein's customers. 7 Who are Schein's customers? 8 A. General practitioners, specialists, anyone 9 with a D.D.S. title. 10 Q. I've seen Schein presentations with a 11 sales pyramid, sales model pyramid. 12 Are you familiar with that? 13 A. Yes. 14 Q. Can you walk me through the different 15 levels of the pyramid? 16 A. Sure. I touched on it earlier. So the 17 base of the pyramid is our general private 18 practitioner, typically your single office space 19 practitioner, maybe one or two locations. 20 The very top of the pyramid is that elite 21 DSO customer segment that's Hal Muller's 22 responsibility. 23 And then we have this mid-market segment, 24 which is where multipractice -- multilocation 25 practices are segmented. In there is also community</p>	<p>1 A. Not anymore. This elite DSO used to be 2 considered the corporate account group. The acronym 3 was CAG, corporate accounts, CAG. We no longer 4 refer to them as that. It's now DSO. 5 Q. And what about the mid-market groups, is 6 there a generic name for that? 7 A. Internally we call them select customers. 8 Q. Are all mid-market customers select 9 customers? 10 A. In essence, yes. I'm sorry, in the 11 mid-market, mid-market segment, the CHCs, the 12 community health centers are also managed by this 13 group. They would not be considered the elite DSOs. 14 They're managed by the same group. 15 Q. You mean the select customers, they're not 16 the select customers? 17 A. Yes. 18 Q. Okay. I think you said elite. 19 A. I'm sorry, you're right. 20 Q. And what about "large group account," is 21 that something that -- a term that you guys use? 22 MR. McDONALD: Object to the form. 23 THE WITNESS: So we've gone through a 24 multitude. We're now -- we now refer to this group 25 in the mid market as select. Used to be LGP, large</p>
<p>1 health centers in the mid-market segment as well. 2 Q. Is the elite -- did you say DSO customers? 3 A. Correct. 4 Q. And what does DSO stand for? 5 A. Dental support organizations. 6 Q. Is that separated from -- is there just a 7 DSO level and then an elite DSO level? 8 A. So this is how we segment the market. The 9 market isn't necessarily segmented this way. 10 So it's roughly our top 50 customers that 11 have the elite DSO status. There are some in the 12 mid-market segment that would refer to themselves as 13 DSOs and, you know, are members of the Association 14 of Dental Support Organizations, ADSO, so we support 15 them out of our mid-market segment there. 16 Q. And so aside from the mid-market DSO and 17 the elite DSO, is there another level of just DSO, 18 or no? 19 A. Not the way we've segmented. 20 Q. Got it, okay. 21 Is it fair to call these different levels 22 different customer segments? 23 A. Yes. 24 Q. Do you or others at Schein use the term 25 "corporate account"?</p>	<p>1 group practices. 2 So you'll see we intertwine these 3 terminologies, you know, from time to time. The 4 goal is to get everyone to talk in the same 5 language: The elite DSOs, the select DSOs, 6 mid-market customers, and the community health 7 centers. 8 BY MS. KAHN: 9 Q. And how large are the mid-market DSOs, how 10 many offices? 11 MR. McDONALD: Object to the form. 12 THE WITNESS: So it does vary because some 13 were grandfathered in from where people were, but 14 going forward our goal is anywhere from about 4 to 15 25 locations or so would be mid market, and anything 16 above that would be select. But, again, it's a 17 real -- it's a gray line at that 25 locations 18 depending how they're structured, what's their 19 go-to-market strategy, what's their growth strategy, 20 do they want a field growth consultant. 21 So there's a number of factors that 22 determine that, but that's the general range. 23 BY MS. KAHN: 24 Q. And above the 25 market approximately then 25 it becomes an elite DSO?</p>

89	<p>1 A. That's correct.</p> <p>2 Q. And special markets handles elite DSOs; is</p> <p>3 that right?</p> <p>4 A. That's correct.</p> <p>5 Q. So you're in charge of everything below</p> <p>6 that line, so the private practice and the mid</p> <p>7 market?</p> <p>8 A. Correct.</p> <p>9 Q. Are you familiar with the term "DPM"?</p> <p>10 A. No.</p> <p>11 Q. Okay. What about "DSM"?</p> <p>12 A. Is that an internal -- so internally?</p> <p>13 Q. Yes.</p> <p>14 A. We have a DSL account, which would be</p> <p>15 Henry Schein Dental, and DSM is dental special</p> <p>16 markets.</p> <p>17 Q. Got it.</p> <p>18 A. That's just terms in a computer system.</p> <p>19 That's the tag on there in the system.</p> <p>20 Q. Okay. DSL is --</p> <p>21 A. HSD, so --</p> <p>22 Q. Okay. And so DSL account would be</p> <p>23 mid-market or private-practice accounts?</p> <p>24 A. That's correct.</p> <p>25 Q. Okay. And DSM would be the elite DSO</p>	91	<p>1 Q. Does Schein do any sort of surveys of its</p> <p>2 customers?</p> <p>3 A. Individually that's part of our business</p> <p>4 development meeting with them, yes. So it's not a</p> <p>5 survey, per se, as much as it is a, you know,</p> <p>6 discovery meeting with them to understand. There's</p> <p>7 a series of questions that we ask them of what's</p> <p>8 happening within their practice.</p> <p>9 Q. Is the same set of questions that are used</p> <p>10 with most customers?</p> <p>11 A. Generally, but it's up to each rep kind of</p> <p>12 which direction they go with the customer when they</p> <p>13 meet with them.</p> <p>14 Q. Sure. And are the answers stored in some</p> <p>15 centralized location?</p> <p>16 A. Not that I'm aware of.</p> <p>17 Q. And are the questions stored somewhere</p> <p>18 centrally?</p> <p>19 A. So we will keep -- we keep the practice</p> <p>20 analysis, which is the output of those questions we</p> <p>21 have by customers. Those are kept by -- our field</p> <p>22 sales consultant has it, our regional managers.</p> <p>23 I'm not sure where it's kept corporately,</p> <p>24 quite honestly, in dental.</p> <p>25 Q. Okay. So practice analysis, that term,</p>
90	<p>1 accounts?</p> <p>2 A. That's correct.</p> <p>3 Q. Okay. Would you say that Schein tries to</p> <p>4 understand its customers' needs to better serve</p> <p>5 them?</p> <p>6 A. Yes.</p> <p>7 Q. And is it fair to say that Schein tries to</p> <p>8 understand the economic environment that its</p> <p>9 customers operate in?</p> <p>10 A. Yes.</p> <p>11 Q. Does Schein try to understand the economic</p> <p>12 pressures that its customers face?</p> <p>13 A. Yes.</p> <p>14 Q. And how would you say Schein tries to</p> <p>15 learn about these things?</p> <p>16 A. From meeting with customers. So we don't</p> <p>17 use a cookie-cutter approach to all customers. We</p> <p>18 have what we call our business discovery meetings</p> <p>19 with customers to understand what their specific</p> <p>20 challenges and issues are. Some of the pressures</p> <p>21 might be reducing -- you know, a reduction in</p> <p>22 insurance coverages, cost per procedure is -- our</p> <p>23 reimbursement procedure coming down.</p> <p>24 So it's really about individual meetings</p> <p>25 with customers.</p>	92	<p>1 you're referring to the answers or the result of the</p> <p>2 business development meeting with the dentist?</p> <p>3 A. Yes.</p> <p>4 Q. And, you know, you mentioned a series of</p> <p>5 questions that are part of the business development</p> <p>6 meeting.</p> <p>7 Do you have access to that list of</p> <p>8 questions that go into the business development</p> <p>9 meeting?</p> <p>10 A. I could get them. I mean, I don't.</p> <p>11 Q. How long typically are the business</p> <p>12 development meetings?</p> <p>13 MR. McDONALD: Object to the form.</p> <p>14 THE WITNESS: I have not sat in one of</p> <p>15 them. I think they're -- we typically block an hour</p> <p>16 with a customer to meet with them to go through</p> <p>17 this.</p> <p>18 BY MS. KAHN:</p> <p>19 Q. Would you say that private practices</p> <p>20 are -- strike that.</p> <p>21 Would you say that private practices</p> <p>22 traditionally have been the core of Schein's</p> <p>23 customer base?</p> <p>24 A. Yes.</p> <p>25 Q. And has there been a shrinking of the size</p>

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1 **of private practices as compared to larger groups?**

2 MR. McDONALD: Object to the form, vague.

3 THE WITNESS: Yes.

4 BY MS. KAHN:

5 **Q. And why do you think that's the case?**

6 A. Well, as the elite DSOs have grown, part
7 of that growth has come from they've acquired
8 private practices. So the sheer number of them are
9 growing faster in the elite space, and it's coming
10 from the private practice segment.

11 As the private practice segment has seen
12 what's going on in the elite space but might not
13 necessarily want to be part of that, they still want
14 to control their own destiny and be the boss, make
15 their decisions, they're creating their own groups
16 that have multiple locations.

17 So the shift from single office space
18 practitioner into this mid-market space, that's our
19 fastest-growing segment right now. So all of
20 those -- the growth comes from the single office
21 space practitioners.

22 So the number of them is down; they're
23 just in different segments.

24 **Q. Got it. And why would you say there has
25 been -- you know, you mentioned the elite DSOs**

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1 **them, but then you mentioned that that's not really
2 the case; is that right?**

3 A. Correct.

4 **Q. Can you explain that to me?**

5 A. So that's part of what we do with our
6 customers in the value proposition. So we just --
7 you know, we meet with our customers individually,
8 understand what their specific needs are; we have a
9 solution for them that can help them achieve their
10 hopes, dreams and goals.

11 So they don't -- just, you know, they
12 don't want to become a -- they don't want to sell
13 their practice, but in their mind they're thinking
14 that the elite segment is getting better pricing.
15 In reality what we can offer them as a single office
16 space practitioner is very competitive, but we can
17 work with them in a unique way to run a better
18 business because in their mind what's happening at
19 the elite is it's business-driven, and therefore
20 someone else is making decisions based on that, and
21 so they want to control their destiny in that
22 regard.

23 **Q. Okay. And you mentioned "in their mind" a
24 couple of times.**

25 **What's the basis of those statements that**

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1 **acquiring some of the private practices and in
2 response some of the private practices are growing
3 themselves into larger groups.**

4 **Why -- what's your sense of why they're
5 doing that?**

6 MR. McDONALD: Object to the form, lack of
7 foundation.

8 THE WITNESS: We have as part -- it's
9 output of some of the meetings we have with our
10 other customers, you know. They want to remain
11 independent; they want to continue -- you know, they
12 love the practice of dentistry and what they're
13 doing. They believe -- the elite DSOs they believe
14 for some reason have some competitive advantages
15 over them, which they really don't, but they
16 believe; and so they're looking to compete with
17 those large groups but in a sense not have to --
18 they don't necessarily want to be -- they don't want
19 to sell their practice, so they're forming groups to
20 be more competitive in the marketplace themselves.

21 BY MS. KAHN:

22 **Q. You mentioned the elite DSOs -- strike
23 that.**

24 **You mentioned that some practices believe
25 the elite DSOs have a competitive advantage over**

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1 **you made?**

2 A. It comes from input from the customers.

3 **Q. Okay. So is it fair to say that the
4 customers have told you or others at Schein that
5 they believe that the elite DSOs are getting better
6 pricing than they are?**

7 A. Yes, they have said that.

8 **Q. Anything else that goes into what you --
9 anything else that they've said to you that's along
10 the lines of what we're talking about?**

11 A. Those are the primary factors.

12 **Q. Why do you think it is that they believe
13 that the elite DSOs are getting better pricing than
14 they are?**

15 MR. McDONALD: Object to the form.

16 THE WITNESS: I think it's just a general
17 feeling that, you know, the larger, the more
18 business you can provide someone, the better pricing
19 you're going to get. That's not always the case,
20 but I think there's a general belief in the overall,
21 you know, marketplace, not just in dental.

22 BY MS. KAHN:

23 **Q. Would you say that the increase in the
24 number of DSOs has impacted Schein's business in any
25 way?**

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1 MR. McDONALD: Object to the form, vague.
 2 THE WITNESS: It's helped us -- we've
 3 focused on that segment, so it's helped us grow in
 4 the marketplace.
 5 BY MS. KAHN:
 6 **Q. How so?**
 7 A. We do business with a lot of the large
 8 elite DSOs that are in the market today.
 9 **Q. How do Schein's margins compare for the**
 10 **elite DSOs versus the private practice dentists?**
 11 MR. McDONALD: Object to the form.
 12 THE WITNESS: I'm not as close to the
 13 special markets on the elite side, so I don't get
 14 involved in the quotes, the pricing, or
 15 understanding what the individual margins are for
 16 accounts there.
 17 BY MS. KAHN:
 18 **Q. Do you have any general sense of margins**
 19 **for special market accounts?**
 20 MR. McDONALD: Object to the form. If you
 21 know, tell her, but don't speculate.
 22 THE WITNESS: So I don't know the exact
 23 number. I know generally they're lower than our
 24 private practice, but some of that is funded -- we
 25 get different pricing, so our suppliers also set up

1 MR. McDONALD: Object to the form.
 2 THE WITNESS: Sorry. No.
 3 BY MS. KAHN:
 4 **Q. Has there been any downward pressure on**
 5 **Schein's margins as a result of the increase in**
 6 **larger groups and DSOs?**
 7 MR. McDONALD: Object to the form, vague.
 8 THE WITNESS: Yes.
 9 BY MS. KAHN:
 10 **Q. Can you explain that to me?**
 11 A. The larger the groups get, the better
 12 pricing that they want.
 13 **Q. And why is that?**
 14 MR. McDONALD: Object to form.
 15 THE WITNESS: I think it's basic
 16 economics. I mean, they're looking for -- they're a
 17 large customer, you know, and they're expecting
 18 better pricing.
 19 BY MS. KAHN:
 20 **Q. Is there a reason that the larger you are**
 21 **the better pricing you expect?**
 22 MR. McDONALD: Object to the form.
 23 THE WITNESS: You'd have to ask them. I
 24 just -- that's their expectations.
 25

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1 different pricing for large groups.
 2 And so we -- in many of those cases we
 3 work with our suppliers on specific pricing for an
 4 account, so we have a lower cost of goods for those
 5 and so there's a savings for the customer, and
 6 then that helps protect our margin on the special
 7 markets. But generally speaking, it is lower than
 8 where we are on the private practice side.
 9 BY MS. KAHN:
 10 **Q. And what about comparing the mid-market to**
 11 **the private-practice segments, how do the margins**
 12 **compare for those two groups?**
 13 A. Very similar.
 14 **Q. Is one higher or lower by any point?**
 15 A. It really varies by account.
 16 **Q. Got it.**
 17 A. But I would say overall very, very, very
 18 similar.
 19 **Q. And earlier when you said the DSOs get a**
 20 **lower margin, you're talking gross margin?**
 21 A. Correct.
 22 **Q. Do you have any sense of net margin, how**
 23 **the net margin compares for the DSOs versus the**
 24 **private accounts?**
 25 A. No.

1 BY MS. KAHN:
 2 **Q. Would you agree that DSOs are able to**
 3 **command lower supply prices through aggressive**
 4 **procurement practices?**
 5 MR. McDONALD: Object to the form, lack of
 6 foundation, vague.
 7 THE WITNESS: I don't know based on
 8 what -- they're expecting better prices based on
 9 their volume. I don't know if it's necessarily due
 10 to procurement or what. It's their volume.
 11 BY MS. KAHN:
 12 **Q. Would you agree that corporate practices**
 13 **have a low demand for value-added services?**
 14 MR. McDONALD: Object to the form --
 15 THE WITNESS: No.
 16 MR. McDONALD: -- overbroad.
 17 BY MS. KAHN:
 18 **Q. You disagree with that?**
 19 A. I disagree with that.
 20 **Q. Can you explain why?**
 21 A. I think everyone expects value-added
 22 services.
 23 MR. McDONALD: Can you just pause a
 24 second. I lost -- okay. I'm back.
 25

25 (Pages 97 to 100)

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<p>1 BY MS. KAHN:</p> <p>2 Q. Do you agree or disagree that DSOs care</p> <p>3 less about personal relationships with a rep?</p> <p>4 A. Yes.</p> <p>5 Q. You agree with that?</p> <p>6 A. With their sales -- with a sales</p> <p>7 representative, yes.</p> <p>8 Q. And why do you think that is?</p> <p>9 A. It's just based on their structure.</p> <p>10 Typically the owner of these large elite DSOs,</p> <p>11 they're -- in some cases, you know, it's someone</p> <p>12 from the VC firm themselves that is running it.</p> <p>13 It's a more business-savvy person, so in their mind</p> <p>14 they believe they know -- they say they can</p> <p>15 understand the business side, so that business</p> <p>16 solutions piece they're less interested in. But</p> <p>17 they still expect all of our other value-added</p> <p>18 services for service technicians and all the other</p> <p>19 things that we provide, practice management software</p> <p>20 services, but that segment of our offering they</p> <p>21 typically say thank you, you know, we've got it.</p> <p>22 Q. And the business solutions piece, remind</p> <p>23 me, is that the piece that you mentioned that no</p> <p>24 other competitor has in the market?</p> <p>25 A. Not the way -- correct, not the way we go</p>	<p>1 procedure as much as 25, 30 percent.</p> <p>2 Q. Has that been a development in the last</p> <p>3 five or ten years?</p> <p>4 A. Yes.</p> <p>5 Q. Can you specify a little bit more on when</p> <p>6 that started to be a real issue for private</p> <p>7 practices?</p> <p>8 A. I'd say it started around ten years ago.</p> <p>9 Q. And you also mentioned general economic</p> <p>10 conditions.</p> <p>11 What were you referring to there?</p> <p>12 A. Just the U.S. economy.</p> <p>13 Q. Any other pressures that you haven't</p> <p>14 mentioned?</p> <p>15 A. I'm sure if you show me a report I can</p> <p>16 tell you some more, but that's the top of mind right</p> <p>17 now.</p> <p>18 Q. Fair enough. Would you agree that</p> <p>19 various -- strike that.</p> <p>20 Would you agree that these pressure points</p> <p>21 that we've been talking about have caused private</p> <p>22 practices to seek ways to reduce their supply costs?</p> <p>23 A. Yes.</p> <p>24 Q. Would you say they seem to be more price</p> <p>25 conscious than ten years ago?</p>
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<p>1 to market with it.</p> <p>2 Q. Got it.</p> <p>3 A. Many will claim they have some of these</p> <p>4 services but not in the way we package it all</p> <p>5 together.</p> <p>6 Q. Sure. In the last five or ten years, what</p> <p>7 types of pressure would you say private practices</p> <p>8 have faced that have sort of -- strike that. Let me</p> <p>9 ask that again.</p> <p>10 In the last five or ten years, what types</p> <p>11 of pressures have you seen on private practices'</p> <p>12 ability to thrive?</p> <p>13 A. Just general economic conditions; pricing</p> <p>14 from insurance companies, so their reimbursement per</p> <p>15 procedure, the pressures have been coming down.</p> <p>16 Again from the private practice</p> <p>17 perspective, the more -- the rise in, again, what</p> <p>18 they view as corporate dentistry, the DSO space,</p> <p>19 they view as a challenge for them to grow.</p> <p>20 Those are the top three that come to mind.</p> <p>21 Q. Can you explain the insurance pressures</p> <p>22 that you were just mentioning?</p> <p>23 A. Sure. Companies like Delta Dental have,</p> <p>24 you know, in certain states have just come across</p> <p>25 the board and cut what they reimburse for a certain</p>	<p>1 A. Yes.</p> <p>2 Q. And how have you seen that in your</p> <p>3 experience?</p> <p>4 A. We've just seen we've had to do more price</p> <p>5 matching, what we call price overrides and the</p> <p>6 things that remain, you know, to keep the business</p> <p>7 of our customer. And our first approach would not</p> <p>8 necessarily be just, you know, drop pricing. We</p> <p>9 want to make sure they understand the full value. A</p> <p>10 lot of times that is what's required, but it's just</p> <p>11 a general sense of, you know, price comes up more</p> <p>12 often in the discussion with customers.</p> <p>13 Q. In the last ten years than before?</p> <p>14 A. Yes.</p> <p>15 Q. You mentioned price overrides.</p> <p>16 What are those?</p> <p>17 A. So in our system, the catalog price, if we</p> <p>18 have to override the price that's already in the</p> <p>19 system.</p> <p>20 Q. To give a discount off of the catalog</p> <p>21 price?</p> <p>22 A. Correct.</p> <p>23 Q. Can you talk a little bit about the</p> <p>24 different pricing plans that Schein offers its</p> <p>25 customers?</p>

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<p>1 MR. McDONALD: Object to the form, overly 2 broad. 3 THE WITNESS: Generally I can. I don't 4 have any -- 5 BY MS. KAHN: 6 Q. Sure. 7 A. I don't have the specifics in front of me, 8 but we have what we call VPAs, volume purchase 9 agreements, and there's a set schedule on the level 10 of the amount of business that they commit to 11 Henry Schein that can increase or decrease the level 12 of either rebate or discount that they get on their 13 orders. 14 Q. Do any customers pay the catalog price? 15 A. Some. Very few. 16 Q. So who are the customers? Just as a 17 general matter, what's the segment that's paying the 18 full catalog price? 19 MR. McDONALD: Object to the form, vague. 20 THE WITNESS: It's scattered throughout 21 the pyramid. 22 BY MS. KAHN: 23 Q. Got it. The sales pyramid of the various 24 customer segments? 25 A. Correct.</p>	<p>1 A. Yes. 2 Q. How would a dentist do that? 3 A. Meet with their field sales consultant. 4 Q. And are there -- is there training for the 5 field sales consultants on when to give a discount 6 just because a dentist is asking? 7 A. No. 8 Q. Do you have a general sense of under what 9 circumstances a discount would be given? 10 MR. McDONALD: Object to the form, overly 11 broad. 12 THE WITNESS: This is a 13 relationship-driven business. It always has been; 14 we believe it always will be. So we leave it in the 15 hand of our sales rep, our sales team to set 16 pricing. They're paid as a percentage of gross 17 profit that's produced, and they can decide the mix 18 with their customers. 19 BY MS. KAHN: 20 Q. Are you familiar with the G plan? 21 A. Yes. 22 Q. And the PG plan? 23 A. Yes. 24 Q. And the P plan? 25 A. Yes.</p>
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<p>1 Q. And why is it that those customers that 2 are paying -- why is it that they're paying full 3 catalog price but others in their same segment are 4 not? 5 MR. McDONALD: Object to the form, overly 6 broad. 7 THE WITNESS: Again, it goes back to 8 volume that they're committing to us, and it might 9 be, you know, you three could be different dentists, 10 and you're paying catalog prices on gloves but 11 you're not because gloves is really important to him 12 but, you know, maybe impression material is more 13 important to you, so it will be based on what your 14 usage of products are. 15 And so we really don't -- we don't go to 16 the market with a cookie-cutter approach. It's very 17 customized customer by customer based on their needs 18 and based on what's important to them. 19 BY MS. KAHN: 20 Q. And the variations in pricing, is that 21 solely based on volume purchased, or is it also -- 22 you know, you mentioned gloves may be important to 23 me. 24 Can I negotiate the pricing of gloves 25 aside from just my volume commitment?</p>	<p>1 Q. Can you tell me what the G plan is? 2 A. I can't tell you which one is special 3 markets versus mid market, you know. They -- all 4 alphabet soup for me, but they're specific, you 5 know. Some include vendor chargebacks; one doesn't. 6 So it's we share some of the -- actually 7 we mimic some of the programs that our special 8 markets elite team created and have offered that 9 into the mid-market space as well, but I don't 10 recall which one is P, which one is G and which one 11 is PG. 12 Q. Got it. You don't know what they stand 13 for either? 14 A. No. 15 Q. Okay. Who would know about that? 16 A. Primarily Joe and Jake have been working 17 the closest with our special markets team on that. 18 Q. Would Mr. Steck be familiar with these 19 various plans? 20 A. Yes, he would. 21 Q. Okay. You mentioned vendor chargebacks. 22 What is that? 23 A. So when we -- that's what I was talking, 24 referring to earlier. We get better pricing from 25 our suppliers based upon certain customers. The way</p>

109	<p>1 that happens is we buy at the regular price, you 2 know. What's in our inventory is in our inventory; 3 we buy in bulk 60 days in advance. But if we commit 4 something to a certain customer, that volume gets a 5 discount. We don't re-order for that. They just 6 give a rebate, if you would, for that volume for 7 that specific customer.</p> <p>8 Q. And when you say "they," you're referring 9 to the manufacturer?</p> <p>10 A. Correct.</p> <p>11 Q. And special market customers qualify for 12 vendor chargebacks; is that right?</p> <p>13 A. Correct.</p> <p>14 Q. And I think you mentioned some DSOs within 15 mid market also qualify for vendor chargebacks?</p> <p>16 A. That's correct.</p> <p>17 Q. Which ones qualify versus those that 18 don't?</p> <p>19 A. It varies, and there's no set rule for it. 20 It's negotiated locally.</p> <p>21 Q. Okay. And who does the negotiating for 22 that?</p> <p>23 A. We have what we call regional account 24 managers that's part of the mid market team, and 25 depending on what pricing and requirements are</p>	111	<p>1 A. That's correct.</p> <p>2 Q. And in special markets there's a similar 3 manager that does something similar to that?</p> <p>4 A. It's a SAM, strategic account manager.</p> <p>5 Q. Okay. Are you familiar with the term 6 "free goods"?</p> <p>7 A. Uh-huh.</p> <p>8 Q. What does that refer to --</p> <p>9 A. Sorry, yes.</p> <p>10 Q. -- in the dental industry?</p> <p>11 MR. McDONALD: Did you get the question? 12 Ask your question again.</p> <p>13 BY MS. KAHN:</p> <p>14 Q. Are you familiar with the term "free 15 goods"?</p> <p>16 A. Yes.</p> <p>17 Q. What does that mean?</p> <p>18 A. So every now and then our suppliers will 19 run a promotion, buy three get one free, and so 20 that's considered the free good. It's in essence a 21 discount, but it's being done through, you know, 22 giving the customer product.</p> <p>23 Q. And do the free goods always come out of 24 the manufacturer's pocket, or does it ever come out 25 of Schein's pocket?</p>
110	<p>1 needed for a specific customer will determine which 2 of those acronym plans they qualify for and then if 3 it's needed to get a chargeback from a supplier or 4 not to get it.</p> <p>5 Q. Got it. And regional account managers, is 6 that R-A-M? Is that referred to as R-A-M?</p> <p>7 A. Yes, a RAM.</p> <p>8 Q. RAM. They're within mid market?</p> <p>9 A. Correct.</p> <p>10 Q. So mid market can negotiate vendor 11 chargebacks directly with the manufacturers?</p> <p>12 A. No, that is predetermined. So 3M, for 13 example, if they allow it, that's set. But it's not 14 necessarily every customer will qualify for it. 15 So 3M has to agree, oh, yes, this customer 16 will qualify for it; then they get it. It's not 17 like, well, one is going to get 2 percent, one is 18 going to get 3. Those -- at least as I understand 19 it, those are predetermined and set, and it's up to 20 our team, the RAM team to decide and work with 21 customers and then the suppliers on which accounts 22 can qualify for the lower pricing so that we can get 23 the chargeback from the supplier.</p> <p>24 Q. So the RAMs work both with the customer 25 and the vendors?</p>	112	<p>1 A. I believe it's -- primarily it's a 2 manufacture-driven program.</p> <p>3 Q. And are they shipped directly from the 4 manufacturers to the dentists?</p> <p>5 A. It will vary. Sometimes that's how it 6 works; sometimes it's out of our inventory.</p> <p>7 Q. If I'm a customer, how do I get free 8 goods?</p> <p>9 MR. McDONALD: Object to the form.</p> <p>10 THE WITNESS: Well, it's up to the field 11 sales consultant working with the manufacturer's 12 rep, you know. Usually those type of programs are a 13 30-day or a 60-day, you know, marketing program that 14 our manufacturers come up with. 15 So the customer might get it because I've 16 walked through the door and talked to them about it. 17 They might -- maybe the manufacturer, it's online; 18 they see it that way.</p> <p>19 And then, again, depending on which 20 program, sometimes the free good comes directly from 21 the manufacturer. Sometimes it comes out of our 22 inventory, so we will ship them the four even though 23 they bought three.</p> <p>24 BY MS. KAHN:</p> <p>25 Q. The G plan, the PG plan and the P plan,</p>

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1 **how do those relate to the catalog price, if you**
2 **know?**

3 MR. McDONALD: Object to the form.

4 THE WITNESS: I don't know. I don't
5 recall.

6 BY MS. KAHN:

7 **Q. And are you familiar with within the P**
8 **plan P10, P15, P20, what those are?**

9 A. I believe that would be one is 10 percent,
10 it's 15, and one is 20 percent discount.

11 **Q. 10 percent discount off of the P plan**
12 **pricing?**

13 MR. McDONALD: Object to the form.
14 Don't speculate. Only if you know.

15 THE WITNESS: Sorry, I don't know exactly.

16 BY MS. KAHN:

17 **Q. Okay. No problem.**

18 **Are you familiar with the term "buying**
19 **group"?**

20 A. I am.

21 **Q. What does that term mean to you?**

22 A. It's a group of customers that will get
23 together and form a group however they refer to
24 themselves as to negotiate with their larger volume.

25 **Q. In order to get better pricing?**

1 **Q. The group decides which distributor to**
2 **work with?**

3 A. I'm sorry. First off, there are no GPOs
4 that I'm aware of in the dental community, so I have
5 not worked directly with them. That's my
6 understanding how they work. And once they get the
7 pricing from the manufacturer, then they'll go to
8 the dealers or whatever their suppliers are in those
9 segments and to see if the supplier will honor those
10 pricing.

11 **Q. And you said historically -- strike that.**
12 **Historically have you used the terms**
13 **"buying group" and "GPOs" interchangeably?**

14 A. Yes, we have.

15 **Q. And when you say "we," are you just**
16 **referring to Schein generally?**

17 A. Yes.

18 **Q. Are there any other terms that Schein has**
19 **used interchangeably for buying groups and GPOs?**

20 A. Not that come to mind right now.

21 **Q. What about a "buying co-op" or a "buying**
22 **cooperative," what does that term mean to you?**

23 A. I think it's similar to a buying group.

24 **Q. Okay. Have you heard of a buying club?**

25 A. Just interchangeably with a buying group.

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1 A. Correct, and in some cases about pricing;
2 some cases they're doing more for the group. It
3 could be to get better insurance rates; it could be
4 an overall better cell phone plan.

5 There's various groups do completely
6 different things. If you've seen one buying group,
7 you've seen one buying group.

8 **Q. Are you familiar with the term "group**
9 **purchasing organization"?**

10 A. I am.

11 **Q. Is that also referred to as GPO?**

12 A. Yes.

13 **Q. And what is that? What does that term**
14 **mean to you?**

15 A. So unfortunately historically we've
16 intertwined the terms, so I've learned a lot more in
17 the last couple years about it.

18 GPOs are different than buying groups.
19 GPOs are those that negotiate directly with the
20 manufacturers on pricing, so they become an
21 intermediary between us and the customer; and that
22 pricing is set then by the manufacturer with that
23 group. And then the group then, you know, decides,
24 you know, what dealer they want to work with and
25 provide that pricing through.

1 I don't know if -- there's this thing called study
2 clubs that in essence try to do the same thing as,
3 you know, a buying group.

4 **Q. You mentioned that in the last few years**
5 **you've learned more about what GPOs are; is that**
6 **right?**

7 A. Yes.

8 **Q. How have you come to learn about that?**

9 A. Just because we've intertwined the terms
10 so much and in working with some of our folks on the
11 medical side where their GPOs are more prevalent,
12 you know, and then understanding from them then what
13 a GPO is versus what we see more prevalent in the
14 dental space is more on buying groups.

15 **Q. And did you have meetings with the medical**
16 **side specifically about GPOs?**

17 A. Not specifically about that, but it's come
18 up in meetings, yes.

19 **Q. And what type of meetings?**

20 A. As I mentioned earlier, Dave McKinley, the
21 president of our medical division, he was at the
22 time, he hasn't in the last year or so, so I'd see
23 him from time to time. We'd be in meetings, and he
24 would raise, you know, the fact that the GPOs in
25 medical are interested in working with our dental

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1 group as well, and that's it. And I'd ask him what
2 that means, and I learned more about that through
3 Dave.
4 **Q. Do you have a sense of when you first**
5 **recall Mr. McKinley mentioning that the GPOs on the**
6 **medical side are interested in working in the dental**
7 **space?**
8 A. It's been in the last three to five years.
9 **Q. And has Schein Dental done anything with**
10 **Mr. McKinley with respect to those GPOs that are**
11 **interested in moving over to dental?**
12 A. No.
13 MR. McDONALD: Object to the form.
14 THE WITNESS: Sorry. No.
15 BY MS. KAHN:
16 **Q. And do you know which GPOs specifically?**
17 A. No.
18 **Q. Did Mr. McKinley say that certain medical**
19 **GPOs are interested in working with Schein Dental?**
20 A. They wanted to meet with us on the dental
21 side to gauge our interest.
22 **Q. And did those meetings take place?**
23 A. No.
24 **Q. Why not?**
25 A. I'm not interested in working with GPOs.

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1 **Q. Has that always been the case?**
2 A. To date, yes.
3 **Q. Why not? Why are you not interested in**
4 **working with GPOs?**
5 A. I view them as an intermediary somewhere
6 between us and our customers, and I want to always
7 have that direct relationship and communication and
8 contact with our customers. I'm not interested in
9 having anyone come between us and our customers.
10 **Q. Why does having an intermediary -- why do**
11 **you see that as a bad thing for you?**
12 A. I didn't say it was necessarily a bad
13 thing. I was saying it's not -- from what I know
14 about them, it's not something I'm interested in.
15 **Q. And why not?**
16 A. Again, I don't want anyone, another
17 intermediary between us and a customer. We will
18 work with our customers directly on their specific
19 issues within their practice and where price comes
20 into that overall proposition. We want to determine
21 that, not another party.
22 **Q. I see. So I'm just trying to understand.**
23 **You don't want the GPO to determine**
24 **pricing. You want to have a direct conversation**
25 **with the customers about pricing?**

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1 MR. McDONALD: Object to the form.
2 THE WITNESS: So price is a component of
3 value, and if that's taken out solely, we think that
4 that does not represent appropriately the total
5 value proposition that we bring to a customer.
6 Price is a component.
7 So we want to talk to our customer about
8 price, about what's going on in the practice,
9 business solutions for them, does CAD/CAM make sense
10 for their practice, going 2D/3D, do they want to add
11 another room, are they interested in another
12 location. All of that comes into the value
13 proposition that we meet with our customers about.
14 BY MS. KAHN:
15 **Q. And am I correct to understand you to say**
16 **that if GPOs are placed in between Schein and a**
17 **customer that the GPO would or could solely want to**
18 **talk about price with Schein rather than all of**
19 **these other services and value that Schein brings to**
20 **a customer?**
21 MR. McDONALD: Object to the form,
22 misstated his testimony.
23 THE WITNESS: What I was -- again, I
24 wouldn't put it that way, all right. I would go
25 back to what I said before. Price is a component of

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1 value. We don't want that -- you know, I wouldn't
2 want one of our manufacturers to meet with the
3 customer specifically and only talk about CAD/CAM
4 and then have the manufacturer work with our
5 customer on here is what we will sell you the
6 CAD/CAM for. We have to do the service and
7 installation. So it's a component of everything and
8 all the value that we provide.
9 So I don't want an intermediary between
10 our company and our customers.
11 BY MS. KAHN:
12 **Q. Right. And I'm trying to understand why**
13 **you don't want an intermediary, and I'm trying to**
14 **understand -- strike that.**
15 **I'm trying to understand why you would not**
16 **want an intermediary between you and the customer.**
17 **And are you saying that an intermediary could**
18 **potentially just focus on one aspect of the entire**
19 **Schein value such as price and you wouldn't want to**
20 **talk about just one aspect, you want to talk about**
21 **the entire wheel with a customer?**
22 MR. McDONALD: Object to the form.
23 THE WITNESS: I don't know how else to
24 answer it than what I did. So I don't want to say
25 it the way you say. You said are you saying this;

121	<p>1 no, I'm not saying this. I didn't say that. No, 2 no, I understand. I'm not trying to be picky 3 either. 4 Price is a component of our overall value 5 proposition, and our overall value proposition has a 6 lot of components to it, and we believe it's best 7 presented to a customer. We think it's actually 8 best for our customer if they understand the full 9 offering. And price is one; we're going to work 10 with them on price. But they need to understand 11 everything. 12 And if a piece of that is being discussed 13 by someone else, they're not going to present it in 14 a way that we would present it to understand the 15 full offering. 16 BY MS. KAHN: 17 Q. And that someone else you're referring to 18 is a GPO potentially? 19 A. In this instance, yes. 20 Q. And, you know, I was asking you earlier 21 about why you would not want an intermediary between 22 you and the customer, and you brought up price. 23 I'm just curious if you see GPOs as 24 wanting -- as being more focused on price alone 25 rather than the entire wheel.</p>	123	<p>1 market? 2 A. Yes. 3 Q. Can a buying group refer to a state dental 4 association that sets up a buying program for its 5 members? 6 MR. McDONALD: Object to the form. 7 THE WITNESS: Well, so historically the 8 state associations, their members are dentists who 9 are our customers, and the state associations have 10 always been this middle neutral party. We work 11 directly with the state associations in a 12 significant way. But recently some of them have 13 looked to add services such as buying group type 14 aspects. 15 So not all state associations are doing 16 that, but some are, yes. 17 BY MS. KAHN: 18 Q. How does Schein distinguish between a 19 buying group and a large group account such as a 20 DSO? 21 A. So it's primarily based on ownership. So, 22 for example, Heartland Dental, Aspen Dental, some of 23 these large, elite DSOs, they own all the locations 24 that they have. So they've got 2, 3, 4, 500 25 locations; they own those. And, therefore, they can</p>
122	<p>1 A. So I have not met with the GPOs, so I 2 don't know that to be the case, but we would -- I 3 have nothing else to add, sorry. 4 Q. I'm just curious why you brought up price. 5 I didn't ask you about price, and you brought up 6 price when we were discussing why you wouldn't want 7 an intermediary between Schein and the customer. 8 A. Well, I thought I said prior to that what 9 I understand about GPOs is they work directly with 10 manufacturers on their group and the prices and the 11 prices that a manufacturer will set with that group, 12 so that came up before that. 13 Q. Got it. 14 A. And that's how it fits into the overall 15 value proposition. 16 Q. Okay. Thank you for that. 17 A. Sure. 18 Q. You said you haven't met with any GPOs, 19 right? 20 A. Correct. 21 Q. Okay. Going back to -- strike that. 22 You said there are no GPOs in the dental 23 market today. Is that what you said? 24 A. None that I'm aware of. 25 Q. But there are buying groups in the dental</p>	124	<p>1 and do negotiate with us on overall volume, and no 2 decisions are made, you know, locally. 3 Typically buying groups are not owned 4 anywhere. They're just, you know, member dentists 5 from across the country. It could be four people in 6 that building right there. But they make their own 7 purchasing decisions; they still require a field 8 sales consultant calling on them. 9 So the buying group itself, there's no 10 mandate that once they're a member of this group you 11 have to now buy on what we've negotiated with 12 fill-in-the-blank dealer name. 13 Q. Is it fair to say that Schein would talk 14 to the group to figure out whether they're a buying 15 group or a corporate account DSO? 16 A. Yes. 17 Q. Do you recall when you first became aware 18 of dental buying groups? 19 A. I started in the industry 28 years ago, 20 and they were around then. 21 Q. 28 years ago? 22 A. Yes. 23 Q. Is that how long you've been -- okay. I 24 was wondering why it was so specific. 25 A. Yeah.</p>

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1 **Q. What do you recall about when you first**
2 **started learning about dental buying groups?**

3 A. They were primarily study clubs, so, you
4 know, I'm from Milwaukee so I'll just pick, you
5 know. There's a Milwaukee study club of five or ten
6 dentists, and they get together monthly or
7 quarterly. I don't know how often they get
8 together. Sometimes it's a golf outing. They get
9 together and talk about the practice of dentistry,
10 and we might go present to them, you know. They
11 invite us in to talk to their group. And then at
12 some point they'd say, oh, by the way, we will
13 commit all of our purchases to us if you give us ten
14 dentists a better price. And, you know, it never
15 follows because each person in that room has a
16 relationship whoever they have a relationship with,
17 and, you know, the buying group has really never
18 worked with the intention that they were -- you
19 know, that they bring us this additional volume.

20 **Q. When you said Schein would go in and**
21 **present, you're talking about as part of some sort**
22 **of continuing education for the study club, not for**
23 **the buying group component?**

24 A. Correct.

25 **Q. And I take it from your answer from time**

1 profitability, I'm sorry.

2 BY MS. KAHN:

3 **Q. And one way that dentists are looking to**
4 **do that is to join a buying group to try to get**
5 **savings through the supplies?**

6 A. Correct.

7 **Q. In the last ten years, when a buying group**
8 **approaches Schein, do you know who those**
9 **communications typically go to?**

10 MR. McDONALD: Object to the form, overly
11 broad.

12 THE WITNESS: It really depends on the
13 size. So if it's something like I mentioned before,
14 ten dentists around Milwaukee, our regional manager
15 is going to meet with them and decide if he wants to
16 put something together or not. We typically have
17 stayed away just because we have learned
18 historically that the volume never follows and then
19 we really have no control; there's no mandate.
20 There's nothing more than I'll call it just the
21 buying group.

22 The larger they become, the more across
23 state lines, across regions as we've set them up,
24 then our zone managers, Jake or Joe, are more likely
25 to get involved.

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1 **to time buying groups have approached Schein to see**
2 **if Schein would be interested in being a supplier?**

3 A. Correct.

4 **Q. Has the frequency of buying clubs --**
5 **strike that.**

6 **Has the frequency of buying groups**
7 **approaching Schein increased in the last five or ten**
8 **years?**

9 A. Yes.

10 **Q. And can you be a little bit more specific?**
11 **Is it ten years? Is it five years?**

12 MR. McDONALD: Object to the form.

13 THE WITNESS: The last ten years, but it
14 has definitely increased significantly in the last
15 five years.

16 BY MS. KAHN:

17 **Q. Why do you think that's the case?**

18 MR. McDONALD: Object to the form, lack of
19 foundation.

20 THE WITNESS: Going back to the pressures
21 that dentistry is under. As I mentioned before, the
22 rate, the reimbursement rate per procedure has come
23 down, general economics, and they're looking to
24 figure out how do they continue to earn more and
25 increase their revenues -- or increase their

1 BY MS. KAHN:

2 **Q. When you said "we typically have stayed**
3 **away," you're saying that Schein has typically**
4 **stayed away from buying groups?**

5 MR. McDONALD: Object to the form.

6 THE WITNESS: So I say typically because
7 we have some relationships with some buying groups,
8 and it will depend on how they're structured. And
9 if we believe that the, you know, volume of
10 purchases that they say that they can bring to us
11 they can actually follow through with will determine
12 whether or not we will, you know, try -- you know,
13 we will work with them.

14 BY MS. KAHN:

15 **Q. So is it fair to say that some buying**
16 **groups have committed to a certain volume? Is that**
17 **fair to say?**

18 A. Yes.

19 **Q. What buying groups are those?**

20 MR. McDONALD: Object to the form.

21 THE WITNESS: You know, I don't know the
22 names off the top of my head. So there's -- just in
23 general the ones that have committed to --
24 Smile Source is one example. It's one that we've
25 recently worked with. We worked with them in the

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1 early 2000s, and we realized during that period of
2 time that their members that they had at that time
3 really weren't -- there was no real incremental
4 volume that followed along once we put together a
5 program with them, and we mutually parted ways, and
6 they decided to work with another dealer. And part
7 of it was because they were just looking for bigger
8 discounts, and we said, well, the volume hasn't come
9 to warrant it.

10 They've changed their leadership there.
11 We've met with them in the last several years, and
12 we just recently became, you know, one of their key
13 suppliers, not sole, not exclusive, but, you know,
14 one of their key suppliers, and we just -- they have
15 changed their structure and their value proposition
16 to their members. Their members have now grown.
17 Their members have re-upped to be multiple-year
18 members of their group, and the statistics that they
19 showed us were that their members actually buy from
20 their suppliers that they have relationships with.

21 So we said in that case, on a multitude of
22 other factors, based on that, you know, we'd like to
23 join.

24 BY MS. KAHN:

25 **Q. You mentioned that they changed their**

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1 **structure, Smile Source.**

2 A. Yes.

3 **Q. What are you referring to when you say**
4 **that?**

5 A. I should say they changed their value
6 proposition to their members.

7 **Q. How so?**

8 A. They have now monthly meetings. They have
9 someone locally in each of their markets. They get
10 their members together and chat. They, you know,
11 have offers with labs so that, you know, they can
12 get a better value and service from -- if they use
13 the labs that they negotiated with.

14 So they've offered more services than just
15 simply join, you can get better pricing on supplies.
16 There's other things they do for the members'
17 practices.

18 **Q. Do these value propositions -- strike**
19 **that.**

20 **How long have these value propositions**
21 **been in place for Smile Source members?**

22 MR. McDONALD: Object to the form, lack of
23 foundation.

24 THE WITNESS: Yeah, just based on what
25 they've told us, you know, in the last four years is

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1 when they've really changed their structure or value
2 proposition.

3 BY MS. KAHN:

4 **Q. And I take it that Schein sees it as a**
5 **positive that Smile Source has these added value**
6 **propositions; is that right?**

7 A. Yes, because part of our -- their offering
8 matches more our entire practice care wheel as well.
9 And so, you know, on the business solutions side
10 they are very focused on helping their members grow
11 their practice. That aligns exactly with our
12 mission statement.

13 And so our missions and our purposes for
14 their members which are our customers are aligned,
15 and, therefore, we're going -- we're approaching
16 their members and our customers in a very similar
17 way with a similar story.

18 **Q. Okay. And is Schein offering sort of the**
19 **same services that Smile Source is offering its**
20 **members?**

21 A. Some. So there's no competing service,
22 but the members can choose, you know, if they want
23 to use one of our business solutions or one that
24 they get, you know, directly from Smile Source. But
25 they're aligned in the intent and the goal of, you

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1 know, what is important to that individual member.

2 **Q. Okay. And how does that alignment -- why**
3 **is that alignment a good thing?**

4 A. It's our -- it aligns with what our
5 strategic plan is and our go-to-market strategy with
6 our customers and here's a group that has the same
7 vision for their members. And price is a component
8 of their value. A member stays and joins
9 Smile Source, and price and supplies is a component
10 of why they joined because they pay I think it's
11 3 percent of their revenue to be a member of
12 Smile Source. If they're a million-dollar practice,
13 that's \$30,000 they pay into Smile Source to be a
14 member. They're doing it for more than a discount
15 on supplies. There's other values that they're
16 getting.

17 **Q. You mentioned that Smile Source showed you**
18 **statistics?**

19 A. Yes.

20 **Q. What are you referring to there?**

21 A. They showed us --

22 MR. McDONALD: Object to the form. And I
23 don't know if you have a nondisclosure with them or
24 not, but if you do, then we should talk before you
25 start disclosing what they told you.

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1 THE WITNESS: So we do. So I apologize, I
2 didn't know. I was in this environment it would
3 be -- that would come out.

4 MR. McDONALD: I don't want you to
5 disclose stuff that you've been instructed by
6 Smile Source to not reveal without us talking about
7 it.

8 BY MS. KAHN:

9 **Q. Is there any privileged information?**

10 MR. McDONALD: I don't care, Lin. If he
11 has got a nondisclosure agreement, the last thing I
12 want to do is get in a lawsuit with Smile Source
13 because he has revealed stuff to you that he has
14 been told not to. And I don't think you're asking
15 him to do that.

16 He can generally answer the question, but
17 I don't want him to give you specifics that are
18 protected from disclosure by a nondisclosure
19 agreement without he and I having a chance to visit
20 and me understanding the circumstances.

21 BY MS. KAHN:

22 **Q. Okay. Can you still answer my question,
23 please? Is there -- were you going to disclose
24 privileged information in response to my question?**

25 A. I don't know. This one particular

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1 statistic about the number of their members that
2 recommit and rejoin their member every single year,
3 I don't know if that would be something that they
4 would consider privileged. For sure pricing, you
5 know, whatever discounts that they're getting, so
6 that for sure would be part of their nondisclosure.
7 I don't know if this statistic that I was about
8 to -- I don't know if it's important, quite
9 honestly, it was to us, but I don't know if it's a
10 statistic that he would -- that they would consider
11 confidential.

12 **Q. Sure. And aside from the nondisclosure
13 agreement, I'm trying to understand if there was
14 some attorney/client privilege that covers what you
15 were going to testify to --**

16 A. I don't know.

17 **Q. -- that you know of.**

18 A. I don't know.

19 **Q. You're not aware of any --**

20 A. I'm not.

21 **Q. -- any attorneys being involved?**

22 A. Attorneys were absolutely involved --

23 **Q. In the statistics that I'm asking about.**

24 A. -- in the contract that we signed with
25 them, including mutual nondisclosure agreements.

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1 **Q. Sure.**

2 A. Absolutely they were involved.

3 **Q. So my question goes back to the statistics
4 that you're referring to.**

5 **Is there any attorney/client
6 communications specifically related to the
7 statistics?**

8 A. That is the piece I'm saying I don't know.

9 **Q. You don't know. You're not aware of any
10 attorneys being involved?**

11 MR. McDONALD: He just told you he doesn't
12 know.

13 THE WITNESS: I don't know if the
14 statistic I was about to give you would fall under
15 the NDA.

16 BY MS. KAHN:

17 **Q. Okay. And, you know, specifics aside of
18 the number that you were going to I guess share with
19 us, the statistics that you're referring to is
20 members purchasing through Smile Source vendors; is
21 that right?**

22 A. Correct.

23 **Q. And based on that statistic in part Schein
24 decided to enter into a deal with Smile Source; is
25 that right?**

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1 A. That's correct.

2 **Q. Is there any level of commitment by
3 Smile Source members to purchase through Schein?**

4 A. Not the -- excuse me, not the
5 individual -- I'm sorry, I don't know on the
6 individual member basis. I believe there is a
7 minimum threshold that we have for them also, but in
8 total there are targets that we have with
9 Smile Source that impacts the financial arrangement
10 that we have with them.

11 **Q. Is it fair to say that the more -- the
12 higher the target that they hit the better the
13 pricing that they get?**

14 A. Not the individual dentists but the
15 administration fee that goes back to Smile Source.

16 **Q. Got it. The individual dentist pricing
17 does not change regardless of purchase volume?**

18 A. That's correct.

19 **Q. In the last five to ten years, have you
20 been personally involved in discussions within
21 Schein about buying groups?**

22 A. Yes.

23 **Q. And has the frequency of those discussions
24 increased over time?**

25 A. Yes.

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1 **Q. Can you tell me generally how these**
2 **discussions come about?**
3 MR. McDONALD: Object to the form, overly
4 broad, vague.
5 THE WITNESS: Generally usually it comes
6 up from the field in some way.
7 BY MS. KAHN:
8 **Q. How so?**
9 A. From a regional manager that might have
10 been approached by someone locally to one of our
11 zone or area VPs.
12 **Q. And then eventually you get involved?**
13 A. Not in all cases, no.
14 **Q. And how often have you been involved?**
15 A. I don't have a number. Several times a
16 year.
17 **Q. And is there a group of individuals at**
18 **Henry Schein corporate that's typically involved in**
19 **discussions about buying groups if that topic comes**
20 **up?**
21 MR. McDONALD: Object to the form.
22 THE WITNESS: So Henry Schein Dental
23 corporate?
24 BY MS. KAHN:
25 **Q. Yes.**

1 **buying groups?**
2 MR. McDONALD: Object to the form, overly
3 broad.
4 THE WITNESS: Generally speaking, yes.
5 BY MS. KAHN:
6 **Q. And is it fair to say that if there's no**
7 **common ownership Schein's practice has been to**
8 **decline those groups?**
9 MR. McDONALD: Object to the form, overly
10 broad.
11 THE WITNESS: Generally speaking, yes.
12 BY MS. KAHN:
13 **Q. Whose decision -- strike that.**
14 **Would you say that there's a general**
15 **company policy to not work with buying groups that**
16 **cannot mandate purchases through the group?**
17 MR. McDONALD: Object to the form.
18 THE WITNESS: I wouldn't call it a policy,
19 per se. I mean, there's no written memo: Here's a
20 policy on buying groups. But we have a general
21 practice as you just outlined in your prior
22 questions.
23 BY MS. KAHN:
24 **Q. And who set those general practices?**
25 MR. McDONALD: Object to the form.

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1 A. Yes.
2 **Q. And who are those individuals?**
3 A. Well, it depends. Again it's
4 account-specific. It really depends on the size.
5 It could be local; we're not involved. The bigger
6 they get, as I mentioned before, then up to Jake and
7 Joe to maybe even Dave and myself. And I know
8 Smile Source I was involved with. That's the only
9 one I've been directly involved with in a number of
10 years.
11 **Q. When there have been discussions about**
12 **buying groups, what is typically discussed about**
13 **them?**
14 MR. McDONALD: Object to the form, overly
15 broad.
16 THE WITNESS: The structure, as I
17 mentioned before, so how are they structured, do
18 they -- is it mandated they have to, you know, buy
19 from the suppliers that partner, how they're
20 structured, you know, do they own the practices or
21 not.
22 BY MS. KAHN:
23 **Q. If a buying group does not mandate**
24 **purchases through the buying group, is it fair to**
25 **say that Schein's practice has been to decline those**

1 THE WITNESS: In many cases ultimately I
2 have, but we determined -- that's based on input
3 from a multitude of executives.
4 BY MS. KAHN:
5 **Q. Have you ever looked specifically into**
6 **what buying groups offer dental practices?**
7 A. Well, again, it depends on -- you know,
8 you've seen one buying group, you've seen one buying
9 group. So it really depends on the individual
10 buying group.
11 **Q. Can you give me some examples of what**
12 **buying groups offer dentists?**
13 MR. McDONALD: Object to the form, overly
14 broad.
15 THE WITNESS: So back to Smile Source.
16 They offer business solutions for them. They might
17 offer, you know, overall combined insurance rates
18 for them. They might try to combine cell phone.
19 Anything -- you know, anything that might be helpful
20 to the profitability of a practice, some buying
21 groups get involved with that. Some talk that way
22 but don't actually really do it. And several are
23 just simply saying let's all get together and try to
24 get a better price because we're a group.
25

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1 BY MS. KAHN:

2 **Q. Do you have a general understanding --**
3 **strike that.**

4 **Has Schein conducted any sort of analysis**
5 **of buying group pricing as compared to Schein's**
6 **pricing?**

7 MR. McDONALD: Object to the form.

8 THE WITNESS: Not that I'm aware of.

9 BY MS. KAHN:

10 **Q. Who is Brian Brady?**

11 A. He is our director of group practices
12 or -- I think that's his title. He's responsible
13 for the mid-market segment.

14 **Q. And at some point did he get involved with**
15 **buying groups?**

16 A. Yes.

17 **Q. And when was that?**

18 A. In the last two to three years, maybe
19 sooner. I don't know, but it's more prevalent in
20 the last couple of years.

21 **Q. Do you recall him doing an analysis of**
22 **existing buying groups in the dental space?**

23 MR. McDONALD: Object to the form, vague.

24 THE WITNESS: I recall him doing it, but I
25 don't recall the specifics of the report, no.

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1 pricing program with us. If only ten of them are,
2 then the opportunity to grow our business with the
3 other 40, that's more appealing.

4 **Q. Have you ever characterized buying groups**
5 **as a threat to Schein?**

6 A. Yes.

7 **Q. And can you explain why?**

8 A. For the purposes of what I just outlined.

9 If a group of dentists do come together and let's
10 say 40 of those 50 are good customers of ours, and
11 we decide, well, we don't want to work with the
12 buying group, we already have the business, and now
13 the buying group aligns with someone else and the
14 business actually does flow, then we'd lose the
15 business of our 40 good customers.

16 **Q. Any other reasons that you would**
17 **characterize buying groups as a threat?**

18 MR. McDONALD: Object to the form.

19 THE WITNESS: That's the primary concern
20 is, you know, the amount of business we already have
21 with the customers that are in the group.

22 BY MS. KAHN:

23 **Q. Would you -- have you ever seen buying**
24 **groups as a threat to the dental industry as a**
25 **whole?**

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1 BY MS. KAHN:

2 **Q. Do you view selling to buying groups as a**
3 **good business opportunity for Schein?**

4 MR. McDONALD: Object to the form, vague.

5 THE WITNESS: It can be.

6 BY MS. KAHN:

7 **Q. Can you just tell me again under what**
8 **circumstances it can be?**

9 A. Under the circumstances I've been talking
10 about. So if they commit to the volume, they
11 mandated that they buy, the volume actually follows;
12 and there's incremental opportunity for us within
13 the group. We will work with them.

14 If it's owned, it's a much simpler
15 decision at the various locations. If it's just
16 members, it would be repeating everything I said in
17 the last 15 minutes on the subject.

18 **Q. You mentioned incremental opportunity.**
19 **What do you mean by that?**

20 A. So we will -- part of what we will
21 analyze, if there's, let's say, 50 dentists in this
22 group, we will ask for a list of those customers,
23 not what they do but where they're located; and we
24 can analyze if 40 of them are already Privileges
25 customers of ours, they're already in some type of

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1 A. Again, it could be a threat but they could
2 also be an opportunity. So they really could fall
3 in both, both, you know, squares of a SWOT analysis.

4 **Q. Let me just ask my question.**

5 **Have you ever seen buying groups as a**
6 **threat to the dental industry as a whole?**

7 MR. McDONALD: Object to the form.

8 BY MS. KAHN:

9 **Q. Aside from losing, you know, the customers**
10 **to another dealer.**

11 MR. McDONALD: Object to the form.

12 THE WITNESS: I only recall thinking of
13 them how they would have impacted under Schein. I
14 don't -- I haven't thought about what the industry
15 impact would be.

16 MS. KAHN: Now is a good time for a break
17 actually.

18 THE WITNESS: Sure.

19 MS. KAHN: Go off the record.

20 (Whereupon, a recess was taken
21 from 10:37 a.m. to 10:55 a.m.)

22 BY MS. KAHN:

23 **Q. I want to go back to Smile Source we were**
24 **talking about earlier.**

25 **Did you say that they, Smile Source, did**

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<p>1 not commit to a volume?</p> <p>2 A. They have stated their members are</p> <p>3 mandated to purchase through their agreed-to</p> <p>4 channels; and if they don't, they put their</p> <p>5 membership at risk.</p> <p>6 Q. Got it. So Smile Source to your</p> <p>7 understanding monitors members' purchases?</p> <p>8 A. That's correct.</p> <p>9 Q. And your understanding is per</p> <p>10 Smile Source's agreements with its members that</p> <p>11 those members are obligated to purchase through the</p> <p>12 Smile Source vendors; is that right?</p> <p>13 A. That's correct.</p> <p>14 Q. And if the members don't, then the members</p> <p>15 could lose their membership with Smile Source?</p> <p>16 A. That's my understanding.</p> <p>17 Q. And what is that understanding based on?</p> <p>18 A. Discussions with Trevor Maurer, who is</p> <p>19 their president and CEO.</p> <p>20 Q. Have you reviewed their customer</p> <p>21 contracts?</p> <p>22 A. I have not.</p> <p>23 Q. Or rather member contracts I should say.</p> <p>24 A. I have not.</p> <p>25 Q. Have you seen other buying groups in the</p>	<p>1 buying group that does not offer any value-added</p> <p>2 services but is able to commit their members'</p> <p>3 volume?</p> <p>4 A. Let's say this: The market has been</p> <p>5 evolving. The market is evolving continuously and</p> <p>6 particularly in this space, so we have worked with</p> <p>7 buying groups in the past; we will work with buying</p> <p>8 groups going forward.</p> <p>9 So generally speaking there's -- there are</p> <p>10 a multitude of factors that we will consider whether</p> <p>11 or not we decide to work with a buying group. One</p> <p>12 of them will be what you just outlined, you know,</p> <p>13 will the volume actually follow. That's an</p> <p>14 important factor.</p> <p>15 Q. So even if a buying group doesn't have the</p> <p>16 value-added components that we talked about earlier,</p> <p>17 Schein would still be interested as long as the</p> <p>18 buying group is able to commit volume?</p> <p>19 MR. McDONALD: Object to the form.</p> <p>20 THE WITNESS: Yeah, I'd be speculating. I</p> <p>21 don't know. It's possible.</p> <p>22 BY MS. KAHN:</p> <p>23 Q. What's your sense sitting here today of</p> <p>24 what Schein would be interested in dealing with?</p> <p>25 MR. McDONALD: Object to the form, overly</p>
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<p>1 dental industry that have done something similar</p> <p>2 where they mandated purchase through the buying</p> <p>3 group vendor?</p> <p>4 A. The closest time is on the Smile Source</p> <p>5 one. I've heard of others, but I don't know</p> <p>6 specifically.</p> <p>7 Q. So does anything come to mind when you say</p> <p>8 you've heard of others?</p> <p>9 A. No.</p> <p>10 Q. But you're saying you are aware of other</p> <p>11 buying groups who have similarly mandated purchases</p> <p>12 through the buying group members?</p> <p>13 A. That's my understanding.</p> <p>14 Q. And do you know if Schein has worked with</p> <p>15 those buying groups?</p> <p>16 A. I believe so, yes.</p> <p>17 Q. And you don't have any names?</p> <p>18 A. No.</p> <p>19 Q. Earlier you talked about being aligned</p> <p>20 with a buying group in terms of offering the</p> <p>21 value-added propositions and not just focusing on</p> <p>22 price.</p> <p>23 Do you recall that?</p> <p>24 A. I do.</p> <p>25 Q. If -- would Schein be interested in a</p>	<p>1 broad.</p> <p>2 Go ahead.</p> <p>3 THE WITNESS: My sense is it's possible.</p> <p>4 BY MS. KAHN:</p> <p>5 Q. So I'm still trying to understand.</p> <p>6 Earlier you talked about the value-added proposition</p> <p>7 of a buying group being important. I'm trying to</p> <p>8 understand why that's important to you.</p> <p>9 A. Well, using it as a specific example with</p> <p>10 Smile Source, that was one of the other compelling</p> <p>11 things. That was part of -- and in that particular</p> <p>12 instance I came to the, you know, conclusion with</p> <p>13 the team, that, yes, let's partner with this one, so</p> <p>14 that was a specific example.</p> <p>15 Q. Got it.</p> <p>16 A. There's a multitude of factors that we</p> <p>17 will think about, as I've outlined before, whether</p> <p>18 we will or we won't. We have historically worked</p> <p>19 with buying groups. Even how they're going to</p> <p>20 market is evolving. So we want to evolve with and</p> <p>21 in advance of how the market is evolving.</p> <p>22 Q. So the Smile Source specific example</p> <p>23 aside, is the value-added proposition that a buying</p> <p>24 group offers its members, is that an important</p> <p>25 component to Schein when you're considering whether</p>

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1 **to partner with a buying group?**
 2 MR. McDONALD: Object to the form.
 3 THE WITNESS: It can be.
 4 BY MS. KAHN:
 5 **Q. Why is that?**
 6 MR. McDONALD: Objection, asked and
 7 answered.
 8 THE WITNESS: I don't know how else to
 9 answer that. I mean, it can be important because it
 10 aligns with what we're doing with them with the
 11 value proposition we provide our customers. That's
 12 another reason why they're members of a group, and
 13 therefore we believe the likelihood of them, those
 14 individual dentists to want to work with us
 15 increases.
 16 BY MS. KAHN:
 17 **Q. The likelihood of the members wanting to**
 18 **work with Schein?**
 19 A. Yes.
 20 **Q. Got it. So I'm just -- sorry, I'm not**
 21 **trying to ask the same question again. I'm just**
 22 **trying to understand why it matters that Schein's**
 23 **value proposition is aligned with a buying group**
 24 **also having these value-added services.**
 25 **And are you saying that if a buying group**

1 BY MS. KAHN:
 2 **Q. The court reporter has handed you what has**
 3 **been marked as Exhibit 209. It has Bates number**
 4 **Henry Schein-000043081.**
 5 **Take a minute and let me know when you're**
 6 **ready.**
 7 A. Okay.
 8 Okay.
 9 **Q. Exhibit 209 is an e-mail chain. The**
 10 **latest in time is an e-mail from you to Mr. Muller**
 11 **on October 30th, 2014.**
 12 **Did you send this e-mail to Mr. Muller?**
 13 A. Oh, I'm sorry, it's at the top. Yes, I
 14 see that.
 15 **Q. And I'm going to focus you in on your**
 16 **e-mail to Jim -- is it Huether --**
 17 A. Yes.
 18 **Q. -- on October 28th, 2014, and the subject**
 19 **is RE: GD Exec Update with SB - Thursday-10/30.**
 20 **What does GD refer to there?**
 21 A. Global dental.
 22 **Q. And who is Jim Huether?**
 23 A. He's on Jim Breslawski's team. I don't
 24 know his exact title but helps in an administrative
 25 role.

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1 **offers value-added services, then the members are**
 2 **more likely to purchase from Schein if Schein is a**
 3 **vendor?**
 4 MR. McDONALD: Object to the form, asked
 5 and answered.
 6 THE WITNESS: As I stated before, we
 7 believe -- I'll use the word "stickiness." The
 8 stickiness with a customer is greater when the
 9 value-added services that we're providing align with
 10 that specific customer's need, and when part of that
 11 is also with the member, you know, the buying group
 12 membership provides, that's even another kind of,
 13 you know, helpful point, stickiness point.
 14 But, again, it's one of many things.
 15 There's a lot of things in a value-added offering.
 16 BY MS. KAHN:
 17 **Q. Why is -- why is there more stickiness if**
 18 **you're aligned with the buying group?**
 19 A. If the likelihood that the member joined
 20 that buying group and why they're working with us
 21 are similar, then they're not only going to enjoy
 22 their partnership with us but their partnership with
 23 their group as a member.
 24 (Exhibit 209 was marked for
 25 identification.)

1 **Q. Were you sending this e-mail to**
 2 **Mr. Huether to prepare for a dental executive update**
 3 **with Stanley Bergman?**
 4 A. No, it was actually for -- that's what the
 5 title says, but it was actually for an off-site
 6 meeting that we were having coming up in November, I
 7 believe.
 8 So initially it started out as the exec
 9 update, and we were pulling things from that for our
 10 off-site planning meeting.
 11 **Q. Got it. And what is this off-site**
 12 **planning meeting that you're referring to?**
 13 A. Once a year we go off-site, meaning just
 14 out of our building, as part of Jimmy's team, the
 15 global dental team to talk budgets, going-to-market
 16 strategies, that sort of thing.
 17 **Q. And you said that takes place in November?**
 18 A. It varies. Here it did, yes.
 19 **Q. Who attends these meetings?**
 20 A. Jimmy, who is the CEO of our global dental
 21 business, and his direct reports.
 22 **Q. So that would be yourself?**
 23 A. Uh-huh.
 24 **Q. And who else?**
 25 A. Bob Minowitz, Graham Stanley, Hal Muller.

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1 And then he will have -- it really depends. There's
2 other invites that might join for certain segments.
3 Some of them are the practice solutions team; the
4 president of that is Kevin Bunker. We might have
5 someone from finance come in, someone from IT come
6 in. There's -- it's based on the topic.

7 **Q. And how long are these meetings typically?**

8 A. A day and a half.

9 **Q. Do you recall sending this e-mail to**
10 **Jim Huether on October 28th, 2014?**

11 A. I do now.

12 **Q. Can you tell me what the purpose of your**
13 **e-mail to Mr. Huether was?**

14 A. Well, I titled it the Top 5 "Keeps Me Up
15 at Night." I believe one of the topics we were
16 going to discuss is everyone come to the meeting
17 with one of the top five keeps you up at night right
18 now.

19 **Q. That means top five things that you're**
20 **most worried about?**

21 A. Could be excited about too. If I'm going
22 on vacation tomorrow I might not sleep well because
23 I'm excited, but yes, it's the top five things that
24 are keeping you up at night.

25 **Q. Okay. So it could be a positive or a**

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1 **negative?**

2 A. Correct.

3 **Q. And under the heading Top 5 "Keeps Me Up**
4 **at Night," in this e-mail these are things that you**
5 **thought at the time were keeping you up at night?**

6 A. I mean, in the heading of things that are
7 on the top of my mind, yes.

8 **Q. And under Top 5 "Keeps Me Up at Night,"**
9 **you have -- you wrote Customer Trends to, and then**
10 **the second bullet under that is Buying Group**
11 **mentality.**

12 **Do you see that?**

13 A. I do.

14 **Q. What did you mean there?**

15 A. All the things we've been discussing about
16 the potential impact of the buying groups could
17 have. It could be positive; it could be negative.

18 **Q. And what did you mean when you said buying**
19 **group mentality?**

20 A. The thoughts of dentists, it's becoming
21 more and more prevalent. As we talked about, the
22 market is evolving. You're hearing more and more
23 about buying groups, and dentists are looking to
24 create or join buying groups, and so the mentality
25 of the want, the desire, the need to join a buying

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1 group.

2 **Q. And your testimony is you included that**
3 **under Top 5 "Keeps Me Up at Night" because you were**
4 **both excited about it and scared of it?**

5 MR. McDONALD: Object to the form,
6 mischaracterizes the testimony.

7 THE WITNESS: So there's the five main
8 headers are The New Normal, Customer Trends,
9 Supplier Relationships, Sales Team Structure, and
10 then the Meetings-R-U's, you know, where I'm spending
11 my time. Those are the top five. Within each of
12 those there are things that we're talking about.

13 So when it came to customer trends, it
14 was, you know, the shift from, you know, to -- or
15 from private practice to mid market and the elite
16 DSOs, and so how do we need to think about that and
17 structure ourselves to answer that market trend; and
18 then from a buying group perspective, mentality,
19 whatever, how do we structure ourselves to meet the
20 demands of our customers.

21 BY MS. KAHN:

22 **Q. And why was the buying group mentality on**
23 **the top of your mind at this time?**

24 MR. McDONALD: Object to the form,
25 misstates his testimony.

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1 THE WITNESS: It in and of itself was
2 customer trends in general or an understanding of
3 what the customer trends are. That was one of the
4 trends in understanding what our customers' needs
5 are or desires, and so how do we structure ourselves
6 to address that.

7 BY MS. KAHN:

8 **Q. There are two bullets under customer**
9 **trends; is that right?**

10 MR. McDONALD: Object to the form,
11 misstates or mischaracterizes the document.

12 THE WITNESS: There are.

13 BY MS. KAHN:

14 **Q. And the first is Mid Market and ultimately**
15 **Elite DSO model.**

16 **Do you see that?**

17 A. I do.

18 **Q. And why was the customer trend of mid**
19 **market and ultimately elite DSO model, why was that**
20 **keeping you up at night?**

21 A. The question is were we structured
22 ourselves to address that trend in the market.

23 **Q. Is it fair to say that in 2014 you**
24 **believed that the buying group mentality was a**
25 **customer trend?**

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1 A. I do.

2 **Q. What would you say are the negative,**
3 **possible negative impacts that the buying group**
4 **mentality can have on Schein?**

5 A. So as I discussed earlier, we -- if it's
6 in an area that a group that the customers are
7 already good customers of ours and if we decide not
8 to work with the group because we already work with
9 them individually but they do buy -- they do join a
10 group and then end up changing their supplies
11 because of that, that's a negative trend for us.

12 **Q. In that scenario, why wouldn't Schein just**
13 **offer a higher discount to retain those customers?**

14 MR. McDONALD: Object to the form.

15 THE WITNESS: That might be one of the
16 strategies.

17 BY MS. KAHN:

18 **Q. A customer can leave Schein at any time,**
19 **right?**

20 A. Absolutely.

21 **Q. So why is the buying group mentality**
22 **something that you were thinking about at this time?**

23 MR. McDONALD: Object to the form.

24 THE WITNESS: I don't know how else to
25 answer than I already have. I'm not trying to be

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1 difficult either. I think I've answered it. I
2 don't know how else to put it in another way.
3 BY MS. KAHN:

4 **Q. So the only possible negative impact of a**
5 **buying group on Schein is that they would leave,**
6 **they would go to another distributor?**

7 MR. McDONALD: Object to the form,
8 mischaracterizes testimony.

9 THE WITNESS: That's our leading concern
10 about that, and if we -- again, if we're already
11 working with these customers, we have a pricing
12 structure set up with them already based on their
13 volume and they decide to leave because they've
14 joined this other group and we decide not to work
15 with that group, that is the primary risk we have
16 with them.

17 BY MS. KAHN:

18 **Q. Is there any other reasons that a buying**
19 **group mentality could possibly have a negative**
20 **impact on Schein?**

21 A. There are cases where if we decide to work
22 with a group and offer better pricing than they're
23 maybe getting today with the expectation that the
24 other business is going to follow but the other
25 business doesn't follow and, therefore, all we have

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1 done is reduce margin on the existing business,
2 that's a risk.

3 **Q. Anything else?**

4 MR. McDONALD: Object to the form, overly
5 broad.

6 THE WITNESS: Those are the two key things
7 that come to mind right now.

8 BY MS. KAHN:

9 **Q. Okay. So going back to the answer that**
10 **you just gave, am I understanding you correctly that**
11 **the buying group mentality could lead to reduced**
12 **margins for Schein?**

13 A. The way I stated it was on our existing
14 business, and we're willing to take that risk, if
15 you would, for the opportunity to grow the accounts
16 that are not currently customers. If the business
17 doesn't follow, if they don't -- if the buying group
18 doesn't do in essence what historically they haven't
19 done, which is the volume followed, then the only
20 thing we've done is reduce our margin through the
21 existing members.

22 **Q. And that's why typically Schein has not**
23 **worked with buying groups, right?**

24 MR. McDONALD: Object to the form,
25 mischaracterizes testimony.

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1 THE WITNESS: Absolutely not why. That's
2 not -- I've never stated that.

3 BY MS. KAHN:

4 **Q. You've never stated what?**

5 A. That that was why.

6 **Q. Okay. Can you explain to me why**
7 **typically -- earlier you testified that typically**
8 **Schein has not worked with buying groups.**

9 **Can you explain why that's the case?**

10 MR. McDONALD: Object to the -- hang on.
11 Object to the form, mischaracterizes testimony.
12 Go ahead.

13 THE WITNESS: So let me clarify what I
14 think I said earlier. I want to make sure that
15 we're on the same page.

16 Generally speaking we have not worked
17 with -- we've worked with buying groups
18 historically. We have in a multitude of cases a
19 multitude of times. We've seen some that worked and
20 some that haven't.

21 As the market has evolved, we want to
22 continue to evolve how we go to market and work with
23 individual dentists that are part of the group,
24 they're a DSO to mid market and have an answer to
25 the trend in the market. So we've worked with

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1 buying groups in the past. We have. We won't work
 2 with all of them depending on all the criteria I've
 3 mentioned to you before.
 4 Now, will we have to adjust that as we go
 5 forward based on what's happening in the
 6 marketplace? It's possible. We were looking at
 7 what's happening within the trends in the
 8 marketplace, and we want to stay ahead of the curve.
 9 So we historically have worked with many,
 10 you know, groups, but there have been many more that
 11 have approached us than we've actually worked with.
 12 BY MS. KAHN:
 13 **Q. How many buying groups has Schein worked**
 14 **with?**
 15 A. I don't know.
 16 **Q. Do you have any ballpark estimate?**
 17 A. I'm not --
 18 MR. McDONALD: Object to the form. If you
 19 know, tell her, but don't guess.
 20 THE WITNESS: I'd be guessing.
 21 BY MS. KAHN:
 22 **Q. How many buying groups have approached**
 23 **Schein, if you have any estimate?**
 24 A. No.
 25 **Q. And can you name any buying groups that**

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1 **Schein has worked with other than Smile Source?**
 2 A. Alpha Omega is one in particular.
 3 **Q. Can you tell me where Alpha Omega is**
 4 **based?**
 5 A. I don't know. I've not worked directly
 6 with them.
 7 **Q. What do you know about Alpha Omega?**
 8 A. That's about all I know about them, quite
 9 honestly. It's a group. I don't know.
 10 **Q. Is it a buying group?**
 11 A. That's my understanding, yes.
 12 **Q. And what's that understanding based on?**
 13 A. That the members that are part of
 14 Alpha Omega we've had a pricing structure
 15 arrangement. It's not been through HSD. It's part
 16 of the special markets, so I'm not directly involved
 17 with them. And I don't even know if it still
 18 exists, to tell you the truth, but it's one that
 19 we've historically worked with.
 20 **Q. Through special markets?**
 21 A. Correct.
 22 **Q. Any others aside from Alpha Omega that you**
 23 **can name that Schein has worked with?**
 24 A. Not that come to mind right now.
 25 **Q. Earlier you mentioned that as the market**

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1 **evolves. Do you recall saying that?**
 2 A. Yes.
 3 **Q. What are you referring to when you say as**
 4 **the market evolves?**
 5 A. Well, what I'll refer to as customer
 6 trends, things that are happening within the market,
 7 the trends to mid market and elite DSOs, those types
 8 of trends. Those are happening in the industry.
 9 (Exhibit 210 was marked for
 10 identification.)
 11 BY MS. KAHN:
 12 **Q. The court reporter has handed you**
 13 **Exhibit 210, which has Bates number**
 14 **Henry Schein-000018481.**
 15 **Take a minute to look at that, and let me**
 16 **know when you're ready.**
 17 A. Okay.
 18 **Q. Exhibit 210 is an e-mail from**
 19 **Bruce Lieberthal on November 19th, 2015, to a number**
 20 **of individuals, and you are cc'd on it; is that**
 21 **right?**
 22 A. Correct.
 23 **Q. And the subject is Christensen**
 24 **International Study Club - Summary of Progress.**
 25 **Do you recall receiving this e-mail?**

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1 A. I do now.
 2 **Q. And do you recall Christensen**
 3 **International Study Club and what that is?**
 4 A. Yes.
 5 **Q. What is it?**
 6 A. So Gordon Christensen is considered one of
 7 the top KOL, key opinion leaders, in the industry,
 8 and he has been followed for many years, and he
 9 comes up with reports on products and value to
 10 dentists.
 11 He has recently also formed study clubs
 12 where he goes out and talks and teaches on various
 13 events and topics, and we support some of those
 14 groups, some of those events as a sponsor.
 15 **Q. Was Schein in discussions with Gordon**
 16 **Christensen on a potential partnership between the**
 17 **two companies?**
 18 A. From a sponsorship standpoint, yes; not
 19 acquire him in any way, no.
 20 **Q. And who is Bruce Lieberthal?**
 21 A. He is our vice president and chief
 22 innovation officer for Henry Schein, Inc.
 23 **Q. Do you know why he was sending this to you**
 24 **and others?**
 25 MR. McDONALD: Object to the form.

41 (Pages 161 to 164)

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1 THE WITNESS: Well, it was to Diana
 2 Friedman and Stan Bergman, so I was cc'd on it. But
 3 I believe it was a follow-up to a meeting that
 4 someone was at a Christensen event, and this is his
 5 notes coming out of that meeting, it looks like his,
 6 yeah, Bruce's.
 7 BY MS. KAHN:
 8 **Q. Do you know why you were cc'd?**
 9 MR. McDONALD: Object to the form.
 10 THE WITNESS: He's a key opinion leader in
 11 the dental industry.
 12 BY MS. KAHN:
 13 **Q. Mr. Lieberthal wrote -- do you see Our**
 14 **Goals? Do you see that heading?**
 15 A. I do.
 16 **Q. And a couple of bullets down, the fifth**
 17 **one down he wrote, "Have Christensen abandon his**
 18 **push for dentists to join buying groups, which is**
 19 **not in their interest and adverse to Henry Schein's**
 20 **interests and well-being."**
 21 **Do you see that?**
 22 A. I do.
 23 **Q. Why was one of Schein's goals to have**
 24 **Christensen abandon his push for dentists to join**
 25 **buying groups?**

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1 MR. McDONALD: Object to the form, lack of
 2 foundation.
 3 THE WITNESS: That wasn't one of Schein's
 4 goals to do that.
 5 BY MS. KAHN:
 6 **Q. Whose goal was it?**
 7 MR. McDONALD: Object to the form, lack of
 8 foundation.
 9 THE WITNESS: It looks like Bruce's.
 10 BY MS. KAHN:
 11 **Q. And why do you think it was Bruce's goal**
 12 **to have Christensen abandon his push for dentists to**
 13 **join buying groups?**
 14 MR. McDONALD: Object to the form.
 15 THE WITNESS: I don't know. I'd be
 16 speculating.
 17 BY MS. KAHN:
 18 **Q. You've never talked to Mr. Lieberthal**
 19 **about buying groups?**
 20 A. I have not.
 21 **Q. Do you have an understanding of what he**
 22 **meant when he wrote the buying group is not in their**
 23 **interest and adverse to Henry Schein's interests and**
 24 **well-being?**
 25 MR. McDONALD: Object to the form.

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1 THE WITNESS: I do not.
 2 BY MS. KAHN:
 3 **Q. Can you think of any reason for**
 4 **Mr. Lieberthal to say that our goal was to have**
 5 **Christensen abandon his push for dentists to join**
 6 **buying groups?**
 7 MR. McDONALD: Object to the form, calls
 8 for speculation.
 9 THE WITNESS: I'd be speculating.
 10 BY MS. KAHN:
 11 **Q. Aside from what he was actually thinking**
 12 **in his head, can you think of any reason sitting**
 13 **here today why Mr. Lieberthal would write that?**
 14 MR. McDONALD: Object to the form, lack of
 15 foundation, calls for speculation.
 16 THE WITNESS: Not beyond anything I've
 17 already shared with you on why I would consider
 18 buying groups in general a risk.
 19 BY MS. KAHN:
 20 **Q. And do you agree that buying groups are**
 21 **adverse to Henry Schein's interests and well-being?**
 22 MR. McDONALD: Object to the form.
 23 THE WITNESS: Not beyond the two primary
 24 reasons why I view buying groups as risks.
 25

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1 BY MS. KAHN:
 2 **Q. And the first reason, just to clarify, is**
 3 **that a buying group can -- a buying group which**
 4 **consists of many Schein customers can leave and go**
 5 **to another distributor; is that right?**
 6 A. That's right.
 7 **Q. And the second is if Schein enters into an**
 8 **agreement with the buying group there's potential**
 9 **for margin reduction?**
 10 MR. McDONALD: Object to the form,
 11 mischaracterizes testimony.
 12 THE WITNESS: On the second one, what I
 13 said in the past and I'll just restate it is that on
 14 the second one if we -- if, it's not for sure that
 15 the prices that we would offer that group are any
 16 better or lower than where the individual customers
 17 are already, but there is risk that some of that
 18 could happen. If our margins go down in those
 19 specific accounts but the other accounts don't come
 20 over to offset that for the incremental opportunity,
 21 then yes, margin erosion in that customer segment
 22 would be a risk.
 23 BY MS. KAHN:
 24 **Q. You can put that document aside.**
 25 **Earlier this morning you testified that**

42 (Pages 165 to 168)

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1 **Schein Dental has the general practice not to work**
2 **with buying groups that cannot mandate purchases**
3 **through the group.**

4 **Do you recall that testimony?**

5 MR. McDONALD: Object to the form.

6 THE WITNESS: Yes, I recall that as part
7 of our discussion, yes.

8 BY MS. KAHN:

9 **Q. And based on what you've said after the**
10 **break, I just want to make sure. You're not**
11 **changing that testimony, are you? You're still**
12 **testifying to that?**

13 A. Repeat --

14 MR. McDONALD: Object to the form.

15 THE WITNESS: Repeat that line again,
16 please.

17 BY MS. KAHN:

18 **Q. Sure. And just to be clear, I'll repeat**
19 **the question and answer so I'm not misstating it.**

20 MR. McDONALD: Could you state where
21 you're reading in the record?

22 MS. KAHN: Sure. It's I guess --

23 MR. McDONALD: The line and pages are on
24 the far left.
25

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1 MR. McDONALD: Object to the form, asked
2 and answered.

3 THE WITNESS: Again, back to it's one of a
4 multitude of factors. Not on that basis alone would
5 that necessarily be the sole determining factor.
6 We've -- as I've said, we've worked with buying
7 groups in the past, and some of them mandated, some
8 have not -- some that have not. It may have worked.
9 I don't know. I don't have the specific examples.

10 And, again, the market is evolving in this
11 case, so we're going to evolve at or ahead of the
12 market to make sure we're addressing our customers'
13 needs.

14 If a group can actually commit that their
15 members are going to shift that business then to us,
16 that is for sure a helpful factor, but it's not the
17 sole determining factor.

18 BY MS. KAHN:

19 **Q. If a group, if a buying group cannot**
20 **mandate purchases, has there been a general practice**
21 **at Schein how to deal with such a group?**

22 A. No.

23 **Q. So sometimes Schein sells, sometimes**
24 **Schein doesn't?**

25 A. That's correct.

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1 BY MS. KAHN:

2 **Q. 134/21. Actually 134/22.**

3 **"Would you say that there's a general**
4 **company policy to not work with buying groups**
5 **that cannot mandate purchases through the**
6 **group?"**

7 **And you said: "I wouldn't call it a**
8 **policy, per se. There's no written memo here's**
9 **a policy on buying groups, but we have a**
10 **general practice as you just outlined in your**
11 **prior questions."**

12 THE WITNESS: So, again, in the context of
13 the entire discussion, there's a multitude of things
14 that we will consider whether we're going to work
15 with a buying group or not. If they have a mandate
16 to purchase through their partners, that's one --
17 that's one of a multitude of things, right.

18 So in that instant, yes, that would help
19 us, you know, get across the goal line of wanting to
20 work with them. It's not the sole factor.

21 BY MS. KAHN:

22 **Q. Sorry to cut you off.**

23 **Has there been a general practice at**
24 **Schein to not work with buying groups that cannot**
25 **mandate purchases of its members?**

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1 **Q. And what determines whether Schein sells**
2 **to a buying group that cannot mandate purchases?**

3 MR. McDONALD: Object to the form.

4 THE WITNESS: There's no one -- I mean,
5 there's no one magic formula that determines it.

6 BY MS. KAHN:

7 **Q. What would you say are the factors that go**
8 **into the decision of whether Schein sells to a**
9 **buying group that cannot mandate purchases?**

10 MR. McDONALD: Object to the form, asked
11 and answered.

12 THE WITNESS: So it could be low percent
13 of the members are doing business with us anyway,
14 you know. There's little risk there in that
15 regards, you know, much more if you have a great
16 opportunity. It could be a local relationship that
17 maybe our manager has, and he says I want to give it
18 a try, go for it, give it a shot. Who knows.

19 I mean, I don't know. I don't work
20 directly with all of them. We leave that up to
21 our -- a lot of the decision-making will happen
22 locally, and there's a lot of it is
23 relationship-driven based on who might be the
24 president of the group.
25

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1 BY MS. KAHN:

2 **Q. And does Schein have any company policy on**
3 **how to deal with buying groups?**

4 A. Not that I'm aware of.

5 **Q. Has Schein ever had a division devoted to**
6 **going after buying group business?**

7 A. Not per se. It was more -- historically
8 more driven by our special markets team and Hal and
9 that group; but as the trend has been moving from
10 single office space practitioner into this
11 mid-market space, our local teams that are on the
12 HSD team have worked with buying groups in the past,
13 and we've continued to partner with them.

14 We've shifted the buying group decision
15 making for the most part to Brian Brady and our
16 mid-market group, but that doesn't stop special
17 markets from, you know, working with one of their
18 customers in that aspect as well.

19 **Q. And has Schein had rules and procedures**
20 **for how to go after buying group business?**

21 A. I think -- not that I'm aware of. I mean,
22 I think there's some general guidelines and
23 discussion points to look for, you know, in
24 determining the factors, some of the things I've
25 already outlined.

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1 the, you know, buying group business. It's a, you
2 know, as the teams are out there and as they're
3 presented with these opportunities, there's a
4 process to figure out so who does it come to and who
5 can make a decision, how much local is it versus,
6 you know, moving it up to someone like Jake or Joe.
7 It's not a written procedure guideline.

8 BY MS. KAHN:

9 **Q. Was there anything similar to what**
10 **Mr. Brady put together prior to him putting that**
11 **together?**

12 MR. McDONALD: Object to the form, lack of
13 foundation.

14 THE WITNESS: Not that I'm aware of.

15 BY MS. KAHN:

16 **Q. Has Schein ever had a pricing plan for**
17 **buying groups?**

18 MR. McDONALD: Object to the form, lack of
19 foundation.

20 THE WITNESS: Not -- again, each one could
21 be presented potentially a different plan, but it's
22 part of where maybe the P and the G and the PG, you
23 know, some of the groups might have presented that
24 type of plan; some have been presented something
25 different.

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1 **Q. Are those general guidelines communicated**
2 **in any way to others within Schein?**

3 MR. McDONALD: Objection to form, lack of
4 foundation.

5 THE WITNESS: Yeah, I believe at one point
6 Brian Brady put something together that talked
7 about, you know, how we will go to market with a
8 group and how we will set them up. It's not
9 necessarily this decision tree if we're going to do
10 one or not but if we do here are some of the things
11 that we're looking for.

12 BY MS. KAHN:

13 **Q. When did Mr. Brady do that?**

14 A. I don't recall, sometime in the last
15 couple years.

16 **Q. And prior to Mr. Brady putting that**
17 **together, were there general guidelines on how to go**
18 **after buying group business?**

19 MR. McDONALD: Object to the form, lack of
20 foundation.

21 THE WITNESS: I'm not saying -- don't hold
22 me to what this report is. I just recently reviewed
23 it again.

24 So it's -- I don't know what it is, if
25 it's a -- it's not a guideline on how to go after

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1 So it's not a written, you know, single
2 price plan for any group that we're talking to.

3 BY MS. KAHN:

4 **Q. Has Schein tracked sales to buying group**
5 **business?**

6 A. I believe so.

7 **Q. How so?**

8 A. I don't know. I mean, Brian has kept
9 track of that.

10 **Q. When did Brian start keeping track of**
11 **that?**

12 MR. McDONALD: Object to the form,
13 mischaracterizes his testimony --

14 THE WITNESS: I don't know.

15 MR. McDONALD: -- foundation.

16 THE WITNESS: I don't know. I haven't
17 seen it in quite some time.

18 BY MS. KAHN:

19 **Q. I think you testified that Mr. Brady**
20 **started getting involved in buying groups in the**
21 **last couple of years; is that fair?**

22 A. Correct.

23 **Q. Prior to that role what was his role at**
24 **Schein?**

25 A. He was a regional manager for us in

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1 southern Cal and then up in northern California, and
2 I believe that was his last role before moving to
3 New York to be part of the mid-market space.

4 **Q. So did his title change after the move?**

5 A. Yes.

6 **Q. What's his current title?**

7 A. I don't know for sure. It has something
8 to do with group practices.

9 **Q. Before Mr. Brady took on his current role
10 having to do with group practices, did Schein track
11 sales to buying groups?**

12 MR. McDONALD: Object to the form, lack of
13 foundation.

14 THE WITNESS: I don't know.

15 BY MS. KAHN:

16 **Q. Who would know?**

17 A. Probably Hal Muller because there's more
18 groups at the time probably in his space. Jake or
19 Joe might know.

20 **Q. Does Schein track business to DSOs?**

21 A. Yes.

22 **Q. Is there a DSO indicator in Schein's
23 databases?**

24 A. Well, that's the DSM indicator that we
25 talked about before, yes.

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1 **during meetings?**

2 A. It's been part of discussions in the
3 meetings. It hasn't been me leading the meeting,
4 per se.

5 **Q. And you said "not beyond what we've talked
6 about." I don't want to make you repeat what you've
7 said, but I just want a general sense of what types
8 of guidance or thoughts you've provided at meetings
9 about buying groups.**

10 MR. McDONALD: Object to the form, asked
11 and answered.

12 THE WITNESS: If the group would commit,
13 mandate the volume purchases, if they're aligned in
14 any way with the services that we're already doing
15 for the customers, if the percentage of the group is
16 a significant amount of customers are all the things
17 that I've -- those type of things that I was
18 referring to before.

19 BY MS. KAHN:

20 **Q. Got it. And if those things are true,
21 then what?**

22 A. It's possible that we would work with the
23 group.

24 **Q. Have you ever expressed a sentiment that
25 Schein should not work with buying groups?**

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1 **Q. Got it. The DSM and the D --**

2 A. -- SL --

3 **Q. DSL.**

4 A. -- is HSD.

5 **Q. Got it. Was there a similar acronym for
6 tracking purposes for buying group --**

7 MR. McDONALD: Object to the form.

8 BY MS. KAHN:

9 **Q. -- business?**

10 MR. McDONALD: Object to the form, lack of
11 foundation.

12 THE WITNESS: Not that I'm aware of.

13 BY MS. KAHN:

14 **Q. Why not?**

15 MR. McDONALD: Object to the form.

16 THE WITNESS: I don't know.

17 BY MS. KAHN:

18 **Q. Have you ever provided any guidance or
19 directive within Schein on whether the company
20 should try to sell to buying groups?**

21 A. Not beyond what we've talked about. I
22 mean, so not that I recall. I mean, anything -- you
23 know, just in general meetings about here's when we
24 want to work with a group or not.

25 **Q. And you've communicated those things**

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1 A. Not as a flat out across the board, no.

2 **Q. What about just a general sense --**

3 MR. McDONALD: Object to form.

4 BY MS. KAHN:

5 **Q. -- that's not a flat out across the board?**

6 MR. McDONALD: Object to the form, vague.

7 THE WITNESS: No.

8 BY MS. KAHN:

9 **Q. You've never said --**

10 A. Not that I recall.

11 **Q. Sorry.**

12 MR. McDONALD: Let her ask the question.

13 BY MS. KAHN:

14 **Q. You said you do not recall that?**

15 A. Can you repeat the question?

16 **Q. Yes. Let me go back a couple.**

17 **Have you ever expressed a sentiment that
18 Schein should not work with buying groups just as a
19 general statement?**

20 A. No.

21 **Q. Have you ever expressed a sentiment that
22 Schein should not align with buying groups?**

23 A. No.

24 **Q. So it's your testimony that you've always
25 expressed that Schein should work with buying groups**

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1 **if certain things are met?**

2 A. I never said the word "should," but we're
3 open to working with any customer.

4 **Q. So just to be clear, your testimony is**
5 **that you've also expressed within Schein that the**
6 **company is open to working with buying groups?**

7 A. Based on certain criteria, yes, and
8 history shows we've done that.

9 **Q. Did you ever personally get involved and**
10 **say yes, we should go after this buying group?**

11 A. Smile Source is the one example that I was
12 personally involved in. Beyond that, I have not,
13 that I recall, been involved in any specific group
14 in particular.

15 **Q. Have you ever been involved in, personally**
16 **involved in determining that yes, Schein should try**
17 **to bid on a particular corporate account or DSO?**

18 A. No. That's been determined by Hal.

19 **Q. Did you ever express to others within**
20 **Schein that it would be good to get buying group**
21 **business?**

22 A. Until -- most recently, yes, and
23 Smile Source is the classic example.

24 **Q. Okay. If we go back to pre 2016, did you**
25 **ever express to others within Schein that it would**

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1 specific here's this moment in time I changed my
2 perspective, no.

3 BY MS. KAHN:

4 **Q. Let me -- I should rephrase my question.**

5 **You testified that you've always been --**
6 **you've been open to working with buying groups; not**
7 **a good or a bad, you're just open to it.**

8 **I'm wondering if that has always been the**
9 **case in the last ten years or if there has been a**
10 **shift in your thinking about buying groups ever.**

11 A. Well, the shift that has happened is the
12 shift in the market, so the more requests we're
13 getting for it; feels like there has been more and
14 more of a customer need for them, so being more open
15 to the concept of them and building and creating a
16 proposition for them has definitely increased over
17 time. But I've always been open to working with a
18 buying group if it made, you know, sense for the
19 company as well as its members.

20 (Exhibit 211 was marked for
21 identification.)

22 BY MS. KAHN:

23 **Q. You've been handed Exhibit 211. Take a**
24 **minute to review, and let me know when you are**
25 **ready.**

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1 **be good to get buying group business?**

2 A. Again, Smile Source we worked with even in
3 '04 and '06, and then for a lot of reasons it didn't
4 work out. We've worked with others, you know,
5 before then.

6 So I have not taken a firm position that
7 we should or we shouldn't. Depending on how the
8 group is structured, based on all the things we've
9 talked about, we're open to exploring whether or not
10 to work with a group.

11 So it's not a should or shouldn't
12 mentality. It's we're open and flexible based on
13 the market needs.

14 **Q. Do you have an opinion one way or the**
15 **other whether buying groups are good for the dental**
16 **distributor market?**

17 MR. McDONALD: Object to the form, vague.

18 THE WITNESS: I would only have thought
19 about the or concerned about the impact that would
20 have for Henry Schein.

21 BY MS. KAHN:

22 **Q. Do you recall ever having a change of mind**
23 **about buying groups?**

24 MR. McDONALD: Object to the form, vague.

25 THE WITNESS: No, I didn't. I mean, not

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1 A. Okay.

2 **Q. Exhibit 211 is an e-mail chain, and the**
3 **top e-mail latest in time is from you to Mr. Mark**
4 **Mlotek and others on July 17th, 2011, and the**
5 **subject is Re: a GPO or possibly just a buying group**
6 **but could it cause a problem.**

7 **Do you see that?**

8 A. I do.

9 **Q. And did you send and receive the e-mails**
10 **in this chain?**

11 A. I did.

12 **Q. Do you recall this e-mail chain?**

13 A. I do now.

14 **Q. Earlier we talked about the terms "GPO"**
15 **and "buying group," and you mentioned that within**
16 **Schein those two terms have typically been used**
17 **interchangeably.**

18 **Do you recall that?**

19 A. Yes.

20 **Q. And this chain is talking about a group**
21 **called Synergy Dental Partners; is that right?**

22 A. That's correct.

23 **Q. And to your understanding was that really**
24 **just a buying group in the dental industry?**

25 A. I don't -- I didn't know them then and I

46 (Pages 181 to 184)

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1 don't know them now, so my assumption is that they
2 were a buying group based on what I'm reading here,
3 yes.

4 **Q. And at the bottom of the chain, Mr. Hal
5 Muller sent the original e-mail on July 17, and his
6 e-mail is suggesting that this Synergy Dental
7 Partners group could cause a problem.**

8 **Is that how you read it?**

9 MR. McDONALD: Object to the form, the
10 document speaks for itself.

11 THE WITNESS: Can you repeat that?

12 BY MS. KAHN:

13 **Q. Sure. Mr. Muller sent the original
14 e-mail, and do you read his e-mail to suggest that
15 he believed this Synergy Dental Partners buying
16 group could cause a problem?**

17 MR. McDONALD: Same objection.

18 THE WITNESS: I see him asking the
19 question "but could it cause a problem." It's not a
20 statement.

21 BY MS. KAHN:

22 **Q. Why do you think Mr. Muller was asking
23 that question?**

24 A. I don't know.

25 MR. McDONALD: Object to the form.

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1 anything I could see on their website, was anything
2 more than the traditional buying group that did any
3 more relative to the things that I've outlined
4 before as far as criteria that we would work with.

5 **Q. Meaning that you wouldn't work with a
6 buying group like this?**

7 MR. McDONALD: Object to the form.

8 THE WITNESS: No, I'm saying nothing new
9 here is what you're asking me. I didn't see
10 anything based on what I saw on the website that
11 provided other membership value, the members follow
12 what the -- you know, what the membership is
13 directing them to do. So it was nothing new in here
14 at that time.

15 BY MS. KAHN:

16 **Q. And you also said that in your e-mail,
17 "Founding partners are two dentists in NC. They
18 list Darby, Brassler, Orascoptic and Sonicare."**

19 **Do you see that?**

20 A. I do.

21 **Q. And that list at the end there, is that
22 the vendors that you believe the buying group was
23 getting supplies from?**

24 A. If I recall correctly, yes, that's who was
25 listed on their website as sponsors.

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1 THE WITNESS: I don't know.

2 BY MS. KAHN:

3 **Q. Can you think of any reason sitting here
4 today?**

5 MR. McDONALD: Object to the form.

6 THE WITNESS: Not beyond the two examples
7 I've given you in the past about buying groups.

8 BY MS. KAHN:

9 **Q. You responded higher up on July 17th,
10 2011, at 8:50 a m. with more information about the
11 group; is that right?**

12 A. What do you mean by with more information
13 from the group? Yes, I did respond. Oh, here, I'm
14 sorry, the top one.

15 **Q. Right. Let me strike --**

16 A. Yes, I see that here.

17 **Q. You were providing some information that
18 you found on the website about the group?**

19 A. Correct.

20 **Q. And you ended your e-mail with, "Nothing
21 new here."**

22 **Do you see that?**

23 A. I do.

24 **Q. And what did you mean there?**

25 A. That I didn't view what they were doing,

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1 **Q. And prior to this were you aware of Darby
2 supplying buying groups?**

3 A. I was not.

4 **Q. Prior to this did you have any
5 understanding of who was supplying buying groups?**

6 A. Well, we had some. I know we were working
7 with some. I don't know what others were doing.

8 **Q. And then I'm going to -- Mr. Mlotek
9 responds to you, and he wrote, "Darby distributing
10 the products, dot-dot-dot."**

11 **Do you see that?**

12 A. I do.

13 **Q. Why do you think he was pointing out Darby
14 there?**

15 MR. McDONALD: Object to the form.

16 THE WITNESS: Well, I listed Darby below.

17 I think he was confirming the fact that Darby is, in
18 fact, distributing the products for them.

19 BY MS. KAHN:

20 **Q. I realize that's all he said in his
21 e-mail, and I guess what I'm trying to understand
22 from you -- you have a history with Mr. Mlotek, you
23 understand the general discussions that the two of
24 you have had.**

25 **I'm trying to understand from you why he**

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1 **made that statement, why he was pointing that out**
 2 **with the dot-dot-dot after it.**
 3 MR. McDONALD: Object to the form, lack of
 4 foundation, calls for speculation.
 5 If you know, tell her.
 6 THE WITNESS: I don't know.
 7 BY MS. KAHN:
 8 **Q. I'm going to focus you on the top e-mail**
 9 **from you. You wrote, "That's where they belong. I**
 10 **don't think you will ever see a full-service dealer**
 11 **getting involved with GPOs."**
 12 **Do you see that?**
 13 A. I do.
 14 **Q. And focusing on the first sentence, when**
 15 **you said "that's where they belong," the "they,"**
 16 **were you referring to Synergy Dental Partners?**
 17 A. No, I was referring to Darby.
 18 **Q. Okay. And what did you mean when you said**
 19 **"that's where they belong"?**
 20 A. So Darby is one of the companies I
 21 mentioned before that they're not full service.
 22 They are, you know, kind of a telesales/mail order
 23 type of company solely that only distribute
 24 merchandise. They don't do the rest of the line.
 25 And if that's looked like what this group was

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1 interested in, I was saying that's where they
 2 belong.
 3 BY MS. KAHN:
 4 **Q. Darby belongs with this buying group?**
 5 A. I was saying that's where they belong,
 6 meaning the buying group belongs, you know, with
 7 Darby as their distribution partner.
 8 **Q. Got it, okay. And then you went on to say**
 9 **"I don't think you will ever see a full-service**
 10 **dealer getting involved with GPOs," but with the**
 11 **term "GPO" were you referring to buying groups**
 12 **there?**
 13 A. Correct, correct.
 14 **Q. Is it fair to say that at this time you**
 15 **did not believe that Henry Schein was involved with**
 16 **buying groups?**
 17 MR. McDONALD: Object to the form.
 18 THE WITNESS: No. As I mentioned before,
 19 we have -- we've already had some. We knew the
 20 market was trending that way. Clearly there's a
 21 poor choice of words on my part, but it was, you
 22 know, the direction that -- 2011 it wasn't as
 23 prevalent as it was today. We're talking about the
 24 last five years primarily.
 25

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1 BY MS. KAHN:
 2 **Q. What do you mean -- go ahead.**
 3 A. So we had -- you asked the question had
 4 Henry Schein been working with buying groups. We
 5 have been. We have even prior to this, and we've
 6 had some since then.
 7 **Q. And were you aware of Henry Schein working**
 8 **with buying groups at the time you wrote this**
 9 **e-mail?**
 10 A. Yes.
 11 **Q. You said earlier there was a poor choice**
 12 **of words.**
 13 **What did you mean by that?**
 14 A. Well, I don't think you'll ever see a
 15 full-service dealer get involved with, you know,
 16 buying groups. Clearly we are already doing that.
 17 **Q. Did you not mean to write those words?**
 18 A. It was just a poor choice of words.
 19 **Q. And what were you meaning to say instead**
 20 **of what you wrote?**
 21 A. I don't recall. That was six years ago.
 22 **Q. Okay. Earlier you testified that you do**
 23 **recall this e-mail chain, right?**
 24 A. Well, I said I remember -- I now recall
 25 the chain now that I've seen it. I remember the

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1 chain. I don't recall why I wrote that at the time.
 2 **Q. Okay. You have no recollection of**
 3 **writing -- of why you wrote "I don't think you will**
 4 **ever see a full-service dealer get involved with**
 5 **GPOs"?**
 6 A. I don't know what I was thinking at that
 7 time because we had been working with buying groups
 8 at the time.
 9 **Q. And the sentence earlier where you said**
 10 **that's where they belonged, you recall why you wrote**
 11 **that?**
 12 A. Yes.
 13 MR. McDONALD: Objection to the form.
 14 BY MS. KAHN:
 15 **Q. Can you help me understand why you're able**
 16 **to recall why you wrote the first sentence but not**
 17 **the second sentence?**
 18 MR. McDONALD: Object to the form.
 19 THE WITNESS: I wish I could tell you the
 20 answer.
 21 BY MS. KAHN:
 22 **Q. I think I know the answer to this, but let**
 23 **me just ask it.**
 24 **Was it your understanding at the time you**
 25 **wrote this e-mail that full-service dealers were not**

48 (Pages 189 to 192)

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1 **involved with buying groups?**
 2 MR. McDONALD: Object to the form.
 3 THE WITNESS: No.
 4 BY MS. KAHN:
 5 **Q. What was your understanding at the time**
 6 **that you wrote this e-mail?**
 7 A. In fact we were working -- had some buying
 8 groups that we were already working with.
 9 **Q. Were you aware of what other full-service**
 10 **dealers were doing with respect to buying groups?**
 11 A. I don't believe so, no.
 12 **Q. Do you have any reason sitting here today**
 13 **of why you would write you will never see -- you**
 14 **don't think you would ever see a full-service dealer**
 15 **get involved with a buying group?**
 16 MR. McDONALD: Object to the form, asked
 17 and answered multiple times.
 18 THE WITNESS: I still don't know.
 19 BY MS. KAHN:
 20 **Q. Did you have an understanding in July 2011**
 21 **that Patterson was not involved with buying groups?**
 22 A. I don't know.
 23 **Q. You don't recall or you don't know?**
 24 A. I don't know what Patterson's strategy is
 25 today much less six years ago what their approach

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1 was with buying groups.
 2 **Q. So you've never known?**
 3 A. I don't know what their strategy is with
 4 buying groups.
 5 **Q. And you didn't know back in 2011?**
 6 A. I don't know today and I didn't know six
 7 years ago.
 8 **Q. And what about with respect to Benco, did**
 9 **you know what Benco's practices or policies were**
 10 **with respect to buying groups in 2011?**
 11 A. I don't know what any other companies'
 12 strategies are other than our own.
 13 **Q. Were you ever aware that Benco had a**
 14 **policy against selling or offering discounts to**
 15 **buying groups?**
 16 MR. McDONALD: Object to the form, lack of
 17 foundation.
 18 THE WITNESS: I don't know.
 19 BY MS. KAHN:
 20 **Q. Nobody ever told you that?**
 21 A. Nobody ever told me what, I'm sorry?
 22 **Q. Nobody ever told you that Benco had a**
 23 **policy against selling or offering discounts to**
 24 **buying groups?**
 25 MR. McDONALD: Object to the form, lack of

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1 foundation.
 2 THE WITNESS: Not that I recall.
 3 BY MS. KAHN:
 4 **Q. Is it possible that somebody told you but**
 5 **you just don't recall?**
 6 MR. McDONALD: Object to the form.
 7 THE WITNESS: Not that I recall. I don't
 8 know. I don't know what their strategy is, so no.
 9 BY MS. KAHN:
 10 **Q. You mentioned that at the time of this**
 11 **e-mail Schein was involved with buying groups; is**
 12 **that right?**
 13 A. Yes.
 14 **Q. And that contradicts what you wrote in**
 15 **this e-mail, right?**
 16 A. It depends how you -- again, I don't know
 17 what I was thinking when I wrote it. It depends on
 18 how you read it. So I don't know how to answer
 19 that.
 20 **Q. Okay. Is there a way to read the second**
 21 **sentence so that it's consistent with the fact that**
 22 **Schein was selling -- was involved with buying**
 23 **groups at the time?**
 24 MR. McDONALD: Object to the form.
 25 THE WITNESS: We were working with the

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1 buying groups at the time, so clearly it was
 2 misstated.
 3 BY MS. KAHN:
 4 **Q. Can you name any buying groups that Schein**
 5 **was working with in July 2011?**
 6 A. I believe the one example I gave you
 7 earlier on, Alpha Omega is one of them; and there
 8 are others in Hal's group that we're -- that we had
 9 relationships with.
 10 **Q. And what about outside of Hal's group?**
 11 A. I don't know of any specifically, but I
 12 believe there were plenty of them throughout -- you
 13 know, maybe some were in Boston, some were in Utah.
 14 Our regional managers can take those decisions. If
 15 you call a study club a buying group, that's in
 16 essence -- you know, we do some of that already.
 17 So those are examples of things that I
 18 know we had in the past. I can't specifically tell
 19 you, you know, any of the names of them.
 20 **Q. And you had that knowledge at the time**
 21 **that you wrote this e-mail?**
 22 A. Correct.
 23 **Q. And at the time that you wrote this e-mail**
 24 **it was your understanding that Schein was working**
 25 **with plenty of buying groups?**

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1 A. Yes.
 2 **Q. Okay. And you are unable to explain to me**
 3 **why you wrote something -- why you wrote the second**
 4 **sentence here; is that right?**
 5 MR. McDONALD: Object to form. Lin,
 6 you've asked him this about six times. I really
 7 respect -- I really ask you to respect this witness.
 8 He's the president of the company. Quit asking him
 9 the same thing over and over again, please.
 10 BY MS. KAHN:
 11 **Q. Mr. Sullivan, I'm entitled to an answer if**
 12 **you're able to answer it.**
 13 MR. McDONALD: He has answered the
 14 question multiple times. He can answer it again.
 15 The next time you ask him I'm going to instruct him
 16 not to answer it. It's abusive, okay.
 17 Ask the question so it's clear, the record
 18 is clear, please.
 19 BY MS. KAHN:
 20 **Q. I'm going to go back two questions so we**
 21 **have a clear record.**
 22 **At the time that you wrote this e-mail in**
 23 **July 2011, it was your understanding that Schein was**
 24 **working with plenty of buying groups?**
 25 A. Correct.

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1 **Q. And are you able to explain to me why you**
 2 **wrote the second sentence where you said "I don't**
 3 **think you will ever see a full-service dealer get**
 4 **involved with buying groups"?**
 5 A. No.
 6 **Q. You can put that document aside.**
 7 **(Exhibit 212 was marked for**
 8 **identification.)**
 9 BY MS. KAHN:
 10 **Q. You've been handed Exhibit 212. Take a**
 11 **minute, and let me know when you are ready.**
 12 A. Okay, I'm ready.
 13 **Q. Exhibit 212 is an e-mail chain with Bates**
 14 **number Henry Schein-000043065. The top e-mail is**
 15 **from you to a number of individuals on October 29th,**
 16 **2014, and the subject is Dental Gator.**
 17 **Do you see that?**
 18 A. I do.
 19 **Q. And did you send this e-mail?**
 20 A. I did.
 21 **Q. Do you recall sending this e-mail?**
 22 A. I do.
 23 **Q. I'm going to turn you to the second page**
 24 **there that's an e-mail from Daniel Hobson on**
 25 **October 29th.**

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1 **Do you see that?**
 2 A. I do.
 3 **Q. And who is Daniel Hobson?**
 4 A. He is a -- we called them SAMs at the
 5 time, but one of -- someone in Hal Muller's special
 6 markets team.
 7 **Q. Mr. Hobson was providing some information**
 8 **about Dental Gator.**
 9 **Do you see that?**
 10 A. I do.
 11 **Q. I'm going to read the first sentence of**
 12 **the first paragraph, and then I'm going to skip to**
 13 **the second paragraph there. He wrote, "Dental Gator**
 14 **is owned by our EDSO, MB2 Dental." And then he goes**
 15 **on in the second paragraph to say, "In our prime**
 16 **vendor agreement we spelled out specific terms and**
 17 **restrictions about these consulting offices to**
 18 **prevent Dental Gator from being a typical GPO."**
 19 **Do you see that?**
 20 A. I do.
 21 **Q. And do you know why Schein included a**
 22 **specific term, specific terms and restrictions to**
 23 **prevent Dental Gator from becoming a typical GPO?**
 24 MR. McDONALD: Object to the form, lack of
 25 foundation.

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1 THE WITNESS: Prime vendor agreements are
 2 something that our special markets team signs with
 3 our customers, so I'm not directly involved with
 4 them at all.
 5 BY MS. KAHN:
 6 **Q. And aside from special markets and, you**
 7 **know, putting this document aside, have you been --**
 8 **are you aware of any contractual restrictions that**
 9 **Henry Schein has entered to try to prevent an entity**
 10 **from becoming a GPO?**
 11 MR. McDONALD: Object to the form, lack of
 12 foundation, mischaracterizes his testimony.
 13 THE WITNESS: I am not aware.
 14 MS. KAHN: You can put that aside.
 15 (Exhibit 213 was marked for
 16 identification.)
 17 BY MS. KAHN:
 18 **Q. You have Exhibit 213 in front of you. Let**
 19 **me know when you are ready.**
 20 A. Okay.
 21 **Q. Exhibit 213 is an e-mail chain with Bates**
 22 **number Henry Schein-000090794.**
 23 **Do you recall receiving and sending the**
 24 **e-mails in this chain?**
 25 A. I do.

50 (Pages 197 to 200)

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1 **Q. This is an e-mail chain about Dental Gator**
2 **again; is that right?**

3 A. Correct.

4 **Q. Is it accurate to say that there was a**
5 **debate within Schein on how to handle Dental Gator?**

6 A. Yes.

7 MR. McDONALD: Object to the form.

8 BY MS. KAHN:

9 **Q. Can you explain that debate to me a little**
10 **bit?**

11 A. So Dental Gator is an offshoot of -- you
12 saw an earlier e-mail -- MB2. MB2 is an elite DSO,
13 one of the customers of Hal's group. What they were
14 attempting to do is offer -- you know, expand to
15 practices that they don't own and those they don't
16 own, you know, try to get them the same pricing that
17 we were offering on the elite DSO contract, if you
18 would, the prime vendor agreement contract. That's
19 where the pricing is determined for those groups.

20 So the conflict was is they're expanding
21 to now just provide that pricing to others that want
22 to join this buying group that they are creating
23 called Dental Gator. Those are, again, existing
24 customers of ours. They weren't mandated that they
25 have to buy. They were not actually permitted to

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1 called Dental Gator. That was in conflict with what
2 their contract allowed them to do from what I'm
3 understanding --

4 **Q. Sure.**

5 A. -- that was in that agreement.

6 If MB2 acquired another dental practice,
7 it would definitely fall into the MB2 contract, but
8 they were not allowed to just now create a buying
9 group based on that pricing. That was -- it's a
10 separate -- so now they're out there promoting it as
11 if it were a Henry Schein-supported program, and it
12 wasn't.

13 And the first couple times I heard about
14 it, you can see Joe's comment about, you know, it
15 used to be just annoyance. It's becoming more and
16 more prevalent, more of an issue; and therefore
17 we're asking her special markets team to address it
18 with them.

19 **Q. And Mr. Muller wrote on October 21st on**
20 **the second page there in response to Joe's request**
21 **for somebody to address this, he said, "I will" -- I**
22 **think that he meant to say I will let Randy address.**
23 **"At the moment we feel good at the point we are at**
24 **with them staying as they are."**

25 **Do you see that?**

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1 use the pricing that they were offering for MB2 to
2 this offshoot of theirs called Dental Gator.

3 So the conflict in the field was we have
4 good customers of ours today and whatever pricing
5 strategy that we're using for them and the overall
6 value proposition; that the customer would say,
7 well, gee, I just met with this Dental Gator
8 company, and it looks like the pricing they're
9 getting is better. And they shouldn't be; they
10 don't have that agreement with us.

11 So that was the conflict that was creating
12 internally between HSD and our special markets
13 group.

14 **Q. And in trying to understand this, is it**
15 **fair to say that HSD or special markets was at the**
16 **time offering the same pricing to MB2 as to the**
17 **Dental Gator entities?**

18 MR. McDONALD: Object to forgot.

19 BY MS. KAHN:

20 **Q. That's what caused the issue?**

21 A. Well, not HSD. So, again, just to
22 clarify, so special markets, so special markets --

23 **Q. Sorry. HSM I meant to say.**

24 A. Yeah. So HSM had the agreement with MB2,
25 a lot of acronyms. They formed a separate group

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1 A. I do.

2 **Q. And did you take that to mean that special**
3 **markets wanted to continue their existing practice**
4 **at this time?**

5 MR. McDONALD: Object to the form.

6 THE WITNESS: Well, with MB2, yes, but not
7 with the extension to that over to Dental Gator.

8 BY MS. KAHN:

9 **Q. Okay. So special markets did not want**
10 **Dental Gator to get the MB2 pricing?**

11 A. That's my recollection, yes.

12 **Q. Okay. And is it fair to say that HSD also**
13 **did not want Dental Gator to get the MB2 pricing?**

14 A. Not just as a standalone if that was the
15 only part of an agreement with them, correct.

16 **Q. Mr. Cavaretta wrote to you on**
17 **October 21st, 2014, at 4:59 p m.**

18 **Do you see that e-mail?**

19 A. Uh-huh. Yes.

20 **Q. He's responding to your question of what**
21 **would you suggest we do. He said, "Don't allow this**
22 **to be used any longer. This is a straight up GPO,**
23 **and if we allow I'm not sure how we say no to other**
24 **GPOs."**

25 **Do you see that?**

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1 A. I do.
 2 **Q. Do you know what he meant there?**
 3 MR. McDONALD: Object to the form, lack of
 4 foundation.
 5 THE WITNESS: So, I mean, based on
 6 discussions that we've had, what I was doing with
 7 the how would you suggest -- what would you suggest
 8 we do, it's my way of challenging Joe just to, you
 9 know, think about it, what's your solution, you
 10 know, what do you want me to do, you know, what
 11 would you do; and his position was if we have a GPO
 12 or buying group that the only thing that they're
 13 doing is it's a price-only play, if it's only about,
 14 you know -- no other thinking, nothing else that
 15 we've talked about, other parameters, then in his
 16 mind if we do with one, we have to do it with all.
 17 And so that's been the internal date and the
 18 internal discussions.
 19 BY MS. KAHN:
 20 **Q. And was it his -- do you recall that his**
 21 **position was that Schein was, generally speaking,**
 22 **not selling to other GPOs at the time?**
 23 MR. McDONALD: Object to the form.
 24 THE WITNESS: I don't know what his -- I
 25 don't know what he was -- you're asking me what he

1 **You're having a dialogue with**
 2 **Mr. Cavaretta, is that right, in this e-mail chain;**
 3 **is that right?**
 4 A. Yes.
 5 **Q. Surely you had an understanding of what he**
 6 **wrote.**
 7 MR. McDONALD: Object to the form.
 8 THE WITNESS: Well, again, my reply to him
 9 wasn't an agreement or disagreement with his
 10 statement, so I was actually challenging further.
 11 So do we close down other large groups, you know?
 12 Would Heartland be considered, you know? I was
 13 trying to say, you know, how do you define GPOs,
 14 what -- so I was challenging him in that because it
 15 wasn't clear to me what he was saying.
 16 So I don't want to speculate as to what
 17 his position is here.
 18 BY MS. KAHN:
 19 **Q. And he ended his e-mail with, "I don't**
 20 **think that is a consistent strategy with where we**
 21 **want to go per our last meeting with you and Dave."**
 22 **Do you see that?**
 23 A. I do see that.
 24 **Q. Do you know what meeting he's referring to**
 25 **here?**

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1 was thinking at the time? I don't know what his
 2 position was at this time.
 3 BY MS. KAHN:
 4 **Q. Well, what did he mean when he said "if we**
 5 **allow I'm not sure how we say no to other GPOs"?**
 6 **That implies to me that he was trying to say no to**
 7 **other GPOs.**
 8 MR. McDONALD: Object to the form, lack of
 9 foundation.
 10 Don't speculate. If you know, tell her.
 11 THE WITNESS: I was just going to say I'd
 12 be speculating what I think he means here, which I
 13 don't think I should do.
 14 BY MS. KAHN:
 15 **Q. Okay. Well, what's your understanding of**
 16 **what that means?**
 17 MR. McDONALD: Object to the form.
 18 Again, if you know tell her, but don't
 19 speculate.
 20 THE WITNESS: I really don't want to
 21 speculate.
 22 BY MS. KAHN:
 23 **Q. I'm not asking you to speculate about what**
 24 **Joe was thinking. I'm just trying to get your**
 25 **understanding.**

1 A. I don't. No, I don't.
 2 **Q. Do you know what strategy he's referring**
 3 **to here?**
 4 A. I don't specifically know.
 5 **Q. What about generally?**
 6 A. No.
 7 **Q. Did you ever discuss with Mr. Cavaretta a**
 8 **general strategy on buying groups?**
 9 A. Yes, as we've talked in the past about we
 10 have worked with them, where it's becoming more
 11 prevalent, how do we want to work with them going
 12 forward; and there were certain parameters that we
 13 were starting to discuss about what it would make
 14 sense to me so we're not -- and what we knew about
 15 Dental Gator didn't seem aligned with that strategy.
 16 **Q. And so in October 2014 was the strategy**
 17 **that you and Mr. Cavaretta discussed that Schein**
 18 **would be open to working with buying groups?**
 19 A. Yes, as we have in the past. We've worked
 20 with some in the past.
 21 **Q. You said in the next e-mail, "So also**
 22 **close down Heartland, Comfort, Mortenson,**
 23 **et cetera?"**
 24 **And are those DSO accounts?**
 25 A. They are.

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1 **Q. And you said, "If these convert to**
2 **ownership office I would not put it -- I would not**
3 **put into the straight up GPO bucket."**

4 **Do you see that?**

5 A. I do.

6 **Q. What did you mean by "straight up GPO**
7 **bucket"?**

8 A. So I was repeating what he had said below
9 about this is a straight up GPO, so I was re quoting
10 his words there. And, again, it goes back to if
11 these accounts are owned, in Heartland's case they
12 own the accounts, it's not a GPO; again, it's not a
13 buying group. It's not -- it doesn't fall into
14 that. It's an individual -- it's an elite DSO.

15 Comfort Dental is an example, so here's
16 another one. When I said I don't recall some names,
17 here's one that historically they don't -- they own
18 some of their practices, and they're more of an MSO
19 to other practices. In other words, they provide
20 some management services. So they don't own, but
21 they fall underneath the Comfort contract, if you
22 would, and therefore they get the pricing.

23 And, again, but there's an example of they
24 don't own them; they don't necessarily mandate that
25 they have to buy, but all the Comfort locations do.

210

1 So I was challenging him saying there's a
2 mix of what's happening here, so we haven't actually
3 determined exactly what the strategy is going to be.
4 It's evolving. So I was challenging what would you
5 do, here is what he said; then what would you do
6 with the others, you know, we need to talk.

7 **Q. You said so we haven't actually determined**
8 **what the strategy is going to be.**

9 **In October 2014 did Schein not have a**
10 **strategy on buying groups?**

11 A. It was very open as I mentioned. We had
12 some relationships. We knew the trend was picking
13 up. How do you want to address this trend going
14 forward? Do we need to rethink how we've done
15 things in the past? Do the parameters change?

16 So it's an evolving strategy. It's
17 evolving as we sit here today.

18 **Q. Why do you say that?**

19 MR. McDONALD: Object to the form.

20 BY MS. KAHN:

21 **Q. What's evolving?**

22 A. Our -- how we're -- how we're evolving and
23 working with our customers based on trends that
24 we're seeing in the industry.

25 **Q. In October 2014 was Schein selling to,**

211

1 **quote, straight up GPOs?**

2 A. Well, again, not GPOs, the term being
3 buying groups. I don't know. I don't know what
4 he's referring to as a straight up GPO. I was just
5 reusing Joe's words for him.

6 **Q. You can put that document aside.**

7 **(Exhibit 214 was marked for**
8 **identification.)**

9 BY MS. KAHN:

10 **Q. You have Exhibit 214 in front of you. Let**
11 **me know when you are ready.**

12 A. Okay.

13 **Q. Exhibit 214 is another e-mail chain**
14 **discussing Dental Gator; is that correct?**

15 A. Correct.

16 **Q. And it looks like Mr. Muller was trying to**
17 **figure out an appropriate pricing plan for**
18 **Dental Gator; is that right?**

19 A. Correct.

20 **Q. I'm going to direct you to**
21 **Mr. Breslawski's e-mail in the middle on the first**
22 **page on January 28, 2015. He wrote, "Thanks. It is**
23 **important that while accommodating for unique**
24 **reasons here, we don't help open the floodgates on**
25 **buying groups, exclamation point."**

212

1 **Do you see that?**

2 A. I do.

3 **Q. What did you understand him to mean there?**

4 MR. McDONALD: Object to the form.

5 THE WITNESS: I'd be speculating what he's
6 defining buying groups there, so I don't want to
7 speculate to that.

8 BY MS. KAHN:

9 **Q. Did you have any -- do you recall**
10 **receiving this e-mail?**

11 A. I do.

12 **Q. Did you have any understanding of what**
13 **Mr. Breslawski meant when you read it?**

14 A. I would have made assumptions about it,
15 but, again, I'd be speculating about it.

16 **Q. What was your understanding of what**
17 **Mr. Breslawski wrote?**

18 A. From it that what I would call the
19 traditional buying group, if it's only about their
20 purchases and nothing else, that we don't want to
21 open -- in this case he's saying we don't want to
22 open up floodgates to just that type of buying
23 group.

24 But, again, we've been working with buying
25 groups significantly in the past, and we will

<p style="text-align: right;">213</p> <p>1 continue to work with them here and into the future. 2 Q. You worked with buying groups 3 significantly in the past. What do you mean by 4 "significantly"? 5 A. We've had a number of relationships with 6 buying groups in the past, as I've already 7 testified. 8 Q. So is it wrong to say that at the time of 9 this e-mail Schein was, generally speaking, not 10 working with buying groups? 11 A. That would be wrong. 12 Q. Do you have any understanding of why 13 Mr. Breslawski would not want to open the floodgates 14 on buying groups? 15 MR. McDONALD: Object to the form. 16 THE WITNESS: I'd be speculating what his 17 thoughts were there. 18 BY MS. KAHN: 19 Q. Do you know if Mr. Breslawski thought that 20 Schein was not working with buying groups? 21 MR. McDONALD: Object to the form. 22 THE WITNESS: I'm confident he knew that 23 we were already at this point. 24 BY MS. KAHN: 25 Q. Why is that?</p>	<p style="text-align: right;">215</p> <p>1 speculating. 2 Ask another question, please. 3 BY MS. KAHN: 4 Q. Mr. Sullivan, you understand that we 5 received this document as part of our investigation, 6 correct? 7 A. Yes. 8 Q. And our job in this investigation is to 9 review the documents and try to understand them. 10 Do you understand that? 11 A. I do. 12 Q. And I'm just trying to understand from you 13 what your interpretation of this document is. 14 Do you understand that? 15 A. I understand that. 16 Q. Okay. And aside from what we've already 17 talked about, is there any other information that 18 you have to share that would help us understand 19 Mr. Breslawski's statement here? 20 A. No. 21 Q. You can put that aside. 22 I can go on to the next document, or do 23 you guys want to take a break? 24 MR. McDONALD: It's up to you. 25 THE WITNESS: I'm good.</p>
<p style="text-align: right;">214</p> <p>1 A. He's the CEO of our dental business. 2 Q. And he would know about the buying groups 3 that Schein was selling to? 4 A. And he had been involved in these type of 5 discussions about, you know, we have in the past, 6 here is an example of one we're working with. And 7 so he knows Dental Gator is a buying group; we're 8 working with them. He's aware of that. Hal 9 supports in to Jimmy. 10 Q. But I read Mr. Breslawski's e-mail to mean 11 that Dental Gator was a unique situation and that 12 Schein shouldn't do this on a regular basis. 13 Is that not how you read his e-mail? 14 MR. McDONALD: Object to the form. 15 THE WITNESS: That's your -- you're 16 speculating what he's thinking? 17 MR. McDONALD: Yes, she is. She is not 18 going to testify. 19 MS. KAHN: If you have an objection, 20 please state it for the record. 21 MR. McDONALD: You know what, Lin, ask a 22 question that's not objectionable, okay. You're not 23 here to testify or give your understanding. You can 24 ask him a question. You've asked him three times if 25 he has an understanding, and he said no, he would be</p>	<p style="text-align: right;">216</p> <p>1 MS. KAHN: Okay. 2 (Exhibit 215 was marked for 3 identification.) 4 BY MS. KAHN: 5 Q. You have Exhibit 215 in front of you. Let 6 me know when you are ready. 7 A. Okay. 8 Q. Exhibit 215 is an e-mail from Graham 9 Stanley to Mr. Breslawski, you, Mr. Steck and a few 10 other individuals. 11 Do you see that? 12 A. I do. 13 Q. And the subject is Meeting notes: 14 November 2nd. 15 What meeting is he referring to? 16 A. We -- I believe this is a meeting we had 17 in our office in West Allis, part of what we would 18 call our off-site planning meeting. 19 Q. And who attended that meeting? 20 A. This one was more my direct team, so it 21 was the focus on the U.S. end of it. It's not a 22 global dental analysis. 23 Q. Was Mr. Breslawski present? 24 A. I believe so. 25 Q. Are the individuals on the To: line, those</p>

217

1 were the individuals at the meeting?
 2 A. That's my understanding, yes.
 3 **Q. And who is Graham Stanley?**
 4 A. He is the global chief financial officer.
 5 **Q. Was he present at the meeting?**
 6 A. I believe so, yes.
 7 **Q. And do you know why he was sending this**
 8 **e-mail?**
 9 A. I think it was summary notes from some of
 10 the key takeaways from the meeting on various
 11 topics.
 12 **Q. Had somebody asked him to send this?**
 13 A. Usually Jim Huether would be that
 14 individual -- you've seen some prior messages -- but
 15 Jim must not have been at the meeting. So Graham as
 16 the CFO would just -- decided to take the notes,
 17 summary notes.
 18 **Q. I'm going to turn to the second page.**
 19 **There's a section titled Buying Groups.**
 20 **Do you see that?**
 21 A. I do.
 22 **Q. Okay. And, again, these are notes, these**
 23 **are Mr. Stanley's notes of what took place during**
 24 **the November 2nd meeting?**
 25 A. Correct.

218

1 **Q. And this says, "Buying Groups, colon: Tim**
 2 **clearly set out that HS should not be first to**
 3 **cooperate with GPOs but also don't want to be last."**
 4 **Do you see that?**
 5 A. I do.
 6 **Q. And do you recall saying something to that**
 7 **effect at the November 2nd meeting?**
 8 A. I think this is poorly summarized, you
 9 know, his summary notes. The discussion was, again,
 10 how are we going to work with them, how have we done
 11 in the past, and how do we set a strategy for
 12 working with them in the future.
 13 If -- I think it's -- I believe it's
 14 poorly worded because the discussion was really
 15 about how do we want to work with them on whether --
 16 is it mandated purchases, is it, you know, all the
 17 things that we've been talking about.
 18 So I don't think it properly summarizes my
 19 position.
 20 **Q. So you did not, at this meeting, you did**
 21 **not clearly set out that Henry Schein should not be**
 22 **first to cooperate with GPOs?**
 23 A. Correct.
 24 **Q. Nor did you say that Henry Schein, that**
 25 **you don't want to be the last to cooperate with**

219

1 **GPOs?**
 2 A. That's correct.
 3 **Q. So Mr. Stanley got the notes wrong?**
 4 A. I think it's poorly worded.
 5 **Q. Well, I mean, when you say "poorly**
 6 **worded," I'm trying to understand.**
 7 **Is there another way to read what he wrote**
 8 **that would be consistent with what you expressed at**
 9 **the meeting?**
 10 A. Yes, I think the summary of the notes on
 11 this topic could have been drafted differently.
 12 **Q. And what he wrote you never said? What he**
 13 **said you clearly set out you did not clearly set**
 14 **out?**
 15 A. That's correct.
 16 **Q. Okay. Did you get a chance to review the**
 17 **rest of the notes here?**
 18 A. I did.
 19 **Q. Is there anything else in here that**
 20 **Mr. Stanley got wrong?**
 21 A. Let me review again.
 22 So his comment here, "Planmeca USA not
 23 fully behind the product," plan -- they absolutely
 24 were fully behind the product. They were struggling
 25 with certain support, but to say that they were not

220

1 fully behind the product is not an accurate
 2 statement.
 3 **Q. Anything else?**
 4 A. Bob P. not participating in the meeting,
 5 his name is Bob Pienkowski, not
 6 participating/attending meetings, that's not
 7 accurate. He was attending meetings. He just
 8 wasn't attending all of them. So it's not clear.
 9 It's a generalization, but it's not clear.
 10 Confidence and quality of reps in
 11 marketing, they have some excellent reps, but
 12 they're struggling. They were losing some reps and
 13 replacing them with newer ones. So it wasn't that
 14 the quality was bad; they were having some turnover
 15 issues.
 16 That's one example.
 17 **Q. Okay. I appreciate that.**
 18 **So turning back to the buying group**
 19 **summary point, do you recall what you stated at the**
 20 **November 2nd meeting?**
 21 A. Not exactly, but it was along the lines of
 22 we have worked with buying groups in the past; it is
 23 definitely a market trend that's happening, you
 24 know. We don't want to -- maybe that's what he's
 25 thinking about, you know, we don't want to be the

55 (Pages 217 to 220)

221

1 first to cooperate. We're not going to lead the way
2 in creating a specific buying group strategy other
3 than when approached we want to understand what the
4 benefits could be, you know, and how it's aligned
5 with our strategy along with the group's strategies
6 and its members, so similar to what we have, you
7 know, been talking about here.

8 **Q. And why didn't you want to lead the way?**

9 A. Poor choice of words. We were -- it's the
10 trend happening in the marketplace, actually view us
11 as being the leader in everything we do relative to
12 our customers and the customers' needs, so we wanted
13 to work with our customers; those that believe they
14 need and want to join a buying group, understand the
15 reasons why and then create a program for -- either
16 through our own, which is why we're talking about
17 possible solutions, you know, work being done to
18 redefine our Privileges programs, address their
19 needs that way directly with us. Or if it's through
20 a group, then how we work with that group to make
21 sure that they're aligned and their members will
22 continue to buy.

23 **Q. So you did want to lead the way with
24 buying groups?**

25 MR. McDONALD: Object to the form.

222

1 THE WITNESS: If the strategy made sense
2 with a particular group, absolutely.

3 BY MS. KAHN:

4 **Q. Okay. I'm just trying to understand how
5 Mr. Stanley summarized -- strike that.**

6 **Did you respond to Mr. Stanley's e-mail?**

7 A. I don't recall. I'd have to -- see,
8 there's a lot of notes in here.

9 **Q. Do you recall reading this summary when
10 you received it?**

11 A. I recall seeing this. I don't recall, you
12 know, line-by-line detail, no.

13 **Q. And did you -- do you recall telling
14 Mr. Stanley that he got your position on buying
15 groups wrong in his summary?**

16 A. No, I do not.

17 **Q. Why not?**

18 MR. McDONALD: Object to the form.

19 THE WITNESS: Because we were going to
20 create -- we knew we had meetings coming up to
21 discuss it further, clarify it there.

22 BY MS. KAHN:

23 **Q. So I just wanted to be clear. Earlier you
24 said maybe what he was getting at was that you
25 didn't want to lead the way with a strategy on**

223

1 **buying groups, but you're recanting that testimony;
2 is that right?**

3 A. I'm restating it. I think it was poorly
4 worded.

5 **Q. What's your restatement of that testimony?**

6 A. Can you read? I think I did.

7 **Q. I didn't get anything about leading.**

8 A. Okay. So we want to lead the way with our
9 customers in addressing their needs, so in that
10 regard absolutely we want to lead the way. And if
11 they're in a position where they want to join a
12 buying group, we want to understand why and address
13 their needs either through our own programs that we
14 already have for them or work with a buying group to
15 say does it make sense for us to work with them. So
16 in that respect I believe we're leading the way in
17 the industry and in the market.

18 So ...

19 **Q. Was there anything that you said that
20 would have given Mr. Stanley the impression that
21 Schein didn't want to be first to do something?**

22 MR. McDONALD: Object to the form.

23 THE WITNESS: Not that I recall.

24 BY MS. KAHN:

25 **Q. Was there anything that you said that**

224

1 **would have made Mr. Stanley get the impression that
2 you didn't want to be last to do something?**

3 A. Not that I -- not that I recall.

4 **Q. Does it matter to Schein whether other
5 distributors are selling to buying groups?**

6 A. Only in the respect of, as I mentioned
7 before, if a buying group decides to work with
8 another dealer and then those members shift to those
9 dealers, to that program, to another dealer,
10 absolutely.

11 **Q. And that would be a risk if other dealers
12 were selling to buying groups, right?**

13 A. In that regard, yes.

14 **Q. All right. You can put that document
15 aside.**

16 **Why don't we take a break now.**

17 (Whereupon, a lunch recess was

18 taken from 12:34 p m. to

19 1:18 p m.)

20 BY MS. KAHN:

21 **Q. Welcome back, Mr. Sullivan.**

22 A. Thank you.

23 **Q. Would you say that buying groups have been
24 a high priority at Schein in the last ten years?**

25 A. The buying group initiative in and of

225

1 itself has not made our top five key priorities, but
2 it's been an important aspect of what we're doing
3 relative to the mid-market space, yes.

4 **Q. Are you referring to a specific initiative**
5 **when you say "the buying group initiative"?**

6 A. No, I'm saying the buying group segment.

7 **Q. It has not been one of the top five key**
8 **priorities you said; is that right?**

9 A. That's correct.

10 **Q. Do you have any sense of where it would**
11 **rank in the longer list of priorities?**

12 A. No.

13 **Q. Was it a top ten, one of the top ten**
14 **priorities?**

15 A. We don't rank the top ten.

16 **Q. What were the top five priorities?**

17 MR. McDONALD: Object to the form.

18 THE WITNESS: It's very -- it's been part
19 of our -- there's various different three-year
20 strat. plans.

21 MS. KAHN: Got it.

22 (Exhibit 216 was marked for
23 identification.)

24 BY MS. KAHN:

25 **Q. You've been handed Exhibit 216. Let me**

227

1 **specific portion of the overall meeting?**

2 A. Correct.

3 **Q. And what --**

4 A. There's a segment of the meeting that we
5 talked about special markets, where there's
6 crossover, how do we structure our teams to, you
7 know, actually work closer together, that type of
8 thing.

9 **Q. Do you remember what Mr. Meadows wrote to**
10 **you on the note that he passed to you?**

11 A. That I do not.

12 **Q. Fair to say that it was about**
13 **Klear Impact?**

14 A. Yes.

15 **Q. And that Klear Impact was a buying group?**

16 A. I didn't know. I'm asking the question
17 who are they, where are they essentially. I didn't
18 know who they were.

19 **Q. You wrote to Mr. Meadows on the last page**
20 **there, "I had just informed Hal and team that we do**
21 **not have plans to open up new buying groups but have**
22 **a plan ready to roll if needed."**

23 **Do you see that?**

24 A. Yes.

25 **Q. And what were you referring to there when**

226

1 **know when you are ready.**

2 A. Okay.

3 **Q. Exhibit 216 is an e-mail chain entitled --**
4 **the subject is RE: Klear Impact Buying Group**
5 **question mark.**

6 Do you see that?

7 A. I do.

8 **Q. Do you recall this e-mail chain?**

9 A. I do.

10 **Q. Your bottom -- the earliest in time e-mail**
11 **is from you to Jake Meadows on November 3rd, 2015,**
12 **and you said, "You slid me a note about this group**
13 **during the SM budget meeting."**

14 **Do you see that?**

15 A. I do.

16 **Q. And you're referring to Mr. Jake Meadows**
17 **slipping you a note about Klear Impact buying group?**

18 A. That's correct.

19 **Q. And the SM budget meeting, is that part of**
20 **the November 2nd meeting that we were looking at in**
21 **Exhibit 215?**

22 A. I believe so, yes.

23 **Q. And you can look back at 215.**

24 A. I believe it is. The dates look right.

25 **Q. Got it. And is the SM budget meeting a**

228

1 **you said "I just informed Hal and team that we do**
2 **not have plans to open up new buying groups"?**

3 A. So I don't know what I wrote the Hal in
4 particular, but I'm highlighting the fact, you know,
5 a little bit of where Graham got his, you know,
6 comment from relative to, you know, we are not
7 looking to accelerate the buying group segment.
8 We've worked with them; we'll continue to work with
9 them. We don't have plans right now to open up new
10 ones. We don't know of new ones that are at the
11 table, but as they come up we will address them.

12 So we're not looking to accelerate the
13 plans, maybe, again, Jimmy's reference to opening
14 the floodgates. It's those type of analogies we're
15 using to say we're in the space; we've always been
16 in the space; we will continue to be in the space;
17 we're not looking to accelerate their growth.

18 I think our model is very good for our
19 customers, but as the market evolves we will look at
20 them on an individual basis. I was getting into
21 then so tell me more specifically about
22 Klear Impact, who are they, what are they; maybe we
23 can put something together for them.

24 **Q. At the time that you wrote this, were you**
25 **open to selling to a new buying group?**

229

231

1 A. Yes.

2 **Q. And you mentioned that you were not**
3 **looking to accelerate the buying group segment.**
4 **Do you remember that?**

5 A. Yes.

6 **Q. Was that a change in strategy, or was that**
7 **always your strategy for the last ten years?**

8 A. It was -- it's always been -- let me make
9 sure I phrase this right. We've always worked with
10 buying groups. We've had numerous that we've worked
11 with in the past, continue to work with them, you
12 know, going forward as the market evolves and our
13 customers evolve, but we don't have plans to
14 necessarily, you know, accelerate it in a pace
15 faster than it may be already moving.

16 We believe our existing model, our current
17 model ten years ago was serving the market well,
18 five years ago well, and today it's moving well.
19 But our structure has evolved. How we have gone to
20 the market has evolved.

21 So we're evolving with the market, and
22 we'll continue to come up with submissions for
23 customers.

24 **Q. And I just want to clarify this. You were**
25 **talking about you didn't want to accelerate it any**

1 **you wouldn't want to see happen if buying groups**
2 **were to grow?**

3 A. So as I've testified prior, there are two
4 potential negative outcomes with, you know, buying
5 groups. So as I said, we don't think putting large
6 groups of our customers, you know, together, again,
7 it's nothing we want to accelerate, but if that's
8 where the market is going we are absolutely going to
9 address it. But the likelihood of customers
10 potentially as they're in large groups making
11 decisions to move their business, you could have a,
12 you know, positive impact if they come over to us or
13 a negative impact if they leave.

14 So that's the -- one of the potential
15 outcomes as I've talked about, and we don't think
16 accelerating getting those groups together is
17 necessarily a good thing for our customers or for
18 us.

19 **Q. Why not for your customers?**

20 A. We believe that our current go-to-market
21 strategy and understanding what really the customer
22 care wheel that I talked to you about can do for our
23 customer and address all of their needs.

24 **Q. Is it fair to say that you know customers**
25 **are better served by Henry Schein directly than by**

230

232

1 **faster.**

2 **Has that always been the thinking, or was**
3 **that a new thinking in 2015?**

4 A. I don't know that it changed dramatically
5 over the years. We, again, we addressed our needs
6 of our customers as it was at the time. It itself
7 has been accelerating, and we've talked about the
8 markets evolving and we get more and more approach
9 from more customers about buying groups, so,
10 therefore, we need to accelerate with the market.
11 But we ourselves didn't want to -- don't want to be
12 the ones that, you know, create that acceleration.
13 It's happening -- there are certain things happening
14 in the market that are going to happen with or
15 without us.

16 **Q. Why do you not want to accelerate the**
17 **growth of buying groups?**

18 A. We think our current strategy is really
19 good for our customers, and we can address their
20 needs, whatever they are. That's why we sit down,
21 have the business discovery meetings with them to
22 understand their needs and create a program that can
23 address it.

24 **Q. What's the -- strike that.**
25 **Is there an impact, a negative impact that**

1 **buying groups?**

2 A. Absolutely.

3 **Q. You talked about positives and negatives**
4 **as a result of buying groups; is that right?**

5 A. Yes.

6 **Q. I guess can you help me understand why**
7 **there are potential positives and potential**
8 **negatives, why Schein wouldn't want to accelerate**
9 **the growth of buying groups?**

10 MR. McDONALD: Object to the form, asked
11 and answered.

12 THE WITNESS: Yeah, I think I've addressed
13 it, but, again, it goes back to what I've said at
14 one point not looking for an intermediary between us
15 and our customer. So we want to work directly with
16 you, Dr. Lin, and what's going on in your practice,
17 not someone else, you know, determining one of the
18 factors that impact our customer care wheel.

19 BY MS. KAHN:

20 **Q. And during the November 2nd series of**
21 **meetings I guess, did you say anything about Schein**
22 **not having any buying group agreements?**

23 A. About not having -- you know, we had -- we
24 absolutely had buying group agreements at that time
25 already.

233

235

1 **Q. So you did not say that?**

2 A. I don't recall saying it. I don't know
3 why I would say that. I know we had agreements with
4 customers already that were buying groups, and I
5 know we were -- you know, would be adding more in
6 the future as they approach us. We didn't have any
7 current plans that I was aware of at this time that
8 we were working with. That's why I was asking about
9 Klear Impact; it was unknown, who is this, tell us
10 more about it.

11 **Q. I just want to be clear. You don't recall**
12 **saying it, or is your testimony that you did not say**
13 **that?**

14 A. Say what?

15 **Q. That Schein does not have any buying group**
16 **agreements.**

17 A. I don't know why -- I don't recall saying
18 it, so I don't know I would say it. I know we had
19 buying group agreements at that time.

20 **Q. And do you recall saying that Schein would**
21 **not do buying group agreements?**

22 A. No.

23 **Q. You can put that aside.**
24 **(Exhibit 217 was marked for**
25 **identification.)**

1 A. No.

2 **Q. Do you have any understanding of how**
3 **Mr. Meadows could have taken this away from that**
4 **meeting?**

5 A. I don't.

6 **Q. And do you know what Mr. Meadows meant**
7 **when he said -- well, strike that.**

8 **Sitting here today, reading what**
9 **Mr. Meadows wrote here, soapboxing about HSD and**
10 **buying groups, do you know what that means?**

11 A. I do not.

12 **Q. Have you in the past talked -- strike**
13 **that.**

14 **You can put that aside.**

15 **You talked about Schein working a lot with**
16 **buying groups in the past, right?**

17 A. Yes.

18 **Q. When did Schein start selling to buying**
19 **groups?**

20 MR. McDONALD: Objection to form, lack of
21 foundation.

22 THE WITNESS: I don't know. I've been
23 with the company 20 years. They could have been
24 doing it before that. I don't know.
25

234

236

1 BY MS. KAHN:

2 **Q. You have Exhibit 217 in front of you. Let**
3 **me know when you are ready.**

4 A. Okay.

5 **Q. Exhibit 217 is an extension of**
6 **Exhibit 216, and I realize that you are not on the**
7 **later parts of the chain; is that right?**

8 A. Correct.

9 **Q. Okay. And this is also about Klear Impact**
10 **as well as the November 2nd meeting; is that right?**

11 A. That's right.

12 **Q. Mr. Meadows wrote to Mr. Cavaretta on**
13 **November 3rd -- strike that. Let me go back a chain**
14 **so the record is clear.**

15 **Mr. Cavaretta asked Mr. Meadows, "Did you**
16 **slide the note to Tim on this"; is that right?**

17 A. I see that.

18 **Q. And Mr. Meadows wrote back, "I had to,**
19 **sorry. He was going off about how we do not have**
20 **any buying group agreements and that we will not do**
21 **them, soapboxing about HSD and buying groups."**

22 **Do you see that?**

23 A. I do.

24 **Q. Is Mr. Meadows' characterization of what**
25 **you said at the November 2nd meeting accurate?**

1 BY MS. KAHN:

2 **Q. Do you recall the first time that you**
3 **learned that Schein was selling to a buying group?**

4 A. No, I do not.

5 **Q. Was it more than ten years ago?**

6 A. Yes.

7 **Q. And what group was that, do you know?**

8 A. I do not. It might have been the
9 Alpha Omega as an example.

10 **Q. Do you know when Schein started selling to**
11 **Alpha Omega?**

12 A. I do not.

13 **Q. And the buying groups that Schein has sold**
14 **to in the past, what division has it been out of?**

15 A. Through both -- the primary focus was
16 through Hal's special markets team before we
17 segmented between the elite and the DSOs and mid
18 markets, but we within HSD within the dental
19 business, as I mentioned, in the past study clubs,
20 you know, various state groups, you know, we had
21 worked with them on an HSD perspective in the past
22 too.

23 **Q. And the buying groups that Schein had sold**
24 **to in the past, again putting aside the Smile Source**
25 **recent agreement, were you personally involved in**

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1 **approving those sales?**
 2 A. No, not that I recall.
 3 **Q. Did anybody ask for your approval for**
 4 **those sales?**
 5 A. With a particular buying group?
 6 **Q. With the buying groups prior to**
 7 **Smile Source.**
 8 A. Not that I recall, not a specific example
 9 of a particular buying group, no. We talked about
 10 the concept of buying groups prior to that. But you
 11 just said -- you excluded Smile Source. I don't
 12 know another incident or specific group that I was
 13 involved in, no.
 14 **Q. Have you ever talked about buying groups**
 15 **with Hal Muller?**
 16 A. Yes.
 17 **Q. And do you have an understanding of how**
 18 **Mr. Muller sees buying groups?**
 19 A. We definitely -- we had a difference of
 20 opinion, as you saw in the Dental Gator example.
 21 **Q. What was that difference of opinion?**
 22 A. That he -- his approach would be
 23 different, and he was fine with the only thing that
 24 they were interested in price and nothing else
 25 mattered. It wasn't as big a concern for him. He

238

1 deals with a different segment of the market, and
 2 whether they're owned or not owned, he didn't have
 3 the same opinion of myself where, you know, if it's
 4 owned that's one thing; if it's not, they're making
 5 individual purchasing decisions, it's another thing.
 6 **Q. Okay. And I just want to clarify the**
 7 **difference in thinking between you and Mr. Muller.**
 8 **I think you said that Mr. Muller was fine with the**
 9 **only thing that they were interested in is price.**
 10 **Can you explain that to me?**
 11 A. Well, as I said in the past, the way we
 12 want to work with buying groups is if -- you know,
 13 price is a component of the overall value
 14 proposition that we provide, and if part of that
 15 they can also convert the business, that's
 16 incremental volume, there's alignment of interests
 17 with our customers and those customers that are
 18 members of the group, that's how we want to work
 19 with the buying group.
 20 Hal's position historically has been
 21 different. His was let's take a shot at anything.
 22 We can get a ton of customers that sign up, and
 23 whether they buy or not, it wasn't that important to
 24 him. To us that creates challenges.
 25 **Q. And why do you think Mr. Hal -- Mr. Muller**

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1 **had a different view than you?**
 2 A. You'd have to ask him. I don't know.
 3 **Q. You guys never talked it further than just**
 4 **understanding the differences?**
 5 A. Correct.
 6 **Q. And did you make your views known to**
 7 **Mr. Hal Muller?**
 8 A. Yes.
 9 **Q. And did he tell you that he disagreed with**
 10 **you?**
 11 A. From time to time, yes.
 12 **Q. Did anybody else within Henry Schein**
 13 **Dental tell you that they disagreed with you on your**
 14 **approach to buying groups?**
 15 A. Not that I recall.
 16 **Q. What about other people in special**
 17 **markets?**
 18 A. I never really worked with them, so not
 19 that I recall, no.
 20 (Exhibit 218 was marked for
 21 identification.)
 22 BY MS. KAHN:
 23 **Q. You have Exhibit 218 in front of you. Let**
 24 **me know when you're ready.**
 25 A. Okay.

240

1 **Q. Exhibit 218 is an e-mail chain, and I**
 2 **realize you're not on it.**
 3 **Is that right?**
 4 A. Correct.
 5 **Q. And you've never seen this document**
 6 **before?**
 7 A. Other than in preparation for this
 8 deposition.
 9 **Q. Did you review this document in**
 10 **preparation with your attorney?**
 11 A. I did.
 12 **Q. And -- okay.**
 13 **This Exhibit 218 is -- the top e-mail is**
 14 **from Jake Meadows to Patty Delikat on July 17, 2012.**
 15 **Do you see that?**
 16 A. I do.
 17 **Q. And this e-mail chain is about a Schein**
 18 **employee helping to put together a buying group.**
 19 **Is that your understanding?**
 20 A. Could you repeat the question?
 21 **Q. Sure. Is this e-mail chain about a buying**
 22 **group?**
 23 A. It is.
 24 **Q. Okay. And who is Ron and Dan who are**
 25 **referred to in that top e-mail?**

60 (Pages 237 to 240)

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1 A. The lead -- Ron Brown at the time was our
2 regional manager, and I believe Dan was our regional
3 operations manager in that market. I think this is
4 Washington State.

5 **Q. And from reading this, was Ron putting
6 together -- working on putting a buying group
7 together?**

8 MR. McDONALD: Object to the form.

9 THE WITNESS: I don't know that Ron was
10 working to put it together. I think they were
11 approached by this group to work with.

12 BY MS. KAHN:

13 **Q. And who is Patty Delikat?**

14 A. She is one of our field sales consultants.

15 **Q. And is it fair to say that Ms. Delikat was
16 saying here that Ron and Dan had approved some
17 discounts for this buying group?**

18 A. I think that's what I read, but I wasn't
19 involved with that. I see that statement, yes.

20 **Q. Okay. I just want to make sure that's how
21 you -- but that's your understanding as well from
22 reading this sitting here today?**

23 A. I'm saying I believe Ron had a discussion
24 with our field sales consultant approving it. I
25 don't know if anything was done with the customer at

1 A. I do.

2 **Q. And do you know why Mr. Meadows would have
3 gotten the impression that you directed him to not
4 support buying groups?**

5 MR. McDONALD: Object to the form.

6 THE WITNESS: I don't think that's what
7 he's -- that's not what I read here.

8 BY MS. KAHN:

9 **Q. Okay. What do you read here?**

10 A. Well, I don't know what happened between,
11 you know, the time that he received this e-mail and
12 the next day when he's responding to Patty, if he
13 spoke with Ron further and now he understood better.
14 I don't know.

15 But in general that's why he's asking the
16 questions down here, which supports what I was
17 saying before about how and why and when we will
18 work with buying groups; you know, who is the leader
19 of the group, is there a relationship there, how
20 many offices do they have, what's the average
21 purchase, has it been presented to them yet, what
22 discounts are we talking about, will each office
23 buy.

24 There's a series of questions that he
25 asked prior to that, and so I don't know what

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1 this point. The way I read it, this is from Patty,
2 our field sales consultant, to Jake after he had
3 asked a series of questions that align with what
4 we've been talking about relative to how and why and
5 when we work with a buying group. The discounts
6 were approved by Ron and Dan. He didn't answer the
7 question, you know, has it been presented, and she's
8 answering the question about were the discounts
9 approved and by who, and she's saying Ron and Dan.

10 **Q. Got it. It was approved at least
11 internally by Ron and Dan?**

12 A. That's correct.

13 **Q. So Ron and Dan had approved some sort of
14 discount for a buying group. Is that your
15 understanding?**

16 A. That's my understanding.

17 **Q. Okay. And then let me read Jake Meadows'
18 e-mail to Patty Delikat. "We can talk about this.
19 I have to tell you Ron and Dan made a decision that
20 is against what Tim Sullivan has directed us to do
21 in regards to supporting buying groups. We do not
22 want our customers organizing and creating what are
23 known as GPOs. It takes the value away from the
24 distributor."**

25 **Do you see that?**

1 happened between all of that and that response.

2 **Q. And have you ever directed anyone within
3 Schein that you do not want your customers
4 organizing and creating buying groups?**

5 A. Only in the spirit that I've outlined
6 before about it's a trend in the marketplace; we see
7 it's happening; we've worked with groups, buying
8 groups in the past; we will continue to work with
9 them in the future. It is accelerating. We don't
10 want to be the accelerator or the accelerator of it.
11 It's happening on its own, so we will work with the
12 market in that regard in that respect.

13 **Q. But you've never directed anyone within
14 Schein that you do not want your customers
15 organizing and creating buying groups?**

16 A. That's correct.

17 **Q. And do you -- have you ever had the
18 sentiment that buying groups take away -- takes the
19 value away from the distributor?**

20 A. I think it's a poor way of saying we don't
21 want anyone between us and our customer. We want
22 the value the customer sees and why they do business
23 with us, the value we want to be with Henry Schein.
24 We want the value that a customer sees or views as
25 why they're buying from Henry Schein, that value we

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1 want absolutely viewed as a value by doing business
 2 with Henry Schein.
 3 **Q. Not the buying group?**
 4 A. Not any form of intermediary.
 5 **Q. I guess I'm a little confused because**
 6 **earlier you said that you want to work with buying**
 7 **groups that offer value-added services, but doesn't**
 8 **that -- wouldn't that take away from the value that**
 9 **Henry Schein has?**
 10 A. No. I think you're reading into what I
 11 said because what I said is I want their values
 12 aligned with ours, and that value can still be
 13 viewed as a Henry Schein value.
 14 **Q. Got it.**
 15 A. When you work with those customers, they
 16 still buy from -- when they're in a buying group
 17 they still buy from Henry Schein Dental. We want
 18 them viewing the why they're buying is because of
 19 the value that we bring.
 20 **Q. And if a buying group is aligned, meaning**
 21 **they also want to provide additional value, the**
 22 **customer would view that as a Henry Schein value as**
 23 **well?**
 24 MR. McDONALD: Object to the form.
 25 THE WITNESS: I don't know which value.

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1 Can you give me an example of what type of value
 2 that could be?
 3 MS. KAHN: It's okay. We don't have to go
 4 back.
 5 (Exhibit 219 was marked for
 6 identification.)
 7 BY MS. KAHN:
 8 **Q. You have Exhibit 219 in front of you.**
 9 A. Yes.
 10 **Q. Let me know when you're ready. And let me**
 11 **just represent that you're not on the top two**
 12 **e-mails, and I will not be asking you about those.**
 13 A. Okay.
 14 **Q. Starting at the bottom you're on there.**
 15 A. Okay.
 16 **Q. Are you ready?**
 17 A. I am.
 18 **Q. Exhibit 219 is an e-mail chain, but I'm**
 19 **only going to ask you about the portion which is an**
 20 **e-mail from Brian Brady to many individuals with a**
 21 **cc to you and others on September 9th, 2015, and I**
 22 **believe the subject line was Henry Schein Dental &**
 23 **Existing Buying Groups; is that correct?**
 24 A. Yes.
 25 **Q. Did you receive this e-mail from**

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1 **Mr. Brady?**
 2 A. I did.
 3 **Q. And at this time in September 2015**
 4 **Mr. Brady had moved into his buying group position?**
 5 A. Responsibility was for the mid-market
 6 space including buying groups, yes.
 7 **Q. Okay. So he wasn't specifically**
 8 **responsible for buying groups and GPOs?**
 9 A. Not -- that wasn't his sole
 10 responsibility. That was in his realm of
 11 responsibility.
 12 **Q. Did anybody else within Schein have any**
 13 **responsibilities over buying groups and GPOs?**
 14 A. Not directly like Brian did.
 15 **Q. Was Mr. Brady tasked to deal with buying**
 16 **groups and GPOs?**
 17 A. To help us develop the strategy and, you
 18 know, any material that we would present. For
 19 example, he helped put together the presentation for
 20 Smile Source. He was involved in that one. So as
 21 they come up, he'd get involved working with our
 22 local teams on what to present and how to present
 23 it.
 24 **Q. Okay. Mr. Brady wrote on September 9,**
 25 **2015, in the third paragraph there, he wrote,**

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1 **"Traditionally Schein has rarely engaged with these**
 2 **groups."**
 3 **Do you see that?**
 4 A. I do.
 5 **Q. And do you understand "these groups" to**
 6 **mean buying groups?**
 7 A. I do.
 8 **Q. And do you disagree with Mr. Brady's**
 9 **statement that traditionally Schein has rarely**
 10 **engaged with buying groups?**
 11 A. I mean, in a 2-plus-billion-dollar
 12 business, I don't know how much it represented, so I
 13 don't know if he's referring to the overall volume
 14 of the business that we're doing, the number of
 15 customers. We look at 90,000 customers across the
 16 country, so if 500 of them are in various different
 17 groups, maybe he's viewing that as rarely. I don't
 18 know. Don't quote me on the 500 number. I don't
 19 know that number.
 20 I'm just saying I'm not sure his view,
 21 what he means by rarely, so you'd have to ask him.
 22 But we've been -- there are a number of groups that
 23 we have worked with even at this time.
 24 **Q. And I just want to -- you know, aside from**
 25 **what Mr. Brady was thinking or how he was**

62 (Pages 245 to 248)

249

1 **quantifying rarely, sitting here today do you**
 2 **disagree with the statement that traditionally**
 3 **Schein has rarely engaged with buying groups?**
 4 MR. McDONALD: Object to the form.
 5 THE WITNESS: Yeah, I would because I
 6 didn't -- even as my testimony earlier, I wasn't
 7 using the word "rarely," but often we worked with
 8 them. We had many different buying groups.
 9 BY MS. KAHN:
 10 **Q. Okay. So kind of the opposite of what you**
 11 **read here from Mr. Brady?**
 12 MR. McDONALD: Object to the form.
 13 THE WITNESS: Correct.
 14 MS. KAHN: Okay. You can put that aside.
 15 (Exhibit 220 and Exhibit 221
 16 were marked for identification.)
 17 BY MS. KAHN:
 18 **Q. You have Exhibits 220 and 221 in front of**
 19 **you. Let me know when you are ready.**
 20 A. Okay.
 21 **Q. Okay. Exhibit 220 is an e-mail with an**
 22 **attachment, and the attachment is Medical-Dental GPO**
 23 **9-18-13, and Exhibit 221 is some sort of a calendar**
 24 **scheduler I believe for the meeting that's**
 25 **referenced in Exhibit 220.**

250

1 **Do I have that right?**
 2 A. You do.
 3 **Q. And from Exhibit 221 it looks like you**
 4 **attended that meeting --**
 5 A. That's correct.
 6 **Q. -- or were going to.**
 7 **Did you attend the meeting?**
 8 A. Yes, I did.
 9 **Q. Do you recall attending the meeting?**
 10 A. I do.
 11 **Q. Can you tell me the purpose of the meeting**
 12 **that was held on September 18, 2013?**
 13 A. So Brad Connett and Bill Barr are two
 14 gentleman in our medical division, and they were
 15 making a presentation about GPOs and how they viewed
 16 GPOs relative to the medical market.
 17 And then if I recall, again, I haven't
 18 looked at this since the meeting quite honestly,
 19 they have some things that they know about GPOs and
 20 where they're going to get their growth and that
 21 type of thing.
 22 **Q. And whose idea -- strike that.**
 23 **And were these two individuals Brad and**
 24 **Bill from medical, they were going to give this**
 25 **presentation about GPOs to some dental folks; is**

251

1 **that right?**
 2 A. Correct.
 3 **Q. Was it an education overview of GPOs for**
 4 **the dental side?**
 5 A. That's how I viewed it, yes.
 6 **Q. Whose idea was it to have this meeting?**
 7 A. I don't recall. It wasn't -- I didn't ask
 8 for the meeting.
 9 **Q. Was it Mr. Muller?**
 10 A. I don't know.
 11 **Q. And earlier we talked about Schein using**
 12 **the terms "GPO" and "buying groups" interchangeably.**
 13 **In this presentation there are only references to**
 14 **GPOs, I believe.**
 15 **Do you know if that was meant to be used**
 16 **interchangeably with buying group?**
 17 MR. McDONALD: Object to the form,
 18 mischaracterizes the testimony.
 19 THE WITNESS: As I reread this again now,
 20 I haven't read it since that meeting, it looks to be
 21 GPO focused, not buying groups, but GPOs as defined
 22 earlier.
 23 BY MS. KAHN:
 24 **Q. GPO where you said the entity would**
 25 **negotiate with the manufacturer for discounts?**

252

1 A. Correct.
 2 **Q. Okay. And, again, there are no GPOs in**
 3 **the dental industry?**
 4 A. None that I'm aware of.
 5 **Q. All right. Turning to Slide 8, the last**
 6 **bullet says, "We know that opening the door for them**
 7 **on their terms" -- strike that. Let me just set the**
 8 **stage.**
 9 **Slide 8 has the title What do we know**
 10 **about GPO's?**
 11 **Do you see that?**
 12 A. I do.
 13 **Q. And you take that GPOs to mean the type**
 14 **where -- an actual GPO, not synonymous with buying**
 15 **groups; is that right?**
 16 A. That's correct.
 17 **Q. And the last bullet says, "We know that**
 18 **opening the door for them on their terms is not a**
 19 **favorable approach."**
 20 **Do you see that?**
 21 A. I do.
 22 **Q. And do you know who drafted this**
 23 **presentation?**
 24 A. I believe it was Brad Connett and
 25 Bill Barr.

63 (Pages 249 to 252)

253

1 **Q. And were they making that statement for**
 2 **the dental industry?**
 3 MR. McDONALD: Object to the form.
 4 THE WITNESS: I don't know. I don't
 5 recall.
 6 BY MS. KAHN:
 7 **Q. Medical was working with GPOs in 2013,**
 8 **right?**
 9 A. That's correct, yes.
 10 **Q. The second-to-last bullet says, "We know**
 11 **they have contacted dental competition."**
 12 **Do you see that?**
 13 A. I do.
 14 **Q. Do you believe that to mean that we know**
 15 **that GPOs have contacted dental competition?**
 16 A. That's how I read it, but I don't --
 17 again, that's not my presentation. I don't recall
 18 how he portrayed it in this meeting.
 19 **Q. Okay. That's what I was going to ask is**
 20 **do you recall the discussion around these bullets.**
 21 A. I do not.
 22 **Q. Do you have any information to share with**
 23 **us that would help us understand these two bullets?**
 24 A. I do not.
 25 **Q. Can you think of any reason why Schein**

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1 **would care whether a GPO has contacted your**
 2 **competitors?**
 3 MR. McDONALD: Object to the form.
 4 THE WITNESS: No.
 5 BY MS. KAHN:
 6 **Q. Can you think of any reason why Schein**
 7 **would care whether a buying group has contacted your**
 8 **competitors?**
 9 A. Well, I just go back to what I stated
 10 earlier, and maybe the GPOs fall under the same
 11 thing, but as it relates to buying groups, again, if
 12 we decide not to and the group decides to work with
 13 one of our competitors and now that puts our
 14 business at risk, yes, we want -- we would want to
 15 know that, and that does matter to us.
 16 **Q. Why?**
 17 A. As I just stated, if we decide not to work
 18 with the group and the group decided to work with
 19 one of our competitors, and then those customers
 20 that were already existing business of ours now are
 21 members of this group move their business, we lose
 22 the business.
 23 **Q. If you turn to Slide 13, this slide is**
 24 **titled What do we not know about GPO's, and the**
 25 **first bullet says, "Will they be successful in**

255

1 **baiting a dental company to work with them?"**
 2 **Do you see that?**
 3 A. I do.
 4 **Q. Do you recall the discussion around that**
 5 **point?**
 6 A. I do not.
 7 **Q. Is it your understanding that in 2013**
 8 **dental distributors were not generally working with**
 9 **GPOs?**
 10 A. That's my understanding.
 11 **Q. And what about buying groups?**
 12 A. I believe they were as -- I mean, I know
 13 we were for sure, and I know in working with some
 14 groups, you know, that we were up against, you know,
 15 competing with other potential distributors for
 16 their -- for the group.
 17 **Q. And so you talked about this concern of a**
 18 **buying group going to a competitor, right?**
 19 A. Yes.
 20 **Q. Can you tell me about any instances where**
 21 **a buying group has gone to a competitor?**
 22 A. I'll give you the example of Smile Source.
 23 We were partners with them in '04 to '06 I believe
 24 is the time frame. I don't know who they were
 25 working with prior, but when we got the business we

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1 did well with the customers in that space that were
 2 members of the group, but they didn't have nearly
 3 the traction with gaining much incremental business
 4 from the group, and then eventually they switched
 5 over and joined Burkhart, so Burkhart became their
 6 supplier of choice. And in that case many members
 7 did shift their business to Burkhart, and we were
 8 able in some cases to go in and maintain as much of
 9 the business as we could on our own directly.
 10 There's one example.
 11 **Q. Can you think of any other examples that**
 12 **involved another distributor?**
 13 A. No, not offhand.
 14 **Q. And earlier we saw a document where Darby**
 15 **was selling to buying groups; is that correct?**
 16 A. Correct.
 17 **Q. Is it still your understanding today that**
 18 **Darby sells to buying groups?**
 19 A. Yes.
 20 **Q. And what about Safco, have you heard of**
 21 **Safco selling to buying groups?**
 22 A. I've heard of Safco. I know who they are.
 23 I don't know of any buying groups that they're
 24 working with.
 25 **Q. Have you heard of a buying group going to**

64 (Pages 253 to 256)

257

1 **Patterson?**
 2 A. No, not that I know of.
 3 **Q. Have you heard of a buying group going to**
 4 **Benco?**
 5 A. I have.
 6 **Q. Which buying group?**
 7 A. There's one in Virginia. I don't know if
 8 it's Dental Alliance, Atlantic Dental, with a name
 9 somewhere along that line.
 10 **Q. Is it the Atlantic Dental Care? Is that**
 11 **what you're thinking of?**
 12 A. No. ADC is a large DSO that Patterson
 13 does have. I think that's the one who -- that's the
 14 ADC I know of, but it's a large DSO. It's not a
 15 buying group, per se.
 16 **Q. Your understanding is Patterson has ADC?**
 17 A. Correct.
 18 **Q. And Benco never had ADC?**
 19 A. Not that I know of.
 20 **Q. Okay.**
 21 A. If it's the same. There might be another
 22 company with those initials. The one I'm thinking
 23 of is a large, large Patterson account.
 24 **Q. So the acronym -- I know ADC may be the**
 25 **same, but I'm talking about Atlantic Dental Care.**

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1 **Is that familiar to you?**
 2 A. I don't know if that's the name. It's one
 3 in Virginia, I know.
 4 **Q. The ADC that you know is in Virginia?**
 5 A. I don't know if it's ADC. I'm saying --
 6 **Q. You're talking about the buying group now?**
 7 A. Right.
 8 **Q. Got it.**
 9 A. It's either Atlantic Dental, I don't know
 10 if they even call themselves -- if there's a C at
 11 the end of that or not, or if it's Dental Alliance.
 12 It's something, some name like that. I just don't
 13 recall the name.
 14 **Q. And that is a buying group to your**
 15 **understanding?**
 16 A. From what we know about them, yes.
 17 **Q. And you said that Benco supplies them?**
 18 A. That's correct.
 19 **Q. And how did you come to learn about that?**
 20 A. Our sales reps there today tell us all the
 21 time, you know, that they've lost accounts; they've
 22 lost some business due to the buying group that
 23 they're -- one of our customers became a member of
 24 and now are buying through Benco.
 25 **Q. Do you know how much you lost in sales to**

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1 **this buying group in Virginia?**
 2 A. I do not.
 3 **Q. Do you have any sense of if it was just**
 4 **one customer or if it was some significant amount?**
 5 A. I don't know.
 6 **Q. And it was brought to your personal**
 7 **attention?**
 8 A. Yes.
 9 **Q. By whom?**
 10 A. Well, a multitude of ways. In this
 11 particular case Chuck Cohen himself called me, which
 12 I thought was a crazy call.
 13 Then after that it just came through --
 14 once we knew that they did sign a deal with Benco,
 15 we were hearing from our regional manager and reps
 16 locally that customers had signed up.
 17 **Q. Which regional managers and reps?**
 18 A. The regional manager involved I believe
 19 was Bobby Anderson.
 20 **Q. Okay. It's your testimony that he called**
 21 **you after they lost customers to Benco?**
 22 A. I'm sorry, he didn't call me.
 23 **Q. Okay.**
 24 A. So I heard it through Jake Meadows, who
 25 was the area manager at the time.

260

1 **Q. And why did -- how did that conversation**
 2 **come about?**
 3 A. I don't know, just in discussion,
 4 conversation that either -- again, I don't remember
 5 if we actually bid on them or what, decided not to.
 6 Whatever the scenario was, we either decided not to
 7 and then Benco did, or we bid on it and Benco won
 8 it. I don't know which way it -- which series of
 9 events happened.
 10 But at some point Jake did update me that
 11 Benco did end up signing with them, and, you know,
 12 some of our reps were saying this is why some of
 13 their business has been lost.
 14 **Q. And do you have an understanding that this**
 15 **Virginia buying group somehow mandates purchases**
 16 **through the buying group?**
 17 A. Not that I'm aware of.
 18 **Q. They do not mandate?**
 19 A. I don't know that they do. I've never met
 20 with them. I don't know their strategy.
 21 **Q. Okay. And you don't know if Schein bid on**
 22 **them?**
 23 A. I don't know.
 24 **Q. Did you -- okay. Strike that.**
 25 **Can you tell me about the call from**

65 (Pages 257 to 260)

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1 **Chuck Cohen that you mentioned?**

2 A. It -- I forget the date. At some point he
3 had called me. Again, I don't know if it was a text
4 first or not or how the series of events went; asked
5 me if I had heard of them. I had not.

6 And he basically said to me that they
7 don't plan to, you know, bid on their -- on this
8 group, to which I immediately said that, Chuck, I
9 don't know why you're telling me this; this is not
10 something you and I should be talking about. And I
11 don't know who they are; I've not met them; I'm
12 really not aware of what their strategy is.

13 **Q. And then what did he say in response?**

14 A. Something to the effect of, oh, I know, I
15 was just, you know, calling to let you know that
16 we're, you know, we're not interested. Okay,
17 thanks, Chuck.

18 **Q. How did the conversation end?**

19 A. Pretty much like that, thanks, Chuck.
20 And, you know, with Chuck, I don't know if you've
21 met him yet, he's a very unique character, and you
22 could have a 20-minute discussion and actually talk
23 about -- absolutely talk about nothing, and --

24 **Q. Why do you say that?**

25 A. He's a very just Chatty Cathy, you know,

1 **Q. And after this call did you receive any
2 follow-up from Mr. Cohen?**

3 A. I did.

4 **Q. Okay. And what follow-up did you receive?**

5 A. I believe he sent me a text, something to
6 the effect of we decided to bid on the Dental
7 Alliance or Alliance, whatever the name of the
8 company was. It was in the text. I don't remember
9 the name.

10 **Q. And during the call, I can go back, but
11 during the call you said he told you about Atlantic
12 Dental Care and that it was a buying group?**

13 A. Yes.

14 **Q. And that he wasn't going to bid on it?**

15 A. Correct.

16 **Q. And he texted you to say that he had
17 essentially changed his mind?**

18 A. Correct.

19 **Q. And that it was not a buying group?**

20 MR. McDONALD: Object to the form.

21 THE WITNESS: I don't think that he -- I
22 don't know. He just said that they're going to bid
23 on it. I don't think he changed the position on
24 whether they were a buying group or not.

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1 talk about the weather, Packers/Philadelphia Eagles
2 conflicts, bets, you know. There's just small talk,
3 how's the family.

4 So it's -- you know, he's just a very
5 unique character.

6 **Q. Was there -- did you ask for any
7 follow-up --**

8 A. No.

9 **Q. -- after the call?**

10 **Did he say he was going to provide any
11 follow-up after the call?**

12 A. He did not say anything, no.

13 **Q. Did you ever ask him about Atlantic Dental
14 Care?**

15 A. No.

16 **Q. How long would you say you guys talked
17 for?**

18 A. I don't know. Sometimes it was two
19 minutes; sometimes it was ten; it might have been
20 twenty. It really depends on the topic.

21 **Q. Sure. I'm specifically --**

22 A. Specifically to this topic, very brief.

23 **Q. All right. Can you quantify that at all?**

24 A. I would say on this topic it couldn't have
25 been a minute or two.

1 BY MS. KAHN:

2 **Q. Got it. And did you respond to that?**

3 A. I don't believe so.

4 **Q. Did you have any -- did you try to call
5 him on the day that you received that text?**

6 A. I don't believe so.

7 **Q. Did you speak to him -- excuse me.**

8 **Did you speak to him again shortly
9 thereafter?**

10 A. You have the records. I'd have to look.
11 I don't recall. We can look at the records.

12 **Q. Did you ever speak to him again about this
13 buying group?**

14 A. I don't believe so, no.

15 **Q. Did you do anything with the information
16 that he shared with you?**

17 A. No.

18 **Q. Did you tell anybody about it?**

19 A. I don't know if I communicated with our
20 in-house legal counsel or not. I typically would,
21 and I just don't recall if I did in this case or
22 not.

23 **Q. What do you mean when you say "I typically
24 would"?**

25 MR. McDONALD: Well, let me just give you

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1 some instruction here. On answering this question I
 2 don't want you to reveal the actual communications
 3 you've had with counsel.
 4 THE WITNESS: That's where I was going.
 5 So I've had a lot of communications with
 6 counsel relative to how and how not to communicate
 7 with Chuck, and I'll leave it at that.
 8 BY MS. KAHN:
 9 **Q. And was this prior to the Source One**
 10 **litigation?**
 11 A. Yes.
 12 **Q. So prior to -- was it prior to the Texas**
 13 **AG investigation?**
 14 A. Yes.
 15 **Q. How did -- strike that.**
 16 **When you said you typically would, were**
 17 **you suggesting that you had previously reported to**
 18 **Schein's legal counsel about other communications**
 19 **from Mr. Cohen?**
 20 A. I need to ask if I can answer that.
 21 MR. McDONALD: You can answer that yes or
 22 no.
 23 THE WITNESS: Yes.
 24 BY MS. KAHN:
 25 **Q. How many times?**

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1 A. I don't know.
 2 **Q. Can you quantify, more than ten, less than**
 3 **five?**
 4 A. Communications with counsel about --
 5 **Q. How many times have you reported a**
 6 **communication that you were having that you received**
 7 **from Chuck to legal counsel?**
 8 A. I don't know. I'd be completely guessing.
 9 More than five.
 10 **Q. More than five.**
 11 **More than twenty?**
 12 A. I don't know.
 13 **Q. Do you know what Schein did with the**
 14 **buying group that Chuck was communicating to you**
 15 **about?**
 16 MR. McDONALD: Object to the form, asked
 17 and answered.
 18 THE WITNESS: I don't. I don't know if we
 19 bid on it or not. I don't recall.
 20 BY MS. KAHN:
 21 **Q. You didn't look into it after you got the**
 22 **call from Chuck Cohen?**
 23 A. No.
 24 **Q. Nor did you look into it after you got the**
 25 **text message from Chuck Cohen?**

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1 A. No.
 2 **Q. Earlier you said that the call from Chuck**
 3 **was crazy.**
 4 **Do you recall that?**
 5 A. I do.
 6 **Q. And why did you say it was crazy?**
 7 A. It was a call I would never make to him,
 8 and I was in shock that he had actually made the
 9 call to me.
 10 **Q. Why would you never make that call?**
 11 A. Based on antitrust training that I've
 12 received throughout the years.
 13 **Q. Why do you think Mr. Cohen called you with**
 14 **that information?**
 15 MR. McDONALD: Object to form.
 16 THE WITNESS: That would be a good
 17 question for him.
 18 BY MS. KAHN:
 19 **Q. Why do you think Mr. Cohen called you with**
 20 **that information?**
 21 MR. McDONALD: Object to the form.
 22 THE WITNESS: I don't know.
 23 BY MS. KAHN:
 24 **Q. You never tried to think about why he**
 25 **called you with this information?**

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1 A. I thought it was -- as I said, I told you
 2 what I thought about it. I thought it was crazy
 3 that he called, and I would never have made that
 4 call.
 5 **Q. I guess my question is going to you didn't**
 6 **try to think about the motive behind the call?**
 7 A. No.
 8 **Q. Did you get the sense that Mr. Cohen was**
 9 **trying to reach some general understanding with you?**
 10 A. No.
 11 **Q. Why not?**
 12 MR. McDONALD: Object to the form.
 13 THE WITNESS: I didn't get the sense. I
 14 can't tell you why not. No, I didn't. We never
 15 would come to an understanding with them to begin
 16 with. We didn't engage in that type of discussion
 17 with him at all. So if he even attempted to go down
 18 that road I would have cut him off immediately.
 19 BY MS. KAHN:
 20 **Q. Can you think of any reason for Mr. Cohen**
 21 **to communicate what he did with you?**
 22 MR. McDONALD: Object to the form, asked
 23 and answered.
 24 THE WITNESS: I cannot.
 25

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1 BY MS. KAHN:
 2 **Q. Was that the only -- so there was a call**
 3 **from Chuck to you and then a text message from Chuck**
 4 **to you, right?**
 5 A. Correct.
 6 **Q. Both about the same buying group**
 7 **situation; is that right?**
 8 A. That's right.
 9 **Q. And that time aside, has Mr. Cohen tried**
 10 **to reach out to you about buying groups in any other**
 11 **instances?**
 12 A. Not that I recall.
 13 **Q. Is it possible but you just don't recall?**
 14 MR. McDONALD: Object to the form.
 15 THE WITNESS: It's not that -- I just
 16 don't recall any specific incident about another
 17 buying group that Chuck ever reached out to me
 18 about.
 19 BY MS. KAHN:
 20 **Q. What about buying groups in general?**
 21 A. I've never had that discussion with Chuck
 22 about our strategy, their strategy on buying groups.
 23 **Q. Has Mr. Cohen ever shared with you his**
 24 **general thoughts on buying groups?**
 25 A. No.

1 **Q. And I just want to confirm, Mr. Cohen**
 2 **never shared with you that Benco had a policy of not**
 3 **selling or offering discounts to buying groups?**
 4 A. That's correct.
 5 **Q. Have you known Mr. Cohen to lie?**
 6 A. I know him as an odd personality but to
 7 flat out lie, no. I don't communicate that much
 8 with him to tell you the truth, but it's -- I don't
 9 know him to have lied.
 10 **Q. Why do you say he's odd?**
 11 MR. McDONALD: Object to the form.
 12 THE WITNESS: I just asked you I don't
 13 know if you've met him yet. I probably shouldn't
 14 even go down that road. No, I don't know him as --
 15 to be a liar.
 16 BY MS. KAHN:
 17 **Q. My question was, why do you say he's odd?**
 18 A. I find him odd.
 19 **Q. Why is that?**
 20 A. He's a close talker. He's -- he's just --
 21 I don't know. How do you define odd? He's just not
 22 my cup of tea.
 23 **Q. Do you consider him a friend?**
 24 A. I consider him not a friend by any means,
 25 no, but we're -- our families know each other.

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1 **Q. Have you ever shared with Mr. Cohen your**
 2 **general thoughts about buying groups?**
 3 A. No.
 4 **Q. And earlier we talked about buying groups**
 5 **not being able to mandate purchases through the**
 6 **vendor contracts.**
 7 **Do you recall those questions and answers?**
 8 MR. McDONALD: Object to the form. We've
 9 had many questions and answers on that.
 10 THE WITNESS: I'm not sure.
 11 BY MS. KAHN:
 12 **Q. Strike that. Let me ask a different**
 13 **question.**
 14 **Have you and Mr. Cohen ever discussed**
 15 **whether buying groups can mandate purchases through**
 16 **buying group vendors?**
 17 A. No.
 18 **Q. Have you and Mr. Cohen ever discussed**
 19 **rationale for not wanting to work with buying**
 20 **groups?**
 21 A. No.
 22 **Q. So aside from this one instance you don't**
 23 **recall any other discussions with Mr. Cohen about**
 24 **buying groups?**
 25 A. That's correct.

1 We've been in the business a long time. We're
 2 friendly but not friends.
 3 **Q. And do you respect Mr. Cohen?**
 4 A. I do.
 5 **Q. In the last ten years how often had you**
 6 **seen Mr. Cohen in person?**
 7 A. Boy, ten, twelve, fifteen. I'd see him at
 8 least once a year at a DTA event. We were both on
 9 the board for a period of time. I usually see him
 10 at at least one major trade show or convention.
 11 **Q. What are the other trade shows and**
 12 **conventions that you're referring to?**
 13 A. There's a Chicago Midwinter meeting in
 14 February, the Greater New York meeting in November.
 15 Those are two of the biggest ones. Wherever the ADA
 16 moves their meeting around to a different city every
 17 year, we might see each other at those meetings.
 18 **Q. So Chicago Midwinter, Greater New York and**
 19 **the ADA meeting, those are three meetings that you**
 20 **have seen Mr. Cohen at throughout the years?**
 21 A. Examples of meetings, you know. I don't
 22 know if -- I've been to the Boston meeting and that
 23 could be in January. I don't know if I ran into him
 24 there or not.
 25 I attend five to six meetings a year

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1 myself, and in most cases Benco is also showing at
2 those meetings. Sometimes Chuck is there. I don't
3 know. I don't go looking for him. We don't have
4 meetings scheduled.

5 So it's just -- it's more by happenstance
6 if we see each other at the meetings.

7 **Q. Do you ever -- have you ever texted each
8 other to try to catch each other at a trade show or
9 convention?**

10 A. There was one meeting in particular that
11 he wanted to get together I'm thinking with someone
12 from Patterson to talk about how do we from a DTA
13 perspective bring more value to the members relative
14 to training service technicians.

15 **Q. Aside from that, any other instances where
16 you've tried to catch one another at a trade show or
17 convention?**

18 A. I mean, you have the -- not that I recall,
19 but I know you have the record, so I'd be happy to
20 address any specific examples you have.

21 **Q. Have you ever had drinks or a meal or food
22 with Mr. Cohen?**

23 A. Yes.

24 **Q. How many times?**

25 A. Drinks, maybe three or four times, you

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1 the family, Packers just beat the Eagles again, how
2 are you feeling, that type of stuff.

3 **Q. Let's move on to the phone conversations.
4 How many phone calls would you say you've
5 had with Mr. Cohen in the last ten years?**

6 A. More than five, less than ten I'm
7 guessing. I'm guessing somewhere in that range.

8 **Q. Have you ever called him from your home
9 line?**

10 A. I don't think we even have a home line
11 anymore. No.

12 **Q. Have you ever called him from anything
13 other than your cell phone or your work line?**

14 A. No.

15 **Q. Has -- strike that.**

16 **Do you have Mr. Cohen's home phone number?**

17 A. I might. I don't know. I don't recall
18 ever calling him at home.

19 **Q. Okay. That was my question. Thank you.**

20 **And the phone calls that you do recall
21 having with Mr. Cohen, aside from the one where we
22 called you about the buying group, what were the
23 other calls about?**

24 A. The majority of them had to do with the
25 employment agreement that we had between our two

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1 know, post a DTA board meeting, not him and I one on
2 one. It's the whole board coming out and getting
3 together and just socializing with the other members
4 of the board.

5 I've had dinner with him twice, both times
6 in a discussion about potentially merging our
7 companies together in some way. Whether we would
8 acquire Benco is the obvious -- not obvious but one
9 of the paths that we wanted to explore, just dream,
10 you know, some day could it happen.

11 **Q. Any other times that you've had drinks or
12 a meal?**

13 A. Not that I recall.

14 **Q. What about any meetings one-on-one in
15 person that didn't involve drinks or food?**

16 A. We had phone conversations.

17 **Q. So I'll get to that. I just wanted to
18 stick with in person first.**

19 A. Okay. Outside of what I just outlined, I
20 don't believe so.

21 **Q. And when you run into him at a trade show,
22 do you stop and say hello?**

23 A. Yes.

24 **Q. Anything beyond that?**

25 A. That's -- typically how's it going, how's

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1 organizations. Going back to the late '90s and
2 early 2000s, when we were going through our merger
3 mania years, Benco was expanding west, and so we
4 ended up in a lot of legal challenges with them,
5 whether -- if they hired one of our employees that
6 had a noncompete, you know, how we -- depending on
7 the state laws, we ended up spending a lot of money
8 on attorneys, and we almost always would end up
9 settling with something less than a 12-month period
10 that was on the employment agreement with our
11 employee.

12 We decided to save ourselves a lot of
13 money and decided if that happens everyone is free
14 to go work where they want to work provided that
15 they live within the confines of the contract, if
16 they had a contract with us primarily, and to make
17 sure that, you know, we cut that period down from
18 12 months to let's say there's a period of 90 days,
19 there's a period of 120 days. So it was actually
20 good for the employee that was leaving because their
21 noncompete time would be reduced.

22 Anyway, so it was those type of
23 discussions on, you know, come to that agreement.
24 And then any time a particular situation happened,
25 usually the lawyers talked, but every now and then

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1 Chuck and I would talk directly about it also.

2 **Q. Any other topics aside from that?**

3 A. He made a call to me one time relative to
4 him seeing a Henry Schein brand product on Amazon.

5 **Q. And what did he say?**

6 A. Tim, are you aware, something to the
7 effect, it wasn't the exact quote, that there's a
8 Henry Schein brand product available on Amazon? And
9 I was surprised to hear it because we don't sell
10 directly to Amazon, and so I said, you know, thanks
11 for the information, I wasn't aware of that,
12 appreciate the heads up.

13 And I did call him back, I think it was
14 two days later, saying thanks for bringing that to
15 my attention. It was happening through a different
16 channel, our medical division, and but I appreciated
17 him letting me know.

18 **Q. And what did you find out about that
19 product appearing on Amazon?**

20 A. So through our medical division, they work
21 with a company called Buy Direct Now or dotcom.
22 It's some dotcom organization, which there's no
23 problem on the medical side who they want to sell
24 to, but there's agreements that we have with our end
25 users that they cannot use Henry Schein brand in

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1 particular and then use it -- resell it to other
2 channels for distribution.

3 And so when that came to our attention,
4 medical saw that as well. They weren't aware,
5 medical, that that particular group is now selling
6 through Amazon themselves, and they took action on
7 that to make sure that BuyDirectNow.com, they can
8 continue to buy but they can't sell it through
9 Amazon.

10 **Q. So is it fair to say that Schein medical I
11 guess stopped the practice?**

12 A. No, didn't stop the practice. It enforced
13 its already-existing rules of we sell to our end
14 user, not end user to another sales channel.

15 So they were selling it to a company
16 called BuyDirect.com. They can then use that
17 product to sell to, you know, other physicians in
18 their case. It could not be used to sell.

19 So it was an agreement they already have.
20 It was enforcing an existing agreement. It wasn't
21 stopping anything other than enforcing the existing
22 agreements.

23 **Q. Why do you think Mr. Cohen called you
24 about this?**

25 MR. McDONALD: Object to the form.

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1 THE WITNESS: Same thing as the prior
2 example. I don't know.

3 BY MS. KAHN:

4 **Q. You have no idea. Okay.**

5 **Had you and Mr. Cohen talked about Amazon
6 prior to that?**

7 A. Not directly, no.

8 **Q. What about indirectly?**

9 A. We both sat on the board of the DTA, and
10 when Amazon was coming into the dental industry
11 there was discussion at the board about can they be
12 members of DTA or not, and ultimately they did.
13 They came onboard while I was the chair of the DTA.
14 And so there was discussion about Amazon at the
15 board of the DTA.

16 **Q. In the last ten years you've also
17 communicated with Mr. Cohen -- well, strike that.**

18 **Let me just make sure. Aside from what
19 you've already told me about, any other calls, any
20 other subjects?**

21 MR. McDONALD: Object to the form.

22 THE WITNESS: None that come to mind right
23 now.

24 BY MS. KAHN:

25 **Q. In the last ten years you've communicated**

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1 **with Mr. Cohen by e-mail from time to time?**

2 A. Correct.

3 **Q. And how often would you say that has
4 occurred?**

5 A. I really don't know.

6 **Q. And you've also communicated with
7 Mr. Cohen by text from time to time?**

8 A. Correct.

9 **Q. How often would you say that has occurred
10 in the last ten years?**

11 A. I really don't know.

12 **Q. Have you ever deleted a text message from
13 Mr. Cohen?**

14 A. No.

15 **Q. Have you ever deleted an e-mail from
16 Mr. Cohen?**

17 A. Just through my normal, you know, like hit
18 delete so it's not in my in box but it's still in my
19 deleted. So I don't do anything to completely clear
20 out anything from Chuck in my system, no.

21 **Q. In the last ten years has Mr. Cohen sent
22 you notes in the mail?**

23 A. Yes.

24 **Q. Can you tell me about those?**

25 A. Usually fun little, you know, notes about

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1 I saw your father's name listed, you know, in Dental
 2 Impressions magazine for, you know -- I forget the
 3 award that he received. He said, hey,
 4 congratulations. So it's congratulatory, nothing
 5 business related; social, you know, a little hey
 6 Packers beat the Eagles. We had a little bet;
 7 here's ten bucks he sent, or he had to send some
 8 cheesesteak or something along that line.
 9 **Q. You guys had a bet going?**
 10 A. We did at one point, yes. And if you
 11 could collect for me when you see him, that would be
 12 great.
 13 **Q. Has Mr. Cohen ever sent you anything in**
 14 **the mail regarding Smile Source?**
 15 A. About Smile Source, no.
 16 **Q. Has he sent you anything in the mail about**
 17 **buying groups in general?**
 18 A. No.
 19 **Q. Have you communicated with Mr. Cohen by**
 20 **any other means aside from what we've already talked**
 21 **about in the last ten years?**
 22 A. No.
 23 **Q. Have you and Mr. Cohen ever communicated**
 24 **about price?**
 25 A. No.

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1 **Q. Have you and Mr. Cohen ever communicated**
 2 **about manufacturers?**
 3 A. There was a communication he sent me about
 4 Dentsply at one point and Hu-Friedy relative to the
 5 Dentsply agreement that all suppliers have to sign
 6 with Dentsply per their rules, and we shared data
 7 and whatnot; and he had sent a message about, you
 8 know, looks like Hu-Friedy is looking to do
 9 something similar.
 10 **Q. And why was he reaching out to you?**
 11 MR. McDONALD: Object to the form.
 12 THE WITNESS: I don't know.
 13 BY MS. KAHN:
 14 **Q. Was there an ask in there somewhere? What**
 15 **was he asking you to do?**
 16 MR. McDONALD: Object to the form.
 17 THE WITNESS: I'd have to read the e-mail
 18 again. I don't know what the -- I do remember that
 19 is one of the communications I mentioned I forwarded
 20 on to counsel.
 21 BY MS. KAHN:
 22 **Q. And aside from that communication, have**
 23 **you communicated with Mr. Cohen about manufacturers**
 24 **in any other instances?**
 25 A. Not that comes to mind right now.

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1 **Q. Have you and Mr. Cohen ever communicated**
 2 **about a private practice account?**
 3 A. Not that I recall.
 4 **Q. Have you and Mr. Cohen ever communicated**
 5 **about a DSO?**
 6 A. Not that I recall.
 7 **Q. Or a corporate account?**
 8 A. Not that I recall.
 9 **Q. Have you and Mr. Cohen ever communicated**
 10 **about Patterson?**
 11 A. I'm sure from time to time, you know, if
 12 we're meeting he might make a joke about Patterson
 13 or vice versa, but not -- nothing, nothing of any
 14 significance, no.
 15 **Q. What do you mean when you say "might make**
 16 **a joke about Patterson or vice versa"?**
 17 A. As I said, Chuck is a funny guy. He may
 18 have referred to Patterson in some way, in some type
 19 of funny way. Nothing comes to mind, so, again, I'm
 20 a little bit speculating here, but I just don't know
 21 if he -- if there's any type of communication that
 22 he might have said something about, you know, where
 23 Patterson, the name, came up. It's not like we --
 24 you know, that it would not have come up at any
 25 point, but we don't talk about Patterson and in

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1 particular how we're going to go to market, you
 2 know, against them, what their strategy is, nothing
 3 of any significant importance.
 4 Are we done with this?
 5 **Q. Yes, thank you.**
 6 **(Exhibit 222 was marked for**
 7 **identification.)**
 8 BY MS. KAHN:
 9 **Q. You have Exhibit 222 in front of you?**
 10 A. I do.
 11 **Q. Let me know when you're ready.**
 12 A. Okay.
 13 **Q. Is this an example of a communication**
 14 **between you and Mr. Cohen involving a joke about**
 15 **Patterson?**
 16 A. Correct.
 17 **Q. And the first text message is from you to**
 18 **Mr. Cohen, correct?**
 19 A. That's correct.
 20 **Q. On June 13, 2012, you wrote, "Creative**
 21 **annual report this year. Nice job and congrats on**
 22 **successful year. Too many former Team Schein**
 23 **Members included though, smiley face."**
 24 **Do you see that?**
 25 A. Yes.

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1 **Q. Why did you send that?**

2 A. So they sent out a thing to -- you know,
3 their customers, many of their customers are our
4 customers. It was a deck of cards, and the deck of
5 cards had pictures of team members on it, had stats
6 on the company, how they did. So they were sharing
7 publicly with their customers information about
8 Benco's year and thanking customers, you know, for
9 their success.

10 So I thought it was creative, kind of
11 funny, and I was, you know, sending a joke about,
12 hey, too many of your team members are former, you
13 know, Team Schein members, ha-ha.

14 **Q. How did you come to get the deck of cards?**

15 A. I don't recall specifically. I think one
16 of our reps sent it in saying they were just in
17 Dr. Smith's office and look what I saw.

18 **Q. And Mr. Cohen responded to you, "Listen,
19 if it weren't for us, Patterson would smoke you
20 guys. You're lucky to have us."**

21 **Do you see that?**

22 A. I do.

23 **Q. Do you know what he meant when he said
24 "Patterson would smoke you guys"?**

25 A. It's his way of joking around, thinking

1 **Q. Do you ever see him in person at events?**

2 A. Occasionally. Again, Chicago Midwinter,
3 there's, again, this Oral Health America is a big
4 dinner that the trade industry puts on on Wednesday
5 night. I might see him there.

6 He comes from California, so if I would
7 attend one of the CDAs, he typically was at that
8 meeting and I might see him there.

9 **Q. What about Mr. Anderson?**

10 A. Most often I'd see him was at the DTA
11 board meetings. Since he left the board I don't see
12 him that often.

13 **Q. How often would you say you've
14 communicated with Mr. Anderson either in person or
15 via some other form in the last ten years?**

16 MR. McDONALD: Object to the form.

17 THE WITNESS: Out -- well, again, the DTA
18 board meetings, we had at least two meetings a year;
19 maybe one other, you know, meeting in Washington,
20 D.C., when we're lobbying as an industry.

21 So I'd see him as many as two to four
22 times a year at various trade events or industry
23 events I should say.

24 BY MS. KAHN:

25 **Q. And in the times that you have**

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1 that, you know, Patterson would be beating us in the
2 market and this is his way of saying instead it's
3 him, I think. I didn't communicate back with him on
4 this.

5 **Q. You can put that aside.**

6 **Have you communicated -- do you guys want
7 to take a break?**

8 MR. McDONALD: Fine. It's up to you.

9 THE WITNESS: I'm fine either way.

10 BY MS. KAHN:

11 **Q. Have you communicated with Mr. Guggenheim,
12 Paul Guggenheim of Patterson from time to time?**

13 A. Very rarely. I don't know Paul Guggenheim
14 nearly very well, but I have had communications with
15 him.

16 **Q. And what about Scott Anderson of
17 Patterson?**

18 A. Yes, I have met with Scott. Scott and I
19 worked on the -- we both were on the DTA board of
20 directors together during the same period of time.

21 **Q. Can you quantify in any way how often
22 you've communicated with Mr. Guggenheim in the last
23 ten years?**

24 A. I'd be surprised if it's more than two or
25 three.

1 **communicated, what have you discussed with
2 Mr. Anderson?**

3 A. The only business-related things we really
4 ever talked about was at one point I expressed an
5 interest or wanted to let him know that if he'd like
6 to talk to us about the medical division, we
7 believed they're struggling with the medical, if
8 they wanted to sell that I could connect him with
9 Mark Mlotek and, you know, maybe have some dialogue
10 on if they wanted to spin off medical we could take
11 that over. But most of it had to do with industry
12 DTA-related topics.

13 **Q. Has the DTA -- strike that.**

14 **The DTA has board meetings from time to
15 time?**

16 A. Correct.

17 **Q. And at one of these DTA board meetings are
18 you aware of any discussions about buying groups?**

19 A. I really don't -- I don't recall buying
20 groups specifically coming up as an agenda topic.
21 It's possible, but, again it doesn't come to mind.

22 **Q. You said specifically as an agenda item,
23 so I just wanted to make sure I broaden up my
24 question.**

25 **What about any discussions through DTA**

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1 about buying groups, do you recall anything like
2 that?

3 A. Not, sorry, no, not that I recall.

4 **Q. Have you ever communicated with
5 Mr. Guggenheim about buying groups?**

6 A. No.

7 **Q. Have you ever communicated with
8 Mr. Anderson about buying groups?**

9 A. No.

10 **Q. Have you communicated with anybody
11 outside -- strike that.**

12 **Have you communicated with any of your
13 competitors about buying groups other than the
14 instance that you already talked about with
15 Mr. Cohen?**

16 A. I don't believe so.
17 (Exhibit 223 was marked for
18 identification.)

19 BY MS. KAHN:

20 **Q. Do you have Exhibit 223 in front of you?**

21 A. Yes.

22 **Q. Let me know when you're ready.**

23 A. Should I go from the top down or the
24 bottom up, do you know?

25 **Q. Top down.**

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1 A. Okay.

2 **Q. Exhibit 223 are various text message
3 exchanges; is that right?**

4 A. Yes.

5 **Q. I'm going to take you through the first
6 three pages of Exhibit 223.**

7 **The first one appears to be a text message
8 from Chuck Cohen's cell phone to your cell phone on
9 March 25th, 2013; is that correct?**

10 A. Yes.

11 **Q. And Mr. Cohen said to you, "You around?
12 Available to talk?"**

13 A. Yes.

14 **Q. And you responded shortly thereafter, "In
15 meeting right now. Scheduled til 5:00 p m. Eastern.
16 Wide open thereafter. What's best for you?"**

17 **And then he responded, "You go to
18 meetings? I stopped years ago. Smiley face.
19 Great. Please call on my cell when meeting ends."**

20 **Did I read that correctly?**

21 A. Yes.

22 **Q. And those were communications between you
23 and Mr. Chuck Cohen, right?**

24 A. Correct.

25 **Q. And the reason that I ask is on the second**

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1 page there I see that it's from you and your phone
2 number, but the To: line, there's no indication of
3 who that's to, so I wanted to confirm that was to
4 Mr. Cohen.

5 A. I believe so, yeah. Yes.

6 **Q. Do you recall this text stream?**

7 A. Yes.

8 **Q. Is this what predated or is this what took
9 place right before the call from Mr. Cohen about the
10 buying group that you referenced?**

11 A. Yes. It's that series I referred to
12 earlier. I didn't recall the order things happened,
13 but yes.

14 **Q. Sure.**

15 A. Yeah.

16 (Exhibit 224 was marked for
17 identification.)

18 BY MS. KAHN:

19 **Q. And the court reporter just handed you
20 Exhibit 224, which is a short excerpt from your
21 phone records from AT&T.**

22 **Do you have that in front of you?**

23 A. I do.

24 **Q. Okay. And I just want to kind of walk you
25 through both Exhibit 223 and 224 in conjunction with**

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1 each other so we can understand the timing of the
2 communications.

3 **If you turn to the second page of
4 Exhibit 224, you'll see line item 3082 on
5 March 25th, 2013, from your cell phone to
6 Chuck Cohen's cell phone.**

7 **Do you see that?**

8 A. I do.

9 **Q. And that's the same day as these text
10 messages. It looks like you guys talked for
11 8 minutes and 35 seconds.**

12 **Were you there calling Mr. Cohen as a
13 response to his text messages to you?**

14 A. Correct.

15 **Q. And it looks like, as I stated, you guys
16 talked for 8 minutes and 35 seconds.**

17 **Aside from what you've already told us,
18 did you guys talk about anything else?**

19 A. Again, with Chuck there's typically some
20 small talk, how's the fam., where are you at, some
21 jokes around, you know, being in meetings, you know,
22 that type of stuff, but nothing else
23 business-related, no.

24 **Q. Did you guys discuss any terms relating to
25 anything?**

73 (Pages 289 to 292)

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1 A. No.
 2 **Q. Did you guys discuss -- strike that.**
 3 **I think you testified that you didn't**
 4 **recall exactly the buying group's name, right?**
 5 A. Correct.
 6 **Q. That you talked about?**
 7 A. Correct. Sorry.
 8 **Q. Okay. I'm going to turn to the next page**
 9 **of Exhibit 223, the text messages, and that is from**
 10 **you to Mr. Cohen on the same day, March 25th, 2013.**
 11 **And you said, "Hi Chuck. Thanks for the call. Yes,**
 12 **I am good with the terms we discussed, and I look**
 13 **forward to joining Team Benco. PS. Want to confirm**
 14 **that the Benco tooth logo will include a picture of**
 15 **me. Smiley face."**
 16 **Do you see that?**
 17 A. I do.
 18 **Q. What did you mean -- well, strike that.**
 19 **Here you were thanking him for the call;**
 20 **is that right?**
 21 A. Yes.
 22 **Q. And why were you thanking him for the**
 23 **call?**
 24 A. Again, I was surprised that he called
 25 about the topic that he did, but I was really more

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1 setting up the joke about him calling, you know,
 2 thanks for the terms we discussed on my employment
 3 as if I was going to go to work for him, as if the
 4 call was him trying to recruit me. So I was being
 5 cute, nothing more than that.
 6 **Q. You were trying to -- I'm sorry, I don't**
 7 **quite understand. You were --**
 8 A. I was saying, "Hi, Chuck. Thanks for the
 9 call. Yes, I am good with the terms we discussed
 10 and I look forward to joining Team Benco," as if he
 11 was calling to recruit me, but he wasn't. I was
 12 just being cute. I have a dry sense of humor
 13 myself, and so I was trying to be cute and be funny
 14 with him and as a matter of fact, you know, make
 15 sure a picture of me is in your logo.
 16 **Q. And why did you send this text message**
 17 **with the joke in it?**
 18 A. I thought it was going to be funny.
 19 **Q. And this was right after a call that you**
 20 **were surprised by; is that right?**
 21 A. The actual --
 22 **Q. The topic.**
 23 A. The intent, ultimately what the purpose of
 24 this call was, yes, I was surprised about that.
 25 **Q. And you were surprised by it because --**

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1 **strike that.**
 2 **You were surprised by it from an antitrust**
 3 **perspective; is that right?**
 4 A. That's correct.
 5 **Q. Can you explain to me why you sent a joke**
 6 **after such a call?**
 7 A. I thought it would be funny.
 8 **Q. On the same day a few hours later,**
 9 **Mr. Cohen followed up with another text; isn't that**
 10 **right? And he said, "Here's a link to the press**
 11 **release we discussed," and there's a link, and in**
 12 **the link you can see the name Atlantic Dental Care**
 13 **PLC.**
 14 **Do you see that?**
 15 A. I do.
 16 **Q. Does this refresh your recollection that**
 17 **the group that you and Mr. Cohen were discussing was**
 18 **called Atlantic Dental Care?**
 19 A. It does.
 20 **Q. And is that the buying group that you guys**
 21 **were discussing?**
 22 A. I believe so, yes.
 23 **Q. Okay. So I guess I just want to clarify.**
 24 **Earlier when you said ADC is a Patterson customer,**
 25 **that's a different ADC?**

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1 A. Correct, yes, thank you.
 2 **Q. And just going back to the joke you made,**
 3 **did that stem from something you guys talked about**
 4 **during the call?**
 5 A. No.
 6 **Q. Why do you think Mr. Cohen sent you the**
 7 **press release?**
 8 A. I don't know.
 9 **Q. Did you guys talk about a press release**
 10 **regarding Atlantic Dental Care during the call?**
 11 A. I don't -- I don't recall that coming up.
 12 **Q. You didn't ask him for any follow-up**
 13 **information such as a press release?**
 14 A. No.
 15 **Q. Did you read the press release?**
 16 A. I don't believe so. I don't remember
 17 clicking on it and reading anything about them.
 18 **Q. Were you surprised when you received this**
 19 **text from Mr. Cohen?**
 20 A. It takes -- after the phone call I
 21 received, I don't know that I would say this
 22 surprised me like the call itself did, but I did
 23 tell him clearly on our call this is not the type of
 24 stuff you and I should be discussing, Chuck. So
 25 from that standpoint, yeah, that surprised me, but,

74 (Pages 293 to 296)

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1 again, some things about Chuck don't surprise me.

2 **Q. Do you have any -- can you think of any**
3 **reason why he would send this to you, the press**
4 **release?**

5 MR. McDONALD: Object to the form, asked
6 and answered.

7 THE WITNESS: No.

8 BY MS. KAHN:

9 **Q. Mr. Cohen then said to you, I think**
10 **responding to your joke, "Problem with this joke is**
11 **if Stan says 'Great.' It's a risk."**

12 **And you responded, "Ouch. Didn't think**
13 **about that response from Stan. Maybe Scott would**
14 **hire me. Thanks for the follow-up on the article.**
15 **Unusual."**

16 **Do you see that?**

17 A. I do.

18 **Q. And the Scott there is referring to**
19 **Scott Anderson of Patterson?**

20 A. That's correct.

21 **Q. Okay. Had you guys talked about**
22 **Mr. Anderson prior to this text?**

23 A. No.

24 **Q. Why did you thank him for the Atlantic**
25 **Dental Care article?**

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1 A. That's a good question. I don't know.

2 **Q. Do you recall thanking him?**

3 A. Until reading this, no.

4 **Q. Can you think of any reason for you to**
5 **thank him?**

6 A. No.

7 **Q. And would you say that's inconsistent with**
8 **the way you responded to him during the call when he**
9 **brought up Atlantic Dental Care?**

10 A. It was -- I was clear with him on the call
11 that this is not the type of stuff you and I should
12 be talking about.

13 **Q. And you didn't write that down anywhere?**

14 A. No.

15 **Q. You didn't communicate in writing to him**
16 **that he should not be talking to you about this**
17 **subject?**

18 A. Not that I recall.

19 **Q. And why did you say "unusual"?**

20 A. Again, I don't even remember, recall
21 writing this line, so unusual that he sent it to me
22 maybe. I don't know.

23 **Q. But you don't recall writing this?**

24 A. I actually remember the exchange around
25 Stan and Scott and the hiring and that type of

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1 stuff. Me actually at one point thanking him for
2 the follow-up on that article is something I don't
3 remember. I'm surprised myself to read it.

4 **Q. Why are you surprised?**

5 A. Because, as I stated, I was clear with him
6 that this is not anything we should be talking
7 about. I don't talk to him about prices; I don't
8 talk to him about strategy. And so I don't know
9 what I was thinking when I said, "Thanks for the
10 follow-up on the article. Usual."

11 **Q. Did Mr. Cohen try to understand from you**
12 **whether Schein was going to try to sell to Atlantic**
13 **Dental Care?**

14 A. I don't remember him asking me anything
15 about that. I told him I wasn't aware of who the
16 group was, which is maybe why he sent me the
17 article; I don't know. Maybe that's why I said, you
18 know, thanks for the follow-up on the article
19 because now I know who they are. I mean, I'm
20 guessing that's -- because I didn't know anything.
21 I didn't know anything about them.

22 **Q. During the call Mr. Cohen indicated to you**
23 **that they were not going to bid on Atlantic Dental**
24 **Care because it was a buying group; is that right?**

25 A. I don't recall him saying why, just that

300

1 he was -- they were not going to go to bid on it.

2 **Q. Did you guys -- you guys talked about a**
3 **buying group, right? That was your testimony before**
4 **about a buying group?**

5 A. Well, the fact that they were a buying
6 group. I don't -- again, there's a very brief
7 discussion once he got to the point of what he
8 wanted to talk about, to which I said, you know,
9 Chuck, this is not anything you and I should be
10 talking about, and we pretty much ended the call
11 after that with a little joking around about I think
12 he said something about no, no, I'm really calling
13 to recruit you. That's the thing that led me to do
14 some of that funny recruiting stuff.

15 **Q. So the joke did stem from something on the**
16 **call?**

17 A. I believe, again, something on that call
18 he joked about, you know, looking -- I'm calling you
19 to recruit you.

20 **Q. So your memory got refreshed because**
21 **earlier you said the joke didn't stem from the call?**

22 A. Yeah. Now it's coming back to me. I
23 think that's why it went back to me. I had that
24 thanks for the call, for joining the team, and, you
25 know, non -- well, maybe Scott will hire me if not

75 (Pages 297 to 300)

301

303

1 you, and then thanks for your follow-up on that
2 article, it was a group I wasn't aware of.

3 **Q. So going back, during the call you said**
4 **Mr. Cohen told you that they were going to -- they**
5 **were not going to bid, but I guess I wasn't clear on**
6 **whether you guys talked about it being a buying**
7 **group.**

8 A. I don't remember him specifically calling
9 them referring to them as a buying group or not on
10 the call. I know later he clarifies what he says on
11 it, but I don't remember he and I talking about that
12 specifically on the call, no.

13 **Q. Okay. Because earlier, before I started**
14 **showing you the documents, you testified that**
15 **Mr. Cohen called you about a buying group. And I**
16 **guess I'm just trying to understand, was that your**
17 **understanding at the time you got the call?**

18 A. At the time I got the call, I didn't know
19 why he wanted to call -- talk. In retrospect I knew
20 he wanted to talk about this ADC group, who is a
21 buying group.

22 All I'm saying is that -- so when I
23 testified earlier that is what he called me about,
24 he called it a buying group, not that he said those
25 words to me on the call.

1 A. Yeah, the timing.

2 **Q. Yeah, I can help you with that because I**
3 **spent a little time with this.**

4 **So the time zone of the text messages**
5 **appeared to be UTC-5, and the time zone of these**
6 **three phone records are UTC.**

7 A. I'm sorry, what's UTC?

8 **Q. UTC is a standard coordinated universal**
9 **time. It's a time zone that we do not live in.**

10 A. Okay.

11 **Q. And so by my calculations you called**
12 **Mr. Cohen on March 27th before he sent you the text**
13 **message on March 27th that said, "Tim, did some**
14 **additional research."**

15 A. Yeah.

16 **Q. So that's why I'm asking you about that**
17 **call before I move on to the next text message.**

18 A. Got it. No, I don't recall why I was
19 reaching out to him.

20 **Q. Okay. Can you think of any reasons?**

21 A. I cannot.

22 **Q. Okay. All right. And then moving to the**
23 **text message then that followed that call, on**
24 **March 27, 2013, Chuck wrote you to you, "Tim: Did**
25 **some additional research on the Atlantic Care deal.**

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304

1 MS. KAHN: Got it. Can we take a short
2 break. I'm going to need a little break before we
3 go to the next part.

4 THE WITNESS: Sure.

5 (Whereupon, a recess was taken
6 from 2:53 p.m. to 3:04 p.m.)

7 MS. KAHN: We are back on the record.

8 BY MS. KAHN:

9 **Q. I'm going to go back to Exhibit 223 and**
10 **224.**

11 A. Okay.

12 **Q. If you look at Exhibit 224, line item**
13 **3089, do you see that?**

14 A. I do.

15 **Q. Do you want a piece of paper so that it**
16 **makes it easier for you to --**

17 A. Sure. Thank you.

18 **Q. So that's on March 27th, 2013. You tried**
19 **to call Mr. Cohen, and it looks like no answer**
20 **because the call is for just six seconds.**

21 **Do you see that?**

22 A. I do.

23 **Q. And do you know why you were calling**
24 **Mr. Cohen? I see you're trying to look at the text**
25 **messages to sort of match up the time.**

1 **Seems like they have actually merged ownership of**
2 **all the practices. So it's not a buying group, it's**
3 **a big group. We're going to bid. Thanks."**

4 **Do you see that?**

5 A. I do.

6 **Q. And does this refresh your memory of**
7 **whether the two of you talked -- whether the term**
8 **"buying group" came up during the call?**

9 A. I still don't believe it did.

10 **Q. Okay. Your testimony is that the term**
11 **"buying group" never came up?**

12 A. I'm saying I don't recall it. I don't
13 believe it did, so I don't recall that it came up
14 during our discussions, no.

15 **Q. You don't recall one way or the other, or**
16 **you don't --**

17 A. Correct.

18 **Q. -- believe it came up?**

19 A. I don't recall one way or the other.

20 **Q. Okay. Thank you. Were you surprised to**
21 **receive this text message from Mr. Cohen?**

22 A. Yes.

23 **Q. And earlier you testified that you had, in**
24 **fact, told him to stop communicating about Atlantic**
25 **Dental Care; is that right?**

305

1 A. I told him that we should -- he and I
2 should not be talking about these type of topics,
3 correct.
4 **Q. Okay. Did you tell him to stop
5 communicating to you about this topic?**
6 A. I don't know exactly what my words were,
7 whether it was stop or we shouldn't be, you know,
8 don't. Something along the lines of I'll send him
9 the message, Chuck, this is not a conversation that
10 you and I should be having.
11 **Q. Can you think of any reason why he would
12 have sent you this text message after you delivered
13 the message that you two should not be having a
14 conversation about this?**
15 A. I cannot.
16 **Q. Okay. Following Chuck's message to you,
17 he then says a few minutes later, "Also, noticed you
18 rang me this a m. No message. Call later?"
19 Do you see that?**
20 A. I do.
21 **Q. And there by my lining up the record with
22 the text messages, I take that to refer to the time
23 that you tried to call his cell earlier on March 27;
24 is that right?**
25 A. That's -- that's what 3089 is?

306

1 **Q. Yes.**
2 A. I see that, yes.
3 **Q. And does this refresh your memory about
4 why you tried to call him?**
5 A. No.
6 **Q. And looking back on the phone records, I'm
7 going to move you to line 8 -- sorry, 3091. It
8 looks like on March 27, that day, you tried to call
9 Mr. Cohen again.
10 Do you see that?**
11 A. I do.
12 **Q. And do you know why you tried to call him
13 again?**
14 A. I do not.
15 **Q. Do you know if it had anything to do with
16 Atlantic Dental Care?**
17 A. No.
18 **Q. Is it possible that you were trying to
19 reach out to him about Atlantic Dental Care?**
20 A. I don't believe so, no.
21 **Q. Can you think of any reason why you were
22 trying to reach out to him on March 27th?**
23 A. I cannot.
24 **Q. Okay. He then -- moving on to the text
25 messages, he then looks like saw your call and said,**

307

1 **"Out for dinner, talk tomorrow?"**
2 **Do you see that?**
3 A. I do.
4 **Q. And you responded, "Sure. Call cell.
5 Bon appétit."
6 Do you see that?**
7 A. Yes.
8 **Q. And just so I have the record clear, do
9 these further text messages refresh your memory
10 about why you were trying to call Mr. Cohen?**
11 A. No.
12 **Q. Actually I skipped two text messages. If
13 you could go back to Henry Schein, it ends in 332
14 and 333.**
15 A. Okay.
16 **Q. So on March 26, 2013, Mr. Cohen sent you a
17 message saying, "As per my guy in Raleigh: Dental
18 Alliance, they apparently get 7 percent off of
19 catalog pricing just for joining. Dr. Ben Koren is
20 the doctor [sic] involved. A guy named Sam
21 contacted me about a year ago and asked if Benco was
22 interested. Told him he was out of his tree."
23 Do you see that?**
24 A. I do.
25 **Q. And then he goes on to say, "Could be a**

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1 **rumor, sometimes stories go around. Thanks."**
2 **What's your understanding of what these
3 two text messages are about?**
4 A. Well, the first one is Chuck telling me
5 what he has learned about Dental Alliance. I'm not
6 sure what "Could be a rumor, sometimes stories go
7 around," I don't know what that's referring to.
8 **Q. Is your testimony that Dental Alliance is
9 the same thing as Atlantic Dental Care?**
10 A. I -- you know what? I assume so. I don't
11 know.
12 **Q. Do you recall receiving this text message
13 about Dental Alliance?**
14 A. I do now after seeing it again, but I
15 never spoke to him about Dental Alliance. That's
16 why I say earlier for some reason I was thinking
17 they're one and the same. I don't know if they are
18 one and the same or not.
19 **Q. So you have -- you don't know Dental
20 Alliance to be something separate from Atlantic
21 Dental Care?**
22 A. I don't know if they're one and the
23 same --
24 **Q. Okay.**
25 A. -- or not.

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1 **Q. Sorry. Aside from what he wrote, you**
 2 **don't know why Mr. Cohen was sending you what he**
 3 **did --**
 4 A. Correct.
 5 **Q. -- about Dental Alliance?**
 6 A. That's correct.
 7 **Q. Nor do you understand when he said, "Could**
 8 **be a rumor, sometimes stories go around"?**
 9 A. Correct.
 10 **Q. And after these two text messages, did you**
 11 **guys have any further discussions about specifically**
 12 **a group called Dental Alliance?**
 13 A. Not that I recall.
 14 **Q. Okay. So moving on to the phone records,**
 15 **it looks like on March 28th, which is a day after**
 16 **the text message exchanges that we've looked at,**
 17 **Mr. Cohen tried to call you on two occasions, and**
 18 **those are line items 3097 and 3098.**
 19 **Do you see that?**
 20 A. I do.
 21 **Q. And do you know why he was trying to call**
 22 **you?**
 23 A. I do not.
 24 **Q. Okay. Was it to return your call, as we**
 25 **had seen in the end of the text messages?**

310

1 A. Possibly. I don't know.
 2 **Q. And, again, you don't recall why you were**
 3 **trying to reach him?**
 4 A. No.
 5 **Q. And if you'd turn to the next page of the**
 6 **phone records, on March 3rd, 2013, line item 3120,**
 7 **you tried to call Mr. Cohen, and it says that the**
 8 **elapsed time is 37 seconds.**
 9 **Do you recall calling him on April 3rd,**
 10 **2013?**
 11 A. I do not.
 12 **Q. Do you know what that could have been**
 13 **about?**
 14 A. No.
 15 **Q. And if you skip a line and go to item**
 16 **3122, it looks like Mr. Cohen called you back, and**
 17 **you guys spoke for 5 minutes and 36 seconds.**
 18 **Do you see that?**
 19 A. I do.
 20 **Q. Do you know what that call was about?**
 21 A. I do not.
 22 **Q. Is it possible that you guys talked about**
 23 **Atlantic Dental Care?**
 24 MR. McDONALD: Object to form.
 25 THE WITNESS: I don't believe so, no.

311

1 BY MS. KAHN:
 2 **Q. And why? Why not?**
 3 MR. McDONALD: Object to the form.
 4 THE WITNESS: I had one discussion with
 5 Chuck when he first called me. I don't recall
 6 talking to him again about that ever again.
 7 BY MS. KAHN:
 8 **Q. Could you guys have been talking about --**
 9 **is it possible that you guys talked about Dental**
 10 **Alliance?**
 11 A. I don't believe so.
 12 **Q. Can you think of any other reasons that**
 13 **you guys were talking on March 3rd, 2013?**
 14 A. I cannot.
 15 **Q. Sorry, April 3rd, 2013.**
 16 A. No.
 17 **Q. Okay. We can put that aside, both of**
 18 **those.**
 19 (Exhibit 225 was marked for
 20 identification.)
 21 BY MS. KAHN:
 22 **Q. You have Exhibit 225 in front of you, and**
 23 **let me know when you're ready.**
 24 A. Okay.
 25 **Q. Exhibit 225 is a pretty long e-mail**

312

1 **chain --**
 2 A. Yeah.
 3 **Q. -- about Atlantic Dental Care; is that**
 4 **right?**
 5 A. Yes.
 6 **Q. Okay. Do you recall this e-mail chain?**
 7 A. I do now, yes.
 8 **Q. I'm going to turn you to the very first**
 9 **e-mail from Michael Porro to you on March 31st,**
 10 **2013.**
 11 **Do you see that?**
 12 A. I do. Is that 164453?
 13 **Q. Yes, it's Bates number Henry**
 14 **Schein-000164453.**
 15 **Who is Michael Porro?**
 16 A. He is our zone general manager in this
 17 market.
 18 **Q. And Mr. Porro wrote, "Tim," I'm going to**
 19 **skip the next parenthetical, he said, "Tim,**
 20 **following up on the chat we had about the Atlantic**
 21 **Dental Care group in Virginia."**
 22 **Do you see that?**
 23 A. I do.
 24 **Q. Did you chat with Mr. Porro about Atlantic**
 25 **Dental Care?**

313

315

1 A. I don't recall the conversation, but
2 apparently I did here.
3 **Q. Okay. So you have no recollection of the**
4 **conversation?**
5 A. This e-mail is bringing back the whole
6 discussion via e-mail back, but I don't recall a
7 discussion with Michael in particular at all.
8 **Q. Got it. And do you know if you reached**
9 **out to Mr. Porro?**
10 A. No. I'm sure he reached out to me.
11 **Q. And why is that?**
12 A. I would have no reason to reach out to
13 Michael as it relates to this group.
14 **Q. This is the group that you were texting**
15 **with Mr. Chuck Cohen about; is that right?**
16 A. Apparently.
17 **Q. And do you see that this is just a few**
18 **days after the text messages and the phone call**
19 **between you and Mr. Cohen about Atlantic Dental**
20 **Care?**
21 A. The initial call that was about Dental
22 Care Alliance [sic]. I don't know that he and I
23 ever had a call about Atlantic Dental Care.
24 **Q. Okay. Let's go back to the text messages.**
25 **That's Exhibit 223. You have that back there, if**

1 **Michael Porro based -- strike that.**
2 **Is it possible that you reached out to**
3 **Michael Porro after getting the call and text from**
4 **Mr. Cohen?**
5 MR. McDONALD: Object to the form.
6 THE WITNESS: I would not have reached out
7 to Michael Porro to tell him anything about a
8 discussion I had with Chuck.
9 BY MS. KAHN:
10 **Q. Okay. Well, okay. Would you have reached**
11 **out to Michael Porro -- aside from telling him about**
12 **any discussion with Chuck Cohen, is it possible that**
13 **you reached out to Michael Porro about Atlantic**
14 **Dental Care after discussing it with Mr. Cohen?**
15 A. I don't believe so.
16 **Q. And Mr. Porro is a zone manager; is that**
17 **right?**
18 A. I believe that's correct at this time.
19 Yes, zone manager.
20 **Q. Do zone managers typically reach out to**
21 **you directly?**
22 A. They can from time to time.
23 **Q. And do you recall the circumstances under**
24 **which Mr. Porro may have reached out to you?**
25 A. Well, you did skip the parenthetical,

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1 **you can grab it.**
2 **So the first three are Mr. Cohen trying to**
3 **reach out to you, and you guys talked on March 25th,**
4 **2013, for 8 minutes and 35 seconds. Thereafter,**
5 **Mr. Cohen on March 25th sent you a link to Atlantic**
6 **Dental Care.**
7 A. I apologize, you're correct. The first
8 one was that, yeah, yeah.
9 **Q. Okay.**
10 A. Like I said, I don't know that -- at one
11 point he refers to I think the same group as Dental
12 Alliance. I don't know. But, anyway, so that's --
13 they may be one and the same is all I'm thinking. I
14 don't know.
15 **Q. The Dental Alliance?**
16 A. Right.
17 **Q. Okay. But in Exhibit 225 you're having a**
18 **conversation with Michael Porro about Atlantic**
19 **Dental Care in Virginia; is that right?**
20 A. An e-mail exchange, yes.
21 **Q. And it's your understanding that this is**
22 **the same group as the group that Mr. Cohen called**
23 **and texted you about?**
24 A. Yes.
25 **Q. Is it possible that you reached out to**

1 which it does say, Dave, you were out. That gives
2 me the impression that he reached out to Dave first;
3 since Dave wasn't in, then I'm reading this as
4 that's why he reached out to me.
5 **Q. So do zone managers reach out to you if --**
6 **strike that.**
7 **Zone managers report to the area manager,**
8 **right?**
9 A. Correct.
10 **Q. Mr. -- and the area manager for Mr. Porro**
11 **would have been Jake Meadows; is that right?**
12 A. That's correct.
13 MR. McDONALD: Object to the form. That's
14 an incorrect statement.
15 BY MS. KAHN:
16 **Q. Is your understanding that -- well, who**
17 **does Mr. Porro report to directly?**
18 MR. McDONALD: Currently?
19 MS. KAHN: At the time of this e-mail.
20 THE WITNESS: I believe Jake Meadows. It
21 might have been -- I don't know for sure that he had
22 the area structure set up at this time. Let me look
23 through this. I don't see Jake on any of these.
24 At this time I don't believe we had the
25 area structure. Jake was our zone general manager

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1 of the west.
 2 BY MS. KAHN:
 3 **Q. Okay. So did Mr. Porro report to who,**
 4 **Dave Steck?**
 5 A. Dave Steck.
 6 **Q. Okay, got it. And do you recall**
 7 **anything -- can you think of any reason why**
 8 **Mr. Porro would have reached out to you about**
 9 **Atlantic Dental Care?**
 10 A. I believe he reached -- the way I read
 11 this, he reached out to Dave first; you were out,
 12 this is the first you're seeing this, following up
 13 with the chats. I believe he then reached out to me
 14 because as I'm reading through the rest of his
 15 exchange it looked like they were looking to turn
 16 something around pretty quickly.
 17 **Q. So he wrote to you and Mr. Dave Steck,**
 18 **"Bobby, let me know. We were invited to bid on the**
 19 **business of this group. See attached. They gave us**
 20 **a list of products they want us to bid on. At first**
 21 **this looks like just a buying group, which led me to**
 22 **initially believe we could do more harm if we bid**
 23 **versus not submitting a bid."**
 24 **Do you see that?**
 25 A. I do.

318

1 **Q. Is it your understanding that prior to**
 2 **March 31st Schein was not planning to bid on**
 3 **Atlantic Dental Care?**
 4 MR. McDONALD: Object to the form.
 5 THE WITNESS: I don't know.
 6 BY MS. KAHN:
 7 **Q. And Mr. Porro goes on to say, "I talked to**
 8 **Joe and Jake and we talked as well, Tim."**
 9 **Do you see that?**
 10 A. I do.
 11 **Q. Do you know why he would have talked to**
 12 **Joe and Jake?**
 13 A. They were involved in our working with,
 14 you know, figuring out our go-to-market strategy on
 15 buying groups as we had our prior discussions about.
 16 **Q. And he said, "The thinking is that Benco,**
 17 **a decent player in the market and always hungry,**
 18 **will put in a bid."**
 19 **Do you see that?**
 20 A. I do.
 21 **Q. You did have a direct conversation with**
 22 **Mr. Porro aside from this e-mail discussion; is that**
 23 **right?**
 24 A. Again, I don't recall a discussion. Just
 25 based on the one line, following up on the chart,

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1 apparently we had.
 2 **Q. Okay. And would that have been by**
 3 **telephone?**
 4 A. I would assume so when he says it's a
 5 follow-up from the chat. I mean, that's -- I don't
 6 know how else you chat with someone.
 7 **Q. Mr. Porro is not in your -- is he in your**
 8 **office?**
 9 A. No, correct, he's out east.
 10 **Q. Okay. And you're not aware of any sales**
 11 **meetings around this time where you would have been**
 12 **in person with each other?**
 13 A. That's correct.
 14 **Q. Okay. So most likely if there was a chat**
 15 **it would have been by phone?**
 16 A. Correct.
 17 **Q. And he said, "The thinking is that Benco,**
 18 **a decent player in the market and always hungry,**
 19 **will put in a bid."**
 20 **Did you tell Mr. Porro that Benco was**
 21 **going to bid on Atlantic Dental Care?**
 22 A. No.
 23 **Q. How are you -- how do you know?**
 24 A. I never had a discussion with Michael
 25 Porro about anything to do with Benco.

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1 **Q. But you don't recall the chat, right, that**
 2 **we were just referring to --**
 3 A. That's correct.
 4 **Q. -- between you and Mr. Porro?**
 5 A. Sorry. That's correct.
 6 **Q. So is it possible that during that chat**
 7 **you brought up Benco?**
 8 A. I would not have brought up Benco, no.
 9 **Q. Why not?**
 10 A. I wouldn't have.
 11 **Q. Why not?**
 12 A. I just wouldn't have.
 13 **Q. Benco is one of your top competitors,**
 14 **right?**
 15 A. That's correct.
 16 **Q. Okay. Why is it unusual for you to bring**
 17 **up one of your competitors?**
 18 A. I don't believe I would have.
 19 **Q. Why not?**
 20 A. I don't believe I would -- I don't know
 21 how else to answer. I don't believe I would have.
 22 **Q. Did you ask Mr. Porro to do some research**
 23 **on Atlantic Dental Care?**
 24 A. As I said, I don't recall having a
 25 discussion with Michael Porro.

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1 Q. And the next e-mail is from you to Michael
2 Porro, John Chatham, Dave Steck and others in
3 response, and in that second line you said, "I think
4 we should take a shot at this."

5 Do you see that? It's ending --

6 A. Yes.

7 Q. Do you see that? Okay.

8 A. Yes.

9 Q. Why did you -- there were you saying that
10 you think Schein should take a shot at bidding on
11 Atlantic Dental Care?

12 A. Yes.

13 Q. Why?

14 A. Well, based on the lengthy e-mail from
15 Michael where he's talking about the group, the size
16 of the group that's already doing business with us,
17 you know, the other details that are in here, and he
18 says that he's hearing from them that they're not a
19 co-op or a buying group, that they have one
20 corporate structure, a unified group of mature
21 practices, so they were fitting into some of the
22 things I would say, you know, here's one that we
23 would work with. I think it shows that I am open to
24 working with buying groups exactly as we've been
25 talking about.

1 involved in Atlantic Dental Care?

2 A. So Comfort Dental seems to be very
3 similar. It's in our special markets group already.
4 If there's 53 locations and they are going to be
5 more of an organized structure, there's some things
6 that we should be working with special markets.

7 Again, this is before we were -- we had
8 the segments split up, right, so that we were doing
9 our best to really work together with special
10 markets in certain areas and that. And based on the
11 size of this potential group, their go-to-market
12 strategy and the number of dentists that were
13 potentially involved, it felt like it could fit
14 maybe better special markets at that time than in
15 our group.

16 Q. And you said to various individuals on
17 April 4th, "Our first reaction to this was it was
18 simply a buying group and we were going to walk
19 away."

20 Do you see that?

21 A. Yes.

22 Q. Is it fair to say that if a group was
23 simply a buying -- well, strike that.

24 What did you mean "simply a buying group"?

25 A. Meaning, again, the only thing that they

322

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1 Q. There was no volume commitment or mandate
2 with this buying group; is that right?

3 A. What they were saying in here, they did
4 mention the merch. spent for the group was probably
5 two and a half million, not the three and a half
6 million in the letter. I'm not sure what the letter
7 is referring to. If we win, the upside is the other
8 business we don't currently get, so a combination of
9 all those things.

10 Q. Okay. I'm going to turn you to the e-mail
11 that's on page ending in Bates number 164444.

12 A. Okay.

13 Q. And here you are roping in special
14 markets; is that right?

15 A. Roping in? Did I say roping in?

16 Q. Here you are looping in special markets;
17 is that right?

18 A. Oh, okay. Yes, I was saying we should
19 have brought special markets in this much sooner,
20 although this seems to have snuck up on us rather
21 quickly. Our first reaction was simply it was a
22 buying group and we were going to walk away, and the
23 more that Michael dug into this, it was more of a
24 Comfort Dental type group.

25 Q. Why were you getting special markets

1 were offering members was some type of, you know,
2 price negotiation. Nothing else aligned with, you
3 know, all the things we've talked about that seemed
4 to be outlined in Michael's lengthy e-mail, that
5 that's all it was. We are happy with how we're
6 approaching customers already in that market, so we
7 would not work with them in that regard.

8 Q. Okay. Was that Schein's general practice,
9 that if a group -- if the buying group was simply a
10 buying group, to use your terms, that Schein would
11 not deal with them?

12 MR. McDONALD: Object to the form.

13 THE WITNESS: I think I've gone through
14 this multiple times. So if -- we've worked with a
15 number of group practices or group -- buying groups
16 in the past. We've continued to analyze them one by
17 one, and depending on if our values are lined up
18 with theirs and how they approach the market, can
19 they commit to the volume, there's a multitude of
20 factors.

21 So no, our practice was not to not work
22 with them, and depending on the size, a local
23 manager could, you know, make a decision. This was
24 a pretty big group, which is why Bobby was bubbling
25 it up and working with Michael on it, and Michael

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1 wanted to confirm with us that is this something we
 2 want to do or not.
 3 **Q. Is it fair to say that prior to these**
 4 **e-mail exchanges Schein was not going to bid on**
 5 **Atlantic Dental Care?**
 6 A. I have no idea.
 7 **Q. Well, you said here, "Our first reaction**
 8 **to this was it was simply a buying group and we were**
 9 **going to walk away."**
 10 **Do you see that?**
 11 A. I do.
 12 **Q. What did you mean there?**
 13 A. Well, it was based on Michael's e-mail to
 14 me. Bobby let me know we were invited to bid on
 15 this, see attached. They gave us a list of
 16 products. At first this looked just like a buying
 17 group, which led me initially to believe that we
 18 could do more harm if we bid versus not bidding, and
 19 he went on to say there's a lot more he learned
 20 about.
 21 So I was going based off of what Michael
 22 was -- I never met with this group. I don't know
 23 them. It was based on our local manager's input.
 24 **Q. Sure. So based on your local manager's**
 25 **input, prior to this e-mail exchange which started**

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1 **on March 31st, 2013, Schein was not going to bid for**
 2 **Atlantic Dental Care; is that right?**
 3 MR. McDONALD: Objection to form.
 4 THE WITNESS: I don't know that to be the
 5 case.
 6 BY MS. KAHN:
 7 **Q. Because you didn't independently verify**
 8 **it, or why not?**
 9 A. I know when we got the invite and when he
 10 says, Bobby, we were invited to bid on the business
 11 group, he could have got that a month ago. I don't
 12 know when he got that. So we could have been
 13 invited a month ago, and for whatever reason I'm
 14 saying we should have brought special markets into
 15 this sooner, and based on what -- you know, now that
 16 you guys have learned more about them, it seems to
 17 me it would be a better fit in special markets, but
 18 at this point let's roll forward, which is why I
 19 then included Hal to make sure that we didn't create
 20 an internal conflict.
 21 **Q. Okay. But at a certain point Schein was**
 22 **not going to bid on Atlantic Dental Care; is that**
 23 **fair to say?**
 24 MR. McDONALD: Object to form.
 25 THE WITNESS: I don't know that to be the

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1 case.
 2 BY MS. KAHN:
 3 **Q. Isn't that what Mr. Porro is telling you?**
 4 A. Where did you see that?
 5 **Q. He said, "At first this looked like just a**
 6 **buying group, which led me initially to believe we**
 7 **would do more harm if we bid versus not submitting a**
 8 **bid."**
 9 A. Doesn't that say that -- I'm sorry, what
 10 I'm saying I don't know when that occurred, when we
 11 were invited; was that a month prior, was it more
 12 recently, when did they learn about -- you know,
 13 more about them. I don't know.
 14 **Q. Sure. And timing aside, is it fair to say**
 15 **at some point in time Schein's inclination was that**
 16 **it was not going to bid? It was going to walk away**
 17 **from Atlantic Dental Care?**
 18 MR. McDONALD: Object to the form, asked
 19 and answered.
 20 THE WITNESS: I don't know how else to
 21 respond in the way I already have. I don't know
 22 when they had first meetings if they were initially
 23 going to or not. The way I read it, when they first
 24 heard about it, it was perceived to be just a buying
 25 group and then when they learned more about it they

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1 would do more.
 2 So I don't know that anyone came to the
 3 conclusion at any point that we were not or was
 4 walking away. If we just walked away I don't think
 5 we would have had these meetings and continued to
 6 learn more about them.
 7 **Q. Why did you say our first reaction to this**
 8 **was it was simply a buying group and we were going**
 9 **to walk away?**
 10 MR. McDONALD: Object to the form, asked
 11 and answered.
 12 Please move on, Lin, please.
 13 MS. KAHN: You can answer, unless you're
 14 instructing him not to answer.
 15 MR. McDONALD: He can answer it, but I'm
 16 asking you to please move on. You've asked him this
 17 question three times now.
 18 MS. KAHN: With all due respect --
 19 MR. McDONALD: Yes, you have, at least
 20 multiple times.
 21 MS. KAHN: I haven't gotten an answer.
 22 MR. McDONALD: Multiple times you've
 23 asked.
 24 MS. KAHN: I've asked, but I haven't
 25 gotten an answer.

82 (Pages 325 to 328)

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1 THE WITNESS: I don't know how else to
2 answer you.
3 BY MS. KAHN:
4 **Q. I'm just asking at a certain point in**
5 **time, you know, putting aside when the timing was,**
6 **was it a month before, was it two months, putting**
7 **aside when this actually occurred, at a certain**
8 **point in time was Schein's inclination to walk away**
9 **from Atlantic Dental Care?**
10 MR. McDONALD: Object to the form, asked
11 and answered.
12 THE WITNESS: And I'm telling you I'm now
13 copying Hal and Randy in special markets. They
14 haven't been involved in this chain prior. So what
15 I'm updating them on is our first reaction based on
16 what I've seen, I don't know when that was, what the
17 timing was, as I've said many times, was to walk
18 away because it looked like it was just a simple --
19 BY MS. KAHN:
20 **Q. Okay.**
21 A. All right. So this is where Hal, for the
22 first time, I'm bringing him into the loop on that.
23 **Q. Got it. So when you say walk away, it**
24 **means not bid; is that right?**
25 MR. McDONALD: Object to the form.

1 he was on an earlier exchange. Yes, he was on the
2 one that John Chatham sent.
3 **Q. Okay. Well, I'm referring to your e-mail**
4 **where you said, "We should have brought SM team into**
5 **this much sooner."**
6 **Do you see that?**
7 A. I do.
8 **Q. Okay. So was there a certain point in**
9 **time when the SM team was not brought in?**
10 A. I don't know when they were or when they
11 weren't. I'm now bringing up -- Hal Muller is the
12 president of the special markets group. I'm now
13 bringing him and his right-hand man Randy Foley into
14 the loop. He wasn't copied before.
15 I don't know what, if anything, Colan
16 Rogers was communicating with them prior.
17 **Q. At this point -- strike that.**
18 **Was your understanding that Atlantic**
19 **Dental Care was a buying group?**
20 A. As we've defined them, a form of, yes.
21 **Q. Is Comfort Dental a buying group?**
22 A. As I explained when their name came up in
23 that earlier exchange, they've always been a part of
24 special markets. They have -- they're structured
25 different where they own some of their practices.

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1 THE WITNESS: Possibly.
2 BY MS. KAHN:
3 **Q. Okay.**
4 A. It possibly could be that. It could be,
5 you know, maybe see, wait if they're going to come
6 back. I mean, it really is up to the local team
7 what we're going to do there.
8 **Q. Okay. At a certain point Schein was going**
9 **to walk away, and then there was a change in**
10 **thinking. Is that fair to say?**
11 A. No, that's not what I'm saying.
12 **Q. Can you explain to me why that's not fair**
13 **to say?**
14 MR. McDONALD: Object to the form.
15 THE WITNESS: I don't know how to answer
16 that.
17 BY MS. KAHN:
18 **Q. You don't know how to answer that**
19 **question?**
20 A. I do not.
21 **Q. Special markets wasn't roped in**
22 **previously, right, wasn't looped in previously,**
23 **right?**
24 A. Colan Rogers was part of the special
25 markets team at this point, I believe, and I believe

1 They don't own all of them. But those that do join
2 consider themselves a part of Comfort Dental, and
3 every one of the locations buys everything -- well,
4 there's a significant majority of the purchases
5 through Henry Schein.
6 **Q. And what made you think that Atlantic**
7 **Dental Care was similar to Comfort Dental?**
8 A. I didn't know for sure that they were. I
9 was just using that as an example. And the way
10 Michael was outlining in his meeting with whoever he
11 met with that they were positioning themselves not
12 to be -- not a co-op, not a buying group, one
13 corporate structure, unified group of mature
14 practices, that to me sounds a little bit like how
15 Comfort Dental positions themselves.
16 **Q. And was part of the reason that Schein**
17 **decided to bid because it believed Benco would bid?**
18 A. No.
19 **Q. Okay. So Benco's -- let me just turn back**
20 **to Mr. Porro's e-mail, the Bates number ending in**
21 **164454. At the top he said, "The thinking is that**
22 **Benco, a decent player in the market and always**
23 **hungry, will put in a bid."**
24 **Do you see that?**
25 A. I do.

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1 **Q. Did that -- go ahead.**

2 A. So it's possible from, you know, not
3 reading that, you know, Michael is -- knowing that,
4 maybe he wanted to -- that was another influence for
5 him to want to get involved.

6 **Q. Prior to this chain had you seen Benco do
7 any deals with a buying group?**

8 A. Not that I -- I would assume so, but I
9 don't know that for sure for a fact.

10 **Q. And why do you assume so?**

11 A. I believe that they've worked with groups
12 in the past.

13 **Q. What groups?**

14 A. I don't know.

15 **Q. Why do you believe they've worked with
16 groups in the past?**

17 A. Just an exchange with our leadership team.

18 **Q. Who in your leadership team?**

19 A. Jake and Joe primarily.

20 **Q. That they indicated to you that Benco was
21 selling to buying groups?**

22 A. That they had relationships with other
23 large groups, whether they're buying groups, they
24 have some DSOs. How they structure them, I have no
25 idea how they structure their segments. I know how

1 BY MS. KAHN:

2 **Q. You've been handed Exhibit 226, which is
3 an e-mail chain around February of 2012, and the
4 subject is Smile Source customer list; is that
5 right?**

6 A. That's correct.

7 **Q. Do you recall this e-mail chain?**

8 A. I do now, yes.

9 **Q. Is it fair to say that February 2012 was
10 right after the time that Schein's relationship with
11 Smile Source ended?**

12 A. I have to tell you I thought -- because
13 I'd referred to the '04-'06 period for a period of
14 time, I didn't think that we had any -- did much
15 with them again until just recently.

16 So I think my prior testimony about those
17 dates must have been off. It must have been more in
18 this '10 to '12 time period.

19 So yes, it looks like around this time is
20 when we severed ties.

21 **Q. And in the earliest e-mail from you ending
22 in Bates number 178391, the earliest in time, you
23 were sending an e-mail on January 31st, 2012, to
24 Kevin Burniston and John Chatham with a cc to a
25 couple of people saying, "How are we doing with**

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1 we segment ours. And based on that, we -- through,
2 you know, the field leadership team, we believed
3 that Benco has also been involved in bidding on our
4 projects or on other groups.

5 **Q. Okay. So just to be clear, Jake Meadows
6 and Joe Cavaretta have informed you in the past that
7 Benco was selling to buying groups?**

8 A. I don't remember the -- the answer is yes,
9 but I don't know the specific group other than that
10 they're in the market as well.

11 **Q. And what about Patterson, did you have an
12 understanding of whether Patterson was in the
13 market?**

14 A. I don't recall.

15 **Q. Did you recall hearing anything from Jake
16 or Joe about Patterson and buying groups?**

17 A. I do not.

18 **Q. And do you know why it is that you would
19 have heard about Benco but not about Patterson?**

20 A. No.

21 **Q. You can put that aside.
22 (Exhibit 226 was marked for
23 identification.)**

24 THE WITNESS: Okay.
25

1 **them?"**

2 **I assume that means Smile Source
3 customers?**

4 A. Yes, the members as customers, yeah.

5 **Q. And then you said, "What tracking
6 mechanism do we have in place to track performance
7 going forward?"**

8 **Do you see that?**

9 A. I do.

10 **Q. Why were you asking that question?**

11 A. I really -- I don't recall other than, you
12 know, we'd want to know -- it seems to me at this
13 point we either knew we were being terminated or it
14 was going out to bid, and so how are we doing with
15 the customers that were in the group.

16 **Q. And do you have a sense of what you were
17 trying to track specifically?**

18 A. Yeah, how much volume did we have at risk
19 here.

20 **Q. Got it. How much are the -- are the
21 Smile Source members currently purchasing from
22 Schein?**

23 A. Correct.

24 **Q. Let me turn you to the latest e-mail from
25 you on February 2nd, 2012, on the first page there.**

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1 A. Yes.

2 **Q. And you said, starting that third sentence**
 3 **on February 2nd, 2012, "I am really interested to**
 4 **see how and what we can do to retain these customers**
 5 **and judge how effective they're buying group model**
 6 **is. Let's really take this serious and get after**
 7 **it. I'm really less concerned about the actual**
 8 **revenues, although very important too, rather more**
 9 **about what we can do to kill the buying group model,**
 10 **exclamation point, exclamation point."**

11 **Do you see that?**

12 A. I do.

13 **Q. Why did you want to kill the buying group**
 14 **model?**

15 A. I probably should have meant -- put -- the
 16 word should be their instead of the because I was
 17 referring to their buying group model. And it
 18 sounds like they had just terminated us, so kill is
 19 probably a strong word, but we wanted to make sure
 20 that we were as successful in retaining those
 21 customers and not allowing their model to survive.

22 **Q. Why is that?**

23 A. Because we wanted -- again, we don't want
 24 anyone between us and our customers. So if those
 25 customers are now -- this is a classic example of if

1 we have at risk that potentially goes out the door.

2 **Q. Why did the relationship end with**
 3 **Smile Source?**

4 A. I don't recall specifically, but, again,
 5 originally they were -- really they didn't add --
 6 they didn't have any of the additional business
 7 solution type things that attracted and actually
 8 retained their members. There were things in their
 9 contracts with members at the time that I understand
 10 that mandated that they purchase from the group, you
 11 know. And I'm sure that they were coming back to us
 12 at this point saying, okay, we've been together a
 13 year or two, we're going out to bid again, so
 14 so-and-so is going to give a bigger discount. Well,
 15 is that all that this is about? That changes our
 16 relationship.

17 **Q. Your testimony is that Smile Source was**
 18 **asking for a bigger discount, and that's why the**
 19 **relationship ended?**

20 A. That's actually not what I said.

21 **Q. Okay.**

22 A. What I said is I don't recall specifically
 23 why. I believe there were a multitude of factors.

24 One of them was they were looking for a bigger
 25 discount, or, you know, going out to bid, you know,

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1 they left to now go to Burkhart, if Burkhart is
 2 their new supplier, we don't want to lose those
 3 members as customers. So we would want to do
 4 whatever we could to not allow their particular
 5 model, however they structured it at that time, to
 6 work. We wanted to make sure that those customers
 7 stayed with us.

8 **Q. So instead of "the" you meant to write**
 9 **"their"?**

10 A. I referred to them as their buying group
 11 model is above. I was talking about their buying
 12 group model.

13 **Q. And why did you put kill in all caps?**

14 A. Just to emphasize. Poor choice of words.

15 **Q. Is it fair to say that you saw**
 16 **Smile Source's buying group model as a negative**
 17 **thing in February of 2012?**

18 A. So two things. That's what I was trying
 19 to understand how are we doing with them to begin
 20 with, you know; did we -- how were those customers
 21 doing anyway, you know, prior to -- did anyone --
 22 the fact that we were partners with them, were they
 23 growing with us, were we gaining any, you know,
 24 incremental revenue or not, so to understand that,
 25 and then clearly if they leave how much business do

1 for better pricing programs.

2 They didn't have a mandate for their
 3 members to purchase; they didn't have the other
 4 business solution things and go-to-market strategy
 5 like we had. So there was a multitude of reasons.

6 **Q. Was special markets, was Schein's special**
 7 **markets selling to Smile Source at some point in**
 8 **time in the past?**

9 A. I don't know when it was, but that's how
 10 the original relationship started, yes.

11 **Q. And then Smile Source got moved to HSD; is**
 12 **that correct?**

13 A. That's correct.

14 **Q. And why did that move come about?**

15 A. For the reasons that we've outlined.

16 From -- all the different locations make their
 17 independent decisions on purchasing. They weren't
 18 required to buy.

19 So our field sales consultants were still
 20 very actively involved with their members who are
 21 our customers, and it was creating a conflict. They
 22 were going to market; they were advertising, you
 23 know, join Smile Source, get a better price from
 24 Henry Schein. We tell -- we were telling them that
 25 we don't want you -- you can't do it that way.

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1 That's not how we want your go-to-market to be
2 because that's not how we market. We don't market
3 to our customers based on price.

4 So it's that they don't tell our value
5 proposition, our total value story the way they were
6 structured then.

7 **Q. Whose -- strike that.**
8 **Were you involved in special markets**
9 **selling to Smile Source in the initial iteration of**
10 **the relationship?**

11 A. No.

12 **Q. Whose -- who was involved?**

13 A. I don't know if it was Hal directly or if
14 it was someone on Hal's team.

15 **Q. And at some point when it got moved to**
16 **Henry Schein Dental, whose decision was it to move**
17 **Smile Source?**

18 A. Collectively Hal and I together.

19 **Q. Did something prompt that decision to come**
20 **about?**

21 A. The noise it was creating in the field
22 relative to how they were going to market and
23 marketing to the general -- the general
24 practitioners as to why to join, it was only about
25 saving discounts on supplies. That's not our total

1 **Q. And why do you say that?**

2 A. He'd flip-flop on it. I mean, one week he
3 was for, one week he's not. It was -- by the time
4 we did it he knew it made sense; and then once they
5 were still with us we were doing, I believe, okay
6 with them.

7 Once they left, it was Hal's opinion that
8 he could have held -- you know, hung onto them if,
9 you know, we didn't try doing all the other
10 value-added service type things. I don't think he's
11 right, but that was his opinion.

12 **Q. I don't understand. What do you mean he**
13 **could have hung onto them if we didn't do all the**
14 **other value-added services?**

15 A. Hal, that was just Hal's opinion, that he
16 didn't think -- you know, to this day he doesn't
17 believe in the value of a sales rep, and that's what
18 was driving the relationship with the specific
19 customers which are members of Smile Source.

20 **Q. So what's your understanding of why Hal**
21 **thought not having the value-added services, why**
22 **that would help Schein keep Smile Source?**

23 A. What I'm saying, I don't understand why he
24 believes that.
25

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1 value story. And they weren't owning the practices.
2 It wasn't -- it didn't fit the model. They
3 weren't -- it wasn't like a Comfort Dental where
4 everyone -- once they joined they all buy. It was
5 very sporadic.

6 And so Hal even was of the opinion from
7 his perspective, you know, don't want to create that
8 conflict. It was also that wasn't working from his
9 perspective the way he had thought it was going to
10 go, so let us take it over and see if we can help
11 drive more volume and have our field sales
12 consultants working with their members to help them
13 grow their revenue and therefore their purchases and
14 buy more from us. And it worked for the accounts
15 that we already had a relationship with, and it
16 didn't change the relationship for those that we
17 didn't already.

18 **Q. And how did the pricing for Smile Source**
19 **change after the move from special markets to HSD?**

20 A. I don't think it did. We honored the
21 pricing that they had at the time.

22 **Q. And just so I understand, was Hal Muller**
23 **in favor or against keeping Smile Source in special**
24 **markets?**

25 A. It depends which week you talked to him.

1 (Exhibit 227 was marked for
2 identification.)

3 BY MS. KAHN:

4 **Q. You have Exhibit 227 in front of you.**

5 A. I do.

6 **Q. Let me know when you're ready.**

7 A. Okay.

8 **Q. Exhibit 227 is an e-mail chain, and the**
9 **subject is Smile Source dated October 3rd, 2014.**
10 **Do you recall this e-mail chain?**

11 A. I do.

12 **Q. There's an e-mail from you to**
13 **Hal Muller -- strike that. Let me start from the**
14 **earliest e-mail.**

15 **Mr. Muller wrote to you, "Are we sure we**
16 **don't want to let SM to try to get this business**
17 **back under SM rules of play?"**

18 **And was SM special markets?**

19 A. Yes.

20 **Q. And was Hal here asking about**
21 **Smile Source?**

22 A. Yes.

23 **Q. Is it fair to say that he wanted to -- he**
24 **was asking whether Schein should try to get**
25 **Smile Source back under special markets?**

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1 A. Well, again, at this point they're no
2 longer -- their members are no longer customers of
3 ours. So he's saying -- I think he cut and pasted
4 this in some type of notice somewhere that they
5 opened up 58 new offices during the month of
6 September. He's saying they're growing, should we
7 go after them again; and if so, should we approach
8 it via special markets versus through HSD.

9 **Q. And your response was, "What's the
10 difference between now and then? What do we do when
11 a private customer joins their GPO?" Is that --**

12 A. That's a Privileges customer. Privileges
13 is the name of our customer loyalty program.

14 **Q. Got it. So you said what do we do when a
15 Privileges customer joins their GPO.**

16 **What did you mean when you said what's the
17 difference between now and then?**

18 A. So what's the difference, what's the
19 difference between how they're structured now versus
20 then? I mean, are we just going to head down the
21 same road where we had it for a year or two,
22 everything goes back out for bid? So you bring them
23 all on, you lose them, you bring them all on; it's
24 not a model we want to work in.

25 So I was asking what's the difference

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1 between now and then with Smile Source.

2 **Q. Meaning you could lose them if you brought
3 them back on?**

4 A. Well, meaning if we'd lost them a year
5 ago, what's changed between now and then that they
6 would want to come in.

7 **Q. Okay. And what did you mean when you said
8 what do we do when a Privileges customer joins their
9 GPO?**

10 A. So we have -- a Privileges customer is one
11 of our -- call it our better customers. Again, it's
12 our customer loyalty program, so they do more
13 business with us. So what do we do with that
14 customer when they join, which this is what was
15 creating our conflict before in the field was that
16 if they were, again, only a price play and that's
17 all that they were doing, adding for their members,
18 that does not fit with what we're doing for our good
19 customers, our Privileges customers.

20 And so if they've changed their model and
21 maybe they're doing more than just -- this is not
22 just a, quote-unquote, price play, it's all they
23 have for members, I was asking what's the
24 difference. And then what do we do if that's all
25 they still are? Isn't the conflict the same today

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1 that it was two years ago when we lost them?

2 **Q. Why would something that's only a price
3 player, why would that not fit with what you're
4 doing with the good customers, the Privileges
5 customers?**

6 A. It goes back to before. We have this
7 customer care wheel. There's a lot we provide our
8 customers. Price is a component of it. But we
9 don't -- we feel if you win a customer only on
10 price, you know, that's the way you'll lose a
11 customer is only a price. If they don't understand
12 the full value of all that we bring and all that we
13 do, then they don't understand the Henry Schein
14 value proposition.

15 **Q. And then Mr. Muller wrote to you, "They
16 are all private customers. What do we do when they
17 have over 1,000 offices? Just throwing it out
18 there."**

19 **And you wrote, "Then we wave flag and
20 commit."**

21 **Do you see that?**

22 A. I do.

23 **Q. What did you mean when you said "then we
24 wave flag and commit"?**

25 A. If at that point they grew to be 1,000

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1 members, then obviously creating value for their
2 members in our mind beyond just a price play. So if
3 that's the case, then we would -- if they really --
4 to me that would mean they have changed their model;
5 they've grown significantly. Their members see
6 value in what they're providing, and we would want
7 to be a part of that because then we can help add to
8 that value.

9 **Q. So when you said "wave flag and commit,"
10 you were referring to supplying Source One or trying
11 to go after that business?**

12 A. It's not -- Smile Source.

13 **Q. Smile Source, sorry.**

14 A. Correct.

15 **Q. Okay. And why does if they -- if they get
16 to over 1,000 offices, why does that indicate to you
17 an entity that you would want to supply?**

18 A. Well, he threw out the number --

19 **Q. Sure.**

20 A. -- so I was just responding to that.
21 There's no magic number.

22 **Q. Yeah, but I'm just trying to understand
23 why does the number of offices indicate something to
24 you?**

25 A. Well, it indicates they're not only

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1 attracting but they're retaining members.
2 **Q. You're familiar with the Dental Trade**
3 **Alliance?**
4 A. I am.
5 **Q. And you were on the board at some point,**
6 **right?**
7 A. Correct.
8 **Q. What years were you on the board?**
9 A. Well, I don't know the exact years. There
10 was a year in the late 2000s I was on. Then the
11 current chair of the board was -- became a
12 Henry Schein employee. So we can't have two members
13 on the board so I went off for about a year and a
14 half; he went back off the board and I went back on.
15 So between 2007 and 2014 I was on and off
16 the board, kind of that window at that time frame.
17 **Q. And after 2014 have you continued to play**
18 **some role with respect to DTA?**
19 A. I attend the annual meeting.
20 I'm sorry, let me be clear. So I was the
21 chair from '13 to '14; then I was the immediate past
22 chair from '14 to '15; and then I went off the board
23 in 2015.
24 **Q. Got it. You're familiar with the**
25 **exhibitors' committee of DTA?**

1 down.
2 **Q. And what was the exhibitors' committee**
3 **going to do about that?**
4 A. Work with --
5 MR. McDONALD: Object to form.
6 THE WITNESS: Sorry.
7 MR. McDONALD: Go ahead.
8 THE WITNESS: Work with the various trade
9 associations, you know. For example the Yankee
10 Dental meeting, it's a great meeting. It's in
11 Boston in January of every year. They have a person
12 that's responsible for the exhibitor relationships.
13 She does a marvelous job in listening to exhibitors
14 as to how to bring more value.
15 The ADA is, quite honestly, just the
16 opposite.
17 BY MS. KAHN:
18 **Q. So I just want to be clear. The**
19 **exhibitors' committee of DTA goes to the**
20 **associations to talk about value of the trade shows?**
21 A. And how to make them -- so, again, their
22 members are our customers. And so when they come to
23 the trade show floor -- so we pay the trade
24 associations to exhibit. There's expenses,
25 significant expenses outside of that, but that's

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1 A. Yes.
2 **Q. And what is that?**
3 A. So the board trade has committees to
4 address certain industry challenges or opportunities
5 or trends, and one had to do with exhibits, that
6 there was a decreasing value in showing up at trade
7 shows. And so what we wanted to do is create an
8 exhibits committee to start working with the various
9 trade associations on bringing up the value of the
10 meetings.
11 **Q. Why did DTA want to create an exhibits**
12 **committee, why at the DTA level?**
13 A. Well, the DTA, its core purpose is to
14 bring more value to its members, and the members are
15 dealers and manufacturers. And there's multiple
16 ways that that can happen, whether it's, you know,
17 lobbying on particular, you know, laws that we think
18 would impact our customers; you know, we want to
19 help our customers grow and how can we as an
20 industry help that happen.
21 One of the issues that we were having as
22 an association as its members was the decreasing
23 value of exhibiting at trade shows. We all exhibit
24 at trade shows, and it costs a lot of money to
25 exhibit, and the value of those had been coming

1 part of what we do is we pay the trade association
2 to exhibit. We want to make sure that the members
3 that are -- the members of the trade association
4 that are our customers, when they come to the trade
5 shows, that they actually come to the exhibit floor
6 and purchase and listen to our story.
7 If they come but, you know, they show up
8 but their attractions are outside or off the exhibit
9 floor and they're not coming onto the exhibit floor,
10 that's where we're challenged as the exhibitor to
11 get the mind share of the customers.
12 So we work with them to say, you know, why
13 not create more activity instead of outside of the
14 trade -- the convention hall than we have inside the
15 convention hall to attract the members in.
16 **Q. And who -- is there -- strike that.**
17 **How many people are on the exhibitors'**
18 **committee?**
19 A. I really don't know.
20 **Q. Is there a Schein representative on the**
21 **committee?**
22 MR. McDONALD: Currently, is that your
23 question?
24 BY MS. KAHN:
25 **Q. Let's start with currently.**

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1 A. I don't know. I would assume -- I would
2 assume so, but I don't know for sure.
3 **Q. What about in the past, do you know?**
4 A. I know there have been, but I don't know,
5 you know, who has been.
6 **Q. What about Patterson and Benco, do you**
7 **know if their representatives --**
8 A. Again, I would assume so, but I don't
9 know. There's other manufacturers and other
10 members.
11 **Q. You're familiar with the Texas Dental**
12 **Association?**
13 A. Yes.
14 **Q. And you're familiar with TDA's endorsement**
15 **of Source One?**
16 A. Well, the TDA Perks Program that is
17 supplied by Source One, yes.
18 **Q. Got it. And following the creation of the**
19 **TDA Perks Program that was supplied by Source One,**
20 **Henry Schein pulled out from the following TDA trade**
21 **show; is that right?**
22 A. That's correct.
23 **Q. And was that in 2014 that TDA -- that**
24 **Schein pulled out of the trade show?**
25 A. That sounds correct.

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1 **Q. Did Schein attend 2015?**
2 A. No.
3 **Q. Did Schein attend in 2016?**
4 A. Yes.
5 **Q. And did you make the decision to attend in**
6 **2016?**
7 A. Yes.
8 **Q. Why did you make that decision?**
9 A. Because we were hearing from our customers
10 that they missed us there and they wanted us to
11 attend.
12 **Q. What specifically were you hearing?**
13 A. That they missed us there and they wanted
14 us to attend.
15 **Q. Okay. How did you come to hear that?**
16 A. Through our sales team.
17 **Q. Do you recall who told you that**
18 **information?**
19 A. No.
20 **Q. Anybody at all? You have no recollection?**
21 A. Well, between our regional manager and
22 zone general manager down there, Randall McLemore,
23 he was hearing from the reps; so I was hearing it,
24 you know, more so from Joe via what was happening
25 with Randall.

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1 Stanley Bergman himself, our chairman and
2 CEO, was at an event where he was speaking when the
3 ADA was in San Antonio, I believe, and he had
4 customers approach him and say we really miss you
5 guys at our trade show. And so Stanley was, you
6 know, a strong push with me saying, you know, he was
7 hearing it from customers there; I really think we
8 should go back there.
9 So it was a multitude of channels like
10 that.
11 **Q. Why would a customer miss Schein? What**
12 **are they missing exactly?**
13 A. We have great relationships with our
14 customers, and the fact that we didn't go really
15 didn't impact our sales in the market, and so -- but
16 when our customers say, you know, we miss you, we
17 want you at the show, we decided to join -- I'm
18 sorry, to go back.
19 **Q. I'm just trying to understand what it is**
20 **that customers missed. Just not seeing the Schein**
21 **faces during the TDA trade show?**
22 MR. McDONALD: Object to the form.
23 THE WITNESS: Or whatever we're
24 exhibiting, we might have a show special going on at
25 the time; there might be -- we might sponsor an

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1 event. We went back in '16; we sponsored a luncheon
2 and invited customers to come to it.
3 You'll have to ask the customers, you
4 know, why they see value with that. The fact that
5 they were telling us that they missed us and they
6 wanted us to come back led to our decision to go
7 back.
8 BY MS. KAHN:
9 **Q. What's the show specials that you're**
10 **referring to?**
11 A. Just, you know, if a -- we have various
12 marketing promotions that are going on all the time,
13 even right now.
14 **Q. Like a discount of some sort?**
15 A. Possibly, or it could be, you know, if a
16 manufacturer has got something going on,
17 manufacturers might have a buy three/get four type
18 thing, and they can place that order anywhere on the
19 floor, we want to make sure we get that order, that
20 type of thing.
21 **Q. So prior -- strike that.**
22 **So your understanding is that customers in**
23 **part were missing these show specials that Schein**
24 **would offer at the TDA trade show?**
25 MR. McDONALD: Object to the form.

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1 THE WITNESS: No, I was using that as an
2 example. When you asked what were they missing, I
3 said I don't know; it could be this, it could be
4 that.
5 BY MS. KAHN:
6 **Q. Sure.**
7 A. They were telling us that they wanted us,
8 so I don't know, you know.
9 **Q. Okay.**
10 A. I didn't specifically talk to a customer
11 about it.
12 **Q. Okay. But you have a general**
13 **understanding of what your customers like and what**
14 **they need --**
15 A. Uh-huh.
16 **Q. -- and want, right?**
17 A. Yes.
18 **Q. So I'm just trying to understand what it**
19 **is about Schein that your customers were missing.**
20 MR. McDONALD: Object to the form.
21 THE WITNESS: I don't know. That's why,
22 you know, we've said we're trying to ourselves
23 understand the value of trade shows, and even by the
24 two years that we didn't go our sales were not
25 impacted.

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1 So we didn't -- we don't see -- we see a
2 dying value or declining value I should say in
3 exhibiting and showing at trade shows. In some
4 cases we've reduced our footprint.
5 When it came to the TDA, for a multitude
6 reasons we decided not to go at all. But once we
7 made that decision, we didn't know for a couple of
8 years; we were hearing from customers we'd really
9 like to have you back. We said okay.
10 BY MS. KAHN:
11 **Q. And what was the reason that Schein pulled**
12 **out of the TDA trade show in 2014?**
13 A. It goes back to we paid to be at the show.
14 We work with our trade associations. We view them
15 as an independent party, a neutral party, if you
16 would. They help put the floor together, to bring
17 the exhibit together. They -- you know, they
18 bring -- they track members that come into the trade
19 show, including continuing education courses, and we
20 pay them for us to show an exhibit.
21 What they started to do then was to say,
22 okay, well, thank you, exhibitors, come pay us, but
23 once customers start showing up on the floor they
24 were actually saying, okay, but now go buy your
25 supplies through our own program called TDA Perks.

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1 So we're paying to be at the trade show to
2 sell our goods, but their members, who are our
3 customers, are coming onboard and they're saying
4 bypass those booths, place your orders here. That,
5 to us, they lost their neutrality as a neutral party
6 when it came to their trade show.
7 **Q. The TDA Perks Program that's being**
8 **supplied by Source One is still going on today,**
9 **right?**
10 A. That's my understanding, yes.
11 **Q. And why is it that that is no longer**
12 **reason enough for Schein not to attend the TDA trade**
13 **show?**
14 A. It showed in the two years that we didn't
15 go we realized it did not affect our volume, did not
16 affect our relationship with customers, and but the
17 fact that they were asking us to come back, we
18 decided to go back.
19 **Q. Even though TDA is no longer a neutral**
20 **platform?**
21 A. That's correct.
22 **Q. So had you not anticipated that your**
23 **customers would miss you at the trade show?**
24 A. Didn't know for sure.
25 **Q. Prior to Schein's decision to pull out of**

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1 **the 2014 TDA trade show, you've come to be aware of**
2 **communications between Schein employees and Benco**
3 **employees about the TDA trade show; is that right?**
4 A. Yes.
5 **Q. And have you also come to be aware of**
6 **communications between Schein employees and**
7 **Patterson employees about the TDA trade show?**
8 A. Yes.
9 **Q. Do you have any understanding of why those**
10 **communications were taking place?**
11 A. No.
12 **Q. You cannot think of any reason sitting**
13 **here today?**
14 A. Well, no.
15 **Q. Did anybody say anything about why those**
16 **communications were taking place?**
17 A. No, I mean, other than people generally
18 wanted to understand and know who was going to the
19 show or not.
20 **Q. Why would people want to generally**
21 **understand that?**
22 A. It would be good to know what's happening
23 at a trade show.
24 **Q. Why is that?**
25 A. It's important. I mean, it's -- if --

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1 we're going to make our decision solely based on
2 what we believe is good for us and for our
3 customers. We find it interesting to understand
4 what's happening with others, but it was not a
5 determining factor on anything that we were deciding
6 to do.

7 **Q. Why was it interesting?**

8 A. We just find it interesting.

9 **Q. Why?**

10 A. I don't know. I find you interesting.

11 **Q. Why? You don't have to answer that.**

12 MR. McDONALD: I don't know. But you're
13 at seven hours, so if you'll try to move it along,
14 that would be great.

15 BY MS. KAHN:

16 **Q. Are you aware of similar communications
17 between Schein employees and Patterson or Benco
18 employees on subjects other than TDA trade show
19 attendance that you're now aware of?**

20 A. Can you give me an example? I mean, I
21 don't -- nothing comes -- you mean the TDA mind set,
22 so no, I don't.

23 **Q. I don't have any examples.**

24 A. Nothing comes to mind.

25 **Q. Okay. And I guess what I'm trying to**

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1 that's a good idea for the TDA and TDA Perks to do
2 that to their exhibitors. And us in particular,
3 we're not going to attend if, in fact, that's what
4 they were going to do.

5 **Q. And, in fact, Joe Cavaretta and others who
6 were in communications with TDA tried for several
7 months to set up a meeting with TDA; is that right?**

8 A. That's correct.

9 **Q. Can you help me understand why Schein
10 didn't just pull out and why Schein spent a lot of
11 effort trying to talk the TDA into changing its
12 mind?**

13 A. Absolutely. It's made up of our
14 customers, so we don't want to fight with our
15 customers, right.

16 And so this is -- you know, the members of
17 the TDA board are dentists, and they're doing what
18 they believe is in the best interests of their
19 members; and we were trying to highlight the fact
20 that, well, by not treating their exhibitors
21 properly at the trade show itself, which we're
22 paying to be at, to then point their -- to start the
23 relationship and our purchases somewhere else other
24 than us, then they're no longer a neutral party. We
25 wanted to talk to them about why we don't think

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1 **understand is why there was communications, why
2 there were communications between Schein employees
3 and Patterson and Benco employees on TDA but not
4 with respect to other issues.**

5 A. I don't know.

6 **Q. Is it fair to say that Schein -- Schein
7 met with TDA, right, to talk about the TDA Perks
8 Program and Source One?**

9 A. Yes, we did.

10 **Q. And from your perspective what was the
11 point of that meeting?**

12 A. We wanted to let them know that we believe
13 that they're crossing the line of neutrality; that
14 they shouldn't expect us to continue to pay them to
15 exhibit when the moment their members walk on the
16 floor they are pointing them somewhere else. We
17 viewed that as that's our role at the trade shows
18 and that -- you know, so we're trying to convince
19 them, you know, if you're going to go down this
20 road, we think you should choose us, and let me show
21 you why.

22 But even in part of those presentations
23 from what I understand it wasn't -- between
24 Dean Kyle and Joe Cavaretta who met with them, we
25 were trying to show them why we don't think that

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1 that's a good strategy for them and in particular us
2 as a paying exhibitor.

3 **Q. You said that you don't want to fight with
4 your customers.**

5 **Did you view pulling out of the trade show
6 as in some way a fight with your customers?**

7 A. Not our customers in general, but, you
8 know, there's ten -- I don't know how many members
9 are on the board. Let's say five of them might have
10 been customers of ours. Some from my understanding
11 were actually supporting our position and trying to
12 convince the TDA not to do this; some were saying
13 they should do this.

14 So those are the ones we didn't want to be
15 arguing with and fighting with.

16 **Q. Just the board members?**

17 A. Correct.

18 **Q. And was your decision to pull out of TDA?**

19 A. Ultimately, yes.

20 **Q. Did anybody at Schein disagree with your
21 decision?**

22 A. Not at the time that I recall. In
23 retrospect I think we would like to have done things
24 different, but at the time no.

25 **Q. Why do you say in retrospect you would**

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1 **have liked to do things different?**
 2 A. We would not have had the opportunity to
 3 meet.
 4 **Q. I'm sorry?**
 5 A. I'm trying to be facetious.
 6 **Q. Oh.**
 7 A. We wouldn't be sitting here right now.
 8 **Q. Got it.**
 9 A. And we think that it's -- yeah.
 10 **Q. Did Mr. Breslawski or Mr. Stanley Bergman**
 11 **indicate that they were not in favor of pulling out**
 12 **of TDA when you made the decision?**
 13 A. Jimmy was ultimately supportive of it with
 14 challenging along the way. Stanley, you know, is
 15 always looking for, always looking for, you know,
 16 ways to make amends with anyone or, you know, to
 17 come to, you know, a mutual understanding versus,
 18 you know, not working together.
 19 So, I mean, at the time I think he
 20 understood it, but I can't tell you that he
 21 necessarily wholeheartedly agreed, but he
 22 understands that my responsibility is the U.S.
 23 dental market. I trusted our local teams to come to
 24 their recommendation and -- but it was ultimately my
 25 decision to say, you know what, let's not go.

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1 **Q. And at the time that you made the**
 2 **decision, you were aware that Patterson had already**
 3 **decided to withdraw, right?**
 4 A. We never know for sure until you actually
 5 get to a convention floor.
 6 **Q. You had market intelligence at the time**
 7 **that you decided that Patterson was likely not**
 8 **going; is that right?**
 9 A. Again, I did not know for sure. What we
 10 do know is you can go right now and go to their
 11 website and see who has registered or not. I don't
 12 know at that time if Patterson was already off the
 13 registration or not; I don't recall. But their
 14 decision to show or not show had no bearing on our
 15 decision whether we were going or not.
 16 **Q. I know counsel has indicated he wants to**
 17 **get you out of here as early as possible, so I want**
 18 **to avoid marking a bunch of documents.**
 19 **But do you recall in communications**
 20 **discussing Patterson having either decided or was**
 21 **going to pull out of the meeting?**
 22 A. Yes.
 23 **Q. Okay. And did it matter to you that**
 24 **Patterson had already pulled out?**
 25 A. No.

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1 **Q. Are you aware of anyone within Schein that**
 2 **took the position that it would actually be**
 3 **advantageous for Schein to attend if Patterson was**
 4 **not going to attend?**
 5 A. Not that I recall, no.
 6 **Q. Does that argument or position make sense**
 7 **to you at all?**
 8 A. It could.
 9 **Q. How so?**
 10 A. If for some reason others backed out but
 11 we went, would the membership there, you know, do
 12 anything to say, look, you know, Schein is
 13 supporting us, even though any others didn't? It's
 14 possible; I don't know. We'd be speculating on what
 15 some potential scenarios are.
 16 MS. KAHN: All right. Let's go off the
 17 record, and I'll wrap it up after that.
 18 (Whereupon, a recess was taken
 19 from 4:23 p.m. to 4:28 p.m.)
 20 MS. KAHN: Back on the record.
 21 BY MS. KAHN:
 22 **Q. Did you want to clarify something?**
 23 A. Yes. I think earlier you had asked the
 24 question about when we decided to pull out. The way
 25 things actually flowed is we had a meeting, so Jake

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1 and Joe had -- sorry, Joe and Dean had that meeting
 2 with the folks at the TDA, gave a presentation.
 3 There were parts of the meeting we thought went
 4 well, some parts of it didn't think went so well;
 5 but later one of the people on the board had called
 6 Joe, said you know what, actually you've got us
 7 thinking about some stuff, we think that, you know,
 8 some of what you said made sense. So we started to
 9 get the sense, you know what, we might be able to
 10 make this work. Then he even said can you delay
 11 your decision for a few months to Joe. We said you
 12 know what, as long as you're committing that we will
 13 continue discussing and talking about this, yes.
 14 It was later then one of our managers down
 15 there, Kyle Steck, was working our events team on
 16 our booth when we realized on the website they had
 17 actually taken us off the site. So we got -- we
 18 actually feel we were uninvited to the show, and
 19 then that's what snowballed to ultimately the
 20 decision for us not to go.
 21 **Q. Okay. I appreciate that. I just have a**
 22 **few more questions and I'll be done.**
 23 **I think I got this from you earlier, but**
 24 **you do have a general sense of what the FTC's**
 25 **investigation of Schein is about?**

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1 A. Yes.
 2 **Q. Okay. And with that in mind, aside from**
 3 **what we've already talked about today, is there**
 4 **anything else that you would like to share with us**
 5 **to help us determine how to move the investigation**
 6 **forward?**
 7 A. No.
 8 MS. KAHN: All right. With that, I have
 9 no further questions.
 10 MR. McDONALD: Okay. Thanks.
 11 MS. KAHN: Do you have anything?
 12 MR. McDONALD: No.
 13 MS. KAHN: Off the record.
 14 (Whereupon, the deposition was
 15 concluded at 4:30 p.m.)
 16
 17
 18
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 22
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1 CORRECTION PAGE
 2
 3 CASE NAME: In re: Henry Schein, Inc.
 4 DEPOSITION OF: Tim Sullivan
 5 DATE TAKEN: May 25th, 2017
 6
 7 PAGE LINE CHANGE
 8 _____
 9 _____
 10 _____
 11 _____
 12 _____
 13 _____
 14 _____
 15 _____
 16 _____
 17 _____
 18 _____
 19 _____
 20 _____
 21 _____
 22 _____
 23 _____
 24 DATE: _____
 25 SIGNATURE: _____

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1 In re: Henry Schein, Inc.
 2 Matter No. 151090
 3
 4 I hereby certify that I have read the
 5 foregoing transcript of my deposition, given on
 6 May 25th, 2017, at the place aforesaid, consisting
 7 of pages 1 through 369, inclusive, and I do again
 8 subscribe and make oath that the same is a true,
 9 correct, and complete transcript of my deposition so
 10 given as aforesaid, as it now appears.
 11 Please check one:
 12 _____ I made no corrections
 13 _____ Number of errata sheets submitted
 14
 15 (signed) _____
 16 TIM SULLIVAN
 17
 18 ALSO PRESENT: _____
 19
 20 SUBSCRIBED AND SWORN TO
 21 before me this ____ day
 22 of _____ 2017.
 23
 24 _____
 25 Notary Public

1 CERTIFICATE
 2 The within and foregoing deposition of the
 3 witness, TIM SULLIVAN, was taken before GREG S.
 4 WEILAND, CSR, RMR, CRR, at Suite 1825, 55 West
 5 Monroe Street, in the City of Chicago, Cook County,
 6 Illinois, commencing at 7:53 o'clock a m., on the
 7 25th day of May, 2017.
 8 The said witness was first duly sworn and
 9 was then examined upon oral interrogatories; the
 10 questions and answers were taken down in shorthand
 11 by the undersigned, acting as stenographer; and the
 12 within and foregoing is a true, accurate and
 13 complete record of all the questions asked of and
 14 answers made by the aforementioned witness at the
 15 time and place hereinabove referred to.
 16 The signature of the witness was not
 17 waived and the deposition was submitted to the
 18 deponent as per copy of the attached letter.
 19 The undersigned is not interested in the
 20 within case, nor of kin or counsel to any of the
 21 parties.
 22 Witness my signature on this 1st day of
 23 June, 2017.
 24
 25 _____
 GREG S. WEILAND, CSR, RMR, CRR

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In the Matter of:

Henry Schein, Inc., et al.

July 26, 2017
John C. Kois, Jr.

Condensed Transcript with Word Index



For The Record, Inc.
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18 Investigational Hearing of JOHN C. KOIS,	18 redacted.
19 JR., at the Law Offices of Byrnes Keller Cromwell, 1000	19 Exhibit No. 329 2-page e-mail chain, 151
20 Second Avenue, 38th Floor, Seattle, Washington, 98104,	20 "Subject: Thank you!"
21 commencing at 8:56 a.m., Wednesday, July 26, 2017,	21 KOIS001133-34.
22 before Terilynn Simons, Certified Shorthand Reporter	22 Exhibit No. 330 4-page e-mail and cover page 165
23 No. 2047, pursuant to Notice.	23 "Subject: Kois Tribe
24	24 membership program launch,"
25	25 dated 10/8/14.
2	4
1 APPEARANCES OF COUNSEL:	1 Seattle, Washington
2	2 Wednesday, July 26, 2017
3	3 JOHN C. KOIS, JR.,
4 FOR THE FEDERAL TRADE COMMISSION:	4 having been first duly sworn by the reporter, was
5 Karen V. Goff	5 examined and testified as follows:
6 U.S. Federal Trade Commission	6 EXAMINATION
7 901 Market Street	7 BY MS. GOFF:
8 Suite 570	8 Q Good morning, Mr. Kois. Thank you very much for being
9 San Francisco, CA 94103	9 here today. My name is Karen Goff. We met off the
10 415.848.5124	10 record. I'm an attorney with the Federal Trade
11 415.848.5184 Fax	11 Commission.
12 Kgoff@ftc.gov	12 Today's proceeding is called an investigational
13	13 hearing, and it is just a way to formalize the interview
14	14 process.
15 FOR JOHN C. KOIS, JR.:	15 It is conducted pursuant to the Federal Trade
16 Nicholas Ryan-Lang	16 Commission's rules, and it's being conducted as part of
17 Byrnes Keller Cromwell LLP	17 the Commission's investigation in Matter No. 1510190.
18 1000 Second Avenue	18 MS. GOFF: For the record, would
19 38th Floor	19 Counsel please state his appearance?
20 Seattle, WA 98104	20 MR. RYAN-LANG: Nicholas Ryan-Lang of
21 206.622.2000	21 Byrnes Keller Cromwell.
22 206.622.2522 Fax	22 Q (By Ms. Goff) Mr. Kois, for the record, would you
23 Nryanlang@byrneskeller.com	23 please state your name and the city and state you live
24	24 in?
25	25 A Sure. Mr. John C. Kois, Junior.

5	<p>1 I live in Seattle, Washington.</p> <p>2 Q I wanted to state for the record today that we actually</p> <p>3 had sent a subpoena to your father, Dr. John Kois, for</p> <p>4 his testimony today, and I spoke with your counsel, and</p> <p>5 I understand there was some confusion about whether the</p> <p>6 subpoena was for you or for Dr. John Kois, and we agreed</p> <p>7 that we would conduct the investigational hearing of you</p> <p>8 today, and we would reserve our rights to conduct an</p> <p>9 investigational hearing of your father, Dr. John Kois,</p> <p>10 at a later time, if it's necessary.</p> <p>11 Thank you very much for making yourself available</p> <p>12 today, and I am hoping that you will be able to answer</p> <p>13 most of our questions and it will be unnecessary to take</p> <p>14 an investigational hearing of your father.</p> <p>15 MS. GOFF: Did you have anything to</p> <p>16 add, Counsel?</p> <p>17 MR. RYAN-LANG: Sounds right.</p> <p>18 Q (By Ms. Goff) Have you ever given sworn testimony</p> <p>19 before?</p> <p>20 A Yes.</p> <p>21 Q When have you done that?</p> <p>22 A It was three or four years ago.</p> <p>23 Q Was it related to your work at Kois-- the Kois Center,</p> <p>24 or any of the Kois companies?</p> <p>25 A No. It was with IsoFusion.</p>	7	<p>1 A I understand.</p> <p>2 Q Is there any reason why you cannot provide complete and</p> <p>3 truthful testimony today?</p> <p>4 A No.</p> <p>5 Q Are you currently the CEO of Kois Center?</p> <p>6 A Yes.</p> <p>7 Q Do you also work for a company called Kois Buyers Group?</p> <p>8 A No.</p> <p>9 To correct, it's Kois Tribal Management.</p> <p>10 Q First let me talk about Kois Center, and then we can</p> <p>11 discuss Kois Buyers Group or Kois Tribal Management.</p> <p>12 What is the Kois Center?</p> <p>13 A Kois Center is a teaching facility.</p> <p>14 We conduct continuing education courses for</p> <p>15 dentists, usually general dentists.</p> <p>16 Q What do you mean by "general dentists"?</p> <p>17 A It's geared towards nonspecialty oriented dentists.</p> <p>18 We do have prosthodontists that come, periodontists</p> <p>19 that come, but the majority of our students are general</p> <p>20 dentists.</p> <p>21 Q Did your father, Dr. John Kois, found the Kois Center?</p> <p>22 A Yes.</p> <p>23 Q And when was that, approximately? Do you know?</p> <p>24 A Approximately 1994.</p> <p>25 Q What are your day-to-day responsibilities, generally, as</p>
6	<p>1 Q Is that a former company that you used to work for?</p> <p>2 A Yes.</p> <p>3 Q I am just going to go over a few ground rules.</p> <p>4 I will be asking you a series of questions, and you</p> <p>5 will tell me the answers.</p> <p>6 The court reporter is recording everything that we</p> <p>7 say, and because she can only record our words, please</p> <p>8 be sure to answer each question with a verbal response.</p> <p>9 Please don't shake your head or nod your head.</p> <p>10 It is helpful if you let me finish my question</p> <p>11 before you answer, and I will try to not interrupt you</p> <p>12 as well.</p> <p>13 That's just so the court reporter can take down</p> <p>14 everything that we both say, since she can't record both</p> <p>15 of us at the same time.</p> <p>16 If at any time you don't understand a question,</p> <p>17 feel free to ask me to rephrase, and I will do my best</p> <p>18 to do so.</p> <p>19 Do you understand?</p> <p>20 A I understand.</p> <p>21 Q If you need a break at any time, please let me know, and</p> <p>22 we can take one.</p> <p>23 If there's a question pending, I may ask you to</p> <p>24 answer the question before we take a break, but</p> <p>25 otherwise I can accommodate you for any breaks.</p>	8	<p>1 it relates to being the CEO of Kois Center?</p> <p>2 A I oversee all the operations of the company, the</p> <p>3 financials of the company, scheduling of courses, all</p> <p>4 day-to-day operations.</p> <p>5 Q Do you oversee any employees?</p> <p>6 A Yes.</p> <p>7 Q How many?</p> <p>8 A 15.</p> <p>9 Q Generally what do those employees do?</p> <p>10 I don't need to know every task that every employee</p> <p>11 does, but I'm trying to get a sense for what work the</p> <p>12 employees that you oversee do.</p> <p>13 A I understand.</p> <p>14 Some of their jobs are directly related to when we</p> <p>15 have courses.</p> <p>16 They make sure the participants are comfortable,</p> <p>17 shelves are restocked, supplies are available, they find</p> <p>18 their seat, those kind of tasks.</p> <p>19 Other employees are responsible for the</p> <p>20 presentations that go up on the screen, graphics. We</p> <p>21 have a digital manual that they produce for every</p> <p>22 course.</p> <p>23 Q Thank you. That's helpful.</p> <p>24 Do you report to anyone at Kois Center?</p> <p>25 A No.</p>

9

1 **Q And does your father, Dr. John Kois, have any role at**
2 **Kois Center?**
3 A Yes. He is the main instructor.
4 **Q Is he an employee of Kois Center?**
5 A Yes.
6 **Q And then going back to Kois Buyers Group, is that a**
7 **company that exists?**
8 A Yes.
9 **Q Okay. What is Kois Buyers Group?**
10 A Kois Buyers Group is owned by Kois Tribal Management,
11 which is the official company.
12 **Q Did you say "Tribal Management"?**
13 A Yes.
14 **Q What is Kois Tribal Management?**
15 A It is a company that was formed to administer the Kois
16 Buyers Group, which is a collection of dentists
17 organized by myself and my father through the
18 participants at the Kois Center to get more favorable
19 pricing for supplies.
20 **Q And what role do you have at Kois Tribal Management?**
21 A I run that as well.
22 **Q Are you the CEO? Do you have a title?**
23 A The official title is "manager."
24 **Q And then what are your day-to-day responsibilities**
25 **related to Kois Tribal Management?**

10

1 A I interface with all vendors, all members, and manage
2 all the finances for the company.
3 I'm the sole employee.
4 **Q Thank you.**
5 **So you don't have any direct reports at Kois Tribal**
6 **Management?**
7 A I'm sorry?
8 **Q Do you have any direct reports at Kois Tribal**
9 **Management?**
10 A I'm sorry, I don't understand what you mean.
11 **Q Does anyone report to you at Kois Tribal Management?**
12 A No.
13 **Q So you said that you interface with all members and**
14 **vendors; is that correct?**
15 A Yes.
16 **Q What does interfacing with the vendors entail?**
17 A I'm responsible for establishing the relationships with
18 all vendors, so discussing any kind of discounts given
19 to the members of the group, making sure that they have
20 the contact information of the members, field any
21 complaints from the members to the vendors, vice versa.
22 **Q That's helpful. Thank you.**
23 **And then with regard to your interfacing with**
24 **members, what, generally, does that involve?**
25 A I make sure their memberships are current and telling

11

1 them what kind of discounts are available if they were a
2 member of the buyers group.
3 **Q Are you involved in recruiting new members?**
4 A Yes.
5 **Q When was Kois Tribal Management founded?**
6 A Approximately October 2014.
7 **Q And who founded it?**
8 A My father, Dr. John C. Kois.
9 **Q Okay. Have you worked for Kois Tribal Management since**
10 **it was founded in October 2014?**
11 A No.
12 **Q When did you start working at Kois Tribal Management?**
13 A October 2015.
14 **Q So from October 2014 to October 2015, who ran Kois**
15 **Tribal Management?**
16 A There was a consultant firm, ProCare Services.
17 **Q ProCare Services?**
18 A Yes.
19 **Q And ProCare Services ran Kois Tribal Management during**
20 **that time period?**
21 A They administered all of the vendor relationships, and
22 there was only, I think, one or two at the time, for
23 vendors.
24 Kois Center managed the sign-ups for members and
25 sent those contacts to ProCare.

12

1 I don't know how ProCare managed the list with the
2 vendor that they had.
3 **Q And was there any particular individual at ProCare**
4 **Services who was responsible for handling Kois Tribal**
5 **Management work?**
6 A That would be Qadeer Ahmed.
7 **Q Would you mind spelling his name, if you know?**
8 A Q-A-D-E-E-R A-H-M-E-D.
9 **Q Thank you.**
10 A There was another person, Michael. I don't know his
11 last name.
12 **Q Michael worked with Qadeer?**
13 A Yes.
14 Qadeer went by "Q" in correspondence.
15 **Q Thank you.**
16 **How did you come to get involved with Kois Tribal**
17 **Management in October 2015?**
18 A The buyers group was not successful. We didn't have a
19 lot of interest.
20 Burkhart was the only known supply company I was
21 familiar with that was a part of it, and they weren't
22 getting a lot of communication, and there wasn't a lot
23 of clarity of what the buyers group was doing in their
24 direction, so I stepped in and assumed responsibility.
25 **Q Okay. Did your father ask you to do that?**

13	<p>1 A Yes.</p> <p>2 Q Have you managed Kois Tribal Management ever since</p> <p>3 October 015?</p> <p>4 A Yes.</p> <p>5 Q With regard to the Kois Center, how long have you been</p> <p>6 the CEO of the Kois Center?</p> <p>7 A Since March 16th, 2015.</p> <p>8 Q Did you have any other roles at Kois Center before</p> <p>9 becoming CEO?</p> <p>10 A Yes.</p> <p>11 Q What were your roles?</p> <p>12 A I was a youth counselor in their annual symposium youth</p> <p>13 program.</p> <p>14 Q When were you a youth counselor in their annual</p> <p>15 symposium youth program? What years, approximately?</p> <p>16 A It is an annual event, the third week of July.</p> <p>17 I have done that for the past ten or 15 years.</p> <p>18 Q Before you became the CEO of Kois Center, did you have</p> <p>19 any jobs outside of the Kois companies?</p> <p>20 A Yes.</p> <p>21 Q What was your job?</p> <p>22 A I was a CFO of IsoFusion.</p> <p>23 Q What is IsoFusion?</p> <p>24 A It is a company that manages a collection of different</p> <p>25 businesses, data centers, broadband connectivity for</p>	15	<p>1 Q How long were you in that position?</p> <p>2 A About eight months.</p> <p>3 Q Were you able to save the company?</p> <p>4 A No.</p> <p>5 Q Why did it fail?</p> <p>6 A Competitors came out with similar products for free.</p> <p>7 Q And so what was the business model for Dentscape, it was</p> <p>8 surveys of dental office staff?</p> <p>9 A Yeah, so you give a survey on an iPad to a patient in</p> <p>10 the chair, and they could rate how good the staff was</p> <p>11 doing, front desk, hygienists, dental assistants, and</p> <p>12 then the doctor could know how good their staff was and</p> <p>13 if they needed to make a change somewhere with somebody.</p> <p>14 The staff didn't want to give a survey on</p> <p>15 themselves.</p> <p>16 Q That makes sense.</p> <p>17 A And then Salesforce offers it for free.</p> <p>18 Q Thank you.</p> <p>19 Do you regularly attend any dental industry</p> <p>20 conferences or trade shows?</p> <p>21 A What would be "regular"?</p> <p>22 Q Yearly or even occasionally.</p> <p>23 Why don't I rephrase the question.</p> <p>24 Do you ever attend dental industry conferences or</p> <p>25 trade shows?</p>
14	<p>1 businesses and homes, technical support, and</p> <p>2 construction.</p> <p>3 Q Okay. And how long were you the CEO for IsoFusion?</p> <p>4 A IsoFusion for about six months prior to me leaving.</p> <p>5 Prior to that, that company was merged between two</p> <p>6 companies to create IsoFusion, and I was part of Optic</p> <p>7 Fusion, and for that I was a CFO for 15 years.</p> <p>8 Q Thank you.</p> <p>9 Prior to becoming involved with the Kois Center and</p> <p>10 the Kois Tribal Management, did you have any jobs that</p> <p>11 involved the dental industry?</p> <p>12 A Besides the youth counselor position?</p> <p>13 Q Yes.</p> <p>14 A No.</p> <p>15 Q Okay.</p> <p>16 A Sorry, my dad had a company that failed, Dentscape, and</p> <p>17 the goal of that was to do surveys on office staff,</p> <p>18 dental office staff, and that was approximately 2013</p> <p>19 that my dad asked me to help him try to save that</p> <p>20 company.</p> <p>21 Q And did you help him work at Dentscape to try to save</p> <p>22 the company?</p> <p>23 A Yes.</p> <p>24 Q What was your role?</p> <p>25 A I was the acting CEO.</p>	16	<p>1 A Yes.</p> <p>2 Q How frequently?</p> <p>3 A I attend the American Academy of Restorative Dentistry</p> <p>4 annually as a guest, and occasionally the American</p> <p>5 Academy of Aesthetic Dentistry as a guest.</p> <p>6 I have been to other ones sporadically if there's a</p> <p>7 reason to go.</p> <p>8 Q What other ones have you been do?</p> <p>9 A The Chicago Midwinter.</p> <p>10 Q Any others?</p> <p>11 A The Washington State Dental Association.</p> <p>12 That's it for conferences.</p> <p>13 Q Okay. And you said that you attend others sporadically</p> <p>14 if there's a reason to go, and you mentioned the Chicago</p> <p>15 Midwinter.</p> <p>16 What was the reason you went to the Chicago</p> <p>17 Midwinter?</p> <p>18 A In February of 2017-- we have had now quite a few</p> <p>19 vendors that have signed up to be members of the buyers</p> <p>20 group, and I thought it was a good opportunity to see</p> <p>21 everybody at one place.</p> <p>22 I don't travel much for business.</p> <p>23 Q When you said "it's a good opportunity to see people in</p> <p>24 one place," did you mean members or what kind of people?</p> <p>25 A Vendors.</p>

17	<p>1 Q And what prompted you to go to the Washington State</p> <p>2 Dental Association conference?</p> <p>3 A About 16, 17 years ago I had a web design company, and</p> <p>4 we put a booth at the Washington State Dental</p> <p>5 Association meeting to try to solicit business.</p> <p>6 Q Have you been to the Washington State Dental Association</p> <p>7 meeting since that one time?</p> <p>8 A No.</p> <p>9 Q Okay. And for Chicago Midwinter, did you only attend</p> <p>10 that one time in February of this year, 2017?</p> <p>11 A Yes.</p> <p>12 Q Going back to your work at Kois Center and Kois Tribal</p> <p>13 Management, how much of your time is spent working on</p> <p>14 Kois Tribal Management work as opposed to Kois Center?</p> <p>15 A In terms of a week, a month--</p> <p>16 Q Sure.</p> <p>17 A week?</p> <p>18 A Depending if there are new vendors, which take more</p> <p>19 time.</p> <p>20 I would say in general five percent or less.</p> <p>21 Q So most of your time is doing Kois Center work?</p> <p>22 A Correct.</p> <p>23 Q I would like to ask you just a few questions about your</p> <p>24 father's background.</p> <p>25 A Yes.</p>	19	<p>1 A Dental assistant, front desk, patient comfort/patient</p> <p>2 awareness, somebody in-between.</p> <p>3 Q Thank you.</p> <p>4 What about for the Seattle office? Does he have</p> <p>5 any employees in Seattle?</p> <p>6 A No.</p> <p>7 Q What is the name of his dental practice?</p> <p>8 A John C. Kois, DMD, MSD.</p> <p>9 Q I think we talked a little bit about your father's role</p> <p>10 at Kois Center, but does Dr. Kois have any role at Kois</p> <p>11 Tribal Management?</p> <p>12 A No.</p> <p>13 Q Is his role at Kois Center limited to being an</p> <p>14 instructor?</p> <p>15 A Can you rephrase?</p> <p>16 Q What is your father's role at Kois Center?</p> <p>17 A He is a primary instructor and also is-- also</p> <p>18 participates in any major decisions for the company</p> <p>19 going forward.</p> <p>20 Q Does he have a formal title at Kois Center?</p> <p>21 A Director.</p> <p>22 Q Does he participate in any major decisions related to</p> <p>23 Kois Tribal Management?</p> <p>24 A No.</p> <p>25 Q How did Kois Tribal Management come to be formed, if you</p>
18	<p>1 Q If you know the answers, that would be great. If you</p> <p>2 don't, that's understandable.</p> <p>3 Is your father a practicing dentist?</p> <p>4 A Yes.</p> <p>5 Q How long has he been a dentist? Do you know?</p> <p>6 A Approximately 40 years.</p> <p>7 Q Does he have any specialties?</p> <p>8 A Yes.</p> <p>9 Q What are they?</p> <p>10 A He is a perio/prosthodontist.</p> <p>11 Q Does he have an office in Seattle?</p> <p>12 A Yes.</p> <p>13 Q Does he also have an office in Tacoma?</p> <p>14 A Yes.</p> <p>15 Q Does he have any employees at his dental practice?</p> <p>16 A Which office?</p> <p>17 Q Either one.</p> <p>18 A Yes.</p> <p>19 Q What about Tacoma? Does he have any employees there?</p> <p>20 A Yes. Tacoma is his primary practice.</p> <p>21 Q Okay. How many employees, do you know, approximately?</p> <p>22 A Three.</p> <p>23 Q Are any of them dentists?</p> <p>24 A No.</p> <p>25 Q What are their job duties, generally?</p>	20	<p>1 know?</p> <p>2 A I do.</p> <p>3 Through the courses at the center, we see a lot of</p> <p>4 dentists from all over, and we had heard complaints from</p> <p>5 dentists that they have a difficult time competing with</p> <p>6 larger companies that have the ability to purchase</p> <p>7 products at a cheaper price than them because of the</p> <p>8 bulk that they purchase.</p> <p>9 The idea was formed to get a group of dentists that</p> <p>10 are like-minded, people that come to the center, to get</p> <p>11 together and say, "This is a group of people that are</p> <p>12 buying products that are recommended at the center."</p> <p>13 My dad has products that he recommends, and he is</p> <p>14 not paid a sponsorship, so the products he recommends</p> <p>15 are usually popular with the dentists because they know</p> <p>16 it comes from something he actually likes instead of</p> <p>17 something he's paid for.</p> <p>18 The idea was to go to these companies and say, "The</p> <p>19 products that we are recommending are going to be</p> <p>20 popular. Would you consider giving a discount to people</p> <p>21 as part of our group for buying one of something, no</p> <p>22 quantity, no obligation, no exclusivity? We would like</p> <p>23 the best price for one of something."</p> <p>24 Q Okay. Thank you. That's very helpful.</p> <p>25 You said that through the Kois Center you have seen</p>

21	<p>1 dentists and heard complaints that they have a difficult</p> <p>2 time competing with larger companies.</p> <p>3 Are you referring to independent dentists?</p> <p>4 A Possibly.</p> <p>5 Some dentists have several practices.</p> <p>6 Some dentists are part of corporations that have</p> <p>7 hundreds of practices.</p> <p>8 A lot of those practices will direct their members</p> <p>9 to buy certain products, and then they have the buying</p> <p>10 power to negotiate directly with manufacturers or</p> <p>11 distribution companies in general for a larger commit on</p> <p>12 something, which we don't have the option to do.</p> <p>13 Q When you say "we," what do you mean?</p> <p>14 A The members of the buyers group, smaller dentists,</p> <p>15 independent practices.</p> <p>16 If you're buying one of something, you have</p> <p>17 significantly less buying power than if you're buying</p> <p>18 10,000.</p> <p>19 Q So the complaints that you heard from dentists, that</p> <p>20 they were having a difficult time competing with larger</p> <p>21 companies, those were complaints from the smaller,</p> <p>22 independent dentists?</p> <p>23 A Yes. They said their percentage of overhead for</p> <p>24 supplies was higher because their costs were higher per</p> <p>25 product than the bigger companies.</p>	23	<p>1 It's a separate company, and there's a separate</p> <p>2 membership fee to gain access to some of the discounts.</p> <p>3 Q Okay. Thank you.</p> <p>4 A You're welcome.</p> <p>5 Q So members of the Kois Buyers Group, they obtain</p> <p>6 discounts on supplies; is that right?</p> <p>7 A Correct.</p> <p>8 Q And are there any other services that Kois Buyers Group</p> <p>9 offers to its members?</p> <p>10 A Besides supplies?</p> <p>11 Q Yeah, besides discounts on supplies.</p> <p>12 A Any other discount advantages that people get are</p> <p>13 through vendors of the buyers group.</p> <p>14 The only product the buyers group has is a</p> <p>15 membership.</p> <p>16 Does that answer your question?</p> <p>17 Q Yes.</p> <p>18 I may ask some follow-up questions.</p> <p>19 Does Kois Buyers Group offer other services, like</p> <p>20 marketing or financing or website design for members of</p> <p>21 the Kois Buyers Group?</p> <p>22 A No.</p> <p>23 Q Does Kois Buyers Group offer member benefits or</p> <p>24 discounts relating to dental equipment or is it solely</p> <p>25 related to supplies?</p>
22	<p>1 Q And so what are the benefits of Kois Tribal Management</p> <p>2 membership?</p> <p>3 A Members of the Kois Buyers Group have an option--</p> <p>4 opportunity for discounted prices without buying in</p> <p>5 larger quantities.</p> <p>6 Q Okay. So that was a good clarification.</p> <p>7 The members are members of Kois Buyers Group, not</p> <p>8 Kois Tribal Management; is that correct?</p> <p>9 A Correct.</p> <p>10 Kois Tribal Management is the company that manages</p> <p>11 Kois Buyers Group.</p> <p>12 Q Okay. And do you have a sense or an understanding for</p> <p>13 why it's broken out like that, why Kois Tribal</p> <p>14 Management is the company that manages Kois Buyers</p> <p>15 Group?</p> <p>16 A Kois Buyers Group was something we renamed because there</p> <p>17 was a lot of confusion that Kois Tribal Management-- if</p> <p>18 I remember correctly, was because the people that come</p> <p>19 to the Kois Center consider themselves part of a tribe,</p> <p>20 which is-- as a group, everyone is in tight, close</p> <p>21 relationships, and the relationship between Kois Tribal</p> <p>22 Management and the tribe as a whole was a bit confusing,</p> <p>23 so we separated it to Kois Buyers Group to differentiate</p> <p>24 that these are-- this is a membership that's separate</p> <p>25 from the Kois Center, even though we have close ties.</p>	24	<p>1 A Some equipment, depending on the vendor, but that's</p> <p>2 vendor dependent.</p> <p>3 Q So some vendors might offer discounts on equipment?</p> <p>4 A Correct.</p> <p>5 Q And I think you have already mentioned this, but just to</p> <p>6 make sure I have it correct, must a dentist be a member</p> <p>7 of Kois Buyers Group to access the discounted pricing on</p> <p>8 merchandise, supplies, and equipment?</p> <p>9 A Yes.</p> <p>10 Q Is there a membership fee?</p> <p>11 A Yes.</p> <p>12 Q How much is it?</p> <p>13 A \$299 a year.</p> <p>14 Q And that's collected by Kois Buyers Group?</p> <p>15 A Yes.</p> <p>16 Q And what does Kois Buyers Group do with the membership</p> <p>17 fees?</p> <p>18 A That money pays for travel for myself to go to these</p> <p>19 conferences.</p> <p>20 We also pay the Kois Center for marketing.</p> <p>21 Also for website development.</p> <p>22 Q So paying the Kois Center for marketing, is that</p> <p>23 marketing the Kois Buyers Group through the Kois Center?</p> <p>24 A Yes.</p> <p>25 Q And then website development, is that just related to</p>

25	<p>1 the Kois Buyers Group website?</p> <p>2 A Correct.</p> <p>3 Q I think I know the answer to this, but who are Kois</p> <p>4 Buyers Group members, generally?</p> <p>5 A Generally-- well, they have to hit a certain threshold</p> <p>6 to be able to have access.</p> <p>7 You had to have come to at least one course at the</p> <p>8 Kois Center.</p> <p>9 To answer your question fully, buyers group members</p> <p>10 are dentists who have attended at least one course at</p> <p>11 the Kois Center and have signed up for membership.</p> <p>12 Q Are they typically dentists who own solo or private</p> <p>13 practices?</p> <p>14 A I can't tell you definitively.</p> <p>15 I could tell you what I think on average, if that's</p> <p>16 acceptable.</p> <p>17 Q That would be helpful, yes.</p> <p>18 A Generally, yes.</p> <p>19 Q Do you think there are any dentists from larger groups,</p> <p>20 like corporate accounts or dental service organizations,</p> <p>21 that are members?</p> <p>22 A Not that I've heard of.</p> <p>23 I think I've heard of a few that had more than one</p> <p>24 practice location, but not, you know, dozens or-- not</p> <p>25 the large, large.</p>	27	<p>1 A Yes.</p> <p>2 Q Does it also have members that are located in Canada?</p> <p>3 A Yes.</p> <p>4 Q Do you know which state has the most members, most Kois</p> <p>5 Buyers Group members?</p> <p>6 A I could guess.</p> <p>7 Q What would your guess be?</p> <p>8 A Washington.</p> <p>9 Q What is your guess based on?</p> <p>10 A Based on the number of members that have been to the</p> <p>11 Kois.</p> <p>12 There is more in Washington because our center is</p> <p>13 in Washington.</p> <p>14 Q Approximately how many members does the Kois Buyers</p> <p>15 Group have today?</p> <p>16 A Approximately 515.</p> <p>17 Q And then what about when you first started at Kois</p> <p>18 Buyers Group in October of 2015? Do you have a</p> <p>19 recollection of how many members, approximately--</p> <p>20 A It was approximately 170.</p> <p>21 Q So generally today I want to ask you questions about the</p> <p>22 Kois Buyers Group, so if I use the word "Kois," I am</p> <p>23 referring to Kois Buyers Group unless I state otherwise.</p> <p>24 A Okay.</p> <p>25 Q Do you understand?</p>
26	<p>1 Q Okay. Is there a word that you use for dentists that</p> <p>2 have more than one practice location?</p> <p>3 A No.</p> <p>4 Q Okay. There's not like a term in the industry that you</p> <p>5 would use for those types of dentists?</p> <p>6 A For more than one practice location?</p> <p>7 Q Yeah.</p> <p>8 A There's no industry standard word.</p> <p>9 There's terms that you can use as practices get</p> <p>10 bigger, but that has to do with the organizational</p> <p>11 structure of the practice.</p> <p>12 I could say that a practice-- somebody has multiple</p> <p>13 locations, would be about as standard as you get until</p> <p>14 you get to some of the very large groups.</p> <p>15 Q And what do you refer to the large groups as?</p> <p>16 A Those would be DSOs. That's a dental service</p> <p>17 organization, I believe is what they're calling</p> <p>18 themselves now.</p> <p>19 I am not familiar with what their business model</p> <p>20 is, but generally they have anything from-- from what</p> <p>21 I've seen, as small as three practices and as large as</p> <p>22 several hundred.</p> <p>23 Q Thank you.</p> <p>24 Does Kois Buyers Group have members throughout the</p> <p>25 country?</p>	28	<p>1 A Yes.</p> <p>2 Q Thank you.</p> <p>3 So it sounds like Kois's membership increased from</p> <p>4 170 to approximately 515 today, since you joined in</p> <p>5 2015.</p> <p>6 How did you get more members to join Kois?</p> <p>7 A We rebuilt the website-- created a website -- there</p> <p>8 wasn't one -- with information on the members.</p> <p>9 We developed an informational handout that the Kois</p> <p>10 Center has allowed us to provide to attendees at the</p> <p>11 courses.</p> <p>12 We do e-mail newsletters.</p> <p>13 We started adding additional vendors, besides just</p> <p>14 a dental supply company.</p> <p>15 Q You mentioned e-mail newsletters.</p> <p>16 A Yes.</p> <p>17 Q Are those e-mail newsletters sent to-- who are they sent</p> <p>18 to?</p> <p>19 A They are sent to members of the buyers group to announce</p> <p>20 new members.</p> <p>21 We also send updates through the Kois Center</p> <p>22 newsletters for updated new vendors and on Kois Center's</p> <p>23 social media.</p> <p>24 Q Are you responsible for sending these updates?</p> <p>25 A Yes.</p>

29	<p>1 Q Do you send the e-mail newsletters?</p> <p>2 A Yes.</p> <p>3 Q So how would you characterize Kois Buyers Group's growth</p> <p>4 in membership over the past two years or so?</p> <p>5 A Slow.</p> <p>6 Q Do you have an understanding of why it has been slow?</p> <p>7 A I could make an assumption.</p> <p>8 Q Sure.</p> <p>9 A That a lot of dentists have a rep that they're happy</p> <p>10 with, that is not part of the dental supply company that</p> <p>11 is part of the buyers group, and they would prefer not</p> <p>12 to change reps.</p> <p>13 It's more true on the East Coast where the dental</p> <p>14 supply company we use does not have a rep. Everything</p> <p>15 is online distribution.</p> <p>16 Also, some dentists are lazy.</p> <p>17 Q Okay. Let me take the last one first.</p> <p>18 How would a dentist being lazy relate to slow</p> <p>19 growth?</p> <p>20 A Sure.</p> <p>21 They're current members of some of the vendors in</p> <p>22 the buyers group, and by signing up, they could save not</p> <p>23 only their membership fee but additional income, a</p> <p>24 definite cost, but they just choose not to sign up.</p> <p>25 Q So which-- you said that the dental supply company that</p>	31	<p>1 Burkhart members who would have access to a rep?</p> <p>2 A Where there's full-service representation, there's</p> <p>3 usually a distribution warehouse where products can come</p> <p>4 same day, where that's not an option -- at no charge --</p> <p>5 for people without representation.</p> <p>6 Q Where does Burkhart have full-service representation?</p> <p>7 What part of the country?</p> <p>8 A Mostly the West Coast.</p> <p>9 I don't know how far east they go.</p> <p>10 Q For members that are in an area where Burkhart has</p> <p>11 full-service representation, those members would be</p> <p>12 likely to get supplies faster; is that correct?</p> <p>13 A If needed, faster, yes.</p> <p>14 I am not familiar with all the shipping options for</p> <p>15 Burkhart and if overnight shipping is available for</p> <p>16 people on the East Coast.</p> <p>17 It depends on if you need it faster or not.</p> <p>18 Usually two to three days with proper inventory</p> <p>19 management isn't an issue to get supplies in time.</p> <p>20 It's the model they set up.</p> <p>21 Q It's the model who set up?</p> <p>22 A Burkhart.</p> <p>23 The bigger piece is having the rep in the office.</p> <p>24 That is a detractor for people on the East Coast.</p> <p>25 Q Having a rep in the office is helpful for inventory</p>
30	<p>1 you use does not have a rep on the East Coast.</p> <p>2 Which company is that?</p> <p>3 A Burkhart.</p> <p>4 Q So do Kois Buyers Group members on the East Coast not</p> <p>5 have access to Burkhart supplies?</p> <p>6 A They do.</p> <p>7 It's through online purchasing.</p> <p>8 They don't have a rep that comes to their practice,</p> <p>9 and they have to wait for their products to be shipped.</p> <p>10 That is not the most popular option for a lot of</p> <p>11 dentists.</p> <p>12 Q Do you have an understanding of why?</p> <p>13 A Inventory management is a big piece.</p> <p>14 A lot of the reps of these companies will come in</p> <p>15 and manage the inventory for the dentist and tell them</p> <p>16 when products are low, when they need to order.</p> <p>17 If they don't have one of those reps, the staff has</p> <p>18 to do that.</p> <p>19 Depending on how good their staff is, that can</p> <p>20 either be a plus or a minus.</p> <p>21 Q And then you said that these members that have to do</p> <p>22 online purchasing, they have to wait for the products to</p> <p>23 be shipped?</p> <p>24 A Yes.</p> <p>25 Q Is that somehow different from the members-- the</p>	32	<p>1 management, you said?</p> <p>2 A Also just a personal relationship.</p> <p>3 Some of these practices have known their reps for</p> <p>4 many years, and cheaper price or not, they're not</p> <p>5 willing to move. There's a loyalty factor.</p> <p>6 Some of the other vendors that we have in the</p> <p>7 buyers group don't have reps, everything is direct</p> <p>8 online sales anyway, so that has helped increase the</p> <p>9 membership of the buyers group.</p> <p>10 Some members don't purchase at all from the supply</p> <p>11 company.</p> <p>12 Q How has that increased the membership of the buyers</p> <p>13 group?</p> <p>14 A Buyers are willing to purchase from vendors other than</p> <p>15 the dental supply company in the buyers group, so they</p> <p>16 don't have to change their dental supply company, which</p> <p>17 they didn't have to anyway, but they feel better about</p> <p>18 keeping a rep in their office, and there's no tension</p> <p>19 with having this other option, but they can buy from</p> <p>20 another vendor in the buyers group and still save.</p> <p>21 Q Okay. I see.</p> <p>22 Are the vendors you're talking about manufacturers</p> <p>23 instead of dental distributors?</p> <p>24 A Yes.</p> <p>25 Q So would you consider Burkhart to be a dental</p>

33	<p>1 distributor?</p> <p>2 A Yes.</p> <p>3 Q Or you mentioned "dental supply company."</p> <p>4 Is that another word for "Burkhart"?</p> <p>5 A Yes.</p> <p>6 Q So buyers or members could maintain their relationship</p> <p>7 with the rep in the office but still get a discount by</p> <p>8 purchasing through the Kois Buyers Group direct from the</p> <p>9 manufacturer?</p> <p>10 A From those particular vendors.</p> <p>11 They can also purchase from Burkhart and keep their</p> <p>12 Schein rep, their Patterson rep.</p> <p>13 There is no obligation to purchase everything from</p> <p>14 one person.</p> <p>15 They can purchase all or nothing from them or</p> <p>16 everything in-between.</p> <p>17 Q Understood.</p> <p>18 You said that having other vendors, like</p> <p>19 manufacturer vendors, has increased the membership of</p> <p>20 the buyers group?</p> <p>21 A Yes.</p> <p>22 Q And that's because those members might be able to keep</p> <p>23 their representative and not switch to Burkhart?</p> <p>24 A If Burkhart is the only company that's a vendor in the</p> <p>25 buyers group, and you have no interest in purchasing</p>	35	<p>1 Q Too high for dentists?</p> <p>2 A Yes.</p> <p>3 Q Did you hear complaints?</p> <p>4 A No.</p> <p>5 Q How did you know that the costs were too high?</p> <p>6 A Personal preference.</p> <p>7 Q Whose personal preference?</p> <p>8 A Mine.</p> <p>9 Q Okay.</p> <p>10 A My preference is to provide the dentists as much value</p> <p>11 as possible with charging the least amount of money to</p> <p>12 keep the program going.</p> <p>13 It is not intended to be a profitable business.</p> <p>14 Q If it's not intended to be a profitable business, why do</p> <p>15 you have Kois Buyers Group?</p> <p>16 A There's a cost associated with managing the buyers</p> <p>17 group. That's what the purpose of the charge is.</p> <p>18 Does that answer your question?</p> <p>19 Q Well, I guess, why did you or your father start Kois</p> <p>20 Buyers Group, if not to make profit?</p> <p>21 A Sure.</p> <p>22 It's a way to allow the smaller dentists an option</p> <p>23 to compete with the larger companies, by reducing some</p> <p>24 of their overhead.</p> <p>25 Q So it was basically just to help the smaller dentists?</p>
34	<p>1 anything from Burkhart, then there's not a lot of</p> <p>2 incentive to join the buyers group, but with the</p> <p>3 addition of additional companies, there's more incentive</p> <p>4 of becoming a member, even though you have no intention</p> <p>5 of purchasing from Burkhart.</p> <p>6 Q Thank you.</p> <p>7 Going back to Kois membership, has the \$299 per</p> <p>8 year fee, the fee structure we discussed earlier, has</p> <p>9 that been in place since Kois Buyers Group was founded,</p> <p>10 if you know?</p> <p>11 A No.</p> <p>12 Originally there was a tiered approach, before I</p> <p>13 came onboard, where dentists were charged monthly based</p> <p>14 on the amount of product that they purchased, so a</p> <p>15 percentage of their supplies.</p> <p>16 There were three tiers.</p> <p>17 I think it was-- the tallest, highest one was, I</p> <p>18 think, \$500 a month.</p> <p>19 The second tier was approximately \$300 a month.</p> <p>20 The final tier was approximately \$200 a month.</p> <p>21 Q And were you responsible for changing that membership</p> <p>22 fee structure?</p> <p>23 A Yes.</p> <p>24 Q Why did you change it?</p> <p>25 A The costs were too high.</p>	36	<p>1 A Yes.</p> <p>2 The overall goal is to save the dentists enough</p> <p>3 money, that it can pay for their education at the Kois</p> <p>4 Center.</p> <p>5 Q You mentioned that members are required to take one</p> <p>6 course at the Kois Center; is that right?</p> <p>7 A Correct.</p> <p>8 Q How much would a class typically run?</p> <p>9 A A typical three-day class is \$5,395.</p> <p>10 Q Is it your goal to save dentists at least that much,</p> <p>11 \$5,395, through the Kois Buyers Group?</p> <p>12 A It is my goal to save them the total cost of taking all</p> <p>13 the courses at the center, which is approximately</p> <p>14 50,000.</p> <p>15 Q Okay. Wow, so \$50,000 a year?</p> <p>16 A No. That's a one-time-- if you have taken all the</p> <p>17 courses, that is the total cost.</p> <p>18 If they were to save that over the lifetime, that</p> <p>19 would be great.</p> <p>20 If they can save that every year, that's even</p> <p>21 better.</p> <p>22 Q So has the \$299 fee been in place since October 2015</p> <p>23 when you started?</p> <p>24 A No. The fee was in place, but we didn't start charging</p> <p>25 people until March of 2016.</p>

37	<p>1 Q Why didn't you start charging people until then?</p> <p>2 A Because the program wasn't structured. There was a lot</p> <p>3 of confusion.</p> <p>4 Before that month, any charges were a deposit on</p> <p>5 future payments, so anyone that paid \$500 or \$300</p> <p>6 previously, we pushed all that forward.</p> <p>7 If they paid \$300, they paid for a year of</p> <p>8 membership, and they wouldn't be charged until the</p> <p>9 following year.</p> <p>10 If they paid 500, we rounded that to two years, and</p> <p>11 they didn't pay for two years.</p> <p>12 We have current members that haven't paid more than</p> <p>13 their deposit when they started in 2014.</p> <p>14 Q So you said prior to March 2016 you weren't charging</p> <p>15 people because the program wasn't structured.</p> <p>16 What did you mean by that?</p> <p>17 A Right.</p> <p>18 There wasn't a platform in place to charge them.</p> <p>19 Everything was manual.</p> <p>20 There was no easy place for information to be</p> <p>21 stored, no organized fashion of displaying the discounts</p> <p>22 from the particular vendors.</p> <p>23 It was a very disorganized group.</p> <p>24 Q But then as of March 2016, it became more organized?</p> <p>25 A By March 2016 we had a website in place that listed all</p>	39	<p>1 have in the program, complaints.</p> <p>2 Q And there's-- am I correct that there's no requirement</p> <p>3 to purchase through Kois Buyers Group vendors?</p> <p>4 A Correct.</p> <p>5 It's clearly stated on the website, that there's no</p> <p>6 obligation.</p> <p>7 It is also listed in all newsletters that I send</p> <p>8 out.</p> <p>9 Q And even if there's no requirement, are there any</p> <p>10 incentives to purchase through the Kois vendors?</p> <p>11 A There would be discounts.</p> <p>12 Q Purchasing through the Kois vendors gives access to</p> <p>13 discounts, correct?</p> <p>14 A Correct.</p> <p>15 Q And there are no requirements for the dentists to change</p> <p>16 their practice in any way?</p> <p>17 A No.</p> <p>18 Q And Kois Buyers Group does not take any ownership</p> <p>19 interest in the member dental practices, correct?</p> <p>20 A Correct.</p> <p>21 Q And does Kois Buyers Group play any role in management</p> <p>22 decisions of the member dental practices?</p> <p>23 A No.</p> <p>24 Q So as part of your job duties, do you interact with Kois</p> <p>25 Buyers Group members?</p>
38	<p>1 the vendors.</p> <p>2 It was also a place for members to sign up for the</p> <p>3 buyers group.</p> <p>4 The website also does renewals for memberships, to</p> <p>5 make things more efficient, which is why it takes so</p> <p>6 little time for me to administer currently.</p> <p>7 Q Thank you.</p> <p>8 Are Kois members required to sign an agreement with</p> <p>9 Kois Buyers Group to access the benefits?</p> <p>10 A No.</p> <p>11 Q So I have heard of something called the Tribal</p> <p>12 Membership Program.</p> <p>13 Do you know what that is?</p> <p>14 A Yes.</p> <p>15 Q What is that?</p> <p>16 A That is what was originally called-- that's what the</p> <p>17 buyers group was originally called.</p> <p>18 Q And are there rules that-- are there Tribal Membership</p> <p>19 Program rules that members must abide by?</p> <p>20 A They have to have taken at least one course.</p> <p>21 Q Other than that, no rules, that you are aware of?</p> <p>22 A No. No.</p> <p>23 They are free to tell anybody they like whatever</p> <p>24 discounts they get from any members.</p> <p>25 They're free to tell anybody about any success they</p>	40	<p>1 A Yes.</p> <p>2 Q How frequently?</p> <p>3 A It's at the members' discrepancy, so when they choose to</p> <p>4 reach out to me.</p> <p>5 That's an interaction I will have with them.</p> <p>6 Other than them engaging the conversation, the only</p> <p>7 interaction I have is the newsletters and the social</p> <p>8 media posts that we do.</p> <p>9 Q Okay. How frequently, approximately, do members reach</p> <p>10 out to you?</p> <p>11 A Two or three times a month.</p> <p>12 Q Two or three times a month you get a member reaching out</p> <p>13 to you, approximately?</p> <p>14 A Mm-hm.</p> <p>15 Q For what purpose do they typically reach out?</p> <p>16 A Some of them have questions about the buyers group that</p> <p>17 could be answered on the website. They just choose not</p> <p>18 to log in and find the answers themselves.</p> <p>19 Some of them are compliments of the success that</p> <p>20 they've had with the vendors of the group.</p> <p>21 Some of them are complaints from the vendors not</p> <p>22 giving them the discounts that they were supposed to</p> <p>23 receive.</p> <p>24 Q Do you usually receive communications from members via</p> <p>25 e-mail?</p>

	41		43
<p>1 A More than likely. 2 Occasionally phone calls. 3 Occasionally, if the people are at courses, they'll 4 tell me in-person. 5 Q Do you attend courses yourself? 6 A What do you mean by "attend"? 7 Q You said "occasionally if people are at courses, they 8 will tell me in-person," so I was wondering if you 9 generally attend courses. 10 A I don't have a seat in the room, so I am not a general 11 participant in the course, but at breaks I will come out 12 and introduce myself and socialize with the members, 13 make sure they're comfortable, they're enjoying their 14 course. 15 Q Am I correct that dentists can take courses at Kois 16 Center without being a member of the Kois Buyers Group? 17 A Yes. 18 Q How frequently does the Kois Center host courses? 19 A Approximately 30 courses taught specifically by Dr. Kois 20 per year, and approximately five additional adjunctive 21 courses per year. 22 Q And the courses can run more than one day? 23 A Correct. 24 Q Do they typically run more than one day? 25 A Yes.</p>	<p>1 It's voluntary, so it's whatever they feel 2 compelled to share their experience. 3 Q Do you have a sense for how much money that dentists, 4 who are members of Kois Buyers Group, are saving in a 5 year? 6 A It depends on vendors that they are saving the money on. 7 We ask vendors to give us an update in whether some 8 of the members are successful in saving money. 9 Q How frequently do you receive that update? 10 A Annually. 11 We ask all the vendors, and it is voluntary whether 12 or not they choose to send any updates on that. 13 Q For those that do send an update, how would they send 14 that to you? 15 A As an e-mail generally. 16 Q Do you recall receiving any e-mails from vendors about 17 how members have been saving money? 18 A Yeah. We received one last year and this year from 19 Burkhart. 20 We asked them to remove any identifiable 21 information from the customers, their name, practice, 22 and give us an idea of anybody that's a member of the 23 buyers group, pre and post membership, if they saved any 24 money. 25 Q What were the results?</p>		
<p>1 Q What do they typically run? 2 A Typically for a course, a core course, a Kois course, 3 there is either a three-day course or a five-day course. 4 Course days are anywhere from ten hours a day for a 5 three-day and 11 hours a day for a five-day. 6 Q Where are the Kois classes held? 7 A At the Kois Center in South Lake Union. 8 Q You mentioned that some dentists have reached out with 9 compliments about Kois Buyers Group? 10 A Yes. 11 Q What type of compliments have you heard? 12 A They're saving a lot of money. 13 Q Anything else? 14 A They love the website. 15 Q Anything else? 16 A They appreciate my efforts. 17 Q Okay. So you have heard from dentists that they've 18 saving a lot of money? 19 A Yeah. 20 Q How frequently do you hear that? 21 A Every-- it depends on the time of year. 22 I would say quarterly. 23 Q Quarterly you will hear from one dentist saying that 24 they're saving a lot of money? 25 A Sure.</p>	<p>1 Q What do they typically run? 2 A Typically for a course, a core course, a Kois course, 3 there is either a three-day course or a five-day course. 4 Course days are anywhere from ten hours a day for a 5 three-day and 11 hours a day for a five-day. 6 Q Where are the Kois classes held? 7 A At the Kois Center in South Lake Union. 8 Q You mentioned that some dentists have reached out with 9 compliments about Kois Buyers Group? 10 A Yes. 11 Q What type of compliments have you heard? 12 A They're saving a lot of money. 13 Q Anything else? 14 A They love the website. 15 Q Anything else? 16 A They appreciate my efforts. 17 Q Okay. So you have heard from dentists that they've 18 saving a lot of money? 19 A Yeah. 20 Q How frequently do you hear that? 21 A Every-- it depends on the time of year. 22 I would say quarterly. 23 Q Quarterly you will hear from one dentist saying that 24 they're saving a lot of money? 25 A Sure.</p>		

45	<p>1 Q Understood.</p> <p>2 MR. RYAN-LANG: I think we have been</p> <p>3 going a little over an hour.</p> <p>4 Do you need to take a break?</p> <p>5 MS. GOFF: This is a great time for a</p> <p>6 break, if you want.</p> <p>7 MR. RYAN-LANG: I would like to take</p> <p>8 a five-minute or ten-minute break.</p> <p>9 MS. GOFF: Sure.</p> <p>10 (Recess 9:56 to 10:07 a m.)</p> <p>11</p> <p>12 Q (By Ms. Goff) Mr. Kois, from your experience in the</p> <p>13 dental industry, do you believe that dentists are</p> <p>14 interested in joining Kois Buyers Group or groups like</p> <p>15 Kois Buyers Group?</p> <p>16 A I can't speak to what their interest is.</p> <p>17 I can tell you that there's a lot of buyers groups</p> <p>18 starting. We are certainly not the only ones. I'm sure</p> <p>19 there's a reason for that.</p> <p>20 If there's that many starting, there has to be an</p> <p>21 interest, but I can't tell you for sure.</p> <p>22 Q Thank you.</p> <p>23 Do you have any understanding of why dentists who</p> <p>24 are members of Kois Buyers Group join?</p> <p>25 A They join to get a discount on products, mostly products</p>	47	<p>1 Q Any sources.</p> <p>2 A I don't have any.</p> <p>3 Q Have you heard of any challenges in the dental market</p> <p>4 specifically related to private practice dentists?</p> <p>5 A The larger group practices are providing a lot of</p> <p>6 services that are cheaper, and they're trying to compete</p> <p>7 on price, and for a dentist that focuses with competing</p> <p>8 on value, that's a hard market to be in.</p> <p>9 Q And so when you're referring to the group practices</p> <p>10 providing services that are cheaper, what kind of</p> <p>11 services do you mean?</p> <p>12 A You know, a crown can be-- there's no set fee, unless</p> <p>13 you're dealing with an insurance company, in which case</p> <p>14 they set a fee for how much a crown is, but a dentist</p> <p>15 has a lot of latitude to decide on how much profit they</p> <p>16 want to make, whether there's a higher lab bill, a</p> <p>17 higher supply-- if you want to make a crown that looks</p> <p>18 exactly like the tooth they had or a brick in a person's</p> <p>19 mouth, that's the choice of the dentist and the patient</p> <p>20 to make an agreement on that.</p> <p>21 Q So the larger group practices are providing services to</p> <p>22 customers, the people that are getting dental work done</p> <p>23 that's cheaper?</p> <p>24 A Well, private practices do as well.</p> <p>25 A private practice can choose to use cheaper</p>
46	<p>1 that they already purchase.</p> <p>2 Q What do you mean by "products they already purchase"?</p> <p>3 A Many of the buyers group members have told me that to</p> <p>4 join the buyers group, the vendors that are part of the</p> <p>5 group are vendors that they buy from anyway, so to join</p> <p>6 and save money on products-- they don't have to do any</p> <p>7 product changes.</p> <p>8 You know, to buy a membership fee, you make that up</p> <p>9 on a couple of orders, depending on how big your orders</p> <p>10 are. It's a no-brainer for a lot of dentists. It's</p> <p>11 really simple.</p> <p>12 Q Has Kois Center or Kois Buyers Group done any analysis</p> <p>13 or study of whether dentists are interested in joining</p> <p>14 buyers groups?</p> <p>15 A No.</p> <p>16 Q Do you have any understanding of-- nevermind. Strike</p> <p>17 that.</p> <p>18 Do you have any understanding of whether in the</p> <p>19 last few years there has been increasing pressure on</p> <p>20 private dental practices' ability to thrive?</p> <p>21 A I don't understand what you mean by "thrive."</p> <p>22 Q Do you have any understanding of whether in the past few</p> <p>23 years there has been increasing pressure on private</p> <p>24 dental practices' ability to make money?</p> <p>25 A Pressure from where?</p>	48	<p>1 materials, do something quicker, cut some corners,</p> <p>2 reduce their own margins.</p> <p>3 That's a choice of the dental office.</p> <p>4 It's not necessarily a group practice.</p> <p>5 Q So are there any challenges related to individual</p> <p>6 dentists or small practices that you see, due to an</p> <p>7 increase in growth in large group practices?</p> <p>8 A I don't have anything concrete.</p> <p>9 I could tell you what dentists feel like, but I</p> <p>10 don't have anything to prove that, nothing to</p> <p>11 substantiate that.</p> <p>12 Q Well, what can you tell me about what dentists feel?</p> <p>13 A Dentists have told me that they feel like the group</p> <p>14 practices do dentistry differently, and their business</p> <p>15 model focuses more on revenue than patient care.</p> <p>16 Q Have dentists ever told you that the high price of</p> <p>17 supplies has been a challenge for them?</p> <p>18 A I don't understand what you mean by "challenge."</p> <p>19 Q Has been a-- have dentists ever informed you that the</p> <p>20 high price of supplies has led to lower profit margins</p> <p>21 for dentists?</p> <p>22 A I would say that "high" is a subjective term, so</p> <p>23 dentists always appreciate lower costs, but if the costs</p> <p>24 they're spending is the costs they've always spent, they</p> <p>25 don't have an idea of what "high" is until they've</p>

49	<p>1 saved.</p> <p>2 Q Okay. We talked a little bit about this earlier, but</p> <p>3 how do you attract new members to your Kois Buyers</p> <p>4 Group?</p> <p>5 A We send out social media updates through the Kois Center</p> <p>6 social media.</p> <p>7 We also provide an informational sheet for all</p> <p>8 participants at the Kois Center, that lists every vendor</p> <p>9 and all the discounts that are available, plus a</p> <p>10 reminder that there's no obligation, no exclusivity for</p> <p>11 any of the vendors.</p> <p>12 Q Any other ways to recruit new members?</p> <p>13 A The only other way we've had is word of mouth.</p> <p>14 Vendors are telling their-- the dentists that they</p> <p>15 work with, that they have an option to give them</p> <p>16 additional savings if they were a buyers group member.</p> <p>17 Q Do you have an understanding of whether vendors do tell</p> <p>18 dentists that they could get additional savings if they</p> <p>19 were a buyers group member?</p> <p>20 A No, I haven't heard anything from the vendor.</p> <p>21 They tell me their reps are saying that, but I have</p> <p>22 no way to substantiate that.</p> <p>23 Q Thank you.</p> <p>24 You mentioned that there are other competitor</p> <p>25 groups like Kois, is that right, other buyers group that</p>	51	<p>1 Ivoclar is a distributor. They're popular with</p> <p>2 labs.</p> <p>3 We don't have a lot of lab members.</p> <p>4 Ultradent.</p> <p>5 Both of those companies said no.</p> <p>6 Q What is Ultradent?</p> <p>7 A They're a direct-to-consumer supply company.</p> <p>8 Q Is it like an online ordering system?</p> <p>9 A I'm not familiar with how they do their sales.</p> <p>10 Q But you said they are a distributor, not a manufacturer?</p> <p>11 A I believe they're a manufacturer.</p> <p>12 Q Thank you.</p> <p>13 Have you ever heard from any members that they</p> <p>14 would like to see Schein, Patterson, or Benco as a</p> <p>15 member?</p> <p>16 A Yes.</p> <p>17 Q How frequently does that occur?</p> <p>18 A How many in a year?</p> <p>19 Q Sure.</p> <p>20 A Maybe one or two times a year total.</p> <p>21 Q What about for individuals that are on the East Coast,</p> <p>22 are those the individuals that are most likely to</p> <p>23 request a Schein, Patterson, or Benco?</p> <p>24 A I would say yes.</p> <p>25 Q And that's because Burkhart doesn't offer full services</p>
50	<p>1 are similar to Kois that are out there?</p> <p>2 A Yes.</p> <p>3 Q Can members be both a member of the Kois Buyers Group</p> <p>4 and another buyers group?</p> <p>5 A That's a question between-- if both buyers groups are</p> <p>6 accepting of that.</p> <p>7 The Kois Buyers Group is accepting-- you can be a</p> <p>8 member of multiple buyers groups. There's no problem,</p> <p>9 as far as we're concerned.</p> <p>10 Q Has Kois Buyers Group ever conducted any type of survey</p> <p>11 of its members?</p> <p>12 A Regarding any kind of survey?</p> <p>13 Q Yes.</p> <p>14 A No.</p> <p>15 Q Okay. So Kois has not surveyed members to determine</p> <p>16 whether-- like which types of distributors or</p> <p>17 manufacturers or vendors that they would like to see</p> <p>18 work with Kois Buyers Group?</p> <p>19 A There's been no surveys, but if people-- people will</p> <p>20 recommend vendors that they use, that they say they</p> <p>21 would appreciate in the buyers group.</p> <p>22 Q And what have you heard from members? What type of</p> <p>23 vendors do they recommend?</p> <p>24 A Lately there are vendors that we talk about in the</p> <p>25 courses but aren't members of the buyers group.</p>	52	<p>1 on the East Coast?</p> <p>2 A Correct.</p> <p>3 Q And we have talked about the full-service distributor.</p> <p>4 Would you contribute Burkhart to be a full-service</p> <p>5 distributor?</p> <p>6 A Depending on what location you are in.</p> <p>7 Q What is a full-service distributor?</p> <p>8 A They have a rep that can come to the office to do your</p> <p>9 sales.</p> <p>10 They have a closer distribution center.</p> <p>11 That the non full service, to my understanding, is</p> <p>12 Internet only or infrequent salesmen calls on the</p> <p>13 office.</p> <p>14 Q Thank you.</p> <p>15 Are Schein, Patterson, Benco, to your</p> <p>16 understanding, full-service distributors?</p> <p>17 A Yes.</p> <p>18 They have full-service reps. I am not familiar</p> <p>19 with what their territories are.</p> <p>20 Q Thank you.</p> <p>21 Has Kois Buyers Group ever done any research into</p> <p>22 why its members joined Kois Buyers Group?</p> <p>23 A Is that formal research like a survey or asking people,</p> <p>24 tabulating results--</p> <p>25 Q Either informal or formal research?</p>

53	<p>1 A Informal.</p> <p>2 We ask people.</p> <p>3 If they say they're a member and they're happy, we</p> <p>4 ask them why they decided to join the buyers group.</p> <p>5 Q And generally what have you heard?</p> <p>6 A For discounts.</p> <p>7 Q Any other reasons that members have given for why they</p> <p>8 have joined Kois Buyers Group?</p> <p>9 A Some of the early members, before my time, they joined</p> <p>10 for the hope of discounts.</p> <p>11 When the initial members first started, there was</p> <p>12 no vendors, just the hope of discounts to come, so they</p> <p>13 weren't joining for the discounts, they were joining for</p> <p>14 the hope of discounts.</p> <p>15 Q Thank you.</p> <p>16 Is it fair to say that obtaining discounts on</p> <p>17 dental supplies is an important part of Kois buyers</p> <p>18 group's offering to dentists?</p> <p>19 A Yes.</p> <p>20 Q And do you have a sense for what percentage of supplies</p> <p>21 a typical member buys through Kois Buyers Group?</p> <p>22 A No.</p> <p>23 Q Kois has not done-- you or Kois has not done any</p> <p>24 analysis on that?</p> <p>25 A No.</p>	55	<p>1 Q Did you give an idea of how much members saved at that</p> <p>2 symposium?</p> <p>3 A Yes.</p> <p>4 Q And what did you say?</p> <p>5 A I only received an update from Burkhart, with three</p> <p>6 members, and the average savings was approximately</p> <p>7 \$23,000.</p> <p>8 Q Do you have an understanding of how Burkhart chose those</p> <p>9 three members to provide to you?</p> <p>10 A Yes. They were ones that they had invoices from the</p> <p>11 practice from pre membership to post membership, and</p> <p>12 they could compare the prices.</p> <p>13 Q Okay. So do you have any understanding of whether that</p> <p>14 23,000 is a norm or is typical for buying group members,</p> <p>15 for Kois Buyers Group members?</p> <p>16 A I don't have an understanding because I don't know how</p> <p>17 much they were spending with a previous company and what</p> <p>18 they're spending now, if it's consolidated, if it's</p> <p>19 something else.</p> <p>20 Q Okay. What is the annual symposium that you mentioned?</p> <p>21 A It is our large course every year.</p> <p>22 The Kois Center does a course providing all the</p> <p>23 updated scientific research from the last 12 months, and</p> <p>24 it's presented to-- anyone who has been a graduate, has</p> <p>25 gone through the program, is invited to come back.</p>
54	<p>1 Q And do you have an understanding of whether dentists</p> <p>2 save money by joining Kois Buyers Group?</p> <p>3 A Yes.</p> <p>4 Q And what is your understanding?</p> <p>5 A The dentists tell me they're saving money through the</p> <p>6 Kois Buyers Group, the dental members.</p> <p>7 Q Do you know what percentage of members save money by</p> <p>8 joining Kois Buyers Group?</p> <p>9 A No.</p> <p>10 We don't know what people purchase, if anything,</p> <p>11 from the vendors.</p> <p>12 Q Okay. So you don't receive any reports from your</p> <p>13 vendors regarding how much the members are purchasing?</p> <p>14 A We have, and it's voluntary.</p> <p>15 Q Voluntary from the vendors?</p> <p>16 A Correct.</p> <p>17 Q Is that something that Kois seeks out?</p> <p>18 A We request.</p> <p>19 Q And why do you request that information?</p> <p>20 A At our annual symposium in July, I give an update, to</p> <p>21 anyone who is in the room, of how the buyers group is</p> <p>22 doing, and I like to give people an idea of how much</p> <p>23 members have saved.</p> <p>24 Q Have you had your annual symposium this July?</p> <p>25 A Yes.</p>	56	<p>1 It's generally about 400 people.</p> <p>2 Q I have a document I would like to show you.</p> <p>3 (Exhibit No. 325 marked</p> <p>4 for identification.)</p> <p>5</p> <p>6 Q (By Ms. Goff) I am handing you what's been marked as</p> <p>7 Exhibit No. 325.</p> <p>8 This is a document that was produced to us by your</p> <p>9 counsel.</p> <p>10 A Yes.</p> <p>11 Q It says, "Johnny's Buyers Group business tip of the</p> <p>12 month," and then there's some text.</p> <p>13 Do you see that?</p> <p>14 A Yes.</p> <p>15 Q Is this something that comes from you?</p> <p>16 A Yes.</p> <p>17 Q What is it?</p> <p>18 A So we started in October of last year trying to do a</p> <p>19 monthly tip for people, to give them, that was hopefully</p> <p>20 more than just an announcement of a new vendor or just a</p> <p>21 discount, something they could take back to their</p> <p>22 practice to use to save money, and we did them through,</p> <p>23 I believe, May of this year.</p> <p>24 The one you have in front-- that you have given me</p> <p>25 as Exhibit No. 325, is the tip that we did for February.</p>

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- 1 **Q How do you know that?**
 2 A Because I know what month this went out.
 3 **Q So these tips of the month ran from approximately**
 4 **October 2016 to May of 2017?**
 5 A Correct.
 6 **Q And was it an e-mail that you sent out?**
 7 A Yes, it was an e-mail and also posted on our social
 8 media, for the Kois Center social media.
 9 **Q It just went to members?**
 10 A This was a public e-mail.
 11 The e-mail went to members, but anyone with access
 12 to Internet and our social media could view this.
 13 **Q And who has access to Kois social media?**
 14 A I do.
 15 **Q Who could access it?**
 16 **Do you keep your social media--**
 17 A Open, totally open.
 18 **Q What social media are you referring to?**
 19 A Facebook, Twitter, LinkedIn, Tumblr, WordPress,
 20 Instagram.
 21 **Q So do these monthly tips go out on all of those social**
 22 **media mediums you just mentioned?**
 23 A Yes.
 24 **Q Thank you.**
 25 **Okay. So it says here, "The Kois Buyers Group was**

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- 1 **created with one purpose, get the best price possible**
 2 **for the individual dentist without having to wait for a**
 3 **'trade show' price or purchase in bulk."**
 4 **Do you see that?**
 5 A Yes.
 6 **Q Is that the Kois Buyers Group's sort of purpose?**
 7 A Yes.
 8 **Q Is there a mission statement somewhere for the Kois**
 9 **Buyers Group?**
 10 A Yes. It's on the Kois Buyers Group website.
 11 **Q Are the words that are in here, that I just read, the**
 12 **mission?**
 13 A Mostly.
 14 The mission statement is this and a reminder that
 15 there's no obligation, no exclusivity to purchase from
 16 any of the vendors.
 17 **Q Okay. Thank you.**
 18 A You're welcome.
 19 **Q Moving down to the next paragraph, it says, "We ask the**
 20 **participating vendors to look at our membership and**
 21 **purchasing power as a whole and take into consideration**
 22 **when offering discounts to our members."**
 23 **Is that how Kois Buyers Group sort of pitches**
 24 **itself to vendors?**
 25 A Are you asking how we open the dialogue for a vendor to

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- 1 become a member of the buyers group?
 2 **Q Yes.**
 3 A We have had requests from people to ask vendors to be
 4 part of the buyers group, and we tell them that "These
 5 are products that my dad uses in his lectures, that he
 6 likes and promotes, and that we don't receive any
 7 compensation for that, but this is a big group of people
 8 that are purchasing. Would you consider offering them a
 9 discount?"
 10 We ask them to provide-- if they do a special sale
 11 at a trade show or something at a bulk price, "If you
 12 could take that price for one product and offer that as
 13 the discount for every day to the members."
 14 **Q Thank you.**
 15 **The next sentence says, "Because of your**
 16 **participation, Burkhart will begin to roll out lower**
 17 **pricing starting February 1st, 2017."**
 18 **Do you see that?**
 19 A Yes.
 20 **Q What does that mean?**
 21 **I am particularly interested in understanding how**
 22 **the participation of the members relates to Burkhart's**
 23 **rolling out lower pricing.**
 24 A So Burkhart tracks how much supply is purchased from the
 25 buyers group.

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- 1 When I negotiated the contract in December of 2015,
 2 the current agreement, they said that if there wasn't a
 3 certain amount of participation, that they would be
 4 increasing their pricing to members, and I asked them to
 5 then lower them if there was a certain purchasing amount
 6 by the members.
 7 In January they told me that those numbers had been
 8 met for the previous year, and that they would be
 9 lowering their margins by two percent, and that was a
 10 figure that they came up to on their own.
 11 That's not two percent from the previous year's
 12 pricing. That was two percent based on their current
 13 year pricing.
 14 If they raise their pricing three percent and then
 15 lowered it two percent, it is still a one percent
 16 increase.
 17 **Q Do you know what the numbers that were met-- strike**
 18 **that.**
 19 **You mentioned that the members bought a certain**
 20 **number of product from Burkhart?**
 21 A Dollar amount?
 22 I don't know number of products.
 23 **Q Okay. Is it a dollar amount that was met?**
 24 A Yes.
 25 **Q Okay. And what was the dollar amount?**

15 (Pages 57 to 60)

61	<p>1 A I believe it was approximately 6 million.</p> <p>2 Q And then the next-- two sentences below that it says,</p> <p>3 "Our members are seeing real results. Some have saved</p> <p>4 well over \$50,000."</p> <p>5 Do you see that?</p> <p>6 A Yes.</p> <p>7 Q And so is this indicating that some individual dentists</p> <p>8 saved over \$50,000 in discounts?</p> <p>9 A Yes.</p> <p>10 Q And how do you know that some individual--</p> <p>11 A We had a dentist that came to us in a course and said</p> <p>12 they saved over \$50,000.</p> <p>13 Q Was that just one dentist?</p> <p>14 A Yes.</p> <p>15 Q Have you heard of any other dentists that have saved</p> <p>16 that much money?</p> <p>17 A No.</p> <p>18 Q And did you have an understanding of whether that</p> <p>19 dentist saved the \$50,000 over a period of a year or was</p> <p>20 it total since he had been a member?</p> <p>21 A He didn't give a timeline.</p> <p>22 Q And then in the next sentence it says, "This means that</p> <p>23 a Kois Buyers Group member can fund his or her entire</p> <p>24 Kois Center curriculum by using whatever products he or</p> <p>25 she chooses."</p>	63	<p>1 Buyers Group member saves on dental supplies in a given</p> <p>2 year?</p> <p>3 A It depends on what they were buying before.</p> <p>4 If you are buying additional products, it is</p> <p>5 difficult to account for the supply savings.</p> <p>6 I can tell you what dentists have told me that</p> <p>7 they've saved, and it is a percentage based on their</p> <p>8 practice, so on average dentists tell me they save</p> <p>9 somewhere between three and 15 percent.</p> <p>10 Some dentists watch that more closely than others.</p> <p>11 Q They watch the savings-- they track the savings?</p> <p>12 A Their inventory in general.</p> <p>13 A lot of dentists don't have a handle on how much</p> <p>14 they spend in any category, including supplies.</p> <p>15 Q For those that you have spoken to, on average, those</p> <p>16 dentists have told you they've saved three to 15</p> <p>17 percent?</p> <p>18 A On average-- on average the dentists have told me</p> <p>19 they've saved, and those dentists, on average, are three</p> <p>20 to 15 percent.</p> <p>21 There are dentists that tell me they're a buyers</p> <p>22 group member and they're not saving any money.</p> <p>23 Q Do you do anything to help those members save more</p> <p>24 money?</p> <p>25 A No. If they're unhappy with their membership, I offer</p>
62	<p>1 Is this a reference to the Kois Center curriculum</p> <p>2 being somewhere around \$50,000?</p> <p>3 A Yes.</p> <p>4 Q Thank you.</p> <p>5 We talked today several times about how Kois Buyers</p> <p>6 Group does not have an obligation to members to purchase</p> <p>7 from the vendors, Kois Buyers Group vendors.</p> <p>8 A Yes.</p> <p>9 Q Why is it that Kois Buyers Group does not require</p> <p>10 members to purchase from certain vendors?</p> <p>11 A We don't have a financial interest in any company.</p> <p>12 The Kois Center is wholly independent from</p> <p>13 sponsorships.</p> <p>14 To direct people to a particular vendor would--</p> <p>15 real or not, should make the appearance that had</p> <p>16 changed, that we did have some sort of financial gain</p> <p>17 from any of these companies, and we don't.</p> <p>18 It was an effort to stay as impartial as possible.</p> <p>19 Q Okay.</p> <p>20 A We also don't have a strong opinion either way, where</p> <p>21 people purchase their products.</p> <p>22 We make a recommendation, but ultimately they can</p> <p>23 choose whatever they'd like.</p> <p>24 Q I think you may have already answered this, but do you</p> <p>25 have any understanding of the average amount that a Kois</p>	64	<p>1 them a refund.</p> <p>2 Q How frequently does that happen?</p> <p>3 A It's happened once.</p> <p>4 Q I would like to talk a little bit about Kois Buyers</p> <p>5 Group vendors.</p> <p>6 A Sure.</p> <p>7 Q So how does a vendor relationship start?</p> <p>8 A Generally I'll reach out to a sales rep, and they will</p> <p>9 reach out to their headquarters and get me in touch with</p> <p>10 the right person.</p> <p>11 Q And how do you decide which sales reps or which</p> <p>12 companies to reach out to?</p> <p>13 A They're products that are generally listed in the</p> <p>14 courses taught by the Kois Center, so if my dad has a</p> <p>15 vendor that he likes, he will ask me to see about if</p> <p>16 they're interested in joining the buyers group as a</p> <p>17 vendor.</p> <p>18 We also have members that will recommend products.</p> <p>19 Q Okay. And what types of vendors does Kois Buyers Group</p> <p>20 approach?</p> <p>21 Is it distributors and manufacturers?</p> <p>22 A Manufacturers mostly.</p> <p>23 Q Is Burkhardt the only distributor that Kois Buyers Group</p> <p>24 has a relationship with?</p> <p>25 A No.</p>

65	<p>1 Q What other ones?</p> <p>2 A Sinclair Dental.</p> <p>3 Q Any others?</p> <p>4 A No.</p> <p>5 Q Is Sinclair Dental a Canadian-based company?</p> <p>6 A Yes.</p> <p>7 Q Do they only sell in Canada?</p> <p>8 A Yes.</p> <p>9 Q So within the United States the only distributor that</p> <p>10 Kois Buyers Group has a relationship with is Burkhart?</p> <p>11 A As a distribution company, yes.</p> <p>12 Brasseler is a manufacturer, but they were</p> <p>13 purchased by Schein.</p> <p>14 Q Do you know how many manufacturer vendors KoIs Buyers</p> <p>15 Group has?</p> <p>16 A Manufacturer only?</p> <p>17 Q Yes.</p> <p>18 A I believe it's 28.</p> <p>19 Q Is there a list of those vendors somewhere?</p> <p>20 A Yes.</p> <p>21 Q Where?</p> <p>22 A It is on an informational handout that we give to all of</p> <p>23 the participants to the courses.</p> <p>24 It is also on the KoIs Buyers Group website.</p> <p>25 Q Is the KoIs Buyers Group website open to anyone or is</p>	67	<p>1 A We can ask them to negotiate with them a better price</p> <p>2 for our members, but ultimately we don't have any</p> <p>3 control over that.</p> <p>4 3M doesn't distribute directly to our members.</p> <p>5 Q Have you reached out to 3M about distributing directly</p> <p>6 to members?</p> <p>7 A Yes.</p> <p>8 Q And did they say that they were not interested?</p> <p>9 A Yes.</p> <p>10 Q Did they give you a reason?</p> <p>11 A They said that the members already purchase from 3M--</p> <p>12 well, they already purchase 3M products, so a discount</p> <p>13 is just eroding their profits.</p> <p>14 Q Have you heard that sentiment from any other vendors</p> <p>15 that you have reached out to?</p> <p>16 A We heard that-- for any vendors? It's always a concern.</p> <p>17 It has never been the main reason to not be-- to</p> <p>18 not participate in the buyers group.</p> <p>19 Q But it was the main reason for 3M?</p> <p>20 A Correct.</p> <p>21 That was what Burkhart told us. I didn't have any</p> <p>22 direct communication with 3M stating as such.</p> <p>23 Q Thank you.</p> <p>24 For the 28 manufacturers that KoIs Buyers Group</p> <p>25 partners with, did you have direct negotiations with all</p>
66	<p>1 there a password--</p> <p>2 A There's a password.</p> <p>3 Q So it is really only for members to log in?</p> <p>4 A You're able to log on without being a KoIs Buyers Group</p> <p>5 member and see all the available discounts.</p> <p>6 Your membership is dictated on if you've been-- if</p> <p>7 you qualify to become a member, so if you've been to at</p> <p>8 least one course, you have access to the vendors.</p> <p>9 Q So I am not going to ask you to list all 28</p> <p>10 manufacturers, but are there a top-five manufacturers</p> <p>11 that KoIs Buyers Group works with?</p> <p>12 A What would qualify as the top five?</p> <p>13 Q I don't know, the top five that you understand dentists</p> <p>14 purchase from.</p> <p>15 A That would be Burkhart, Sinclair, Brasseler, Straumann,</p> <p>16 Dentsply, and I'm going to guess CariFree.</p> <p>17 Q Does KoIs Buyers Group work with 3M?</p> <p>18 A Through Burkhart.</p> <p>19 Q Okay. So what is the distinction you are making there?</p> <p>20 A We can't purchase directly through 3M, so if it's a</p> <p>21 product that is distributed through Burkhart, Burkhart</p> <p>22 negotiates the discounts.</p> <p>23 We don't have any opinion, any kind of a sway in</p> <p>24 those conversations.</p> <p>25 Q Okay.</p>	68	<p>1 of those?</p> <p>2 A Yes.</p> <p>3 Q And does KoIs Buyers Group have some sort of contract</p> <p>4 with those 28 manufacturers?</p> <p>5 A No.</p> <p>6 Q Okay. What is the relationship then?</p> <p>7 A We asked them to provide a discount to the members.</p> <p>8 We sent them a member list, and they agreed to give</p> <p>9 a discount to the members.</p> <p>10 Q But it is an informal agreement?</p> <p>11 A Yes.</p> <p>12 Q In other words, it is not written in a contract?</p> <p>13 A Correct.</p> <p>14 Q But your agreement with Burkhart and Sinclair, that is</p> <p>15 written in a contract, correct?</p> <p>16 A Correct. They are the only two contracts that we have.</p> <p>17 Q And why did you do a contract with Burkhart and Sinclair</p> <p>18 but not with the other manufacturers?</p> <p>19 A It is vendor preference.</p> <p>20 Q So "vendor" meaning the Burkhart and Sinclair?</p> <p>21 A Correct.</p> <p>22 Q And did-- do Burkhart and Sinclair have any type of</p> <p>23 relationship with each other?</p> <p>24 A What kind of relationship?</p> <p>25 Q I don't know.</p>

69	71
<p>1 I just wasn't sure if they were related at all,</p> <p>2 like maybe subsidiaries or something like that.</p> <p>3 A No.</p> <p>4 Q Does Kois have any minimum discounts that it requires</p> <p>5 vendors to offer in order to be a part of the Kois</p> <p>6 Buyers Group program?</p> <p>7 A No.</p> <p>8 Q Would you consider Kois Buyers Group to be selective</p> <p>9 about what vendor partners they work with?</p> <p>10 A Yes.</p> <p>11 Q And you mentioned earlier that it's based on your</p> <p>12 father's sort of recommendations on products?</p> <p>13 A Partly.</p> <p>14 Q What else is it based on?</p> <p>15 A Member requests.</p> <p>16 We have some vendors that aren't listed in any of</p> <p>17 our lectures, but the members have requested they be</p> <p>18 available as a vendor in the discount.</p> <p>19 We also try not to have too many of the same type</p> <p>20 of vendor in the same-- as a part of it.</p> <p>21 Q What do you mean by "the same type of vendor"?</p> <p>22 A We have four different implant companies as part of it.</p> <p>23 If the implant company knows they're competing</p> <p>24 against nobody, they have more incentive to give a</p> <p>25 larger discount. They have less of an incentive when</p>	<p>1 more expensive than a vendor in the buyers group is not</p> <p>2 an incentive for them to switch to a different implant</p> <p>3 company.</p> <p>4 For implants in particular, it was better to have</p> <p>5 more options for people, because we're finding that</p> <p>6 implants is a very inflexible product. People will take</p> <p>7 a discount on the product they use, but they won't</p> <p>8 necessarily move to another brand, is our experience.</p> <p>9 Q Okay. Are there any other types of supplies that fall</p> <p>10 into that category?</p> <p>11 A Sure.</p> <p>12 Some people have personal preferences, some people</p> <p>13 don't.</p> <p>14 Some people like a particular glove brand, some</p> <p>15 people don't.</p> <p>16 Some people have a type.</p> <p>17 Some people have a certain type of composite that</p> <p>18 they like.</p> <p>19 It's really dependent on what the dentist likes.</p> <p>20 Q Other than implants, which you said was a pretty</p> <p>21 inflexible product, have you come across any products</p> <p>22 that you've noted are particularly inflexible?</p> <p>23 A My dad recommends 3M's Unicem, which is a bonding agent.</p> <p>24 His opinion is it's a superior product, so people</p> <p>25 are willing to spend more for that product than a</p>
70	72
<p>1 they have more than one competitor giving a discount.</p> <p>2 We also elect for less of a discount and more</p> <p>3 vendors, if possible.</p> <p>4 Q And why is that?</p> <p>5 A Give people more options.</p> <p>6 Q Have dentists expressed an interest in having more</p> <p>7 options?</p> <p>8 A In what category?</p> <p>9 Q Any category.</p> <p>10 A Not for particular supplies. They just ask for</p> <p>11 particular products, so that would be a personal</p> <p>12 preference.</p> <p>13 Q When you say they ask for particular products, are you</p> <p>14 referring to a particular brand name?</p> <p>15 A Occasionally.</p> <p>16 Q What else could it be?</p> <p>17 A That's all I've heard.</p> <p>18 Q Okay. So you said "not for particular supplies,"</p> <p>19 meaning like gloves or-- I don't know, fillings or</p> <p>20 something like that, but for particular products,</p> <p>21 meaning brands--</p> <p>22 A Some people-- right.</p> <p>23 We have, for instance-- implants, people have a</p> <p>24 very strong opinion one way or the other which implant</p> <p>25 they choose to use, and whether or not that vendor is</p>	<p>1 competitor, which is why people continue to buy a 3M</p> <p>2 product, even though they can get cheaper versions, as</p> <p>3 far as our members are concerned.</p> <p>4 Q Does Kois Buyers Group impose any requirements on the</p> <p>5 vendors that it partners with?</p> <p>6 A Yes.</p> <p>7 Q What?</p> <p>8 A We ask that they not e-mail too frequently with</p> <p>9 discounts for the members.</p> <p>10 We ask them to limit their e-mail newsletters to</p> <p>11 quarterly.</p> <p>12 Q Any other requirements?</p> <p>13 A We ask them to tell people that they're part of the Kois</p> <p>14 Buyers Group and not a member-- and not related to the</p> <p>15 Kois Center.</p> <p>16 Q Any other requirements?</p> <p>17 A No.</p> <p>18 Q And why do you ask vendors to tell people that they're</p> <p>19 part of Kois Buyers Group and not related to Kois</p> <p>20 Center?</p> <p>21 A We don't want people to get the opinion that there is a</p> <p>22 sponsorship with the Kois Center.</p> <p>23 It is a separate company, and we like to make that</p> <p>24 very clear.</p> <p>25 Q And why is that?</p>

73	<p>1 A Because having no sponsorship and be part of a</p> <p>2 continuing education center is not-- is not something</p> <p>3 that happens a lot, so that uniqueness gives us a lot of</p> <p>4 traction in any opinions we give as far as what products</p> <p>5 are.</p> <p>6 The idea that we are paid for those endorsements</p> <p>7 cheapens the opinions.</p> <p>8 Q Does Kois Buyers Group advertise or let members know</p> <p>9 that they're not paid for the endorsements?</p> <p>10 A The Kois Buyers Group doesn't.</p> <p>11 The Kois Center does.</p> <p>12 Q Okay. What are the range of discounts that the</p> <p>13 manufacturer vendor partners provide?</p> <p>14 A I think the smallest is approximately three percent and</p> <p>15 the highest is approximately 40 percent.</p> <p>16 Q And so if there's no formal contract with the</p> <p>17 manufacturers, are the discounts written down somewhere,</p> <p>18 the discounts that are offered to Kois Buyers Group</p> <p>19 members?</p> <p>20 A We ask the vendors to fill out an informational sheet</p> <p>21 that lists what kind of discount they intend to give to</p> <p>22 the members, but we have no way of tracking that.</p> <p>23 Q And when you said you have no way of tracking that, do</p> <p>24 you mean you have no way of confirming or verifying if</p> <p>25 those are the discounts that are actually offered to</p>	75	<p>1 Q Any other ways?</p> <p>2 A No.</p> <p>3 Q Is Kois interested in partnering with a variety of</p> <p>4 vendors?</p> <p>5 In other words, is it important to have as many</p> <p>6 vendors as possible?</p> <p>7 A No.</p> <p>8 Q Has Kois reached out to any distributors, other than</p> <p>9 Burkhart?</p> <p>10 A To be a part of the buyers group?</p> <p>11 Q Yes.</p> <p>12 A Yes.</p> <p>13 Q Which ones?</p> <p>14 A I reached out to Benco in 2015 when I was negotiating</p> <p>15 the agreement with Burkhart.</p> <p>16 Q Have you reached out to any other distributors?</p> <p>17 A Schein Canada reached out to us last year and expressed</p> <p>18 an interest in being part of the-- of being a</p> <p>19 distributor in Canada.</p> <p>20 Q Okay. Has Schein in the United States reached out to</p> <p>21 Kois Buyers Group about being a distributor?</p> <p>22 A No.</p> <p>23 Q Have you or anyone else from Kois Buyers Group reached</p> <p>24 out to Schein?</p> <p>25 A No.</p>
74	<p>1 members?</p> <p>2 A Correct.</p> <p>3 Q Is there any requirement that vendors offer discounts on</p> <p>4 all of their products as opposed to just certain</p> <p>5 products?</p> <p>6 A No.</p> <p>7 Q Do some vendors only offer discounts on certain</p> <p>8 products?</p> <p>9 A Yes.</p> <p>10 Q Are there any that offer discounts across the board on</p> <p>11 all the products that they sell?</p> <p>12 A Yes.</p> <p>13 Q So you mentioned that the first step in bringing in a</p> <p>14 new vendor partner is to reach out to a sales rep.</p> <p>15 Do you usually reach out via e-mail or on the</p> <p>16 telephone?</p> <p>17 A Either, whatever contact I have.</p> <p>18 That's usually all I have for contacting the</p> <p>19 company, and usually that's the first place to start.</p> <p>20 Q E-mail, that is?</p> <p>21 A Or phone.</p> <p>22 Q Okay.</p> <p>23 A Many times it's phone.</p> <p>24 Q How do you determine which vendors to reach out to?</p> <p>25 A Recommendations from either Dr. Kois or current members.</p>	76	<p>1 Q And what about prior to your arrival at Kois Buyers</p> <p>2 Group, do you have an understanding of whether there</p> <p>3 were any conversations between Kois Buyers Group and</p> <p>4 Schein?</p> <p>5 A My understanding is that Schein was approached prior to</p> <p>6 the agreement with Burkhart, and their response was no.</p> <p>7 Q How did you come to have that understanding?</p> <p>8 A That's what my dad told me, based on a conversation with</p> <p>9 Qadeer.</p> <p>10 Q Did your dad tell you whether Schein gave a reason for</p> <p>11 saying no?</p> <p>12 A No.</p> <p>13 Q So do you have any understanding of why Schein said no?</p> <p>14 A No.</p> <p>15 Q What about Patterson? Did Kois Buyers Group ever</p> <p>16 approach Patterson to be a distributor?</p> <p>17 A Neither of these would have been the Kois Buyers Group.</p> <p>18 This was ProCare Services that did the negotiation, and</p> <p>19 it is my understanding that they also reached out to</p> <p>20 Patterson.</p> <p>21 Q Okay. Just to be clear, ProCare Services was doing the</p> <p>22 negotiation on behalf of Kois Buyers Group, correct?</p> <p>23 A Correct.</p> <p>24 Q And what is your understanding of what Patterson's</p> <p>25 response was?</p>

77	<p>1 A My understanding is their response was no.</p> <p>2 Q How did you come to have that understanding?</p> <p>3 A Burkhart was already a vendor, and my understanding was</p> <p>4 Burkhart was a member because Schein and Patterson both</p> <p>5 said no.</p> <p>6 Q Did your father tell you that or--</p> <p>7 A Yes.</p> <p>8 Q Okay. Was your father interested in having Schein</p> <p>9 and/or Patterson be a vendor?</p> <p>10 A I don't understand by "interested" what you mean.</p> <p>11 Q Did your father direct ProCare Services to reach out to</p> <p>12 Schein and Patterson?</p> <p>13 A No.</p> <p>14 Q And what is your understanding of why ProCare Services</p> <p>15 approached Schein and Patterson?</p> <p>16 A I don't have an understanding of why they started with</p> <p>17 them.</p> <p>18 Q And how do you know that your father did not direct</p> <p>19 ProCare Services to reach out to Schein and Patterson?</p> <p>20 A I don't have any opinion-- I can give you an opinion of</p> <p>21 why, if that's--</p> <p>22 Q Sure.</p> <p>23 A We have a better relationship with Burkhart, so if the</p> <p>24 direction came from us, we would have started with</p> <p>25 Burkhart.</p>	79	<p>1 potential vendor partner, what's the next step?</p> <p>2 A I create a page on the website with their information.</p> <p>3 Q What is the next step after that?</p> <p>4 A We add them to the newsletter.</p> <p>5 Q Anything else after that?</p> <p>6 A Then we add them to a mailing list that gets an updated</p> <p>7 member list every time a new member gets added.</p> <p>8 Q Okay.</p> <p>9 A Finally, we announce on our social media and newsletters</p> <p>10 that we have an additional vendor.</p> <p>11 Q Thank you.</p> <p>12 Any other steps in that process?</p> <p>13 A No.</p> <p>14 Q So for the mailing list, you provide a list of all</p> <p>15 members to the vendors?</p> <p>16 A All vendors.</p> <p>17 Q Okay. And then you send updates whenever there's a new</p> <p>18 member?</p> <p>19 A No. We send a full list every time.</p> <p>20 The full list has a notice for any that have been</p> <p>21 added or been removed, but it's still the full list.</p> <p>22 Q Okay. And then how do the members themselves receive</p> <p>23 the discounts?</p> <p>24 A They contact the vendors.</p> <p>25 Q And then they place an order with the vendor?</p>
78	<p>1 Q When you say "we have a better relationship," what do</p> <p>2 you mean by "we"?</p> <p>3 A The Kois Center, and my dad, for his practice, purchase</p> <p>4 from Benco and Schein, Patterson, and Burkhart.</p> <p>5 We just happened to purchase a majority of our</p> <p>6 supplies from Burkhart.</p> <p>7 We like our relationship with Burkhart better. We</p> <p>8 like the way that-- we hear comments from our members.</p> <p>9 They're always positive for Burkhart reps.</p> <p>10 Q So other than Burkhart, Benco, and Schein Canada, have</p> <p>11 you personally spoken to any distributors about becoming</p> <p>12 a part of Kois Buyers Group?</p> <p>13 A Larrs is a Canadian company.</p> <p>14 Q Any others?</p> <p>15 A No.</p> <p>16 Q After you reach out to a vendor, what is the next step</p> <p>17 in the process?</p> <p>18 A We wait to receive their information back.</p> <p>19 We ask them for their discount, some information</p> <p>20 about their company, and how somebody could contact</p> <p>21 them.</p> <p>22 Q Does Kois Buyers Group ever have a bidding process,</p> <p>23 whereby it solicits bids from potential vendor partners?</p> <p>24 A No.</p> <p>25 Q And then once you receive the information back from the</p>	80	<p>1 A Correct.</p> <p>2 Q And have you been the person in charge of maintaining</p> <p>3 relationships with vendor partners since you started at</p> <p>4 Kois Buyers Group?</p> <p>5 A Yes.</p> <p>6 Q So how do the manufacturer discounts work?</p> <p>7 Is it correct that a member would place an order</p> <p>8 directly with that manufacturer?</p> <p>9 A Which manufacturer?</p> <p>10 Q Any manufacturer.</p> <p>11 A Some manufacturers are offering exclusive discounts</p> <p>12 through Burkhart as their distribution company, so it</p> <p>13 depends on which manufacturer you are referring to.</p> <p>14 Q Okay. Do you have an understanding of-- well, let me</p> <p>15 clarify.</p> <p>16 The manufacturer vendors that you've negotiated the</p> <p>17 discounts for, are those manufacturer vendors offering</p> <p>18 discounts for orders placed directly with them?</p> <p>19 A Yes.</p> <p>20 Q Okay. And are any of those manufacturers also</p> <p>21 manufacturers that Burkhart distributes?</p> <p>22 A I don't know.</p> <p>23 Q Are you aware of whether a member might get two</p> <p>24 discounts for the same order, one for ordering through</p> <p>25 Burkhart and then the same order get a discount from the</p>

81	<p>1 manufacturer?</p> <p>2 A I'm not aware of any that work out like that.</p> <p>3 Q For the manufacturers that offer discounts through</p> <p>4 Burkhart, do you have an understanding of which</p> <p>5 manufacturers those are?</p> <p>6 A Some.</p> <p>7 I didn't negotiate any of the discounts if the</p> <p>8 manufacturers offered it direct through Burkhart.</p> <p>9 Q Which ones are you aware of?</p> <p>10 A Hu-Friedy.</p> <p>11 Q How do you spell that?</p> <p>12 A H-U-F-R-I-E-D-Y.</p> <p>13 Q Any others?</p> <p>14 A Halyard, H-A-L-Y-A-R-D, Butler, Coltene, and I think</p> <p>15 DMG.</p> <p>16 Q Thank you.</p> <p>17 Just to be clear, none of the ones you just</p> <p>18 mentioned are vendors that offer discounts that you have</p> <p>19 negotiated?</p> <p>20 A Correct.</p> <p>21 MS. GOFF: Is now an okay time for</p> <p>22 another break?</p> <p>23 MR. RYAN-LANG: It has been about an</p> <p>24 hour. Sure.</p> <p>25 (Recess 11:06 to 11:14 a.m.)</p>	83	<p>1 have a company that does Internet connection that</p> <p>2 offered a discount, and one that does merchant services.</p> <p>3 Q What are merchant services?</p> <p>4 A Credit card transactions, discount on the fee that the</p> <p>5 practice would receive for processing credit cards.</p> <p>6 Q Just for the record, what is the Internet connection</p> <p>7 company called?</p> <p>8 A IsoFusion.</p> <p>9 Q And what about the merchant service--</p> <p>10 A True Data Merchant Services.</p> <p>11 Q How did Kois Buyers Group come to partner with those two</p> <p>12 companies?</p> <p>13 A IsoFusion is a company I used to work for.</p> <p>14 True Data Merchant Services is a credit card</p> <p>15 company we were interested in partnering with the Kois</p> <p>16 Center for processing our credit cards.</p> <p>17 Q Do you have an understanding of whether the members take</p> <p>18 advantage of the discounts for those two types of</p> <p>19 companies, Internet connection and merchant services?</p> <p>20 A My understanding is that some have for the credit card,</p> <p>21 the merchant services.</p> <p>22 I don't have an exact figure.</p> <p>23 And I don't have an exact figure for the IsoFusion.</p> <p>24 My understanding is the number is zero.</p> <p>25 Q Are there any other vendor partners or types of vendor</p>
82	<p>1 Q (By Ms. Goff) So going back to our discussion about</p> <p>2 manufacturer vendor partners, are there advantages to</p> <p>3 partners with a manufacturer directly as opposed to a</p> <p>4 dental supply company or a dental distributor?</p> <p>5 A Yes.</p> <p>6 Q What are the advantages?</p> <p>7 A They don't go through a distribution company.</p> <p>8 Q The manufacturers don't go through--</p> <p>9 A Correct.</p> <p>10 Q And why is that an advantage?</p> <p>11 A We wouldn't be able to get any discount with them unless</p> <p>12 we deal with them directly.</p> <p>13 Q Oh, the manufacturers don't sell through a distribution</p> <p>14 company?</p> <p>15 A Correct.</p> <p>16 Q I see.</p> <p>17 So the manufacturers that you have agreements with</p> <p>18 do not sell through distribution companies?</p> <p>19 A That's my understanding.</p> <p>20 Q We have talked about the two distribution companies that</p> <p>21 Kois Buyers Group partners with, and then you mentioned</p> <p>22 there are 28 manufacturers.</p> <p>23 Are there any other categories of vendor partners</p> <p>24 that Kois partners with?</p> <p>25 A I guess another category would be like a service, so we</p>	84	<p>1 partners that we have not discussed today?</p> <p>2 A No.</p> <p>3 Q And why does Kois Buyers Group partner with dental</p> <p>4 distributors, like Burkhart and Sinclair, as opposed to</p> <p>5 partnering solely with manufacturers?</p> <p>6 A There are a number of products that distributors sell</p> <p>7 that are not available unless you go through a</p> <p>8 distribution company.</p> <p>9 Q When you say "products," what do you mean?</p> <p>10 A Products that are used in the dental practice, anything</p> <p>11 from disposables, such as gauze, to equipment, mixing</p> <p>12 bowls, et cetera.</p> <p>13 Q Okay.</p> <p>14 A The primary source of supplies for a dental practice is</p> <p>15 typically a supply company, a distribution company.</p> <p>16 Q Thank you.</p> <p>17 Does Kois Buyers Group charge a fee to its vendor</p> <p>18 partners?</p> <p>19 A No.</p> <p>20 Q Do you know-- nevermind. Strike that.</p> <p>21 Does Kois Buyers Group publish anywhere the</p> <p>22 specific prices that it offers to members on dental</p> <p>23 supplies or the specific discounts?</p> <p>24 A We don't offer any supplies.</p> <p>25 Q What do you mean by that?</p>

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<p>1 A Kois Buyers Group does not offer any supplies. 2 All supplies and purchases are through the vendors. 3 Q So does Kois Buyers Group publish the specific discounts 4 that the vendors offer to Kois Buyers Group members? 5 A Yes. 6 Q Where are those published? 7 A Those are on the website and the informational handout 8 that is given to all participants at the Kois Center. 9 Q And are all of the discounts located on the website and 10 the informational handout? 11 A Yes. 12 Q How frequently do you update the website and 13 informational handout? 14 A There are two ways that we update it: When a vendor asks 15 us to update their information, and if we have a new 16 vendor. 17 Q How frequently do the discounts that are offered by 18 vendors change? 19 A It is vendor dependent. 20 Sometimes some are annually. Some are not at all. 21 (Exhibit No. 326 marked 22 for identification.) 23 24 Q (By Ms. Goff) The court reporter handed you what has 25 been marked as Exhibit No. 326, which is a document with</p>	<p>1 The other one was gauze, and that was a bit more 2 sporadic. 3 Gauze comes in lots of different sizes, quantities. 4 Q And then how did you determine the savings identified 5 here, "If you only purchased gloves from Burkhart, you 6 would save anywhere from \$450 to over \$3,000 annually"? 7 A We took all the manufacturers that Burkhart supplies for 8 gloves and asked Burkhart what the buyers group savings 9 would be times by 425, and that gave us the range of 10 products. 11 Q And then there's a chart below the paragraph listing a 12 series of manufacturers, categories, and member savings. 13 Do you see that? 14 A Yes. 15 Q Are these discounts offered by Burkhart? 16 A Yes. 17 If you notice, the last line in the paragraph, 18 "Burkhart has negotiated exclusive pricing from the 19 following companies," that was on their behalf. They 20 did that. 21 Q Are any of these manufacturers, manufacturers that you 22 have negotiated a contract with or an agreement with? 23 A No. 24 Q Where did you get the information for this chart? 25 A Burkhart.</p>
<p>1 the Bates stamp Kois 001607. 2 Do you recognize this document? 3 A Yes. 4 Q What is it? 5 A This is one of the buyers group tips that I sent out. 6 Q Do you have an idea or sense of when you sent this out? 7 A Within the last six months. 8 Q So in the second paragraph it states, "The average 9 practice purchases about 425 boxes of gloves annually 10 from a dental supply company. 11 "If you only purchased gloves from Burkhart, our 12 U.S. dental supply company partner, you would save 13 anywhere from \$450 to over \$3,000 annually, depending on 14 the brand." 15 How did you obtain the information, and let's take 16 the first sentence first, about the average practice 17 purchasing about 425 boxes of gloves annually? 18 A We asked Burkhart what the average number of glove 19 purchases was for our members. 20 Q Did you ask Burkhart about the average number of 21 purchases for any other types of products? 22 A For this newsletter? No. 23 Q Or just in general, have you ever? 24 A Yes, in relation to what came out for this document, we 25 looked at a couple different products.</p>	<p>1 Q And so does Kois Buyers Group provide these member 2 savings to-- sorry. Strike that. 3 Does Kois Buyers Group provide the information to 4 its members about the member savings that are offered by 5 Burkhart? 6 A Yes. 7 Q And is that included in the informational pamphlet and 8 the e-mails? 9 A No. This would be the specific information that we 10 provided, this particular notice. 11 Q Okay. So in the member savings category it says, "Up 12 to," and then there's a variety of percentages. 13 Do you have an understanding of what "up to" means 14 in this context? 15 A Yes. 16 Q What? 17 A There are several different products listed in the 18 categories. 19 They range in discounts, so the member savings is 20 up to, as in the large discount available from that list 21 of categories. 22 Q Other than in this buyers group tip of the month, are 23 the discounts for Burkhart printed somewhere for Kois 24 members to see? 25 A If they are, they're through Burkhart directly.</p>

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<p>1 Q With regard to Burkhart, do you know the range of</p> <p>2 discounts that Kois members receive from Burkhart?</p> <p>3 A A discount compared to what?</p> <p>4 Q What do you mean by that?</p> <p>5 A A discount compared to a different supply company is</p> <p>6 different than discounts compared to nonmembers that are</p> <p>7 also Burkhart supply customers.</p> <p>8 Q Okay. Understood.</p> <p>9 Do you know the range of discounts that Kois</p> <p>10 members receive from Burkhart as compared to Burkhart's</p> <p>11 nonmember prices?</p> <p>12 A No, and I'll explain.</p> <p>13 Burkhart has their own savings guarantees for</p> <p>14 members, so they offer different pricing based on</p> <p>15 quantities that people provide.</p> <p>16 I don't know where those thresholds are.</p> <p>17 Q Okay. Do you have an understanding of the discounts</p> <p>18 compared to different supply companies?</p> <p>19 A My understanding is that these discounts are lower.</p> <p>20 I don't know how much per product.</p> <p>21 Burkhart isn't descriptive in how they do their</p> <p>22 discounts.</p> <p>23 Q What do you mean the discounts are lower?</p> <p>24 A That's what I've heard from members when they say</p> <p>25 they're purchasing products from Burkhart and the</p>	<p>1 A Correct.</p> <p>2 Q Approximately when, in the year, do you receive it?</p> <p>3 A Approximately June, July.</p> <p>4 Q For how many customers does Burkhart typically provide</p> <p>5 this information?</p> <p>6 A It's at their discretion.</p> <p>7 This past year was three.</p> <p>8 Q Those were the three that you provided at your annual</p> <p>9 conference?</p> <p>10 A Yes.</p> <p>11 Q Do you recall receiving one last June, July?</p> <p>12 A Yes.</p> <p>13 Q Do you recall how many members?</p> <p>14 A I think it was five or six.</p> <p>15 Q So you are not able to provide me sort of the range of</p> <p>16 discounts that Kois Buyers Group members receive from</p> <p>17 Burkhart as compared to Burkhart's own pricing, its</p> <p>18 typical pricing?</p> <p>19 A No.</p> <p>20 Q Who do you think would know the answer to that?</p> <p>21 A That would be Burkhart.</p> <p>22 Q The contract with Burkhart doesn't call for any</p> <p>23 specific-- the contract between Kois Buyers Group and</p> <p>24 Burkhart doesn't call for any specific discount to be</p> <p>25 offered?</p>
<p>90</p> <p>1 pricing is cheaper than other distribution companies.</p> <p>2 I don't know if-- what the basis is of "cheaper."</p> <p>3 I don't have the numbers in front of me.</p> <p>4 Q So you have heard from members that Burkhart pricing is</p> <p>5 cheaper than other distribution companies?</p> <p>6 A Some, depending on where they are.</p> <p>7 It is my understanding that all distribution</p> <p>8 companies have different pricing based on where they are</p> <p>9 nationally.</p> <p>10 The only concrete evidence I get is on our annual</p> <p>11 requests where we can get-- when they tell us</p> <p>12 specifically, "This particular member saved a certain</p> <p>13 amount of money," and they'll tell us-- sometimes they</p> <p>14 tell us who that vendor-- who they came from, or if it</p> <p>15 was themselves.</p> <p>16 Q So Burkhart will tell you specifically how much a</p> <p>17 particular member saved?</p> <p>18 A No. They will tell us-- we don't have any personal</p> <p>19 identification information about that person.</p> <p>20 They will tell us a customer has saved a certain</p> <p>21 amount of money over the last year.</p> <p>22 Q Okay. Right.</p> <p>23 How frequently-- you said you receive those yearly,</p> <p>24 these updates from Burkhart, about how much customers</p> <p>25 have saved?</p>	<p>92</p> <p>1 A It does.</p> <p>2 It calls for a specific margin that they assess on</p> <p>3 their product, but I don't know what it is normally and</p> <p>4 what it is in their particular other buying programs.</p> <p>5 Q So how did you come up with that margin?</p> <p>6 A They came up with it, and they told us this was a good</p> <p>7 deal compared to their other programs.</p> <p>8 Q Did you do anything to verify whether it was a good</p> <p>9 deal?</p> <p>10 A Once it was in place, I asked members if they thought</p> <p>11 the pricing was better, and they said yes.</p> <p>12 Q And would those have been members that previously</p> <p>13 purchased from Burkhart not through the Kois Buyers</p> <p>14 Group?</p> <p>15 A Correct.</p> <p>16 Q But do you have a sense for the range of discounts that</p> <p>17 Kois Buyers Group members received from manufacturers?</p> <p>18 A For the ones that are vendors for the buyers group or</p> <p>19 manufacturers through the distribution company?</p> <p>20 Q No, manufacturers that are vendors for the buyers group.</p> <p>21 A Sort of.</p> <p>22 I know what the percentage is based off of</p> <p>23 suggested retail pricing.</p> <p>24 I don't know if suggested retail pricing is the</p> <p>25 pricing they offer to practices in general.</p>

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- 1 **Q What is the range of discount off the suggested retail**
 2 **pricing?**
 3 A The range is between three percent and 40 percent.
 4 **Q Do Kois Buyers Group members ever receive-- strike that.**
 5 **Are you aware of the term "manufacturer rebates"?**
 6 A Yes.
 7 **Q What does that mean to you?**
 8 A It means a rebate that is given from the manufacturer to
 9 the purchaser after the purchase is made.
 10 **Q Do Kois Buyers Group members receive any manufacturer**
 11 **rebates as part of their membership with Kois?**
 12 A Directly?
 13 **Q Yes, directly.**
 14 A Specifically the manufacturers that are direct to
 15 customer or distributors-- through the distribution
 16 company.
 17 **Q Let's start with specifically the manufacturers that are**
 18 **direct to customer.**
 19 A I don't know. My understanding is no.
 20 **Q What is your understanding based on?**
 21 A We didn't negotiate any special rebates with them.
 22 We asked for no rebates, just a discount upfront.
 23 If they negotiated something separate with the
 24 practice, that was not something I was privy to.
 25 **Q Why did you ask for just a discount upfront instead of**

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- 1 **rebates?**
 2 A Because people aren't always good about mailing in their
 3 rebates.
 4 **Q You thought it would be better for the dentist to get**
 5 **the discount upfront?**
 6 A Yes.
 7 **Q And then do you have an understanding of whether Kois**
 8 **Buyers Group members receive manufacturer rebates**
 9 **through distributors?**
 10 A Some.
 11 I don't have a complete understanding.
 12 It is my understanding that through distribution
 13 companies, manufacturers offer rebates, and depending on
 14 the supply company, those rebates are processed for the
 15 practice-- by Burkhart on behalf of the practice.
 16 In this case, Burkhart processes the rebates.
 17 With other distribution companies, it's my
 18 understanding that they don't always do that on behalf
 19 of the practice.
 20 **Q But for Burkhart, which is your Kois Buyers Group vendor**
 21 **in the United States, you understand that Burkhart**
 22 **processes the rebates on behalf of the members?**
 23 A I don't know if they do that for all members or just
 24 full-service members or supply-side guarantee members.
 25 They have different levels, and I don't know if

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- 1 it's offered for all of them.
 2 **Q Do you have an understanding of whether there are some**
 3 **manufacturers that offer manufacturer rebates to Kois**
 4 **Buyers Group members who purchase through Burkhart?**
 5 A I believe there are.
 6 I don't know which ones.
 7 My understanding is based on the fact that rebates
 8 happen with lots of different manufacturers, and we have
 9 a lot of different manufacturers that distribute through
 10 the-- Burkhart.
 11 **Q But you are not aware of any specific ones?**
 12 A No.
 13 **Q Does Kois maintain any records reflecting whether its**
 14 **members are purchasing from Kois Buyers Group members or**
 15 **not?**
 16 A Only the information submitted from the vendors.
 17 **Q And that's the yearly information that you get?**
 18 A The annual request.
 19 **Q Does Kois Buyers Group advertise to-- strike that.**
 20 **Does Kois Buyers Group advertise, other than to the**
 21 **Kois Center dentists, not just that come to the Kois**
 22 **Center?**
 23 A Yes.
 24 **Q Where?**
 25 A On the Internet.

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- 1 **Q Where on the Internet?**
 2 A Google.
 3 The Kois Buyers Group does AdWords.
 4 **Q What do you mean by "AdWords"?**
 5 A So if people type in particular phrases, certain sites
 6 can come up on the site to be clicked on.
 7 We tried-- they are no longer running.
 8 We were, last year, doing them for "discount buying
 9 group."
 10 **Q So if a person searched "discount buying group"--**
 11 **A Or "dental discount buying group," our hope was that it**
 12 **would come up and they would find our website and either**
 13 **be a Kois member or be motivated enough to sign up for a**
 14 **class to be a Kois Buyers Group member.**
 15 **Q And how come you stopped doing that?**
 16 A I changed credit cards, and they stopped producing the
 17 ads when we stopped putting money on the account.
 18 **Q Did you find this type of advertisement was useful?**
 19 A No.
 20 **Q It was not?**
 21 A Useful for traffic, not for sign-ups.
 22 **Q Do you have any goals in terms of how many members you**
 23 **would like to get to sign up in the next year?**
 24 A I would like to see a couple hundred sign-ups.
 25 My overall goal is a thousand members as part of

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<p>1 the buyers group.</p> <p>2 Q Do you think if you get up to a thousand members, then</p> <p>3 you would be able to negotiate more-- better discounts</p> <p>4 for the members?</p> <p>5 A With the current layout of the buyers group now, no.</p> <p>6 Q Why not?</p> <p>7 A Because we don't obligate any of the members to purchase</p> <p>8 particular products.</p> <p>9 We don't have any real buying power.</p> <p>10 We have nothing forward looking. Everything is</p> <p>11 past-- previous purchases.</p> <p>12 I don't believe that manufacturers would be-- or</p> <p>13 any kind of vendor would be willing to discount further</p> <p>14 without any hope of any additional purchases going</p> <p>15 forward.</p> <p>16 Q So does Kois Buyers Group guarantee any level of</p> <p>17 purchases for any particular vendor?</p> <p>18 A No.</p> <p>19 Q Other than membership fees from customers, does Kois</p> <p>20 Buyers Group bring in money in any other way?</p> <p>21 A No.</p> <p>22 Q You mentioned earlier that there are competitors to Kois</p> <p>23 Buyers Group popping up.</p> <p>24 Is that true?</p> <p>25 A Yes.</p>	<p>1 DSOs?</p> <p>2 A I don't know the motivation behind the other dental</p> <p>3 supply buyers groups.</p> <p>4 I can just tell you what motivated us.</p> <p>5 Q And what motivated Kois--</p> <p>6 A To provide better pricing for the smaller practices.</p> <p>7 Q And was it, in part, to be able to allow the smaller</p> <p>8 practices to compete with the larger DSOs?</p> <p>9 A Not specifically DSOs, just other practices.</p> <p>10 Q Larger group practices that are able to negotiate</p> <p>11 discounts based on volume?</p> <p>12 A I'm sure that's a byproduct, but anybody, any other</p> <p>13 practice is potentially a competitor to them, so if it</p> <p>14 gives them an advantage, like getting a deeper discount,</p> <p>15 it doesn't necessarily have to be another group</p> <p>16 practice.</p> <p>17 Q But the focus of Kois Buyers Group was on the</p> <p>18 independent dentist?</p> <p>19 A Yes.</p> <p>20 Q Do you consider-- well, does Kois attempt to compete</p> <p>21 with those other buying groups, like SmileSource or the</p> <p>22 state dental organizations or Benco--</p> <p>23 A What do you mean by "compete"?</p> <p>24 Q To obtain members and get members to come to Kois Buyers</p> <p>25 Group as opposed to any of those other buying groups.</p>
<p>1 Q Which ones have you heard of?</p> <p>2 A SmileSource is one that we've heard of.</p> <p>3 Q Any others?</p> <p>4 A It is my understanding that Benco has started their own</p> <p>5 buying group.</p> <p>6 They had asked us to be a member of it, the Kois</p> <p>7 Center, not the Kois Buyers Group.</p> <p>8 Q Benco asked the Kois Center to be a member of Benco's</p> <p>9 buying group?</p> <p>10 A Correct.</p> <p>11 Q Any other buying groups that you've heard of?</p> <p>12 A I know there's others out there.</p> <p>13 I don't recall any of the names specifically.</p> <p>14 Q Do you have an understanding of why buyers groups are</p> <p>15 popping up?</p> <p>16 A For a discount on products.</p> <p>17 I'm sorry, it is my understanding that some of the</p> <p>18 state dental organizations are trying to establish their</p> <p>19 own buying groups.</p> <p>20 Q Okay. So it is your understanding that buying groups</p> <p>21 are popping up in order for dentists to obtain discounts</p> <p>22 on products?</p> <p>23 A Yes.</p> <p>24 Q Is part of the reason why buying groups are popping up,</p> <p>25 to allow independent dentists to compete with the larger</p>	<p>1 A No.</p> <p>2 We don't have a-- it is not an exclusive buying</p> <p>3 group.</p> <p>4 Members are free to join additional buyers groups.</p> <p>5 If they choose one buyers group over the other, it</p> <p>6 is my understanding that other buyers groups have those</p> <p>7 exclusivity provisions, but that's not something that we</p> <p>8 have.</p> <p>9 Q When you say "exclusivity provisions," what do you mean?</p> <p>10 A I was told by a member that SmileSource does not allow</p> <p>11 you to join another buyers group if you are a part of</p> <p>12 their buyers group.</p> <p>13 Q I see. Thank you.</p> <p>14 Why is it that Kois does not have exclusivity</p> <p>15 provisions?</p> <p>16 A We didn't want to limit any of the options for people to</p> <p>17 find better deals.</p> <p>18 If you can find a better price on a product through</p> <p>19 another buyers group, we think you should take it.</p> <p>20 Q Do you consider Kois Buyers Group to be a customer of</p> <p>21 Burkhart, for example?</p> <p>22 A No.</p> <p>23 Q Do you consider Kois Buyers Group to be a competitor of</p> <p>24 Burkhart?</p> <p>25 A No.</p>

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<p>1 Q What do you consider the relationship to be?</p> <p>2 A A relationship.</p> <p>3 I mean, the members specifically purchase from</p> <p>4 Burkhart.</p> <p>5 We don't purchase directly from Burkhart, so we are</p> <p>6 not a customer of Burkhart.</p> <p>7 We also don't compete with them or any other</p> <p>8 vendors.</p> <p>9 We have an opportunity to provide discounts on both</p> <p>10 sides, so if Burkhart gets additional customers because</p> <p>11 they're a part of the buyers group, and if buyers group</p> <p>12 members get a better price for things, it's a good deal</p> <p>13 for everybody.</p> <p>14 Q Do you have an understanding of whether Burkhart has</p> <p>15 obtained additional customers because they're part of</p> <p>16 the buyers group?</p> <p>17 A My understanding is they have.</p> <p>18 Q What is that understanding based on?</p> <p>19 A We do an annual review-- a quarterly review.</p> <p>20 Burkhart sits down with me and goes over whether or</p> <p>21 not they're happy with the progress of the buyers group.</p> <p>22 The understanding is if members aren't buying from</p> <p>23 them, they would no longer be willing to give discounts.</p> <p>24 Q Okay. And in the quarterly reviews, what has Burkhart</p> <p>25 said to you about the progress?</p>	<p>1 Q Was that that one person?</p> <p>2 A One person.</p> <p>3 None of their vendors-- they were a laboratory</p> <p>4 technician, and there were no discounts available for</p> <p>5 the laboratory technicians.</p> <p>6 Q Any other individuals that you've heard of losing--</p> <p>7 A The person didn't actually lose money. We refunded</p> <p>8 their membership.</p> <p>9 Q Understood.</p> <p>10 Other than that one person, have there been any</p> <p>11 other individuals who said that they have not made up at</p> <p>12 least the annual membership fee in savings?</p> <p>13 A Not that I've heard of.</p> <p>14 Q And to what do you attribute Kois Buying Group's</p> <p>15 success?</p> <p>16 A Promoting the buying group as part of the Kois Center,</p> <p>17 its flexibility. There is no exclusivity, no</p> <p>18 obligation, and a variety of vendors.</p> <p>19 Q Is the variety of vendors-- why is that important?</p> <p>20 A Not everyone purchases through Burkhart. They're not</p> <p>21 obligated to purchase through Burkhart, so additional</p> <p>22 supply companies-- the more supply companies-- well, not</p> <p>23 supply, but the more vendors that you have, the more</p> <p>24 likely you are to find somebody who purchases from one</p> <p>25 of those vendors and would be motivated to join a buyers</p>	
<p>1 A They said existing members-- they've lost profit on</p> <p>2 existing members that have become buyers group members,</p> <p>3 but they've gained revenue in new members that are</p> <p>4 outside of their full-service territory or members that</p> <p>5 are in their territory that otherwise hadn't looked at</p> <p>6 Burkhart.</p> <p>7 Q Okay. And who do you meet with at Burkhart on a</p> <p>8 quarterly basis?</p> <p>9 A Dave Anderson.</p> <p>10 Q Are these meetings in-person?</p> <p>11 A Yes.</p> <p>12 Q Here in Seattle?</p> <p>13 A Depends.</p> <p>14 Either here or in Tacoma.</p> <p>15 Q How successful has Kois Buyers Group been, in your</p> <p>16 opinion?</p> <p>17 A What would be a benchmark of being successful?</p> <p>18 Q I am curious about your opinion of how Kois Buyers Group</p> <p>19 is doing.</p> <p>20 A My opinion is it's successful.</p> <p>21 Q And what is your benchmark?</p> <p>22 A People are at least saving their annual fee, so at worst</p> <p>23 I am hoping that nobody is losing money.</p> <p>24 Q Have you heard of anyone losing money?</p> <p>25 A Yes.</p>	<p>1 group.</p> <p>2 Q Have you considered adding additional distributor</p> <p>3 vendors, other than Burkhart?</p> <p>4 A Yes.</p> <p>5 Q And why haven't you added any others?</p> <p>6 I'm referring specifically to in the United States.</p> <p>7 A We talked to Benco when we first renewed our agreement</p> <p>8 with Burkhart, and we talked with Burkhart about having</p> <p>9 both of them as part of the buyers group.</p> <p>10 Both of them indicated a lack of interest in being</p> <p>11 one of two dental supply companies in a buyers group.</p> <p>12 Q Why were they not interested?</p> <p>13 Let's talk specifically-- we will do both.</p> <p>14 First, why did Benco say they were not interested?</p> <p>15 A They didn't want to lower their prices and continue to</p> <p>16 compete with another supply company within the buyers</p> <p>17 group.</p> <p>18 Q And what about Burkhart?</p> <p>19 A They didn't want to lower their fees and continue to</p> <p>20 compete with another supply company.</p> <p>21 Q So how did you end up going with Burkhart?</p> <p>22 A They were the original supply company, and we didn't</p> <p>23 have any reason to change.</p> <p>24 We just explored the option of adding an additional</p> <p>25 buyers group-- another supply company, and ultimately we</p>	

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<p>1 just chose to stick with the relationship that was</p> <p>2 working.</p> <p>3 Q Now, Benco is a national distributor, right?</p> <p>4 A Mm-hm-- I don't know what their foothold is in the</p> <p>5 United States, but my assumption is they're in most, if</p> <p>6 not all, states.</p> <p>7 Q What is that assumption based on?</p> <p>8 A What they've said.</p> <p>9 Q Did you see any advantage of working with a national</p> <p>10 distributor or a company like Benco that has a foothold</p> <p>11 in most of the United States as opposed to Burkhart?</p> <p>12 A I don't work with the supply companies on the level of a</p> <p>13 practice, so it didn't-- to me, they're all about the</p> <p>14 same, supply company-wise.</p> <p>15 Q Yeah, I meant advantages to your members.</p> <p>16 Did you see that members would prefer to work with</p> <p>17 a national distributor, like Benco, as opposed to</p> <p>18 Burkhart?</p> <p>19 A We didn't have that sense from the members.</p> <p>20 When we did the negotiation, Burkhart did not have</p> <p>21 any reps in the Washington state area, and we have a lot</p> <p>22 of members in the Washington state area, so switching</p> <p>23 supply companies would be a big change for a large</p> <p>24 percentage of our members.</p> <p>25 Q You said "Burkhart did not have any reps in the</p>	<p>1 A I would say-- it's a subjective term, but I would say</p> <p>2 "easy."</p> <p>3 Q You found that dentists are interested in joining?</p> <p>4 A No, that the costs for new members is low.</p> <p>5 Q Have you found it relatively easy in terms of interest</p> <p>6 to obtain new members?</p> <p>7 A No.</p> <p>8 Q You mentioned earlier that you noticed that growth has</p> <p>9 been slow.</p> <p>10 What was the reason for that?</p> <p>11 A I think with the vendors that are available, it's pretty</p> <p>12 easy to save at least the membership fee and plus some</p> <p>13 from all the vendors that are available, and still</p> <p>14 there's not the larger interest that we think would</p> <p>15 come. You can say that regardless of the dental supply</p> <p>16 company you use.</p> <p>17 Q Do you have an understanding for why there's been less</p> <p>18 interest than you would have expected?</p> <p>19 A I could tell you some-- what some of the dentists have</p> <p>20 told me, but I don't have anything to collaborate that</p> <p>21 or any proof of it.</p> <p>22 I have had dentists tell me that their current</p> <p>23 reps, that are not Burkhart, tell them that they can't</p> <p>24 sell to them anymore if they're a buyers group member.</p> <p>25 Our response is "That's not our choice. That would</p>
<p>1 Washington state"--</p> <p>2 A Sorry. "Benco."</p> <p>3 Sorry for that.</p> <p>4 Q Have you heard complaints about-- from individuals on</p> <p>5 the East Coast that don't have access to a full-service</p> <p>6 distributor through Kois Buyers Group?</p> <p>7 A Yes.</p> <p>8 Q And would having a Benco kind of solve that problem?</p> <p>9 A I don't know who the rep is now and if they're willing</p> <p>10 to change.</p> <p>11 Q Okay. So is this one particular individual that you are</p> <p>12 thinking of?</p> <p>13 A No.</p> <p>14 When people say they want a full-service rep, what</p> <p>15 they usually mean is they want the full-service rep that</p> <p>16 they're currently using to be their full-service rep,</p> <p>17 with an additional discount.</p> <p>18 Q How do you know that that's what they usually mean?</p> <p>19 A Because they say they want their rep to be part of the</p> <p>20 buyers group.</p> <p>21 Q And how many people have indicated that they want their</p> <p>22 rep to be part of the buyers group, approximately?</p> <p>23 A Five.</p> <p>24 Q Have you found it relatively easy or difficult to obtain</p> <p>25 new members?</p>	<p>1 be the choice of whoever your supply company is."</p> <p>2 Q So you have heard from dentists that their current reps</p> <p>3 have told them that they would no longer sell to them if</p> <p>4 they become a buying group member?</p> <p>5 A Yes.</p> <p>6 They didn't say they would no longer sell. They</p> <p>7 said they were not allowed to.</p> <p>8 We are not sure if that's a miscommunication that</p> <p>9 they assume that you are obligated to purchase from</p> <p>10 Burkhart, so if they're not sure what the buyers group</p> <p>11 setup is-- that's what we feel it is, so we try hard to</p> <p>12 educate everybody.</p> <p>13 Q To educate--</p> <p>14 A The dentists.</p> <p>15 Q To educate the dentists to understand that they're not</p> <p>16 required to purchase through the buyers group or through</p> <p>17 Burkhart, for example, to get the discounts?</p> <p>18 A We tell everybody that they're free to keep their reps.</p> <p>19 Q But you have heard from some dentists that their current</p> <p>20 reps have told them that they would not sell to them if</p> <p>21 they become buyers group members?</p> <p>22 A Yes.</p> <p>23 Q Approximately how many dentists have told you that?</p> <p>24 A I have heard from two.</p> <p>25 Q And do you know what the current-- where the reps work--</p>

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<p>1 for those two, which companies were they with?</p> <p>2 A One, I don't know.</p> <p>3 The other one, I believe, was Schein.</p> <p>4 Q So we've been talking a lot about buying groups, and</p> <p>5 Kois refers to itself as Kois Buyers Group, right?</p> <p>6 A Right.</p> <p>7 Q What do you understand the word "buying group" to mean?</p> <p>8 A A group of members that use their buying power as a</p> <p>9 whole to receive discounts for the members.</p> <p>10 Q And have you ever heard the term "group purchasing</p> <p>11 organization"?</p> <p>12 A Yes.</p> <p>13 Q Do you have an understanding of what that means?</p> <p>14 A It is my understanding that that means that the group</p> <p>15 agrees to purchase a certain product or a certain amount</p> <p>16 of a product for a larger discount.</p> <p>17 Q Is there a distinction in your mind between a buying</p> <p>18 group and a group purchasing organization?</p> <p>19 A Depends on how they're set up.</p> <p>20 Some are, I'm sure, interchangeable in terms of</p> <p>21 ours don't have any agreements to purchase a certain</p> <p>22 quantity or any particular products, and if I had to</p> <p>23 guess, I would say some of the other buyers groups</p> <p>24 probably do.</p> <p>25 Q So in your understanding, if a buyers group does have an</p>	<p>1 term?</p> <p>2 A Nuh-uh.</p> <p>3 Q Going back to "group purchasing organization," would you</p> <p>4 consider Kois Buyers Group to be a group purchasing</p> <p>5 organization?</p> <p>6 A No.</p> <p>7 MS. GOFF: I am a good breaking point</p> <p>8 if you think now is a good time to take lunch.</p> <p>9 MR. RYAN-LANG: If you want to.</p> <p>10 (Discussion off the record.)</p> <p>11</p> <p>12 Q (By Ms. Goff) I would like to talk more in detail about</p> <p>13 Kois's relationship with Burkhart.</p> <p>14 A Sure.</p> <p>15 Q When did Kois first partner with Burkhart?</p> <p>16 A In relation to-- I just want to be clear on the entity.</p> <p>17 Q Sorry--</p> <p>18 A So the three I would think of would be my father's</p> <p>19 practice or the Kois Center or the Kois Buyers Group.</p> <p>20 Q Understood.</p> <p>21 When did Kois Buyers Group first partner with</p> <p>22 Burkhart?</p> <p>23 A October 2014 at the inception of the buyers group.</p> <p>24 Q And was there a contract that Kois Buyers Group entered</p> <p>25 into with Burkhart at that time?</p>
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<p>1 agreement to purchase a certain quantity of product,</p> <p>2 then it's a group purchasing organization?</p> <p>3 A My opinion?</p> <p>4 Q Yes, your--</p> <p>5 A That would be my opinion.</p> <p>6 Q So do you use the word "buying group" and "group</p> <p>7 purchasing organization" interchangeably or no?</p> <p>8 A When-- who are we referring to?</p> <p>9 Q Just in general.</p> <p>10 If you're speaking to other dentists, would you use</p> <p>11 those two words interchangeably?</p> <p>12 A I don't use "group purchasing organization."</p> <p>13 As far as I'm concerned, a buyers group is a buyers</p> <p>14 group, and how they're set up is up to them.</p> <p>15 Q Have you heard of the word "buying club"?</p> <p>16 A Yes.</p> <p>17 Q What do you understand that to mean?</p> <p>18 A Similar to a buyers group.</p> <p>19 My understanding is a buying club might have a</p> <p>20 monthly fee whether you purchase things or not, or you</p> <p>21 have certain products that get delivered every month for</p> <p>22 a set fee, something like that.</p> <p>23 I hear of a buying club mostly for clothes,</p> <p>24 something outside the dental world.</p> <p>25 Q What about "buying cooperative," have you heard that</p>	<p>1 A No.</p> <p>2 Q So what was the nature of the relationship at that time?</p> <p>3 A There was a contract from ProCare with Burkhart and Kois</p> <p>4 Tribal Management as additional listed agents in the</p> <p>5 agreement.</p> <p>6 Q Okay. And who from the Kois Buyers Group side</p> <p>7 negotiated that contract?</p> <p>8 A The initial contract was from ProCare.</p> <p>9 My understanding is Q.</p> <p>10 Q Qadeer?</p> <p>11 A Qadeer.</p> <p>12 Q And how long was that initial contract in place?</p> <p>13 A For two years.</p> <p>14 Q Until October 2016?</p> <p>15 A Until-- yes.</p> <p>16 Q And then did you negotiate a second contract after that?</p> <p>17 A Yes.</p> <p>18 Q And is that the current contract that Kois Buyers Group</p> <p>19 has with Burkhart?</p> <p>20 A Correct.</p> <p>21 Q Is the current contract different in any significant way</p> <p>22 from the previous contract with Burkhart?</p> <p>23 A Yes.</p> <p>24 Q How is it different?</p> <p>25 A The original contract was an agreement between ProCare</p>

113	<p>1 and Burkhart and the Kois Center, to provide-- for</p> <p>2 Burkhart to provide discounts to Kois Center</p> <p>3 participants, and for ProCare to manage the membership</p> <p>4 and to negotiate with the manufacturers on behalf of</p> <p>5 Burkhart.</p> <p>6 Q And how has that changed?</p> <p>7 A The new contract is an agreement between Burkhart and</p> <p>8 Kois Tribal Management where Burkhart will negotiate</p> <p>9 with their manufacturers as they see fit, and the Kois</p> <p>10 Tribal Management will manage the membership group, and</p> <p>11 that Burkhart is the exclusive supply company to be a</p> <p>12 distributor in the buyers group.</p> <p>13 Q So under the previous contract, ProCare was responsible</p> <p>14 for negotiating with manufacturers on behalf of</p> <p>15 Burkhart?</p> <p>16 A For the buyers group.</p> <p>17 Q So in other words, are you referring to manufacturers</p> <p>18 that sell through Burkhart as a distributor?</p> <p>19 A Yes.</p> <p>20 Q So ProCare would go to those manufacturers and negotiate</p> <p>21 some kind of discount on behalf of--</p> <p>22 A That was their intent.</p> <p>23 Q Did that ever actually happen?</p> <p>24 A I don't believe so.</p> <p>25 Q Why did that change in the current contract?</p>	115	<p>1 A Yes.</p> <p>2 Q And that's from those quarterly meetings?</p> <p>3 A Yes.</p> <p>4 Q And have they been happy?</p> <p>5 A My understanding is they've been happy.</p> <p>6 Q Burkhart-- would you consider Burkhart to be a regional</p> <p>7 distributor?</p> <p>8 A As opposed to--</p> <p>9 Q As opposed to a national distributor.</p> <p>10 A What would be a determining factor?</p> <p>11 Q Let me rephrase the question.</p> <p>12 Would you consider Burkhart to be a regional</p> <p>13 full-service distributor as opposed to a national</p> <p>14 full-service distributor?</p> <p>15 A Yes.</p> <p>16 Q I think I know the answer to this question, but I want</p> <p>17 to make sure.</p> <p>18 Do Kois members ever take possession of any of the</p> <p>19 products that its members purchase at all?</p> <p>20 In other words, does Kois ever ship products to its</p> <p>21 members or is that all done by the distributors or</p> <p>22 manufacturers or other vendors?</p> <p>23 A Occasionally the distribution companies will ship to the</p> <p>24 Kois Center when participants are there for courses.</p> <p>25 Q Okay. Other than that, is all of the shipment done from</p>
114	<p>1 A Because Burkhart works with these manufacturers every</p> <p>2 day. They have a better relationship.</p> <p>3 I think that would make more sense.</p> <p>4 Q Did you ask for that change?</p> <p>5 A Yes.</p> <p>6 Q And was Burkhart receptive?</p> <p>7 A Yes.</p> <p>8 The three-way contract was confusing, so a contract</p> <p>9 directly between Kois Tribal Management and Burkhart,</p> <p>10 showing the discounts to members, made more sense.</p> <p>11 Q Okay. Just to be clear, for the October 2014 contract</p> <p>12 with Burkhart, you were not involved with that contract</p> <p>13 at all?</p> <p>14 A Correct.</p> <p>15 Q Do you have an understanding of whether your father was</p> <p>16 involved in negotiating that contract at all?</p> <p>17 A It is my understanding he was not.</p> <p>18 Q For the contract that you negotiated, who was your</p> <p>19 contact at Burkhart?</p> <p>20 A Dave Anderson.</p> <p>21 Q What is his role?</p> <p>22 A I don't remember his title.</p> <p>23 He works with special groups.</p> <p>24 Q Do you have an understanding of whether Burkhart has</p> <p>25 been happy with its relationship with Kois Buyers Group?</p>	116	<p>1 Kois Buyers Group vendors directly to the members?</p> <p>2 A Yes.</p> <p>3 Occasionally we have international participants</p> <p>4 that can't get products in their country that are sold</p> <p>5 from Burkhart, so they will send us products for them,</p> <p>6 so in that case we occasionally will ship something to</p> <p>7 somebody's country at the request of the participant.</p> <p>8 Q Do you have an understanding of whether members have</p> <p>9 been happy with Burkhart as a distributor?</p> <p>10 A Yes.</p> <p>11 Q Have you heard of any members that have been unhappy</p> <p>12 with Burkhart?</p> <p>13 A Yes.</p> <p>14 Q I think we talked about a few earlier, but could you</p> <p>15 just, for the record, refresh my memory of what members</p> <p>16 have said that they've been unhappy about?</p> <p>17 A Some members have said they haven't received any</p> <p>18 discounts when they switched.</p> <p>19 Q Any other complaints?</p> <p>20 A They don't have a full-service rep in their area.</p> <p>21 Q Any others?</p> <p>22 A Shipping is long.</p> <p>23 Q Any others?</p> <p>24 A That's all that I've heard.</p> <p>25 Q And is it your-- is it part of your job to respond to</p>

117	<p>1 unhappy Kois Buyers Group members?</p> <p>2 A Yes.</p> <p>3 Q How frequently do you receive complaints?</p> <p>4 A Sporadic.</p> <p>5 I would say, on average, one every other month.</p> <p>6 Most common complaint is they're not getting their</p> <p>7 discount.</p> <p>8 Q And in those cases what do you do? How do you handle--</p> <p>9 A I call the vendor and ask them to verify that that</p> <p>10 customer is receiving their discount.</p> <p>11 Q Okay. With regard to Burkhart in particular, what is</p> <p>12 the most common complaint that you receive?</p> <p>13 A They don't have a full-service rep in their area.</p> <p>14 Q And then how do you respond to those complaints?</p> <p>15 A Which ones specifically?</p> <p>16 Q Complaints that they don't have a full-service rep in</p> <p>17 their area?</p> <p>18 A "I'm sorry."</p> <p>19 Q How do you respond to--</p> <p>20 A That's what I respond with, "I'm sorry they don't have a</p> <p>21 full-service rep in your area."</p> <p>22 Q Have you ever indicated that you would try to get a</p> <p>23 full-service rep in their area?</p> <p>24 A I have.</p> <p>25 I don't have any way to help with that, other than</p>	119	<p>1 discounts from other distributors to what Burkhart is</p> <p>2 offering to Kois Buyers Group?</p> <p>3 A Yes. I have heard of-- and the direct market is what</p> <p>4 they consider their non full-service areas.</p> <p>5 I have heard of dentists printing out the pricing</p> <p>6 online that they get pricing for, and giving that to</p> <p>7 their local rep from another company, and that rep</p> <p>8 matches the prices for them.</p> <p>9 Q How frequently have you heard that?</p> <p>10 A A couple times.</p> <p>11 MS. GOFF: Is now a good time?</p> <p>12 MR. RYAN-LANG: Sure.</p> <p>13 (Lunch recess 12:11 to 12:51 p m.)</p> <p>14 (Exhibit No. 327 marked</p> <p>15 for identification.)</p> <p>16</p> <p>17 Q (By Ms. Goff) Mr. Kois, I am handing you what has been</p> <p>18 marked as Exhibit No. 327, which is a document bearing</p> <p>19 the Bates stamp Kois 001622 through 1625.</p> <p>20 This is an exclusive supplier agreement between</p> <p>21 Burkhart Dental Supply Company and Kois Tribal</p> <p>22 Management; is that correct?</p> <p>23 A Yes.</p> <p>24 Q Is this the contract that you negotiated with Burkhart?</p> <p>25 A Yes.</p>
118	<p>1 request it from Burkhart.</p> <p>2 Q But could you bring in another vendor that does have a</p> <p>3 full-service rep in that area?</p> <p>4 A Not with the current contract.</p> <p>5 Q What do you mean by that?</p> <p>6 A The current contract says it's an exclusive-- they are</p> <p>7 the exclusive supply company in the buyers group, so</p> <p>8 that's not an option, unless the contract is rewritten.</p> <p>9 Q Would you consider rewriting the contract so that you</p> <p>10 could have a full-service rep for members across the</p> <p>11 country?</p> <p>12 A It depends on what discounts are offered to members.</p> <p>13 Right now they're still free to use whatever rep</p> <p>14 they want, so if having a full-service rep is that</p> <p>15 important to them, they can take all the pricing they</p> <p>16 have at Burkhart and take it to the other company and</p> <p>17 see if they'll match the pricing, so it's not like</p> <p>18 they're without options.</p> <p>19 Q Sure, but if they want to get discounts from Kois Buyers</p> <p>20 Group--</p> <p>21 A Directly from Burkhart as the manufacturer-- because a</p> <p>22 lot of these people are getting similar discounts from</p> <p>23 their full-service reps, even if they're in the direct</p> <p>24 area.</p> <p>25 Q So have you heard of dentists that have received similar</p>	120	<p>1 Q I just want to go through a few of the clauses here and</p> <p>2 make sure I understand what they mean.</p> <p>3 A Sure.</p> <p>4 Q So first, there's definitions and then Paragraph No. 1</p> <p>5 is "Exclusivity."</p> <p>6 It says, "Buyers group agrees that Burkhart will be</p> <p>7 the exclusive supplier for dental supplies in the United</p> <p>8 States."</p> <p>9 Am I correct that this clause means that within the</p> <p>10 United States, Kois members can only access discounts</p> <p>11 from Burkhart?</p> <p>12 My question is really-- I will strike that.</p> <p>13 It says that Burkhart will be the exclusive</p> <p>14 supplier for dental supplies in the United States.</p> <p>15 What does that mean?</p> <p>16 A As a dental supply company.</p> <p>17 Q Because manufacturers also supply dental supplies in the</p> <p>18 United States?</p> <p>19 A Correct.</p> <p>20 Q I know we talked a little bit about this before, but why</p> <p>21 did Kois Buyers Group agree to this clause?</p> <p>22 A Which part of it?</p> <p>23 There's two parts.</p> <p>24 Q 1.1, the one I just read, that the buyers group agrees</p> <p>25 that Burkhart will be the exclusive supplier for dental</p>

<p style="text-align: right;">121</p> <p>1 supplies in the United States.</p> <p>2 A That was what Burkhart wanted to move forward on the</p> <p>3 agreement.</p> <p>4 Q Okay. So Burkhart would not enter into an agreement</p> <p>5 with Kois Buyers Group unless they were the exclusive</p> <p>6 supplier?</p> <p>7 A They would.</p> <p>8 They said they wouldn't do as aggressive of a</p> <p>9 discount.</p> <p>10 Q So how come-- why did Kois Buyers Group agree to do the</p> <p>11 exclusivity instead of dispensing with the exclusivity</p> <p>12 and doing a lower discount?</p> <p>13 A Because we ultimately agreed that they would be the</p> <p>14 exclusive dental supply company, but there was no</p> <p>15 exclusivity-- there is no obligation for members to use</p> <p>16 them exclusively.</p> <p>17 Q Understood.</p> <p>18 Did you feel that there was value in getting the</p> <p>19 most aggressive discount that you could possibly get</p> <p>20 from Burkhart?</p> <p>21 A From a dental supply company.</p> <p>22 Q I think you said earlier that with regard to</p> <p>23 manufacturers, you would rather have more vendors, even</p> <p>24 if the discount is lower; is that correct?</p> <p>25 A Yes, because people are very particular about the</p>	<p style="text-align: right;">123</p> <p>1 Q Any other examples?</p> <p>2 A I don't have any other examples.</p> <p>3 Q Do you see any value at all in offering your members the</p> <p>4 option to purchase from more than one supply company?</p> <p>5 A Value for who?</p> <p>6 Q For the members.</p> <p>7 A I am not sure where the value would come from.</p> <p>8 I could see a benefit for the dental supply</p> <p>9 companies where they have a group of members that they</p> <p>10 can compete for back and forth, for membership, but as</p> <p>11 far as discounts, I'm not sure how much more of a</p> <p>12 discount they'd get to have more than one discount</p> <p>13 company in the buyers group.</p> <p>14 Q But they would have more options from whom to purchase</p> <p>15 through, right?</p> <p>16 A Well, they have options now, but do you mean</p> <p>17 specifically through--</p> <p>18 Q Through Kois Buyers Group, yeah.</p> <p>19 A Right.</p> <p>20 Q And do you see value in allowing the dentists to have</p> <p>21 options for which supply company to buy from and still</p> <p>22 get that Kois Buyers Group discount?</p> <p>23 A I don't know if the value would be as great if you had</p> <p>24 more than one supply company.</p> <p>25 Q And is that because you don't think the discount would</p>
<p style="text-align: right;">122</p> <p>1 products they want.</p> <p>2 There's not that many supply companies out there.</p> <p>3 Q So my next question was going to be:</p> <p>4 Why wouldn't that same principle apply to supply</p> <p>5 companies?</p> <p>6 A A lot of supply companies are partners with other buyers</p> <p>7 groups and give substantial discounts, so if the</p> <p>8 discounts from a supply company-- dental supply company</p> <p>9 wasn't at least as good as other buyers groups or as</p> <p>10 good as they offer members without the buyers group,</p> <p>11 there wasn't a lot of incentive for people to purchase</p> <p>12 products from Burkhart as a buyers group member.</p> <p>13 Q Is it your understanding that a lot of supply companies</p> <p>14 are partners with other buyers groups?</p> <p>15 A What would be "a lot"?</p> <p>16 Q I am just reading back what you had mentioned.</p> <p>17 A I don't know how many supply companies.</p> <p>18 I know that dental supply companies are exclusive</p> <p>19 distributors for other buyers groups.</p> <p>20 Q Can you give me some examples?</p> <p>21 A Burkhart is the exclusive distributor for SmileSource,</p> <p>22 for their buyers group.</p> <p>23 Q Any other examples?</p> <p>24 A Benco has a buyers group where they're the exclusive</p> <p>25 distributor for their buyers group.</p>	<p style="text-align: right;">124</p> <p>1 be as aggressive?</p> <p>2 A Which is what the supply companies told me.</p> <p>3 Q Going down to Paragraph No. 2, "Service levels," it</p> <p>4 says, "Burkhart agrees to provide full service dental</p> <p>5 supply and equipment distribution sales and support with</p> <p>6 account managers, equipment specialists, equipment</p> <p>7 service technicians, and branch support associates to</p> <p>8 members with offices in support areas designated as full</p> <p>9 service on Burkhart's website."</p> <p>10 Do you see that?</p> <p>11 A Yes.</p> <p>12 Q Do you know what areas generally are designated as full</p> <p>13 service on Burkhart's website?</p> <p>14 A I would have to go to their website.</p> <p>15 Q Do you know if their website is open? In other words,</p> <p>16 could I go on their website and find out which companies</p> <p>17 are designated as full service?</p> <p>18 A I believe it is.</p> <p>19 Q And these are geographic areas that we are talking</p> <p>20 about, right?</p> <p>21 A Yes.</p> <p>22 Q And then the "Limited service areas," "Burkhart agrees</p> <p>23 to provide limited service dental supply and equipment</p> <p>24 distribution sales, phone support to members with</p> <p>25 offices in support areas designated as limited service</p>

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<p>1 on Burkhart's website," I understand that "limited</p> <p>2 service" is a defined term in this contract, but can you</p> <p>3 just tell me what your understanding of "limited</p> <p>4 service" means in this context?</p> <p>5 A In this context they don't have account managers,</p> <p>6 equipment specialists, or equipment service technicians</p> <p>7 or a branch support to the members.</p> <p>8 Q Do you have an understanding of what percentage,</p> <p>9 roughly, of the United States would be within the</p> <p>10 limited service area for Burkhart?</p> <p>11 A That would depend on what their service area map is.</p> <p>12 Q Understood.</p> <p>13 Do you have an understanding of what that--</p> <p>14 A I think it's approximately half of the country has</p> <p>15 full-service reps.</p> <p>16 Q So it is, approximately, in your understanding, 50</p> <p>17 percent of the country is full service and 50 percent is</p> <p>18 limited service?</p> <p>19 A I believe so.</p> <p>20 Q Have you ever heard of any prospective members who</p> <p>21 indicate that they would prefer full-service</p> <p>22 distribution, but they are in a part of the country that</p> <p>23 is not serviced by Burkhart's full service?</p> <p>24 A Yes.</p> <p>25 Q How frequently does that occur?</p>	<p>1 percent on all brand dental supplies and 39 percent on</p> <p>2 Burkhart private label dental supplies.</p> <p>3 Do you see that?</p> <p>4 A Yes.</p> <p>5 Q We talked about the margin earlier, but I just wanted to</p> <p>6 make sure I understood.</p> <p>7 So this 28 percent margin, was that something that</p> <p>8 Burkhart proposed?</p> <p>9 A Yes.</p> <p>10 Q And Burkhart indicated that that was a good deal for</p> <p>11 Kois Buyers Group members?</p> <p>12 A They didn't say whether it was a good deal or a bad</p> <p>13 deal.</p> <p>14 They said this was the margin they're willing to do</p> <p>15 as part of the buyers group.</p> <p>16 Q Do you have a sense for what their usual margin is for</p> <p>17 customers that don't have access to discounts?</p> <p>18 A I don't have a sense of their margin.</p> <p>19 I can say my sense is it is a good deal, based on</p> <p>20 the savings that I hear from people.</p> <p>21 Q That's what you have heard from dentists?</p> <p>22 A Yes.</p> <p>23 Q And do you have an understanding for why the margin is</p> <p>24 39 percent for private label, which is higher than the</p> <p>25 28 percent for other brand dental supplies?</p>
<p>126</p> <p>1 A Maybe once a month, every other month.</p> <p>2 Q And in those cases did the prospective members say that</p> <p>3 they were not going to join because of that?</p> <p>4 A No.</p> <p>5 Q And what did they say?</p> <p>6 A They said they'd prefer to have a full-service rep in</p> <p>7 their area.</p> <p>8 Q Okay. And did some of those members join Kois Buyers</p> <p>9 Group in spite of not having a full-service rep in their</p> <p>10 area?</p> <p>11 A I know some did because I have heard stories of people</p> <p>12 adjusting to shipments as opposed to having a rep bring</p> <p>13 their products in.</p> <p>14 Q So for full service, at least with regard to Burkhart's</p> <p>15 offering of full service, do they typically have their</p> <p>16 reps bring in the supplies as opposed to shipping them?</p> <p>17 A I don't know what the workout is for the full-service</p> <p>18 areas.</p> <p>19 Sometimes reps bring products, sometimes they're</p> <p>20 delivered.</p> <p>21 A lot of times the reps do the ordering on behalf</p> <p>22 of the practice.</p> <p>23 Q Then moving down to Paragraph No. 3, which sets forth</p> <p>24 the dental supply margin that Burkhart agrees to, and it</p> <p>25 says that Burkhart agreed to limit its margin to 28</p>	<p>127</p> <p>1 A I could guess.</p> <p>2 Q What is your guess?</p> <p>3 A If it's a white-label product, they have a lower cost</p> <p>4 associated with it.</p> <p>5 Q Did you say "white-label"?</p> <p>6 A Yes.</p> <p>7 Q What does that mean?</p> <p>8 A They have private label dental supplies, so they are</p> <p>9 branding their own-- so somebody is making it for them,</p> <p>10 and they are putting their label on it.</p> <p>11 My assumption is the cost to procure private label</p> <p>12 supplies is cheaper than name brand supplies, so they</p> <p>13 are giving it at a discount, but not at the same margin</p> <p>14 level, so they can increase-- dollar-wise it's a</p> <p>15 discount, but percentage-wise, they get a higher profit.</p> <p>16 Q Understood.</p> <p>17 Do you have an understanding of whether 28 percent</p> <p>18 is relatively low for a dental supply company like</p> <p>19 Burkhart?</p> <p>20 A Compared to another dental supply company? I don't know</p> <p>21 what other people's supply costs are or what their</p> <p>22 margin is on their products.</p> <p>23 What I've heard is that-- from manufacturers, is</p> <p>24 that most manufacturers tend to sell about the same</p> <p>25 price to the supply companies, and the difference in</p>

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<p>1 price to the consumer is based on the margin.</p> <p>2 Q So manufacturers tend to sell at about the same price to</p> <p>3 the various supply companies, and then any difference in</p> <p>4 price between the various supply companies is based on</p> <p>5 that individual supply company's margin?</p> <p>6 A That's my understanding.</p> <p>7 Q So you don't have any-- just to make sure I have an</p> <p>8 answer to my other question, do you have an</p> <p>9 understanding of whether 28 percent is relatively low</p> <p>10 for a supply company?</p> <p>11 A I don't know what their pricing structure is at other</p> <p>12 companies.</p> <p>13 I know Burkhart is a 28 percent flat across the</p> <p>14 board.</p> <p>15 I don't know what it is at the other supply</p> <p>16 companies.</p> <p>17 They could be higher on some products and lower on</p> <p>18 other ones.</p> <p>19 I don't have any way to track that.</p> <p>20 Q Okay. But Burkhart is offering only Kois members a 28</p> <p>21 percent margin, right?</p> <p>22 Like for individuals that are buying from Burkhart</p> <p>23 that are not a member of Kois Buyers Group, the margins</p> <p>24 could be higher than 28 percent?</p> <p>25 A Sure.</p>	<p>1 Q And that resulted in Burkhart giving that additional two</p> <p>2 percent discount?</p> <p>3 A Yes, per this agreement.</p> <p>4 Q Turning to Paragraph No. 5, "Manufacturer discounts,"</p> <p>5 this says that "Burkhart will negotiate manufacturer</p> <p>6 discounts for buyers groups with manufacturers."</p> <p>7 This is saying that Burkhart would go to the</p> <p>8 manufacturers that they worked with and try to obtain</p> <p>9 discounts for Kois Buyers Group members?</p> <p>10 A Correct.</p> <p>11 Q Do you know whether any manufacturers agreed to give</p> <p>12 discounts for the Kois Buyers Group members?</p> <p>13 A That list you have is Exhibit No. 326.</p> <p>14 Q And is that a complete list of all of the manufacturers</p> <p>15 that you understand give discounts through Burkhart to</p> <p>16 Kois Buyers Group members?</p> <p>17 A That's my understanding.</p> <p>18 I don't know if they're working with others.</p> <p>19 Sorry, there is at least one other I can think of</p> <p>20 that's not on this list that was brought out after this</p> <p>21 list came out.</p> <p>22 Q Okay. So you are saying after Exhibit No. 326--</p> <p>23 A There was an additional--</p> <p>24 Q --published?</p> <p>25 A Correct.</p>
130	132
<p>1 Q Okay.</p> <p>2 A I don't know what their different pricing models are.</p> <p>3 Q But it is your understanding that Burkhart is offering</p> <p>4 Kois Buyers Group a discount from Burkhart's usual</p> <p>5 prices?</p> <p>6 A Yes.</p> <p>7 Q And then we have the-- the last clause that says,</p> <p>8 "Provided that the volume of purchases exceeds the</p> <p>9 current pace of 5.3 million annually"-- do you see that?</p> <p>10 A Yes.</p> <p>11 Q When it says "the current pace," what does that mean?</p> <p>12 A So the amount of buying is determined by how much people</p> <p>13 buy on a given basis.</p> <p>14 If the pace of buying at Burkhart slows, the annual</p> <p>15 dollar amount that Burkhart is getting for the members</p> <p>16 would slow as well.</p> <p>17 Q Where did the current pace number of 5.3 million come</p> <p>18 from?</p> <p>19 Was that based on their prior contract?</p> <p>20 A That was 2015 purchasing levels, so since there's no</p> <p>21 guarantee that people will continue to purchase, it's</p> <p>22 based on previous--</p> <p>23 Q Okay. But then did it turn out that for 2016 members</p> <p>24 purchased more than 5.3 million?</p> <p>25 A Yes.</p>	<p>1 Q What was that one?</p> <p>2 A It was an x-ray sensor by Acteon.</p> <p>3 Q In the same Paragraph No. 5, Burkhart agreed to apply</p> <p>4 all manufacturer discounts to members by lowering the</p> <p>5 price of products sold to members.</p> <p>6 Does that just mean that Burkhart would pass on any</p> <p>7 manufacturer discounts to members?</p> <p>8 A That was our hope.</p> <p>9 Q Okay. And it says that "Burkhart agrees to be</p> <p>10 transparent about how manufacturer discounts are</p> <p>11 applied."</p> <p>12 What does that clause mean?</p> <p>13 A That means if it's a rebate, they would tell us it was</p> <p>14 in the form of rebate.</p> <p>15 If it's a general lower cost for the product, they</p> <p>16 would tell us that.</p> <p>17 Q Okay. When they said "they would tell us," did you mean</p> <p>18 the Kois Buyers Group members?</p> <p>19 A No. They would tell the Kois Buyers Group how those</p> <p>20 discounts came about.</p> <p>21 Q Have they provided that information to you?</p> <p>22 A That is evidenced in Exhibit No. 326.</p> <p>23 Any information that they provide to us, as far as</p> <p>24 discounts, we ask them to provide us in a form that we</p> <p>25 are free to distribute to the public, that there's no</p>

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1 proprietary information.

2 **Q Looking at Exhibit No. 326, do you have an understanding**

3 **of whether these discounts offered by the manufacturers**

4 **are lower costs for supplies or rebates?**

5 A I don't have an understanding of that.

6 **Q Okay. So it could be either one?**

7 A Or both.

8 **Q Other than the information in Exhibit No. 326, and I**

9 **know you mentioned there is an additional manufacturer,**

10 **do you have any other information for us to understand**

11 **whether the discounts being offered by these**

12 **manufacturers are in the form of rebates or lower**

13 **prices?**

14 A I don't have any information that determines how the

15 discounts are calculated.

16 **Q Burkhart would have that information?**

17 A Yes.

18 **Q One more quick question:**

19 **Paragraph No. 6 talks about new member incentives.**

20 **It says that Burkhart will provide a merchandise**

21 **credit of 299 to new Kois members.**

22 **Then it goes on to say the credit will be applied**

23 **to their account once they have become a tribe member**

24 **and they have completed a meeting with their Burkhart**

25 **account manager.**

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1 **What is your understanding of this?**

2 **I am particularly interested in the meeting with a**

3 **Burkhart account manager.**

4 A So to clarify, the rest of that statement is a customer

5 service agent introducing them to the Kois Buyers Group

6 program, Kois select manufacturers' benefits, Burkhart

7 Dental Supply benefits, and better value program.

8 The reason to be specific is it's a program open to

9 both full service and direct service markets, and there

10 are no account managers in the direct service.

11 To answer your question, the 30-minute meeting or

12 phone call or in-person, depending on what's available,

13 is to-- to give Burkhart an opportunity to explain what

14 services and products they offer.

15 It is an introductory meeting.

16 **Q So if you're in the full-service region of the United**

17 **States, that meeting would be with a Burkhart account**

18 **manager, and if you're in a limited-service region, it**

19 **would be with a customer service agent?**

20 A Most of the time.

21 I am told sometimes it's by phone, regardless of

22 the area that you're in.

23 **Q Okay. We have talked a fair bit about complaints that**

24 **you have heard from members.**

25 **Have you ever heard that deliveries have been slow**

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1 **when ordering through Burkhart?**

2 A "Slow" is a relative term.

3 Slower than people would like was an earlier

4 complaint.

5 Now shipping is two days as opposed to three days

6 to five days.

7 **Q At one point was Burkhart shipping three to five days?**

8 A At no charge.

9 In this contract it stipulates a two-day business

10 shipping for orders over \$750.

11 **Q So currently for orders under \$750, is it still a**

12 **three-day to five-day shipping?**

13 A Shipping can be any way you like, depending on how much

14 you're willing to pay, but free shipping for two-day, if

15 it's over \$750.

16 **Q Have complaints regarding delivery time decreased in**

17 **recent months?**

18 A Yes.

19 **Q And is that because Burkhart is shipping things faster**

20 **than they were before?**

21 A Yes.

22 They also-- East Coast dentists tend to use

23 different types of products, so they started to house

24 different things in the distribution centers that

25 service the direct markets, so that speeds some of the

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1 delivery, where they're not waiting for things to get

2 delivered.

3 **Q Have you ever heard from Kois Buyers Group members that**

4 **deliveries with other supply companies are much faster**

5 **than Burkhart?**

6 A No.

7 **Q Have you ever heard of members cancelling membership or**

8 **complaining because another supplier matched the**

9 **discount offered by Kois?**

10 A Cancelling? No.

11 Complaining? Yes.

12 **Q What has been the nature of the complaint?**

13 A That other supply companies are matching the price given

14 to the buyers group members.

15 **Q And why would that be a complaint?**

16 A They don't feel like it's the same value if they can get

17 the same pricing outside of the buyers group if they're

18 a member of the buyers group.

19 **Q And have you heard of specific supply companies that**

20 **have matched prices given to buyers group members?**

21 A I have heard of Schein and Patterson matching prices.

22 **Q What about Benco?**

23 A I haven't heard specifically.

24 I asked Burkhart about that.

25 They said price matches like that is at the

34 (Pages 133 to 136)

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1 discretion of the sales rep.
 2 **Q The sales rep--**
 3 A For that particular practice, for Schein or Patterson.
 4 **Q Is there an individual who works for you who processes**
 5 **cancellations?**
 6 A Right now? No. I handle all the memberships.
 7 **Q Who is Scott Heyamoto?**
 8 A He was a former employee of the Kois Center.
 9 Prior to me taking over the buyers group, he
 10 managed the requests that came in for membership at the
 11 Kois Center and sent those names off to ProCare.
 12 **Q Okay. Was he also responsible for processing**
 13 **cancellations?**
 14 A If people cancelled.
 15 I wasn't quite familiar with the process, but I
 16 believe so.
 17 **Q And you said you started at Kois Buyers Group in October**
 18 **2015?**
 19 A Yes.
 20 **Q Was there a period of time where-- a transition period**
 21 **where Qadeer was still sort of working with you?**
 22 A I don't know how much he was working with the buyers
 23 group.
 24 I heard updates between March and October that--
 25 from Scott when he would converse with ProCare, but with

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1 me directly, there was-- I can't think of any-- there
 2 might have been one or two e-mails.
 3 He wasn't very good about contacting people.
 4 **Q Who is "he"?**
 5 A Q, Qadeer.
 6 **Q And you said you heard updates between March and**
 7 **October--**
 8 A So in July Qadeer spoke at our symposium, and I sat with
 9 him for about three hours and asked him some specific
 10 questions about the buyers group, and that's where I got
 11 the majority of my information.
 12 **Q Okay. Was that July of 2015?**
 13 A Yes.
 14 **Q And then did you sit with him and speak with him**
 15 **understanding that you were going to be taking over the**
 16 **buyers group in the future?**
 17 A I sent him an e-mail towards the end of the year that I
 18 would be negotiating with Burkhart and managing the
 19 buyers group going forward.
 20 **Q And then does Kois Buyers Group have any relationship**
 21 **with ProCare or Qadeer today?**
 22 A No.
 23 **Q When did that relationship end?**
 24 A When this exclusive supplier agreement was in place.
 25 **Q When you said that you heard updates between March and**

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1 **October from Scott, what year were you talking about?**
 2 A 2015.
 3 **Q Okay. So as of March 2015, what was your role at Kois**
 4 **Buyers Group?**
 5 A I didn't have one.
 6 **Q But you were receiving e-mails?**
 7 A I would get updates from Scott, as far as how many
 8 members were part of the buyers group.
 9 **Q Did you have a role at Kois Center at that point?**
 10 A Yes.
 11 **Q You were CEO?**
 12 A Yes.
 13 **Q Why were you receiving updates from Scott?**
 14 A I asked for them.
 15 **Q Why did you ask?**
 16 A Because I didn't know anything about the buyers group,
 17 and I didn't have any documentation anywhere.
 18 I was trying to get some insight on what the
 19 program was.
 20 **Q So do you have an understanding of whether the Kois**
 21 **partnership has allowed Burkhart to bring in new**
 22 **customers?**
 23 A My understanding is it has.
 24 **Q Do you have an understanding of how many new customers?**
 25 A I could take a guess.

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1 It would be-- is-- would that be--
 2 **Q Sure.**
 3 A Because I can't speak to any full-service areas.
 4 I would say there's probably a good indication that
 5 anyone that's in the direct market would not have gone
 6 with Burkhart if they weren't part of the buyers group.
 7 **Q When you say "anyone in the direct market," what do you**
 8 **mean by that?**
 9 A People that get shipments via online shipments, they
 10 don't have a full-service rep in their area.
 11 Full-service area, I can't speak to whether or not
 12 it was the prowess of the Burkhart sales rep that caused
 13 them to move over and whether or not that would have
 14 happened anywhere.
 15 **Q Do you have an understanding of how many new customers**
 16 **Burkhart has obtained through its relationship with the**
 17 **Kois Buyers Group?**
 18 A It's part of their presentations they do quarterly.
 19 I can find that information. I don't have it off
 20 the top of my head.
 21 **Q Do you have any recollection off the top of your head?**
 22 A I would say it's probably around 100.
 23 **Q Total?**
 24 A Mm-hm.
 25 **Q Thank you.**

35 (Pages 137 to 140)

141	<p>1 Let's talk a little bit more about Kois's history</p> <p>2 with Benco.</p> <p>3 A Sure.</p> <p>4 Q So you mentioned that you have spoken to Benco about</p> <p>5 doing business with the Kois Buyers Group; is that</p> <p>6 right?</p> <p>7 A Mm-hm.</p> <p>8 Q When did you have those conversations?</p> <p>9 A It was in-- probably fall of 2015.</p> <p>10 Q Did you reach out to Benco or did they reach out to you?</p> <p>11 A I reached out to them.</p> <p>12 Q Who did you reach out to?</p> <p>13 A I don't remember if it was Julie Rasmussen or-- I don't</p> <p>14 remember the other person's-- Kathleen, I think.</p> <p>15 Kois Center had an ongoing relationship with Benco</p> <p>16 separate from the buyers group for speaking for my dad,</p> <p>17 so he would do a couple lectures a year at Benco, so I</p> <p>18 already had a relationship with them, but specifically</p> <p>19 for the Kois Buyers Group, that didn't start until the</p> <p>20 fall.</p> <p>21 Q Until the fall of 2015?</p> <p>22 A Yes.</p> <p>23 Q Okay. When you said Kathleen at Benco, would that be</p> <p>24 Kathleen Bird?</p> <p>25 A Yes.</p>	143	<p>1 Q Okay. How many meetings did you have?</p> <p>2 A Probably one, and I would say probably one or two phone</p> <p>3 calls.</p> <p>4 Q And for the in-person meeting, where did it take place?</p> <p>5 A That would be at the Kois Center in Seattle, Washington.</p> <p>6 Q And who from Benco was there?</p> <p>7 A That would have been Julie, and I don't think Kathleen</p> <p>8 was there. I think just Julie.</p> <p>9 Q Have you ever met with Chuck Cowen?</p> <p>10 A Yes.</p> <p>11 Q Have you ever met with Chuck Cowen with regard to the</p> <p>12 Kois Buyers Group specifically?</p> <p>13 A Not for the Kois Buyers Group.</p> <p>14 They asked about their own buyers group.</p> <p>15 Q So the meeting with Julie at Kois Center in the fall of</p> <p>16 2015, what was that meeting related to?</p> <p>17 A Two parts:</p> <p>18 One was my dad's speaking engagements for the</p> <p>19 following year with Benco, and that's the Kois Center</p> <p>20 side.</p> <p>21 On the Kois Buyers Group side, exploring an option</p> <p>22 to have them as part of the buyers group.</p> <p>23 Q Were they receptive to that?</p> <p>24 A Yes.</p> <p>25 Q What did Julie say to you about the possibility of</p>
142	<p>1 Q And then Julie-- is it "Radzyminski"?</p> <p>2 A I think so.</p> <p>3 Q So in the fall of 2015 you reached out to either Julie</p> <p>4 or Kathleen at Benco?</p> <p>5 A Correct.</p> <p>6 Q And why did you reach out to them?</p> <p>7 A I was starting to negotiate the contract with Burkhart,</p> <p>8 and I wanted to keep some options open.</p> <p>9 My intention originally was to explore having two</p> <p>10 supply companies as part of the buyers group.</p> <p>11 Q Did you think it would be beneficial, at that time, to</p> <p>12 have two supply companies as part of the buyers group?</p> <p>13 A I didn't know if it would be beneficial to the members.</p> <p>14 I just wanted to explore the option.</p> <p>15 My first step was to see if both supply companies</p> <p>16 would be receptive to that.</p> <p>17 Q And you mentioned earlier that neither were receptive;</p> <p>18 is that right?</p> <p>19 A Correct.</p> <p>20 Q And did you have any in-person meetings with people at</p> <p>21 Benco to discuss joining the Kois Buyers Group as a</p> <p>22 vendor?</p> <p>23 A Yes.</p> <p>24 Q When were those meetings?</p> <p>25 A Approximately that time of year, fall of 2015.</p>	144	<p>1 becoming a member for Kois Buyers Group?</p> <p>2 A They were interested.</p> <p>3 Q What were the next steps after that?</p> <p>4 A I asked both Burkhart and Benco if they would be willing</p> <p>5 to be part of the buyers group together.</p> <p>6 Q Okay. And so focusing on Benco, what did Benco say?</p> <p>7 A They said they would rather not.</p> <p>8 Q And what reason did they give?</p> <p>9 A They would rather not have another supply company in the</p> <p>10 same buyers group as them.</p> <p>11 Q Did they give any other explanation for why they didn't</p> <p>12 want to have another supply company in the same buyers</p> <p>13 group as them?</p> <p>14 A No.</p> <p>15 Q Were you surprised at that response?</p> <p>16 A No.</p> <p>17 Q Why not?</p> <p>18 A It was the same response Burkhart gave.</p> <p>19 Q Were you surprised by either of their responses?</p> <p>20 A No.</p> <p>21 Q Why not?</p> <p>22 A Because they could do what they liked.</p> <p>23 There was no-- I mean, they could choose to work</p> <p>24 with us or not.</p> <p>25 Q Were there any other further discussions with Benco</p>

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1 regarding Benco being a supplier for Kois Buyers Group?
 2 A Yes.
 3 **Q What were those?**
 4 A We told them we decided to go with Burkhart for the
 5 supply company in the buyers group.
 6 **Q Did you have any negotiations with Benco about like what**
 7 **type of discounts they would be able to offer or**
 8 **anything like that?**
 9 A We didn't get that far.
 10 **Q So when Benco said, "We don't want to be one of two**
 11 **suppliers for Kois Buyers Group," that was pretty much**
 12 **the end of the conversation?**
 13 A Yes.
 14 **Q And then prior to the meeting in the fall of 2015, did**
 15 **you have any understanding of whether ProCare had any**
 16 **negotiations with Benco regarding Kois Buyers Group, or**
 17 **conversations with Benco?**
 18 A Prior to-- so-- as far back as where?
 19 **Q So the Kois Buyers Group was founded in October 2014,**
 20 **right?**
 21 A Mm-hm.
 22 **Q So around that time or sometime between then and the**
 23 **fall of 2015, when you came on and were involved, were**
 24 **there any conversations between ProCare and Benco about**
 25 **Kois Buyers Group?**

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1 A I don't believe so.
 2 I believe once the initial contract with Burkhart
 3 was in place, that was the extent of any supplier
 4 company negotiations.
 5 **Q Okay. What is your understanding based on?**
 6 A I hadn't heard anything to the contrary.
 7 **Q Okay. But would Qadeer have more information about**
 8 **that?**
 9 A It's possible.
 10 **Q Would your father have more information about that?**
 11 A I doubt it.
 12 (Exhibit No. 328 marked
 13 for identification.)
 14
 15 **Q (By Ms. Goff) Mr. Kois, the court reporter has handed**
 16 **you what has been marked as Exhibit No. 328.**
 17 **This is a document that we received from another**
 18 **party, so I don't expect that you would have necessarily**
 19 **seen it before, but I have a couple questions, and this**
 20 **would be useful to facilitate the discussion.**
 21 A Mm-hm.
 22 **Q Go ahead and take a minute to read it, and let me know**
 23 **when you're finished.**
 24 **Have you had a chance to review it?**
 25 A Yes.

147

1 **Q So this is what appears to be a blog post.**
 2 **At the top it says, "Julie Radzyminski: Added blog**
 3 **post in @[Benco buzz]."**
 4 **The date at the end of the document is 12/3/2014.**
 5 **In the second paragraph it says that "Dr. Kois came**
 6 **to us a few months ago and asked if we would be**
 7 **interested in participating in his Tribal Management**
 8 **Buying Group."**
 9 **Skipping forward it says, "After hearing all of the**
 10 **details, we decided we did not want to participate."**
 11 **Do you see that?**
 12 A Yes.
 13 **Q I just want to ask you whether you have an understanding**
 14 **of whether your father, Dr. Kois, talked to Benco at all**
 15 **about participating in a buyers group.**
 16 A You mean between him and me? It certainly wasn't me.
 17 This says him, so my assumption would be it was
 18 during one of his lectures with them, if he was out
 19 there.
 20 **Q But you haven't discussed with your father him speaking**
 21 **with Benco about participating in his buyers group?**
 22 A No.
 23 **Q Okay. So then the last thing I wanted to ask you about**
 24 **this document is:**
 25 **There are two bullet points. One says, "Minimal**

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1 **impact," and the last sentence says, "Additionally, many**
 2 **of the tribal members will not be able to participate**
 3 **due to Burkhart's limited geographic distribution**
 4 **capabilities."**
 5 **Do you see that?**
 6 A Yes.
 7 **Q Did this turn out to be correct?**
 8 **Do you agree with this statement that many tribal**
 9 **members would not be able to participate due to**
 10 **Burkhart's limited geographic distribution capabilities?**
 11 A I don't know how many impacted as far as Benco
 12 customers.
 13 I believe the Internet shipping for products was
 14 new, that Burkhart was rolling out, and that was partly
 15 due to their association with the buyers group.
 16 **Q Okay. You can put that one to the side. Thank you.**
 17 **You mentioned that you've had conversations with**
 18 **Chuck Cowen?**
 19 A Yes.
 20 **Q And those conversations, did they relate to Benco's**
 21 **buying group? Is that what you said?**
 22 A Yes.
 23 **Q What did Chuck Cowen-- how did those conversations go?**
 24 A The Kois Center was one of the success partners for
 25 Benco up until, I believe, the end of 2016, is my

37 (Pages 145 to 148)

149	<p>1 assumption, or sometime around there. Sometime last</p> <p>2 year we ended that relationship with them.</p> <p>3 What they did was they asked their success partners</p> <p>4 to be part of their buyers group, and that was in-- the</p> <p>5 capacity that they were looking for, for the Kois</p> <p>6 Center, was to get a discount on courses offered at the</p> <p>7 Kois Center for members of Benco's buyers group.</p> <p>8 Q So did Benco ever ask for the Kois Buyers Group to</p> <p>9 somehow be merged with Benco's buyers group?</p> <p>10 A No. They were separate.</p> <p>11 Q What do you mean "they were separate"?</p> <p>12 A It is a separate company that-- Kois Buyers Group.</p> <p>13 We never got that far in discussions with Benco as</p> <p>14 far as their buyers group.</p> <p>15 Our conversations stopped with us not being</p> <p>16 interested in giving a discount to their members for our</p> <p>17 courses.</p> <p>18 Q So there was never any conversation about Kois Buyers</p> <p>19 Group and Benco Buyers Group merging?</p> <p>20 A I'm sure there was a conversation with that, but it</p> <p>21 didn't go very far.</p> <p>22 Q And why was the Kois Center not interested in giving a</p> <p>23 discount to Benco Buyers Group members?</p> <p>24 A The purpose of the discount was to increase demand for</p> <p>25 the Kois Center courses, but our courses are generally</p>	151	<p>1 A Yes.</p> <p>2 Q And why did it end?</p> <p>3 A My dad didn't want to lecture for Benco for their</p> <p>4 courses anymore.</p> <p>5 We didn't feel we got a return for us.</p> <p>6 Q Is that the reason why your dad didn't want to lecture</p> <p>7 at the courses anymore?</p> <p>8 A He's pulling back from out-of-state lectures in general.</p> <p>9 This was part of that plan.</p> <p>10 (Exhibit No. 329 marked</p> <p>11 for identification.)</p> <p>12</p> <p>13 Q (By Ms. Goff) So the court reporter handed you what has</p> <p>14 been marked as Exhibit No. 329.</p> <p>15 It is an e-mail chain bearing the Bates stamp Kois</p> <p>16 001133 through 1134.</p> <p>17 Have you had a chance to review it?</p> <p>18 A Yes.</p> <p>19 Q Okay. So is this an e-mail chain between you and Julie</p> <p>20 Radzyninski of Benco, and Kathleen Bird is on here as</p> <p>21 well?</p> <p>22 A Yes.</p> <p>23 Q Is this in reference to the meeting you had in the fall</p> <p>24 of 2015 with Julie?</p> <p>25 A Yes.</p>
150	<p>1 full, so we didn't see an incentive to discount our</p> <p>2 already-full courses.</p> <p>3 Q And have you ever had any other conversations with Chuck</p> <p>4 Cowen?</p> <p>5 A Yes.</p> <p>6 Q And what are the nature of those conversations?</p> <p>7 A I went to Texas in-- it might have been that time, about</p> <p>8 fall of 2015, I believe, to speak at one of their--</p> <p>9 their summit meeting, which was a collection of all of</p> <p>10 their reps, to-- in the capacity of the Kois Center CEO,</p> <p>11 because we were a success partner of theirs.</p> <p>12 While there, I had conversations with Chuck as well</p> <p>13 as Julie and Kathleen.</p> <p>14 Q What is a success partner?</p> <p>15 A They have several partners that they offer some sort of</p> <p>16 incentive for people to go to.</p> <p>17 For Benco, if someone asks for continuing</p> <p>18 education, they would recommend the Kois Center.</p> <p>19 If people wanted a study group, they would offer a</p> <p>20 different vendor.</p> <p>21 If people wanted financial advice-- a way to extend</p> <p>22 their reach of services without having those services</p> <p>23 in-house.</p> <p>24 Q Okay. And at some point the relationship between Kois</p> <p>25 Center and Benco ended?</p>	152	<p>1 Specifically this was for-- yes, this was when</p> <p>2 Julie came to visit.</p> <p>3 Q And then the top e-mail in the chain, it's from you, and</p> <p>4 it says, in the second paragraph, "Regarding the buyers</p> <p>5 group, I am interested in hearing what type of deal you</p> <p>6 would like to see in a perfect world, and we can work</p> <p>7 towards that. For me, I would love to give dentists an</p> <p>8 opportunity to choose between Burkhart and Benco, based</p> <p>9 on their needs and relationships."</p> <p>10 Do you see that?</p> <p>11 A Yes.</p> <p>12 Q At this time were you interested in giving dentists the</p> <p>13 opportunity to choose between either Burkhart or Benco?</p> <p>14 A Yes.</p> <p>15 Q And why were you interested in that?</p> <p>16 A To have another supply company in the buyers group that</p> <p>17 gave the same kind of discounts, and one with reps</p> <p>18 closer to people, which I thought would be beneficial.</p> <p>19 Q Would that help solve the complaints or the issues that</p> <p>20 some members had on the East Coast with not having a</p> <p>21 full-service distributor nearby?</p> <p>22 A I don't know if it would have solved.</p> <p>23 That would be assuming that their rep was Benco.</p> <p>24 There are other supply companies that have local</p> <p>25 representation.</p>

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1 I thought it would help.
 2 **Q But there is always the possibility for Kois Buyers**
 3 **Group members to leave their former supply companies and**
 4 **switch to Kois Buying Group's supply company, right?**
 5 A Oh, sure, and switch back.
 6 **Q So just to make sure I understood, you said you thought**
 7 **it would help address some of the complaints that you**
 8 **had heard about members on the East Coast not having a**
 9 **full-service distributor nearby?**
 10 A I did think it would help.
 11 **Q Have you ever received any feedback from dentists that**
 12 **they would be interested in having Benco as a vendor?**
 13 A No.
 14 **Q You haven't heard that specifically?**
 15 A No.
 16 **Q But you have heard it with regard to Schein and**
 17 **Patterson specifically?**
 18 A Yes.
 19 **Q So Benco was never a supplier for Kois Buyers Group,**
 20 **correct?**
 21 A Correct.
 22 **Q By the way, turning back to Exhibit No. 329, it looks**
 23 **like your e-mail is Johnny@KoisCenter.com?**
 24 A Correct.
 25 **Q And is that your e-mail for Kois Center and Kois Buyers**

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1 **Group?**
 2 A Yes.
 3 **Q So do you do Kois Buyers Group business through this**
 4 **e-mail address, Johnny@KoisCenter.com?**
 5 A I do. I send out newsletters at
 6 Info@KoisBuyersGroup.com.
 7 **Q When you say "info," do you mean like those monthly**
 8 **updates or--**
 9 A "Info" as in that's the e-mail address that the
 10 newsletters come from, and I will have, occasionally,
 11 dentists that will respond to those e-mails.
 12 **Q When you said "newsletters," is Exhibit No. 325 an**
 13 **example of a newsletter?**
 14 A Yes.
 15 **Q For Schein, and I know we discussed Schein earlier, but**
 16 **just to make sure I have it correct, is it your**
 17 **understanding that Qadeer at ProCare approached Schein**
 18 **on behalf of the Kois Buyers Group?**
 19 A Yes.
 20 **Q And Schein responded that they were not interested in**
 21 **working with the Kois Buyers Group?**
 22 A Correct.
 23 **Q And do you have an understanding of why Schein said no**
 24 **to working with Kois Buyers Group?**
 25 A I don't.

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1 **Q If not for the exclusivity clause in the Burkhart**
 2 **contract, would you be interested in partnering with**
 3 **Schein?**
 4 A No.
 5 **Q Why not?**
 6 A I have heard less than favorable things about their
 7 reps.
 8 **Q Okay. So is it fair to say you have not approached**
 9 **Schein, since you have been managing Kois Buyers Group,**
 10 **to form a relationship with them?**
 11 A In the United States?
 12 **Q Yes, in the United States.**
 13 A Correct.
 14 **Q So you said you have heard less than favorable things**
 15 **about their reps.**
 16 **Generally, what types of things have you heard?**
 17 A Generally, I never hear anything-- any kind of complaint
 18 from the Burkhart reps.
 19 I will occasionally hear complaints from a Schein
 20 rep or a Patterson rep where they're aggressive, said
 21 they would get one price and another-- nothing I can
 22 prove, but it's just what dentists say when I see them.
 23 **Q And you said you would occasionally hear complaints from**
 24 **a Schein rep or a Patterson rep.**
 25 **Did you mean "about a Schein"--**

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1 A "About."
 2 **Q "Yes," right?**
 3 A Yes.
 4 **Q Thank you.**
 5 **Have you ever had any e-mail communications with**
 6 **individuals at Schein regarding Kois Buyers Group?**
 7 A Schein in which country?
 8 **Q The United States.**
 9 A No.
 10 **Q And whatever happened-- I know you mentioned that Schein**
 11 **Canada approached Kois?**
 12 A They did.
 13 **Q And what was the result of that?**
 14 A I told them we were happy with our relationship with
 15 Sinclair, and if they wanted to follow up with us in a
 16 couple of years, they were welcome to.
 17 **Q Who approached you from Schein Canada?**
 18 A A Schein rep in Canada.
 19 I don't remember his name.
 20 **Q Do you know that individual's title?**
 21 **Were they just a representative?**
 22 A I thought-- I got the thought that they were more than a
 23 rep, somebody more of a regional representation in
 24 Canada, but because we weren't planning to move forward
 25 with them, I didn't take too much time with it.

39 (Pages 153 to 156)

157

1 **Q Have you ever talked to Tim Sullivan with Schein?**
 2 A Is he Canada?
 3 **Q Have you ever spoken with--**
 4 A The name doesn't ring a bell to me.
 5 **Q Thank you.**
 6 **Then same questions for Patterson:**
 7 **Is it your understanding that ProCare approached**
 8 **Patterson to work with Kois Buyers Group prior to your**
 9 **arrival at Kois Buyers Group?**
 10 A Yes.
 11 **Q And that was Qadeer that spoke with Patterson?**
 12 A Yes.
 13 **Q And it is your understanding that Patterson said no?**
 14 A Correct.
 15 **Q And do you have an understanding of why Patterson said**
 16 **no?**
 17 A No.
 18 **Q Do you have any understanding of the reason why**
 19 **Patterson was not interested in working with Kois Buyers**
 20 **Group?**
 21 A I can guess. I can speculate.
 22 **Q Okay.**
 23 A At the time-- there were no members, so there wasn't
 24 anything to offer them.
 25 It was the idea that we would put a group together

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1 to give a discount to, but when the group started, there
 2 were no members.
 3 **Q So when the group started, is that true, there were no**
 4 **members?**
 5 **I thought there were 174 members.**
 6 A They came at the same time.
 7 Once we established a supply company, we requested
 8 any interest from the members, so there were no members
 9 when we first started.
 10 **Q Okay. Understood.**
 11 **But similarly, there were no members when you first**
 12 **approached Burkhart and they agreed to do business with**
 13 **Kois Buyers Group?**
 14 A That's correct.
 15 **Q So that fact did not turn off Burkhart, right?**
 16 A Correct.
 17 **Q So why do you think that it turned off Patterson when it**
 18 **didn't turn off Burkhart?**
 19 A I don't know what the reasoning was behind the
 20 motivation of the cancel.
 21 **Q Behind the--**
 22 A The decision for Patterson and Schein to not move
 23 forward.
 24 I don't know what the reason was, other than that
 25 they decided not to move forward.

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1 **Q Okay. Thank you.**
 2 **And if not for the exclusivity clause with**
 3 **Burkhart, would you be interested in having Kois Buyers**
 4 **Group partner with Patterson?**
 5 A Personally?
 6 **Q Yes.**
 7 A No.
 8 **Q Why not?**
 9 A I don't know much about the company. I don't have a
 10 relationship with them.
 11 **Q Okay. So have you reached out to Patterson at all about**
 12 **doing business with Kois Buyers Group?**
 13 A No.
 14 **Q And have you ever had any e-mail communications or other**
 15 **communications with individuals at Patterson regarding**
 16 **Kois Buyers Group?**
 17 A No.
 18 **Q Do you think that not working with Schein, Patterson, or**
 19 **Benco has impacted Kois Buyers Group's success in any**
 20 **way?**
 21 A I would say no.
 22 **Q Why not?**
 23 A Because we have quite a few members signed on.
 24 The members that we have are happy.
 25 I can't speculate as to why other members haven't

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1 joined, just what people tell me.
 2 **Q Okay. But you have heard from some members that they**
 3 **wished that there was full-service distribution in their**
 4 **area, correct?**
 5 A Yes.
 6 They also say that they would rather have a cheaper
 7 price than a full-service rep.
 8 **Q Understood.**
 9 **Would you consider buying groups to be prevalent in**
 10 **the dental industry today?**
 11 A What would you determine "prevalent"--
 12 **Q Not being in the dental industry myself, I am just**
 13 **curious if buying groups are common, if they're out**
 14 **there for people to join--**
 15 A It's a familiar idea.
 16 As far as a percentage of practices that are buyers
 17 group members and not buyers group, I don't have any
 18 data on that.
 19 **Q When you first started working at Kois Buyers Group, did**
 20 **you notice any barriers to entry into the dental**
 21 **industry?**
 22 A Can you rephrase?
 23 **Q Have you noticed any barriers to entry in terms of**
 24 **getting customers, getting members, or getting vendors**
 25 **for Kois Buyers Group?**

40 (Pages 157 to 160)

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- 1 A No.
- 2 The decisions for companies to come into the buyers
- 3 group or pass is based on that company, you know,
- 4 whether or not they find it of benefit to be part of our
- 5 buyers group.
- 6 **Q Have you heard from any vendors that they don't find it**
- 7 **to be beneficial to work with Kois Buyers Group?**
- 8 A I haven't heard of any.
- 9 **Q So most vendors that you've approached have decided to**
- 10 **do business with Kois Buyers Group?**
- 11 A Yes-- I'm sorry, I should back up.
- 12 Zimmer is an implant company. They offer discounts
- 13 for U.S. and Canadian practices, the same discounts, and
- 14 the pricing models are different in Canada and the
- 15 United States.
- 16 The representatives in Canada asked for a different
- 17 pricing structure.
- 18 **Q So have you heard of any vendors that don't find it**
- 19 **beneficial to work with Kois Buyers Group that have**
- 20 **informed you that they don't find it beneficial?**
- 21 A That was the only one.
- 22 **Q So Zimmer is an example?**
- 23 A Zimmer in Canada.
- 24 Zimmer in U.S. is very happy.
- 25 **Q Have you ever heard of rumors in the dental industry**

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- 1 **that buyers group sell gray market products?**
- 2 A Rumors? Nothing that I can substantiate.
- 3 **Q But have you heard of rumors to that effect?**
- 4 A I have.
- 5 **Q Have dentists informed you of that?**
- 6 A Yes.
- 7 **Q And have dentists told you where they've heard that**
- 8 **information?**
- 9 A No.
- 10 It's the-- but their thought was if there's a
- 11 product-- it's not so much in the dental community.
- 12 It's a special one-time offer on a particular product,
- 13 and the products might be past expiration but still
- 14 good, that kind of gray market.
- 15 Is that what you're referring to?
- 16 **Q Why don't we define what you understand "gray market" to**
- 17 **be.**
- 18 A "Gray market" is not direct from the original seller to
- 19 the original supplier.
- 20 **Q And so have dentists told you that they've heard that**
- 21 **buyers groups sell gray market products?**
- 22 A I haven't heard specifically for a buyers group.
- 23 I have heard of dentists getting offered products
- 24 that were below what would be considered even a
- 25 discounted price, and ultimately those were usually some

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- 1 sort of gray market product.
- 2 **Q Okay. Was that tied to a buyers group or no?**
- 3 A No.
- 4 **Q So just going back to buying groups in particular, have**
- 5 **you heard any rumors in the dental industry that buyers**
- 6 **groups sell gray market products or partner with**
- 7 **companies that sell gray market products?**
- 8 A I haven't heard anything specific.
- 9 **Q Have you heard anything generally?**
- 10 A No.
- 11 **Q Do you have an understanding of the term "manufacturer"**
- 12 **or "vendor chargeback" as it's used in the dental**
- 13 **industry?**
- 14 A No.
- 15 **Q You have never heard the term "chargeback"?**
- 16 A I don't have a good understanding of it.
- 17 **Q So do you have any understanding of it?**
- 18 A I have heard the term. I am not familiar with what it
- 19 really means.
- 20 **Q Do you have an understanding of how manufacturers view**
- 21 **buying groups in general?**
- 22 A No.
- 23 **Q Have manufacturers ever told you that they would not**
- 24 **work with Kois Buyers Group because it was a buying**
- 25 **group?**

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- 1 A No.
- 2 **Q Has any manufacturer told you they have a policy of not**
- 3 **working with buying groups?**
- 4 A Yes.
- 5 **Q Was that 3M?**
- 6 A No.
- 7 **Q Which one was that?**
- 8 A Ultradent.
- 9 They said they had a bad experience with a buyers
- 10 group, and going forward they're not going to be
- 11 partnering with any other buyers groups.
- 12 **Q Did they tell you which buyers group that was?**
- 13 A No.
- 14 **Q And what about 3M?**
- 15 **3M said that they would not sell direct to Kois**
- 16 **Buyers Group members; is that right?**
- 17 A No.
- 18 They never sell direct to Kois Buyers Group
- 19 members. It would be through Burkhart, and they said
- 20 that they weren't willing to give a discount to buyers
- 21 group members.
- 22 **Q And you heard that through Burkhart?**
- 23 A Yes.
- 24 MR. RYAN-LANG: So we are just past
- 25 2:00 now. Can you give me a sense of how much more

41 (Pages 161 to 164)

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1 you've got?
2 Some of this ground I feel like we have covered a
3 little bit.

4 MS. GOFF: Sure. Why don't we take a
5 break right now, and I will try to wrap up. I have one
6 more topic that I don't think will take too long, and
7 then we can wrap up.

8 (Recess 2:02 to 2:11 p m.)
9 (Exhibit No. 330 marked
10 for identification.)
11

12 **Q (By Ms. Goff) The court reporter handed you what has**
13 **been marked as Exhibit No. 330.**

14 **This is another document that was produced by**
15 **another company, so I've redacted some of it, and there**
16 **are no Bates stamps or-- I guess I've redacted the Bates**
17 **stamps.**

18 **Take a moment to look at it, and let me know when**
19 **you're finished.**

20 **I am really just focused on who this e-mail came**
21 **from.**

22 **You are welcome to read as much of this as you**
23 **would like, but my main question is:**

24 **The "From" says, "KoisTribe@KoisCenter.com."**
25 **Is that your e-mail or the e-mail address of your**

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1 A Yes.

2 **Q And then "the layout of the discounts," what did you**
3 **mean by that?**

4 A This was what the original idea of the buyers group was,
5 was this plan.

6 This wasn't the reality.

7 This was before they even had a group signed up.

8 This was before we had any members signed up.

9 This looks like the original announcement letter
10 that went out.

11 **Q As soon as members signed up, did the pricing structure**
12 **go to that 299 per year--**

13 A No. It went that way when I took over.

14 **Q That's what I thought. Okay.**

15 A Where it says here the deposit, first month, last month,
16 initial deposit-- on Page 3, that was the initial
17 deposit that was taken from people based on whatever
18 category they signed up for.

19 **Q Okay.**

20 A When I took over, I pushed all these forward for
21 everybody.

22 Based on 299 a year, if they spent an initial
23 deposit of \$400, they got two years worth of services
24 going forward as their membership.

25 **Q Okay. You can put that one aside. Thank you.**

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1 **father's?**

2 A It is neither.

3 This would appear to be a newsletter that went out.

4 **Q And who sent this newsletter?**

5 A Probably based on the date this came out, I would say
6 that Scott was the person who ultimately sent it out.

7 **Q And that's Scott--**

8 A Heyamoto.

9 **Q The letter says, "Warmest always, John C. Kois."**

10 A This looks like the original setup of the buyers group,
11 so the language in it looks more like something that
12 Qadeer wrote rather than something that my dad wrote.

13 **Q In the salutation, "John C. Kois," is that a reference**
14 **to your father, to your understanding?**

15 A Yes.

16 **Q And what makes you say that this is something that you**
17 **think Qadeer wrote and not your father?**

18 A The "ProCare Dental Services," just the type of-- the
19 layout of how the discounts are offered and the language
20 in it.

21 **Q So the first-- well, the second paragraph says, "I have**
22 **been working on this plan from partners with ProCare**
23 **Dental Services."**

24 **Is that what you were referring to when you said**
25 **"ProCare Dental Services"?**

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1 **Do you agree or disagree with the statement that**
2 **dentists, for the most part, are not interested in**
3 **purchasing from buying groups?**

4 A That's a very direct statement. I am trying to decide
5 the best way to-- can you say it again?

6 **Q Well, do you agree or disagree that dentists are not**
7 **interested in purchasing from buying groups?**

8 **MR. RYAN-LANG: He's not a dentist--**

9 MS. GOFF: I understand, but he is in
10 the dental industry, and he has--

11 THE WITNESS: I have to make sure I
12 get all my double negatives here.

13 I would disagree that dentists are not interested
14 in purchasing from buyers groups.

15 **Q (By Ms. Goff) And that's based on your experience**
16 **working at a buyers group and speaking with dentists?**

17 A Yes.

18 **Q Do you believe that buying groups provide value to**
19 **dentists?**

20 A I can't speak for other buying groups.

21 I believe that the Kois Buyers Group provides value
22 to members.

23 **Q Okay. And do you believe that the Kois Buyers Group has**
24 **brought down the price for supplies for its members?**

25 A I do.

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1 **Q And is that understanding-- what is that understanding**
 2 **based on?**
 3 A The discounts offered are off of retail pricing.
 4 I don't know what dentists would have paid
 5 otherwise, but the responses I get from dentists is that
 6 they're saving money on those invoices.
 7 **Q Okay. Thank you.**
 8 **Does your father have an e-mail address?**
 9 A Yes.
 10 **Q What is it?**
 11 A It's JohnKois@Hotmail.com.
 12 **Q For you personally, I know we mentioned the**
 13 **Johnny@KoisCenter, and you told me that there is another**
 14 **one, Info--**
 15 A Info@KoisBuyersGroup.com.
 16 **Q Other than those two, do you conduct any other business**
 17 **for Kois Buyers Group in any other e-mail addresses?**
 18 A No.
 19 MS. GOFF: Thank you very much for
 20 coming in today. Those are all my questions, but I
 21 really appreciate your time.
 22 With that, we can close the transcript, unless your
 23 counsel has anything else.
 24 MR. RYAN-LANG: I'm good.
 25 (Hearing concluded at 2:20 p m.) (Signature reserved.)

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1 STATE OF WASHINGTON) I, Terilynn Simons, RMR, CRR,
 2) ss CLR, a certified court reporter
 3 County of Pierce) in the State of Washington, do
 4 hereby certify:
 5 That the foregoing investigational hearing of JOHN C.
 6 KOIS, JR. Was taken before me and completed on
 7 July 26, 2017, and thereafter was transcribed under my
 8 direction; that the transcript is a full, true and complete
 9 transcript of the testimony of said witness, including all
 10 questions, answers, objections, motions and exceptions;
 11 That the witness, before examination, was by me duly
 12 sworn to testify the truth, the whole truth, and nothing but
 13 the truth, and that the witness reserved the right of
 14 signature;
 15 That I am not a relative, employee, attorney or counsel
 16 of any party to this action or relative or employee of any
 17 such attorney or counsel and that I am not financially
 18 interested in the said action or the outcome thereof;
 19 That I am herewith securely sealing the said transcript
 20 and promptly delivering the same to Attorney Karen V. Goff.
 21 IN WITNESS WHEREOF, I have hereunto set my signature on
 22 the 30th day of July, 2017.
 23 Terilynn Simons, CCR, RMR, CRR, CLR
 24 Certified Court Reporter No. 2047.
 25 (Certification expires 07/07/2018)

43 (Pages 169 to 170)

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CX0322

Redacted in Entirety

CX1032

Redacted in Entirety

CX1062

From: Chuck Cohen
Sent: Wednesday, April 16, 2014 10:50 PM
To: Timothy Sullivan; Paul Guggenheim (paul.guggenheim@pattersondental.com)
Subject: FW: TDA Perks letter
Attachments: Perks_Value_1113.pdf

Tim & Paul...

Thought you'd be interested in this 'essay' from our friends at the TDA. Not only are they our new competitor, but they basically tell their members that dental distributors rip off the dentists. Nice!

cfc

From: Ron Fernandez
Sent: Wednesday, April 16, 2014 4:07 PM
To: Mark Rowe; Mike McElaney; Chuck Cohen
Subject: FW: TDA Perks letter

Gentlemen,

Here is a letter that the TDA sent out to all 7400 of their members. Extremely disturbing.....

Here are a few of their spotlighted manufacturers:

GC America
Kuraray
Carestream
Sunstar
Coltene Whaldent



Provided by TDA Perks Program

value for your profession

Texas Private Practices Gain the Volume Purchasing Power of Corporate Practices

TDA Perks Program's newest partner provides independent private practices with volume purchasing power formerly only available to corporate practices.

Provided by TDA Perks Supplies



Ask dentists what their top 3 concerns are regarding the business of their practice, and one of the most common answers you'll hear is "overhead."

For private-practice dentists, reducing the costs of dental supplies would mean a significant reduction in overhead, but doing so hasn't been simple. No matter the practice type, most overhead costs are relatively fixed. Relocating to reduce rent or mortgage costs, or decreasing staff or staff pay is perilous. Another main contributor to overhead is the cost of the wide variety of supplies needed to operate a modern practice. The average practice

spends an amount equal to 30% of net profit on consumable dental supplies. Dentists can decrease the cost of supplies by using lower quality products, or buying in bulk or directly from manufacturers instead of a one-stop-shop distributor. Dental manufacturers long ago realized that selling directly to dentists was difficult because there were too many of them. They also saw it didn't produce the best profit margins, because individually dentists don't spend thousands of dollars on items like bibs, burs or impression trays. As a result, about 80% of dental product manufacturers only sell their products through dealers. Though some manufacturers do sell directly—and offices could save money by purchasing from them—a practice would almost need a full-time staff person to place dozens or even hundreds of separate orders each month, since no one manufacturer makes everything a practice needs.

The overwhelming majority of dental-product sales are made through a handful of large dealers that purchase and resell thousands of products from a variety of manufacturers. Working with a distributor saves time and is convenient, because an office typically works with a single representative and only needs to place one order a month. But distributors rarely provide the best deal. Convenience comes with the cost of a middleman. For each sale generated, most distributors have to pay variable costs — sales representative salary and commissions, new-customer marketing costs, etc. Many dealers charge prices at or above MSRP,

On October 1, 2013, TDA Perks launched a new program that leverages the group buying power of more than 7,400 TDA members, who collectively have an annual dental supplies spend of more than \$370 million.

and offer discounts of just a few percentage points on only certain items to attract new customers.

Most practices buy from territory sales representatives and could shop the few vendors available to them to try to negotiate discounts; but doing so usually amounts to no more than single-digit percent savings. The key point is, because private practices don't purchase in bulk volume, they have little wiggle room in price negotiation with suppliers. This is an area where corporate practices have a major advantage over private practices: negotiating power with suppliers.

COST-PLUS VS. RETAIL-MINUS PRICING

A corporate practice with 500 dentists will use in excess of \$25 million per year worth of consumable dental supplies, and millions more in equipment, office supplies and other products. A private practice spends an average of about \$55,000 on consumable supplies alone. Because corporate dental practices have the ability to purchase dental supplies on contracts worth tens of millions of dollars, they can negotiate prices on a cost-plus model (dealer cost plus a few percentage points) — instead of having their discount potential limited to 10% off retail. Given the volume a dealer would receive by converting a corporate practice, a dealer could afford to earn a much smaller margin. After all, five percent of \$10 million is quite a bit more than 45% of \$55,000.

VOLUME-PURCHASING POWER FOR PRIVATE PRACTICES

On October 1, 2013, TDA Perks launched a new program that leverages the group buying power of more than 7,400 TDA members, who collectively have an annual dental supplies spend of more than \$370 million. TDAPerksSupplies.com enables members to save an average of more than 35 percent on dental supplies. More than 40,000 products are listed—including brands typically available only through dealers—as well as the products of more than 60 direct manufacturers (companies whose products are not available through dealers). This new program attempts to offer TDA-member private practices the same buying power of corporate dental practices. The program will add more manufacturers and further reduce prices regularly as the number of members using the service grows. Following is information needed to start taking advantage of the program:

- Get a price estimate by sending a list of items (using SKU or distributor item numbers) via email, phone or fax.
- Order online at TDAPerksSupplies.com (or via e-mail, phone or fax).
- ADA membership numbers will be required. All active TDA members have pre-activated accounts.
- Customer support is available Monday through Friday, 8:00 AM to 7:00 PM.
- Contact TDA Perks Supplies at:
 - support@tdaperkssupplies.com
 - T: 512-270-6999
 - F: 888-740-4154

For more information regarding other TDA Perks programs, please visit tdaperks.com, or call 512-443-3675.

CX1076

Redacted in Entirety

CX1149

From: Bob Cunningham <DailyDigest@benco.com>
Sent: Sunday, February 24, 2013 3:38 AM
To: Bob Cunningham
Subject: Daily Activity Stream Summary: 2/23/2013 10:38:16 PM

Community Activity



Benco Buzz

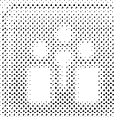


Chuck Cohen: @[Benco Buzz] Busy days at Chicago Mid-Winter meeting. Showed our CAD-CAM milling solution for the first time. Lots of buzz!



2/23/2013 12:21 PM | [Like](#) | [Comment](#) | [Follow-up](#) | [View](#)

- [Brian Evans](#) likes this.
- [Van Huynh](#) likes this.
- [Matt Lewinson](#) likes this.
- [Joe Balady](#) likes this.
- [Michele DiFilippo](#) likes this.
- [Stephanie Starer](#) likes this.



Sales



Gerald Barto: @[Sales]: there has to be some program that we have (even if made up) for what just happened to me. I had two separate offices. One was owned by Dr.. He was partial owner of the other one along with another Dr. I tried to get 6 other offices under partner sharing but I couldn't because it was mixed with different owners. It worked in reverse because Patterson gave my two offices same deal that the 6 offices had. Confused? Well I'm frustrated and just wanted to get off my chest. One Dr. was fighting for me to get all, instead I lost two. You would think there would be something for me to (and Benco) to get 8 offices but billed to one office blah blah blah

2/22/2013 5:40 PM | [Like](#) | [Comment](#) | [Follow-up](#) | [View](#)

- [Jeff McAdoo](#): Do all six offices have common ownership? I know that there are different owners associated with each office, but is there one Doctor or corporation who owns a piece of all six? If so, I would think you should be able to set up a single account with six

different ship-tos.
(2/22/2013 10:33 PM)

- Gerald Barto: No Jeff. That's the problem. It's all intermixed (is that a word:). You just said it. Has to be one owner. It's confusing to say in print. Thank you for your reply. Sometimes programs should be able to be tweaked to get large quantity of supply business
(2/23/2013 12:59 AM)
- Patrick Ryan: To be recognized as one customer, one of the following three situations must be happening.
 1. All of the offices are owned by the same entity and everyone is an employee
 2. A single entity owns the hard assets of the practice (building, lease, equipment, etc) and a doc or multiple docs own each "practice" (the charts essentially)
 3. A single entity has a minimum of a 51% stake in all the practices but may have multiple minority partners

Anything other than the scenarios above is a "buying club" or GPO (group purchasing organization). Benco does not recognize GPOs as a single customer. GPOs are what ruined the medical supply business and why they work on single digit margins. If this door is ever opened in dental, its all over for all of us. It may seem like "oh, why not? Let's get a bunch of cotton rolls", but picture a day when every single customer of yours is in some kind of buying club and all margins are now 12% over cost and its a race to the bottom. It doesn't catch on here, because so far,
(2/23/2013 12:13 PM)

- Patrick Ryan: all of the major dental companies have said, "NO", and that's the stance we will continue to take. If this doesn't make sense to anyone, call me and I will explain in detail
(2/23/2013 12:14 PM)



Sean Rokita: @[Sales]: I am currently working with a Dr. who has Cerac, EagleSoft, Schick and the XG3. Patterson came back to him and basically "offered" more competitive pricing and support with Patterson Stuff mentioned above! Any suggestions on how to combat this? Thanks and Go FLYERS

2/22/2013 4:00 PM | [Like](#) | [Comment](#) | [Follow-up](#) | [View](#)

- Gari Calvert: yeah - why didn't they offer that in the first place? I've always brought that to a customers' attention when in a competitive situation and I always say "if they are willing to give you that now, why were they not giving it to you before?" I've lost a few on this conversation but won MANY. Not much more they can do with CEREC/Eaglesoft/Schick/XG3 anyway. They are probably on the monthly service contract with all of them and there is nothing that they can do more than that. Hope that helps!
(2/22/2013 6:39 PM)

- Stephanie Starer likes this.

- Donald Ellerton: Very sage advice Gari

(2/23/2013 3:56 AM)



Matt Hogan: @[Sales]: I just called the manufacturer, Sota, to request a demo on the ebite illumination system (similar to Isolite). Sota said they no longer sell that product and directed me to some website of a company from overseas who now sells it?? What is that about? This is stuff we need to know before i tell a customer we have an option and then embarrass myself when we dont. Who can get me some info on whats going on here? Thanks mjh

2/21/2013 8:54 PM | [Like](#) | [Comment](#) | [Follow-up](#) | [View](#)

- Stephanie Starer likes this.
- Jason Sturm: Funny. It's still on their website, though. It is true, the website is always the last to know.

(2/22/2013 3:49 AM)

- Derek Dreyer: Matt they actually gave me a name and number to a rep who I called and text and left voice mails over and over.....finally gave up. Never heard back.

(2/22/2013 9:05 PM)

- Analiz Aquino: Matt when you get an answer let me know because I also wanted an Ebite demo. Thx

(2/23/2013 3:22 AM)

- Matt Hogan: Here is the reply from marketing- I am at the Chicago Dental Show. I saw your post on SharePoint, so I stopped by the Sota booth to ask them about Ebite. As of Jan 1, they stopped distributing the product. Now that company who does, only sells direct...

(2/23/2013 12:51 PM)

- Stephanie Starer likes this.
- Shawn Angell: matt, just get the mr thirsty with zirc thats the closest we have for isolite and they actually have a intro kit its the old airbug

(2/24/2013 1:31 AM)



Service Community



Mark Reed: @[Service Community]: Does anyone have an alignment kit for a Planmeca Proline EC with ceph, that i can borrow?

2/6/2013 6:18 PM | [Like](#) | [Comment](#) | [Follow-up](#) | [View](#)

- Aaron Taddei: Yes, where do you want it shipped?

(2/7/2013 4:11 PM)

- Mark Reed: 550 Elwood park blvd. Harahan,La 70123. Thanks bud
(2/12/2013 1:15 PM)
 - Aaron Taddej: Cool, I'll have it out in the next couple of days...
(2/13/2013 4:44 PM)
 - Aaron Taddej: It's on it's way...
(2/23/2013 10:10 PM)
-

CX1156

From: Patrick Ryan
Sent: Tuesday, August 27, 2013 7:23 PM
To: He Zhao
Subject: Re: Riverside...

Exactly the same. But on the medical side they are common and recognized.

Sent from my iPhone

On Aug 27, 2013, at 3:21 PM, "He Zhao" <hzhao@benco.com> wrote:

Understood. Sounds similar to buying groups.

Thanks and enjoy the week

Zhao
Regional Manager
Benco Dental
Mobile: 443-691-9751
Email: hzhao@benco.com

From: Patrick Ryan
Sent: Tuesday, August 27, 2013 3:20 PM
To: He Zhao
Subject: Re: Riverside...

Group Purchasing Organizations.

They aggregate the purchase volume of unrelated entities in order to leverage price. We do not recognize them. GPOs are why medical works at the margins they do.

My suspicion is, that if Schein's prices are that high, then there is a kickback back to Premier, which we are not going to do. There also probably is a membership "fee".

Also, it obligates us to all their terms and conditions and obligates us to that and pricing to EVERY entity that is in their system.

No thanks.

Sent from my iPhone

On Aug 27, 2013, at 3:03 PM, "He Zhao" <hzhao@benco.com> wrote:

Pat
What are GPOs?

Brandon's wife works there and got them to switch from Schein to us, but if we can't sell to them, I will ask her to hold off.

Thanks

Zhao
Regional Manager
Benco Dental
Mobile: 443-691-9751
Email: hzhao@benco.com

From: Patrick Ryan
Sent: Tuesday, August 27, 2013 2:59 PM
To: Brandon Pargoe
Cc: Amanda Pelak; Brandon Pargoe; Denise Nagle; He Zhao; Patricia Landry
Subject: Re: Riverside...

No GPOs.

Sent from my iPhone

On Aug 27, 2013, at 2:01 PM, "Brandon Pargoe" <bpargoe@benco.com> wrote:

Pat,

This hospital is where my wife works. The ordering has been going through Schein, however, they will start ordering with Benco.

I am meeting with the ordering person tomorrow and have a merchandise order that needs to be placed.

Please let me know if and how we are able to assist the hospital.

Btw, this order is for dental supplies, the hospital has general dentists there a few times a week, when patients need heavy sedation.

Brandon

Sent from my iPhone

On Aug 27, 2013, at 1:05 PM, "Amanda Pelak" <apelak@benco.com> wrote:

Hi Pat,

I was speaking with Brandon the equipment specialist on an account, Riverside Medical. We needed to become an approved vendor on their website before they can order. The link to the site is below and I called Premier Inc. and they said they were the GPO company. In reviewing the website it does appear to be a GPO set up.

BDS-FTC00017054

I know in previous circumstances we do not do anything with GPO's. However I don't know if this would work differently with equipment sales.

Would you mind taking a quick look at the site to see if you agree?

Any help is appreciated.

Thank you,

Amanda Pelak
Institutions Department
Benco Dental
apelak@benco.com
1-800-462-3626 ext. 82121

From: Greenlaw, Yolanda
[mailto:YOLANDA.GREENLAW@rivhs.com]
Sent: Tuesday, August 27, 2013 12:28 PM
To: Amanda Pelak
Subject: RE: Riverside...

It is www.premierinc.com. If you have any questions, please call supply chain 757-534-6500. That is where I go to find out if a vendor is approved.

From: Amanda Pelak [mailto:apelak@benco.com]
Sent: Tuesday, August 27, 2013 8:14 AM
To: Greenlaw, Yolanda; Brandon Pargoe
Cc: Amanda Pelak
Subject: RE: Riverside...

Do you have a website?

What is Premiere GPO? Benco does not do anything with GPO's.....

Thank you,

Amanda Pelak

Institutions Department

Benco Dental

apelak@benco.com

1-800-462-3626 ext. 82121

From: Greenlaw, Yolanda
[mailto:YOLANDA.GREENLAW@rivhs.com]
Sent: Tuesday, August 27, 2013 7:54 AM
To: Amanda Pelak; Brandon Pargoe
Subject: RE: Riverside...

Hello Amanda,

You need to go to Supply Chain Management.
Contact Kitty Williams. You also have be on
Premiere GPO. You can go through
Premiereinc.com to register. Then contact Kitty.

From: Amanda Pelak [mailto:apelak@benco.com]
Sent: Monday, August 26, 2013 3:36 PM
To: Greenlaw, Yolanda; Brandon Pargoe
Cc: Amanda Pelak
Subject: Riverside...

Hello Yolanda,

I was speaking with Brandon on becoming an
approved vendor. Do you have any information
from the hospital as to how we go about this?

BDS-FTC00017056

Is there a hospital website?

Can you provide me with the exact name and address? I will see what I can find as well.

Thank you,

Amanda Pelak

Institutions Department

Benco Dental

apelak@benco.com

1-800-462-3626 ext. 82121

Congratulations Natural Extensions Ultra! nitrile gloves for being nominated for Dental Product Shopper Product of the Year 2013! Please read Dental Product Shopper's report at www.naturalextensions.com, and ask me for a FREE sample!

CONFIDENTIALITY NOTICE: This e-mail message, including any attachments, is for the sole use of the intended recipient(s) and may contain confidential and privileged information. Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply e-mail and destroy all copies of the original message.

Congratulations Natural Extensions Ultra! nitrile gloves for being nominated for Dental Product Shopper Product of the Year 2013! Please read Dental Product Shopper's report at www.naturalextensions.com, and ask me for a FREE sample!

BDS-FTC00017057

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BDS-FTC00017058

CX1218

Redacted in Entirety

CX1233

From: Don Taylor
Sent: Thursday, July 11, 2013 2:14 PM
To: Paul Ehler
Subject: RE: Sure Smiles and idea for womens buying group...

Hi Paul- let's talk live about this and I can fill you in. Short version is Chuck Cohen is adamant about not participating in any way shape or form in anything that looks, walks, talks, smells or acts like a buying group. Its death to dealers and you really won't find manufacturers participating in it due to those reasons. Every time I hear of one of these things trying to start, they die just as fast. Its impossible to get all of the offices on the same page and committed to the same thing. Let's connect tomorrow as I should have my phone fixed by then.

All the Best,

Don Taylor
Regional Manager, Rocky Mountain Region (WY,CO,NM, El Paso)
Benco Dental Company

Cell: 303-548-9475
Fax: 303-583-9167
dtaylor@benco.com

Regional Site: www.benco.com/rockymtn
Personal Site: www.benco.com/dtaylor

From: Paul Ehler
Sent: Wednesday, July 10, 2013 8:35 PM
To: Don Taylor
Subject: Sure Smiles and idea for womens buying group....

Don,

I was in Dr. Kaspers office today, and speaking with her business manager / husband Cri. Sounds like sure smiles that is partnered with Burkhardt is hitting it hard. Thankfully they are sticking with me. He has been looking at and having some initial conversations with a group of dentists they are close with on putting together a buying group. Cri has an idea for a group of women Dr's tht would form a group with support for other women docs, and increased buying power. I already work with at least one more of these women. It also seems to line up with the Lucy Hobbs initiative. I told him this is something myself and Benco could be interested in. Cri would like to at least pick your brain on this maybe meet with you and myself if this progresses. I told him you were pretty slammed with travel and everything with your wife, but if you could reach out to him next week I would appreciate it. Call me with thoughts or questions. Could be a great way for me to get a bunch of new accounts. Contact info below....

Cri Boratenski
General Manager
cri@cofamilydentistry.com
(303) 284-0202 [Office]
(303) 284-0404 [Fax]
www.cofamilydentistry.com
255 Union Blvd
Suite 410

Lakewood, CO 80228

Paul Ehler
Benco Dental
Territory Representative
Cell- 303-941-1085
Fax- 303-790-1421
www.benco.com

No virus found in this message.
Checked by AVG - www.avg.com
Version: 2013.0.3349 / Virus Database: 3204/6482 - Release Date: 07/11/13

CX1234

From: Don Taylor
Sent: Saturday, September 21, 2013 12:19 AM
To: Mark Nguyen
Subject: Re: Smile source is now partners with Vatech and Midmark FYI

Sounds good. I can call you at 4 MST, 3 pst?

All the Best,

Don Taylor
 303 548 9475 cell
 303 583 9167 eFax
 dtaylor@benco.com

On Sep 20, 2013, at 5:50 PM, "Mark Nguyen" <marknguyen@vatechamerica.com> wrote:

Thanks Don for your feed back, I would love to discuss Tuesday. Let me know what time is best for you. Im in the office all day. Enjoy your weekend,

Mark

On Sep 20, 2013, at 4:18 PM, Don Taylor <dtaylor@benco.com> wrote:

Hi Mark- Thanks for your help on this. See bullet notes below:

- Buying clubs are the death of dealers/distributors. We become reduced to catalog companies and lose our value proposition. When we lose our value as a merch dealer, it's hard to employ techs and equip specialists to sell and support equipment.
- This is not a competitive dig, Mark but isn't it ironic that Burkhardt, the dealer whose whole value proposition is 'holding their margin', is willing to participate in a Costco style buying club? This is the same company who does not have large account buying discounts and believes everyone should be the same. Something is wrong with that.
- Providing these deals through Burkhardt does provide them a competitive advantage that they don't have to earn. And its not like they are bringing you 10% or more of the market to justify it. Why would their customers get this when we do not, especially when they don't have to pony up and buy anything from you to get it? We have to buy in bulk and extend capital to get better pricing. I would fully expect if we come across a deal like this that Vatech would honor the same discounts/rebates from us to help ensure we do not lose that deal.
- If you look at their website, this buying group only has ~ 6 accounts in Denver, ~ 4 or 5 in CA and about the same in AZ. What do you really gain by participating in this?
- A 4% equipment rebate offered through Burkhardt is very interesting. The customer writes off the full amount and then get a nontaxable 4% rebate on the back-end.
- Most importantly, Chuck Cohen is adamantly against buying groups. He will not let us participate because he doesn't think everyone should get the same price. It's one of the only times I have seen him really get fired up. I am only assuming he is not aware of this given the history and strength of our relationship with Vatech.

Just a few thoughts. We can and need to visit live about this and some other things in the very near future:

- 1- The Mountain West Dental Institute. I need to know if you guys want to be the intraoral sensor company in this facility. They have already booked out usage and it only grows from here. Your call, no hard feelings either way. However, we (Benco) has the opportunity to fill the spot and we have other companies wanting to contribute if you guys decide it's not for you.
- 2- This 5 year warranty that Craig says was offered and then rescinded from the CDA. This is a pretty big deal. You and I both just lost a Vatech sale and worse the customer now refuses to buy Vatech no matter what as a result. I'm not passing judgment, we just need to talk it through. If you did approve it with Craig and hope that our reps will understand the dynamics of a Benco bulk buy, they will not. Why would they? They are forced to use what we have in stock first, so it's out of their control. Further, they do not get coaching or training on how and when we might have to buy an additional unit from a manufacture to get a certain price that was offered.

How about next Tuesday afternoon? Let me know.

All the Best,

Don Taylor
 Regional Manager, Rocky Mountain Region (WY,CO,NM, El Paso)
 Benco Dental Company

Cell: 303-548-9475
 Fax: 303-583-9167
 dtaylor@benco.com

Regional Site: www.benco.com/rockymtn
 Personal Site: www.benco.com/dtaylor

From: Mark Nguyen [mailto:marknguyen@vatechamerica.com]
Sent: Friday, September 13, 2013 4:31 PM
To: Don Taylor
Subject: Re: Smile source is now partners with Vatech and Midmark FYI

Don, It was great seeing you too. Hope you made it home safely. As far as working with smile source, yes we are working with them through Burkhardt. In all reality, majority of the time Benco has better prices then what is offered to smile source through Burkhardt so I dont think price will be an issue, especially with your bulk purchase items. Please share with me your thought as to why this potentially can be a negative situation, as we are evaluating if we want to continue our relationship with them next year and i would like to get your inputs

Thanks,

Mark

On Sep 13, 2013, at 7:10 AM, Don Taylor <dtaylor@benco.com> wrote:

Good morning and great to see you.

Are you guys participating in a buying group? These things are the death of the dealer...

All the Best,

Don Taylor
 303 548 9475 cell
 303 583 9167 eFax

dtaylor@benco.com

Begin forwarded message:

From: Paul Ehler <pehler@benco.com>
Date: September 12, 2013, 9:07:10 PM MDT
To: Don Taylor <dtaylor@benco.com>
Subject: Re: Smile source is now partners with Vatech and Midmark FYI

That new buying group that is popping up that Greg Castro, Burkart is the rep for.

Sent from my iPhone

On Sep 12, 2013, at 8:36 PM, "Don Taylor" <dtaylor@benco.com> wrote:

What is smile source?

All the Best,

Don Taylor
303 548 9475 cell
303 583 9167 eFax
dtaylor@benco.com

On Sep 12, 2013, at 2:16 PM, "Paul Ehler" <pehler@benco.com> wrote:

And offering "exclusive" deals in town.

Sent from my iPhone

Congratulations Natural Extensions Ultra! nitrile gloves for being nominated for Dental Product Shopper Product of the Year 2013! Please read Dental Product Shopper's report at www.naturalexensions.com, and ask me for a FREE sample!

Congratulations Natural Extensions Ultra! nitrile gloves for being nominated for Dental Product Shopper Product of the Year 2013! Please read Dental Product Shopper's report at www.naturalexensions.com, and ask me for a FREE sample!

CX1239

Redacted in Entirety

CX1278

Redacted in Entirety

CX1289

From: Ron Fernandez
Sent: Wednesday, December 11, 2013 4:53 PM
To: Mark Rowe; Rick Dunn
Subject: RE: TDA

I will call the Patterson manager right now. Last time I spoke with him, about three weeks ago, they were out, but considering options.

From: Mark Rowe
Sent: Wednesday, December 11, 2013 10:50 AM
To: Rick Dunn
Cc: Ron Fernandez
Subject: Re: TDA

C if u can verify that

Mark Rowe
Director of Sales
South District
601-201-4336

“We make a living by what we get; we make a life by what we give”

On Dec 11, 2013, at 10:31 AM, "Rick Dunn" <rdunn@benco.com> wrote:

Ron....I heard from the ex TDA president, that Patterson pulled out of the meeting, what did we decide ?.

From: Pat Stella
Sent: Tuesday, October 15, 2013 7:55 AM
To: Ken Lee
Cc: Mark Rowe; Rick Dunn; Ron Fernandez
Subject: RE: TDA

Good Morning Ken,

Redacted

Patricia Stella
Exhibit Coordinator
Benco Dental
We deliver success *smile after smile*

295 Centerpoint Blvd
Pittston, PA 18640
570.602.6874 (office)
570.602-4920 (fax)

From: Ron Fernandez
Sent: Tuesday, October 15, 2013 8:29 AM
To: Pat Stella
Cc: Mark Rowe; Rick Dunn
Subject: RE: TDA

Thank you for the info Pat. We will let you know this week what our plans are.

Redacted

From: Pat Stella
Sent: Tuesday, October 15, 2013 6:28 AM
To: Ron Fernandez
Cc: Mark Rowe; Rick Dunn
Subject: RE: TDA

Good Morning Ron,
I sent in the contract and deposit of \$1000.00 on 7-19-13 per your request. Benco was assigned space 757 (20'x30' island) and I sent in the balance of \$8200.00.

Cancellation of Exhibit Space
All booth cancellations must be submitted to the TDA Exhibits Manager in writing. After TDA has been given a written cancellation notice, TDA reserves the right to re-assign the booth space.
Refund schedule is as follows:
50% refund of monies paid to TDA if cancelled by October 26, 2013
No refund after October 26, 2013

Patricia Stella
Exhibit Coordinator
Benco Dental
We deliver success *smile after smile*

295 Centerpoint Blvd
Pittston, PA 18640
570.602.6874 (office)
570.602-4920 (fax)

From: Ron Fernandez
Sent: Monday, October 14, 2013 3:29 PM
To: Pat Stella
Cc: Mark Rowe; Rick Dunn
Subject: TDA

Hello Pat,

Will you let me know what our financial contribution is to attend the Texas Dental Association meeting and when we pay? We may not want to attend this year after all. Just need to find out the details.

CX1331

From: Mike Wade
Sent: Wednesday, July 30, 2014 11:11 PM
To: Goslee, Brian (Brian.Goslee@dentsply.com)
Subject: FW: We know you're curious - Find out how much you could save
Attachments: image001.jpg

Brian,

Following up on my vmail. I hope you are doing well. Wanted to keep you apprised of our newest competition in AZ. AZDA! They have partnered with Source One Dental to provide dental supplies.

Can you let me know if Source One is an authorized dealer of Dentsply?

I have communicated with our competition at Schein and Patterson and we are all of the same mind that we will not be supporting a competitor's meeting next year.

Let me know your thoughts.

Best,

Mike Wade

Regional Manager - Cactus | **Benco Dental Company** | USA
Tempe Showroom | 1602 S Priest Dr Ste 101 Tempe AZ 85281
Office: 480-968-0460 Cell: 480-239-9502 | Fax: 480-753-5522 | mwade@benco.com
www.Benco.com

We deliver success *smile after smile*.

From: Christine Bennett
Sent: Wednesday, July 16, 2014 5:47 PM
To: Mike Wade
Subject: Fwd: We know you're curious - Find out how much you could save

Here you go

Christine Bennett
Sales Representative
602-740-5615

Begin forwarded message:

From: John Harman <johniv11@hotmail.com>
Date: July 16, 2014 at 5:35:55 PM MST
To: Christine Bennett <cbennett@benco.com>
Subject: Fwd: We know you're curious - Find out how much you could save

Sent from my iPhone

Begin forwarded message:

From: "AzDA Members" <azda-members@azda.org>
Date: July 16, 2014 at 3:27:20 PM MST
To: johniv11@hotmail.com
Subject: We know you're curious - Find out how much you could save
Reply-To: AzDA <azda@azda.org>

It's up—it's running, and AzDA member dentists are saving BIG TIME!

Several orders have already been placed. In fact, one member dentist placed an order last night for \$592.76 (free standard shipping, as always). The savings was \$195.61!! That's 20% of their 2014 AzDA + ADA dues recouped in just one order!

Get your ADA number and check out how much you can save right now at

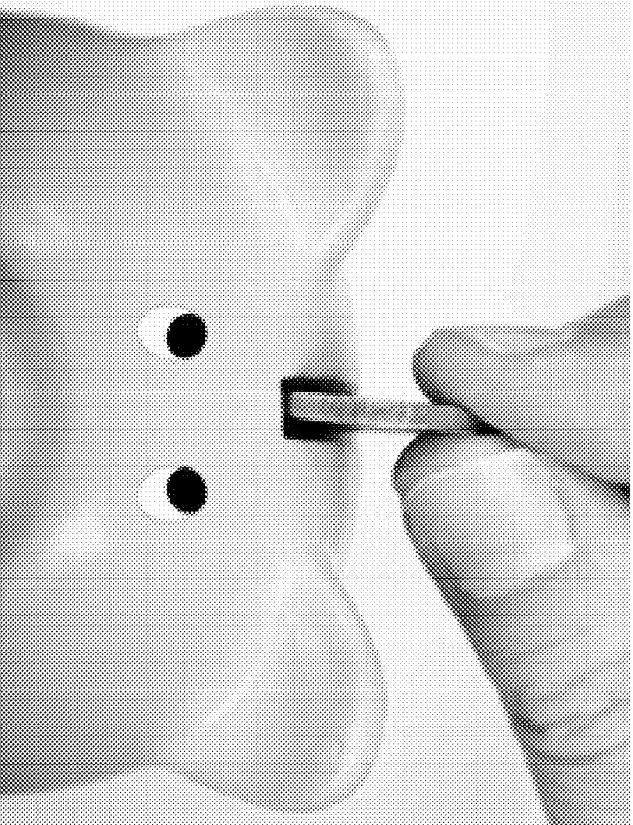
<http://azda.SourceOneDental.com>

AzDA Membership...don't you owe it to yourself?

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3193 N Drinkwater Blvd, Scottsdale, AZ 85251 • 480.344.5777

Proof your colleagues are already getting great deals

We know you're curious — find out how much you could save



CX2062

From: Foley, Randy
Sent: Wednesday, December 21, 2011 1:33 PM
To: Durante, Rhonda
Subject: FW: Request for Meeting - Dec 12 - 22 - Janet Knysz
Attachments: Unified Smiles DSO criteria.docx

FYI

Randy Foley

Director of Sales

Special Markets

randy.foley@henryschein.com

248-582-1529 office

248-990-5653 mobile

From: Foley, Randy
Sent: Wednesday, December 21, 2011 1:52 PM
To: Janet Knysz
Subject: RE: Request for Meeting - Dec 12 - 22 - Janet Knysz

Jan. It was great meeting you last week and reviewing your plans for Unified Smiles.

Unfortunately, unless you have some "ownership" of your practices Henry Schein considers your business model as a Buying Group, and we no longer participate in Buying Groups. Buying Groups cause a lot of friction within our private dentist segment as it leads to unwarranted lower pricing for EXISTING customers.

If you can show ownership, then Unified can qualify as a Special Markets DSO, just like Great Expressions. We'd be happy to work with you under this type of arrangement. However, initially we cannot offer a plan as aggressive as GEDC's. That plan is based on \$5M + of business with negotiated pricing from our vendor/suppliers based on GEDC's proven volume. Special Markets does offer some starter plans, such as our P-10 plan. This plan consists of approximately 4,000 deeply discounted items and with discounts of 10% off Schein's catalog for all items outside of these 4,000 items. As Unified expands we can move you from a P-10 to a P-15, P-18, P-20, and eventually to a customized formulary. As an owner/partner you could drive compliance to achieve the best plan.

I've attached our minimal requirements for ownership as we are not talking 100% ownership. I'm at my desk all week if you'd like to discuss.

Happy Holidays!

Randy Foley

Director of Sales

Special Markets

randy.foley@henryschein.com <mailto:randy.foley@henryschein.com>

248-582-1529 office

248-990-5653 mobile

From: Janet Knysz [mailto:janet.knysz@yahoo.com]
Sent: Sunday, December 11, 2011 3:07 PM
To: Foley, Randy
Subject: Re: Request for Meeting - Dec 12 - 22 - Janet Knysz

Actually tomorrow is better for me, could you stop by around 4pm our meeting should not take more than 1 hour. Please however keep our meeting confidential, I don't want to get anyone at GEDC stirred up.

Thank you,
Jan

From: "Foley, Randy" <KeithRandy.Foley@henryschein.com>
To: Janet Knysz <janet.knysz@yahoo.com>
Sent: Sunday, December 11, 2011 12:26 PM
Subject: Re: Request for Meeting - Dec 12 - 22 - Janet Knysz

Jan. The 22nd works out fine with me. However, I have a meeting with GEDC tomorrow, the 12th at 5PM. Would you like to meet a 3:30 or 4 tomorrow? If not, the 22nd is fine as you are right up the street from me! Thanks, Randy Foley
Director of Sales Special Markets
(248) 582-1529 Main
(248) 990-5653 Cell

From: Janet Knysz <janet.knysz@yahoo.com<mailto:janet.knysz@yahoo.com>>
Reply-To: Janet Knysz <janet.knysz@yahoo.com<mailto:janet.knysz@yahoo.com>>
Date: Fri, 9 Dec 2011 10:58:14 -0500
To: "Foley, Randy" <KeithRandy.Foley@henryschein.com<mailto:KeithRandy.Foley@henryschein.com>>
Subject: Re: Request for Meeting - Dec 12 - 22 - Janet Knysz

Randy,

Thank you so much for reaching out, I too am available the week of December 19th and look forward to meeting with you. I propose Monday, December 19th @ 1:30 in our offices. We are in the same building as GEDC, first floor, Suite 145. Please let me know if this time works with your schedule, if not you can reach me in my office on Monday @ 248-633-2455 to arrange a date that is good for both.

Best Regards,
Jan

From: "Foley, Randy" <KeithRandy.Foley@henryschein.com<mailto:KeithRandy.Foley@henryschein.com>>
To: "janet.knysz@yahoo.com<mailto:janet.knysz@yahoo.com>"
<janet.knysz@yahoo.com<mailto:janet.knysz@yahoo.com>>
Cc: "Levandowski, JoAnn" <JoAnn.Levandowski@henryschein.com<mailto:JoAnn.Levandowski@henryschein.com>>
Sent: Friday, December 9, 2011 10:11 AM
Subject: FW: Request for Meeting - Dec 12 - 22 - Janet Knysz

Jan. Hi! I'm Randy Foley, the Director of Sales for our Special Markets division at Henry Schein. It is very nice to hear that your long term relationship with Henry Schein as been a good one, including that with JoAnn. We are very fortunate to have JoAnn on our team!

I'm open the week of 12/19 and I based out of Royal Oak. Are you still in the Detroit area? If so, we could meet at my place or a dinner or lunch to discuss your new plans. Whatever is most convenient for you.

Today I have a hectic traveling scheduling (I'm in IL) but will be at my desk most of the day on Monday. We could talk then to set something up, or you can simply respond to this email with some dates.

Thanks, and Happy Holidays!

Randy Foley
Director of Sales
Special Markets
randy.foley@henryschein.com<mailto:randy.foley@henryschein.com>
248-582-1529 office
248-990-5653 mobile

From: Jan Knysz [mailto:janet.knysz@yahoo.com]
Sent: Thursday, December 08, 2011 2:05 PM
To: Levandowski, JoAnn

Subject: Re: Request for Meeting

Let's say we will have a significant number of general and specialty practices. We will administer operations the same way as GEDC with all purchases running through our corporate office.

Thank you do much for your quick reply I sincerely look forward to meeting with you Or a member of your team.

Sincerely
Jan

Sent from my iPhone

On Dec 8, 2011, at 11:50 AM, "Levandowski, JoAnn"
<JoAnn.Levandowski@henryschein.com<mailto:JoAnn.Levandowski@henryschein.com>> wrote:

Hello Jan,

Of course, I definitely remember you. :) It's so wonderful to reconnect with you again!

We certainly welcome the opportunity to meet with you and review the services we have available for your dental practice. Would you be willing to tell me a bit about your practice needs so I can direct you to the appropriate Schein team members? Do you have one location (private practice) or multiple locations with a Corporate Office? (Dental Service Organization)

Thank you,

Jo Ann Levandowski
Special Markets Division
Direct: 330.721.7987
Fax: 330.723.8739
Web Support: 1-800-711-6032
Special Markets: 1-800-851-0400

Visit our website: www.henryschein.com/sm<<http://www.henryschein.com/sm>>

From: Janet Knysz [mailto:janet.knysz@yahoo.com]
Sent: Thursday, December 08, 2011 9:54 AM
To: Levandowski, JoAnn
Subject: Request for Meeting

Hello JoAnn,

I am not sure if you remember me but we were introduced many years ago when my husband and I owned the majority stake in Great Expressions Dental Centers. That was many years ago and things have certainly evolved and changed. As I am sure you are aware we sold all of our remaining interest in GEDC in October this year. We are very appreciative of

all the excellent services that was delivered by Henry Schein and the wonderful team that serviced our account, you all were certainly a significant part of the success we realized.

Well, the reality of the matter is we have moved on and we are currently in the process of developing a new relationship in the dental industry. We would like to discuss this business development and Schein's potential role. I would like to schedule a meeting to further discuss opportunities in person. Would you be available to meet sometime between Dec 12th and the 22nd? I look forward to seeing you again.

Thank you,
Jan Knysz

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2.1 Owned by Unified Smiles: The practice that is owned by Unified Smiles or its subsidiaries and affiliates.

- 2.1.1 The clinic support staff is employed by Unified Smiles or its subsidiaries or affiliates.
- 2.1.2 The dentists working in the practice are employed by and/or independent contractors of Unified Smiles or its subsidiaries or affiliates.
- 2.1.3 The business and operational decisions of the practice are made by Unified Smiles.

2.2 Owned In Part by Unified Smiles: A dentist-owned practice is owned in part by Unified Smiles.

- 2.2.1 The dentists working in the practice may be employed by and/or independent contractors of Unified Smiles or its subsidiaries or affiliates and/or the dentist-owner may provide services as an owner of the practice.
- 2.2.2 The clinic support staff is employed by Unified Smiles or its subsidiaries or affiliates.
- 2.2.3 The dentist-owner and Unified Smiles make the strategic business and financial management decisions, but Unified Smiles makes the day-to-day operational and administrative decisions under a management contract.

CX2106

From: Foley, Randy
Sent: Wednesday, March 05, 2014 3:04 PM
To: 'Thompson, Chad'
Subject: RE:

Thanks. The good thing here is that PDCO, Benco and us are on the same page regarding these buying groups/consortiums. Checking to see if we should join the TDA boycott.

Randy Foley

Director of Sales-Special Markets

Henry Schein, Inc

248-582-1529 (main)

248-990-5653 (mobile)

randy.foley@henryschein.com <<mailto:randy.foley@henryschein.com>>

From: Thompson, Chad [<mailto:cthompson@heartland.com>]
Sent: Wednesday, March 05, 2014 1:45 PM
To: Foley, Randy
Subject: RE:

Interesting, we heard Patterson was boycotting their TDA annual meeting because of this so I thought Schein must have worked with them on it.

Chad Thompson

Vice President of Administration

Corporate Compliance Officer

office 217-540-5100 fax 877-452-0703

email cthompson@heartland.com

www.HeartlandDentalCare.com <<http://www.heartlanddentalcare.com/>>

From: Foley, Randy [<mailto:KeithRandy.Foley@henryschein.com>]
Sent: Wednesday, March 05, 2014 12:26 PM
To: Thompson, Chad
Subject: RE:

Here's the scoop from our branch manager, Randall:

Hi,

Here is Randall's response:

No, they had reached out in the past but we never did anything with them. They have subsequently developed a relationship with other entities and are selling supplies under the "TDA PERKS" banner. While they don't have many of the major players they have an extensive # of products our clients can purchase.

Randy Foley

Director of Sales-Special Markets

Henry Schein, Inc

248-582-1529 (main)

248-990-5653 (mobile)

randy.foley@henryschein.com <<mailto:randy.foley@henryschein.com>>

From: Thompson, Chad [<mailto:cthompson@heartland.com>]
Sent: Wednesday, March 05, 2014 9:30 AM
To: Foley, Randy
Subject:

Hey Randy

Have you heard about the Texas Dental Association offering supplies to members at discount prices? Are they working through Schein on this?

Just wondering,

Chad

Chad Thompson

Vice President of Administration

Corporate Compliance Officer

office 217-540-5100 fax 877-452-0703

email cthompson@heartland.com

www.HeartlandDentalCare.com <<http://www.heartlanddentalcare.com/>>

Image removed by sender.

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<http://heartland.com/sites/all/themes/heartland/images/external-files/HeartlandDentalLogo.png>

CX2107

From: Muller, Hal <hal.muller@henryschein.com>
Sent: Friday, July 11, 2014 8:30 AM
To: Foley, Randy
Subject: MB2 Dinner

And I guess that is why we don't sell smile source--

The flyer with DENT from Burkhart?

Sos I guess the question is, if we hard line this, do they leave us and go to, whom?
Hal

HENRY SCHEIN SPECIAL MARKETS
Hal S Muller
President
(631) 390-8150

From: <Foley>, Randy <KeithRandy.Foley@henryschein.com>
Date: Friday, July 11, 2014 8:45 AM
To: HAL MULLER <hal.muller@henryschein.com>
Subject: FW: MB2 Dinner

Daniel had his meetings yesterday with MB2 and bkfast will be taking place shortly. They're resisting the rebate issue as well as the new plan. They stated that Smile Source gets supplier support. I know this is true because I saw a Denstply flyer for SS customers showing different pricing based on volume. The flyer was for each of the SS customers—not for SS its entirety.

Randy Foley

Vice President of Sales-Special Markets

Henry Schein, Inc

248-582-1529 (main)

248-990-5653 (mobile)

randy.foley@henryschein.com <<mailto:randy.foley@henryschein.com>>

From: Foley, Randy
Sent: Friday, July 11, 2014 8:41 AM
To: Hobson, Daniel
Subject: RE: MB2 Dinner

A couple of issues. 1. Two of our vendor partners have approached us about DG, one while meeting out in Melville. They too will not support this AT THE SAME LEVEL that they support our DSO's, like MB2 itself. Thus we cannot cover the DG practices under the MB2 plan. Even having the name DG instead of MB2 is a huge red flag for a GPO. So far we have been able to calm our FSCs who may lose margin when a customer moves to DG. Patrick Gill of all people should understand this FSC issue. What we don't have control over is when DG converts a competitor's customers. Those sales reps are the ones that are running back to the supplier partners. Again, this should be no surprise to Patrick.

2. New pricing plan is still very aggressive and similar to what we once provided Smile Source. We ended the Smile Source relationship when they became more of a GPO than a 'management company'.

3. Yes, some suppliers are offering special pricing (but not at the level of MB2 and other DSO) to SmileSource customer. It's more of buy \$x amount and we will offer this discount or rebate.

In their PVA we state "that practices not owned in whole or part by MB2 must have a formal affiliate agreement in place with MB2.the primary relationship will comprise of business management services and shall include the ability to require offices to comply with the purchasing commitment and payment terms in this agreement. ". Can they show us their formal agreement? Do they have a list of business management services offered to these affiliates—is it in their agreement?

Also, "this agreement may not be used to grow any GPO type relationship which is defined as a relationship whose purpose is to generate revenue for the parent company by allowing others to benefit from the terms of our PV relationship".

If the DG practices are really receiving only GPO benefits, then they are in violation of the agreement and we obviously won't pay rebates

based on the DG practices. If the DG practices have formal business management agreement then they may have an argument here for rebates. Even in this situation, for Schein customers that move to DG, their historical sales numbers would be added to the base year to calculate any rebates. So, we would adjust the baseline for 2013 and then DG would only be paid on actual growth.

They know what they are up to and we are not shutting them down. We're making adjustments as they push the envelope. OK?

Randy Foley

Vice President of Sales-Special Markets

Henry Schein, Inc

248-582-1529 (main)

248-990-5653 (mobile)

randy.foley@henryschein.com

From: Hobson, Daniel
Sent: Friday, July 11, 2014 12:25 AM
To: Foley, Randy
Subject: MB2 Dinner

Randy,

Meeting went as well as it could. They are frustrated and say others are doing it. I told them about the new plan. They did say that there understanding was that the agreement covered a rebate on Dental Gator sales. I told them that was not my understanding and they wanted me to check on it. They said that it was very clear in the negotiations of the PVA. I will call you in the morning. We are having breakfast in the morning I will call before.

Daniel

Daniel Hobson

Strategic Account Manager

Henry Schein Special Markets

(949) 378-4548

CX2216

From: Cavaretta, Joe
Sent: Tuesday, June 10, 2014 7:07 PM
To: Titus, Kathleen; Meadows, Jake; Gantos, Kam; Kyle, Dean; Khoury, George; Reichardt, Jeff; Upchurch, Kevin
Subject: RE: Steadfast Medical GPO

Thanks for leading the charge on this KT. GPO's are popping up like crazy so it is nice when we can shut one down and still keep the business from the individual customers. Nice job!

Joe

From: Titus, Kathleen
Sent: Tuesday, June 10, 2014 5:46 PM
To: Cavaretta, Joe; Meadows, Jake; Gantos, Kam; Kyle, Dean; Khoury, George; Reichardt, Jeff; Upchurch, Kevin
Subject: Steadfast Medical GPO

Greetings Folks,

Please see the email below... bottom line, Steadfast Medical is a double whammy; a GPO that is also a 100% procurement service. They are set up under SM, but when we examined their business practices, it became clear that they were cannibalizing existing business and reallocating HS orders to our competitors.

Since this GPO HQ's is based in Dallas, RAM, Kip Rowling will be taking the lead on field follow up. Kip will be sending RM's and FSC's a list of accounts in their area that were ordering supplies under the Steadfast Medical parent account. Their members are virtually all OS & Perio offices/groups. We collaborated on an FSC call to action, which includes advice on professionalism (got to be a bit careful here), utilizing our SSC's, and presenting their docs with the OS/Perio formulary.

Thanks and let me know if you have any questions.

Warm Regards,

Kathleen Titus, Strategic Account Manager Western Zone

Henry Schein Special Markets/Corporate Account Group

Email: kathleen.titus@henryschein.com

Direct Line: 916 765-2778

From: Titus, Kathleen

Sent: Tuesday, June 10, 2014 3:01 PM

To: 'Jon Staples'

Subject: FW: Joe Cavaretta will be in Dalls May 8,9 and is hoping to meet with you then... Follow to my email of 4/22/14

Greetings Jon,

After examination of your GPO business model we have concluded that continuation of our current relationship is counter to our business practices. Unfortunately, it is my duty to inform you that effective this Friday, 06/13/14, Henry Schein will no longer support the fulfillment of Steadfast Medical supply orders.

If at some future date you are interested in exploring an exclusive relationship with Henry Schein, we would welcome revisiting a mutually beneficial partnership. In fact, in the event I have overlooked or misunderstood some aspect of your business, may I invite you to discuss our guidelines for our Managed Support Organization/Dental Support Organization (MSO/DSO) customers?

I wish you all the best, Jon. Know I am available to you at any time.

Warm Regards,

Kathleen Titus, Area Director Managed Group Practice

Henry Schein Special Markets/Corporate Account Group

Email: kathleen.titus@henryschein.com

Direct Line: 916 765-2778

From: Titus, Kathleen

Sent: Tuesday, April 22, 2014 1:19 PM

To: 'Jon Staples'

Subject: Joe Cavaretta will be in Dalls May 8,9 and is hoping to meet with you then...

Hi Jon,

Hope your week is going well. Recall we were discussing a live meeting with you and your team? I spoke with Joe Cavaretta today and he tells me he will be in Dallas on May 8,9. Would you be available to meet with Joe? I have given Joe a recap of Steadfast Medical, updated him on our call and provided him with the necessary reporting to understand the impact to our (mutual) business. Joe and I agree, in order to continue to support your growth, we'll need to have a better understanding of how you allocate to the distribution network and discover if there is way to create a better collaboration that provides prosperity to all the stakeholders.

Would you kindly let me know what your schedule looks like and I will coordinate with Joe's Admin. I would think 45 min would be adequate. I know you will find Joe to be extremely open minded and anxious to learn more about your model and relationship with our mutual clients.

Warm Regards,

Kathleen Titus, Strategic Account Manager Western Zone

Henry Schein Special Markets/Corporate Account Group

Email: kathleen.titus@henryschein.com

Direct Line: 916 765-2778

CX2235

Redacted in Entirety

CX2306

From: Cavaretta, Joe
Sent: Wednesday, April 09, 2014 2:52 PM
To: Breslawski, Jim; Sullivan, Tim
Cc: Steck, Dave
Subject: RE: 2014 TDA - booth strategy call

I just spoke to Allsop and he understands and agrees with the direction. He is going to talk to Kevin but believes they can use the money they would spend at the TDA and use towards a special promotion.

To be clear we are out of the meeting.

From: Breslawski, Jim
Sent: Wednesday, April 09, 2014 2:11 PM
To: Cavaretta, Joe; Sullivan, Tim
Cc: Steck, Dave
Subject: RE: 2014 TDA - booth strategy call

Hi Guys,

So, I am unclear as to whether or not we have in fact pulled out of the meeting or have reached our decision as HSD to pull out and now bring in HSPS to discuss how this affects them? So, its possible H S I is there but not HSD?

A call for me is tough right now but could do one in the morning??

jb

From: Cavaretta, Joe
Sent: Wednesday, April 09, 2014 1:29 PM
To: Sullivan, Tim; Breslawski, Jim
Cc: Steck, Dave
Subject: RE: 2014 TDA - booth strategy call

Hey Tim,

Considering that we didn't have a final decision until yesterday we haven't discussed with HSPS yet. We have also been very careful about talking to other partners as we didn't want the perception out there that we were trying to turn others away from the TDA. I can discuss with the HSPS team today if you would like...

The other Schein entities have not been alerted yet as again we just found out the decision by the TDA FROM our CONVENTIONS team. We will send out an email to the division heads so they are aware.

It is important to note that we approached the TDA with other options to help them grow their business using HSPAs, business solutions, membership drive, etc. They appreciated this approach because it was different than PDCOs but we still couldn't sway them to change their minds.

Jimmy – I will send an email to you from last week with the a recap of the TDA meeting. After you receive please feel free to send me any questions you may have. Thanks.

Joe

From: Sullivan, Tim
Sent: Wednesday, April 09, 2014 12:02 PM
To: Breslawski, Jim
Cc: Cavaretta, Joe; Steck, Dave
Subject: Re: 2014 TDA - booth strategy call

All good questions. Maybe we schedule call to discuss live?

I have not discussed with HSPS. Dave, Joe?

I don't believe other Schein entities show, but need to confirm. Also, not sure about Events Team. Not sure their role in these smaller meetings though either.

PUBLIC

We don't think customer response will be negative other than those who are board members. Even then, not sure they will "punish" their FSC once we have opportunity to explain the why. We know PDCO and Sirona have also pulled out. Not sure about others.

In retrospect, I have not managed this well beyond the HSD team. We can't think in a silo like this and I'll manage the fallout. That said, I absolutely believe we came to the right conclusion. This is hot topic at DTA as well. CDA is next on the list to discuss . . . Not for pulling out this year, but possible in the future. They are actually attempting to create a buying group. Really not good. Other state societies as well. The bulk of their revenue comes from their state meetings. Without exhibitors though, they have no meeting and lose huge revenue generator. E and Dean gave TDA a very compelling story that we should use with others.

Tim

On Apr 9, 2014, at 11:22 AM, "Breslawski, Jim"
<Jim.Breslawski@henryschein.com> wrote:

Thanks for the update Tim. So we have officially withdrawn and HSPS doesn't know anything yet? Are there other Schein entities taking a booth there? Has the Events team been involved along the way?

It would be an easier call with Kevin, Steve Klis and Jim Harding if we were not confirmed out yet.

You referenced the general support of the local team for action, what about the customers? What is the thinking about their reaction?
Do we have any evidence one way or the other about customers support for the concept of TDA Parks?

jb

From: Sullivan, Tim
Sent: Wednesday, April 09, 2014 11:05 AM
To: Breslawski, Jim
Cc: Cavaretta, Joe; Steck, Dave
Subject: Fwd: 2014 TDA - booth strategy call

JB,

CONFIDENTIAL TREATMENT REQUESTED

CX2306-003
Henry Schein-000005424

As you know, the team had a very professional yet candid discussion with TDA Board about their TDA Parks program that competes directly with dealers. After the meeting Dr. Duncan reached out to Joe thanking him for the candid discussion, his support of wanting to work towards a resolution and a little time to work this thru with the board. It appears he was either playing us a bit or he just couldn't get the board to change their position. So, we are officially withdrawn from the TDA Annual Meeting in May. Dean is communicating with the local TSMs who generally support this decision (I saw Tony and a few other FSCs on Sunday at GKAS race day who absolutely support this) and will put together some sort of "No-Show Special" to present with customer prior to the meeting.

The issue or question at hand now is what to ask of HSPS. They currently have a separate booth space that would otherwise be next to us with a similar look and feel. Without our FSCs, DTSSs, ETSSs, etc present I think we should ask HSPS to also withdraw from meeting. Not just to send additional message to TDA, but it will cause confusion for customers looking for help or their FSC. Quite honestly, I didn't think this through well enough to consider them and they should have been included in this decision. TDA Perks does not compete in the PM space (yet anyway) so I could understand why HSPS may feel differently about this. I have not yet discussed with Steve Klis or Kevin Bunker yet either. I will do that directly today, but was hoping to get your insight prior if possible.

Thoughts?

Tim

Begin forwarded message:

From: "Cavaretta, Joe" <Joe.Cavaretta@henryschein.com>
Date: April 8, 2014 at 4:55:10 PM EDT
To: "Sullivan, Tim" <Tim.Sullivan@henryschein.com>, "Steck, Dave" <Dave.Steck@henryschein.com>
Subject: FW: 2014 TDA - booth strategy call

Gotta love it...not only did Dr. Duncan contact me to try and work something out and then not call me back after I tried to call him twice...we found out from our conventions team that they already sold our booth space.

We are officially out...

From: Kyle, Dean
Sent: Tuesday, April 08, 2014 3:47 PM
To: Cavaretta, Joe
Cc: Steck, Kyle
Subject: Re: 2014 TDA - booth strategy call

On it. Email will go out today.

On Apr 8, 2014, at 3:20 PM, "Cavaretta, Joe"
<Joe.Cavaretta@henryschein.com> wrote:

We are out then. If this is true I'm really upset that Duncan didn't have the decency to call back after he called me to work something out.

Dean – unless you have additional concerns let's communicate to the team in Texas.

From: Steck, Kyle
Sent: Tuesday, April 08, 2014 2:30 PM
To: Cavaretta, Joe; Kyle, Dean
Subject: FW: 2014 TDA - booth strategy call

For TDA, we aren't listed or shown on this most updated map.

It actually appears they subdivided our space and gave it away already?

I've been stemming all the rumors until I heard something officially, but wanted to check in and see if a decision was made on the meeting.

Kyle

Kyle Steck

Regional Manager – South Texas

Phone: (210) 545-3147

Email: kyle.steck@henryschein.com

<image001.png>

From: <Pryor>, Julianna
<Julianna.Pryor@henryschein.com>
Date: Tuesday, April 8, 2014 at 2:24 PM
To: Kyle Steck <kyle.steck@henryschein.com>, William Dunning
<William.Dunning@henryschein.com>
Subject: RE: 2014 TDA - booth strategy call

<http://fp37.a2zinc.net/clients/fptda/TDA14/Public/eventmap.aspx?shmode=E>

From: Pryor, Julianna
Sent: Tuesday, April 08, 2014 3:12 PM
To: Steck, Kyle; Dunning, William
Subject: RE: 2014 TDA - booth strategy call

<< File: 20-20 regional booth property oregon 13.jpg >>

-----Original Appointment-----

From: Pryor, Julianna
Sent: Wednesday, April 02, 2014 4:56 PM
To: Pryor, Julianna; Steck, Kyle; Dunning, William
Subject: 2014 TDA - booth strategy call
When: Tuesday, April 08, 2014 3:00 PM-4:00 PM
(UTC-05:00) Eastern Time (US & Canada).
Where: conference call

Please let me know if this date/time work for you to review the 2014 Texas Meeting HSD booth plan.

Here is the 2013 show kit for reference during the call:

Here is the 2014 literature request order form:

Please let me know if anyone else needs to be added to the call.

Dial in: 877-530-1760

Conference code: 711-417-0416

Password: 2156

Leader: Julianna

Have a great night,
Julianna

<< File: 2013 Texas Show Kit.pptx >> << File:
2014 Dental Literature Request Form - REGIONALS.xlsx >>

CX2757

From: Cavaretta, Joe
Sent: Friday, July 18, 2014 4:45 PM
To: Upchurch, Kevin
Subject: Re: BigNews

We will cancel too but keep in my mind we cannot collaborate with them.
If they tell us they are not going that is their call.

I can tell you that Burkhart will attend the meeting as they did this in Texas. They have win some business but lost respect of the sales community.

Sent from my iPhone

On Jul 18, 2014, at 4:43 PM, "Upchurch, Kevin"
<Kevin.Upchurch@henryschein.com> wrote:

Benco is ready to cancel their involvement in the State meeting and from my past conversations with PDCO I would not be surprised if they also decided not to attend. It could make for an interesting state meeting if no distributors were present.

Wm. Kevin Upchurch
Zone General Manager
Western Pacific Zone
Henry Schein Dental
Cell (480) 215.5409
Office (602) 414.9705

From: Cavaretta, Joe
Sent: Friday, July 18, 2014 2:41 PM
To: Upchurch, Kevin
Subject: Re: BigNews

Thanks. Same pattern we had with the TDA. They make this announcement and then go run and hide.

Sent from my iPhone

On Jul 18, 2014, at 4:40 PM, "Upchurch, Kevin"
<Kevin.Upchurch@henryschein.com> wrote:

I sent Terry an email asking him to set aside some time for the two of you to talk when you are in town, he has not responded to my email request.

Wm. Kevin Upchurch
Zone General Manager
Western Pacific Zone
Henry Schein Dental
Cell (480) 215.5409
Office (602) 414.9705

From: Cavaretta, Joe
Sent: Friday, July 18, 2014 1:51 PM
To: Upchurch, Kevin
Subject: Re: BigNews

Thanks. I know that will try and avoid us so we have to figure out what type of Monetary support we have given them in addition to the state meeting.

Sent from my iPhone

On Jul 18, 2014, at 3:03 PM, "Upchurch, Kevin"
<Kevin.Upchurch@henryschein.com> wrote:

I have left two messages with the Manager of Business Development for AZDA Terry Xelowski asking him if we could set up a meeting to come talk about what they are doing. I will try again later today.

Terry Xelowski
480-344-5777 ext 313

Wm. Kevin Upchurch
Zone General Manager

Western Pacific Zone

Henry Schein Dental

Cell (480) 215.5409

Office (602) 414.9705

From: Cavaretta, Joe
Sent: Friday, July 18, 2014 11:42 AM
To: Upchurch, Kevin
Subject: Fwd: BigNews

Were you able to secure a meeting while I'm in town? We didn't get a chance to discuss live this week.

Sent from my iPhone

Begin forwarded message:

From: "KELLY, JAMES"
<JAMES.KELLY@henryschein.com>
Date: July 18, 2014 at 1:15:01 PM CDT
To: "Cavaretta, Joe"
<Joe.Cavaretta@henryschein.com>
Subject: BigNews

You probably already have gotten 50 emails on this.

<http://www.azda.org/bignews>

James Kelly
Sent from my iPhone

CX2884

From: Cavaretta, Joe
Sent: Tuesday, January 21, 2014 3:42 PM
To: Kyle, Dean
Subject: RE: TDA Info

I think he is losing his mind. We already discussed this live.

From: Kyle, Dean
Sent: Tuesday, January 21, 2014 3:33 PM
To: Steck, Dave; Steck, Kyle
Cc: Cavaretta, Joe
Subject: RE: TDA Info

Yes on all counts. Depending on how the meeting goes we may not show this year. Still working to get an appointment with more than one of the top people. Problem is the top people are spread all over TX and they have not given me the date of their next meeting at TDA HQ in Austin. If you speak with Patterson find out who they spoke with and let me know.

From: Steck, Dave
Sent: Tuesday, January 21, 2014 3:29 PM
To: Kyle, Dean; Steck, Kyle
Cc: Cavaretta, Joe
Subject: TDA Info

Guys, I have to get back to PDCO on whether or not we are attending the TDA. My understanding is that we are, but having a meeting with them and telling them that if their partnership continues with their supply relationship (link below?) we will no longer display at future meetings. Is this correct and is the link below what we are objecting to?

<http://www.tdaperks.com/ProgramsbyCompany/T/TDAPerksSupplies.aspx>

Thanks,

Dave

David A Steck

Vice President & General Manager

Henry Schein Dental

10920 West Lincoln Ave

West Allis, WI 53227

414.290.2568

CX3002

From: Fruehauf, Anthony
Sent: Tuesday, July 15, 2014 11:27 AM
To: Nease, Devon
Subject: Favor

Devon

I need your help! Can you provide me with an in depth market analysis of the Chesapeake market. What I need is:

Customer Count
Market Share
Listing of accts we lost to GPO with \$ amount for each one
Potential new GPO losses
Force Ranking of all personnel
Competitive analysis

I know this is a lot of work. Please take a few days and work from home if need be to deliver a great analysis.

Thanks so much!
Anthony Fruehauf
SouthEast Region Manager
Patterson Dental Supply, Inc.
C-(919)-523-4335
O-(919)-877-8500

CX3004

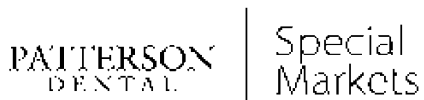
From: Barlage, Amy
Sent: Monday, May 19, 2014 2:38 PM
To: McFadden, Neal; Sammarco, Kristin
Subject: RE: Buying Groups

I agree with Neal, but I think it would be pertinent to keep track of where these groups are and what their volume is. So, if it starts to gain real momentum, we can get into the game before it's super late...

We need to focus on 'real' group accounts today. Once we get on more solid ground here we will have more experience, and capacity to properly assess these purchasing groups.

Thank you.

Amy Barlage
Director of Operations – Special Markets
Patterson Dental Supply, Inc.
651-686-1688

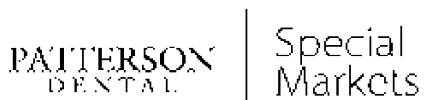


From: McFadden, Neal
Sent: Monday, May 19, 2014 1:49 PM
To: Sammarco, Kristin; Barlage, Amy
Subject: RE: Buying Groups

For now -- I am electing to not participate with these groups -- we have said no to several already -- there really is no advantage to Patterson, branches or reps -- we can discuss in detail later -- thanks for researching this though -- you are right, they are gaining momentum -- that's why I prefaced this with "for now"

thanks

Neal McFadden
President Special Markets
864-346-7209



From: Sammarco, Kristin
Sent: Monday, May 19, 2014 1:44 PM
To: Barlage, Amy
Cc: McFadden, Neal
Subject: Buying Groups

Amy,

In reading about the Don Williams Group from your email, I wondered if this management/consulting group could aggregate their individual offices demonstrating volume then present an RFP for special pricing. The SM categories don't directly address a dental buying group, that I understand, as the definition begins with "a group practice with. . ."

Then today while speaking with Eric Hanson, he mentioned an Orlando Buying Group is being created and would like special pricing from Patterson. Currently there are 10 individual offices that have joined this buying group. There is also a Jacksonville buying group being developed by Dr. Nick Narducci, a former Patterson customer. Eric is going to gather more information on this Orlando Buying Group, i.e. are they current customers with Patterson, which offices, who is leading this charge/organization, etc. We realize that both Henry Schein and Benco will probably participate if they are not already in these buying group opportunities.

As these buying groups develop, do we have a list of minimum requirements that is needed from groups before we can issue special pricing if no formal RFP is sent to us for our response? And if not I would like to add this to my list to develop.

Thanks,

Kristin Sammarco, CDA, MBA
Business Operations Specialist
Patterson Dental – Special Markets
Cell: 407-924-0834
Email: Kristin.sammarco@pattersondental.com

CX3006

From: Moon, Feather
Sent: Wednesday, July 29, 2015 11:39 PM
To: Neal, William
Cc: McFadden, Neal
Subject: Re: Dentistry Unchained Conversation

Bill:

- A) Well said.
- B) Thank you for taking the time
- C) I agree that this appears to be more than a typical GPO; however, at the end of the day, we would be sacrificing margin and responsible for bringing additional value services.

I'm not sure how this looks in the Patterson landscape, but I am glad to hear we are at least beginning to have these conversations. I believe that GPOs are not going away anytime soon.

Again, thank you Bill!

Feather

Sent from my iPhone

On Jul 29, 2015, at 10:29 PM, Neal, William <Bill.Neal@pattersondental.com> wrote:

Hi Neal,

I had a 40 minute phone call with Dr. David Bennett and Wendy Phillips from Dentistry Unchained on Monday, July 28 .Feather Moon introduced us via email on Monday. You can view their website and learn more about them at dentistryunchained.com. This organization just launched April 15,2015. Dr. Bennett described his mission to create an organization that will be a movement of independent DDS, giving them a voice, and trying to level the playing field. His goal is to have a dental supply company, dental labs, consultants, real estate professionals and others who will partner with Dentistry Unchained to offer discounted rates and or value added services to the members of this organization.

They claim to have 226 members who have enrolled so far at no-charge. After they hit 250 there will be an enrollment fee and all the members will pay a monthly fee to part of the organization. Dr. Bennett mentioned that currently about one-third of the members are specialist. They claim that about 35% say they are currently Patterson customers and that there members favor having Patterson as the supply partner. They claim that 80% of those who have joined have said they will switch suppliers if the discount offered is favorable. They have what Dr. Bennett described as a non-binding letter of intent with a dental supplier that he did not name. His preference is to work with Patterson.

I have to say that I did enjoy my conversation with David & Wendy as I think there vision and goals do align with our values of Patient Experience/Practice Lifestyle. I also fully realize what a very slippery slope a GPO arrangement can be. The supply pricing is a difficult matrix to establish for an organization like this. Perhaps we could consider a value added discount on services such as Revenue Well, Eaglesoft clinical software, Eaglesoft training, and perhaps an additional training voucher if a member purchased a CEREC or CBT unit.

I told David & Wendy I would be bringing this to you Neal and I was honest with them that we have not elected to participate in these type of programs in the past. I was very clear that I was strictly gathering information from them and that any decision would be made at the highest levels of our company which could take some time. As I stated before I felt much better about my discussion with this group then I have other GPO's in terms of their vision. That being said it is still basically a GPO looking for a discount to pass on to their members to entice them to join and pay a fee.

Please let me know if you have any questions or would like to discuss this further. Have a good Thursday Neal.

Bill Neal
Western Special Markets Territory Manager
Patterson Dental Supply Inc.

CX3009

From: McFadden, Neal
Sent: Thursday, March 26, 2015 10:35 AM
To: Smurr, Michael
Cc: Fehling, Christian; Reinhardt, Daniel; Counts, Tony
Subject: Re: BWTP Accounting Firm Supporting a Buying Club

Christian, we have said no to smile source. It is a direct competition to our sales reps. They are buying club and have agreements with study clubs, state institutions, and everybody they can connect with. Thanks

Neal McFadden
President Special Markets
Patterson Dental
Cell 864-346-7209

Sent from my iPhone

On Mar 26, 2015, at 11:32 AM, Smurr, Michael <mike.smurr@pattersondental.com> wrote:

Hi Christian,
I'm not familiar with Smile Source, in particular. I've heard of these buying groups cropping up but the subject falls into our Special Markets area. I'm forwarding this to Neal for his insight.

Mike

Mike Smurr
Director of Marketing, Merchandise
Patterson Dental
P: 651.686.1678 | F: 651.686.0288
www.pattersondental.com

Patient Experience, Practice LifestyleSM
<image001.png>
<image002.png> <image003.png> <image004.png> <image005.png> <image006.png> <image007.png>

From: Fehling, Christian
Sent: Thursday, March 26, 2015 7:41 AM
To: Smurr, Michael
Cc: Reinhardt, Daniel; Counts, Tony
Subject: FW: BWTP Accounting Firm Supporting a Buying Club

Mike,

Have you heard of Smilesource.com? It seems the largest Dental CPA firm, BWTP and Assoc. is promoting this group in the St. Louis and Kansas City area. I was wondering if you had any feedback on the company.

Thank you,

Christian Fehling
Branch Manager

Patterson Dental
St. Louis, MO

Christian.fehling@pattersondental.com

O:314-5951301
C:314-330-4670

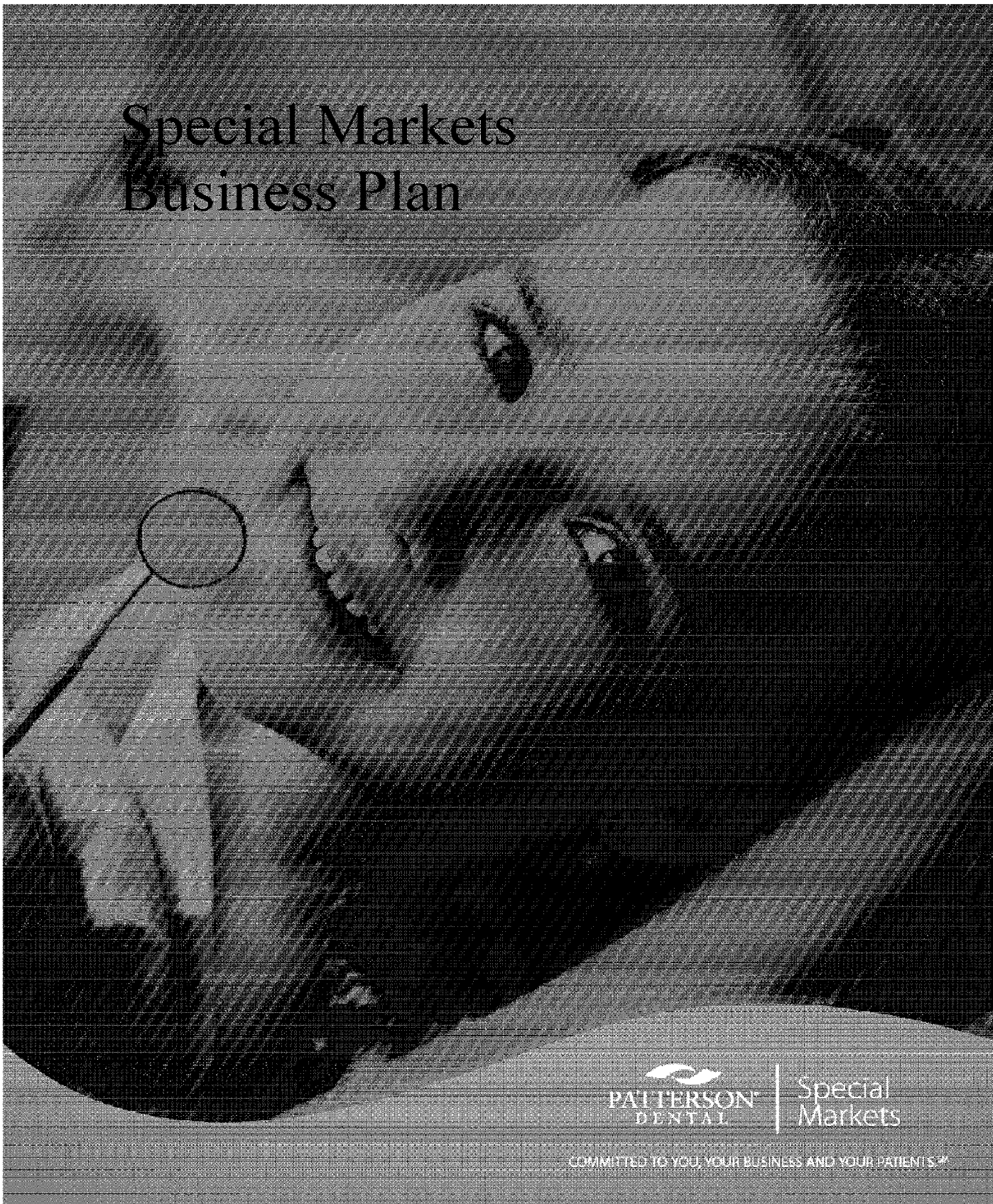
From: Evans, Brian
Sent: Thursday, March 26, 2015 6:25 AM
To: Fehling, Christian
Subject: BWTP Accounting Firm Supporting a Buying Club

Christian,
I just wanted to forward you information I got from an office yesterday regarding BWTP supporting a buying club. They're holding a meeting this Friday morning and I know at least one of our customers is going to be there to learn more, which I hope to get additional info.
Have you heard of this before: Smile Source Buying Club
See attachments..
Thanks,
Brian

Brian Evans
cell 314-306-0436

CX3014

Special Markets Business Plan




PATTERSON
DENTAL

Special
Markets

COMMITTED TO YOU, YOUR BUSINESS AND YOUR PATIENTS.™

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Summary

The growth of corporate dentistry has caused Patterson Dental to look more closely at this new Special Markets segment. The growth is primarily caused by the following:

- Indebtedness of recent graduates
- Lifestyle choices, such as work/life balance and attitudes toward practice ownership
- High cost of acquiring a practice and low return on investment of the sole practitioner model
- Traditional practices are not absorbing as many new graduates as in the past
- Dental Practice Management (DPM) companies or Dental Support Organizations (DSOs) are hiring and have available capital for expansion – mostly through Private Equity investment
- Perceived benefits of practicing in a group practice

DPMs and DSOs are continually growing. In order to achieve their objectives, they are focused on the following:

- Retaining a high patient standard of care through:
 - staff retention
 - clinical continuing education
 - products and technology
- Maintaining procedural fees
- Continuously improving productivity both clinically and operationally
- Protecting themselves from regulatory intervention

DPMs and DSOs are seeking supplier partnerships to assist in overcoming their perceived growth challenges. As a market segment, DSOs seek the following from their supplier of choice:

- Dedication to service
- Willingness to partner
- Ease of doing business

A most recent Patterson Dental commissioned report on the rise of the DSO model stated the following revenue opportunity and growth projections:

Total supply business:

2012 \$580 million

2015 \$952 million

2020 \$1.91 Billion

Michelle Perpich, October 23, 2012

Patterson Dental is estimated to have total revenue of ~\$90 million, including ~\$45 million in supplies annually for fiscal 2014.

The ideal Patterson Special Markets client:

- Needs a partner to help them grow and become more operationally efficient
- Understands and respects technology

- Is forward thinking
- Is clinically focused
- Provides an above-average patient experience
- Wants to differentiate themselves from the “corporate dentistry norm”
- Is not deeply committed to our competitor: low switching costs

Patterson Special Markets

Patterson Dental Special Markets will focus on large group practices with 15 or more locations and/or potential annual merchandise of \$600,000. PSM will also cater to federal customers, including government, military, community and Indian health, schools and institutions. Our target customer mix is 70% DSO/DSM and 30% federal.

Patterson Special Markets has segmented the DSO market into three categories:

- Emerging: Organizations with fewer than 15 locations AND less than \$600,000 of annual merchandise potential
- Established: Organizations with 15-49 locations and/or annual merchandise potential between \$600,000 and \$2 million
- Elite: Organizations with 50 or more locations and/or annual merchandise potential in excess of \$2 million

Organizations with fewer than 15 locations and less than \$600,000 of annual merchandise potential will continue to be managed by the sales branches with support from the VP of Sales as needed. We will develop a strategy to identify and migrate those offices with 10-15 locations to ensure we have a proper “hand off” into Special Markets.

Patterson Special Markets’ initial target audience is the **established** DSOs due to:

- Lower switching costs from current supplier
- Customer need for unique value proposition and other tailor-made solutions to their problems
- These mid-sized customers will give us valuable experience as we ramp up and continue to build out the Special Markets division

All current business designated as “Special Markets” will continue to be managed at the branch level, and the branch will continue to receive the revenue from these customers, both DSO and federal. The Special Markets division will continue to offer centralized support of these accounts where applicable until it may be necessary to centralize (timing TBD). While these customers are being managed at the branch their financials will be included in the branch P&L AND the Special Markets P&L. When these customers become centralized in the future, the branch will no longer have revenue from these customers on their P&Ls.**

All new business generated by and through the Special Markets division will reside solely on the Special Markets P&L and will not impact the branches.

**See segment on Migration for further details.

Vision

To become the partner of choice by assisting our clients in delivering the most cost effective and favorable clinical outcomes for their patients and exceptional practice lifestyle for their dentists

Mission

To reinvent the Special Markets space by partnering with our clients through growth initiatives, innovative services and technology solutions that make a memorable difference in the lives of their patients, while providing an exceptional practice lifestyle for their dentists.

Competitor Analysis

There are primarily two major competitors in the Special Markets space: Henry Schein and Benco. There are many small competitors in the federal space. Schein has and gets business based on longevity in the space. Benco receives business based on price alone. Patterson is known as the distributor that has historically ignored the space and is looked upon as a high priced entry.

Henry Schein

Currently, Henry Schein's Special Markets Division is the dental supplier of choice for over 80 percent of the DSOs. According to the Perpich report, and adjusted for 2014, merchandise revenue for Henry Schein's Special Markets Division from the DSO segment is estimated above \$550 million with an average gross margin of 22 percent. We estimate their overall business in the space to be in excess of \$650 million.

The overall consensus is that Henry Schein has set the bar on centralized support but also has a sense of entitlement and arrogance with the manufacturers and clients. They are the only game in town with 14 years of experience supporting this space. They also have become extremely contentious with their core business sales force, creating an antagonistic culture between the two.

Benco Dental

They have approached the market segment with a "transparent" pricing strategy. They present a proposal of cost plus 16-20%. They have some fairly large regional clients: Affordable Care, Great Expressions and Kool Smiles. Their clients chose them over Henry Schein due to being the only other player in the field or simply due to cheaper supplies. Benco currently offers no unique value proposition in the space other than price.

Amazon

Amazon could become a formidable competitor in this space, where huge volume and price sensitivity is the norm.

Current Situation

Patterson Dental's current decentralized model has been attractive to the DSO's that we have historically done business with. They appreciate the local branch support and territory rep

relationships. The new business of Special Markets desires centralized support with no territory representative and everyday low prices. The current format creates inconsistencies in service, support and pricing when a client crosses branch boundaries. This is frustrating for DSO's.

PRICING

The customer wants everyday low prices. They do not want to receive their discount after the fact or in the form of a loyalty program or free product. This requires working with the manufacturers to give Patterson lower prices when their products are sold to DSOs. Typically this is negotiated by line item, by customer, with the manufacturer at the time the contract is being created. These wholesale discounts vary depending on the size of the customer. By negotiating these discounts with the manufacturer ahead of time, Patterson can offer everyday low prices to the customer. We refer to this model as "net down" pricing. An additional component to this new pricing model is the importance of analytical reporting. In order for Patterson to get reimbursed for net down pricing, essential and accurate reports must be generated on each account each month or quarter.

CURRENT MODEL OPERATION/FINANCE STRUCTURE

STRUCTURE

- Revenue, cost of goods sold, and commissions for **ALL** business passes through the branches and is invoiced, scheduled, etc. at the branch level. This includes all large group accounts.
- A Special Markets P&L has been created that identifies the revenues, cost of goods sold, and commissions related to Established & Elite accounts, though they are also shown at the branch level.
- Beginning in FY15, any new business that Special Markets acquires will post directly to Special Markets, and will not be duplicated at the branch level. These will be included on the same P&L mentioned in the bullet above.

ISSUES

- Many branches have created their own unique discount structure to include additional Advantage Dollars and other methods to secure the business; this is not consistent from branch to branch or based on customer size.
- In most situations, the vendors have not been asked to participate in the discounts passed on to group customers that are managed by the branches.
- Branches receive all the revenue and commissions from group accounts, including those customers that are managed by corporate where the branch and/or sales rep have little involvement.

- Clients, or our own Special Markets inside team on their behalf, have to work with the individual branches to purchase equipment or request technical service. This breeds inefficiency, delays and visible inconsistency in pricing.
- New customers must be set up at the branch level, creating a back-and-forth with the SM inside team that often takes several days.
- Branch personnel typically do not have the financial acumen to keep the accounts receivable records for these customers with multiple locations accurate and up to date.

Updates in Progress

The IT department is building out the necessary foundational needs to give the Special Markets team tools to centrally manage customers. Phase 1 of this project goes live with fiscal 2015. The Special Markets team needs full branch functions to manage all new business without the need of a local branch. Tasks included in this phase include:

- Setting up account
- Billing and crediting and rebilling
- Scheduling and/or requesting service calls

In addition to the above, behind-the-scenes plumbing is being built that will become functional at the start of FY15. This will allow centralized customers to be flagged so their revenue and cost of goods sold post directly to the Special Markets P&L, bypassing the branches. This flag will also “lock out” the branch from making adjustments to customer information, etc. This essential IT work will be the basis for additional IT work that will take place prior to the ERP SAP implementation.

Migration of Current Business

As mentioned in the definition, the Special Markets division will focus solely on those practices with 15 or more locations. Current business that meets the definition will continue to reside at the branch level until the customer requests centralization or at which time it is strategically decided to migrate the account. Once that request has been made, the following will transpire:

- The official transition plan will be initiated
- Patterson Special Markets will handle all day-to-day business with said account.
 - Special Markets will administer the account information and this functionality will be “locked down” so the branch cannot make changes in CSS (Phase 1 – May FY15)
 - Accounts receivable will be centralized (this ability already exists)
 - Customer returns will be centralized – Call Tags distributed from Special Markets inside team (we currently have the ability to do this) or Self Service Returns (Piloting in FY15)
 - Remove the ability of the branch to place orders or process credits for merchandise in CSS (Phase 2 – TBD)
 - Special Markets will request to schedule service for the customer in CSS (Phase 1 – May FY15) – the branch will see the request and schedule a technician
 - Details for Clearview protocol to follow
 - Special Markets will schedule and bill for service calls (Phase 2 – TBD)
- The revenue and cost of goods sold will post directly to the Special Markets group and will no longer post to the branch.

- Launch the Special Markets web experience. A seamless transition to the client that excludes items that DSO's cannot use, such as Advantage \$, Free goods, and other pricing promotions.
- It will be determined by management (President of Special Markets and VP Sales for Dental) whether or not a territory representative will remain assigned to the said account.
- Territory and CEREC sales representatives will no longer receive commissions for sales to the customer. IF it is strategically determined (see bullet above) that a territory representative is needed for the client relationship we will pay the representative a "Special Markets commission" of 10% on merchandise ONLY to be paid manually and quarterly. CEREC representatives will not be paid on Special Markets sales.
- In many circumstances, equipment sales representatives will stop receiving commissions for "commodity" sales to the customer *(see below). In the case where the equipment specialist is needed to assist with a large order/ new office, Special Markets will request their assistance and they will be paid through commission adjustments at a rate that is 20% less than the normal commission rate. The expense for these commission adjustments will be manually submitted and paid by Special Markets.
- Special Markets will "contract" the service technicians to perform technical service for said account (see technical service section for details).
- The branch budget will be adjusted to reflect the sales that have been removed from their P&L

* Examples of equipment commodities: Single items ordered through equipment or service such as:

Compressor
 Vacuum
 Sterilizer
 Intra-Oral x-ray replacement
 Light
 Small equipment such as cavitron, etc

Special Markets believes that all current branch "Special Markets" accounts will migrate into the centralized system over time. Meanwhile, our main focus and priority is on new incremental business.

Below is a listing of the accounts that make up the Special Markets P&L to date:

American Dental Partners
 AppleWhite Dental
 Aspen Dental Management
 Christie Dental
 Church Street (FORBA)
 CMS
 Corizon
 Dental Care Alliance
 Dental One Partners
 East Carolina University
 Famila Dental
 Family 1st Management
 Health Partners

Heartland Dental
ImmediaDent Management,
LLC
Jefferson Dental
Kaplan Higher Education
Mayo Foundation
Medical Teams International
MI Community Dental Clinics
Midwest Dental
Military – ECAT ACCOUNTS
National Dentex
Orthosynetics
Other
Pacific Dental
State of Florida

Strategic Focus and Value Proposition

Patterson Dental Special Markets feels that with a unique value proposition focused on growth, operational efficiency and unique technical service it could have a different impact within the established DSO space (15 or more locations). Regarding the Elite space (50 or more locations), our strategy is to lead with our best-in-class equipment and technology, primarily A-dec and Sirona, as a foot in the door.

Patterson Special Markets feels that we can offer value to the space by helping the clients grow and become more operationally efficient both organically and inorganically, allowing them to grow their current business while acquiring and setting up denovos.

It is also understood that each Special Markets account has unique needs and is structured in a unique way. Therefore, it may become necessary to develop an individualized value proposition to meet the needs of special circumstances based on opportunities, challenges and requisite solutions.

We feel that Henry Schein has grown complacent and relies on their historical advantage of supporting the growth of Special Markets through their large centralized infrastructure.

Special Markets Offerings

Merchandise

Sundries Pricing Model

Develop a pricing template for all group sizes, which is a rational and consistent strategy. Branding for these tiers is underway and will be displayed in branch systems for their reference when servicing the customer. To create consistency, the definition of these classes (i.e., 15-24 locations) will carry through various aspects of our pricing model. We will build a marketing story around the 5 levels. Also, the levels are A,B,C,D,E so they will be easy for the branches to remember when billing. Some customers may be grandfathered in initially. Below is the initial pricing we will model on merchandise.

INITIAL CLASSES TO MODEL MERCHANDISE PRICING:

		Annual Merchandise	Branded Merchandise Gross Margin	Patterson Brand Merchandise Gross Margin
<i>Accelerated</i>	15-24 locations	\$600,000 up to \$1M	~25% GM	~28% GM
<i>Business</i>	25-49 locations	\$1M up to \$2M	~23% GM	~26% GM
<i>Champion</i>	50 to 124 locations	\$2M up to \$5M	~21% GM	~24% GM
<i>Dynasty</i>	125 to 249 locations	\$5M up to \$10M	~19% GM	~22% GM
<i>Elite</i>	250 or more locations	\$10M +	~17% GM	~20% GM

Numbers may be adjusted after initial modeling.

Since Patterson has not been in this space, we feel we need to be aggressive with merchandise pricing to get our foot in the door. Core equipment opportunities are a by-product of the merchandise relationship. We will use sales of core equipment and proprietary technology products to raise our overall blended Gross Margin percentage.

Returns will be handled by printable call tags or return services labels, without a territory representative or branch involved.

Pharmaceuticals will be a necessary addition to the Special Markets team as many RFPs will be sole source distributor. An anomaly is American Dental Partners, which purchases supplies from Patterson but pharmaceuticals from Henry Schein.

Work with Patterson Logistics on customer differentiated opportunities – best-in-class delivery for top client experience.

Pattersondental.com

Merchandise Order Management:

Create a Special Markets Pattersondental.com web facing page, to launch FY15, displaying the client's logo with their formulary attached. The IT department will remove any free goods and Advantage dollars.

Patterson Proprietary Offerings

- Free or special deal on CAESY patient education software with new merchandise partnership
- Special pricing on Patterson Office Supplies
- Discounts on RevenueWell
- Complimentary office design services

1-800-DENTIST

Partner with Futuredontics:

Designed to drive new patients to client and also regenerate lost or complacent patients within the practice. Patterson Special Markets will offer new centralized business a 4-month trial with 5 select modules designed to grow the client's current business:

- 1-800-DENTIST – Drive new leads to the office
- Patient Activator – Patient communication tool
- Patient ReActivator – Mine for lost or complacent patients within the clients database
- Reputation Monitor – Track how the client's organization is perceived within the marketplace
- Web Director – Customized web development for both PC and handheld devices

Mercer 360 Planning

Partner with Mercer:

Recently acquired by Patterson Dental, the Mercer team will offer Special Markets new business 6 months of complimentary access to OnTrack, designed to perform the following:

- Prioritize the areas you need to pay attention to
- Monitor those areas and provide real-time feedback
- Systems to offer solutions to close the gaps

QSI Partnership

Establish a true business partnership with QSI to offer large DSOs a complete practice management solution on the cloud. No money will change hands within Patterson and QSI. It is suggested that QSI will offer all new Special Markets clients a discount for the referral.

Technical Service Offering

Patterson Dental boasts the largest and best technical service field force in the country. Patterson Special Markets will utilize the local technical service departments to service its centralized business. By utilizing the existing branch service departments we plan to offer all new Special Markets business the following value proposition:

- Centralized service dispatch through their “one point of contact”
- Online scheduling of technical service calls
- Dedicated technicians assigned to affiliates
- Proactive response: A monthly automated scheduled courtesy call by a designated technician
- Patterson Technology Center hotline for all technology service needs
- National repair hotline for all everyday repairs
- Extended warranties on select products
- Response time guarantee on service calls
- Guaranteed cost of ownership with select new business when purchasing A-dec equipment
- National Service Contract including pre-paid technical service

We will offer the same tiered model as merchandise for service:

INITIAL CLASSES TO MODEL SERVICE PRICING:

		Labor Rate	Parts Discount	Nat'l Rpr Discount	MFG Repair Discount
<i>Accelerated</i>	15-24 locations	\$115	10%	10%	10%
<i>Business</i>	25-49 locations	\$105	10%	10%	10%
<i>Champion</i>	50-124 locations	\$95	15%	15%	15%
<i>Dynasty</i>	125-249 locations	\$80	15%	15%	15%
<i>Elite</i>	250 or more locations	\$70	15%	15%	15%

Numbers may be adjusted after initial modeling.

- Current business will remain and be managed at the branch level until the time comes to migrate the account(s). All new business will be centralized and managed by the Special Markets division. Special Markets will employ a service coordinator(s) to work with the local branches to schedule technical service for Special Markets accounts. Special Markets agrees to supplement the local branch at the current Gold Advantage rate for that branch. For example, if the branch Gold Advantage rate was \$180:

- For an account that has 15 or more locations and is NOT centralized: the branch will service and bill the customer directly. The Special Markets division will NOT supplement the branch.
- In the case where an account that IS centralized calls for technical service labor: the branch bills the customer at \$80 per hour. The Special Markets division will give \$180 per hour to the branch as goodwill, because the branch did not receive ANY revenue from the invoicing.
- In the case where an account that IS centralized needs equipment installed: the Special Markets division will give the branch \$180 per hour for commodity installs. When a complete installation occurs Special Markets will establish a flat rate reimbursement for the branch (i.e., \$5,000). The customer will be billed at no charge.
- The Special Markets division will create a new annual incentive opportunity for the entire service department at each branch based on their service to Special Markets customers. The additional bonus will require a completed survey and/or a satisfaction scorecard filled out by the select affiliate and returned to the Special Markets division. The amount is TBD and will be paid annually.

Customer Reporting Suite

A reporting suite will be developed in conjunction with several of our current and initial future customers. Once we have intelligence from a few of these interviews we will create a reporting suite to be offered to all Special Markets Customers. The goal is to have a reporting suite defined by the beginning of calendar 2015.

Forecast

SPECIAL MARKETS	FY2015	FY2016	FY2017	FY2018
REVENUE	\$105,000,000	\$120,000,000	\$140,000,000	\$170,000,000
<i>Growth Rate</i>	<i>17%</i>	<i>14%</i>	<i>17%</i>	<i>21%</i>
GM%	23.7%	23.7%	23.7%	23.7%
GROSS MARGIN	\$24,900,000	\$28,400,000	\$33,200,000	\$40,300,000
TOTAL EXPENSE	\$12,200,000	\$14,000,000	\$16,300,000	\$19,500,000
Operating Income	\$12,700,000	\$14,400,000	\$16,900,000	\$20,800,000
	12.1%	12.0%	12.1%	12.2%

Organization

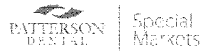
Today

We have added three necessary positions in Special Markets in FY14:

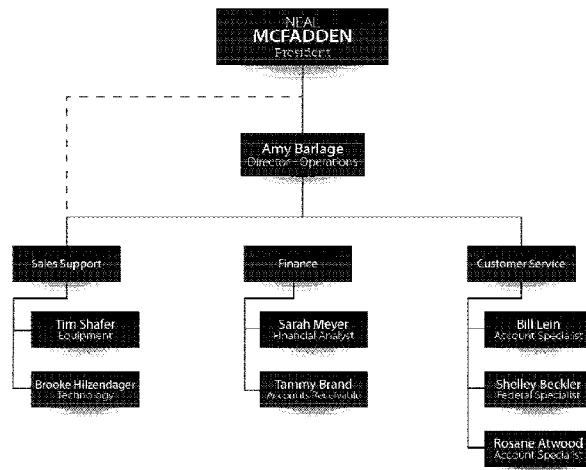
Director of Operations

Financial Analyst

Account Specialist (one additional)



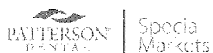
Current Organization Chart



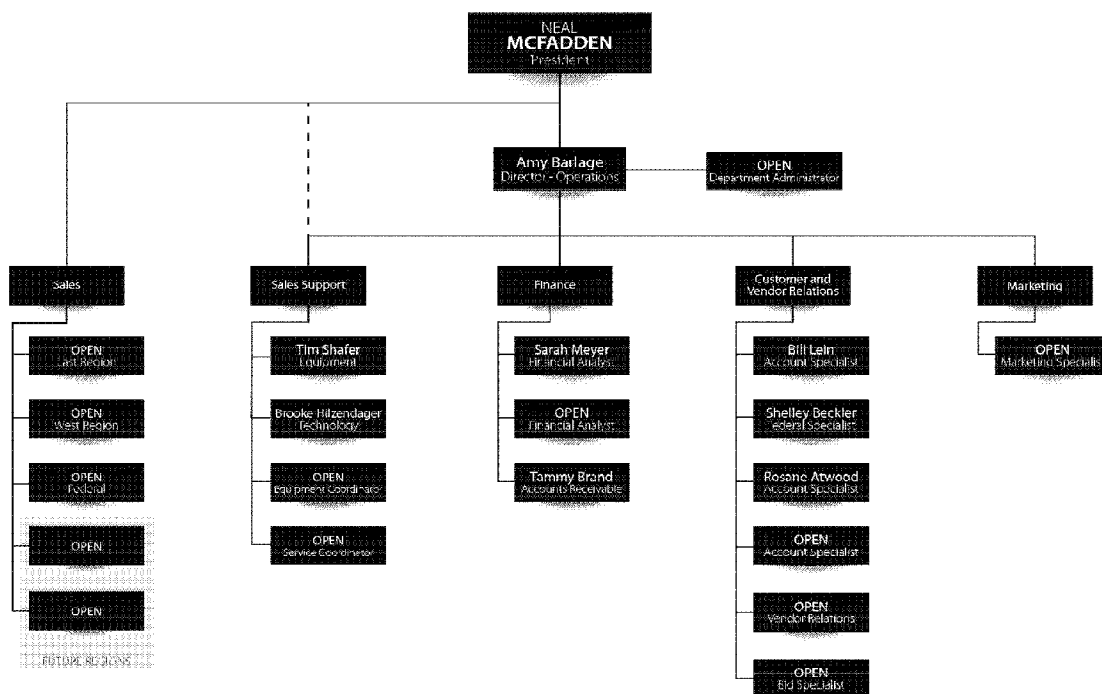
Tomorrow

In FY15 budgeted proposed positions include:

- 2 Bid Specialists/Vendor Relations
- Equipment Coordinator
- Service Coordinator
- 2 Field Sales Representatives: East and West Coasts
- 2 Account Specialists
- Department Administrator
- Financial Analyst
- Marketing Specialist
- Federal Specialist



Organization with Proposed Positions



Special Markets Regional Sales Representatives

It is proposed to have four Special Markets Regional Sales Managers by the end of FY16 focusing on the following markets: New England, Florida, Texas, and California. For the short term, in Q2 of FY15 two sales representatives will be hired: East and West regions – ***actual region lines may vary:**



Special Markets Regional Sales Representatives will focus on new business for the organization and serve as a support liaison for the two Elite clients currently with Patterson Dental: American Dental Partners and Pacific Dental Services.

The position will be salaried with a performance based bonus% of salary.

It is recommended that as Special Markets is building out its business the guaranteed pay of the sales reps be a higher % of the total for the first year. Therefore, a portion of the bonus will be guaranteed during the first year for the initial representatives hired, and paid quarterly.

Sales Rep Compensation	Year 1	GOAL (Year 2)
Base Salary	\$110,000	\$110,000
Bonus %	50%	50%
Bonus \$	\$55,000	\$55,000
Target Total Compensation	\$165,000	\$165,000
Bonus Guarantee % of Salary	25%	0%
Guarantee \$	\$137,500	\$110,000
Total Guarantee % of Target	83%	67%

An example of bonus metrics would be:

- New Business in fiscal year – 50% of bonus
- Growth of current business within region – 30% of bonus
- Sirona sales growth – total dollars or growth – 10% of bonus
- Adec sales growth – total dollars or growth – 10% of bonus

We are also looking at an expense budget of \$30,000 per representative.

CEREC and A-dec Plan

Patterson Special Markets' entry into this space brings two of the biggest manufacturers: Sirona and A-dec. Both have dedicated themselves to pursuing this business. Each has established a matrix supporting the various sizes of DSOs.

Current Business

CEREC Pilot Programs

Since 2012 Sirona has offered pilot programs to several DSOs. A pilot is a 120-day CEREC "trial" where the client pays \$3,000 per month for up to four units each to try with select dentists. Sirona spearheads this and handles all training. If the client decides to proceed with purchasing the CEREC then two-thirds of the pilot fees are credited toward the cost of each CEREC unit. A similar pilot program exists for Digital Impressioning and lasers. Sirona trains Special Markets customers. Once Patterson Special Markets hires field sales reps we will take the leadership role in these pilots.

Future Program

Sirona

Sirona and Patterson have agreed to the following pricing tiers:

Patterson Retail Discount to Group Practices and Gross Margins on Group Practice

	Discount off of MSRP			Patterson Group Practice Margin
	Tier 1 10-24 Installations	Tier 2 25-99 Installations	Tier 3 100+ Installations	
Intraoral				
- Equipment	45.0%	50.0%	55.0%	28.0%
- Upgrades	50.0%	55.0%	60.0%	25.0%
Extraoral				
2D (incl. Hediocent)	30.0%	32.0%	35.0%	25.0%
3D	22.0%	24.0%	26.0%	25.0%
3D Service Contracts	22.0%	24.0%	26.0%	25.0%
CAD CAM				
- Equipment	10.0%	15.0%	20.0%	30.0%
- Service Club	10.0%	15.0%	20.0%	40.0%
Lasers				
Laser and Consumables				
- SiroLaser Xtend	28.0%	30.0%	32.0%	20.0%
- SiroLaser Advance	24.0%	26.0%	28.0%	20.0%
- Consumables	30.0%	34.0%	37.0%	20.0%



The Dental Company

As of March 11, 2014

Patterson Standard Costs	MSRP	Tier 1 - 15-24 Installs			Tier 2 - 25-99 Installs			Tier 3 - 100+ Installs		
		Customer	Patterson	Patterson	Customer	Patterson	Patterson	Customer	Patterson	Patterson
		Retail Price	Branch Cost	True-Up	Retail Price	Branch Cost	True-Up	Retail Price	Branch Cost	True-Up
Product Configuration		10%	@ GM	Due / (Owes)	15%	@ GM	Due / (Owes)	20%	@ GM	Due / (Owes)
Complete Packages										
Cerec OmniCam + MCXL	\$ 136,995	\$ 123,296	\$ 86,307	\$ (15,545)	\$ 116,446	\$ 81,512	\$ (10,750)	\$ 109,596	\$ 76,717	\$ (5,956)
Cerec OmniCam + MCXL Practice Lab	\$ 139,995	\$ 125,996	\$ 88,197	\$ (10,648)	\$ 118,996	\$ 83,297	\$ (5,748)	\$ 111,996	\$ 78,397	\$ (848)
Cerec OmniCam + MCX	\$ 129,995	\$ 116,996	\$ 81,897	\$ (14,748)	\$ 110,496	\$ 77,347	\$ (10,198)	\$ 103,996	\$ 72,797	\$ (5,649)
Cerec OmniCam + MC	\$ 109,995	\$ 98,996	\$ 69,297	\$ (12,471)	\$ 93,496	\$ 65,447	\$ (8,621)	\$ 87,996	\$ 61,597	\$ (4,772)
Cerec AC Blue Cam + MCXL	\$ 106,995	\$ 96,296	\$ 67,407	\$ (12,132)	\$ 90,946	\$ 63,667	\$ (8,387)	\$ 85,596	\$ 59,917	\$ (4,642)
Cerec AC Blue Cam + MCXL Practice Lab	\$ 109,995	\$ 98,996	\$ 69,297	\$ (7,235)	\$ 93,496	\$ 65,447	\$ (3,385)	\$ 87,996	\$ 61,597	\$ 465
Cerec AC Blue Cam + MCX	\$ 99,995	\$ 89,996	\$ 62,997	\$ (11,335)	\$ 84,996	\$ 59,497	\$ (7,835)	\$ 79,996	\$ 55,997	\$ (4,335)
Cerec AC Blue Cam + MC	\$ 79,995	\$ 71,996	\$ 50,397	\$ (9,058)	\$ 67,996	\$ 47,597	\$ (6,258)	\$ 63,996	\$ 44,797	\$ (3,458)
Acquisition Units										
Cerec OmniCam	\$ 68,995	\$ 62,096	\$ 43,467	\$ (7,829)	\$ 58,646	\$ 41,052	\$ (5,414)	\$ 55,196	\$ 38,637	\$ (3,000)
Cerec AC Blue Cam	\$ 38,995	\$ 35,096	\$ 24,567	\$ (4,416)	\$ 33,146	\$ 23,202	\$ (3,051)	\$ 31,196	\$ 21,837	\$ (1,686)
Milling Units										
MCXL	\$ 68,000	\$ 61,200	\$ 42,840	\$ (7,716)	\$ 57,800	\$ 40,460	\$ (5,336)	\$ 54,400	\$ 38,080	\$ (2,956)
MCXL Practice Lab	\$ 71,000	\$ 63,900	\$ 44,730	\$ (2,819)	\$ 60,350	\$ 42,245	\$ (334)	\$ 56,800	\$ 39,760	\$ 2,151
MCX	\$ 61,000	\$ 54,900	\$ 38,430	\$ (6,919)	\$ 51,850	\$ 36,295	\$ (4,784)	\$ 48,800	\$ 34,100	\$ (2,649)
MC	\$ 41,000	\$ 36,900	\$ 25,830	\$ (4,642)	\$ 34,850	\$ 24,395	\$ (3,207)	\$ 32,800	\$ 22,960	\$ (1,772)
Digital Impression Machines										
Cerec OmniCam Connect	\$ 49,995	\$ 44,996	\$ 31,497	\$ 1,435	\$ 42,496	\$ 29,747	\$ 3,185	\$ 39,996	\$ 27,997	\$ 4,935
Cerec AC Blue Cam Connect	\$ 25,995	\$ 23,396	\$ 16,377	\$ 746	\$ 22,096	\$ 15,467	\$ 1,656	\$ 20,796	\$ 14,557	\$ 2,566
Apollo Di	\$ 19,750	\$ 17,775	\$ 12,443	\$ 567	\$ 16,788	\$ 11,751	\$ 1,258	\$ 15,800	\$ 11,060	\$ 1,949
Service Club										
Service Club - Acquisition Unit (std)	\$ 149	\$ 134	\$ 80	\$ 7	\$ 127	\$ 76	\$ 12	\$ 119	\$ 72	\$ 16
Service Club - Milling Unit	\$ 70	\$ 63	\$ 38	\$ 3	\$ 60	\$ 36	\$ 6	\$ 56	\$ 34	\$ 8
Service Club - Connect Club	\$ 149	\$ 134	\$ 80	\$ 7	\$ 127	\$ 76	\$ 12	\$ 119	\$ 72	\$ 16

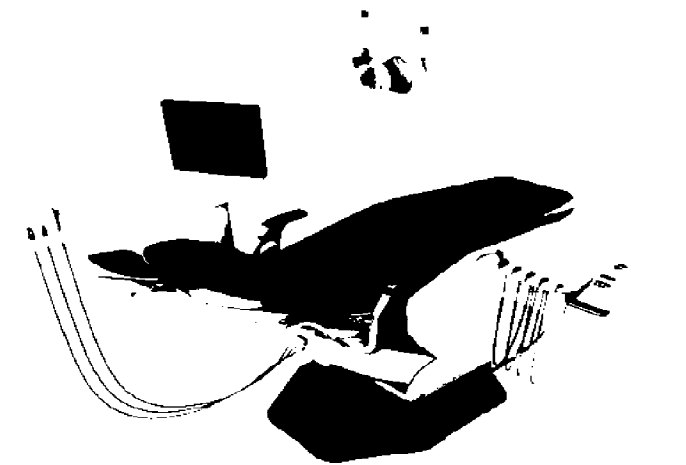
A-dec

A-dec has designed an operatory package specifically for the Special Markets space. This package cannot be sold through the branches without approval from the President of Special Markets and the Vice President of Sales for Patterson Dental.

The new "BRONZE" package (Basic package – gold and silver options available at \$16,930 and \$15,591 retail) will be tailored on the following matrix:

Baseline	Retail	DC	Dir GM	Selling Price to DSO	% off Retail	Diff from baseline selling Price	Projected Revenue to Patterson	Projected Savings to Customer	
1	\$ 14,474	43%	32%	\$ 12,133	16.2%	\$ -		\$ -	
Emerging DSO Scale (Draft)									
Min	Max	DC	Dir GM	Selling Price					
15	24	51%	27%	\$ 9,715	32.9%	\$ 2,417	\$ 233,170	\$ 58,013	
25	50	52%	26%	\$ 9,389	35.1%	\$ 2,744	\$ 469,427	\$ 137,204	
51	99	53%	25%	\$ 9,070	37.3%	\$ 3,062	\$ 897,967	\$ 303,162	
Elite DSO Scale (Draft)									
Min	Max	DC	Dir GM	Selling Price					
100	200	54%	24%	\$ 8,761	39.5%	\$ 3,372	\$ 1,752,116	\$ 674,408	
201	300	55%	23%	\$ 8,459	41.6%	\$ 3,674	\$ 2,537,649	\$ 1,102,136	
301	400	56%	22%	\$ 8,165	43.6%	\$ 3,968	\$ 3,265,928	\$ 1,587,119	
401	500	57%	21%	\$ 7,878	45.6%	\$ 4,254	\$ 3,939,127	\$ 2,127,182	
501		58%	20%	\$ 7,599	47.5%	\$ 4,534			

Note: Contract would stipulate a 2 year time window as a standard to reach increments



Federal

It is proposed that 30% of Special Markets business will be federal. This consists of the following areas:

- Government/Military
- Community Health

- Indian Health
- Schools

We will have a full electronic catalog (ECAT) for the government by the end of calendar 2014. We are taking the current ECAT product selection from 2,000 products to over 57,000 products. This will increase the potential in sales with the government exponentially. According to our third-party contractor, Deborah Peyton, Henry Schein currently gets over \$120 million in federal sales. By increasing our ECAT selections our goal is to capture 40% of this market.

We will also have a full GSA/FSC contract by fall 2014. This will give both the branches and Special Markets the opportunity to bid for state, local government, community health and Indian health business that Patterson has not historically gone after.

We will build an internal federal support team to support the new Special Markets field sales force. Plans are to add one internal support position in Q4 of FY15 and then add a new Federal Field Sales Representative beginning FY16.

Marketing

A Patterson Special Markets marketing plan will be developed and worked on throughout FY15. Some aspects of the marketing focus will include both internal and external marketing:

- Advertising in First Impression publication in July FY15: 3 full-page ads and 1 editorial – create client awareness
- Special Markets trade show displays and banners
- Special Markets “Patterson Today” Q4 FY15
- Special Markets formulary Q4 FY15
- Sponsor and attend the Dental Group Practice Association board meeting in July 2014
- Sales rep presentation tools such as sales material and electronic media
- Participate in key DSO annual meetings such as Pacific Dental’s XP meeting and American Dental Partners’ Best Practices meeting
- Participate in several donation opportunities with key DSO accounts
- Direct Marketing to all group practices within target market

We will build a marketing plan and story around the 5 levels of Special Market clients:

Accelerated Class	15-24 locations
Business Class	25-49 locations
Champion Class	50-124 locations
Dynasty Class	125-249 locations
Elite Class	250+ locations

Appendix

Bid Specialist/Vendor Relations:

Assigned to complete and manage all Requests for Proposals (RFPs) and work with each manufacturer to determine appropriate wholesale pricing

Equipment Coordinator:

Work with all Special Markets clients as a centralized point of contact for equipment needs
Acts as the liaison between the account and the local branches for equipment

Service Coordinator:

Responsible for scheduling and monitoring the technical service needs of all Special Markets accounts
Works with the local branches to complete technical service needs: both repairs and installations
Will assist in tracking all rates and "remuneration" to the local branch service department

Account Specialist:

Required to handle the specific needs of assigned account

Department Administrator:

Acts as the department administrative assistant supporting inside and outside personnel: books travel, assists with processing/tracking branch remuneration, assists with AR administration

Financial Analyst:

Responsible for both client unique reporting, manufacturer reporting and internal reporting needs

Marketing Specialist:

Future position to include all external communication and promotions for the Special Markets division

Federal Specialist:

A Q4 position to handle all new ECAT and GSA needs

Sirona Technology Target Accounts: CEREC, Schick, Lasers, Panoramic & Conebeam

Pacific Dental	fully integrated
ADP	Schick - CEREC pilot – planned for May 14
Affordable Care	purchased 7 CEREC units
Applewhite	Schick
Coast Dental	CEREC pilot – planned for May 14
Dental Care Alliance	CEREC pilot – in progress – purchased 1 unit
Dental One Partners	CEREC pilot – in progress
Dental Depot	Schick
Gentle Dental –NW dental services	CEREC pilot – in discussions
Heartland	CEREC pilot – in discussions
Immediadent	Schick
Jefferson Dental	Schick
Lane and Associates	
Midwest dental	
Northcast Dental Management	Schick and Pans
Ocean Dental	Schick
Interdent	
Park Dental	

Special Market Target Accounts:

Firm	Contact	Title	City, State, ZIP	Phone
Affordable Care, Inc.	Mr. Doug Brown	CEO	Raleigh, NC 27607	252-208-3201
Allied Dental Practices	Dr. Edward B. Poller	CEO	Toms River, NJ 08753	732-914-1213
American Dental Partners	Greg Serraro	CEO	South Wakefield, MA 01880	781-213-0223
Aspen Dental Mangement, Inc.	Bob Fontana	CEO	East Syracuse, NY 13057	315-454-6000
Birner Dental Management Services, Inc.	Mr. Fred Birner	CEO	Denver, CO 80210	303 691 0680
Clear Choice Implants	Kevin Mosher	CEO		303-217-2409
Dental Associates	Mr. Anthony Vastardis	CEO	Wauwatosa, WI 53222-3108	414-778-5290
Dental Care Alliance	Mr. Mitch Olan	CEO	Sarasota, Florida 34237	941-955-3150
Dental Depot	Dr. Glenn Ashmore	CEO	Oklahoma City, OK 73107	405-949-0123
DentalOne Partners	Keith Newton	CEO	Mayfield Heights, Ohio 44124	216-584-1800
Dentisty For Children	Frank Baynham	CEO	Marietta, GA Sarasota, Florida 34237	678-244-4299
Dynamic Dental	Alex Giannini	CEO	Waltham, MA 02451	941-918-4300
Gentle Dental Partners	Dr. Ronald G. Weissman	CEO		617-966-3374
Great Expressions Dental Centers, Inc.	Rich Beckman	CEO	Bloomfield Hills, MI 48304	248-203-1121
Heartland Dental Care	Rick Workman, DMD	CEO	Effingham, Illinois 62401	217-540-5100
InterDent, Inc.	Vito Dacchille	CEO	Vancouver, Washington	310-765-2437

			98683	
Jefferson Dental Clinics	Mr. Chris Srong	CEO	Dallas, Texas 75234	469-766-7561
Katsur Management Group, Inc.	Dr. James T. Katsur	CEO	Altamonte Springs, FL 32714	407-718-5798
Midwest Dental	Jeffrey Moos, DDS	CEO	Mondovi, Wisconsin 54755	715-926-5050 x 131
Northeast Dental Management	Dr. Craig Abramowitz	CEO	Paramus, NJ 07652	201-291-0935
Northwestern Mgmt/Gentle Dental Group	Joseph Garcia	CEO	Boca Raton, FL 33487	561-999-9650
Ocean Dental	Chad Hoecker, DDS	CEO	Stillwater, OK 74074	405-707-6199
Onsite Health	Ern Blackwelder	CEO	Arlington, VA	571-257-2409
OrthoSynetics	David Marks	CEO	Irvine, Texas	888-622-7645
Pacific Dental Services	Mr. Stephen Thorne	CEO	Irvine, CA 92618	714-845-8405
Refresh Dental	Ken Cooper	CEO	New Castle, PA	724-698-2475
Samson/Immediadent	Theresa Schikirke	CEO	Leawood, KS	816-304-3332
Smile Brands	David Young (interim)	CEO	Irvine, CA 92618	714-824-5140
West Coast Dental	Dr. Fahrad Manavi	CEO	Los Angeles, CA 90025	310-820-9933
Western Dental Centers	Simon Castellanos	CEO	Orange, CA 92863	714-571-3690

The above accounts are members of the DGPA. In addition to these we have created an “ongoing” list of discovered opportunities:

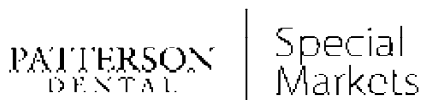
Ocean Dental	Tampa Florida	800-327-6453	180 locations
Mortenson Dental	Louisville, KY		
Park Dental	Minneapolis, MN		
Bold Dental	Bentonville, AR		
Hero Mgt/Academy Kids	Denver, Co		
Family First	Omaha		

CX3018

From: McFadden, M
Sent: Wednesday, March 02, 2016 11:49 AM
To: Neal, William
Subject: RE: Dentistry Unchained Proposal

Yes - -I will take responsibility - -we must start stretching - - This seems to be the only way for now to insert ourselves into the mix with these GPO's or quasi. We just need to get the cost correct and any "order numbers, etc.". We have offered a few groups the Caesy proposal. The book and voucher should be easy - - The revenue Well component just needs a protocol built around it - -but all in all I say go for it.

Neal McFadden
President Special Markets
864-346-7209



From: Neal, William
Sent: Wednesday, March 02, 2016 11:10 AM
To: McFadden, M
Subject: RE: Dentistry Unchained Proposal

Hi Neal,

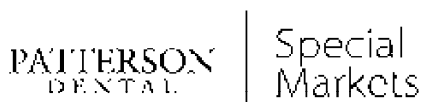
Do we need Dave or Paul's approval before I roll this out ? I would need to launch this to the branches as soon as Dentistry Unchained put's it up on their site and I don't want to catch anyone off-guard. I'm back home and working the rest of the week. Our travel and the trip went as well as it could have. I appreciate your support and I look forward to seeing you next Wednesday.

Bill Neal
Western Special Markets Territory Manager
Patterson Dental Supply Inc.

From: McFadden, M
Sent: Saturday, February 27, 2016 11:18 AM
To: Neal, William
Subject: RE: Dentistry Unchained Proposal

All this looks fine Bill - - let's try this out -we need to figure out how to work with these types of organizations - -thanks

Neal McFadden
President Special Markets
864-346-7209



From: Neal, William
Sent: Wednesday, February 24, 2016 3:38 PM
To: McFadden, M
Subject: Dentistry Unchained Proposal

Hi Neal,

I meet with Wendy from Dentistry Unchained last week in Denver. They are trying to create a marketplace approach for their members that would include offerings from multiple suppliers. I have a feeling that Burkhart may have offered them the same supply discount program they have in place with John Kois and Smile Source but I have not confirmed this. Here is what I told her is a potential offer from Patterson that would still need to be approved by upper management :

1-Revunue Well discounted rate of \$249 with no set-up fee. If it is a hassle for the PTC to load in another price point we could go with the \$229 rate they offer groups with 5 or more locations.

2-CAESY discounted rate of \$39 per month with no set-up fee

3- CEREC purchase gains an additional \$500 Advanced Training Voucher to be funded by the local branch.

4- Sirona CBT/Cone Beam purchase gains a copy of Dr. August de Oliveria's book on guided surgery to be funded by the branch. We should be able to get a rate of \$225-\$250 on the book form August.

Wendy was meeting with Schein & Burkhart last week to finalize their offerings. If we are going to participate with these type of organization this might be an offering that requires a purchase and focuses our offering on the Patient Experience & Practice Lifestyle theme. I would like to give Wendy an answer by mid-March if possible. Thank you for your consideration of this proposal.

Bill Neal
Western Special Markets Territory Manager
Patterson Dental Supply Inc.

CX3042

From: Desportes, Perrin [perrin.desportes@pattersondental.com]
Sent: Tuesday, December 16, 2014 1:27 PM
To: Fruehauf, Anthony; Austin, Andrew
Cc: Cousins, Peter; Branch Managers - South East Region
Subject: RE: Smile Source

Thanks for all the feedback, guys.

Perrin DesPortes
 Branch Sales Manager, Charlotte
 Patterson Dental Supply
 704-849-4520

From: Fruehauf, Anthony
Sent: Tuesday, December 16, 2014 10:01 AM
To: Austin, Andrew
Cc: Cousins, Peter; Desportes, Perrin; Branch Managers - South East Region
Subject: Re: Smile Source

I would also add a few things. Under no circumstance are we to engage in threatening vendors for doing business with GPOs. We have a huge legal case currently in another region for this very reason. It is important that we get to our best clients proactively. Andy can attest that once they sign it is gone and tough to get back. Have our people be able to speak of all Patterson does without going straight for a huge discount. If we erode our margins on merchandise significantly we will never achieve leverage. The best offense is for the manager to visit the largest accounts to be visible and gauge the relationship. We cannot be desktop generals moving forward. The visibility of the branch manager is huge and we have to delegate whatever it is that is causing us to be in the office more than 2 days per week. Thanks

Anthony Fruehauf
 Southeast Region Manager
 Patterson Dental Supply Inc

On Dec 15, 2014, at 6:08 PM, Austin, Andrew <Andy.Austin@pattersondental.com> wrote:

SE Team,

Pete is all over it. Additionally, there will be a local proctor of the "Study Club/ recruitment meetings" and they 1099 that doctor...under \$10K/yr. I have had intense and uncomfortable meeting with Dentsply about what it "is" or what they are doing in the way of rebates...and they continue to say there is nothing they do for them that they won't do for us, but I always hear the brand Dentsply mentioned after every monthly recruitment meeting.

- 1) we do need to figure out the pricing issue b/c we took a 91/17 in to one of our clients and that did not get close.
- 2) fee is about right I have heard 2.2% so I think it changes based on volume of practice.
- 3) Lab info is correct and the crown is a sub \$60 crown (\$58, I think)
- 4) \$100 Flat labor rate, but no labor warranty
- 5) moving to strictly Darby in the near future
- 6) US Bank and Patterson Dental already have a discount program in place, the merchant service program with USB is called Elavon. And if the client will use a PDCO/USB Business Visa, they get the 2pts for every \$1 spent with PDCO but they also get points for every transaction on the merchant services side through a program called Encore.

7) 3M also attends these meetings but locally our guy does not play SmileSource ball. Find out if your manufacture Rep does or doesn't b/c they can be an asset.

8) Also, if you don't already do a CE seminar series similar to Alain's, you had better get one going, it takes a bit to get the right people...b/c that is the number 2 reason our clients left. They say we only have meetings to sell CEREC and 3D... and that we don't have meetings to help them run better businesses.

At the end of the day, it makes you think about the Client's business from a perspective I never have before and has made the direction of our 2015 Vision very exciting.

AA

From: Cousins, Peter [<mailto:Peter.Cousins@pattersondental.com>]

Sent: Monday, December 15, 2014 3:17 PM

To: Desportes, Perrin; Branch Managers - South East Region

Subject: RE: Smile Source

This is what I have learned so far:

1. Pricing is about 25-30% off our 94 pricing
2. They have to pay approx. 2% of Production annually for membership (monthly ACH withdrawal)
3. They get access to a proprietary lab in TX who extends discounts on their casework
4. They get \$100/hr flat rate service labor from Atlanta Dental, not sure about NDS b/c they've always given it away if customer spends \$1500/mo or more.
5. Atlanta Dental and NDS are the two primary suppliers for me...not sure about Darby picking it up elsewhere
6. They get access to discounted CC merchant services and some sort of "marketing" assistance.
7. They earn cash rebates from Smilesource in exchange for their volume purchases with Dentsply (and possibly others). This explains why the Dr's are always recruiting members, the more volume spending there is, the more the rebates are worth.
8. They have "recruiting" meetings where members will bring prospects. It's apparently during these meetings that checks are handed out to members so the prospects "smell the ether"

That's all I have so far. If anyone gets their hands on a written agreement I would love to see it.

Peter Cousins
Branch Manager
Patterson Dental Atlanta
1775 West Oak Pkwy
Marietta, GA 30062
Cell-770-807-2483

<[image001.jpg](#)>

From: Desportes, Perrin [<mailto:perrin.desportes@pattersondental.com>]

Sent: Monday, December 15, 2014 3:10 PM

To: Branch Managers - South East Region

Subject: Smile Source

Well, it looks like Smile Source is coming to Charlotte. Yippee...

I looked at some of their stuff online and it's pretty impressive. I think the TN guys have battled them for a while, so can they – or anyone else – give any feedback? Does Darby do their fulfillment?

Thanks,

Perrin DesPortes
Branch Sales Manager, Charlotte
Patterson Dental Supply
704-849-4520

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CX3043

From: Desportes, Perrin
Sent: Monday, December 15, 2014 2:24 PM
To: Fruehauf, Anthony
Subject: RE: Smile Source

I totally agree. We're already suffering under that Synergy Dental Partners buying group here and Smile Source will only make it worse. We're all going to have to answer the "I want to keep the business but at what price" question sooner or later.

Perrin DesPortes
Branch Sales Manager, Charlotte
Patterson Dental Supply
704-849-4520

From: Fruehauf, Anthony
Sent: Monday, December 15, 2014 3:14 PM
To: Desportes, Perrin
Subject: RE: Smile Source

Darby, Atlanta Dental. Nashville, Burkhardt

Don't underestimate the impact they can have ...scary

From: Desportes, Perrin [<mailto:perrin.desportes@pattersondental.com>]
Sent: Monday, December 15, 2014 3:10 PM
To: Branch Managers - South East Region
Subject: Smile Source

Well, it looks like Smile Source is coming to Charlotte. Yippee...

I looked at some of their stuff online and it's pretty impressive. I think the TN guys have battled them for a while, so can they – or anyone else – give any feedback? Does Darby do their fulfillment?

Thanks,

Perrin DesPortes
Branch Sales Manager, Charlotte
Patterson Dental Supply
704-849-4520

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received this message by mistake and also permanently destroy printed copies and delete the original and all copies of this email and any attachments from your computer.

CX3045

From: Fruehauf, Anthony
Sent: Wednesday, January 14, 2015 10:56 AM
To: McFadden, Neal
Subject: Re: Livello Group

Does not

Anthony Fruehauf
Southeast Region Manager
Patterson Dental Supply Inc

On Jan 14, 2015, at 11:49 AM, McFadden, Neal <neal.mcfadden@pattersondental.com> wrote:

I get it. If he calls I will ask him for financials --does he own all these offices --if not then he is a GPO -- we don't deal with GPO's -- I will let you know -- thanks

Neal McFadden
President Special Markets
864-346-7209

<image001.jpg>

From: Fruehauf, Anthony
Sent: Wednesday, January 14, 2015 9:40 AM
To: McFadden, Neal
Subject: Livello Group

Neal

There is a Dr Narducci in Orlando that you may remember. He has formed a GPO and has been purchasing through HSSM. He came back to us and asked that we bid as he is displeased with Schein service etc. We could not touch the prices. We are going to have him call you guys because he is building more offices and we want to maintain a relationship on the equipment side. I would ask that we do not entertain him as a customer and he be told that he does not fit the description of a Patterson Special Markets customer. This is not a group/corporate entity but a Dr that is building out a GPO and if we back him it could further hurt Ginger. Eric thought if the "no" came from you guys vs the local branch it would not hurt the relationship for equipment and technology. I will be forwarding you his invoices so you have an idea of how they are pricing items out for this group. If you have any concerns here give me a shout

Anthony Fruehauf
Southeast Region Manager
Patterson Dental Supply
O- (919)877-8500
C- (919)523-4335

CX3054

From: Fruehauf, Louis
Sent: Thursday, August 15, 2013 10:05 AM
To: Rogan, Tim;McFadden, M
Subject: Fw: Smile Source

Anthony Fruehauf
Mid-Atlantic Region Manager
Patterson Dental
Anthony.Fruehauf@pattersondental.com
P 919.877.8434 C 919.523.4335

----- Forwarded by Anthony Fruehauf/PDCO/PDCO on 08/15/2013 11:05 AM -----

From: "Kidd, Amy" <Amy.Kidd@dentsply.com>
To: "Anthony.Fruehauf@pattersondental.com" <Anthony.Fruehauf@pattersondental.com>
Date: 08/14/2013 05:51 PM
Subject: RE: Smile Source

Hello Anthony! I hope all is going well and you are keeping your head above the water with all that you are managing right now! ☺

I wanted to respond to your question about our interaction with the Smile Source account group. We treat Smile Source in the same fashion as our other regional and national key account groups and/or buying groups. They are managed by our National Account Managers and our Key Account Managers from Dentsply. We have varying programs for each group that range from net or lower retail pricing, to free good auto processing offers, to cash rebates. The Smile Source group is set up similar to our current Alliance (Cash) Rebate Program customers. Your field reps are familiar with our Alliance program and have numerous customers, including groups, that are on the program and are incented to grow Dentsply dollar purchases. Just FYI- we just added a few months ago 4 of your Nashville/Knoxville team accounts to our Alliance Cash rebate program ☺

Anyways, both programs are between Dentsply and the end user (DDS) and offer a cash rebate based on either dollar growth or category growth. The Smile Source program is category growth. Our current rebate programs pay out twice a year and we track the transactional sales. The programs are established with the end user as many of our regional key accounts (such as Smile Source) and sole practitioners utilize varying distributors. Our interaction with Smile Source (July 1) came on a little late from their entrance into the market, so I don't have a ton of info to offer you on to what has taken place in the market place over the last year with this group. I know there are numerous other manufacturers that participate with them as well that you work with, however, I'm not privy to the information on how their programs are set up.

In addition, I am aware that there is only a small number in this area that are members and I am not sure the strategy of the Group overall, but understand that they have members throughout the US.

I hope this information helps. This is small piece of the pie with the number of accounts and opportunities that lie in the market, so please let us know how we can support your team and move the needle to get your region to maximum rebate. Fyi- you have probably seen the email from Tim Rogan about our game changing new tissue management impression material. This and our Automate (handpiece maintenance station) that are coming out will be great ways for us to gain incremental growth to get you to that rebate.

If you would like to connect via phone or when you are back in Nashville soon, just let me know. I believe I have also secured about \$5000 for the Nashville branch solely to do some individual programs with your folks to get them fired up about our new products! Will keep you posted on that.

Thanks Anthony for your continued support and I look forward to talking with you soon.

Kind Regards,

Amy Lowery Kidd
Region Sales Manager
Dentsply North America
Cell: 615-294-4212



From: Anthony.Fruehauf@pattersondental.com [mailto:Anthony.Fruehauf@pattersondental.com]
Sent: Friday, August 09, 2013 2:17 PM
To: Kidd, Amy
Subject: Smile Source

Amy

Can you share with me the program you have designed for Smile Source. I need to get this behind us and cannot communicate effectively with the sales force until I understand the position you have taken.
Thanks

Anthony Fruehauf
Mid-Atlantic Region Manager
Patterson Dental
Anthony.Fruehauf@pattersondental.com
P 919.877.8434 C 919.523.4335

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CX3057

From: Cousins, Peter
Sent: Monday, September 14, 2015 2:57 PM
To: Fruehauf, Anthony
Subject: RE: RFP

He deferred to Dave and didn't have any statement to offer when I spoke with him.

I think we just say the company has chosen not to participate in GPOs at this time.

Pete Cousins
General Manager- GA/Chattanooga
Patterson Dental Company
1775 West Oak Parkway Suite 500
Marietta, GA 30062

PATTERSON

From: Fruehauf, Anthony
Sent: Monday, September 14, 2015 3:28 PM
To: Cousins, Peter
Subject: RE: RFP

Waiting on Les

From: Cousins, Peter
Sent: Friday, September 11, 2015 4:20 PM
To: Fruehauf, Anthony; McFadden, Neal
Subject: FW: RFP

The sooner the better on some sort of positioning statement that I can give to the sales team...my phone is ringing today b/c Frank took my email reply and relayed it to the board last night.

Pete Cousins
General Manager- GA/Chattanooga
Patterson Dental Company
1775 West Oak Parkway Suite 500
Marietta, GA 30062

PATTERSON

From: Frank Capaldo [<mailto:capaldo@gadental.org>]
Sent: Friday, September 11, 2015 1:11 PM

To: Cousins, Peter
Cc: Melana McClatchey; Antinora, Liz; Lisa VanZandt; Fruehauf, Anthony; McFadden, Neal
Subject: Re: RFP

Peter,

I am confused as your immediate prior email indicated you were setting up dates to sit down and talk with us and include your president!

Nothing ventured nothing gained as you may have found there is opportunity in sitting face to face before making a decision.

Although disappointed I will convey your response to the Board and membership.

Regards,

Frank

Sent from my iPhone

On Sep 10, 2015, at 3:10 PM, Cousins, Peter <Peter.Cousins@pattersondental.com> wrote:

Good afternoon everyone,
After careful consideration Patterson Dental has made the decision not to respond to the RFP at this time.
We certainly value our relationship with the GDA and will continue to support you as we have in the past.

Thank you for your understanding,

Pete Cousins
General Manager- GA/Chattanooga
Patterson Dental Company
1775 West Oak Parkway Suite 500
Marietta, GA 30062

<image001.png>

From: Melana McClatchey [<mailto:mcclatchey@gadental.org>]
Sent: Tuesday, September 08, 2015 5:53 PM
To: Frank Capaldo; McFadden, Neal; Antinora, Liz
Cc: Cousins, Peter; Lisa VanZandt
Subject: RE: RFP

Greetings:

Please find attached a Non-Disclosure and Confidentiality Letter Agreement. Once you have had an opportunity to review and sign the Agreement, please countersign and email it back to me. Thank you very much.

Sincerely,
Melana

Melana Kopman McClatchey
Georgia Dental Association
General Counsel
7000 Peachtree Dunwoody Road
Bldg. 17, Suite 200
Atlanta, Georgia 30328
Tel: 404.636.7553
Fax: 404.633-3943
mcclatchey@gadental.org

<image002.png>

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From: Frank Capaldo
Sent: Tuesday, September 08, 2015 2:55 PM
To: neal.mcfadden@pattersondental.com; liz.antinora@pattersondental.com
Cc: peter.cousins@pattersondental.com; Lisa VanZandt <vanzandt@gadental.org>; Melana McClatchey <mcclatchey@gadental.org>
Subject: FW: RFP

Neal and Liz,

Please see below and attached.

Frank J. Capaldo
Executive Director
Georgia Dental Association
7000 Peachtree Dunwoody Road, NE
Suite 200, Building 17
Atlanta, GA 30328-1655
capaldo@gadental.org
404-636-7553
678-428-0096 (cell)
404-633-3943 (Fax)
www.gadental.org

GDA Vision Statement

“Georgia: A state with optimal oral health.”

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From: Frank Capaldo
Sent: Tuesday, September 08, 2015 11:48 AM
To: 'peter.cousins@pattersondental.com' <peter.cousins@pattersondental.com>
Cc: Melana McClatchey <mcclatchey@gadental.org>; Lisa VanZandt <vanzandt@gadental.org>
Subject: RFP

Pete,

As promised, attached please find the RFP for your consideration and response. Melana will forward the Confidentiality and Non-Disclosure to you later this week. As for the dates for responses and return we will work with you considering the late entry into the process.

In addition, I would very much like you to meet with our COO, Lisa VanZandt, who heads up the project. Meeting face to face and all can exchange questions information and begin a working relationship

Thank you,

Frank

Frank J. Capaldo
Executive Director
Georgia Dental Association
7000 Peachtree Dunwoody Road, NE
Suite 200, Building 17
Atlanta, GA 30328-1655
capaldo@gadental.org
404-636-7553
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CX3059

From: McFadden, Neal
Sent: Wednesday, September 03, 2014 8:39 AM
To: Fruehauf, Anthony
Cc: McFadden, Neal
Subject: Re: Large Group Account with Patterson

No worries Anthony. I get these on a daily basis. It is helpful to keep track of how many buying groups are popping up in your region. Hope all is well take care

Neal McFadden
President Special Markets
Patterson Dental
Cell 864-346-7209

Sent from my iPhone

On Sep 3, 2014, at 8:14 AM, "Fruehauf, Anthony" <Anthony.Fruehauf@pattersondental.com> wrote:

FYI trying to keep these off your plate

From: Smith, Matt
Sent: Tuesday, September 02, 2014 12:09 PM
To: Stephen Sebastian
Cc: Fruehauf, Anthony
Subject: Re: Large Group Account with Patterson

Dr Sebastian,

Patterson Dental has an existing loyalty program in place for dentists that utilize our products & services as their primary source. For this reason, we do not have a separate discount program for group buyers.

I have copied the SouthEast Regional Mgr, Anthony Fruehauf, on my reply should you need additional information regarding this.

Thank you for your inquiry....if you are interested in opening an individual practice account please let me know & I'll have one of my local representatives get in contact with you.

-Matt

Matthew J. Smith
Branch Manager
Patterson Dental
Richmond, VA
(804) 262-4070

From: Stephen Sebastian <stephenjsebastian@yahoo.com>
Date: Wednesday, August 20, 2014 at 12:31 PM

To: Matthew Smith <Matthew.Smith@pattersondental.com>

Subject: Large Group Account with Patterson

Hello Matt,

I left a message on your voicemail yesterday. Ron Cook gave me your name.

I'm wanting to talk to someone about the possibility of starting a large group account with Patterson. I'm looking to recruit a group of individually owned offices that will all purchase their supplies and equipment from a single source in exchange for a discount. Is this something Patterson would be open to? I know I can make this worthwhile for Patterson and ensure compliance among members. Please let me know if we can talk.

Stephen Sebastian, DMD
Midlothian, VA
603-491-6281 - cell

CX3074

From: Misiak, David
Sent: Tuesday, September 03, 2013 7:23 PM
To: Anderson, Scott;Guggenheim, Paul
Subject: Fw: GPO/Burkhart Relationship

I would not currently classify these as a big threat to the business but the GPO noise has been pretty loud from the field. We have said no at every turn, including to Delta dental. Benco has also crept into few of these.

My guidance has been to politely say no and whether the storm with these.

Incredible to me how Burkhardt bit this apple and that they are broadcasting it. Proves they have no other value to add for customers.

Dave

Dave Misiak
Vice President, Sales
Patterson Dental
Phone 651.686.1652

----- Forwarded by David Misiak/PDCO/PDCO on 09/03/2013 07:11 PM -----

From: Neal McFadden/PDCO/PDCO
To: Bill Neal/PDCO/PDCO@PDCO
Cc: John Soderberg/PDCO/PDCO@PDCO
Date: 09/03/2013 07:00 PM
Subject: Re: GPO/Burkhart Relationship

Thanks Bill - - I cannot believe Burkhardt is joining with a GPO like this - -It seems they are cutting off their nose to spite their face?? Offering ancillary services like lower cell phone bills, medical gasses, etc while dropping merchandise prices does not benefit them nor their reps..... We are choosing to forgo this route as its both anti rep, manufacturer and distributor.

Thanks

Neal McFadden
President Special Markets
105-G Ben Hamby Drive
Greenville, SC 29681
O- 864-676-0333
F- 864-676-0041

From: Bill Neal/PDCO/PDCO
To: John Soderberg/PDCO/PDCO@PDCO, Neal McFadden/PDCO/PDCO@PDCO,
Date: 09/03/2013 03:46 PM
Subject: GPO/Burkhart Relationship

I was aware that Burkhardt had joined Amerinet but this provides some insight into who they are working with & what there strategy seems to be.



GPOs Expand Their Reach

Hospitals have used it for decades. Doctors are starting to catch on. And med/surg device and supply manufacturers consider it part of the landscape. It's group purchasing, and, after some false starts, it may be set to make an impact on dentistry.

Seattle, Wash.-based Health Resource Services, an affiliate of the national group purchasing organization (GPO) Amerinet, is among those hoping that's the case.

"We recognized insurance companies are starting to cut back on reimbursement to dentists," says Tamara Gibbons, vice president of operations. "So dentists are looking to save money wherever they can. We have contracts in place that dentists can use and save money with. That's the opportunity."

"We've been received very well [by dentists], as soon as they understand what it is we do," she adds.

What Health Resource Services does – like all GPOs – is aggregate potential purchasing volume, and then pursue favorable agreements with vendors. Membership in HRS's dental program is free to dental practices, just as group purchasing is free to most hospitals and medical practices. The organization is funded by administrative fees, that is, fees paid to the GPO by

contract vendors – manufacturers and distributors – based on sales.

Significant opportunity

"Several GPOs are using their affiliate or sponsor partners to implement marketing strategies for the non-medical/surgical markets, such as research, veterinary and dental," says David Rose, vice president, business development and corporate programs, National Distribution & Contracting Inc., Nashville, Tenn. "It's a strong enough growth initiative, but they're flying low on the radar, building their case."

Success in the dental market has been limited to this point, he continues. "That said, the dental market is a significant opportunity for the GPO that figures out a strategy. It has to be [a combination of] the right manufacturer contracts and attractive programs, and it has to have a win/win administrative fee structure, which doesn't tax distribution without any benefit."

"GPOs look at the dental market as an opportunity," adds Lori Paulson, NDC vice president, dental and specialty markets. "It's an untapped market. They're developing their strategy."

Provider-owned

Health Resource Services is owned by Virginia Mason Medical Center in Seattle,

infection control: Q&A

Dirty Little Secrets

Editor's note: Are your customers asking tough hygiene questions? Here is your chance to ask someone "In the Know." Nancy Andrews, RDH, BS, will take your questions and tell your tales. Pulling from centuries of experience, endless education, lots of research, and occasional consultation with other experts, Nancy invites your emails at Infectioncontrol@mdsi.org. The best question or tale at the end of the year gets \$100.

Questions following the Oklahoma case

Q The Tulsa, Oklahoma case that hit the news about a doctor that may have exposed 7,000 patients to hepatitis and HIV has caused patients to ask questions. Some of my customers have come to me with questions too. Can you clarify some things? I've been asked about soaking instruments in bleach or other chemicals, because the doctor in the news was accused of using rusty instruments caused by soaking them in bleach. Also, the news media suggested that patients be on the lookout for old and rusty instruments and avoid any dentists that are using them. So some customers think they should start soaking instruments, but want to know what to use. Others want to stop soaking instruments all together to avoid ruining them. One office ordered scrub brushes to make sure all instruments are scrubbed before they go in the ultrasonic. I have never told customers to soak instruments; I thought the ultrasonic was enough. And I thought scrubbing instruments was dangerous and not recommended. What is your take on these ideas?

The Tulsa, Oklahoma case is a wake-up call for us all, and I'm glad you are trying to understand it. After years of improving safety in dentistry, it just takes one public case of criminal behavior to re-ignite public fears. That office is accused of practicing dangerously poor infection control, and "rusted" instruments was a main focus of most newscasts. The June issue of *First Impressions* reviewed

the case and provided some guidelines for reps to follow, but your question is perfect – reps need to get into the details when they provide direction to customers. This is a great opportunity to help customers buy the right products, practice the right protocol, and then tell their patients about those important investments they have made in safe dentistry.

The doctor in Oklahoma is accused of treating instruments differently if they were used on patients known to be infectious: this is against Standard Precautions, which are the minimum safety precautions taken on each patient. Standard Precautions are rules based on the fact that all blood and body fluids from patients must be considered infectious because the actual infectivity is unknown. It is NOT correct to treat instruments used on known or suspected infectious patients differently than those used on other patients. The protocol being used by an office must be trusted to sterilize all instruments.

The doctor's practice of soaking instruments in corrosive bleach after use on "infectious" patients damaged the surface of the instruments, causing visible corrosion or "rust." It is difficult or impossible to clean adherent blood and debris from the microscopic depressions in corroded instruments. Sterilizers expose instruments to steam under pressure for a short period of time, designed to sterilize clean, dry, and smooth instruments. In a typical sterilization cycle, the steam may not have time to penetrate rough, corroded, complex surfaces like the rusted instruments, especially if the surfaces contain hidden debris and bioburden.



a fact that may explain its willingness to expand the reach of group purchasing, says Gibbons.

“We’re owned by healthcare providers; so we understand providers’ preferences and needs,” she says. Virginia Mason owns a network of clinics. “So we thought, ‘Why not take group purchasing to the clinics?’” Roughly two years ago, she and others at HRS made the decision to explore the dental market.

Being an affiliate of Amerinet, with a network of national contracts, HRS had a good head start. Amerinet has contracts that can roll over to the dental market, including agreements for sterilization equipment and supplies, needles and syringes, personal protection apparel and devices, paper goods, pharmaceuticals and more, says Gibbons.

HRS is also pursuing dental-specific contracts, such as contracts for instrumentation, implants and dental lab services. The organization has also aggressively pursued contracts with service providers, such as Verizon (wireless services and accessories), Airgas (non-mixed gases and safety supplies and equipment), SHI (computer hardware and software), Office Depot and OfficeMax (office supplies and services), CuraScriptSD (pharmaceuticals), UPS (shipping), The Home Depot and Energizer.

Distribution – an integral part

HRS is marketing its program through partnerships with state and national dental associations, and by exhibiting at various shows, including the California Dental Association, the Hinman, and the Midwinter Meeting of the Chicago Dental Society.

But an integral part of any group purchasing program is distribution. “[GPOs] know they cannot be successful without the cooperation and support of distributors and manufacturers,” says Rose. Manufacturers have to offer competitive pricing on their products and services, and distributors must be in practitioners’ offices selling the program.

HRS members can access manufacturers through Burkhart Dental, with whom it negotiated a distribution contract in September 2012.

The HRS program offers dental practices more than just special deals on dental products, says Jeff Reece, vice president of sales. In fact, the supplies are just one of the many areas that bring savings into a partnership with Burkhart,

he says. “We felt by complementing our offering with the HRS portfolio of benefits, it would bring important value to our clients.”

It takes some time for dentists to grasp the program, says Reece. “We explain that we have a cell phone program that will save your associates money, and they do a double take.” The Burkhart rep through HRS has the opportunity to demonstrate that by offering favorable rates on cell phone services to staffers. In turn, the practice owner can distinguish his or her practice from others, a fact that might help with associate retention, he adds.

Meanwhile, discounts for shipping services, medical gases and office supplies help the practice reduce overhead and increase office efficiency, he continues. “If we are able

“It’s been an education for our account managers and our clients, to understand how programs like HRS can complement a traditional supply dealer relationship.”

– Jeff Reece

to present HRS partnered services that save the practice valuable overhead dollars, it sends a clear message that we care about their business.”

Distributor reps play an important role in the success of the program. “It goes back to understanding the big picture,” says Reece. “Do you want to be first, or do you want to be on the outside looking in? Ultimately, group purchasing is making its way into dentistry. It may not touch everyone. But someone will walk through the door and present an offering. I want to make sure they think of Burkhart/HRS first.”

Even so, getting busy sales reps onboard takes some doing. “It’s been an education for our account managers and our clients, to understand how programs like HRS can complement a traditional supply dealer relationship,” says Reece. “We’re starting to get traction,” with help from Gibbons and HRS Business Development Manager Laura Long, who work with reps at sales meetings.

Independent distributors do face some administrative challenges associated with offering a GPO portfolio, including filing for rebates from contract vendors, points out Rose.

“But NDC is able to assist our distributors with that processing,” says Paulson. “We help out significantly, to make it as seamless as possible and to minimize the cost.” [F]

CX3084

From: Scott Strommer [drscott@newimagedentalcare.com]
Sent: Monday, October 13, 2014 9:12 AM
To: Walter Turner;Sullivan, Sean;Remo;Leslie Strommer
Subject: Re: Kois Tribe Program

Wow! Walter, your emotions are evident in your email, so I made sure I took a day to let everything to digest. I meditated and asked God for inspiration, and intuitive thought and action. Here is what came of it:

I need to let Walter and Patterson know that you are my "Tribe" too and I am not going to be participating in the Kois Tribe purchasing program. That should let you know how much I appreciate you and that it is about relationships and service, not just price on products.

I do not know much about the Kois Tribe Program. I will let you know what I know when more information is available.

Walter (and Patterson), I hope this helps. I will be Mentoring at the Kois Center in a couple weeks for a week long Implants (Fixed and Removable) Track Course. I will speak with Dr Kois about this, especially from the context of Walter's email. John is a wonderful man and one of the key principles is that he does not want to hurt others or have them feel left out or slighted. I will be a stand for this and let you know what he says.

Scott Strommer

On Sat, Oct 11, 2014 at 7:35 PM, Walter Turner <walterofpatterson@gmail.com> wrote:
 Hey Scott,

Your wisdom and advice ... as this is a long verbal conversation to discover what Patterson Corporate has concluded "we will NOT be entertaining participating in any buying group of this nature." I want to share with you what Paul Guggenheim (Patterson President) shared with me this week when I forwarded Jeff's (confidentially) email (we spoke a good 10 minutes). There was a surprise reaction that Dr. Kois would associate his name with an "additional income revenue source for him" which resembled that of managed care dentistry ... thoughts? It seems odd? It doesn't add up to the person all my dentist have described over the years (we're talking 20 plus years)? It seems that Dr. Kois has always been about "how can we as a collective dental industry group help patients to understand how amazing dental health can change their lives and how can we work as a collective dental industry group in this endeavor of dental excellence." So now Dr. Kois wants to figure out a way to "squeeze" profits at the expense of the vendors which supported his quest for almost 3 decades??? Am I off here on my puzzled thoughts? It seems to me that Dr. Kois may not truly understand how hurtful this is to the many dental vendors who have supported his amazing pursuit of excellence (think about it I have breached his amazement for 20 plus years and have encouraged dentist to pursue his excellence). Now he wants to figure out a way to "Squeeze" profits out of the same hands who have supported his wonderful message for decades? Something is OFF here?

In this example, Dr. Gray takes his supply business to the Kois Buying Group and saves \$ ____ ? And Dr. Kois gets \$ ____ ? An Walter gets minus \$ ____ ? However Walter supported Dr. Kois for over 22 years. Dr. Kois motivated Walter (there are many Walter's in the dental industry ... basically Dental Representatives across the nation) to encourage their dentist clients to pursue excellence and to join Dr. Kois in his amazing pursuit of excellence in dentistry ... it's awesome! I knew in my career that Dr. Jon Kois would NEVER EVER do anything to harm the many many dental industry supporters of his principals ... something is off here and I

suspect that Dr. Jon Kois may not be aware of the harm he is being advised to pursue??? I just do not believe Dr. Kois is aware of this situation ... Thoughts?

Thoughts?

Talk soon,

Walter

Begin forwarded message:

From: Jeff Gray <jgraydds@aol.com>
Date: October 11, 2014 at 10:07:18 AM PDT
To: Walter Turner <walterofpatterson@gmail.com>
Cc: Mary Gray <MGrayRDH@aol.com>, Carla Gomez <rda.carlagomez@hotmail.com>
Subject: Kois Tribe Program

Walter,

After much debate internally I have decided to try this program as a show of solidarity with John, The Center and it's principles. I have tremendous loyalty to you and the service you provide us. I know Patterson is in the running to be part of this program and I hope it works out. It's so difficult to choose between two friends. I am one of the leaders at the Center(which just means I am old and have around a long time) and feel that I need to at least try this to see where it goes. To be honest I feel like I am betraying you and all you have done for us. You are part of our team and no one provides better service.

This program and John's vision for it could change the way "private practices " can operate and compete for the betterment of dentistry and our patients. I must go for the greater good of the Tribe even if tears my heart apart. I have no idea how this program even works but I must at stand behind the man who has done so much for me and many.

Most Humbly,

JG

Sent from my iPad

CX3089

From: Sullivan, Sean
Sent: Thursday, December 18, 2014 6:41 PM
To: Guggenheim, Paul; Michaud, Brian
Cc: Turner, Walter
Subject: RE: Kois buying group

Thanks for the reply Paul. I wouldn't say that Kois followers are more prevalent in San Diego than other cities but they are certainly our high quality / high producing clients. The two clients that we have lost to this "experiment" (Dr. Jeff Gray & Dr. Davis Perry) are both Platinum Advantage clients so the cut is deep to us all. The philosophical challenge is that Kois and his group are well known as high quality clinicians who spend a great amount of time perfecting their patient experience which makes them a perfect match for our services. In Dr. Gray's case, he's a Kois instructor and feels that he will be letting down his "tribe" if he did not follow suit with Dr. Kois.

Brian, Walter, and I (along with Jason and Jody from El Segundo) are putting our heads together to combat this as best we can. We want to make you aware of the situation in case an opportunity arises for you to address this with Dr. Kois or one of his tribe. We'll keep you updated as we learn more and meet with the doctors to address and measure the results.

Sean

-----Original Message-----

From: Guggenheim, Paul
Sent: Thursday, December 18, 2014 3:31 PM
To: Michaud, Brian
Cc: Sullivan, Sean; Turner, Walter
Subject: RE: Kois buying group

Thanks Brian, Keep me posted on what you guys conclude here. How prevalent is Kois in S.D.? I thought they were more concentrated in the Northwest?

-----Original Message-----

From: Michaud, Brian
Sent: Thursday, December 18, 2014 5:02 PM
To: Guggenheim, Paul
Cc: Sullivan, Sean; Turner, Walter
Subject: Kois buying group

Paul,

Hope all is well with you and you're staying warm!

I wanted to write you a brief email just to let you know that my customer, Dr. Dave Perry 456637214, has also decided to move his business from Patterson to the "Kois buying group".

I'm writing not to gripe, but rather provide you with the information I gathered from my conversation with Dave Perry. I know that this has come up with Walter, as well as others, so I thought it important.

Dr. Perry expressed to me that he will be leaving Patterson to join the buying group. According to him:

He will save 25% - 30% on his supply bill. Dr Perry has run the numbers and he believes that he will save \$30,000 - \$35,000. It is just too much savings for him to ignore.

He says that it's hard for him to make the change. He's been my customer for 20 years, and he says it should be no reflection on me or the excellent service I've provided all these years.

He is going to track his savings very carefully and if it doesn't work out, he would like to come back as a customer.

Additional:

- Burkhardt is the chosen supplier
- Dr considers Kois high integrity, so he's difficult for us to impeach
- Dr was told that the Kois group is going to negotiate directly with mfg for better deals.
- Patterson doesn't do a good job separating support costs and Cerec supplies on the doctors statement, so he will likely tell them he spent more than he really did with Patterson. This makes it easier for them to show a savings. I will work on preventing this.
- not sure if I heard this from the doctor, or with my discussion with Walter, but Burkhardt is going to give a rebate to the doctor if they don't save the amount they promised.

I have yearly business meetings with my doctors and Dr. Perry's supply overhead with Patterson has been:

2013 - 5.77%
2012 - 5.85%
2011 - 5.39%

The above numbers are determined by the production numbers shared by Dr. Perry.

Sean, Walter and I plan on putting our heads together and preparing a report for our doctors on exactly where they were with Patterson, so that they know what to compare to.

Unfortunately, many of our best doctors are Kois followers, so I think this is a precarious situation for us as a company. Any additional information or guidance you can provide would be appreciated.

Thanks,

Brian Michaud
Patterson Dental
(951) 285-7368 mobile/text

CX3103

From: Neal, William
Sent: Friday, August 5, 2016 10:00 AM
To: McFadden, M
Subject: Dentistry Unchained

Hi Neal,

Our offering to Dentistry Unchained is under the equipment & technology page. Wendy told me a couple of months ago that Schein was going to be the supply partner but that has changed to Benco. I will brief you on my discussion with her when we talk next week. Have a great weekend.

Bill Neal
Western Region Strategic Accounts Manager
Patterson Dental Supply Inc.

From: Wendy Phillips [<mailto:Wendy@bigbuzzinc.com>]
Sent: Wednesday, August 03, 2016 12:22 PM
To: Neal, William
Cc: David Bennett
Subject: For Our Call Friday

*** External Email ***

Hi, Bill.

We are getting ready to launch the Dentistry Unchained marketplace, which you can see here:

<http://dentistryunchained.com/benefits-overview/>

And here's the Patterson page:

<http://dentistryunchained.com/software-equipment-savings/>

On our call, lets discuss any changes or additions you have before we go live.

Looking forward to driving some new business your way!

Best,
W.

CX3105

Redacted in Entirety

CX3115

From: Foss, Bob
Sent: Thursday, August 12, 2010 10:06 AM
To: Edens, Clint
Subject: Re: Group Purchasing Organization

Different guy, same answer NO. We do not recognize these groups nor do we want to do business with them. Medical doctors screwed up their industry and they should stay out of ours.

Sent from my BlackBerry!

----- Original Message -----

From: Clint Edens
Sent: 08/12/2010 10:02 AM CDT
To: Bob Foss
Subject: Fw: Group Purchasing Organization

Is this the guy you talked to from the TDA?

----- Original Message -----

From: Margaret Salin
Sent: 08/12/2010 09:27 AM CDT
To: Clint Edens
Subject: Group Purchasing Organization

Clint,

I had a call this morning from a Dr. Martin Denbar out of Austin. He is part of a newly formed Group Purchasing Organization out of Austin. They are currently medical physicians but are branching out to Dentists. They are looking for a contact name at the national level to talk to someone in hopes of developing an exclusive agreement/partnership for them to receive a large discounts for bulk purchasing through their organization. Is this something Patterson would want to pursue and whom should they contact?

Margie Salin
Operations Manager
Patterson Dental
405 S Nolen Drive, Suite 100
Southlake, TX 76092
817-305-4210 Direct
817-975-3707 Mobile

CX3121

From: Misiak, David
Sent: Wednesday, February 12, 2014 1:15 PM
To: Guggenheim, Paul
Subject: Re: follow up

A co op buying group that we pay Catapult (him) and he provided CE

Sent from my iPhone

On Feb 12, 2014, at 1:03 PM, "Paul Guggenheim" <paul.guggenheim@pattersondental.com> wrote:

What exactly is he proposing?

Paul A. Guggenheim
President
Patterson Dental Supply
David Misiak---02/12/2014 12:38:36 PM---From: David Misiak/PDCO/PDCO To: Paul Guggenheim/PDCO/PDCO, Tim Rogan/PDCO/PDCO, Rick Cacciatore/PDCO/PDCO, Rex Plamann/PDCO/PD

From: David Misiak/PDCO/PDCO
To: Paul Guggenheim/PDCO/PDCO, Tim Rogan/PDCO/PDCO, Rick Cacciatore/PDCO/PDCO, Rex Plamann/PDCO/PDCO,
Date: 02/12/2014 12:38 PM
Subject: Fwd: follow up

All, I will respond to Dr Graham, bcc each of you, with a polite pass on this request. Rex you will need to verbally connect Landeck and keep him positive around this.

Sent from my iPhone

Begin forwarded message:

From: lgrahamdds@aol.com
Date: February 12, 2014 at 11:39:40 AM CST
To: david.misiak@pattersondental.com
Subject: Re: follow up

David, as a Patterson customer I did want to follow up with you. We have 3 companies already meeting with us at mid winter to further the discussions about what the Catapult Group will be launching. They are either national or online companies who also understand the dynamics of our changing market. We sent out surveys to 5000 doctors last week and

another 2000 will be going out this week to understand these issues and how they are affecting their practices. Without question, as seen in our discussion points after dinner, our initial surveys demonstrate these are very challenging times to many of my colleagues.

If you are interested in meeting, please let me know. I will forward my calendar of availability if a meeting is desired.

Thanks

Lou Graham, DDS

-Founder of The Catapult Group
www.catapultelite.com
-University Dental Professionals
www.udpdentistry.com

-----Original Message-----

From: david.misiak <david.misiak@pattersondental.com>
To: lgrahamdds <lgrahamdds@aol.com>
Sent: Fri, Jan 24, 2014 11:11 am
Subject: Re: follow up

Hi Lou,

I really enjoyed our time together a few weeks back. I will be socializing your strategy with our team in the coming weeks and get back to you.

Thanks always for your partnership with Rich Landeck and Patterson Dental.

Dave

Dave Misiak
Vice President, Sales
Patterson Dental
Phone 651.686.1652

From: lgrahamdds@aol.com
To: dave.misiak@pattersondental.com,
Date: 01/24/2014 09:23 AM
Subject: follow up

Dave, I wanted to see if your team would want to share a follow up from our discussions last week. I thought the post dinner dialogue truly added to the 'flavor' of both dinner and our earlier meeting. Let me know.

Lou Graham, DDS

-Founder of The Catapult Group

www.catapultelite.com

-University Dental Professionals

www.udpdentistry.com

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CX3128

From: Stewart, James
Sent: Thursday, October 23, 2014 3:22 PM
To: McFadden, Neal
Cc: Barlage, Amy; Misiak, Dave
Subject: RE: Kois Buying Group?

Neal,

Received a call from another TR today who asked the same question, is Patterson participating in a group buy program through Kois. Evidently, this customer stated that Kois asked all 600 members what they spend annually in supplies, for them to pull the number to go to all the national distributors to bid it on. The dealers that were mentioned that are going to be asked to bid on this is Patterson, Schein, Burkart and Benco. You may be seeing this shortly.

Thanks,

Jim Stewart
Branch Manager
Rochester, New York
Patterson Dental Supply, Inc.
P: (585) 924-0550 | F: (585) 924-4322
www.pattersondental.com

From: McFadden, Neal
Sent: Thursday, October 23, 2014 9:57 AM
To: Stewart, James
Cc: Barlage, Amy; Misiak, Dave
Subject: RE: Kois Buying Group?

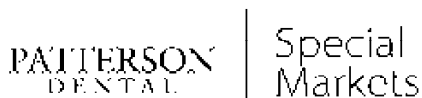
Jim,

As a rule we are trying our best to steer clear of all buying groups. As far as a "Kois group thru Patterson" --that's news to me. Special Markets has had no communication with Dr. John Kois and his team. I believe they are in Seattle and may have a deal with Burkhart (who supports GPO's, namely Smile Source). So, that's all I have for now. I wish I could say this was rare but it seems weekly I hear of a group forming. I hope this helps.

It might be good to ask Bill Neal since they are in his backyard.

thanks

Neal McFadden
President Special Markets
864-346-7209



From: Stewart, James
Sent: Thursday, October 23, 2014 8:39 AM

To: McFadden, Neal
Subject: Kois Buying Group?

Neal,

Hope things are well as I'm sure business is just taking off. I wanted to reach out to you about a comment one of our customers made referencing a new buying group with Kois. They just recently told us that they are trimming back on their orders with Patterson as they are waiting to hear about a new pricing structure through their affiliate with the Kois Group, from Patterson. They're a good gold customer, so any insight would be greatly appreciated.

<http://koiscenter.com/Default.aspx>

Thanks again,
Jim

Jim Stewart
Branch Manager
Rochester, New York
Patterson Dental Supply, Inc.
P: (585) 924-0550 | F: (585) 924-4322
www.pattersondental.com

CX3165

From: Rogan, Tim
Sent: Monday, August 05, 2013 9:02 AM
To: Misiak, David
Subject: Re: Dentsply and Nashville

Got it.

Sincerely,

Tim E. Rogan
Vice President of Marketing, Merchandise
Patterson Dental

From: David Misiak/PDCO/PDCO
To: Tim Rogan/PDCO/PDCO,
Date: 08/05/2013 08:50 AM
Subject: Re: Dentsply and Nashville

Tim,

Specific to this one I think we should wait (but still gain insights to their GPO strategy) to see what the likelihood of an acquisition of Nashville is. Dentsply could rock their ship and spook a potential deal

Sent from my iPhone

On Aug 5, 2013, at 8:44 AM, "Tim Rogan" <tim.rogan@pattersondental.com> wrote:

Dave,

I have been thinking about how to handle this. I think I should just send it to Keith, Mark, and John at Dentsply with a note from me. I believe they need to hear it directly from Anthony so I should sugar coat anything.

Your thoughts?

Sincerely,

Tim E. Rogan
Vice President of Marketing, Merchandise
Patterson Dental

----- Forwarded by Tim Rogan/PDCO/PDCO on 08/05/2013 08:43 AM -----

From: Anthony Fruehauf/PDCO/PDCO
To: Tim Rogan/PDCO/PDCO@PDCO,
Cc: David Misiak/PDCO/PDCO@PDCO
Date: 07/29/2013 08:17 AM
Subject: Dentsply and Nashville

Tim

As a follow up to our conversation in Napa about Dentsply and Nashville I spoke to Amy Kidd the RM from Tennessee to share my concerns with the relationship in Nashville. I fully understand the additional dealers they added and the fact that they still have fewer than most. My concern was the rebate they are offering Nashville in support of Smile Source a GPO out of Texas. Her comment to me was that they were treating them as they would "any big customer". This is a tough one because it enables more price slashing by the GPO and Nashville and really goes against the grain of the Pathways program. I am committed to getting the branch engaged with the program but I am highly concerned that our partners support these buying groups and what it will do to erode our relationships at the street level. Thanks as always

Anthony Fruehauf
Mid-Atlantic Region Manager
Patterson Dental
Anthony.Fruehauf@pattersondental.com
P 919.877.8434 C 919.523.4335

CX3168

From: Rogan, Tim
Sent: Wednesday, November 20, 2013 10:35 PM
To: Hannon, Jennifer
Subject: Re: Patterson Cross Reference

We don't sell to buying groups. Let's talk live.

Sent from my iPhone

On Nov 20, 2013, at 6:57 PM, "Jennifer Hannon" <jennifer.hannon@pattersoncompanies.com> wrote:

FYI-I had responded to Shelley's original email with the fact I would reach out to this contact. As you can see, she reached out first. As I am unfamiliar with buying groups, I am not sure if this type of request is legit. Thoughts?

Jennifer Hannon
Manager, Marketing Communications

Patterson Dental, Inc.
1031 Mendota Heights Road
Saint Paul, MN 55120

www.pattersondental.com
P: 651.686.1970 | F: 651.686.1928
jennifer.hannon@pattersondental.com

"Healthcare's most trusted partner for services, supplies, equipment & technology."
----- Forwarded by Jennifer Hannon/PDCO/PDCO on 11/20/2013 08:48 PM -----

From: Shelley Beckler/PDCO/PDCO
To: Jennifer Hannon/PDCO/PDCO@PDCO,
Date: 11/20/2013 12:11 PM
Subject: Fw: Patterson Cross Reference

Below is what she sent back.

Shelley Beckler CDA, LDA
Account Specialist
Patterson Dental Supply, Inc.,
1031 Mendota Heights Road
St. Paul, MN 55120
(800)328-5536 ext 3235
(651)-905-3235
Fax-(651)-686-0288

shelley.beckler@pattersondental.com

----- Forwarded by Shelley Beckler/PDCO/PDCO on 11/20/2013 12:10 PM -----

From: "Nicholls, Denise" <Denise.Nicholls@ascensionhealth.org>
To: "Shelley.Beckler@pattersondental.com" <Shelley.Beckler@pattersondental.com>,
Cc: "Khan, Taimur" <Taimur.Khan@ascension.org>
Date: 11/20/2013 12:02 PM
Subject: Patterson Cross Reference

Good morning Shelley,

I am a new Sourcing Manager in the Resource Management Group of Ascension Health. One of my latest projects is to put dental consumables on our Resource Group paper.

I was provided your contact information as a supplier that could potentially quote on our dental consumables and would be willing to work with our terms and conditions.

I am in the beginning stages of gathering data and also waiting on Decision team input to provide direction on where we wish to go from here.

In the meantime, if you could provide Patterson materials that cross to dental materials on the spreadsheet that Taimur Khan provided, under separate cover, that would be appreciated. We will then use that information later when we prepare to go out for on line bids.

If you have any questions, please feel free to contact me.

Regards,

Denise

Denise A. Nicholls
Manager, Sourcing & Supplier Management
The Resource Group, LLC
Integrating Excellence and Stewardship

An Ascension Subsidiary

Office: 314.733.8552

Customer Care Representatives
314.733.8500

From: Shelley.Beckler@pattersondental.com
[<mailto:Shelley.Beckler@pattersondental.com>]
Sent: Wednesday, November 20, 2013 10:54 AM
To: Khan, Taimur

Cc: Nicholls, Denise
Subject: Re: Patterson Cross Reference

Taimur,

I'm not familiar with what this is for or why you need these item numbers. I have sent it to our Marketing Department.

Thanks!

Shelley Beckler CDA, LDA
Account Specialist
Patterson Dental Supply, Inc.,
1031 Mendota Heights Road
St. Paul, MN 55120
(800)328-5536 ext 3235
(651)-905-3235
Fax-(651)-686-0288
shelley.beckler@pattersondental.com

From: "Khan, Taimur" <Taimur.Khan@ascension.org>
To: "shelley.beckler@pattersondental.com" <shelley.beckler@pattersondental.com>,
Cc: "Nicholls, Denise" <Denise.Nicholls@ascensionhealth.org>
Date: 11/20/2013 09:59 AM
Subject: Patterson Cross Reference

Shelley,

My name is Taimur Khan and I am working with Denise Nicholls to obtain Patterson's cross reference to the attached items. The first tab has brief reminders about the data collection and we hope that the template on the second page is functional for your use. Please let us know if we can help in any way and we'll be sure to oblige.

Regards,

Taimur

Taimur Khan
Senior Business Analyst
The Resource Group, LLC
Integrating Excellence and Stewardship

An Ascension Health Alliance Subsidiary

Office: 314.733.8660

Customer Care Representatives
314.733.8500

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CX3265

From: Lepley, Joseph
Sent: Wednesday, March 15, 2017 8:27 AM
To: Fields, Wesley;Rogan, Tim
Subject: FW: Buying Groups
Attachments: 52651.jpeg

Wes / Tim,

Attached is some competitive intel from Schein on a program on Buying Groups.

Given our recent discussions with Smile Source are we looking at talking with Buying Groups now?

Thanks,
Joe

From: Almquist, Travis
Sent: Wednesday, March 15, 2017 8:23 AM
To: Lepley, Joseph <Joseph.Lepley@pattersondental.com>
Cc: Pricing Desk <pricingdesk@pattersondental.com>
Subject: FW: Buying Groups

Hey Joe:

Normally I would send this back to the GM (or have the pricing desk send something) stating that we do not participate in buying groups for multiple reasons, but I wanted your feedback on it since so many things are changing in that MidMarket space.

Thanks!

Travis Almquist
Product & Pricing Analyst – Team Lead
Patterson Dental Supply, Inc.
1031 Mendota Heights Rd
Mendota Heights, MN 55120
P: 651)681.3740 | C:661)803.1575 |
travis.almquist@pattersondental.com

From: Feldman, Elliott
Sent: Tuesday, March 14, 2017 8:12 PM
To: Almquist, Travis
Subject: Buying Groups

Hey Travis,

We came across this locally and wanted to see if we could do something like this. To me it looks like a different route at going about middle markets. If 6-10 larger doctors decide they want to pool together and go middle markets for rebates we wouldn't necessarily stop them right? We would issue one check and then they distribute? I figured in this era of we're going to fight for everything, we would have an answer for this.

**PATTERSON
DENTAL**

Elliott Feldman | General Manager

T: (440) 891-5281 | M: (440) 666-0622

E: elliott.feldman@pattersondental.com

W: www.pattersondental.com



DENTAL

2017 - 2019 TERMS OF AGREEMENT
CORYDON PALMER DENTAL SOCIETY AND HENRY SCHEIN DENTAL

The following are the terms of agreement between the Corydon Palmer Dental Society and Henry Schein Dental:

- Minimum purchases in any given quarter must exceed \$415,000 in total merchandise purchases to qualify for payment. Once the quarterly purchases exceed \$415,000 the 5% rebate applies back to the first dollar.
- An annual bonus will be paid on incremental merchandise purchases over the \$1,660,000 based on the following scale:

\$0 - \$90,000 = 1%
 \$90,001 - \$180,000 = 1.5%
 \$180,001 and up = 2%

- If the above merchandise qualifiers are met, an additional annual bonus based on equipment sales will be made available to the society. Equipment purchases must exceed \$ 500,000.

\$500,000 - \$1,000,000 = .25%
 \$1,000,000 + above = .5%

- Equipment includes: Large equipment, operatory equipment, Hi Tech (computers, Dentrrix & Dexis), Digital Impression scanners & mills.
- Rebate will be in the form of a check to the Corydon Palmer Dental Society.
- The maximum rebate in any calendar year cannot exceed \$16,000.
- The ability to exhibit at all of The Corydon Palmer Dental Society Seminars at no charge. Unless the minimum annual purchase goal is not met, Henry Schein Dental will be billed for exhibiting in accordance with current established rates.
- In the event that a vendor completely underwrites a speaker's full honorarium, that vendor would have exclusivity at the Seminar e. Permission may be obtained from said vendor to allow other vendors to attend, but this would be their decision
- Agreement is subject to renewal on a 3 year basis after review and agreement of both the Corydon Palmer Dental Society and Henry Schein Dental.
- Regional Manager, Mark Sirney, along with Field Sales Consultant, Eric Aho and Kathy Hynde will meet with the dental society annually to review progress.

Upon signature of all parties, this is a continuance of the agreement effective January 1, 2017

Dr. Joseph Bedich, President - 2017
Corydon Palmer Dental Society

Date: _____

Dr. Daniel DeAngelo, President - 2018
Corydon Palmer Dental Society

Date: _____

Dr. Jeffery Caldwell, President - 2019
Corydon Palmer Dental Society

Date: _____

Mark Sirney, Regional Manager
Henry Schein Dental

Date: _____

CX3283

Redacted in Entirety

CX3286

Redacted in Entirety

CX3300

From: Reinhardt, Daniel
Sent: Monday, July 21, 2014 7:10 PM
To: Bushman, Chad
Subject: RE: AZDA - SourceOne

Chad,
Please discuss live and no further emails.
Dan

Sent from my Samsung Galaxy smartphone.

----- Original message -----

From: "Bushman, Chad"
Date: 07/21/2014 5:35 PM (GMT-07:00)
To: Mike Wade
Cc: "Reinhardt, Daniel"
Subject: RE: AZDA - SourceOne

Mike,

Thank you for reaching out. If the AZDA has in fact signed on with SourceOne (which it looks like they have) we will be pulling our sponsorship and attendance of the state meeting as they will have positioned themselves as a competitor.

Thank you,

Chad Bushman
Branch Manager
Patterson Dental – Arizona
P: 480.898.7800
F: 480.898.7850

From: Mike Wade [<mailto:MWade@benco.com>]
Sent: Monday, July 21, 2014 2:55 PM
To: Bushman, Chad
Subject: AZDA - SourceOne

Chad,

Welcome to the Valley! Hope the transition is going well.

I wanted to catch up and get your take on our friends at the AZDA becoming our competitors? I am sure you are hearing plenty from your reps about the AZDA partnership with SourceOne selling supplies.

Needless to say we are not real happy and we are looking at pulling all our sponsorship including the AZDA meeting. I know that Patterson, Schein and Benco boycotted the Texas Dental Association meeting this year after the TDA did the same thing and wanted to see if we could create the same message here in AZ.

Let me know your thoughts.

Feel free to call me on my cell to discuss.

Best regards,

Mike Wade

Regional Manager - Cactus | **Benco Dental Company** | USA
Tempe Showroom | 1602 S Priest Dr Ste 101 Tempe AZ 85281
Office: 480-968-0460 Cell: 480-239-9502 | Fax: 480-753-5522 | mwade@benco.com
www.Benco.com

We deliver success *smile after smile.*

CX3301

From: Guggenheim, Paul
Sent: Monday, June 10, 2013 1:12 PM
To: Chuck Cohen
Subject: RE: Fwd: New Mexico Dental Cooperative purchasing.

Sounds good Chuck, Just wanted to clarify where you guys stand.

Thanks for the follow up and send my love and congratulations to Larry and Sally upon their return. If someone goes overboard It would probably be Larry and he's a pretty strong swimmer!

All the best,

Paul

Paul A. Guggenheim
President
Patterson Dental Supply

From: Chuck Cohen <ccohen@benco.com>
To: "paul.guggenheim@pattersondental.com" <paul.guggenheim@pattersondental.com>
Date: 06/08/2013 07:16 AM
Subject: RE: Fwd: New Mexico Dental Cooperative purchasing.

Greetings, Paul...

Thanks for reaching out, I was at a board meeting yesterday & couldn't respond.

As we've discussed, we don't recognize buying groups. On the Atlantic Dental Care situation, here's our understanding after several in-depth conversations...

1. There are 32 practices that have legally merged together.
2. The new company is owned by the former practice owners.
3. They are in the process of rebranding all the offices Atlantic Dental Care.
4. They have a board of directors made up of some of the stakeholders that makes the decisions.

Although they're in the early stages of the process, we believe this meets our criteria for a large group practice. We've asked to see the merger documents once they are completed, to confirm that they've really become a legally merged entity, and we're going to continue monitoring the process to ensure that ADC delivers on their commitment to us. Happy to discuss in more detail, if you'd like.

Meanwhile, glad to hear that all's well with you & the family, and that you're enjoying the summer in Minnesota. As we speak, my folks are on a cruise across the Atlantic to celebrate their 50th anniversary; hopefully, one of them won't throw the other off the side of the ship.... ☺

All's good here, keep in touch, talk soon...

cfc

From: paul.guggenheim@pattersondental.com [mailto:paul.guggenheim@pattersondental.com]
Sent: Thursday, June 06, 2013 7:03 PM
To: Chuck Cohen
Subject: Re: Fwd: New Mexico Dental Cooperative purchasing.

Chuck,

I hope all is going well with you and the Family. Summer is upon us although in Minnesota it still seems like winter was in California. Reflecting back on our conversation earlier this year, could you shed some light on your business agreement with Atlantic Dental Care? I understand they are a group of 55 dentists in and around Chesapeake Va. being led by a practice management consultant that your team has signed a supply agreement with. I'm wondering if your position on buying groups is still as you articulated back in February?

Let me know your thoughts....Sometimes these things grow legs without our awareness!

Best to you, Rick and Larry.

Sincerely,

Paul.

Paul A. Guggenheim
President
Patterson Dental Supply

From: Chuck Cohen <ccohen@benco.com>
To: Paul Guggenheim <paul.guggenheim@pattersondental.com>
Date: 02/08/2013 11:57 AM
Subject: Fwd: New Mexico Dental Cooperative purchasing.

Greetings, Paul...

Hope things are going well at Patterson. Just saw Sirona's strong results, good sign for you.

Just wanted to let you know about some noise I've picked up from New Mexico. FYI: Our policy at Benco is that we do not recognize, work with, or offer discounts to buying groups (though we do work with corporate accounts) and our team understands that policy.

Thanks, best for success in 2013!

cfc

Charles F. Cohen
Benco Dental Company
'We deliver success, smile after smile.'

295 Centerpoint Boulevard
Pittston, PA. 18640
Phone: 570.602.6811
Cell: 570.407.1340
E-mail: ccohen@benco.com
Administrative Assistant: Nancy McCarroll (nmccarroll@benco.com)

Begin forwarded message:

From: Don Taylor <dtaylor@benco.com>
Date: February 7, 2013, 9:22:27 AM PST
To: Brian Evans <bevans@benco.com>, Chuck Cohen <ccohen@benco.com>, Patrick Ryan <pryan@benco.com>
Subject: Fwd: New Mexico Dental Cooperative purchasing.

Gents, will you please read the bottom if this e-mail? I'd like to connect for just a couple if minutes to get your feedback and coaching on this. Thank you.

All the Best,

Don Taylor
303 548 9475
dtaylor@benco.com

Begin forwarded message:

From: Mike Trimble <mtrimble@benco.com>
Date: February 6, 2013, 11:36:03 AM PST
To: Don Taylor <dtaylor@benco.com>
Subject: Fwd: New Mexico Dental Cooperative purchasing.

Sent from my iPhone

Begin forwarded message:

From: Stewart Hanley <shanley@benco.com>
Date: February 6, 2013, 9:59:05 AM PST
To: Mike Trimble <mtrimble@benco.com>
Subject: Fwd: New Mexico Dental Cooperative purchasing.

Sent from my iPhone

Begin forwarded message:

From: "Bergman, Brandon" <Brandon.Bergman@henryschein.com>
Date: February 6, 2013 9:54:15 AM GMT-08:00

To: Stewart Hanley <SHanley@benco.com>
Subject: FW: New Mexico Dental Cooperative purchasing.

Did you see this? Call me.

Brandon Bergman

Henry Schein Dental

Regional Manager

Albuquerque Office 505-856-3384

Cell Phone 505-385-1934

brandon.bergman@henryschein.com

From: Michael Stanislawski [<mailto:MStanislawski@midmark.com>]
Sent: Monday, February 04, 2013 7:10 PM
To: ARCHULETA, CHRIS; Bergman, Brandon
Subject: FW: New Mexico Dental Cooperative purchasing.

Is he joking?

Wow.....

Because we care.

Mike Stanislawski

Territory Manager

Dental Sales Division - Rocky Mountains

(303) 601-6493 - Cell

mstanislawski@midmark.com

Customer Service: Melissa Oakley - (937) 526-8302

Technical Support: Dave Magoteaux - (937) 526-8443

From: brenton mason [<mailto:txdelphia@gmail.com>]

Sent: Monday, February 04, 2013 1:18 PM

To: John Shernock; clhoss@mmm.com; Marquita.Mason@dentsply.com; Adam.Ternan@sybrondental.com; Marni.StoneWalsh@voco.com; Todd_Cretors@gcamerica.com; Windi.Vigil@ivoclarvivadent.com; Reagan.Wheeler@sybrondental.com; JWeyenberg@hu-friedy.com; ruby.howley@us.sunstar.com; cherie.borer@rockymountainsalesassociates.com; JZaneis@PREMUSA.com; Mark.Rohan@us.acteongroup.com; Bob.Gess@sirona.com; dolsen5065@aol.com; Mike.Wilson@a-dec.com; Steven.Griffith@planmecausa.com; gmorton@dentalez.com; sconnolly@digi-doc.com; jpdmonuco@aol.com; BrianDillonSales@Q.com; jamihsacks@gmail.com; msherman@meisingerusa.com; dknoxpsa@gmail.com; lanid@crosstex.com; rbehbahani@septodonta.com; Sterling.Parker@sirona.com; wright.mc.1@pg.com; jason chapman; Frank Montoya; lisa.franks@ultradent.com; Charles Goodis; Jeff.Katt@pattersondental.com; Scott.Belcheff@pattersondental.com; robert lehm; Michael Stanislawski; plowe@axisdental.com; HJBinfo@bosworth.com; info@coltenewhaledent.com; Crosstex@crosstex.com; gca_sales@gcamerica.com; info@hu-friedy.com; info@jmoritusa.com; info@parkell.com; akegerise@premusa.com; domestic@sswhiteburs.com; customer-service@shofu.com; infousa@voco.com; customerservice@youngdental.com; brenton mason

Subject: New Mexico Dental Cooperative purchasing.

To All,

Frank Montoya, Jason Chapman and I are in the process of starting a dental Cooperative. Thus we are working together with our local private practice dental office owners to compete with the national large corporations in the dental field. We as small businesses are well aware of the studies showing the corporate dentistry role over the next 10 years. Furthermore, Walmart has provided us with a case study to evaluate the survival of the independent dental offices. Thus we have partnered with Patterson Dental to provide the individual office the same opportunities as the larger corporations. We as a group of 17 offices currently are expanding on weekly basis; Furthermore, we have doctors in our group from every specialty participating in the co op.

We are inviting all dental manufactures and representative to a our vendors meeting March 13, 2013 at 6:00 pm. The location is Patterson Dental Branch in Albuquerque, NM. During this meeting we will do the following:

I) explain our philosophies

II) Have an open forum question and answer, I will take any and all questions and be available however long needed.

III) Explain our bid seeking for the next 12 months.

April 1st our co op will start to formulate the Preferred Vendor list for dental supplies. Our Preferred Vendor list will be update annually following our annual vendor meeting. We highly encourage our co op members to

support the manufactures whom best support our co op. At the present moment we have begun formulating the Preferred Vendor list for all aspect of running a dental office. Upon conclusion of this process we will have a Preferred Vendor List for everything from cotton rolls to credit card processing fees to janitorial services and everything in the middle.

Our goal was 50 dental offices. However, that will have to change, we just started this co op and have added 17 offices without any effort. We have changed our goal to 75 dental offices in Albuquerque and then will expand to all areas of New Mexico. Furthermore, we are putting together a doctors meeting to have a discussion about the co op to increase our current enrollment.

If you have any questions please feel free to contact me at this email (personal email address) or my office, 505-821-1430. If you call the office I will need to set up a time to have a phone conversation due to patient care. As many of you know from the past, I have not been easy accessible b/c of the amount of sales persons that have wanted to work with our 3 to 5 offices. For the Co-op I will be 100% available to anyone wishing communicate and our personal corporations will only purchase with Preferred CO-OP Vendors.

--
Brenton Mason DMD

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CX3332

From: Mike Wade <MWade@benco.com>
Sent: Tuesday, July 22, 2014 11:21 AM
To: Bushman, Chad
Cc: Reinhardt, Daniel; Brian Evans
Subject: RE: AZDA - SourceOne

Chad,

Thanks for the quick response. We are of the same mindset. It would be gratifying to see every distributor with a local presence make a unified statement on the AZDA's ill-conceived idea to become a distribution competitor.

Best regards,

Mike Wade

Regional Manager - Cactus | **Benco Dental Company** | USA
Tempe Showroom | 1602 S Priest Dr Ste 101 Tempe AZ 85281
Office: 480-968-0460 Cell: 480-239-9502 | Fax: 480-753-5522 | mwade@benco.com
www.Benco.com

We deliver success *smile after smile*.

From: Bushman, Chad [<mailto:Chad.Bushman@pattersondental.com>]
Sent: Monday, July 21, 2014 4:35 PM
To: Mike Wade
Cc: Reinhardt, Daniel
Subject: RE: AZDA - SourceOne

Mike,

Thank you for reaching out. If the AZDA has in fact signed on with SourceOne (which it looks like they have) we will be pulling our sponsorship and attendance of the state meeting as they will have positioned themselves as a competitor.

Thank you,

Chad Bushman
Branch Manager
Patterson Dental – Arizona
P: 480.898.7800
F: 480.898.7850

From: Mike Wade [<mailto:MWade@benco.com>]
Sent: Monday, July 21, 2014 2:55 PM
To: Bushman, Chad
Subject: AZDA - SourceOne

Chad,

Welcome to the Valley! Hope the transition is going well.

I wanted to catch up and get your take on our friends at the AZDA becoming our competitors? I am sure you are hearing plenty from your reps about the AZDA partnership with SourceOne selling supplies.

Needless to say we are not real happy and we are looking at pulling all our sponsorship including the AZDA meeting. I know that Patterson, Schein and Benco boycotted the Texas Dental Association meeting this year after the TDA did the same thing and wanted to see if we could create the same message here in AZ.

Let me know your thoughts.

Feel free to call me on my cell to discuss.

Best regards,

Mike Wade

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CX3341

From: McFadden, Neal
Sent: Friday, October 24, 2014 5:29 PM
To: cpritchett@247medplan.com
Subject: RE: Special markets dental opportunity

Cindy -- I apologize but I did not get your VM regarding this

I will be happy to discuss - -however, I was wondering if this is a buying group? We have had several people reach out wondering if we will discount supplies for their group of clients. We have taken a stance to protect both the territory rep and the branches and not participate. Special Markets focusses on clients that have ownership in the affiliated offices.

If I am mistaken - -please let me know.

Have a great weekend.

Neal McFadden
President Special Markets
864-346-7209

-----Original Message-----

From: cpritchett@247medplan.com [<mailto:cpritchett@247medplan.com>]
Sent: Friday, October 24, 2014 4:30 PM
To: McFadden, Neal
Subject: Special markets dental opportunity

Neal,

Not sure if you received my email or voicemail last week however wanted to reach out to you one more time.

I was given your contact info from Jeff Van Hess at Patterson Dental.

Jeff and I have spoken and he has passed the baton onto you as you are special markets director.

I would like to talk to you about an opportunity with Dr. Mike Abernathy and his consulting firm with of 40,000 dentists. We are looking to introduce a new dental equipment supplier as yourself too many of our dentist who are looking for new suppliers, better equipment etc.

Please let me know when I can set up a call with you explaining details and if you're interested afterwards I can set a call up with you and Dr. Mike Abernathy and take necessary steps from there.

If you are not interested then not a problem, there are many companies who do what you do, however please let me know either way.

Thank you very much for your time

Colby

972-742-6999

Sent from Colby Pritchett's iPhone

CX3342

From: Neal, William
Sent: Sunday, July 26, 2015 3:04 PM
To: McFadden, Neal
Subject: RE: GPO's

Thanks Neal. I will talk with Feather on Monday morning and get some more information.

Bill Neal
Western Special Markets Territory Manager Patterson Dental Supply Inc.

-----Original Message-----

From: McFadden, Neal
Sent: Sunday, July 26, 2015 12:37 PM
To: Neal, William
Subject: Re: GPO's

I'm going to talk to Dave over the next few days. I think we need to be picky and choosy and rethink our overall strategy. This is turning into a dirty business but if we continue to say no we will look back at ourselves, just like we did with special markets, and possibly regret it. So I would at least want to hear the story.

I had the same conversation with Pete Cousins on Friday. Unfortunately, the Georgia state association wants to do the same thing. I'm trying to be very open-minded.

I will keep you posted. Thanks

Neal McFadden
President Special Markets
Patterson Dental
Cell 864-346-7209

Sent from my iPhone

> On Jul 26, 2015, at 2:28 PM, Neal, William <Bill.Neal@pattersondental.com> wrote:
>
> Hi Neal,
>
> I wanted to make sure that GPO's are not something we as a company are choosing to partner with at this point. I know Dave has been clear about this in the past and I wanted to verify that this still is the case. Feather just contacted me about one and I want to make sure I'm correct about our stand on this.
>
> Have a great week.
> Bill
>
> Sent from my iPhone

CX3412

From: Chuck Cohen [ccohen@benco.com]
Sent: Saturday, June 08, 2013 7:17 AM
To: Guggenheim, Paul
Subject: RE: Fwd: New Mexico Dental Cooperative purchasing.

Greetings, Paul...

Thanks for reaching out, I was at a board meeting yesterday & couldn't respond.

As we've discussed, we don't recognize buying groups. On the Atlantic Dental Care situation, here's our understanding after several in-depth conversations...

1. There are 32 practices that have legally merged together.
2. The new company is owned by the former practice owners.
3. They are in the process of rebranding all the offices Atlantic Dental Care.
4. They have a board of directors made up of some of the stakeholders that makes the decisions.

Although they're in the early stages of the process, we believe this meets our criteria for a large group practice. We've asked to see the merger documents once they are completed, to confirm that they've really become a legally merged entity, and we're going to continue monitoring the process to ensure that ADC delivers on their commitment to us. Happy to discuss in more detail, if you'd like.

Meanwhile, glad to hear that all's well with you & the family, and that you're enjoying the summer in Minnesota. As we speak, my folks are on a cruise across the Atlantic to celebrate their 50th anniversary; hopefully, one of them won't throw the other off the side of the ship.... ☺

All's good here, keep in touch, talk soon...

cfc

From: paul.guggenheim@pattersondental.com [mailto:paul.guggenheim@pattersondental.com]
Sent: Thursday, June 06, 2013 7:03 PM
To: Chuck Cohen
Subject: Re: Fwd: New Mexico Dental Cooperative purchasing.

Chuck,

I hope all is going well with you and the Family. Summer is upon us although in Minnesota it still seems like winter was in California. Reflecting back on our conversation earlier this year, could you shed some light on your business agreement with Atlantic Dental Care? I understand they are a group of 55 dentists in and around Chesapeake Va. being led by a practice management consultant that your team has signed a supply agreement with. I'm wondering if your position on buying groups is still as you articulated back in February?

Let me know your thoughts....Sometimes these things grow legs without our awareness!

Best to you, Rick and Larry.

Sincerely,

Paul.

Paul A. Guggenheim
President
Patterson Dental Supply

From: Chuck Cohen <ccohen@benco.com>
To: Paul Guggenheim <paul.guggenheim@pattersondental.com>
Date: 02/08/2013 11:57 AM
Subject: Fwd: New Mexico Dental Cooperative purchasing.

Greetings, Paul...

Hope things are going well at Patterson. Just saw Sirona's strong results, good sign for you.

Just wanted to let you know about some noise I've picked up from New Mexico. FYI: Our policy at Benco is that we do not recognize, work with, or offer discounts to buying groups (though we do work with corporate accounts) and our team understands that policy.

Thanks, best for success in 2013!

cfc

Charles F. Cohen
Benco Dental Company
'We deliver success, smile after smile.'
295 Centerpoint Boulevard
Pittston, PA. 18640
Phone: 570.602.6811
Cell: 570.407.1340
E-mail: ccohen@benco.com
Administrative Assistant: Nancy McCarroll (nmccarroll@benco.com)

Begin forwarded message:

From: Don Taylor <dtaylor@benco.com>
Date: February 7, 2013, 9:22:27 AM PST
To: Brian Evans <bevans@benco.com>, Chuck Cohen <ccohen@benco.com>, Patrick Ryan <pryan@benco.com>
Subject: Fwd: New Mexico Dental Cooperative purchasing.

Gents, will you please read the bottom if this e-mail? I'd like to connect for just a couple if minutes to get your feedback and coaching on this. Thank you.

All the Best,

Don Taylor
303 548 9475
dataylor@benco.com

Begin forwarded message:

From: Mike Trimble <mtrimble@benco.com>
Date: February 6, 2013, 11:36:03 AM PST
To: Don Taylor <dtaylor@benco.com>
Subject: Fwd: New Mexico Dental Cooperative purchasing.

Sent from my iPhone

Begin forwarded message:

From: Stewart Hanley <shanley@benco.com>
Date: February 6, 2013, 9:59:05 AM PST
To: Mike Trimble <mtrimble@benco.com>
Subject: Fwd: New Mexico Dental Cooperative purchasing.

Sent from my iPhone

Begin forwarded message:

From: "Bergman, Brandon" <Brandon.Bergman@henryschein.com>
Date: February 6, 2013 9:54:15 AM GMT-08:00
To: Stewart Hanley <SHanley@benco.com>
Subject: FW: New Mexico Dental Cooperative purchasing.

Did you see this? Call me.

Brandon Bergman

Henry Schein Dental

Regional Manager

Albuquerque Office 505-856-3384

Cell Phone 505-385-1934

brandon.bergman@henryschein.com

From: Michael Stanislawski [<mailto:MStanislawski@midmark.com>]
Sent: Monday, February 04, 2013 7:10 PM
To: ARCHULETA, CHRIS; Bergman, Brandon
Subject: FW: New Mexico Dental Cooperative purchasing.

Is he joking?

Wow.....

Because we care.

Mike Stanislawski

Territory Manager

Dental Sales Division - Rocky Mountains

(303) 601-6493 - Cell

mstanislawski@midmark.com

Customer Service: Melissa Oakley - (937) 526-8302

Technical Support: Dave Magoteaux - (937) 526-8443

From: brenton mason [<mailto:txdelphia@gmail.com>]
Sent: Monday, February 04, 2013 1:18 PM
To: John Shernock; clhoss@mmm.com; Marquita.Mason@dentsply.com; Adam.Ternan@sybrondental.com; Marni.StoneWalsh@voco.com; Todd_Cretors@gcamerica.com; Windi.Vigil@ivoclarvivadent.com; Reagan.Wheeler@sybrondental.com; JWeyenberg@hu-friedy.com; ruby.howley@us.sunstar.com; cherie.borer@rockymountainsalesassociates.com; JZaneis@PREMUSA.com;

Mark.Rohan@us.acteongroup.com; Bob.Gess@sirona.com; dolsen5065@aol.com; Mike.Wilson@a-dec.com; Steven.Griffith@planmecausa.com; gmorton@dentalez.com; sconnolly@digi-doc.com; jpdmonuco@aol.com; BrianDillonSales@Q.com; jamihsacks@gmail.com; msherman@meisingerusa.com; dknoxpsa@gmail.com; lanid@crosstex.com; rbehbahani@septodonta.com; Sterling.Parker@sirona.com; wright.mc.1@pg.com; Jason Chapman; Frank Montoya; lisa.franks@ultradent.com; Charles Goodis; Jeff.Katt@pattersondental.com; Scott.Belcheff@pattersondental.com; robert.lehm; Michael Stanislawski; plowe@axisdental.com; HJBinfo@bosworth.com; info@coltenewhaledent.com; Crosstex@crosstex.com; gca_sales@gcamerica.com; info@hu-friedy.com; info@jmoritusa.com; info@parkell.com; akegerise@premusa.com; domestic@sswhiteburs.com; customer-service@shofu.com; infousa@voco.com; customerservice@youngdental.com; brenton mason

Subject: New Mexico Dental Cooperative purchasing.

To All,

Frank Montoya, Jason Chapman and I are in the process of starting a dental Cooperative. Thus we are working together with our local private practice dental office owners to compete with the national large corporations in the dental field. We as small businesses are well aware of the studies showing the corporate dentistry role over the next 10 years. Furthermore, Walmart has provided us with a case study to evaluate the survival of the independent dental offices. Thus we have partnered with Patterson Dental to provide the individual office the same opportunities as the larger corporations. We as a group of 17 offices currently are expanding on weekly basis; Furthermore, we have doctors in our group from every specialty participating in the co op.

We are inviting all dental manufactures and representative to a our vendors meeting March 13, 2013 at 6:00 pm. The location is Patterson Dental Branch in Albuquerque, NM. During this meeting we will do the following:

- I) explain our philosophies
- II) Have an open forum question and answer, I will take any and all questions and be available however long needed.
- III) Explain our bid seeking for the next 12 months.

April 1st our co op will start to formulate the Preferred Vendor list for dental supplies. Our Preferred Vendor list will be update annually following our annual vendor meeting. We highly encourage our co op members to support the manufactures whom best support our co op. At the present moment we have begun formulating the Preferred Vendor list for all aspect of running a dental office. Upon conclusion of this process we will have a Preferred Vendor List for everything from cotton rolls to credit card processing fees to janitorial services and everything in the middle.

Our goal was 50 dental offices. However, that will have to change, we just started this co op and have added 17 offices without any effort. We have changed our goal to 75 dental offices in Albuquerque and then will expand to all areas of New Mexico. Furthermore, we are putting together a doctors meeting to have a discussion about the co op to increase our current enrollment.

If you have any questions please feel free to contact me at this email (personal email address) or my office, 505-821-1430. If you call the office I will need to set up a time to have a phone conversation due to patient care. As many of you know from the past, I have not been easy accessible b/c of the amount of sales persons that have wanted to work with our 3 to 5 offices. For the Co-op I will be 100% available to anyone wishing communicate and our personal corporations will only purchase with Preferred CO-OP Vendors.

--

Brenton Mason DMD

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CX3419

From: McFadden, M
Sent: Tuesday, February 11, 2014 7:39 AM
To: Guggenheim, Paul
Subject: Fwd: Special Markets

Paul, I need a bit of advice here. A few weeks ago a guy representing a community health center contacted Shelly regarding doing a bid. I approved her to get started working on the bid primarily as practice and experience as we will be involved in a lot of RFPs. A week or so into the project we found out that this guy George represents a GPO representing the CHC. He gets 3% of sales. It was after this I contacted Mike Orslen at medical and asked him about dealing with GPO's in the medical and government space. He told me it was a necessary evil for him. However, my gut told me that historically we've never done this so I sent the bottom letter respectfully declining the offer. Please see his response and let me know if I did the right thing or if I should proceed further. Thank you

Sent from my iPhone

Begin forwarded message:

From: glennon@naids.org
Date: February 10, 2014 at 9:37:03 PM CST
To: neal.mcfadden@pattersondental.com
Cc: Amanda.Barlage@pattersondental.com, Shelley.Beckler@pattersondental.com
Subject: RE: Special Markets

Neal,

I'm very disappointed in your decision to not go forward with this opportunity with this CHC. I do however understand your concern for partnering with a GPO and the different dental business model this opens. I am also aware of the time that Patterson spent on this project in terms of man hours spent with the price quote and talking to manufacturers to gain better pricing for your special market accounts, so I know your intentions were honest with me.

Having said this, my problem now is that I have a director of Purchasing expecting a call from you on Thursday who is anxious to replace his \$5,000,000 plus account from Schein to another national dealer. As you did, I also contacted Carestream (Kodak) to get a 30% discount for Patterson with this CHC so I now have to explain why they won't be getting this business after they reduced their film pricing to gain this business with Patterson.

I doubt if I can contact a national dealer that can handle this size account in two days and develop a plan that meets the needs of my customer. I know that neither of us wants to lose a \$5,000,000 account that can grow to 6X this size. Many dental companies use independent sales reps and I'm open to doing that with this account or more if you feel I can bring value to your special markets group. This is a market I know as well as anyone and could help you target areas that get very little attention that would bring some big rewards.

Competing against Schein in special markets is difficult at best and to take this account from them would be a game changer in dental, and I expect you would get this account. Schein's

strength in this market is their relationship with Danaher, it can also be their biggest weakness if you have the right strategy.

I hope to hear from you regarding saving this sale, working with your team has been a pleasure.

Best Regards,
George

George Lennon
Executive Director of Operations
Lighthouse Dental Buying Group, LLC
San Antonio, Texas 78260
585-781-0180
glennon@naids.org
<http://naids.org>

----- Original Message -----

Subject: Special Markets
From: neal.mcfadden@pattersondental.com
Date: Mon, February 10, 2014 10:47 am
To: glennon@naids.org
Cc: Amanda.Barlage@pattersondental.com,
Shelley.Beckler@pattersondental.com

George,

I want to begin by thanking you for considering Patterson Dental as your preferred partner for NAIDS. As we discussed, the Special Markets group is new to Patterson Dental and we are in our early stages of building out our infrastructure and deciding our target market. At the advice of our legal department and our executive leadership team I am respectfully declining your offer to participate further in your RFP. Patterson has historically never done business with GPO's and culturally we do not feel it is a long term strategy for our company. I am sorry for this late decision and trust you will still have time to find another dental supplier.

Respectfully,

Neal McFadden
President Special Markets
1031 Mendota Heights Road
St. Paul, MN 55120
direct: 651-686-1945
fax: 651-686-0288

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CX4090

From: brenton mason [txdelphia@gmail.com]
Sent: Thursday, February 7, 2013 3:50 PM
To: Belcheff, Larry
Subject: Re:

That is fine, I get where your coming from, set up the meetings as needed with Jason and Frank, they will better be able to assist with the Co op efforts.

BRent

On Thu, Feb 7, 2013 at 2:44 PM, <Scott.Belcheff@pattersondental.com> wrote:
Dr. Mason,

I will not reach out with the manufacturer reps until after we meet on Monday. This way we can discuss this in person. I definitely want to keep this moving forward

Thanks,

Scott Belcheff
Branch Manager
Patterson Dental
Albuquerque Branch
505-884-6747

-----brenton mason <txdelphia@gmail.com> wrote: -----

To: Scott.Belcheff@pattersondental.com
From: brenton mason <txdelphia@gmail.com>
Date: 02/07/2013 02:19PM
Subject: Re:

Keep the meeting the same day, just put together all the information we need to make everyone happy. Thus we can keep moving forward.

BRent

On Thu, Feb 7, 2013 at 2:01 PM, <Scott.Belcheff@pattersondental.com> wrote:
Dr. Mason,

I wanted to reach out to you in regards to the Vendor meeting you scheduled through e-mail for March 13. There was some confusion on my part. I thought it was a meeting for your preferred vendors and vendors you want to introduce to the co-op on the running of the business side of the equation. For example Credit Card Services, Patterson, Banking, etc. I did not understand it to mean the entire dental manufactures group.

I wanted to take some time to think about this meeting before I reached out to you,

and after reflecting on this, here is the direction we need to take. We need to cancel this meeting, and I will be sending out an e-mail by the end of the day today to the included manufacturers about this cancellation, while also asking them to "stay tuned" for more information to come in the near future. The reason for this course of action is as follows, and I do look forward to discussing with you when you're able.

First - The email you sent out has greatly confused the dental community, and actually Patterson's role in the dental business community as well.. Dan Reinhardt, my regional manager and myself, have been getting calls with questions because manufacturers are confused as to the purpose of the meeting you called. These companies do choose to do business with distributors like Patterson, Schein or Benco, and we handle the bid process. Not the manufactures (unless they are a direct selling manufacturer, such as Brasseler). If Patterson is going to be your preferred vendor then we handle the bid process for you. We make sure you are getting the appropriate pricing on the supplies you use based on volume and commitment. As your partner, we're working to assure you fair pricing, and also anything else the manufacturing company has to offer such, as rebate programs. This is why we are your partner, which is not just verbiage to me. Your schedule is crazy enough with out having to deal with this as well.

Second - The e-mail invitation you sent includes manufacturers that Patterson does not do business with, and are, in some cases, direct competitors of Patterson Dental.

Third - Patterson Dental is a Value-Add distributor, and that's why you've chosen to do business with you over the years. We also extend this to our relations with our manufacturing community, as we value their knowledge, and their investment in Research and Development, and for advancing dental care in general.

This has the opportunity to be huge and is moving fast and I want to make sure we are doing this right from the beginning. Our dinner Monday night will help with this and also help us get guidelines in place. You and I have always been straight forward with each other and I respect your vision. I am hoping Patterson can be a partner you trust and that will always do the right thing for you. I won't always tell you what you want to hear, but that's what true partners do.

Thank for your understanding in regards to this matter.

*Scott Belcheff
Branch Manager
Patterson Dental
Albuquerque Branch
505-884-6747*

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Brenton Mason DMD

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Brenton Mason DMD

CX6027

#	Type	From	To	Date	Time (UTC)	Duration	Content	Supporting CX
1	Call	Chuck Cohen mobile (phone # last four digits - 1340)	Scott Anderson land line (phone # last four digits - 1708)	1/23/2009	10:44:00	2 min	[phone call - not UTC]	CX4435 at -026
2	Call	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	3/13/2009	17:39:15	1 min 49 sec	[phone call]	CX4414 at -2043 (item 478)
3	Call	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	3/15/2009	19:54:12	52 sec	[phone call]	CX4435 at -044; CX4414 at -2044 (item 500)
4	Call	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	3/15/2009	19:55:14	16 min 56 sec	[phone call]	CX4435 at -044; CX4414 at -2044 (item 501)
5	Call	Chuck Cohen mobile (phone # last four digits - 1340)	Scott Anderson land line (phone # last four digits - 1708)	6/25/2009	11:48:00	3 min	[phone call - not UTC]	CX4435 at -097
6	Call	Tim Sullivan mobile (phone # last four digits - 8377)	Scott Anderson mobile (phone # last four digits - 7215)	7/7/2009	17:55:59	1 min 29 sec	[phone call]	CX4414 at -2090 (item 97)
7	Call	Scott Anderson mobile (phone # last four digits - 7215)	Tim Sullivan land line (phone # last four digits - 2508)	7/8/2009	18:14:25	52 sec	[phone call]	CX4436 at -005 CX4414 at -0756 (item 849)
8	Call	Scott Anderson mobile (phone # last four digits - 7215)	Tim Sullivan mobile (phone # last four digits - 8377)	7/8/2009	18:15:37	1 min 6 sec	[phone call]	CX4436 at -005 CX4414 at -2090
9	Call	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	10/30/2009	20:01:48	7 min 25 sec	[phone call]	CX4435 at -175 CX4414 at -2113 (item 951)
10	Call	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	3/16/2010	13:02:27	5 min 7 sec	[phone call]	CX4414 at -2136 (item 491) CX4437 at -251
11	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	3/16/2010	15:08:27	n/a	[no content available]	CX1114 at -17880 (item 1306)
12	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	3/16/2010	15:10:21	n/a	[no content available]	CX1114 at -17880 (item 1307)
13	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	3/16/2010	15:10:22	n/a	[no content available]	CX1114 at -17880 (item 1308)

#	Type	From	To	Date	Time (UTC)	Duration	Content	Supporting CX
14	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	3/16/2010	16:47:44	n/a	[no content available]	CX1114 at -17880 (item 1313)
15	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	3/21/2010	4:04:47	n/a	[no content available]	CX1114 at -17882 (item 1440)
16	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	3/21/2010	12:10:20	n/a	[no content available]	CX1114 at -17882 (item 1441)
17	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	3/21/2010	22:54:09	n/a	[no content available]	CX1114 at -17883 (item 1488)
18	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	3/22/2010	0:20:08	n/a	[no content available]	CX1114 at -17883 (item 1489)
19	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	4/26/2010	18:41:22	n/a	[no content available]	CX1114 at -17910 (item 2854)
20	Call	Scott Anderson mobile (phone # last four digits - 7215)	Chuck Cohen mobile (phone # last four digits - 1340)	6/24/2010	9:16:00	2 min	[phone call - not UTC]	CX4436 at -052
21	Call	Chuck Cohen mobile (phone # last four digits - 1340)	Scott Anderson mobile (phone # last four digits - 7215)	6/24/2010	9:18:00	16 min	[phone call - not UTC]	CX4436 at -052
22	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	11/30/2010	12:45:30	n/a	[no content available]	CX1114 at -17318 (item 6355)
23	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	11/30/2010	14:15:27	n/a	[no content available]	CX1114 at -17318 (item 6358)
24	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	11/30/2010	14:15:28	n/a	[no content available]	CX1114 at -17318 (item 6359)
25	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	11/30/2010	17:16:44	n/a	[no content available]	CX1114 at -17319 (item 6365)
26	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	12/2/2010	13:38:57	n/a	[no content available]	CX1114 at -17322 (item 6517)
27	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	12/2/2010	16:30:56	n/a	[no content available]	CX1114 at -17323 (item 6548)
28	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	12/2/2010	18:37:02	n/a	[no content available]	CX1114 at -17323 (item 6553)
29	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	12/2/2010	18:37:35	n/a	[no content available]	CX1114 at -17323 (item 6554)

#	Type	From	To	Date	Time (UTC)	Duration	Content	Supporting CX
30	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	12/2/2010	20:19:32	n/a	[no content available]	CX1114 at -17323 (item 6560)
31	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	12/2/2010	21:17:33	n/a	[no content available]	CX1114 at -17323 (item 6561)
32	Call	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	12/10/2010	16:22:40	1 min 52 sec	[phone call]	CX4414 at -2085 (item 836)
33	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	12/10/2010	16:23:33	n/a	[no content available]	CX1114 at -17334 (item 6973)
34	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	12/10/2010	16:25:13	n/a	[no content available]	CX1114 at -17323 (item 6974)
35	Call	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	1/31/2011	23:55:24	20 sec	[phone call]	CX4413 at -0735 (item 132) CX1380 at -012
38	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	2/1/2011	0:07:18	n/a	[no content available]	CX4412 at -10919 (item 1392)
36	Call	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	2/1/2011	0:12:35	0 sec	[phone call]	CX4413 at -0735 (item 133)
37	Call	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	2/1/2011	0:18:43	49 sec	[phone call]	CX4413 at -0735 (item 134) CX1380 at -012
40	Call	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	2/1/2011	14:14:38	35 sec	[phone call]	CX4413 at -0735 (item 135)
39	Call	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	2/1/2011	14:19:41	17 min 14 sec	[phone call]	CX4413 at -0735 (item 136) CX1380 at -013
41	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	2/2/2011	14:30:08	n/a	[no content available]	CX4412 at -10922 (item 1500)
42	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	2/2/2011	14:30:08	n/a	[no content available]	CX4412 at -10923 (item 1501)
43	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	2/9/2011	3:07:02	n/a	[no content available]	CX4412 at -10936 (item 1986)

#	Type	From	To	Date	Time (UTC)	Duration	Content	Supporting CX
44	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	2/9/2011	3:25:17	n/a	[no content available]	CX4412 at -10936 (item 1987)
45	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	2/9/2011	3:25:18	n/a	[no content available]	CX4412 at -10936 (item 1988)
46	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	2/9/2011	20:14:56	n/a	[no content available]	CX4412 at -10937 (item 2003)
47	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	2/9/2011	20:15:32	n/a	[no content available]	CX4412 at -10937 (item 2004)
48	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	2/14/2011	13:54:56	n/a	[no content available]	CX4412 at -10944 (item 2278)
49	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	2/14/2011	19:25:11	n/a	[no content available]	CX4412 at -10944 (item 2279)
50	Call	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	2/14/2011	20:30:06	49 sec	[phone call]	CX4413 at -0737 (item 220)
51	Call	Chuck Cohen land line (phone # last four digits - 6811)	Tim Sullivan mobile (phone # last four digits - 8377)	2/14/2011	20:43:05	31 sec	[phone call]	CX4412 at -09157 (item 847)
52	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	2/14/2011	20:48:41	n/a	[no content available]	CX4412 at -10944 (item 2282)
53	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	2/14/2011	20:59:19	n/a	[no content available]	CX4412 at -10944 (item 2283)
54	Call	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	2/14/2011	21:04:23	8 sec	[phone call]	CX4413 at -0737 (item 223)
55	Call	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	2/14/2011	21:22:46	0 sec	[phone call]	CX4413 at -0737 (item 225)
56	Call	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	2/14/2011	21:23:13	18 sec	[phone call]	CX4413 at -0737 (item 227)
57	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	2/21/2011	11:40:32	n/a	[no content available]	CX4412 at -10951 (item 2521)
58	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	2/21/2011	11:43:16	n/a	[no content available]	CX4412 at -10951 (item 2522)
59	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	2/21/2011	11:44:03	n/a	[no content available]	CX4412 at -10951 (item 2523)

#	Type	From	To	Date	Time (UTC)	Duration	Content	Supporting CX
60	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	2/21/2011	15:51:40	n/a	[no content available]	CX4412 at -10951 (item 2534)
61	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	2/22/2011	12:49:04	n/a	[no content available]	CX4412 at -10952 (item 2555)
62	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	3/24/2011	17:53:46	n/a	[no content available]	CX4412 at -10983 (item 3659)
63	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	3/24/2011	18:21:03	n/a	[no content available]	CX4412 at -10983 (item 3661)
64	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	3/24/2011	20:03:07	n/a	[no content available]	CX4412 at -10983 (item 3662)
65	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Scott Anderson mobile (phone # last four digits - 7215)	4/8/2011	21:58:47	n/a	[no content available]	CX4412 at -11003 (item 4367)
66	Text	Scott Anderson mobile (phone # last four digits - 7215)	Tim Sullivan mobile (phone # last four digits - 8377)	4/8/2011	23:55:26	n/a	[no content available]	CX4412 at -11003 (item 4371) CX4412 at -28340 (item 127)
67	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Scott Anderson mobile (phone # last four digits - 7215)	4/8/2011	23:57:46	n/a	[no content available]	CX4412 at -11003 (item 4372)
68	Text	Scott Anderson mobile (phone # last four digits - 7215)	Tim Sullivan mobile (phone # last four digits - 8377)	4/9/2011	0:23:24	n/a	[no content available]	CX4412 at -11003 (item 4373) CX4412 at -28340 (item 128)
70	Call	Chuck Cohen mobile (phone # last four digits - 1340)	Paul Guggenheim land line (phone # last four digits - 1760)	8/29/2011	16:37:00	1 min	[phone call - not UTC]	CX1382 at -011
71	Call	Chuck Cohen mobile (phone # last four digits - 1340)	Paul Guggenheim land line (phone # last four digits - 1760)	8/29/2011	16:37:00	1 min	[phone call - not UTC]	CX1382 at -011
72	Call	Chuck Cohen mobile (phone # last four digits - 1340)	Paul Guggenheim land line (phone # last four digits - 1760)	8/29/2011	16:38:00	1 min	[phone call - not UTC]	CX1382 at -011
73	Call	Chuck Cohen mobile (phone # last four digits - 1340)	Paul Guggenheim land line (phone # last four digits - 1760)	8/29/2011	16:40:00	1 min	[phone call - not UTC]	CX1382 at -011
74	Call	Chuck Cohen mobile (phone # last four digits - 1340)	Paul Guggenheim land line (phone # last four digits - 1760)	8/29/2011	16:48:00	1 min	[phone call - not UTC]	CX1382 at -011

#	Type	From	To	Date	Time (UTC)	Duration	Content	Supporting CX
76	Call	Chuck Cohen mobile (phone # last four digits - 1340)	Paul Guggenheim land line (phone # last four digits - 1760)	8/29/2011	17:07:00	1 min	[phone call - not UTC]	CX1382 at -011
78	Call	Chuck Cohen mobile (phone # last four digits - 1340)	Paul Guggenheim land line (phone # last four digits - 1760)	8/29/2011	17:50:00	1 min	[phone call - not UTC]	CX1382 at -011
79	Call	Paul Guggenheim land line (phone # last four digits - 1760)	Chuck Cohen mobile (phone # last four digits - 1340)	8/29/2011	17:52:00	3 min	[phone call - not UTC]	CX1382 at -011
69	Call	Chuck Cohen mobile (phone # last four digits - 1340)	Paul Guggenheim mobile (phone # last four digits - 2444)	8/29/2011	20:31:10	50 sec	[phone call]	CX4413 at -0188 (item 1744) CX1382 at -010
75	Call	Chuck Cohen mobile (phone # last four digits - 1340)	Paul Guggenheim mobile (phone # last four digits - 2444)	8/29/2011	20:57:58	25 sec	[phone call]	CX4413 at -0188 (item 1745) CX1382 at -011
77	Call	Chuck Cohen mobile (phone # last four digits - 1340)	Paul Guggenheim mobile (phone # last four digits - 2444)	8/29/2011	21:49:56	0 sec	[phone call]	CX4412 at -04634 (item 4653) CX1382 at -011
80	Call	Patterson Dental (phone # last four digits - 3100)	Chuck Cohen mobile (phone # last four digits - 1340)	9/27/2011	16:14:00	6 min	[phone call - not UTC]	CX1126 at -009
81	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	10/6/2011	0:39:18	n/a	"Having dinner with Julie Charlestein in NY @ YPO program, she claims you have an RM @ Schein named Chuck Cohen. True?"	CX2846 CX4412 at -11290 (item 14622)
82	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	10/6/2011	1:14:34	n/a	"Not a RM but there is a TSM (employee) w the name. Funny looking guy too. :)"	CX2967 CX4412 at -11290 (item 14623)
83	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	10/6/2011	2:10:29	n/a	"Must be very bright & hard working. He needs to be working for Benco, does he have a contract? Can I give him a signing bonus? :-}"	CX2968 CX4412 at -11290 (item 14640)

#	Type	From	To	Date	Time (UTC)	Duration	Content	Supporting CX
84	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	10/6/2011	2:11:53	n/a	"If it's a Brewers-Yankees series, we better be going to a game. I'll come to WI, or you come to NY. We can bring Stan too."	CX2969 CX4412 at -11290 (item 14641)
85	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	10/6/2011	2:11:58	n/a	"I think Bill Rotert has already signed him too."	CX4412 at -11290 (item 14642) CX6615
86	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	10/6/2011	2:12:38	n/a	"In! Game 4 not starting well."	CX2970 CX4412 at -11290 (item 14643)
87	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	10/6/2011	2:27:33	n/a	"Maybe invite Bill too?"	CX2972 CX4412 at -11291 (item 14645)
88	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	10/6/2011	2:28:20	n/a	"Bill Rotert? Does he work for me?"	CX2973 CX4412 at -11291 (item 14646)
89	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	10/6/2011	2:29:30	n/a	"Apparently very soon. Part of group in Fresno. We should get together at ADA and talk."	CX2974 CX4412 at -11291 (item 14647)
90	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	10/6/2011	2:31:12	n/a	"Happy to talk anytime, let's get a cup of coffee in Vegas."	CX2975 CX4412 at -11291 (item 14648)
91	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	10/6/2011	2:31:27	n/a	"I'm going to Yankee Stadium for game 5 tomorrow nite. Go Yanks!"	CX2971 CX4412 at -11290 (item 14644)

#	Type	From	To	Date	Time (UTC)	Duration	Content	Supporting CX
92	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	10/6/2011	2:32:45	n/a	"K. Shoot for during break at Board meeting? If we need mire time after that then we will schedule there. Ok?"	CX2976 CX4412 at -11291 (item 14649)
93	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	10/6/2011	2:34:27	n/a	"I'm on DTAF board, not DTA board. Our mtg is noon on Monday, when is DTA mtg?"	CX2977 CX4412 at -11291 (item 14650)
94	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	10/6/2011	2:35:51	n/a	"Oh yea. We r Tues 7 am to 11. I will look at schedule tomorrow and send you a few options."	CX2978 CX4412 at -11291 (item 14651)
95	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	10/6/2011	2:36:25	n/a	"Ok, let me know, thx."	CX2979 CX4412 at -11291 (item 14652)
96	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	10/10/2011	11:08:45	n/a	"Tim: I had to change my ticket to leave Vegas early Weds AM. I arrive today & will be @ mtg all day tomorrow & GC party Tom nite. Any other time that wo" "rks for you to meet? Sorry. Thx."	CX2980 CX4412 at -11303 (item 15091) CX2981 CX4412 at -11303 (item 15092)
97	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	10/10/2011	11:14:25	n/a	"Though between the Brewers & Packers, you should be in a fine mood this morning."	CX2982 CX4412 at -11303 (item 15093)

#	Type	From	To	Date	Time (UTC)	Duration	Content	Supporting CX
98	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	10/10/2011	11:16:35	n/a	"On wayto airport myself. I will send alternate times later. Great time to be a cheesehead sports fan!"	CX2983 CX4412 at -11303 (item 15094)
99	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	10/10/2011	11:32:07	n/a	"I arrive in Vegas midday today, maybe late afternoon today works for you. See u in Vegas."	CX2984 CX4412 at -11303 (item 15095)
100	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	10/10/2011	13:02:09	n/a	"How does 5:00 work for you? We are staying at Mandalay Bay which is where convention is at. We can determine location once there and have a lay of the land. Ok?"	CX2985 CX4412 at -11303 (item 15096)
101	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	10/10/2011	17:24:40	n/a	"5p today works for me @ Mandalay, let me know. Thx."	CX2986 CX4412 at -11303 (item 15097)
102	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	10/10/2011	21:13:37	n/a	"Oy. Go figure. I can no longer do this today. Maybe we chat via phone later in week and the live at annual session? I assume u r going to DC?"	CX2987 CX4412 at -11304 (item 15118)

#	Type	From	To	Date	Time (UTC)	Duration	Content	Supporting CX
103	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	10/10/2011	21:15:24	n/a	"Oy'? Clearly you've been hanging around Stan too long. Talk later this week & live in DC works for me. Am stuck now @ DTAF board mtg."	CX2988 CX4412 at -11304 (item 15119)
104	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	10/10/2011	21:16:09	n/a	"If your calendar tomorrow frees up, let me know. My schedule tomorrow isn't too tight. Thx."	CX2989 CX4412 at -11304 (item 15120)
105	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	10/10/2011	21:17:11	n/a	"I thought you would enjoy that. It's more Mark Mlotek than Stan, but I catch on quickly. Tomorrow afternoon gas possibilities, but not sure I want to do on convention floor. We'll figure it out."	CX2990 CX4412 at -11304 (item 15121)
106	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	10/10/2011	21:17:16	n/a	[no content available]	CX4412 at -11304 (item 15122)
107	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	10/10/2011	21:20:02	n/a	":-). OK, let me know for tomorrow. Thx."	CX2991 CX4412 at -11304 (item 15123)
108	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	10/10/2011	21:27:40	n/a	"BTW, I love the way that the Sullivan Foundation/DTAF joint scholarship has turned out. Well done. I'm going to talk with my dad about doing some." "thing similar. Thank you for helping to set the standard."	CX2847 CX4412 at -11304 (item 15124) CX2992 CX4412 at -11304 (item 15125)

#	Type	From	To	Date	Time (UTC)	Duration	Content	Supporting CX
109	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	10/10/2011	21:29:24	n/a	"That's great. We contemplated making it a matching fun somehow to get other Dental Families in the game, but it got complicated. Happy to see it having the effect anyway. :)"	CX2993 CX4412 at -11304 (item 15126)
110	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	10/10/2011	21:29:29	n/a	[no content available]	CX4412 at -11304 (item 15127)
111	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	10/14/2011	18:36:30	n/a	"U available right now by chance?"	CX2994 CX4412 at -11309 (item 15302)
112	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	10/14/2011	18:55:46	n/a	"Now?"	CX2995 CX4412 at -11309 (item 15305)
113	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	10/14/2011	18:55:59	n/a	"Sorry. Jut Yates another one."	CX2996 CX4412 at -11309 (item 15306)
114	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	10/14/2011	18:56:12	n/a	"Ooops. Just started another one."	CX2997 CX4412 at -11309 (item 15307)
115	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	10/14/2011	18:56:42	n/a	"No worries, ok."	CX2998 CX4412 at -11309 (item 15308)
116	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	10/14/2011	20:27:50	n/a	"I will dial ya in 5 mins. Ok?"	CX2999 CX4412 at -11310 (item 15327)
117	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	10/14/2011	20:30:03	n/a	"Ok."	CX6400 CX4412 at -11310 (item 15328)

#	Type	From	To	Date	Time (UTC)	Duration	Content	Supporting CX
118	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	10/14/2011	20:31:17	n/a	"Can I get u anything from Starbucks? I'm at drive thru. :)"	CX6401 CX4412 at -11310 (item 15329)
119	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	10/14/2011	20:31:50	n/a	"Lol"	CX6402 CX4412 at -11310 (item 15330)
120	Call	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	10/14/2011	20:34:54	21 min 30 sec	[phone call]	CX1109 at -004 CX1356 CX1463 CX4413 at -0767 (item 1366)
121	Call	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	10/14/2011	20:56:51	59 sec	[phone call]	CX4413 at -0767 (item 1367)
122	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	10/14/2011	21:21:33	n/a	"Good to talk today, forgot to mention that I talked to Larry this week & he's excited about doing something similar with the DTAF fund, maybe 50k with a "match. So you've inspired others to give. Pls tell your mom. Happy birthday to your dad. Best for the wknd."	CX6403 CX6404 CX4412 at -11310 (item 15331) CX4412 at -11310 (item 15332)
123	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	10/14/2011	21:26:19	n/a	"Awesome. I just read to my mom an we had a great smile n hug. :)"	CX6405 CX4412 at -11310 (item 15333)
124	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	10/14/2011	21:26:28	n/a	"Thank you!!"	CX6406 CX4412 at -11310 (item 15334)

#	Type	From	To	Date	Time (UTC)	Duration	Content	Supporting CX
125	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	11/2/2011	15:21:44	n/a	"Get together @ the break?"	CX2848 CX4412 at -11353 (item 16871)
126	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	11/2/2011	15:49:28	n/a	"Sorry. I was on conf call and could not reply. Let's do on break between Ram Charan's parts. Ok?"	CX6407 CX4412 at -11353 (item 16872)
127	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	11/2/2011	17:16:38	n/a	"Ok. Thx."	CX6408 CX4412 at -11353 (item 16873)
128	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	11/2/2011	19:09:24	n/a	"I didn't get any popcorn at the break. You making another run?"	CX6409 CX4412 at -11353 (item 16882)
129	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	11/2/2011	19:10:48	n/a	"I missed the popcorn too. But I'm sitting in the front & can't get up. Since Larry can't hear, we need to sit in the front. 'what did he say?'"	CX6410 CX4412 at -11353 (item 16883)
130	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	11/2/2011	19:12:32	n/a	"Dont forget to send me a map of your zones. Thanks."	CX6411 CX4412 at -11353 (item 16884)
131	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	11/2/2011	19:14:48	n/a	"Got it."	CX6412 CX4412 at -11353 (item 16885)

#	Type	From	To	Date	Time (UTC)	Duration	Content	Supporting CX
132	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	11/2/2011	22:35:35	n/a	"Tim: Assume our conversation today only covers TRs/FSCs with books of business. Guys who get fired, equipment specialists, service techs, etc. are stil" "I covered by the current Global Agreement terms. Your understanding also?"	CX4412 at -11353 (item 16894) CX4412 at -11354 (item 16895) CX6413 CX6414
133	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	11/2/2011	22:52:06	n/a	[no content available]	CX4412 at -11354 (item 16896)
134	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	11/3/2011	0:10:19	n/a	"Anyone termed without cause . . . Yes. Otherwise, I thought we were discussing any employes regardless of role."	CX6415 CX4412 at -11353 (item 16898)

#	Type	From	To	Date	Time (UTC)	Duration	Content	Supporting CX
135	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	11/3/2011	11:45:03	n/a	"Sorry, my confusion, I should have better stated my proposal. Since most of our stress & strain is over TR/FSCs, and all the names we discussed yesterday" "were TRs, my plan was to restrict the number of those folks who can move in a six-month period. We've rarely had issues with support like techs, Equipme" "nt specialists, etc. Doesn't make sense to me that hiring a tech should count the same as hiring a 3m rep. What do you think?"	CX6416 CX6595 CX6596 CX4412 at -11354 (item 16913)
136	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Scott Anderson mobile (phone # last four digits - 7215)	11/3/2011	12:07:11	n/a	"Two days in a row that Paul G is late. I thought you ran a tighter ship."	CX2490 CX4412 at -11354 (item 16914)
137	Text	Scott Anderson mobile (phone # last four digits - 7215)	Tim Sullivan mobile (phone # last four digits - 8377)	11/3/2011	12:14:11	n/a	"He can only contained...not controlled. He still runs on a west coast clock...we call it Guggentime."	CX4412 at -11354 (item 16915), and at -28350 (item 475) CX6588
138	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	11/3/2011	13:06:10	n/a	"R u still here?"	CX4412 at -11354 (item 16920) CX6417
139	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	11/3/2011	13:07:04	n/a	"Up in my room working on a project, should be down around 11."	CX4412 at -11354 (item 16921) CX6418

#	Type	From	To	Date	Time (UTC)	Duration	Content	Supporting CX
140	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	11/3/2011	13:07:14	n/a	"Don't tell Larry."	CX4412 at -11354 (item 16922) CX6419
141	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	11/3/2011	13:43:01	n/a	"K. Maybe catch up at break? I literally am sprinting to airport after Ripken. Text me when you're coming down and I will step out if break is over."	CX4412 at -11354 (item 16923) CX6420
142	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	11/3/2011	13:43:37	n/a	"Ok, will do."	CX4412 at -11354 (item 16924) CX6421
143	Call	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	11/3/2011	20:04:39	33 sec	[phone call]	CX4413 at -0770 (item 1447)
144	Call	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	11/3/2011	20:05:31	36 sec	[phone call]	CX4413 at -0770 (item 1448)
145	Call	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	11/4/2011	21:04:48	0 sec	[phone call]	CX4413 at -0770 (item 1456)
146	Call	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	11/4/2011	21:05:47	18 min 41 sec	[phone call]	CX1109 at -016 CX4412 at -09463 (item 6471)
147	Call	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	11/7/2011	17:29:41	31 sec	[phone call]	CX4413 at -0770 (item 1468)
148	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	11/7/2011	18:44:16	n/a	"Got your message, will call later, tied up in meetings. Thx."	CX6483
149	Text	Tim Sullivan mobile (phone # last four digits - 8377)	4c54b051-b551-4262-b042-67110e7750d3@iMessage: +XXXXXXXX8377	11/7/2011	18:48:00	n/a	"Thanks"	CX6484
150	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	11/8/2011	3:58:56	n/a	"Also, please send map. Thanks."	CX6485

#	Type	From	To	Date	Time (UTC)	Duration	Content	Supporting CX
151	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	11/8/2011	3:58:56	n/a	"Sorry didn't call earlier today, running in & out of meetings today. Sorry about Kent, he was in play before our conversation last week. After we talked Friday, I reviewed with our team & we will live up to new arrangement. I'm available to talk tomorrow AM, if you are. Thanks."	CX6486
152	Call	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	11/8/2011	23:37:30	13 sec	[phone call]	CX1109 at -017 CX4412 at -09467 (item 6543)
153	Call	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	11/8/2011	23:40:55	0 sec	[phone call]	CX4412 at -09467 (item 6544)
154	Call	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	11/8/2011	23:42:26	0 sec	[phone call]	CX4412 at -09467 (item 6544)
155	Call	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	11/8/2011	23:45:32	5 min 51 sec	[phone call]	CX4413 at -0770 (item 1476) CX1109 at -017
156	Call	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	11/9/2011	0:02:50	4 sec	[phone call]	CX4413 at -0770 (item 1478)
157	Call	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	11/9/2011	0:44:15	1 min 16 sec	[phone call]	CX4413 at -0770 (item 1479) CX1109 at -017
158	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	11/9/2011	12:54:24	n/a	"Told my team to be done in Fresno. Thx."	CX6487
159	Text	Tim Sullivan mobile (phone # last four digits - 8377)	4c54b051-b551-4262-b042-67110e7750d3@iMessage: +XXXXXXXX8377	11/9/2011	12:57:31	n/a	":)"	CX6488

#	Type	From	To	Date	Time (UTC)	Duration	Content	Supporting CX
160	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Scott Anderson mobile (phone # last four digits - 7215)	11/23/2011	23:47:59	n/a	[no content available]	CX4412 at -12052 (item 41855)
161	Call	Paul Guggenheim mobile (phone # last four digits - 2444)	Chuck Cohen mobile (phone # last four digits - 1340)	12/1/2011	15:50:03	12 sec	[phone call]	CX1384 at -006 CX4413 at -0211 (item 2619)
162	Text	Tim Sullivan mobile (phone # last four digits - 8377)	4c54b051-b551-4262-b042-67110e7750d3@iMessage: +XXXXXXXX8377	12/5/2011	16:21:05	n/a	"Available to talk? Subject is Kent Hayes."	CX6489
163	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	12/5/2011	18:14:24	n/a	"Still need to talk?"	CX2857
164	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	12/5/2011	18:14:24	n/a	"You owe me one. :-)"	CX6490
165	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	12/5/2011	18:14:24	n/a	"Sure, I'm around. Heard that Kent decided to go back. We won't pursue the customers, and he doesn't have to sit. If he tried it, and doesn't like it, and wants to go back, no hard feelings."	CX6491
166	Text	Tim Sullivan mobile (phone # last four digits - 8377)	4c54b051-b551-4262-b042-67110e7750d3@iMessage: +XXXXXXXX8377	12/5/2011	19:07:43	n/a	"No. All good. I appreciate the message."	CX6492
167	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	1/13/2012	1:14:40	n/a	"You around to talk for a few minutes tomorrow? Let me know, thanks."	CX2347
168	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	1/13/2012	1:37:23	n/a	"Sure. About 8:00 am central best for me. Ok with you?"	CX2347
169	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	1/13/2012	1:40:16	n/a	"OK by me, thanks. Will call."	CX2347

#	Type	From	To	Date	Time (UTC)	Duration	Content	Supporting CX
170	Call	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	1/13/2012	14:03:28	11 min 34 sec	[phone call]	CX1110 at -008 CX4413 at -0776 (item 1679) CX4434 at -204
171	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	1/19/2012	3:19:55	n/a	"Got your note. Can't make the YPO event in April. Keep me posted on future opportunities. Thanks."	CX2492
172	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	2/8/2012	22:57:30	n/a	"Did you warm up the Dentsply crowd for me & Paul? I'm nervous about following you, it's like following Elvis on stage! :-)"	CX1102 (Chats Tab row 3) CX2870
173	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	2/9/2012	0:19:12	n/a	"Just wrapped up. They boo'd me off the stage. Threw fruit. Ornerly crowd. I'm sure you'll do great!!"	CX1102 (Chats Tab row 4) CX6560
174	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	2/9/2012	1:18:14	n/a	"Sure that's not true. You killed! Thanks for the heads up. I'm going back to Wilkes-Barre!"	CX1102 (Chats Tab row 5) CX6561
175	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	2/17/2012	1:45:56	n/a	"Fired Ann Cox? Ethics?"	CX1102 (Chats Tab row 6) CX2871
176	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	2/17/2012	1:53:04	n/a	"A. Yes. B. no. Catch up in Chicago?"	CX1102 (Chats Tab row 7)

#	Type	From	To	Date	Time (UTC)	Duration	Content	Supporting CX
177	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	2/17/2012	1:58:54	n/a	"Thanks. Absolutely. Thursday AM?"	CX1102 (Chats Tab row 8)
178	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	2/17/2012	2:05:52	n/a	"Sure. At dinner in UT. Will ask Carol I set it up."	CX1102 (Chats Tab row 9)
179	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	2/17/2012	2:10:12	n/a	"Me too. We're @ Deer Valley. You?"	CX1102 (Chats Tab row 10)
180	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	2/17/2012	2:12:16	n/a	"Wow. Snowbird. Ski tomorrow and Sat. With Bergmans on Sat."	CX1102 (Chats Tab row 11)
181	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	2/17/2012	2:17:01	n/a	"Good stuff, enjoy. We're doing Jewish princess skiing where everything is groomed. Too bad you're not here, could have skied & had dinner!"	CX1102 (Chats Tab row 12)
182	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	2/17/2012	2:18:20	n/a	"BTW, had bfast with Stan, Jimmy & Mark on Monday. They offered me your job, I turned them down. Too much aggravation! :-). See u in Chicago."	CX1102 (Chats Tab row 13)
183	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	2/17/2012	2:22:56	n/a	"Lol. We should trade for a month. :-)"	CX1102 (Chats Tab row 14)
184	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	2/20/2012	15:53:36	n/a	"Hiring Anne?"	CX1102 (Chats Tab row 15) CX2872

#	Type	From	To	Date	Time (UTC)	Duration	Content	Supporting CX
185	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	2/20/2012	16:01:12	n/a	"Don't know, our RM out there is talking to her this week. I'm out of it for now, will see how it develops. Words of warning?"	CX1102 (Chats Tab row 16)
186	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	2/20/2012	16:02:08	n/a	"No warnings. I'll call ya to chat live."	CX1102 (Chats Tab row 17)
187	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	2/20/2012	16:02:22	n/a	"You hired all of my head cases in 2010, I don't need another."	CX1102 (Chats Tab row 18)
188	Call	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	2/20/2012	16:14:53	24 sec	[phone call]	CX4413 at -0779 (item 1806)
189	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	2/20/2012	16:16:23	n/a	"On my way to SLC airport, heading home from skiing. Will call later. Thanks."	CX1102 (Chats Tab row 19)
190	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	2/20/2012	16:19:12	n/a	"Must have had great snow day yesterday!! We had to leave early for airport to get out ahead of it!!"	CX1102 (Chats Tab row 20)
191	Call	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	2/20/2012	17:08:20	0 sec	[phone call]	CX1385 at -005 CX4412 at -09558 (item 8221)
192	Call	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	2/20/2012	17:09:44	27 sec	[phone call]	CX4412 at -09558 (item 8223)
193	Call	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	2/20/2012	19:18:15	35 sec	[phone call]	CX1385 at -005 CX4412 at -09558 (item 8228) CX4413 at -0779 (item 1808)

#	Type	From	To	Date	Time (UTC)	Duration	Content	Supporting CX
194	Call	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	2/20/2012	19:18:51	18 sec	[phone call]	CX4412 at -09559 (item 8229)
195	Call	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	2/20/2012	19:19:21	11 min 39 sec	[phone call]	CX4412 at -09559 (item 8230) CX1385 at -005
196	Text	Chuck Cohen (ccohen@benco.com)	Paul Guggenheim mobile (phone # last four digits - 2444)	2/23/2012	21:43:28	n/a	"Hi Paul! Was at a meeting downtown. Am heading back to McCormick now. Catch up?"	CX3106 (iMessage Tab row 69)
197	Text	Chuck Cohen (ccohen@benco.com)	Paul Guggenheim mobile (phone # last four digits - 2444)	2/23/2012	21:45:36	n/a	"Yes."	CX3106 (iMessage Tab row 68)
198	Text	Paul Guggenheim mobile (phone # last four digits - 2444)	Chuck Cohen (ccohen@benco.com)	2/23/2012	21:46:15	n/a	"Im in a meeting offsite. Will you be around tomorrow"	CX3106 (iMessage Tab row 67)
199	Text	Paul Guggenheim mobile (phone # last four digits - 2444)	Chuck Cohen (ccohen@benco.com)	2/23/2012	21:47:01	n/a	"I'll call you and swing by"	CX3106 (iMessage Tab row 66)
200	Text	Chuck Cohen (ccohen@benco.com)	Paul Guggenheim mobile (phone # last four digits - 2444)	2/23/2012	21:47:44	n/a	"How about 1:30?"	CX3106 (iMessage Tab row 65)
201	Text	Paul Guggenheim mobile (phone # last four digits - 2444)	Chuck Cohen (ccohen@benco.com)	2/23/2012	21:53:42	n/a	"Oops .. I'm currently not scheduled to be at the floor. I'm offsite in meetings all day..... If I make it over I'll call you. Otherwise next time?"	CX3106 (iMessage Tab row 64)
202	Text	Chuck Cohen (ccohen@benco.com)	Paul Guggenheim mobile (phone # last four digits - 2444)	2/26/2012	2:14:24	n/a	"Good to see you at the O'Neill shindig. Give me a call if you want to touch base on something specific. Thanks."	CX3106 (iMessage Tab row 63)
203	Text	Paul Guggenheim mobile (phone # last four digits - 2444)	Chuck Cohen (ccohen@benco.com)	2/26/2012	4:28:33	n/a	"Good to see you too... Keep on touch and say hi to mom and dad."	CX3106 (iMessage Tab row 62)

#	Type	From	To	Date	Time (UTC)	Duration	Content	Supporting CX
204	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	3/2/2012	21:01:42	n/a	"Tim: You asked me to let you know re Anne Cox. We are hiring her, starts next week. Thanks. Cfc"	CX0060 (Chats Tab row 3)
205	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	3/2/2012	21:26:01	n/a	"Yes. We're honoring our agreement even though she was dismissed."	CX0060 (Chats Tab row 4)
206	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	3/2/2012	21:26:24	n/a	"Thanks Chuck. I'll call ya shortly. She'd have two weeks yet to sit out still then, right?"	CX0060 (Chats Tab row 5)
207	Call	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	3/2/2012	21:46:16	7 sec	[phone call]	CX1385 at -012 CX4413 at -0781 (item 1878)
208	Call	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	3/2/2012	21:54:06	13 min 29 sec	[phone call]	CX1385 at -012 CX4412 at -09570 (item 8438)
209	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	3/2/2012	22:45:20	n/a	"Thanks for chat. Have a great weekend. Hello to Larry. :)"	CX0060 (Chats Tab row 6)
210	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	3/14/2012	19:10:06	n/a	"Tim: Just heard that Steve Hoyt is your manager in CT. If you're interested in why he no longer has that role with Benco, happy to discuss. If not, that's OK too. Thanks."	CX0060 (Chats Tab row 7) CX2873
211	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	3/14/2012	20:20:16	n/a	"Tomorrow am or any time in fri would be great. Got one for you too. :)"	CX0060 (Chats Tab row 8)

#	Type	From	To	Date	Time (UTC)	Duration	Content	Supporting CX
212	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	3/14/2012	20:23:20	n/a	"Am at National Sales Meeting in Dallas, busy plotting your downfall. :-). Let's catch up next week. Thanks."	CX0060 (Chats Tab row 9)
213	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	3/14/2012	20:41:36	n/a	"Why don't I meet you there?! Have a good Meeting. Say hello to all my former Team Schein Members "	CX0060 (Chats Tab row 10)
214	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	3/14/2012	20:44:25	n/a	"Dude, it would be no good for me if you were here. They'd all like you better! Thanks. "	CX0060 (Chats Tab row 11)
215	Call	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	3/19/2012	21:58:19	13 min 9 sec	[phone call]	CX1386 at -006 CX4413 at -0782 (item 1928)
216	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	4/30/2012	22:56:35	n/a	"Thanks for your note. Im going to start collecting all of my Chuck Cohen note cards!!!! :)"	CX0057 (SMS Messages Tab row 57) CX2849 CX4412 at -11499 (item 22078)
217	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	6/13/2012	21:22:32	n/a	"Creative annual report this year!! Nice job and congrats on successful year. Too many former Team Schein Members included though. :)"	CX0057 (SMS Messages Tab row 56) CX6422 CX4412 at -11550 (item 23923)
218	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	6/13/2012	22:02:57	n/a	"Listen, if it wasn't for us, Patterson would smoke you guys. You're lucky to have us! :-). Thanks."	CX0060 (Chats Tab row 12)

#	Type	From	To	Date	Time (UTC)	Duration	Content	Supporting CX
219	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	6/13/2012	23:13:04	n/a	"We should chat soon. Rick Rietman makes 4th recent hire in Central Atlantic zone."	CX0060 (Chats Tab row 13)
220	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	6/14/2012	11:40:47	n/a	"Let me check my numbers today... Thanks. "	CX0060 (Chats Tab row 14)
221	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	6/14/2012	18:47:48	n/a	"Here's our list for Atl Cen zone... Moss 3/30, Cate 3/30, Rietman 6/4. Happy to discuss. Thanks."	CX0060 (Chats Tab row 15)
222	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	6/14/2012	19:01:20	n/a	"Thought we agreed Cox was included."	CX0060 (Chats Tab row 16)
223	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	6/14/2012	19:06:39	n/a	"We agreed that she would sit even though she didn't have a contract. And she did sit, even longer than the agreement says. We never talked about whether she counts toward the limit. You fired her, we didn't recruit her."	CX0060 (Chats Tab row 17)
224	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	6/14/2012	19:09:52	n/a	"Ok. Just confirming. Thanks Chuck. "	CX0060 (Chats Tab row 18)
225	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	6/14/2012	19:15:34	n/a	"No worries. Thanks. Heard ur sales mtg was great. "	CX0060 (Chats Tab row 19)
226	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	6/14/2012	19:39:44	n/a	"You should have been there. :)"	CX1102 (Chats Tab row 38)

#	Type	From	To	Date	Time (UTC)	Duration	Content	Supporting CX
227	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	1/3/2013	15:58:36	n/a	"Time to chat today?"	CX0057 (SMS Messages Tab row 55) CX2850 CX4412 at -11762 (item 31473)
228	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	1/3/2013	16:02:15	n/a	"Of course. Expected to hear from you yesterday..."	CX1102 (Chats Tab row 39) CX6493
229	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	1/3/2013	16:06:24	n/a	"Was returning from Rosé Bowl with family. On conf call now. I'll call ya soon".	CX1102 (Chats Tab row 40) CX6494
230	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	1/6/2013	21:22:28	n/a	"Kudos on the Packers, they looked good last nite. Sorry missed your call on Friday, I was out of the office. Will call you tomorrow. Thanks."	CX1102 (Chats Tab row 41) CX6495
231	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	1/6/2013	21:24:16	n/a	"Halftime of kids basketball right now. Tomorrow I am offsite for managers meeting. I'll call ya durng a break. Nothing urgent."	CX1102 (Chats Tab row 42) CX6496
232	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	1/6/2013	21:30:25	n/a	"OK. Thanks."	CX1102 (Chats Tab row 43) CX6497
233	Call	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	1/7/2013	22:54:17	31 sec	[phone call]	CX1387 at -012 CX4413 at -805 (item 2808)
234	Call	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	1/8/2013	20:59:37	10 sec	[phone call]	CX1387 at -013 CX4413 at -806 (item 2811)

#	Type	From	To	Date	Time (UTC)	Duration	Content	Supporting CX
235	Call	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	1/8/2013	22:43:22	11 sec	[phone call]	CX1387 at -013 CX4412 at -09838 (item 13301)
236	Call	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	1/8/2013	22:47:28	16 min 40 sec	[phone call]	CX1387 at -013 CX4413 at -806 (item 2812)
237	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	3/25/2013	20:13:44	n/a	"You around? Available to talk?"	CX1102 (Chats Tab row 44) CX0196
238	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	3/25/2013	20:15:07	n/a	"In meeting right now. Scheduled til 5:00 pm eastern. Wide open thereafter. What's best for you?"	CX1102 (Chats Tab row 45) CX6498
239	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	3/25/2013	20:17:25	n/a	"You go to meetings? i stopped years ago! :-) Great. Pls call on my cell when mtg ends."	CX1102 (Chats Tab row 46) CX6499
240	Call	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	3/25/2013	20:57:16	8 min 35 sec	[phone call]	CX0059 at-007 CX4413 at -0813 (item 3082)
241	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	3/25/2013	21:09:20	n/a	"Hi Chuck. Thanks for the call. Yes, I am good with the terms we discussed and I look forward to joining Team Benco! Ps. Want to confirm that the Benco tooth logo will include a picture of me. :)"	CX0060 (Chats Tab row 20) CX6500
242	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	3/26/2013	2:49:52	n/a	"Problem with this joke is if Stan says 'Great!' It's a risk..."	CX0060 (Chats Tab row 21) CX6502

#	Type	From	To	Date	Time (UTC)	Duration	Content	Supporting CX
243	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	3/26/2013	2:50:20	n/a	"Here's a link to the press release we discussed http://marketbrief.com/atlantic-dental-care-plc/d/form-d/2012/11/21/9835185 "	CX0060 (Chats Tab row 22) CX6501
244	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	3/26/2013	2:54:06	n/a	"Ouch . . . Didn't think about that response from Stan!! Maybe Scott would hire me? Thanks for the follow up on that article. Unusual. "	CX0060 (Chats Tab row 23) CX6503
245	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	3/26/2013	11:58:37	n/a	"As per my guy in Raleigh: 'Dental alliance. They apparently get 7% off of catalog pricing just for joining. Dr. Ben Koren is the dentist involved. A guy named Sam contacted me about a year ago and asked if Benco was interested.. Told him he was out of his tree.'"	CX0060 (Chats Tab row 24) CX2670
246	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	3/26/2013	11:58:56	n/a	"Could be a rumor, sometimes stories go around. Thanks"	CX0060 (Chats Tab row 25) CX6504
247	Call	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	3/27/2013	11:53:54	6 sec	[phone call]	CX4413 at -0813 (item 3089)

#	Type	From	To	Date	Time (UTC)	Duration	Content	Supporting CX
248	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	3/27/2013	20:04:49	n/a	"Tim: Did some additional research on the Atlantic Care deal, seems like they have actually merged ownership of all the practices. So it's not a buying group, it's a big group. We're going to bid. Thanks. "	CX0060 (Chats Tab row 26) CX6505
249	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	3/27/2013	20:05:02	n/a	"Also, noticed you rang me this AM, no message. Call later?"	CX2858
250	Call	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	3/27/2013	23:21:53	20 sec	[phone call]	CX4413 at -0813 (item 3091)
251	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	3/27/2013	23:32:04	n/a	"Out for dinner, talk tomorrow?"	CX1102 (Chats Tab row 55) CX6506
252	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	3/27/2013	23:32:16	n/a	"Sure. Call cell. Bon appetite"	CX1102 (Chats Tab row 56) CX6507
253	Call	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	3/28/2013	17:25:39	25 sec	[phone call]	CX0059 at-008 CX4413 at -0813 (item 3097)
254	Call	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	3/28/2013	20:52:04	5 sec	[phone call]	CX0059 at-008 CX4413 at -0813 (item 3098)
255	Call	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	4/3/2013	16:11:08	37 sec	[phone call]	CX4413 at -0814 (item 3120)
256	Call	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	4/3/2013	21:41:48	5 min 36 sec	[phone call]	CX0059 at-011 CX4413 at -0814 (item 3122)

#	Type	From	To	Date	Time (UTC)	Duration	Content	Supporting CX
257	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	4/7/2013	18:30:56	n/a	"Shows we saw in NYC: Pippin & Mathilda. Both excellent. Our 10-yr-old loved both. Thanks."	CX2859
258	Call	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	6/13/2013	15:14:59	3 sec	[phone call]	CX4413 at -0818 (item 3300)
259	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	6/13/2013	15:15:12	n/a	"Call me when you have a moment."	CX1102 (Chats Tab row 59)
260	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	6/13/2013	15:15:12	n/a	"Nothing urgent."	CX1102 (Chats Tab row 58)
261	Call	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	6/18/2013	12:50:29	9 min 16 sec	[phone call]	CX1127 at -007 CX4413 at -0819 (item 3321)
262	Call	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	6/18/2013	12:59:53	2 min 32 sec	[phone call]	CX1127 at -007 CX4413 at -0819 (item 3322)
263	Call	Paul Guggenheim mobile (phone # last four digits - 2444)	Chuck Cohen land line (phone # last four digits - 6811)	6/18/2013	18:33:09	47 sec	[phone call]	CX4413 at -0295 (item 5805)
264	Call	Paul Guggenheim mobile (phone # last four digits - 2444)	Chuck Cohen mobile (phone # last four digits - 1340)	6/18/2013	18:34:40	56 sec	[phone call]	CX4413 at -0295 (item 5806)

#	Type	From	To	Date	Time (UTC)	Duration	Content	Supporting CX
265	Text	Paul Guggenheim mobile (phone # last four digits - 2444)	Chuck Cohen mobile (phone # last four digits - 1340)	6/18/2013	18:44:30	n/a	"1/4 YouMail TXT Alerts: Transcript: GUGGENHEIM PAUL - XXX-XXX-2444 - Jun 18 2:34PM EDT: Chuck, hey, it's Paul ****. How are you doing? Hey, just getting back" - - "2/4 to you on this question if we have done the reconnaissance in our organization. Yeah going back to the beginning of these agreements, there was always a 3" - - "3/4 year **** clause that we've signed in specific with regard to **** is in that agreement. So I think they're getting bad or I don't know, maybe they're" - - "4/4 trying to **** over there or something, I don't know. But maybe we have a **** regarding sharing of data includes a 2 year disclosure clause whereby they" [message cuts off]	CX0057 (SMS Messages Tab rows 51-54)
266	Call	Chuck Cohen mobile (phone # last four digits - 1340)	Paul Guggenheim mobile (phone # last four digits - 2444)	6/20/2013	16:59:00	1 min	[phone call - not UTC]	CX1127 at -008
267	Call	Paul Guggenheim mobile (phone # last four digits - 2444)	Chuck Cohen mobile (phone # last four digits - 1340)	6/21/2013	13:38:29	56 sec	[phone call]	CX4413 at -0296 (item 5844)

#	Type	From	To	Date	Time (UTC)	Duration	Content	Supporting CX
268	Text	Paul Guggenheim mobile (phone # last four digits - 2444)	Chuck Cohen mobile (phone # last four digits - 1340)	6/21/2013	13:45:58	n/a	"1/4 YouMail TXT Alerts: Transcript: GUGGENHEIM PAUL - XXX-XXX-2444 - Jun 21 9:38AM EDT: Hey, Chuck. It's Paul returning your call. Yeah, I guess I'll catch up" - - "2/4 sometime soon. I'm heading off that soon. I guess the Turkey today. So, I'm at the airport. So, I might be tough to get a hold of me but we'll catch up at" - - "3/4 some point but generally just to know where we are pretty firm on that policy and the it's (??) free and we just agreed to that (??) signed off on that" - - "4/4 contract and there's a few (??) closet and then we have to get it from that. You know historically ever. So someone to tell me that we have you know we May" [message cuts off]	CX0057 (SMS Messages Tab rows 47-50)

#	Type	From	To	Date	Time (UTC)	Duration	Content	Supporting CX
269	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	7/2/2013	15:32:33	n/a	"Tim: Sales rep forced to resign yesterday b/c of ethical issues, caught him with his hand in the cookie jar. Aaron Swanson in Twin Cities. Heard he's going to you guys, happy to fill you in on the details if you'd like. Just give me a call. Thanks. "	CX0060 (Chats Tab row 27) CX2860
270	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	7/3/2013	14:31:42	n/a	"?????"	CX1102 (Chats Tab row 61) CX6508
271	Call	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	7/3/2013	14:33:39	2 min 4 sec	[phone call]	CX1127 at -012 CX4413 at -0821 (item 3384)
272	Call	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	7/3/2013	14:35:53	37 sec	[phone call]	CX1127 at -012 CX4413 at -0821 (item 3385)
273	Call	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	7/3/2013	14:36:51	7 min 10 sec	[phone call]	CX1127 at -012 CX4412 at -09997 (item 16190)
274	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	7/3/2013	14:45:37	n/a	"Thanks for the talk, much appreciated. Have a great vacation."	CX1102 (Chats Tab row 62) CX6509
275	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	7/3/2013	15:02:24	n/a	"Back at ya Chuck. Enjoy!!"	CX1102 (Chats Tab row 63) CX6510
276	Text	Tim Sullivan mobile (phone # last four digits - 8377)	4c54b051-b551-4262-b042-67110e7750d3@iMessage: +XXXXXXXX8377	8/1/2013	23:20:30	n/a	"Happy Sunshine Act day . . . Ugh!!"	CX2861

#	Type	From	To	Date	Time (UTC)	Duration	Content	Supporting CX
277	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	8/1/2013	23:21:26	n/a	"Ha! Larry sang everyone at Benco a song today in celebration. I'll send you a copy. Funny!"	CX1102 (Chats Tab row 65) CX6511
278	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	8/1/2013	23:23:38	n/a	"Funniest conversation we had here was how to track pens that are given to offices. Lawyer wanted to track & report them. After I scratched out my eyeballs, and then got them back in my sockets, I told him he was crazy and put him back in his cage for a timeout. You can't make this shit up."	CX1102 (Chats Tab row 66)
279	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	8/1/2013	23:23:44	n/a	"Gotta c it!! Nice job on yours and Ricks video too. We're watching you. 🙄"	CX1102 (Chats Tab row 67)
280	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	8/4/2013	18:41:17	n/a	"Just fired a rep in CT for running his own deal on amalgam refinement, and manager for knowing about it & not handling. Rep is Steve Ryan, manager is Jon Horn. Call if questions. "	CX0060 (Chats Tab row 28)

#	Type	From	To	Date	Time (UTC)	Duration	Content	Supporting CX
281	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Paul Guggenheim mobile (phone # last four digits - 2444)	8/4/2013	18:44:13	n/a	"Just fired a rep in CT for running his own deal on amalgam refinement, and manager for knowing about it & not handling. Rep is Steve Ryan, manager is Jon Horn. Call if questions. Thanks."	CX0060 (Chats Tab row 169) CX3106 (iMessage Tab row 61) CX6512
282	Text	Paul Guggenheim mobile (phone # last four digits - 2444)	Chuck Cohen mobile (phone # last four digits - 1340)	8/4/2013	19:35:48	n/a	"Cool.... Thanks for the heads up"	CX0060 (Chats Tab row 170) CX3106 (iMessage Tab row 59)
283	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	8/5/2013	22:38:31	n/a	"Sorry for delayed response. Sorry you're dealing with this. I am not aware of any activity on our end with these guys, but clearly you termed for cause. I'll follow up."	CX0060 (Chats Tab row 29) CX6513
284	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	9/3/2013	20:21:10	n/a	[no content available]	CX4412 at -11991 (item 39670)
285	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	9/3/2013	20:22:14	n/a	"Just received the extra copy from First Impressions. Thanks for the note . . . Not!! 🖱"	CX0057 (SMS Messages Tab row 46)
286	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	9/3/2013	20:30:56	n/a	"You're lucky I didn't get it framed for your office. Haha!"	CX2862
287	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	9/3/2013	20:31:12	n/a	"Enjoy!"	CX1102 (Chats Tab row 71) CX6514

#	Type	From	To	Date	Time (UTC)	Duration	Content	Supporting CX
288	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	9/3/2013	23:06:40	n/a	":)"	CX1102 (Chats Tab row 73)
289	Call	Patrick Ryan mobile (phone # last four digits - 4977)	Chuck Cohen mobile (phone # last four digits - 1340)	10/1/2013	9:11:00	2 min	[phone call - not UTC]	CX1000 at-011
290	Call	Patrick Ryan mobile (phone # last four digits - 4977)	Randy Foley land line (phone # last four digits - 1529)	10/1/2013	11:00:00	18 min	[phone call - not UTC]	CX1000 at-024
291	Call	Patrick Ryan mobile (phone # last four digits - 4977)	Michael McElaney mobile (phone # last four digits - 4354)	10/1/2013	11:19:00	8 min	[phone call - not UTC]	CX1000 at-024
292	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Scott Anderson mobile (phone # last four digits - 7215)	11/23/2013	23:48:01	n/a	"Traveling today. What's happening in college football?"	CX4412 at -28448 (item 3974) CX6589
293	Text	Scott Anderson mobile (phone # last four digits - 7215)	Tim Sullivan mobile (phone # last four digits - 8377)	11/23/2013	23:50:47	n/a	"The tide is turning. Enjoy the axe as we are getting legit with Kill. FU tomorrow as well!!"	CX6424
294	Text	Tim Sullivan mobile (phone # last four digits - 8377)	4c54b051-b551-4262-b042-67110e7750d3@iMessage: +XXXXXXXX8377	11/23/2013	23:51:20	n/a	"Now that's funny!!"	CX6425
295	Text	Scott Anderson mobile (phone # last four digits - 7215)	Tim Sullivan mobile (phone # last four digits - 8377)	11/24/2013	21:58:24	n/a	"Totally brutal for all!"	CX6426
296	Text	Tim Sullivan mobile (phone # last four digits - 8377)	4c54b051-b551-4262-b042-67110e7750d3@iMessage: +XXXXXXXX8377	11/24/2013	21:58:57	n/a	"I consider that a Viking win."	CX6427
297	Call	Jim Breslawski mobile (phone # last four digits - 6788)	Patterson Dental (phone # last four digits - 3100)	12/9/2013	22:59:39	11 min 56 sec	[phone call]	CX4412 at -14416 (item 8117)
298	Call	David Misiak land line (phone # last four digits - 1652)	Dave Steck mobile (phone # last four digits - 1925)	1/6/2014	12:42:00	14 min	[phone call - not UTC]	CX2839 at -199
299	Text	Scott Anderson mobile (phone # last four digits - 7215)	Tim Sullivan mobile (phone # last four digits - 8377)	1/6/2014	22:09:04	n/a	"Happy New Year!!"	CX6428

#	Type	From	To	Date	Time (UTC)	Duration	Content	Supporting CX
300	Text	Tim Sullivan mobile (phone # last four digits - 8377)	4c54b051-b551-4262-b042-67110e7750d3@iMessage: +XXXXXXXX8377	1/6/2014	22:23:26	n/a	"8-7-1 and we win out pathetic division. Scary. At least we know we will be back next year. How 'bout y'all?"	CX6429
301	Text	Scott Anderson mobile (phone # last four digits - 7215)	Tim Sullivan mobile (phone # last four digits - 8377)	1/6/2014	22:30:24	n/a	"I grew up in SF so yes we will be back!!"	CX6430
302	Text	Tim Sullivan mobile (phone # last four digits - 8377)	4c54b051-b551-4262-b042-67110e7750d3@iMessage: +XXXXXXXX8377	1/6/2014	22:31:58	n/a	"Ahhhh. Yes. Congrats on 1980's. Good years for ya. Anything since? Finish this year out and then I'll eat this text."	CX6431
303	Text	Tim Sullivan mobile (phone # last four digits - 8377)	4c54b051-b551-4262-b042-67110e7750d3@iMessage: +XXXXXXXX8377	1/6/2014	22:34:20	n/a	"This close to being us in Carolina . . And also, "	CX6432
304	Text	Scott Anderson mobile (phone # last four digits - 7215)	Tim Sullivan mobile (phone # last four digits - 8377)	1/6/2014	22:36:48	n/a	"When win 5 Super Bowls call me! World champs don 't count!"	CX6433
305	Text	Tim Sullivan mobile (phone # last four digits - 8377)	4c54b051-b551-4262-b042-67110e7750d3@iMessage: +XXXXXXXX8377	1/6/2014	23:03:43	n/a	"One behind on SBs and 9 ahead on world championships."	CX6434
306	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	2/7/2014	15:34:14	n/a	"Our newest recruit!!" (attach. IMG951873.jpg)	CX0057 (MMS Messages Tab row 3) CX2874 CX4412 at -12131 (item 44661, 44662)

#	Type	From	To	Date	Time (UTC)	Duration	Content	Supporting CX
307	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	2/7/2014	16:21:28	n/a	"Funny! Can we trade? I'll take Anderson in Richmond & a 3rd round choice."	CX1102 (Chats Tab row 74) CX6515
308	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	2/7/2014	16:44:48	n/a	"Ha. I won't share that with Richard. :)"	CX1102 (Chats Tab row 75)
309	Text	Scott Anderson mobile (phone # last four digits - 7215)	Tim Sullivan mobile (phone # last four digits - 8377)	3/14/2014	0:05:03	n/a	"Go Vikes...Manziel Mania!!"	CX6436
310	Text	Tim Sullivan mobile (phone # last four digits - 8377)	4c54b051-b551-4262-b042-67110e7750d3@iMessage: +XXXXXXXX8377	3/14/2014	0:13:24	n/a	CX6437	
311	Text	Tim Sullivan mobile (phone # last four digits - 8377)	4c54b051-b551-4262-b042-67110e7750d3@iMessage: +XXXXXXXX8377	3/14/2014	23:38:00	n/a	"NIT . . NIT. :)"	CX6435
312	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	3/19/2014	2:16:28	n/a	"Tim: I'm updating our sales regions, and would appreciate having a look at your latest zone map. If you wouldn't mind, please send. Thanks. Cfc"	CX0057 (SMS Messages Tab row 45) CX4412 at -12166 (item 45897) CX6423
313	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	3/19/2014	2:16:32	n/a	"I've got Badgers in March. You?"	CX1102 (Chats Tab row 76) CX6516
314	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	3/19/2014	2:16:32	n/a	"Will do."	CX1102 (Chats Tab row 77)
315	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	3/19/2014	2:20:18	n/a	"Good pick, #2 seed. They'll have to get past Creighton & McDermott, will be tough."	CX1102 (Chats Tab row 78) CX2863

#	Type	From	To	Date	Time (UTC)	Duration	Content	Supporting CX
316	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	3/19/2014	2:20:53	n/a	"Excited to see Ivy (Harvard) as 12 seed this year. Might go to round 2!"	CX1102 (Chats Tab row 79) CX6517
317	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	3/19/2014	2:21:29	n/a	"So you're not declaring? Where did you go to college?"	CX1102 (Chats Tab row 80) CX6518
318	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	3/19/2014	2:22:34	n/a	"Penn. Our basketball program has been a shambles the last few years. Depressing. This time of year we're all Harvard fans."	CX1102 (Chats Tab row 81) CX6519
319	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	3/19/2014	2:22:56	n/a	"Ok. I've got Badgers. You've got Harvard. For a beer. 🍷🍷"	CX1102 (Chats Tab row 82) CX6520
320	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	3/19/2014	2:23:02	n/a	"I'm going with FL all the way, too tough I think."	CX1102 (Chats Tab row 83) CX6521
321	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	3/19/2014	2:24:02	n/a	"Count me in, I'll take that bet, I'm a man with more pride than brains."	CX1102 (Chats Tab row 84) CX6522
322	Text	Tim Sullivan mobile (phone # last four digits - 8377)	4c54b051-b551-4262-b042-67110e7750d3@iMessage: +XXXXXXXX8377	4/4/2014	1:11:18	n/a	"Congrats. Good for Big Ten. Now it's badgers turn. :)"	CX6438
323	Text	Scott Anderson mobile (phone # last four digits - 7215)	Tim Sullivan mobile (phone # last four digits - 8377)	4/4/2014	1:16:48	n/a	"Going to final four with Kari...we will cheer on the badgers, I like Bo!"	CX6439
324	Text	Tim Sullivan mobile (phone # last four digits - 8377)	4c54b051-b551-4262-b042-67110e7750d3@iMessage: +XXXXXXXX8377	4/4/2014	1:21:10	n/a	"I may be there with two of my boys. I'll text ya if we make it."	CX6440

#	Type	From	To	Date	Time (UTC)	Duration	Content	Supporting CX
325	Text	Scott Anderson mobile (phone # last four digits - 7215)	Tim Sullivan mobile (phone # last four digits - 8377)	4/4/2014	1:23:12	n/a	"Will buy you a beer!"	CX6441
326	Text	Tim Sullivan mobile (phone # last four digits - 8377)	4c54b051-b551-4262-b042-67110e7750d3@iMessage: +XXXXXXXX8377	4/4/2014	1:25:41	n/a	"Unless you're in a suite . . No beer. NCAA. :("	CX6442
327	Text	Scott Anderson mobile (phone # last four digits - 7215)	Tim Sullivan mobile (phone # last four digits - 8377)	4/7/2014	1:33:52	n/a	"Dude...great game, Badger nation was awesome. Am now a UConn fan!"	CX6443
328	Text	Tim Sullivan mobile (phone # last four digits - 8377)	4c54b051-b551-4262-b042-67110e7750d3@iMessage: +XXXXXXXX8377	4/7/2014	1:47:54	n/a	"Was that awesome or what?! Bad ending, but great game. One of my sons is HUGE UConn fan. Had them winning his bracket."	CX6444
329	Text	Tim Sullivan mobile (phone # last four digits - 8377)	4c54b051-b551-4262-b042-67110e7750d3@iMessage: +XXXXXXXX8377	4/7/2014	1:48:11	n/a	"Wow. Those your seats?!?!"	CX6445
330	Text	Scott Anderson mobile (phone # last four digits - 7215)	Tim Sullivan mobile (phone # last four digits - 8377)	4/7/2014	1:48:48	n/a	"Will tell you my hook up next time we are together...it is all about division 3, just like Bo. Say hi to Obama in DC!"	CX6446
331	Text	Scott Anderson mobile (phone # last four digits - 7215)	Tim Sullivan mobile (phone # last four digits - 8377)	4/7/2014	1:50:56	n/a	"Going to game Monday...I am the new Perry! "	CX6447
332	Text	Tim Sullivan mobile (phone # last four digits - 8377)	4c54b051-b551-4262-b042-67110e7750d3@iMessage: +XXXXXXXX8377	4/7/2014	1:51:12	n/a	"You not going to DC?"	CX6448
333	Text	Tim Sullivan mobile (phone # last four digits - 8377)	4c54b051-b551-4262-b042-67110e7750d3@iMessage: +XXXXXXXX8377	4/7/2014	1:54:52	n/a	"Had Bucky won I'd be staying too. Go UConn!!"	CX6449

#	Type	From	To	Date	Time (UTC)	Duration	Content	Supporting CX
334	Text	Scott Anderson mobile (phone # last four digits - 7215)	Tim Sullivan mobile (phone # last four digits - 8377)	4/7/2014	2:08:00	n/a	"Look who sat behind my kid at San Diego regional two weeks ago."	CX6450
335	Text	Tim Sullivan mobile (phone # last four digits - 8377)	4c54b051-b551-4262-b042-67110e7750d3@iMessage: +XXXXXXXX8377	4/7/2014	2:16:58	n/a	"That's cool. Did he take pic or sign autograph? Wait til I show you the Selfies my son took this weekend. Between final four and nascar today he was hilarious. "	CX6451
336	Text	Scott Anderson mobile (phone # last four digits - 7215)	Tim Sullivan mobile (phone # last four digits - 8377)	4/7/2014	2:18:40	n/a	"He was so nice to Cole, talked brackets with him all game."	CX6452
337	Text	Tim Sullivan mobile (phone # last four digits - 8377)	4c54b051-b551-4262-b042-67110e7750d3@iMessage: +XXXXXXXX8377	4/7/2014	2:20:59	n/a	"I can c you're warming up to Packers!! :)"	CX6454
338	Text	Scott Anderson mobile (phone # last four digits - 7215)	Tim Sullivan mobile (phone # last four digits - 8377)	4/7/2014	2:21:48	n/a	"Fuck you!"	CX6453
339	Text	Tim Sullivan mobile (phone # last four digits - 8377)	4c54b051-b551-4262-b042-67110e7750d3@iMessage: +XXXXXXXX8377	4/7/2014	2:22:16	n/a	"Literally lol"	CX6455
340	Text	Tim Sullivan mobile (phone # last four digits - 8377)	4c54b051-b551-4262-b042-67110e7750d3@iMessage: +XXXXXXXX8377	4/8/2014	1:17:52	n/a	"Same seats tonight?"	CX6456
341	Text	Scott Anderson mobile (phone # last four digits - 7215)	Tim Sullivan mobile (phone # last four digits - 8377)	4/8/2014	1:24:37	n/a	[Image]	CX6585
342	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Scott Anderson mobile (phone # last four digits - 7215)	4/8/2014	1:25:31	n/a	"Nice!! Go Huskies!"	CX6586
343	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	4/16/2014	17:37:29	n/a	"Got a minute?"	CX1102 (Chats Tab row 85) CX2864

#	Type	From	To	Date	Time (UTC)	Duration	Content	Supporting CX
344	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	4/16/2014	17:38:08	n/a	"In about 20 mins. Ok?"	CX1102 (Chats Tab row 86) CX6523
345	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	4/16/2014	17:40:22	n/a	"Good. Thanks."	CX1102 (Chats Tab row 87) CX6524
346	Call	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	4/16/2014	17:59:35	9 min 16 sec	[phone call]	CX1111 at -004 CX4413 at -0845 (item 4288)
347	Text	Tim Sullivan mobile (phone # last four digits - 8377)	4c54b051-b551-4262-b042- 67110e7750d3@iMessage: +XXXXXXXX8377	5/10/2014	20:56:35	n/a	"Watching The Players reminds me of a free lunch last fall. :)"	CX6457
348	Text	Scott Anderson mobile (phone # last four digits - 7215)	Tim Sullivan mobile (phone # last four digits - 8377)	5/10/2014	21:14:59	n/a	"So good!!"	CX6458
349	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	5/20/2014	13:28:33	n/a	"Thanks for Amazon change."	CX1102 (Chats Tab row 88) CX2865
350	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	5/20/2014	13:30:40	n/a	"I don't know what you're talking about. Do you have time to chat this am?"	CX1102 (Chats Tab row 89) CX6525
351	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	5/20/2014	13:32:37	n/a	"Talking about buy now direct. Can talk in the afternoon. Morning busy."	CX1102 (Chats Tab row 90) CX6616
352	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	5/20/2014	13:32:48	n/a	"I'm open between 12:00-3:00 eastern or after 6:00 PM. Not urgent"	CX1102 (Chats Tab row 91) CX6526

#	Type	From	To	Date	Time (UTC)	Duration	Content	Supporting CX
353	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	5/21/2014	11:50:26	n/a	"Time today? Sorry, got busy yesterday. Thanks."	CX1102 (Chats Tab row 92) CX6527
354	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	5/21/2014	12:05:15	n/a	"NP. 8:30 eastern?"	CX1102 (Chats Tab row 93) CX6528
355	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	5/21/2014	12:05:20	n/a	"Sure. Call my cell when available."	CX1102 (Chats Tab row 94) CX6530
356	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	5/21/2014	12:05:48	n/a	"9 ok."	CX1102 (Chats Tab row 95) CX6529
357	Call	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	5/21/2014	13:10:29	12 min 45 sec	[phone call]	CX1389 at -006 CX4413 at -0848 (item 4414)
358	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	5/21/2014	13:22:08	n/a	"Good discussion on your family foundation. Let me know if you want to discuss further on how we manage ours. :)"	CX1102 (Chats Tab row 96) CX6531
359	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	5/21/2014	17:57:20	n/a	"Thanks. Much appreciated."	CX1102 (Chats Tab row 97) CX6532
360	Text	Tim Sullivan mobile (phone # last four digits - 8377)	4c54b051-b551-4262-b042-67110e7750d3@iMessage: +XXXXXXX8377	6/29/2014	16:59:13	n/a	"Weekend lacrosse tourney here at st. Thomas academy. Just noticed today the neighbor. Nice building. :)"	CX6459
361	Text	Scott Anderson mobile (phone # last four digits - 7215)	Tim Sullivan mobile (phone # last four digits - 8377)	6/29/2014	18:25:04	n/a	"Too funny!!"	CX6460

#	Type	From	To	Date	Time (UTC)	Duration	Content	Supporting CX
363	Text	Scott Anderson mobile (phone # last four digits - 7215)	Chuck Cohen mobile (phone # last four digits - 1340)	7/16/2014	0:17:04	n/a	"Why are you in 3M suite and not me???"	CX0057 (Chats Tab row 93)
362	Text	Scott Anderson mobile (phone # last four digits - 7215)	Chuck Cohen mobile (phone # last four digits - 1340)	7/16/2014	0:31:57	n/a	"Look to your right...our suite is better...:"	CX0057 (Chats Tab row 94)
364	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	7/18/2014	13:03:01	n/a	"Got your message, out with my kid this morning, will call later. Heard rumbles about Ohio issue, I think it's resolved, want to talk about it. Sorry. Thanks."	CX1102 (Chats Tab row 98) CX2866
365	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	7/18/2014	13:20:00	n/a	"No worries. Call when available, but don't interrupt family time!!"	CX1102 (Chats Tab row 99) CX6533
366	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	7/18/2014	15:34:39	n/a	"Guess which one is mine..."	CX1102 (Chats Tab row 100) CX6534
367	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	7/18/2014	16:00:00	n/a	"Very cool!!"	CX1102 (Chats Tab row 101)
368	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	7/18/2014	20:16:54	n/a	"Sorry, on the run to meet my wife. Talk Monday? Thanks."	CX1102 (Chats Tab row 102) CX6535
369	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	7/18/2014	20:30:56	n/a	"NP. Enjoy the weekend."	CX1102 (Chats Tab row 103) CX6536
370	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	7/24/2014	17:27:58	n/a	"Available today?"	CX1102 (Chats Tab row 104) CX6537

#	Type	From	To	Date	Time (UTC)	Duration	Content	Supporting CX
371	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	7/24/2014	18:56:59	n/a	"Sorry. No. Early afternoon tomorrow?"	CX1102 (Chats Tab row 105) CX6538
372	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	7/24/2014	19:20:49	n/a	"No worries, tomorrow afternoon good with me. Thanks."	CX1102 (Chats Tab row 106) CX6539
373	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	7/25/2014	22:05:55	n/a	"Available??"	CX1102 (Chats Tab row 107) CX6540
374	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	7/25/2014	23:19:28	n/a	"Just landed. Call ya shortly? Too late?"	CX1102 (Chats Tab row 108) CX6541
375	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	7/25/2014	23:25:56	n/a	"Good now if u r."	CX1102 (Chats Tab row 109) CX6542
376	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	7/25/2014	23:34:24	n/a	"Give me 10 mins. Baggage claim and then to car. K?"	CX1102 (Chats Tab row 110) CX6543
377	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	7/25/2014	23:34:53	n/a	"KK. Thanks."	CX1102 (Chats Tab row 111) CX6544
378	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	7/25/2014	23:50:55	n/a	"Argh. Still waiting on baggage."	CX1102 (Chats Tab row 112) CX6545
379	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	7/25/2014	23:53:22	n/a	"Annoying. Where r u? I'm home in 10 mins. No worries, talk next week or over the weekend."	CX1102 (Chats Tab row 113) CX6546
380	Call	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	7/25/2014	23:57:27	10 min 42 sec	[phone call]	CX1390 at -008 CX4413 at -0853 (item 4590)

#	Type	From	To	Date	Time (UTC)	Duration	Content	Supporting CX
381	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	8/4/2014	23:33:34	n/a	"Tim: Need to talk about Rotert when u get a chance. Thanks."	CX2867
382	Call	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	8/5/2014	0:07:48	8 min 43 sec	[phone call]	CX1390 at -012 CX4413 at -0853 (item 4600)
383	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	9/9/2014	21:35:33	n/a	"Talk today? Thanks."	CX0057 (SMS Messages Tab row 40) CX2851 CX4412 at -12293 (item 50462)
384	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	9/10/2014	3:03:23	n/a	"Sorry. Just saw this. Tomorrow ok? Sons varsity soccer game now."	CX0057 (SMS Messages Tab row 38 and 39) CX2852 CX4412 at -12293 (item 50463 and 50464)
385	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	9/10/2014	3:04:30	n/a	"I sent this at 8:00 and didn't go thru. Argh. Chat tomorrow."	CX0057 (SMS Messages Tab row 37) CX2853 CX4412 at -12293 (item 50465)
386	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	9/10/2014	17:31:48	n/a	"Good. Available later? Thanks."	CX0057 (SMS Messages Tab row 36) CX2854
387	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	9/10/2014	17:31:50	n/a	[no content available]	CX4412 at -12293 (item 50466)
388	Call	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	9/10/2014	21:14:13	12 min 21 sec	[phone call]	CX1391 at -009 CX4412 at -10323 (item 22029)

#	Type	From	To	Date	Time (UTC)	Duration	Content	Supporting CX
389	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	9/25/2014	13:04:17	n/a	"John Cox says hello."	CX0057 (SMS Messages Tab row 31) CX2855 CX4412 at -12299 (item 50669)
390	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	9/25/2014	21:38:17	n/a	"Haha!"	CX0057 (SMS Messages Tab row 30) CX2856 CX4412 at -12299 (item 50670)
391	Text	Scott Anderson mobile (phone # last four digits - 7215)	Tim Sullivan mobile (phone # last four digits - 8377)	10/3/2014	22:37:07	n/a	"Beat so bad no shit from Packer nation..."	CX6461
392	Text	Tim Sullivan mobile (phone # last four digits - 8377)	4c54b051-b551-4262-b042- 67110e7750d3@iMessage: +XXXXXXXX8377	10/3/2014	22:37:48	n/a	"Wasn't worthy of a dig"	CX6462
393	Text	Scott Anderson mobile (phone # last four digits - 7215)	Tim Sullivan mobile (phone # last four digits - 8377)	10/3/2014	22:43:12	n/a	"Gophers on fire...Bucky nervous."	CX6463
394	Text	Tim Sullivan mobile (phone # last four digits - 8377)	4c54b051-b551-4262-b042- 67110e7750d3@iMessage: +XXXXXXXX8377	10/3/2014	22:44:23	n/a	"That's it"	CX6464
395	Text	Tim Sullivan mobile (phone # last four digits - 8377)	4c54b051-b551-4262-b042- 67110e7750d3@iMessage: +XXXXXXXX8377	10/25/2014	19:50:29	n/a	"What's worse. Wi loss to Northwestern or MN loss to IL? Big Ten not so pretty this year. "	CX6465
396	Text	Scott Anderson mobile (phone # last four digits - 7215)	Tim Sullivan mobile (phone # last four digits - 8377)	10/25/2014	20:12:24	n/a	"Someone will be the best of the worst. Hate that i even care!!!"	CX6466

#	Type	From	To	Date	Time (UTC)	Duration	Content	Supporting CX
397	Text	Tim Sullivan mobile (phone # last four digits - 8377)	4c54b051-b551-4262-b042-67110e7750d3@iMessage: +XXXXXXXX8377	10/27/2014	22:17:43	n/a	"Just heard about Andre today. Sorry for your loss. I heard only good things about him, but never had opportunity to meet him."	CX6467
398	Text	Scott Anderson mobile (phone # last four digits - 7215)	Tim Sullivan mobile (phone # last four digits - 8377)	10/27/2014	22:45:20	n/a	"Great guy...thanks for the note."	CX6468
399	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Paul Guggenheim mobile (phone # last four digits - 2444)	12/2/2014	17:00:24	n/a	"10 minutes. Sorry. Thanks"	CX0060 (Chats Tab row 171) CX3106 (iMessage Tab row 20)
400	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Paul Guggenheim mobile (phone # last four digits - 2444)	12/2/2014	17:00:31	n/a	"In vendor meeting."	CX0060 (Chats Tab row 172) CX3106 (iMessage Tab row 19)
401	Text	Paul Guggenheim mobile (phone # last four digits - 2444)	Chuck Cohen mobile (phone # last four digits - 1340)	12/2/2014	17:02:51	n/a	"No worries...I'm at my booth"	CX0060 (Chats Tab row 173) CX3106 (iMessage Tab row 18)
402	Text	Paul Guggenheim mobile (phone # last four digits - 2444)	Chuck Cohen mobile (phone # last four digits - 1340)	12/2/2014	17:03:49	n/a	"Whoever the vendor is... Make sure you leave some for us! ☺"	CX0060 (Chats Tab row 174) CX3106 (iMessage Tab row 17)
403	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	1/6/2015	23:29:27	n/a	"Good get. Well played."	CX2868
404	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	1/6/2015	23:46:31	n/a	"Thanks. Interesting process."	CX1102 (Chats Tab row 116) CX6547
405	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	1/6/2015	23:50:24	n/a	"I bet."	CX1102 (Chats Tab row 117) CX6548

#	Type	From	To	Date	Time (UTC)	Duration	Content	Supporting CX
406	Text	Stan Bergman mobile (phone # last four digits - 2691)	Chuck Cohen mobile (phone # last four digits - 1340)	1/10/2015	18:00:01	n/a	[no content available]	CX4412 at -26058 (item 7834)
407	Text	Stan Bergman mobile (phone # last four digits - 2691)	Chuck Cohen mobile (phone # last four digits - 1340)	1/10/2015	18:00:02	n/a	[no content available]	CX4412 at -26058 (item 7835)
408	Text	Stan Bergman mobile (phone # last four digits - 2691)	Chuck Cohen mobile (phone # last four digits - 1340)	1/10/2015	18:00:03	n/a	[no content available]	CX4412 at -26058 (item 7836)
409	Text	Stan Bergman mobile (phone # last four digits - 2691)	Chuck Cohen mobile (phone # last four digits - 1340)	1/10/2015	18:00:04	n/a	"Hi Chuck. Thanks for your nice card:). Appreciate. There must be a way for us to partner in some way and meet out mutual needs. You're the best in the bu"	CX0057 (SMS Messages Tab row 28)
410	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Stan Bergman mobile (phone # last four digits - 2691)	1/10/2015	19:06:43	n/a	[no content available]	CX4412 at -26058 (item 7839)
411	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Stan Bergman mobile (phone # last four digits - 2691)	1/10/2015	19:06:47	n/a	[no content available]	CX4412 at -26058 (item 7840)
412	Text	Tim Sullivan mobile (phone # last four digits - 8377)	4c54b051-b551-4262-b042-67110e7750d3@iMessage: +XXXXXXXX8377	2/21/2015	16:20:43	n/a	"Go Badgers!"	CX6469
413	Text	Scott Anderson mobile (phone # last four digits - 7215)	Tim Sullivan mobile (phone # last four digits - 8377)	2/21/2015	17:42:24	n/a	"Could care less today!"	CX6470
414	Text	Tim Sullivan mobile (phone # last four digits - 8377)	4c54b051-b551-4262-b042-67110e7750d3@iMessage: +XXXXXXXX8377	2/21/2015	17:44:30	n/a	"Nice. Where r Ya? I'm about to jump on snowmobile in N WI. Little different climate. "	CX6471
415	Text	Scott Anderson mobile (phone # last four digits - 7215)	Tim Sullivan mobile (phone # last four digits - 8377)	2/21/2015	18:27:09	n/a	"Calusa Pines...enjoy!"	CX6472
416	Text	Paul Guggenheim mobile (phone # last four digits - 2444)	Chuck Cohen mobile (phone # last four digits - 1340)	3/10/2015	17:09:01	n/a	"Are you at the IDS?"	CX0057 (SMS Messages Tab row 27) CX3106 (SMS Tab row 14)

#	Type	From	To	Date	Time (UTC)	Duration	Content	Supporting CX
417	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Paul Guggenheim mobile (phone # last four digits - 2444)	3/10/2015	17:24:00	n/a	"Yes, just spent the day at show. You?"	CX3106 (SMS Tab row 11)
418	Text	Paul Guggenheim mobile (phone # last four digits - 2444)	Chuck Cohen mobile (phone # last four digits - 1340)	3/10/2015	17:27:00	n/a	"Yes... Heading to the Kavo event. Are you going there?"	CX0057 (SMS Messages Tab row 26) CX3106 (SMS Tab row 13)
419	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Paul Guggenheim mobile (phone # last four digits - 2444)	3/10/2015	17:27:22	n/a	"Yes, me too. See you there."	CX3106 (SMS Tab row 10)
420	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Paul Guggenheim mobile (phone # last four digits - 2444)	3/10/2015	17:28:11	n/a	"ĎDon't suck up so much that you get Pelton opened this year, give me" -- "Ď a little break! □ □"	CX3106 (SMS Tab row 9 and 8)
421	Text	Paul Guggenheim mobile (phone # last four digits - 2444)	Chuck Cohen mobile (phone # last four digits - 1340)	3/11/2015	9:43:59	n/a	"You on the floor?"	CX0057 (SMS Messages Tab row 25) CX3106 (SMS Tab row 12)
422	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Paul Guggenheim mobile (phone # last four digits - 2444)	3/11/2015	12:14:53	n/a	"Yes. You?"	CX3106 (SMS Tab row 7)
423	Call	Chuck Cohen mobile (phone # last four digits - 1340)	Paul Guggenheim mobile (phone # last four digits - 2444)	3/11/2015	12:18:09	55 sec	[phone call]	CX4412 at -05930 (item 27241) CX1392 at -015
424	Text	Tim Sullivan mobile (phone # last four digits - 8377)	4c54b051-b551-4262-b042-67110e7750d3@iMessage: +XXXXXXXX8377	5/5/2015	0:54:14	n/a	"Hey Chuck, I heard rumor that you've been REDACTED. I hope not true of course, but if so know we are thinking of you."	CX2869
425	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	5/5/2015	1:43:00	n/a	"No rumor: REDACTED"	CX6549

#	Type	From	To	Date	Time (UTC)	Duration	Content	Supporting CX
426	Text	Tim Sullivan mobile (phone # last four digits - 8377)	4c54b051-b551-4262-b042-67110e7750d3@iMessage: +XXXXXXXX8377	5/5/2015	1:44:03	n/a	"I hope REDACTED my friend."	CX6550
427	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	5/5/2015	1:44:24	n/a	"After years of threats, REDACTED. Should be just fine by the end of the summer."	CX6551
428	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	5/5/2015	1:45:09	n/a	"REDACTED, thank God. Just a bit of a distraction, I'll be fine."	CX6552
429	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	5/5/2015	1:45:32	n/a	"Thanks for the kind thoughts,check your REDACTED tonite!"	CX6553
430	Text	Tim Sullivan mobile (phone # last four digits - 8377)	4c54b051-b551-4262-b042-67110e7750d3@iMessage: +XXXXXXXX8377	5/5/2015	1:45:37	n/a	"Let me know when it's ok to tease Ya about that. :) Until then, prayers your way!!"	CX6554
431	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	5/5/2015	1:46:31	n/a	"Can't wait to report this conversation on my monthly report to the Texas AG: 'I told Tim Sullivan to grab his balls!' Let's see what they do with that comment!"	CX0057 (Chats Tab row 3) CX6555
432	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	5/5/2015	1:46:40	n/a	"Teasing and jokes are always welcome!! :-)"	CX6556
433	Text	Tim Sullivan mobile (phone # last four digits - 8377)	4c54b051-b551-4262-b042-67110e7750d3@iMessage: +XXXXXXXX8377	5/5/2015	1:46:47	n/a	"Now that's funny!!"	CX6557

#	Type	From	To	Date	Time (UTC)	Duration	Content	Supporting CX
434	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	5/5/2015	1:47:38	n/a	"Thanks, be well!"	CX6558
435	Text	Scott Anderson mobile (phone # last four digits - 7215)	Tim Sullivan mobile (phone # last four digits - 8377)	5/10/2015	0:00:00	n/a	"Fowler is a stud!! Great tourney!"	CX6474
436	Text	Tim Sullivan mobile (phone # last four digits - 8377)	4c54b051-b551-4262-b042- 67110e7750d3@iMessage: +XXXXXXXX8377	5/10/2015	0:02:30	n/a	"Whole family was cheering him on here. Mom too. :) Amazing he pulled it off after all the crap this week."	CX6475
437	Text	Tim Sullivan mobile (phone # last four digits - 8377)	4c54b051-b551-4262-b042- 67110e7750d3@iMessage: +XXXXXXXX8377	5/10/2015	23:51:41	n/a	"I was in that bunker!"	CX6473
438	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	5/13/2015	11:01:12	n/a	"Hysterical!! Thanks!!"	CX6559
439	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	5/13/2015	11:27:33	n/a	[illegible]	CX6584
440	[Deleted]	[Deleted]	[Deleted]	[Deleted]	[Deleted]	[Deleted]	[Deleted]	[Deleted]
441	Call	Chuck Cohen mobile (phone # last four digits - 1340)	Paul Guggenheim mobile (phone # last four digits - 2444)	5/15/2015	17:42:17	10 min 16 sec	[phone call]	CX1393 at -004 CX4413 at -0436 (item 11163)

#	Type	From	To	Date	Time (UTC)	Duration	Content	Supporting CX
442	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Scott Anderson mobile (phone # last four digits - 7215)	5/19/2015	20:34:00	n/a	"I'm doing well, and expect a quick recovery. No worries! Even with REDACTED, I'm twice the man Guggenheim is --- be sure to tell him that!" [not UTC]	CX1500
443	Text	Scott Anderson mobile (phone # last four digits - 7215)	Chuck Cohen mobile (phone # last four digits - 1340)	5/19/2015	22:39:50	n/a	"Paul got me in the loop on your short term challenge. My brother in law had REDACTED. He is a neuro surgeon which is sometimes annoying. If you ever want to talk to him let me know. He is a great guy. Scott A." [not UTC]	CX0057 (Chats Tab row 95)
444	Text	Scott Anderson mobile (phone # last four digits - 7215)	Chuck Cohen mobile (phone # last four digits - 1340)	5/20/2015	0:35:02	n/a	"Five times Sullivan!!!"	CX0057 (Chats Tab row 96)
445	Text	Scott Anderson mobile (phone # last four digits - 7215)	Chuck Cohen mobile (phone # last four digits - 1340)	5/20/2015	0:35:46	n/a	"Serious about my bro in law if you ever want to talk to him."	CX0057 (Chats Tab row 97)
446	Text	Scott Anderson mobile (phone # last four digits - 7215)	Chuck Cohen mobile (phone # last four digits - 1340)	5/20/2015	0:39:09	n/a	"25 years in the clear...you will do great!"	CX0057 (Chats Tab row 98)
447	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Stan Bergman mobile (phone # last four digits - 2691)	6/5/2015	11:30:01	n/a	[no content available]	CX4412 at -26268 (item 15333)
448	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Stan Bergman mobile (phone # last four digits - 2691)	6/5/2015	11:30:01	n/a	[no content available]	CX4412 at -26268 (item 15334)

#	Type	From	To	Date	Time (UTC)	Duration	Content	Supporting CX
449	Text	Michelle Lewis mobile (phone # last four digits - 3590)	Chuck Cohen mobile (phone # last four digits - 1340)	7/18/2015	20:27:48	n/a	"Yes. I'll get it back over tonight. Just leaving a wedding in Milwaukee. When do you think I should tell Schein? I'll probably reach out to Tim first."	CX0057 (Chats Tab row 103)
450	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Michelle Lewis mobile (phone # last four digits - 3590)	7/18/2015	20:30:56	n/a	"Good idea. That's a tough conversation. It will go over easier if you assure him no issues transitioning your current territory. "	CX0057 (Chats Tab row 104)
451	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Michelle Lewis mobile (phone # last four digits - 3590)	7/18/2015	20:31:42	n/a	"Agree talk to Tim. Try the 'Schein is just too big now' angle. He can't argue too much with that one."	CX0057 (Chats Tab row 105)
452	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Michelle Lewis mobile (phone # last four digits - 3590)	7/21/2015	2:18:57	n/a	"Suggest you get a mentor who can help you make the transition from Schein to Benco. Some things you'll like, some things will frustrate you. "	CX0057 (Chats Tab row 106)
453	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Michelle Lewis mobile (phone # last four digits - 3590)	7/21/2015	2:26:52	n/a	"Let's let this idea ruminate for a few days while you get thru the conversation with Schein, and then revisit. No rush now."	CX0057 (Chats Tab row 107)
454	Text	Mark Mlotek mobile (phone # last four digits - 6968)	Rick Cohen mobile (phone # last four digits - 2279)	10/14/2015	15:34:25	n/a	"Mark Mlotek here...free for a quick call so can understand why we canceled?"	CX1498 (SMS Tab row 3) CX4412 at -23884 (item123417)

#	Type	From	To	Date	Time (UTC)	Duration	Content	Supporting CX
455	Text	Rick Cohen mobile (phone # last four digits - 2279)	Mark Mlotek mobile (phone # last four digits - 6968)	10/14/2015	15:40:24	n/a	"OK... but I think we should have outside counsel on the call. We are concerned with the various anti trust cases and better safe than sorry."	CX1498 (SMS Tab row 4) CX4412 at -23884 (item123426)
456	Text	Mark Mlotek mobile (phone # last four digits - 6968)	Rick Cohen mobile (phone # last four digits - 2279)	10/14/2015	15:41:36	n/a	"Great. No issues. Just tell me when it can work from your end."	CX1498 (SMS Tab row 5) CX4412 at -23884 (item123428)
457	Text	Rick Cohen mobile (phone # last four digits - 2279)	Mark Mlotek mobile (phone # last four digits - 6968)	10/14/2015	15:42:12	n/a	[no content available]	CX4412 at -23884 (item123429)
458	Text	Mark Mlotek mobile (phone # last four digits - 6968)	Rick Cohen mobile (phone # last four digits - 2279)	10/14/2015	17:46:09	n/a	[no content available]	CX4412 at -23885 (item123442)
459	Text	Mark Mlotek mobile (phone # last four digits - 6968)	Rick Cohen mobile (phone # last four digits - 2279)	10/14/2015	17:46:47	n/a	[no content available]	CX4412 at -23885 (item123443)
460	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Scott Anderson mobile (phone # last four digits - 7215)	10/22/2015	14:28:39	n/a	"Driver says 'Go Pack Go!'"	CX6587
461	Call	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	11/3/2015	13:50:44	4 min 59 sec	[phone call]	CX0057 (Call Log Tab row 5) CX1395 at -071 CX4413 at -0886 (item 5847)
462	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Paul Guggenheim mobile (phone # last four digits - 2444)	11/3/2015	14:01:41	n/a	"Got a minute?"	CX3106 (iMessage Tab row 14)
463	Text	Paul Guggenheim mobile (phone # last four digits - 2444)	Chuck Cohen mobile (phone # last four digits - 1340)	11/3/2015	14:02:06	n/a	"Can I call you in 30?"	CX3106 (iMessage Tab row 13)
464	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Paul Guggenheim mobile (phone # last four digits - 2444)	11/3/2015	14:02:19	n/a	"Yes, please, on my cell. Thanks."	CX3106 (iMessage Tab row 12)
465	Text	Paul Guggenheim mobile (phone # last four digits - 2444)	Chuck Cohen mobile (phone # last four digits - 1340)	11/3/2015	14:02:30	n/a	"Got it...will do."	CX3106 (iMessage Tab row 11)

#	Type	From	To	Date	Time (UTC)	Duration	Content	Supporting CX
466	Call	Paul Guggenheim mobile (phone # last four digits - 2444)	Chuck Cohen mobile (phone # last four digits - 1340)	11/3/2015	14:31:10	7 min 57 sec	[phone call]	CX1395 at -071 CX4413 at -0469 (item 12419)
467	Call	Chuck Cohen mobile (phone # last four digits - 1340)	Dave Steck land line (phone # last four digits - 2568)	11/9/2015	20:01:46	11 min 20 sec	[phone call]	CX0057 (Call Log Tab row 4) CX2963
468	Text	Paul Guggenheim mobile (phone # last four digits - 2444)	Chuck Cohen mobile (phone # last four digits - 1340)	11/10/2015	19:56:17	n/a	"Chuck, can you do lunch Tuesday at the greater New York meeting?"	CX3106 (iMessage Tab row 10)
469	Text	Paul Guggenheim mobile (phone # last four digits - 2444)	Chuck Cohen mobile (phone # last four digits - 1340)	11/12/2015	14:31:28	n/a	"Lunch on Tuesday?"	CX3106 (iMessage Tab row 9)
470	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Paul Guggenheim mobile (phone # last four digits - 2444)	11/12/2015	23:34:38	n/a	"Paul. Sorry for the delayed response. Spoke with our attorney this week and I think we should pass on any conversations until current anti-trust issues are resolved. Thanks."	CX3106 (iMessage Tab row 8)
471	Text	Paul Guggenheim mobile (phone # last four digits - 2444)	Chuck Cohen mobile (phone # last four digits - 1340)	11/13/2015	0:16:31	n/a	"Ok...sounds good. Catch up with you then."	CX3106 (iMessage Tab row 7)
472	Text	Tim Sullivan mobile (phone # last four digits - 8377)	4c54b051-b551-4262-b042-67110e7750d3@iMessage: +XXXXXXXX8377	11/29/2015	0:51:43	n/a	The Ax remains "Home"!! :)	CX6476
473	Text	Scott Anderson mobile (phone # last four digits - 7215)	Tim Sullivan mobile (phone # last four digits - 8377)	11/30/2015	13:41:06	n/a	"Skol Vikings!!"	CX6477
474	Text	Tim Sullivan mobile (phone # last four digits - 8377)	4c54b051-b551-4262-b042-67110e7750d3@iMessage: +XXXXXXXX8377	11/30/2015	13:41:57	n/a	"Congrats on another reg season win."	CX6478
475	Text	Scott Anderson mobile (phone # last four digits - 7215)	Tim Sullivan mobile (phone # last four digits - 8377)	11/30/2015	13:42:23	n/a	"Discount Double Check!"	CX6479

#	Type	From	To	Date	Time (UTC)	Duration	Content	Supporting CX
476	Text	Tim Sullivan mobile (phone # last four digits - 8377)	4c54b051-b551-4262-b042-67110e7750d3@iMessage: +XXXXXXXX8377	12/1/2015	0:54:34	n/a	"Ever hear of school called Gustavous? They are interested in my son for soccer, but their academic program looks suspect."	CX6480
477	Text	Scott Anderson mobile (phone # last four digits - 7215)	Tim Sullivan mobile (phone # last four digits - 8377)	12/1/2015	0:59:18	n/a	"Ha!! Only I could get your kid in!!"	CX6481
478	Text	Tim Sullivan mobile (phone # last four digits - 8377)	4c54b051-b551-4262-b042-67110e7750d3@iMessage: +XXXXXXXX8377	12/1/2015	1:00:13	n/a	"I thought you graduated in 1962? Was it 1862?"	CX6482

CX7100

Redacted in Entirety

CX8002

Redacted in Entirety

CX8004

Redacted in Entirety

CX8006

PUCKETT

June 25, 2018
9:05 a.m.

Deposition of JUSTIN PUCKETT, held at the offices of MB2 Dental Solutions, 2403 Lacy Lane, Carrollton, Texas, before Susan S. Klinger, a Registered Merit Reporter and Certified Realtime Reporter of the State of Texas.

PUCKETT

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PUCKETT

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(Appearing telephonically)

PUCKETT

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1 PUCKETT
2 JUSTIN PUCKETT,
3 having been first duly sworn testified as
4 follows:

EXAMINATION

BY MR. SOLOMON:

7 Q. All right. Good morning, Justin.

8 A. Good morning.

9 Q. Thanks for being here. I
10 appreciate --

11 A. Of course.

12 Q. -- your time. As you know, I'm
13 Ronnie Solomon. I'm an attorney with the
14 Federal Trade Commission. On the line as well
15 is my colleague, Lin Kahn, is also an attorney
16 with the Federal Trade Commission.

17 MR. SOLOMON: And would counsel for
18 the respondents state their appearances for
19 the --

20 MS. FINCHER: Lauren Fincher with
21 Locke Lord, here on behalf of Henry Schein.

22 MR. McDONALD: John McDonald from
23 Locke Lord, here on behalf of Henry Schein.

24 MR. LONG: Jim Long with Briggs &
25 Morgan on behalf of Patterson.

1 PUCKETT
2 MR. SOLOMON: Carrie.
3 MS. AMEZCUA: Carrie Amezcua from
4 Buchanan Ingersoll & Rooney on behalf of
5 Benco Dental.

6 MS. FINCHER: And, Ronnie, just
7 before we get started, I would like to put
8 on the record that we have an agreement
9 that one objection by one party is an
10 objection for all, just to confirm.

11 MR. SOLOMON: Yes. I have no
12 problem with that.

13 Q. Mr. Puckett, have you been deposed
14 before?

15 A. I have.

16 Q. Okay. So you probably understand
17 how this goes?

18 A. Yes.

19 Q. I will just go over a couple of
20 ground rules just for the record.

21 A. Yes.

22 Q. And just in case, as you can see, we
23 have a court reporter here this morning. She
24 is taking down everything that I say and
25 everything that you say and everything that

1 PUCKETT
2 counsel opposing -- or respondents' counsel
3 will say as well. So it is really important
4 that you just provide a verbal response to all
5 of our questions and try and avoid any head
6 nods or gestures. Is that okay?

7 A. Yes.

8 Q. And if at any point throughout the
9 day you want to take a break, you get tired,
10 you want to grab some water, just let me know
11 and that's totally fine. We can take a break.
12 I will try and break every hour or so.

13 A. Cool.

14 Q. But if you get tired before then,
15 just let me know. If there is a question
16 pending or we're in the middle of a line of
17 questioning, we just ask that you just finish
18 the -- you know, answer the question first
19 before we go off the record. Is that okay?

20 A. Yes.

21 Q. And at any point today if I ask a
22 question that seems unclear or is vague or you
23 just don't understand what I'm asking you, do
24 let me know and I will do my best to just
25 rephrase the question.

1 PUCKETT
2 So I will start off today asking you
3 questions, and then respondents will have an
4 opportunity to do the same as well, and then I
5 will plan to reserve some time for rebuttal,
6 just so you understand how things will go down.

7 A. Okay.

8 Q. Okay. Mr. Puckett, is there any
9 reason that you can't provide truthful and
10 accurate testimony today?

11 A. No, sir.

12 Q. Mr. Puckett, would you mind just
13 stating your name for the record?

14 A. Yes. Justin Michael Puckett.

15 Q. Who is your employer?

16 A. My employer is MB2 Dental Solutions.

17 Q. And what is MB2 Dental Solutions?

18 A. We are a -- what is called a DSO,
19 which is a dental support organization, which
20 is a fancy made-up term for -- we do all the
21 back office support for dental offices, meaning
22 legal, IT, pay the bills, HR, basically
23 anything nonclinical.

24 The whole rocket science behind the
25 whole industry is that if you do that, then

1 PUCKETT
2 dentists can focus more on patient care, and
3 open -- be a little more efficient on the
4 business side of things and be open more days,
5 and so that is what we do for what -- we call
6 them affiliated offices throughout Texas and
7 the U.S.

8 Q. Would you say MB2 is what is
9 sometimes called a corporate dental practice?

10 MS. FINCHER: Objection to form.

11 A. Yes. Corporate -- you know, again,
12 these are all made-up terms by ourselves. That
13 is what is great about a new industry. So
14 let's see, DSO, corporate group, group
15 practice, chains, you know, it is -- we used to
16 call ourselves DPOs, dental practice
17 organizations, so it kind of -- it is all
18 resolving and, of course, the spectrum is wide
19 upon which every group -- every group is a
20 little different.

21 Q. Got it. So are all of the affiliate
22 practices of MB2 under common ownership?

23 A. Yes. They are now, yes.

24 Q. And what is the ownership structure
25 like?

1 PUCKETT

2 A. We have -- I guess on legality,
3 every -- because due to the corporate practice
4 of medicine rules, we have -- every practice is
5 either a PC or PLLC. It is owned by a local
6 dentist, so of our -- we have 90, I think 95
7 practices, we have about 42 or 43 individual
8 owners. They then enter into a management
9 services agreement with MB2 Dental Solutions.
10 And that is how the ownership structure is set
11 up of MB2 Dental.

12 These dentists also own a piece of
13 that entity as well, so it is made up of -- I
14 think we have 44 or 43 -- I can't remember
15 exactly -- dentists.

16 Q. How many different dental practices
17 are a part of MB2?

18 A. I think it is 95 right now.

19 Q. Where are they all located?

20 A. Texas, New Mexico, Louisiana,
21 Oklahoma, Tennessee and Alaska.

22 Q. Has MB2 been expanding in recent
23 years?

24 A. Yes, sir.

25 Q. What has been the rate of expansion?

1 PUCKETT

2 A. I would say variable, but, you know,
3 a little bit each year.

4 Q. And how long have you worked at MB2?

5 A. Since December of 2013.

6 Q. And what is your current title?

7 A. President.

8 Q. And what are your duties and
9 responsibilities as president of MB2?

10 A. I handle all -- I'm a lawyer, I
11 guess by -- in a past life, so I still handle
12 and oversee all legal ramifications for the
13 business. In the role of president, most of my
14 job is spent dealing with professional
15 baby-sitting or putting out fires every day.
16 But no, I deal with mostly growth. So a lot of
17 my job is spent on the phone or working with
18 our local owners in order to advance their, you
19 know, little mini empires within our company.

20 So just working with the young
21 entrepreneurs to kind of help them grow their
22 business.

23 Q. Have you been president the whole
24 time that you have been at MB2 Dental
25 Solutions?

1 PUCKETT

2 A. No. I was general counsel for the
3 first I would say eight months maybe, and then
4 was promoted to president thereafter, so a vast
5 majority of it.

6 Q. So sometime around August or
7 September 2014 --

8 A. Yes.

9 Q. -- you were promoted --

10 A. I think it was August of '14, if
11 I'm -- maybe July, but right around there.

12 Q. And what was the reason for your
13 promotion?

14 A. I guess they thought I could do
15 things outside of just legal, yes.

16 Q. Good reason.

17 A. I guess you would have to ask them,
18 but I was one of the first outside hires
19 outside of kind of a family business at the
20 time, a bunch of dentists. And so I think they
21 just wanted -- I had some experience in dental,
22 and so they wanted someone to kind of help
23 expand.

24 Q. Prior to working at MB2 Dental,
25 where did you work?

1 PUCKETT

2 A. I worked at another DSO called Floss
3 Dental based in Dallas.

4 Q. How long did you work at Floss
5 Dental?

6 A. About a year and a half.

7 Q. And what was your role at Floss
8 Dental?

9 A. It was I think only three people, so
10 I kind of -- we had every title. I think I
11 was -- my technical title I want to say was VP
12 of finance and general counsel.

13 Q. Any other titles that you held at
14 Floss Dental?

15 A. No, not to my knowledge.

16 Q. And then prior to Floss, where did
17 you work?

18 A. I was at a law firm in Dallas called
19 Andrews Kurth.

20 Q. And what was your position at
21 Andrews Kurth?

22 A. Associate. I was in the real estate
23 and M&A section.

24 Q. Very different from your current
25 role.

1 PUCKETT

2 A. Very different, yes.

3 Q. And prior to Andrews Kurth, where
4 were you?

5 A. I was at Andrews Kurth for the
6 longest period, and then I clerked at a few
7 other firms or intern, whatever, at a few other
8 firms here in Dallas, and then as well as with
9 Exxon Mobil in Houston in their tax department.

10 Q. You were an extern or an intern with
11 Exxon Mobil?

12 A. Yeah, two different times, so about
13 nine months total in their international tax
14 department.

15 Q. Any other important roles that you
16 have held in the last 15 years that we haven't
17 talked about?

18 A. I was the manager of a Segway tour
19 shop in Washington, D.C. for two summers, so...

20 Q. Okay. I think that covers it.

21 A. That is it.

22 Q. So we talked a little bit about the
23 corporate organization of MB2. Does MB2 own
24 the clinical assets of all of its associate
25 practices?

1 PUCKETT

2 A. We do not. I guess I will make it a
3 distinction here. We do not -- and I assume
4 most lawyers on this call know you are not
5 allowed to -- until October 1st of last year,
6 we were truly set up as 90 -- or at that time
7 it was 87 separate entities. MB2 didn't even
8 share a stream of profits or anything. It was
9 operated on a fixed-fee break-even type basis.

10 That was just because we were owned
11 privately. We partnered with a private equity
12 group in October of last year, October 1st.
13 And so at that time we did have to go through a
14 legal restructuring to now where MB2 does.

15 We have one main entity, MB2, as
16 opposed to just all the others, but we still --
17 no, MB2 does not own any clinical assets. They
18 only own a portion of the nonclinical assets.

19 Q. Do you know what that portion is?

20 A. It is variable. We operate -- we're
21 kind of unique in the space. We operate it --
22 it is a true joint venture, so anywhere from --
23 on the lowest end, probably the doctor would
24 own 20 percent. On the highest end, 50 percent
25 or a little more than that. So it just depends

1 PUCKETT

2 on the market, the doctor, and kind of no
3 set -- there is no set guidelines.

4 Q. So when you say "joint venture," you
5 mean a joint venture between the doctor and MB2
6 Dental?

7 A. Yes, I do, yes. So it is a
8 partnership in every sense of -- every sense of
9 the word, I guess, from the local doctor.

10 Q. Does MB2 own anything else in the
11 practice?

12 MS. FINCHER: Object to form.

13 A. I'm not -- no, just -- we -- no,
14 they don't. I'm not sure how to answer the
15 question.

16 Q. So prior to October 1st of last year
17 when MB2 partnered with a private equity group,
18 was there common ownership among all of the
19 individual practices?

20 MS. FINCHER: Object to the form.

21 A. There -- not on every practice, no.
22 Our founder, Dr. Chris Villanueva, I would say
23 owned a portion of most -- I'll rough guess it
24 at 80 of the 87, and that was minority interest
25 anywhere from 20 to 30 percent, but other than

1 PUCKETT
2 that, no, it was just a bunch of dentists
3 together. So some of our entities had 35
4 dentists ownerships in one.
5 Q. So you said 80 of the 87 practices
6 were owned by Dr. Villanueva?
7 A. A portion of those practices.
8 Q. A portion. Do you know what the
9 portion was or did it vary?
10 A. Completely variable, anywhere
11 between 15 and 20 percent of each practice.
12 Q. And how about the other seven
13 practices?
14 A. Those were just owned by other
15 dentists, not him, so just -- I mean, we have
16 at that time I would guess 38, 39 dentists that
17 made up our ownership pool. So we weren't very
18 sophisticated. It was -- you know, we would
19 find a practice to partner with and they would
20 pass the bucket around like who had money to
21 invest in each other, and that is how it kind
22 of -- that is the rocket science, I guess, idea
23 or, you know, that is how we did it.
24 Q. Was it still classified as a DSO?
25 A. It is -- you know, again, there is

1 PUCKETT
2 I just think we are something unique among the
3 various DSOs, which on the spectrum, you know,
4 you have some that are 100 percent corporately
5 owned and, you know, all they -- they employ an
6 associate model. So, you know, it is just --
7 we're just kind of somewhere on the other end
8 of the spectrum as far as DSOs go.
9 Q. How does MB2 oversee all of its
10 practices?
11 A. You know, we say we don't oversee
12 anything. We have a few commonalities. We
13 employ a compliance department across every
14 office. We employ a -- the same accounting
15 department books and records, so we, you know,
16 are now on this -- we use QuickBooks. We pay
17 the bills on every office and we do payroll
18 with ADP for every office. Those are the only,
19 what we call kind of non-negotiables when you
20 are part of MB2.
21 Everything else is basically, you
22 know, billing, collections, marketing,
23 operations, legal IT. It is more of a
24 practice-specific initiative that we determine
25 at the time of partnership, and that, to be

1 PUCKETT
2 not a -- even the association of DSOs, or it is
3 called ADSO, they don't have a defined --
4 they're making it a defined term. I don't
5 know. It just depends on your definition of
6 it. The ADA, American Dental Association,
7 called us a hybrid DSO because of our
8 structure. So I consider on the legality
9 terms, yes, because we provide corporate
10 services, but that is my own definition.
11 Q. You mentioned the term "hybrid DSO."
12 Do you know what that means?
13 A. No, I don't think the ADA would have
14 meant it. I think they meant that it is not
15 DSO, but it is not private practice, which is
16 the two spectrums, DSO and private practice,
17 and so they called us something in the middle,
18 so they used -- they preferred the term
19 "hybrid," so --
20 Q. And what did --
21 A. -- just different.
22 Q. And what did you consider it to be?
23 A. Yeah, I think we're -- I always say
24 we're the least corporate, corporate group.
25 There is not, you know, a perfect definition.

1 PUCKETT
2 honest, is fluid throughout the whole term.
3 Q. Is there centralized -- is there --
4 strike that.
5 Is there a department that conducts
6 centralized purchasing of supplies and
7 equipment?
8 A. Yeah, we call that department
9 procurement. It is made up of one to one and a
10 half people, ranging from basically anything
11 that is purchased in the practice from printing
12 paper to gloves.
13 Q. That would include equipment as
14 well?
15 A. Equipment, all across the board.
16 Q. So the procurement practice procures
17 supplies for all of MB2's dental practices?
18 A. Yeah, they facilitate it, because
19 every practice is different. Every practice is
20 different -- what do you call it, I guess
21 preferences, so they act as the go-between
22 between the vendor and their office, with the
23 whole theory being we don't want a doctor
24 spending six hours searching for a certain
25 grape-flavored gloves. Our guy here, Johnny

1 PUCKETT
 2 Wynn, who has been with us since inception, he
 3 knows very well, he knows the catalogs of every
 4 manufacturer, every distributor, so he's a big
 5 help on that.
 6 Q. So the procurement department
 7 provides guidance to the --
 8 A. Yes.
 9 Q. -- dentists?
 10 A. We do not offer -- we do not dictate
 11 what they can or cannot buy, so if the doctor
 12 calls today and says he wants large
 13 grape-flavored gloves, we will go find them on
 14 the catalog and send an email to him saying,
 15 here is the button, click it if you want to buy
 16 it.
 17 Q. How often does that happen?
 18 A. Every day, multiple times a day.
 19 Q. So dentists very frequently want to
 20 purchase supplies and equipment that they
 21 prefer?
 22 MS. FINCHER: Object to the form.
 23 A. Yeah. Again, I don't know how
 24 rabbit hole you want me to go down. We operate
 25 on what is called a formulary of supplies,

1 PUCKETT
 2 products among many other medical field type
 3 products.
 4 Q. Is MB2 a Schein customer?
 5 A. We are, yes.
 6 Q. For how long -- strike that.
 7 How long has MB2 been a Schein
 8 customer for?
 9 A. Since inception, which was 2007. It
 10 was at that time called DPTX, or Dental
 11 Professionals of Texas, which we did a name
 12 change in 2012 when we expanded outside of
 13 Texas, and they have been a Henry Schein
 14 customer since 2007. At that point they only
 15 had one office, so it wasn't a DSO, but...
 16 Q. Which department within Henry Schein
 17 or which division -- strike that.
 18 Which division within Henry Schein
 19 does MB2 Dental work with?
 20 A. I'm not familiar with how they
 21 organize their departments. We work with a lot
 22 of different people within Henry Schein. I'm
 23 unfamiliar with the specific departments.
 24 Q. Do you know whether MB2 works with
 25 Schein special markets division?

1 PUCKETT
 2 meaning how we do it is we get together once a
 3 year with some doctors who volunteer to take a
 4 day off and they go and sit in this room and
 5 they go over Henry Schein's or whoever's --
 6 Patterson's catalog, and we try to narrow the
 7 scope, the whole mind being a Costco kind of
 8 thing.
 9 If you narrow it, you can buy more.
 10 That probably gets us to about 80 to 90 percent
 11 because it's just a bunch of doctors talking
 12 about which materials best -- we offer a bunch
 13 of different kinds of each one. Just let's say
 14 there is 50 types of gloves, we will offer six.
 15 So that generally gets us there.
 16 But, you know, when you have -- when
 17 our model with the different doctors, you know,
 18 they all have different opinions, so it is --
 19 it is a small one-off request, but you get them
 20 every day.
 21 Q. Are you familiar with a company
 22 called Henry Schein?
 23 A. Yes.
 24 Q. And what is Henry Schein?
 25 A. They are a distributor of dental

1 PUCKETT
 2 A. Yes, I am familiar. We do operate
 3 with special markets.
 4 Q. Do you know why MB2 works with
 5 special markets specifically?
 6 MS. FINCHER: Object to the form.
 7 A. I think -- am I still supposed to
 8 answer, right?
 9 Q. You can answer.
 10 A. Okay. Special markets is another
 11 term used for DSO corporate groups, all those
 12 things I listed earlier. So that is very
 13 common throughout the dental industry for
 14 vendors of any kind, whether that is ADP,
 15 payroll, whoever. Special markets is a common
 16 used term for that. But we also have used
 17 their -- the other antithesis of special
 18 markets. They will use some of that, which is
 19 their local level reps, so it is kind of a
 20 blended mix for us.
 21 Q. When does MB2 Dental Solutions use
 22 the local reps?
 23 A. It is in tandem, so it is a kind of
 24 a preference. You know, we have local reps
 25 still on some accounts, but our dealings for

1 PUCKETT

2 the most part on a corporate level is with
3 special markets regarding pricing. The local
4 reps will help out if a piece of equipment
5 breaks, for example. That is a localized
6 initiative.

7 Q. And what services does Henry Schein
8 special markets provide to MB2?

9 A. I'm unsure of services. I mean, I
10 don't believe Schein's service arm, meaning
11 they go fix the compressor when it breaks, I
12 don't believe that is a special market service,
13 but I'm unfamiliar with their business, so I
14 don't know how it distinguishes these two.

15 Q. What is the nature of the
16 relationship between MB2 and special markets?

17 A. You know, the goal is as we grow,
18 that we get a little bit more power, meaning a
19 bunch of different things, buying power, power
20 to fix our machines quicker or equipment. You
21 know, the goal is that they help us grow our
22 business, right? Like any vendor, we want them
23 to be partners, not vendors, so we ask them to
24 help us, which is a complete loaded, you know,
25 statement, but we ask them to help us grow our

1 PUCKETT

2 business in many different ways.

3 Q. So MB2 purchases supplies and
4 equipment through special markets?

5 A. Uh-huh, yes, through Schein.

6 Q. Does MB2 purchase anything else
7 through Schein special markets division?

8 MS. FINCHER: Object to the form.

9 A. I mean, Schein offers a ton of
10 stuff, so it's a loose definition of supplies
11 and equipment. I mean, a camera is considered
12 equipment, drugs meaning -- you know, an EpiPen
13 is considered supplies.

14 So yeah, we order a lot of
15 different -- everything, you know, most of the
16 stuff in the office. We order our supplies
17 through Staples, but most everything else
18 outside of -- you have the random things that
19 are direct from manufacturers are through
20 Schein ranging from gauze to masks, gowns,
21 handpieces, burrs, stuff that goes in fillings,
22 crowns, you know, they even do some lab work to
23 heavy equipment.

24 Q. Do you know the total amount of
25 money that MB2 Dental purchases through Henry

1 PUCKETT

2 Schein?

3 MS. FINCHER: Object to the form.

4 A. I will need some clarity. Month,
5 year, total, ever or what?

6 Q. Just on an annual basis.

7 A. I can just -- last year we spent
8 about 5.3, I believe, million with Schein on --
9 in total, and I think -- I don't believe that
10 included equipment, so maybe call it 6 and a
11 half million.

12 Q. 6 and a half million would be
13 including equipment?

14 A. Yes.

15 Q. Has that number increased or
16 decreased over the years?

17 A. It has increased every year, given
18 our growth of our company.

19 Q. Who are MB2's main points of
20 contacts within Henry Schein?

21 A. It changes. MB2's contacts are
22 going to be different than the office's
23 contacts. So I've been kind of the primary
24 contact at MB2. Most of my job -- you know, a
25 lot of the part -- I've done all the

1 PUCKETT

2 negotiation. Obviously our founder, Dr. V, has
3 been involved, but that has kind of been my
4 main thing.

5 It has varied throughout the times.

6 Right now at this exact second it is --
7 Samantha Glucksman is our, what is called
8 account rep. She works for Henry Schein
9 special markets. And we have dealt with
10 everyone kind of across the sun on a -- that is
11 who -- that is the person who you deal with the
12 most, and then it kind of goes up the chain.

13 There is -- I mean, too many names
14 to mention, all the way to the top, which used
15 to be Hal Muller, who is now transitioning into
16 kind of a different role, but now it is -- I
17 think it is Jake Meadows, AJ, has a weird last
18 name, a few other people.

19 Q. All right. You said Jake Meadows?

20 A. AJ, some weird name guy, Brazinsky
21 or something, but I'm making that last name up
22 for the record. Those two kind of split, and
23 they take -- they take Hal's role together.
24 And who used to be underneath him was Randy
25 Foley, now it's Kim Khoury, Bill Harrison, a

1 PUCKETT
 2 few other people.
 3 Their organization has changed a lot
 4 like everyone else's in a five-year time, so...
 5 Q. And how often do you interact with
 6 your point of contact at Henry Schein?
 7 A. I would say weekly, at least weekly,
 8 usually quick hitters, but weekly. Samantha
 9 has been a rep for a few months now. Prior to
 10 that, it was Daniel Hobson, who was -- I talk
 11 to a lot, maybe twice a week for the previous
 12 three, three and a half years, four years. And
 13 then for a brief period of time it was Andrea
 14 Hight.
 15 So Andrea, Daniel, and Samantha have
 16 all kind of held the same role here, and then
 17 we have a few guys locally, Matt Zolfo and Tony
 18 Starnes. Matt is on the equipment side. Tony
 19 is on our supply side, so before we were,
 20 quote, unquote, special markets, those were our
 21 guys here in Dallas, and they are still a part
 22 of our Henry Schein team, for example, but most
 23 of my contact is with Samantha.
 24 Q. Do you know why Daniel Hobson no
 25 longer services the MB2 Dental account?

1 PUCKETT
 2 Q. Same question for Andrea Hight?
 3 A. She was our rep, so at that time, we
 4 talked twice, three times a week. I haven't
 5 talked to her in years.
 6 Q. Do you recall when Andrea stopped
 7 servicing the MB2 Dental account?
 8 A. I don't have that exact day. It is
 9 going to be sometime in 2014.
 10 Q. And do you recall why Andrea Hight
 11 stopped servicing the MB2 Dental account?
 12 MS. FINCHER: Object to the form.
 13 A. I do not. I believe she took
 14 another position within Henry Schein.
 15 Q. Do you negotiate agreements with
 16 Schein on behalf of MB2 Dental?
 17 A. Yes.
 18 Q. And what is your role in negotiating
 19 those agreements?
 20 A. I negotiate on MB2's side. That is
 21 my role, I guess, yes. I mean, we always lead
 22 with a clinical department.
 23 I mean, it is Dr. V, our founder,
 24 CEO's call, but I'm kind of the -- I guess
 25 given my legal side, it has always been vendor

1 PUCKETT
 2 MS. FINCHER: Object to the form.
 3 A. I do not know why. I was told that
 4 they were shrinking the number of accounts each
 5 rep had.
 6 Q. When Hal Muller was head of special
 7 markets, do you recall how often you would talk
 8 to him?
 9 A. Maybe usually only when there was an
 10 issue, or we would run into him at conferences,
 11 events, I would -- I'm going to guess once a
 12 quarter.
 13 Q. And same question for Randy Foley?
 14 A. Probably a little less. I don't
 15 think Randy has been around for a couple of
 16 years, but I could be wrong on that. I haven't
 17 seen him in a while.
 18 Q. So for Randy, when he was at Schein,
 19 you would say you spoke with him approximately
 20 once a quarter?
 21 MS. FINCHER: Object to the form.
 22 A. He would come here, I would call it
 23 once or twice a year, and I would see him out
 24 in industry stuff, you know, two or three times
 25 a year.

1 PUCKETT
 2 relations. So I'm kind of the guy on our side
 3 who goes through the nitty gritty, and I get
 4 guidance from our team, my boss, as well as all
 5 of our dentist owners who I consider my bosses
 6 as well.
 7 Q. Who is your boss?
 8 A. Dr. Chris Villanueva.
 9 Q. And what is Dr. Villanueva's title?
 10 A. Founder and CEO.
 11 Q. So when you negotiate agreements
 12 with Schein, do you negotiate specific
 13 provisions of individual contracts?
 14 A. Yeah.
 15 Q. Does MB2 have a PVA, or prime vendor
 16 agreement, with Schein?
 17 A. Yes.
 18 Q. Do you recall when the most recent
 19 one was signed?
 20 A. Early or mid -- mid 2017.
 21 Q. And that agreement provides for the
 22 purchase of supplies and equipment through the
 23 special markets division; is that right?
 24 A. Yes. It is not -- it is a very --
 25 it is not -- it does not detail pricing. It is

1 PUCKETT
 2 more of the, I guess, overarching guidelines or
 3 theme of their relationship.
 4 Q. Does the agreement between MB2
 5 Dental and Schein provide for volume discounts?
 6 A. Yes, and rebates as well.
 7 Q. Do you know the specifics of those
 8 discounts and rebates?
 9 A. No. You would have to look at the
 10 contracts. It is varied. It is complicated
 11 based on types of equipment, buckets of growth
 12 that you have hit, so it is a -- it is a
 13 convoluted answer.
 14 Q. Could you give me a general sense as
 15 to what the numbers are?
 16 MS. FINCHER: Object to the form.
 17 A. No, I can't.
 18 Q. You also mentioned rebates. Is that
 19 something you could speak to?
 20 A. Yeah. So I mean, there is different
 21 ways to, I guess, skin a cat or whatever.
 22 We -- on us, basically the options are if you
 23 buy a pack of M&Ms, they can either sell it to
 24 you -- it's listed for a dollar. They can sell
 25 it to you for, you know, 70 cents at the

1 PUCKETT
 2 certain amount of products, equipment and
 3 supplies through Schein on an annual basis?
 4 A. I would -- I guess "required" is
 5 a -- the word in question, but part of our PVA
 6 states that I think we shall or make best
 7 efforts to purchase, I believe it is a
 8 majority -- 80 percent I believe is the words
 9 that are used, but I'm -- I need to check the
 10 contract on that -- primary supplier for sure.
 11 Q. Does MB2 usually hit those targets?
 12 A. Yes, we do.
 13 Q. Do you know whether there are
 14 consequences if MB2 doesn't hit those targets?
 15 MS. FINCHER: Object to the form.
 16 A. I do not know that.
 17 Q. Has there ever been a year where MB2
 18 Dental has not purchased 80 percent of its
 19 supplies or equipment through Henry Schein?
 20 A. No, sir, there has not.
 21 Q. Do you recall whether MB2 signed a
 22 prime vendor agreement with Schein around March
 23 2014?
 24 A. We did. Yes, we did. That was our
 25 first one that we signed.

1 PUCKETT
 2 cheapest price, or they can sell it to for 72
 3 cents and give you two cents back, so you are
 4 reaching the same point, but that two cents is
 5 what we call a rebate.
 6 We do that because that is how we
 7 sponsor our basically company trips, CE
 8 initiatives. That is just more company
 9 preference. It's just kind of how we've done
 10 it based on our weird structure, so we do that
 11 to hold doctor events throughout the year.
 12 Q. Does MB2 have to hit certain
 13 thresholds in order to qualify for the rebate?
 14 A. On some products, yes. On other
 15 products, no, so that is one of the negotiation
 16 points that you go through. This is for any --
 17 not just Schein, but, you know, we do things
 18 from labs to anything.
 19 Q. And going back to the volume
 20 discounts, do you know whether MB2 has to hit
 21 certain volume thresholds in order to qualify
 22 for volume discounts?
 23 MS. FINCHER: Object to the form.
 24 A. Yes, we do.
 25 Q. Is MB2 required to purchase a

1 PUCKETT
 2 Q. The first prime vendor agreement?
 3 A. Yes.
 4 Q. So prior to March 2014, did MB2 have
 5 an agreement with Schein?
 6 A. I don't -- you know, I don't think
 7 we did, no, no. They were our supplier, prime
 8 supplier, but I don't -- maybe they -- I don't
 9 know. That is the first contract we saw from
 10 that, but that just could be -- they didn't
 11 have -- we didn't have a huge corporate
 12 structure at that point prior to me coming on
 13 board.
 14 Q. And did you sign the agreement on
 15 behalf of MB2?
 16 A. I believe I did. I believe I was
 17 the signer on that.
 18 Q. Were you involved in the
 19 negotiations of that agreement?
 20 A. Yes.
 21 Q. Do you recall who from Schein was
 22 involved in the negotiations of that agreement?
 23 A. The primary person was Andrea Hight.
 24 Q. Do you recall whether that agreement
 25 provided volume discounts for MB2?

1 PUCKETT
 2 A. Yes, it did.
 3 Q. Do you recall the amount of the
 4 volume discounts?
 5 A. I do not.
 6 Q. And how about rebates?
 7 A. Same, I do not. It was broken up
 8 into buckets, so very -- it is convoluted.
 9 Q. Were the terms of the 2014 agreement
 10 and the more recent agreement substantially the
 11 same in terms of rebates and volume discounts?
 12 MS. FINCHER: Object to the form.
 13 A. Substantially -- it is nebulous, but
 14 yes, I would say, you know, most of the bones
 15 of the contract were the same, yes. Our
 16 volume -- our rebate, I guess, you know, we
 17 tried to increase it, but it just depends on
 18 the measuring terms of each bucket.
 19 Q. Were there any terms in the 2017
 20 agreement that you renegotiated from the 2014
 21 agreement?
 22 A. I'm sure -- I do not -- I'm sure
 23 there are multitudes of it as our business
 24 changed. I don't have the exact in front of
 25 me, I'm sorry.

1 PUCKETT
 2 Q. Were there any points of contention
 3 between MB2 and Schein in the negotiating of
 4 that agreement?
 5 MS. FINCHER: Object to the form.
 6 A. Yeah. You know, again, this is now
 7 four years ago, so I don't know -- I don't
 8 remember -- there were contentions on how our
 9 rebate was structured, meaning how it is all
 10 measured on what is the bucket that you are
 11 required to hit, you know, so when does it
 12 start. That was a big one.
 13 Obviously I think the reason we're
 14 here, Dental Gator was a reason, as well as
 15 kind of just our baseline volume discounts,
 16 just because on paper wise, that was -- this
 17 was the first time we were going to do what I
 18 mentioned earlier what is called a formulary of
 19 spent. So being that it was the first one,
 20 yeah, it was different, because it was new to
 21 us at least.
 22 Q. A moment ago you mentioned Dental
 23 Gator. What were you referring to?
 24 A. Dental Gator is an entity, a
 25 separate company that involved common -- some

1 PUCKETT
 2 Q. And do you recall in the 2014
 3 agreement whether MB2 was required to purchase
 4 all of its dental supplies through Schein?
 5 MS. FINCHER: Object to the form.
 6 A. I don't -- I don't recall the exact
 7 wording.
 8 Q. Do you recall whether Randy Foley
 9 was involved at all in negotiating the
 10 agreement on behalf of Schein?
 11 MS. FINCHER: Object to the form.
 12 A. Yes, I do. He was.
 13 Q. Do you recall anyone else from
 14 Schein who was involved in negotiating the
 15 agreement?
 16 A. I do not. I'm sure there are -- I
 17 mean, when I say "involved," I'm not saying
 18 copied on an email. I mean that I talked to a
 19 bunch -- I think Hal, I believe we talked to
 20 Hal, a few others, but those are -- Andrea was
 21 the primary person, no doubt.
 22 Q. Do you recall how long it took to
 23 negotiate the agreement with Schein?
 24 A. Couple of months, yeah. I don't
 25 know exact, but a few months.

1 PUCKETT
 2 owners of MB2 that we used that purchased
 3 supplies through Schein as well.
 4 Q. How would you describe Dental Gator?
 5 A. I would describe Dental Gator as
 6 a -- how would I describe Dental Gator -- it
 7 was designed to be a -- basically a buying club
 8 of some sort that we value basically everything
 9 that -- or not everything -- most things that
 10 we used at MB2. We would then offer some of
 11 those to non-MB2 owners.
 12 To be a part of MB2, our rule is
 13 that you had to have common ownership of some
 14 kind of equity split. You know, we did not
 15 operate under a Costco-type membership that you
 16 pay us X, and then you can use it.
 17 And so Dental Gator was our brain
 18 child to allow the non-MB2 owner -- non-MB2
 19 owned practices to use some of our services
 20 ranging from supplies to construction to CPAs,
 21 you know, across the board. And our whole goal
 22 was that we could then establish relationships
 23 with practices, and eventually the goal was to
 24 get them a part of MB2 via acquisition.
 25 Q. You referred to it as a buying club

1 PUCKETT

2 a moment ago; is that right?

3 A. Yeah, of some kind, I mean, again,
4 it is -- it is a -- what it was, was a company,
5 right, but we won't -- our goal was to get
6 people involved, like we -- we always used --
7 it was either a country club or a Costco
8 example.

9 So you come into a country club, you
10 pay 500 bucks a month, you don't have to golf,
11 you don't have to swim, your wife can work out,
12 she doesn't have to work out, whatever it is.
13 So that was kind of our mindset that we have a
14 bunch of things you pay for. You can use
15 whatever you want.

16 So a buying club is something that
17 came off, I believe, the vision space -- vision
18 industry, Vision Source. And so that was
19 another thing of, you know, optometrists,
20 whoever used them would just come in to buy a
21 bunch of services from CPA services, to
22 construction, to direct mail marketing, to
23 stamps, to anything, and then we, as a whole,
24 group ours together, and then buy more. Then
25 MB2 -- our goal was just to try to grow MB2's

1 PUCKETT

2 business by this separate company.

3 Q. You mentioned a moment ago a country
4 club model and a Costco model. Which model did
5 Dental Gator fall into?

6 A. I think it is both. I mean, I'm
7 using the Costco and the country club as the
8 same. You know, you pay a membership to Costco
9 whether you buy a million dollars of stuff or
10 zero dollars of stuff.

11 Q. Did Dental Gator members have to pay
12 a membership fee?

13 A. They did, yes.

14 Q. Do you recall what the amount was?

15 A. It varied. We -- I mean, again, our
16 purpose was not to become super wealthy off
17 Dental Gator. So I think it was at the
18 highest, maybe 500 bucks a month, and at the
19 lowest, it was free.

20 Q. And how did Dental Gator or MB2
21 decide when to give a member free membership or
22 require them to have a paid membership?

23 MS. FINCHER: Object to the form.

24 A. Originally, it was everyone paid.
25 The president of Dental Gator was Patrick Gill,

1 PUCKETT

2 who was brought on after we created it. And so
3 he ran the company, so it was completely his
4 decision. But again, the mind-set of
5 establishing this and funding -- funding Dental
6 Gator was to get acquisitions who were not for
7 sale, and so it really didn't matter to us at
8 the end of the day.

9 So, for example, if a customer was
10 trying to quit because he said he didn't --
11 there wasn't enough value in it at 500 bucks a
12 month. We would say, how about free. So I
13 believe there is still a couple of people on
14 Dental Gator today for free, maybe one or two.

15 Q. So Patrick Gill had the discretion
16 to decide that?

17 A. Yeah, he had full discretion.

18 Q. Were you involved in any of those
19 decisions?

20 A. Maybe on the -- early on, before he
21 started kind of thing, but no, Patrick would
22 not reach out, like he would just -- he has
23 full autonomy.

24 Q. Going back to the definition -- or
25 the term "buying club," why -- what is your

1 PUCKETT

2 understanding of the term "buying club"?

3 MS. FINCHER: Object to the form.

4 A. It is in the dental space a group of
5 practices that form together to buy supplies
6 for a cheaper amount than they could on their
7 own, so...

8 Q. Are buying clubs usually comprised
9 of independent dental practices or private
10 practices?

11 MS. FINCHER: Object to the form.

12 A. Yes.

13 Q. Have you ever heard -- strike that.
14 Have you ever heard buying club
15 referred to as a buying group?

16 A. Yes.

17 Q. And those terms have been used
18 interchangeably, as far as you know, to refer
19 to groups of independent dentists that come
20 together to get volume discounts?

21 MS. FINCHER: Object to the form.

22 A. Yes.

23 Q. How about the term "group purchasing
24 organization"?

25 A. Yes.

1 PUCKETT

2 Q. You've heard that term used to refer
3 to a buying group or a buying club?

4 A. Yes, the GPO.

5 Q. Was one of the goals of Dental Gator
6 to leverage the collective volume of dental
7 practices in order to secure discounts on
8 dental supplies?

9 MS. FINCHER: Object to the form.

10 A. Yes.

11 Q. Was one of the goals of MB2 to offer
12 value-added services to dentists?

13 MS. FINCHER: Object to the form.

14 A. MB2?

15 Q. Strike that. Was one of the goals
16 of Dental Gator to offer value-added services
17 to dentists?

18 MS. FINCHER: Object to the form.

19 A. Yes.

20 Q. And what kind of value-added
21 services did Dental Gator offer to independent
22 dentists?

23 A. Marketing, construction, tax, direct
24 mailing, which is advertising, CPA, legal, some
25 billing services. I mean, I think we ended up

1 PUCKETT

2 about nine or 10. We tried -- I mean, we tried
3 everything.

4 Q. Do you recall what the other -- is
5 that an exhaustive list or do you recall --

6 A. That is not an exhaustive list. I
7 think you would have to go to the website or
8 some materials that I've sent to y'all as far
9 as where we were at some point. It has been
10 too long.

11 Q. And did Dental Gator offer those
12 services to independent dentists from the
13 outset?

14 MS. FINCHER: Object to the form.

15 A. Yes, we did if they were a member of
16 Dental Gator.

17 Q. Do you know whether dentists found
18 those services useful?

19 MS. FINCHER: Object to the form.

20 A. Yes, I think they did.

21 Q. Any in particular that dentists
22 particularly liked or found useful?

23 A. I think they used them all at some
24 point. You know, the most common one was I
25 would say labs and supplies, dental supplies.

1 PUCKETT

2 Q. When you say "labs," what do you
3 mean?

4 A. Dental labs are what make bridges,
5 crowns, dentures that go in people's mouths, so
6 you send in a model or a restoration or a
7 temporary or a model like a mold of your tooth,
8 they make a tooth, and we put it in your mouth.

9 Q. And did Dental Gator work with a
10 specific vendor for that program?

11 A. For labs, we worked I believe with a
12 bunch of different labs, MicroDental, DSG Labs,
13 which is on my GPS, DDS Lab, Reliable. There
14 are -- there are a myriad of labs.

15 Q. Was one of the goals of Dental Gator
16 to compete with other buying groups such as
17 Smile Source?

18 MS. FINCHER: Object to the form.

19 A. Yes.

20 Q. Do you know why that was one of the
21 goals?

22 A. Just because we wanted, again, to
23 get people under our umbrella so we could then
24 establish relationships and tell them about
25 MB2. So anyone who was offering moderately

1 PUCKETT

2 similar services was a competitor in that
3 sense, not a negative sense, but just they had
4 options to choose, so...

5 Q. Did Dental Gator try and compete
6 with any other buying groups in the dental
7 industry?

8 A. You know, I know there were some out
9 there. I'm not familiar with the names of who.
10 Obviously Smile Source was in our -- probably
11 the one we knew.

12 Q. And how did Dental Gator hear about
13 Smile Source?

14 A. Just through the industry.

15 Q. And your understanding is Smile
16 Source is a buying group of independent
17 dentists?

18 MS. FINCHER: Object to the form.

19 A. My understanding, yes, it is.

20 Q. Were all of Dental Gator's customers
21 independent dentists or private practices?

22 A. Yeah, I believe so, in my -- again,
23 it goes back to my definition of independent
24 practices, so yes.

25 Q. That would be solo practitioners?

1 PUCKETT

2 A. Yeah, but I believe a couple of solo
3 practitioners had more than one office, but,
4 you know, my definition of DSO is not them, so
5 yeah.

6 Q. You mentioned a few moments ago that
7 one of the goals of MB2 was to permit -- strike
8 that.

9 You mention a moment ago that one of
10 the goals of Dental Gator was to permit MB2 to
11 identify potential acquisition targets. Can
12 you talk a little bit more about that?

13 A. Just, you know, MB2, our model is to
14 grow, and we grow via dentists and dental
15 practices. So the thought was if -- you know,
16 asking someone to sell your business is a very
17 tough and I would say personal question.

18 It is much easier to say do you want
19 to order cotton rolls through this company. It
20 is less committed versus selling equity. So
21 the thought was kind of to ease it in, like
22 let's just kind of get the relationship going.
23 They can see MB2, how we operate, hopefully how
24 we're a little different, and they could see
25 the value proposition.

1 PUCKETT

2 Q. You talk a little bit about the
3 benefits to independent dentists of joining
4 Dental Gator. Are there any that we haven't --
5 are there any other benefits that we haven't
6 talked about?

7 A. I'm -- I have to look at all the
8 resources that are on the website.

9 Q. Nothing you can think of at the
10 moment?

11 A. (Witness shakes his head.)

12 Q. And just to back up a little bit,
13 you have personal knowledge of Dental Gator and
14 its business activities; is that right?

15 A. Yes. I am an owner.

16 Q. When you say you're an owner, what
17 do you mean?

18 A. I own equity of Dental Gator.

19 Q. How much equity in Dental Gator do
20 you have?

21 A. I believe I have 8 percent.

22 Q. And who has the other 92 percent
23 equity in Dental Gator?

24 A. Dr. Akhil Reddy I believe owns -- I
25 forget the amount -- Dr. Akhil Reddy owned I

1 PUCKETT

2 think 8 percent, Dr. John McCully, Dr. Mauricio
3 Dardano, Dr. Gabriel Shahwan, S-h-a-h-w-a-n,
4 Dr. Trung Tang, T-r-u-n-g, T-a-n-g. I think we
5 all added up to 60 percent, and Dr. Chris
6 Villanueva owned 40 percent.

7 Q. How is Dental Gator structured in
8 terms of its corporate structure? Is it an
9 LLC, an LLP, partnership?

10 A. Yeah, it was an LLC registered in
11 the State of Texas. We didn't have a -- I
12 don't believe we had a company agreement. I
13 think we had a loose one that was just member
14 managed.

15 Q. Is Dental Gator still in existence?

16 A. Technically, yes, it is. I believe
17 we actually plan to shut it down at the end of
18 this year, but it is -- it is today.

19 Q. Why are you planning to shut it
20 down?

21 A. Just kind of playing cleanup. I
22 think it has one member left, and again, it is
23 free. I don't think we maybe made a dollar
24 since maybe early last year or the year before
25 that. Just playing cleanup.

1 PUCKETT

2 Q. Did Dental Gator have any employees
3 at any point?

4 A. We have had a couple of employees
5 throughout the years. We had a guy named Cory
6 for a brief second, couple of months. I don't
7 remember his last name. We had a guy named
8 Tyler a couple of months. I don't remember his
9 last name. We had -- and then -- but Patrick
10 Gill was the main employee. Patrick Gill
11 governed those two and was the president. He
12 was brought over. He was a rep for Henry
13 Schein that we brought over.

14 Q. And when did Mr. Gill start working
15 at Dental Gator?

16 A. I don't know. I don't recall that
17 date. I apologize.

18 Q. That is okay. Approximately do you
19 recall a year?

20 A. I honestly don't. I would say it
21 was in 2014.

22 Q. Do you know if it is like the latter
23 part of 2014 or early --

24 A. Latter I would guess, but again, I'm
25 guessing here. I don't know on that. He was

1 PUCKETT
 2 employed for over a year, I know that. I don't
 3 remember even when he quit. I should know
 4 that, but I don't.
 5 Q. And the person named Tyler, do you
 6 know when that person worked at Dental Gator?
 7 A. He worked in '14 as well early,
 8 early on. Did not stay very long.
 9 Q. And the same question for Khoury?
 10 A. He worked for like a minute. I
 11 don't even know, not that long, early, early,
 12 early, early.
 13 Q. 2014?
 14 A. Yeah, maybe like right when it
 15 started or so.
 16 Q. So Patrick Gill was the
 17 longest-standing employee of Dental Gator?
 18 A. By far, yes.
 19 Q. Did you hire Mr. Gill?
 20 A. I did.
 21 Q. Why did you hire Mr. Gill?
 22 A. You know, again, this was not our --
 23 we didn't want to run Dental Gator. It is not
 24 our job and not our bread and butter, not what
 25 I'm hired to do by Dr. V. So we wanted to hire

1 PUCKETT
 2 shared office space?
 3 A. We did, yes. We had -- they had an
 4 office here.
 5 Q. How often did you meet with Mr. Gill
 6 regarding Dental Gator's activities?
 7 A. Formal meeting wise I would say once
 8 a month. Of course, fire drills throughout the
 9 month, you know, text, call, email, run into
 10 him, but formally, maybe once a month, once
 11 every six weeks.
 12 Q. Were you Mr. Gill's supervisor?
 13 A. I would say yes, yeah.
 14 Q. So Mr. Gill had to answer to you?
 15 MS. FINCHER: Object to the form.
 16 A. Yes, yes, ultimately obviously I
 17 answer to people -- you know, it flows down,
 18 but yeah, I was Patrick's report.
 19 Q. Were you involved in any aspects of
 20 Dental Gator's business activities?
 21 A. Yeah, I mean, we were kind of the de
 22 facto board of directors, kind of we're the
 23 owners, so yeah, we were involved in a lot of
 24 it, just not the day-to-day.
 25 Q. When you say "we," you are referring

1 PUCKETT
 2 someone we thought would do the best job at it.
 3 Yes, we wanted to make money off this, we did
 4 long term, but the goal was again MB2's gain.
 5 And Patrick was one of the top reps here in
 6 D/FW, really liked him both personally and
 7 professionally, so we thought he would do a
 8 good job.
 9 Q. Where does Mr. Gill work now?
 10 A. Henry Schein in Austin, Texas.
 11 Q. Is Mr. Gill an FSC at Henry Schein,
 12 do you know?
 13 MS. FINCHER: Object to form.
 14 A. He was an FSC, yes. I think he
 15 still is.
 16 Q. Did you and Mr. Gill work in the
 17 same office when Mr. Gill was president of
 18 Dental Gator?
 19 A. I need you to clarify.
 20 Q. Did you guys -- was Mr. Gill on site
 21 here at MB2 Dental?
 22 A. Sorry, yes. Yes, he had -- he had
 23 an office here. He was out in the field 95
 24 percent of the time, or working from his house.
 25 Q. So Dental Gator and MB2 Dental

1 PUCKETT
 2 to --
 3 A. The other owners that I listed.
 4 Q. Okay. Were you involved in the
 5 creation of Dental Gator?
 6 A. I was, yes. I guess myself formed
 7 the entity. And I was, you know, we were the
 8 initial founders, owners, so we kind of, you
 9 know, sat around and talked about starting
 10 Dental Gator.
 11 Q. Did you file the paperwork to get
 12 Dental Gator incorporated in the state of
 13 Texas?
 14 A. Yes, I did.
 15 Q. And did you engage in any
 16 discussions regarding Dental Gator with Henry
 17 Schein?
 18 A. Yes.
 19 Q. How about with Patterson?
 20 A. Yes.
 21 Q. How about a company called Benco?
 22 A. Yes.
 23 Q. And for the record, what is
 24 Patterson?
 25 A. Patterson and Benco are the same as

1 PUCKETT
2 Schein. They're distributors in the dental --
3 the dental space, supplies, equipment, and a
4 bunch of other stuff.
5 Q. Are Schein, Patterson, and Benco
6 competitors, to your knowledge?
7 MS. FINCHER: Object to the form.
8 A. Yes.
9 Q. Did you ever attend meetings
10 relating to Dental Gator?
11 MS. FINCHER: Object to the form.
12 A. Yes. A lot of the times meetings
13 were blended, right. MB2 is the primary
14 purpose and we would touch on Dental Gator, but
15 occasionally Patrick and I did have meetings
16 just about Dental Gator.
17 Q. Did you have access to Dental
18 Gator's email account?
19 A. Yes.
20 Q. Do you recall the address of the
21 Dental Gator email account?
22 A. Info@dentalgator.com, and then I
23 believe Patrick had one as well. I don't know
24 his email address.
25 Q. Did you ever send emails or

1 PUCKETT
2 in Dental Gator about 8 percent. May I ask you
3 what your total investment in Dental Gator is
4 in terms of actual cash value?
5 A. I believe we put in \$150,000 total,
6 so math, I need to check. I think I put in 12
7 grand. I've gotten back -- I don't know. I
8 need to check -- probably 10 grand, so I guess
9 it wasn't a great investment.
10 Q. So since 2015 -- 2014, you have
11 gotten back 10?
12 A. I think around 10, yeah.
13 Q. Do you recall whose idea it was to
14 start Dental Gator?
15 A. I think it was Dr. V's,
16 Dr. Villanueva. It could have been any one of
17 us sitting around at the table or something,
18 you know, but I think it was -- I don't
19 remember. Actually I don't know who it exactly
20 was, the group or someone -- one of us in the
21 owners, that was for sure.
22 Q. Do you recall what the impetus for
23 that business idea was?
24 MS. FINCHER: Object to the form.
25 A. To get acquisitions for MB2.

1 PUCKETT
2 correspondence on behalf of Dental Gator?
3 A. Yes. In the early stages I was -- I
4 was the guy sending emails to like dentists and
5 manufacturers or whoever else before Patrick
6 came on.
7 Q. How about after Patrick came on?
8 A. Maybe I sent one or two, but I don't
9 recall actually sending any, but maybe one or
10 two.
11 Q. Did you receive regular reports
12 about Dental Gator's business activities?
13 A. Monthly. Again, I'm not talking
14 anything fancy here, but just kind of --
15 Patrick would send us February results, March
16 results, April results of, we have this many
17 members, one quit, one joined, you know, very
18 top level. We did have financials prepared
19 monthly as well. I didn't really look at them.
20 Q. Do you know if anyone at MB2 would
21 look at those?
22 MS. FINCHER: Object to the form.
23 A. MB2 -- one of our accountants would
24 prepare them, so they would look at them.
25 Q. You mentioned you were an investor

1 PUCKETT
2 Q. Did you think that independent
3 dentists would be interested in a buying club?
4 A. I did.
5 MS. FINCHER: Object to the form.
6 Q. Why?
7 A. Because I thought who does not want
8 to save money buying the exact same product
9 that they're buying.
10 Q. And in your experience working with
11 Dental Gator, were dentists interested in that
12 model?
13 MS. FINCHER: Object to the form.
14 A. I didn't work at Dental Gator. I --
15 but yes, we did have people sign up.
16 Q. At its height, do you recall how
17 many members Dental Gator had?
18 A. I recall the high 20s.
19 Q. Do you recall whether members
20 purchased supplies -- strike that.
21 Do you recall whether Dental Gator
22 members purchased supplies through Henry
23 Schein?
24 A. I did, yes.
25 Q. Was there a requirement that they

1 PUCKETT
 2 purchase from Schein?
 3 A. No, no.
 4 Q. Did dentists -- strike that.
 5 Did Dental Gator members typically
 6 purchase a majority of their supplies through
 7 Schein?
 8 MS. FINCHER: Object to the form.
 9 A. I'm unaware of the percentages.
 10 Q. Did Dental Gator track whether
 11 members were purchasing their supplies through
 12 Schein?
 13 A. We did not.
 14 Q. Did Dental Gator have an agreement
 15 with Schein?
 16 A. I do not believe we had a technical
 17 written agreement with Schein, but I could be
 18 mistaken on that.
 19 Q. Was there an understanding --
 20 A. Yes.
 21 Q. -- between Schein and Dental Gator?
 22 MS. FINCHER: Object to the form.
 23 A. Yeah. I mean, they knew about
 24 Dental Gator so I don't -- I don't know --
 25 signed a PVA or whatever they called it, but

1 PUCKETT
 2 right, it flowed through Andrea Hight.
 3 Q. You mentioned Andrea Hight asked
 4 whether it was a buying club?
 5 A. Uh-huh.
 6 Q. Do you know why she asked that?
 7 MS. FINCHER: Object to the form.
 8 A. I think she was curious about if it
 9 was in her definition of buying club or if it
 10 was a new name for MB2.
 11 Q. Do you recall whether Ms. Hight was
 12 concerned about Dental Gator serving as a
 13 buying club for independent dentists?
 14 MS. FINCHER: Object to the form,
 15 leading.
 16 A. Yeah. I mean, concerned, I don't
 17 know what she -- yes, I guess she was concerned
 18 that if it was set up to be a pure straight
 19 buying club in their definition, versus, you
 20 know, a value-added organization.
 21 Q. And what were the -- what was the
 22 nature of her concerns specifically?
 23 MS. FINCHER: Object to the form.
 24 A. They did not do -- they did not do
 25 business with pure buying clubs was the answer

1 PUCKETT
 2 they knew that, yes, we were opening Dental
 3 Gator.
 4 Q. And when did Schein find that out?
 5 A. Around I would say early '14, when
 6 we were kind of doing our negotiation for our
 7 supplies with MB2.
 8 Q. Do you recall how Schein found that
 9 out?
 10 A. We told them.
 11 Q. Who told Schein?
 12 A. Probably myself or Dr. Villanueva.
 13 Q. Do you recall what Schein's reaction
 14 was to Dental Gator?
 15 A. They had a lot of questions
 16 regarding what was it, why is it not at MB2,
 17 what is the purpose, who are the members, is it
 18 a buying club, is it not, what services are you
 19 providing, etcetera. So yes, they had a lot of
 20 questions of it, just because it was something
 21 against the norm of the business that we had
 22 been running for six years.
 23 Q. Do you recall who at Schein asked
 24 those questions?
 25 A. It was all flowed -- if I remember,

1 PUCKETT
 2 we were told.
 3 Q. Did you have any understanding as to
 4 what Andrea Hight meant by that?
 5 A. They do not sign agreements or allow
 6 buying clubs to buy through them. Again,
 7 buying club, it is another definition that is
 8 made up, so I don't know what that means. Pure
 9 buying clubs is what we always used to hear.
 10 Q. So did Andrea Hight tell you that
 11 she would refuse to work with Dental Gator if
 12 they were a pure buying club?
 13 MS. FINCHER: Object to the form,
 14 leading. Ronnie, this is a third party.
 15 You know you can't lead the witness.
 16 A. We were told Schein did not
 17 operate -- or did not work with groups that
 18 were pure buying clubs, yes, they did not --
 19 and again, pure buying clubs meaning -- that is
 20 the nebulous term, that someone joined strictly
 21 for supplies was the -- if I remember right,
 22 the narrative we were given.
 23 Q. Did anyone else besides Ms. Hight
 24 tell you that?
 25 A. I do not recall.

1 PUCKETT

2 Q. Did you ask any follow-up questions
3 to Ms. Hight about her statement that Henry
4 Schein did not work with buying clubs?

5 MS. FINCHER: Object to the form.

6 A. Yes, I did. I said, in my opinion,
7 I thought they already did work with some
8 buying clubs. I didn't know who. Again, we
9 were talking about this nebulous definition,
10 but yes, I said why -- why do you care. We
11 grow your business, be partners of ours. You
12 know, we weren't happy about it. We had tons
13 of questions. It took a while. Eventually
14 obviously we came around because we eventually
15 obviously opened Dental Gator with Schein,
16 so...

17 Q. Do you know why Henry Schein cared
18 whether Dental Gator was a buying club?

19 MS. FINCHER: Object to the form.

20 A. I do not, no. I can't I guess reach
21 into their head. I believe they did not want
22 to because they had -- I know they had some
23 agreements with manufacturers that --
24 regarding, you know, I don't have knowledge of
25 that, but agreements with manufacturers that

1 PUCKETT

2 dictated as well who they -- who Henry Schein's
3 clients were, so...

4 Q. And did Ms. Hight ever tell you that
5 Schein had a policy not to work with buying
6 clubs?

7 MS. FINCHER: Object to the form,
8 leading.

9 A. Yes, I believe they -- I don't know
10 if it was Ms. Hight or someone, but yes, it
11 was, to our knowledge, that they did not work
12 with their definition of buying clubs, not our
13 definition, but theirs.

14 Q. So what was the difference between
15 your definition or Dental Gator's definition
16 and Schein's definition as it related to buying
17 clubs?

18 MS. FINCHER: Object to the form.

19 A. I don't know exactly. I think,
20 again, it was purely people banding together
21 just under the guise of a partnership or a
22 co-op or an agreement or a venture to get
23 cheaper pricing, but not having -- not being a
24 true group partnership, venture, co-op, you
25 know, agreement type thing.

1 PUCKETT

2 Q. Can you clarify that statement a
3 little bit? When you say a true group
4 partnership venture co-op, what do you mean by
5 that?

6 A. I don't think I can -- I'm not sure
7 how to clarify it. Again, it is kind of
8 nebulous as far as this whole thing regarding
9 what is a -- is there equity ownership, is
10 there a fee paid, is there -- you know, it is a
11 very -- what is the purpose of the corporation.

12 For us it was to get access to
13 clients from MB2, and so we wanted to do that.
14 We were flexible. You know, the purpose of us
15 was not to make money from shaving percents
16 off, you know, membership fees or supplies or
17 CPA services. So for us, we wanted to provide
18 whatever value we could to get people to sign
19 up, and then we could see if they were a good
20 partner for us.

21 Q. Did Schein ever tell you that an
22 ownership interest was required in any of the
23 Dental Gator member's practices?

24 MS. FINCHER: Object to the form,
25 leading.

1 PUCKETT

2 A. At a certain point they asked --
3 they said that in order -- originally to be a
4 part of it, yes, they wanted a common
5 ownership, but they obviously -- I don't know.
6 I don't remember the timelines, but it
7 obviously delved off of that to where, you
8 know, they -- membership models or another
9 term. So eventually we, I guess, relaxed on
10 that, and we still opened Dental Gator.

11 Q. So around the time you opened Dental
12 Gator in 2014, Schein told you that there had
13 to be common ownership interest in Dental
14 Gator?

15 MS. FINCHER: Object to the form,
16 leading. Ronnie, again, third-party
17 witness. You know you are not allowed to
18 lead the witness.

19 MR. SOLOMON: I don't believe I am.

20 MS. FINCHER: You are.

21 Q. You can answer the question, Justin.

22 A. I don't -- I mean, obviously they
23 didn't -- they did not because we opened Dental
24 Gator, and I'm not picking dates. I'm not
25 sure. We opened Dental Gator under the very

1 PUCKETT
2 transparent nature of not having ownership. We
3 weren't trying to pull the covers over anyone.
4 We were very -- we thought we were really smart
5 in coming up with this great idea. You know,
6 we told everyone about it. We weren't trying
7 to hide it. We were doing the opposite of
8 bringing it to everyone's attention, so...

9 Q. Did Schein say that Dental Gator was
10 trying to hide something?

11 MS. FINCHER: Object to the form.

12 A. No.

13 Q. Did anyone from Schein ever tell you
14 that Dental Gator required centralized
15 purchasing in order for Schein to work with it?

16 MS. FINCHER: Object to the form,
17 leading.

18 A. I do not recall.

19 Q. Did anyone from Schein give you any
20 other criteria that Dental Gator had to meet in
21 order for Schein to work with it?

22 MS. FINCHER: Object to the form.

23 A. Yes. I think there were -- you
24 know, as far as -- can you repeat the question,
25 sorry? Does any client -- what did they say,

1 PUCKETT

2 sorry.

3 Q. I will just repeat it.

4 Did anyone from Schein give you any
5 other criteria that Dental Gator had to meet in
6 order for Schein to work with it?

7 MS. FINCHER: Object to the form.

8 A. I don't believe so. We had to -- I
9 know we could not operate -- we had to be clear
10 that we were not operating as GPO, a pure GPO.
11 You know, we -- our website even said we are
12 not a buying club. We're not a buying group.
13 I don't know the words, but we were, you know,
14 a value-added -- I don't know -- we didn't have
15 a title, but value-added company to bring value
16 out -- you know, whether that was from our CPA
17 guy giving discounted services, so we had
18 lawyers involved as far as they charged 300 an
19 hour, now they charge 280, that -- they were
20 part of Dental Gator and available to our
21 customers or clients.

22 Q. You mentioned a moment ago that
23 Dental Gator had to be clear that it was not
24 operating as a GPO or a pure buying club. What
25 did you mean by that?

1 PUCKETT

2 A. Yes. I mean, Schein did not want us
3 to be advertising that we were a GPO because,
4 again, they were -- you know, I don't know the
5 term. Sorry, I don't recall this, so it is on
6 the record. I don't know if it was a GPO
7 buying club, buying group throughout all my
8 testimony, but they did not want -- they were
9 not allowed through their manufacturers as well
10 as their own personal beliefs working with
11 someone who is purely designed for that only
12 purpose.

13 So they did not want us advertising
14 for that, and again, they were involved in this
15 because it is -- it is somewhat of a nebulous
16 term, just like DSO, what does it mean. Same
17 thing with buying group, buying club, GPO, you
18 know, buying co-ops, whatever you want to call
19 them.

20 Q. So did Schein tell Dental Gator that
21 it could not advertise itself as a buying club?

22 A. Yes.

23 MS. FINCHER: Object to the form,
24 leading. Go ahead.

25 Q. Did Schein tell Dental Gator that it

1 PUCKETT

2 could not advertise itself as a GPO?

3 MS. FINCHER: Object to the form.

4 A. I will say, yes. I do not remember
5 if it was a GPO, buying club, buying group, but
6 we did have some stuff that we -- you know, and
7 I'm not going to say require, but that was told
8 to us, agreed upon, you know, again, four years
9 ago, so yes, there was something in there with
10 that. I don't remember the exact wording.

11 Q. Did Schein use those terms -- the
12 terms "buying group," "buying club," and "GPO,"
13 or group purchasing organization
14 interchangeably?

15 MS. FINCHER: Object to the form,
16 vague, asked and answered.

17 A. I think I've answered that. Yeah, I
18 don't remember.

19 Q. You mentioned a moment ago also that
20 there was a statement on your website that
21 Dental Gator is not a buying group. Can you
22 talk a little bit more about that?

23 A. There is a frequently asked
24 questions section, I believe, that says, are
25 you a buying group, buying club. I don't know

1 PUCKETT
 2 what it says, GPO, one of those terms used
 3 interchangeably throughout the rest of my
 4 testimony, and we say no, we're not, because in
 5 our view, we were not a -- in our definition,
 6 we are more than a buying club.
 7 Q. Do you know when that statement was
 8 added to Dental Gator's website?
 9 A. I do not, I'm sorry.
 10 Q. Do you have an approximate
 11 estimation as to when it might have been added
 12 to Dental Gator's website?
 13 MS. FINCHER: Object to the form.
 14 A. I do not.
 15 Q. Do you know why Dental Gator added
 16 that statement to its website?
 17 A. I do not recall specifically. I
 18 believe that was something that we had decided
 19 internally on to make it -- we wanted to be
 20 abundantly clear for all of our distributors,
 21 manufacturers, partners, and vendors.
 22 Q. So you wanted to make that clear
 23 because of something that Schein told you?
 24 MS. FINCHER: Object to the form,
 25 leading.

1 PUCKETT
 2 website on its own?
 3 MS. FINCHER: Object to the form.
 4 A. I do not.
 5 Q. Do you believe that Dental Gator
 6 would have added that statement to its website
 7 absent pressure from a distributor like Schein?
 8 MS. FINCHER: Object to the form.
 9 Ronnie --
 10 A. I do not.
 11 MS. FINCHER: -- you can't lead the
 12 witness. Asked and answered.
 13 A. I do not. I don't remember the
 14 specifics of when or why we did it. It was
 15 very -- it is a group -- you know, again,
 16 transparent. We operated under group think.
 17 We relied on vendors whether that was -- you
 18 know, yes, we knew every -- you know, all our
 19 distributors we were dealing with, no one
 20 wanted us to operate as a pure buying club,
 21 which we were passionate and adamant that we
 22 were not. And so I don't remember if that was
 23 us wanting to be clear for the market or vice
 24 versa. I don't remember those specifics.
 25 Q. Did anyone from Schein ever ask you

1 PUCKETT
 2 A. I don't -- I don't recall exactly
 3 why we decided to do that. I know that -- that
 4 was at a time when Patrick Gill was here.
 5 Q. Do you recall whether Schein asked
 6 Dental Gator to add that statement to its
 7 website?
 8 A. I do not --
 9 MS. FINCHER: Object to the form,
 10 leading.
 11 A. I don't recall exactly who it was or
 12 why we added it. Again, that was --
 13 I know that was Patrick's --
 14 something he added, was dealing with.
 15 Q. So you don't recall one way or the
 16 other whether that was something --
 17 A. I don't.
 18 Q. -- Schein had asked Dental Gator to
 19 add to its website?
 20 MS. FINCHER: Object to the form --
 21 A. I do not.
 22 MS. FINCHER: -- leading, asked and
 23 answered.
 24 Q. Do you know whether that is
 25 something Dental Gator would have added to its

1 PUCKETT
 2 whether Dental Gator was advertising itself as
 3 a buying group?
 4 MS. FINCHER: Object to the form.
 5 A. Yes.
 6 Q. Who asked you that?
 7 A. Andrea Hight.
 8 Q. Anyone else?
 9 A. I do not recall.
 10 Q. Did Schein ever attempt to restrict
 11 Dental Gator's advertising or marketing?
 12 MS. FINCHER: Object to the form,
 13 leading.
 14 A. They did have some questions and
 15 concerns around a couple of advertising pieces
 16 that some of our 1099 contractors or employees
 17 or third-party reps -- I can't remember -- put
 18 out, yes.
 19 Q. Do you recall what the nature of
 20 those concerns were?
 21 A. I believe it was regarding some
 22 emails and flyers that we sent that were
 23 advertising as a more pure strict buying club,
 24 as a join us and we were using their name
 25 specifically, Schein's, which they also didn't

1 PUCKETT

2 want us to do.

3 Q. So Schein was concerned for two
4 reasons, one being that it was being advertised
5 as a pure buying club, and the second being
6 that Schein -- that Dental Gator was using
7 Schein's name?

8 MS. FINCHER: Object to the form,
9 leading.

10 A. Yes, without -- that we were using
11 the name without consent.

12 Q. And those were two separate reasons
13 why Schein was concerned?

14 MS. FINCHER: Object to the form.

15 A. Yes.

16 Q. Did anyone else at Schein other than
17 Ms. Hight talk to you about restricting Dental
18 Gator's advertising and marketing?

19 MS. FINCHER: Object to the form,
20 misstates the testimony.

21 A. I don't believe so. I believe they
22 floated everything through them. Individuals
23 like Mr. Foley and Mr. Miller were involved
24 occasionally, but on a very, very, very, very
25 limited basis. And my contact every day was

1 PUCKETT

2 Andrea Hight.

3 Q. How specifically did Schein try to
4 restrict Dental Gator's marketing and
5 advertising?

6 MS. FINCHER: Object to the form,
7 leading, misstates the testimony.

8 A. I don't recall the specifics, no.

9 Q. Did they ever complain about any
10 specific flyers, for example?

11 MS. FINCHER: Object to the form.

12 A. There was at least one email that
13 I'm aware of, as I think there was one online
14 YouTube thing presentation that was floating
15 around. Those are the two things that I'm
16 aware of.

17 Q. Can you tell me a little bit more
18 about that?

19 A. There was an email sent out that I
20 think point blunt said, join us and save 60
21 percent off Schein products, which was I think
22 again a violation of -- we are not -- we agree
23 that we were not going to -- that is not our
24 mission.

25 And we also -- I don't think we're

1 PUCKETT

2 allowed to say -- I don't think anyone has the
3 -- can save 60 percent -- it is probably a
4 false statement -- 60 percent off Schein's
5 products. And so they were -- they were --
6 Andrea was not happy about that email. So we
7 reprimanded our employee -- "reprimanded" may
8 be a strong word -- we told them not to send it
9 out again.

10 Q. So Andrea was concerned about what
11 specifically in the email?

12 MS. FINCHER: Object to the form.

13 A. I don't recall the specific
14 sentences or whatever. She was more the
15 overall tenor and the tone.

16 Q. Did it relate to the fact that
17 Dental Gator was advertising or marketing
18 itself as a buying club?

19 MS. FINCHER: Object to the form,
20 leading.

21 A. I don't know. I don't think in that
22 email -- we did not say in that email buying
23 club, buying group or buying co-op -- or that
24 stuff.

25 Q. Was Ms. Hight concerned specifically

1 PUCKETT

2 about the advertising of specific discounts?

3 MS. FINCHER: Object to the form.

4 A. I believe -- again, this is going
5 back four years, but I believe, yes, that we
6 stated specific things, and I think it was the
7 right brain, but it was -- the email said, hi,
8 join Dental Gator, we will save you 60 percent
9 off Schein products. You will be crazy not to
10 join us. I think the bluntness of the
11 promising of straight discounts, not our other
12 services, our value props was concerning.

13 I have to go potty real quick. I
14 need to take a break.

15 Q. Yeah, sure. I'll just ask you a
16 couple more questions and then we'll go off the
17 record.

18 So did Ms. Hight bring that email
19 specifically to your attention?

20 MS. FINCHER: Object to the form.

21 A. She did, yes.

22 Q. And you had conversations with her
23 about that email?

24 A. Yes.

25 MR. SOLOMON: We can go off the

1 PUCKETT

2 record.

3 (Recess taken 10:18 a.m. to 10:37 a.m.)

4 Q. Justin, before the break, we talked
5 a little bit about what you had referred to as
6 a pure buying group.

7 Do you recall that discussion?

8 A. Yes.

9 Q. When Schein -- strike that.

10 Schein told Dental Gator that it was
11 concerned that Dental Gator was a pure buying
12 group?

13 A. Yes.

14 MS. FINCHER: Object to the form.

15 Q. What was Dental Gator's response to
16 that?

17 A. It was that we are not a pure buying
18 club.

19 Q. Why is Dental Gator -- or strike
20 that.

21 Why was Dental Gator not a pure
22 buying club?

23 A. Because we did more than just say,
24 join us and you save on Schein. Schein was,
25 call it, one out of 10 value-added services,

1 PUCKETT

2 accounting, lawyers, marketing, construction,
3 tax, etcetera. That was, you know, one sliver
4 of the value we provided. So we provided -- I
5 guess the simple thing is, do you provide more
6 value outside of someone buying the same supply
7 they have been buying, and our answer is,
8 unequivocally yes, we did.

9 Q. Was Schein satisfied with that
10 response?

11 MS. FINCHER: Object to the form.

12 A. Yes, they were, because they let
13 us -- we opened or started or whatever you call
14 it.

15 Q. And after Dental Gator started, did
16 Schein continue to ask questions about Dental
17 Gator's business model?

18 MS. FINCHER: Object to the form.

19 A. Yes, they did. Throughout the
20 existence, they -- you know, they would have
21 questions on, you know, were we still doing
22 what we set out to do, were we doing what we
23 told them to do or were we out there just
24 trying to get people to join from -- for Schein
25 example -- or Schein's exclusive purpose, so

1 PUCKETT

2 they would check in on that quite a few -- you
3 know, fairly often.

4 Q. Who would check in on that?

5 A. Andrea Hight, and at a certain
6 point, it turned into Daniel Hobson.

7 Q. And how often would they check in on
8 that?

9 A. You know, again, it was always
10 under -- it was very, very rarely. Dental
11 Gator specific check-in or call, very, very
12 rarely. It was more, you know, we talked all
13 the time, and me too, and that would come up.

14 Q. You said a moment ago they would
15 check in frequently about Dental Gator.

16 A. Like it would come up in
17 conversation, meaning I talked -- you know, I
18 was just talking to Henry Schein today for --
19 something broke in Houston or something, right?
20 That would be an example, and like, okay, and
21 hey, how is Dental Gator, or I heard X about
22 Dental Gator, or what is going on today, even
23 that -- so it would come up as a happenstance
24 for the purpose of another conversation.

25 Q. Okay. Anyone else at Schein other

1 PUCKETT

2 than Ms. Hight and Mr. Hobson who asked you
3 questions about Dental Gator?

4 A. I would say on -- you know, again,
5 same answer as I answered before. Those
6 individuals that I named previously, on rare
7 occasions. Once a year we would have large
8 meetings, you know, to go over our MB2's
9 relationship with Schein as a whole, cover
10 yearly numbers, that sort of thing. Dental
11 Gator would be covered in that on a brief
12 basis, so that is when the other people were
13 involved.

14 Q. What kind of questions did the
15 people from Schein ask about Dental Gator?

16 MS. FINCHER: Object to the form.

17 A. They did not ask a ton of questions.
18 We would at a certain point, about halfway
19 through Patrick's involvement here, we were
20 getting frustrated, "we" being Dental Gator
21 owners, that Schein was not doing enough to
22 support us. You know, it just wasn't working
23 as much -- as fast as we wanted it to. And so
24 we were typically asking them questions about
25 why can't we do this, can you help us here, we

1 PUCKETT
 2 need ideas. We wanted to boost our equivalent
 3 of sales, which is customers.
 4 Q. What was Schein's response to Dental
 5 Gator's questions?
 6 A. It was all about -- you know, they
 7 said they had agreements or pressure from
 8 manufacturers as well, so they were -- you
 9 know, they said -- they always said they
 10 support us. They support us in our venture,
 11 our partnership, "us" being MB2. And although
 12 it wasn't a direct venture with Dental Gator,
 13 you know, they supported MB2 in its desire to
 14 have common ownership to Dental Gator,
 15 whatever, maybe.
 16 So they said they supported us, but
 17 they also said they -- you know, at a certain
 18 point, and I don't remember the date, prices
 19 were raised from the initial Dental Gator
 20 offerings, and so we did not like that.
 21 Q. Can you talk a little bit more about
 22 that?
 23 A. I don't know the percentages, but
 24 this is a Patrick Gill conversation, but
 25 pricing arrays, I don't know if that is 1

1 PUCKETT
 2 products that they were buying.
 3 Q. Do you recall why they raised the
 4 prices?
 5 MS. FINCHER: Object to the form.
 6 A. I do not.
 7 Q. The price increase, was that for
 8 Dental Gator members only or did it also apply
 9 to MB2?
 10 MS. FINCHER: Object to the form.
 11 A. That was for Dental Gator members
 12 only.
 13 Q. What was Dental Gator's reaction to
 14 the price increase?
 15 A. As I mentioned, we said we didn't
 16 like it.
 17 Q. What was Schein's response?
 18 A. They said, sorry, but tough poop.
 19 You know, they offered to help us on other ends
 20 as far as other -- what do you call them,
 21 services offerings, recruiting, different
 22 things dental practices use, but again,
 23 Patrick -- at this point, this is when -- I was
 24 only involved in the front side. Patrick came
 25 in on this stuff, so I'm sure Patrick had many,

1 PUCKETT
 2 percent or 100 percent, they were raised, and
 3 Patrick felt that hindered his ability to get
 4 new customers. So we were upset about that for
 5 a while and told them that we didn't think it
 6 was cool.
 7 Q. Do you recall when that happened?
 8 A. I don't.
 9 Q. Do you recall who at Schein Dental
 10 Gator had those conversations with about the
 11 price increases?
 12 MS. FINCHER: Object to the form.
 13 A. I believe that would be Patrick and
 14 Daniel -- Patrick Gill would have those
 15 conversations on behalf of Dental Gator with
 16 Daniel Hobson on behalf of Schein.
 17 Q. When you say Schein raised prices,
 18 what do you mean?
 19 MS. FINCHER: Object to the form.
 20 A. They raised pricing on our -- on
 21 Dental Gator's formulary.
 22 Q. Did they cut the discounts that
 23 Dental Gator members were previously getting?
 24 MS. FINCHER: Object to the form.
 25 A. They raised the pricing on the same

1 PUCKETT
 2 many, many conversations about this, but I was
 3 just -- you know, Patrick would just talk to us
 4 in frustration and ask us to push whenever we
 5 met on MB2 stuff, so that is what we did.
 6 Q. Did Dental Gator express its
 7 frustration to Schein about the price
 8 increases?
 9 MS. FINCHER: Object to the form.
 10 A. Yes. As I just said, Patrick did
 11 many times as well as the owners at MB2. We
 12 told them in person during meetings from MB2
 13 that we thought that was not -- they were not
 14 doing their part of the deal.
 15 Q. And why is that?
 16 A. Just supporting us -- supporting our
 17 venture. I mean, it makes it hard when you
 18 are -- you know, you raise -- if you are
 19 exclusive with American Airlines and they raise
 20 pricing, you are more likely to look to
 21 Southwest Airlines, so that is what we felt was
 22 happening.
 23 Q. Did you get the sense that Schein
 24 did not want to support Dental Gator?
 25 MS. FINCHER: Object to the form,

1 PUCKETT
 2 leading.
 3 A. I don't think it was a lack of --
 4 I'm not saying intentional support. They just
 5 raised the pricing, which didn't -- which hurt
 6 Dental Gator's value proposition to the common
 7 dentist that we were trying to recruit from.
 8 Q. So how did the price increases
 9 affect Dental Gator's business?
 10 A. I mean, it -- I would -- it hurt it
 11 a lot. I mean, we stopped growing at this
 12 point. You know, we kind of topped out and
 13 disclosed -- we lost some value. You know, if
 14 it -- the value -- if they were paying us 500
 15 bucks or 300 bucks and they weren't saving as
 16 much on the Schein supplies, which one of the
 17 services, you know, the global savings bucket
 18 they were benefitting from was decreased, and
 19 so that hurt us.
 20 This was also in a time when I
 21 think, you know, it was rising competition just
 22 in everything, so I think that -- you know, it
 23 was, you know, we started to see sales dwindle
 24 as well as decrease.
 25 Q. That was right after the price

1 PUCKETT
 2 yeah, towards the end he was pretty -- towards
 3 the end of his employment before he quit Dental
 4 Gator, he was a pretty -- I would say his
 5 morale was not great.
 6 Q. Do you attribute the decrease in
 7 Dental Gator's growth to Patrick's performance?
 8 MS. FINCHER: Object to the form.
 9 A. I think that is an impossible
 10 question. Pure guessing on my part. I think
 11 it was a totality of things and probably
 12 something that Patrick would have the best
 13 opinion on.
 14 Q. Did you ever have discussions with
 15 Patrick about that?
 16 A. Yeah, yeah, I did. I would say,
 17 what is going on, you seem down, you seem --
 18 yeah, I mean, he was like, yeah, I feel
 19 defeated. I mean, he wasn't making money. We
 20 gave him a salary, but he got commission on
 21 every sale, and so he took a pay cut coming
 22 over here from Schein because he wanted, you
 23 know, to try something different, equity in the
 24 company, and it wasn't working. He wasn't
 25 making very much money at the time, and so he

1 PUCKETT
 2 increase from Schein?
 3 MS. FINCHER: Object.
 4 A. Yeah. It was hand in hand, I would
 5 say, together with Patrick, and again, we
 6 weren't involved at this point. Patrick and I
 7 would touch base maybe once a month, and so I
 8 had no idea if he was sitting on his butt not
 9 doing anything every day. That could have been
 10 a bigger reason. I have no idea on that.
 11 I just know from Patrick's point of
 12 view, it -- it undercut us or hurt us as one of
 13 the value propositions, and so, you know, it
 14 just -- for whatever reason, Patrick stopped
 15 making sales and we stopped -- we had people
 16 who dropped out, so...
 17 Q. Do you have any reason to believe
 18 that was related to Patrick's performance as an
 19 employee?
 20 A. I know he felt defeated at times.
 21 That is -- I mean, he didn't -- you know, it is
 22 a sales job, so if you get your balls kicked in
 23 daily and not making -- sorry for that -- not
 24 getting sales and like positive reinforcement
 25 of, you know, seeing some results come through,

1 PUCKETT
 2 had a family. I don't think he was -- I don't
 3 think things were awesome.
 4 Q. Did Patrick ever tell you why he
 5 thought Dental Gator had stopped growing?
 6 MS. FINCHER: Object to the form.
 7 A. Yeah. He thought that, you know,
 8 our pricing -- they increased -- he thought we
 9 had increased competition from other similar
 10 buying groups like Dental Gator. He thought
 11 that, you know, local dentists just -- I think
 12 overall, dentists were just much less apt to
 13 jump from their current relationships with any
 14 and all vendors.
 15 Even at -- even when we were
 16 offering it for free -- we knew we had a
 17 problem when we were offering it for free and
 18 people weren't signing up. That was the oh,
 19 crap moment of -- you know, we just -- we just
 20 built a bad business or had bad people
 21 employed.
 22 Q. Up until the point of the price
 23 increase from Schein, was Dental Gator on the
 24 growth trajectory?
 25 MS. FINCHER: Object to the form.

1 PUCKETT

2 A. Yes, I would say it -- if I have my
3 dates right, it had slowed. We came out -- I
4 mean, kind of like anything, we came out of the
5 gates hot when Patrick joined, went from four
6 to 9 to 15 to 20 to 25, you know, but I think
7 that is some of -- that is probably human
8 nature, and from what little I know about
9 sales, you kind of come out fired up.

10 So, you know, I think it was, again,
11 a multitude of things. You know, we -- our
12 growth had slowed. It was not on the -- we
13 were not hockey sticking up to the right -- as
14 far as each month growth.

15 Q. How did Dental Gator's customers
16 react to the price increase?

17 MS. FINCHER: Object to the form.

18 A. I'm unfamiliar with that. I wasn't
19 involved in the customer facing side.

20 Q. Did Patrick ever speak to you about
21 how customers were reacting to the price
22 increase?

23 MS. FINCHER: Object to the form.

24 A. Not to my knowledge.

25 Q. Do you know whether independent

1 PUCKETT

2 dentists were able to get the same discounts
3 from their sales representatives -- strike
4 that.

5 After the price increase from
6 Schein, were independent dentists able to get
7 the same discounts through their local sales
8 reps --

9 MS. FINCHER: Object to the form.

10 Q. -- of distributors like Schein?

11 MS. FINCHER: Object to the form.

12 A. I think -- I know on certain
13 products, yes. Part of the whole distributor,
14 I call it, I guess, business game that they --
15 you know, what they do is certain products be
16 priced certain ways, others would not be.

17 You know, it is hard -- it is hard
18 to get apples to apples, but yeah, we were much
19 closer to private practitioner pricing,
20 probably cheaper as the total if you looked at
21 all the products, but certain products, even to
22 this day, MB2 gets the same price as John down
23 the street, but we get, you know, much of the
24 other things cheaper.

25 Q. Did MB2 or Dental Gator see Schein's

1 PUCKETT

2 price increase as an attempt to undercut buying
3 group pricing?

4 MS. FINCHER: Object to the form,
5 leading.

6 A. No.

7 Q. I want to go back a little bit to --
8 we talked earlier about Dental Gator's
9 marketing and advertising efforts, and we
10 talked a little bit about an email that was
11 sent out at some point in 2014. We also talked
12 about flyers and mailers, and I think we also
13 talked briefly about YouTube. Can you tell me
14 a little bit more about the nature of Dental
15 Gator's presence on YouTube?

16 A. I'm unfamiliar with the specifics.
17 I know Patrick had reached out to some type of
18 third-party service who was made up of a bunch
19 of individual -- I want to call it salespeople.
20 I think these guys would shuck anything that
21 walked kind of deal where they would, you know,
22 sell Skittles, whatever it is, for a certain,
23 you know, commission structure. And so Patrick
24 would work with them, and these guys were out
25 beating the street, trying to sell Dental

1 PUCKETT

2 Gator.

3 I think -- I think they are
4 completely independent contractors. So I think
5 one of them made like a YouTube video or like a
6 YouTube presentation. I don't even know the
7 names of what state these guys were in. Again,
8 this was Patrick, you know, but some kind of
9 third-party sales force.

10 Q. What do you mean when you say
11 "third-party sales force"?

12 A. Meaning they were not employed by
13 us. They were -- they're in fact a third
14 party, but they were doing sales of our
15 product.

16 Q. Were they doing marketing?

17 A. I think marketing and sales, yeah,
18 probably go hand in hand. So if they're
19 pitching our product, I think that is -- that
20 is also marketing materials.

21 Q. Do you recall the name of that
22 company?

23 A. I have no idea.

24 Q. So apart from YouTube and the other
25 things we discussed, how else did Dental Gator

1 PUCKETT
 2 advertise its business?
 3 A. I think that is all of the marketing
 4 medias that I'm aware of outside of cold
 5 calling.
 6 Q. Any other social media advertising
 7 efforts that Dental Gator engaged in?
 8 A. I don't recall if we did anything
 9 else.
 10 MR. SOLOMON: I'm handing the
 11 witness a document that was premarked
 12 CX4067.
 13 (Exhibit CX4067 marked.)
 14 Q. Justin, can you take a moment just
 15 to read that over and let me know when you are
 16 done?
 17 A. (Reviewing document.) Yes, okay.
 18 Q. Mr. Puckett, what is this? What is
 19 CX4067?
 20 A. This is an email string between
 21 members of MB2 and members of Schein.
 22 Q. If you focus -- I just want to
 23 direct your attention to the first page, so it
 24 is 4067-001. Do you see your email address?
 25 A. Yeah.

1 PUCKETT
 2 Q. At the time of this email, did you
 3 have knowledge of the contents of this email?
 4 A. Yeah. I mean, when I read it, yes.
 5 Q. And was this email kept in the
 6 course of regularly conducted business at MB2?
 7 A. Yeah.
 8 Q. And did this email come from your
 9 files?
 10 A. Yes, I believe so -- I assume so,
 11 yes.
 12 Q. Do you recognize this as something
 13 you produced to the FTC?
 14 A. Yes, I think I produced it to all
 15 parties, I believe.
 16 Q. So I just want to focus again on the
 17 topmost email from Andrea Hight, again, June
 18 10th, 2014 at 9:45 a.m. She writes, Hi, Dr. T
 19 and Justin. For your reference and
 20 documentation, here is the image of the letter
 21 that caused concerns. Thank you so much for
 22 the prompt response and remediation and the
 23 call this morning. We really do look forward
 24 to seeing your great success continue and to be
 25 true partners with you to help make that

1 PUCKETT
 2 Q. On this page?
 3 A. I do.
 4 Q. Is that JPuckett@MB2Dental.com?
 5 A. I do, yes.
 6 Q. And this is an email from Tuesday,
 7 June 10th, 2014, and the topmost email is from
 8 Andrea Hight --
 9 A. Uh-huh.
 10 Q. -- to yourself, and it looks like
 11 someone named Dr. T. Tang. Do you see that?
 12 A. I do.
 13 Q. And who is Dr. T. Tang?
 14 A. Dr. Trung Tang.
 15 Q. Is Dr. Trung Tang a dentist involved
 16 with MB2?
 17 A. Yes.
 18 Q. And he was also involved in Dental
 19 Gator?
 20 A. Yes.
 21 Q. Did you receive this email as part
 22 of your job at MB2 Dental?
 23 A. Yes, but it is involved. I mean,
 24 yes, I was answering this as an MB2 employee,
 25 but it obviously regarded Dental Gator.

1 PUCKETT
 2 happen.
 3 I just want to focus first on the
 4 first sentence Ms. Hight is referring to the
 5 image of a letter that caused concerns. Do you
 6 know what Ms. Hight was referring to there?
 7 MS. FINCHER: Object to the form.
 8 A. I am fairly certain that was an
 9 email attachment.
 10 MS. FINCHER: Do you have an email
 11 attachment, Ronnie, to this email?
 12 MR. SOLOMON: So we have -- as I
 13 understand it, we have documents that
 14 Justin -- Mr. Puckett believes is the email
 15 attachment that was --
 16 A. I have the document. I apologize, I
 17 thought I had --
 18 MR. SOLOMON: I have it as well with
 19 me.
 20 A. Myra -- full disclosure, I don't --
 21 I wasn't -- our IT people helped me with the
 22 hot links or whatever they call it. Yeah, we
 23 have -- we have the attachments.
 24 Q. I'm happy to introduce what you --
 25 what you had sent over. We can talk about

1 PUCKETT
 2 whether or not those are attachments to this
 3 email.
 4 MS. FINCHER: Ronnie, is this
 5 something that has been produced to
 6 respondents?
 7 MR. SOLOMON: It was produced by MB2
 8 Dental.
 9 MS. FINCHER: But in the course of
 10 production in this --
 11 MR. SOLOMON: Yes.
 12 MS. FINCHER: -- matter?
 13 MR. SOLOMON: Yes. You have
 14 everything we have.
 15 Q. Going back to my question, do you
 16 know what was attached to this email?
 17 A. I think this was the -- this was an
 18 email with Tyler -- I don't know the dude's
 19 last name, one of -- he worked under Patrick,
 20 the sales guy, sending out an email. He said,
 21 that is the one I represented earlier that
 22 saved money on supplies or saved money on
 23 Schein, as well as our pricing sheet, a
 24 pamphlet sheet thing, trifold.
 25 Q. Turning to the next sentence,

1 PUCKETT
 2 Ms. Hight refers to prompt response and
 3 remediation. Do you know what she was
 4 referring to there?
 5 MS. FINCHER: Object to the form.
 6 A. She asked us to take -- not email
 7 this again from -- or to have -- we talked to
 8 Patrick, talked to the kid, Tyler, about not --
 9 cleaning up his emails. I do not remember what
 10 exactly we told him that he could and could not
 11 do. I just know that the email was not okay,
 12 so I don't recall what, again, with the email
 13 was not okay. Again, if I'm -- if I'm assuming
 14 correctly, it was regarding the specific
 15 wording in that email regarding price savings
 16 with Schein.
 17 Q. Anything else that Ms. Hight was
 18 concerned about as it relates to this email?
 19 MS. FINCHER: Object to the form.
 20 A. I don't -- again, I don't recall the
 21 specifics. Obviously she was not happy with
 22 the letter that was sent out that caused her
 23 concerns.
 24 Q. Do you know -- how do you know she
 25 wasn't happy?

1 PUCKETT
 2 A. Because it says on the email "that
 3 caused the concerns."
 4 Q. Did you have a call with Ms. Hight
 5 at some point in time near this email?
 6 A. Yes.
 7 Q. Do you recall the discussion that
 8 took place on that call?
 9 A. I don't remember the specifics. I
 10 didn't even remember I had a call, except for
 11 it says here I had a call, so yeah. I didn't
 12 look at phone records or anything just to
 13 verify that, but yeah, it looks like we had a
 14 call.
 15 Q. Do you recall generally what the
 16 nature of that call was?
 17 MS. FINCHER: Object to the form.
 18 A. I remember one or two times
 19 throughout Dental Gator that they got pissed at
 20 stuff we sent out. I don't remember -- I can't
 21 remember all the specifics, but they got pissed
 22 that we sent out certain things like this,
 23 which I read the email and it is -- it is kind
 24 of throwing it blunt in the face of join us,
 25 just save a bunch of money on Schein, which

1 PUCKETT
 2 again, that goes back to -- we're not -- we're
 3 not talking about other stuff we're providing
 4 them value on, so...
 5 Q. Anything else that was raised as a
 6 concern as it relates to these communications
 7 with Ms. Hight?
 8 MS. FINCHER: Object to the form.
 9 A. No.
 10 Q. Do you recall who else was a part of
 11 that phone call with Ms. Hight?
 12 MS. FINCHER: Object to the form.
 13 A. I don't at all, no, I don't.
 14 Q. Was Mr. -- strike that.
 15 Was Dr. T on that call?
 16 MS. FINCHER: Object to the form --
 17 A. I don't recall.
 18 MS. FINCHER: -- asked and answered.
 19 MR. SOLOMON: I would like to hand
 20 the witness a document that has been
 21 premarked as CX4036.
 22 (Exhibit CX4036 marked.)
 23 A. Yes.
 24 Q. Mr. Puckett, do you recognize
 25 Exhibit 4036?

1 PUCKETT
2 A. Yeah. Vaguely I remember help --
3 you know, over viewing some of his stuff as
4 they were inputting.
5 Q. What is CX4036?
6 A. It is a pamphlet, an advertising
7 pamphlet for Dental Gator.
8 Q. Did you produce this in response to
9 the subpoena from the FTC?
10 A. I believe so, yes.
11 Q. And did CX4036 come from Dental
12 Gator's files?
13 A. I don't know if it was Dental
14 Gator's, mine -- I assume it was kind of a
15 myriad of everybody.
16 Q. Do you know who created CX4036?
17 A. I don't. I think our -- at the time
18 Anna Phillips, who worked -- helped marketing
19 MB2 maybe like actually -- actually -- I don't
20 know.
21 MS. FINCHER: Hey, Ronnie, do you
22 want to -- I mean, just remember that we
23 have Carrie on the line and you keep
24 referring to complaint counsel number.
25 Nobody on respondent's side has all of your

1 PUCKETT
2 another -- kind of confusing, but an email
3 string -- you know how you can attach an email
4 string in Outlook, I think the email contained
5 this.
6 Q. Okay.
7 A. And Ms. Hight's email, there is two
8 attachments. One was an image, I think, so I
9 don't have it in front of me. I'm sorry.
10 Q. So the material in CX4036, would you
11 say this is the material that Ms. Hight was
12 concerned about as it related to these June
13 2014 communications?
14 MS. FINCHER: Object to the form,
15 leading.
16 A. I don't -- again, I'm sorry, guys, I
17 don't know. Y'all would have the email. I can
18 pull the exact email with specific things, and
19 I will be able to tell you that. So we sent
20 this out -- I think we sent CX4036 -- we sent
21 this out to a lot of people all the time.
22 Q. To potential customers?
23 A. Yes.
24 Q. Do you recall whether anyone from
25 Schein ever complained about the contents of

1 PUCKETT
2 exhibit numbers, so if you could read the
3 Bates, I think that would be helpful.
4 MR. SOLOMON: Sure. Just for the
5 record, and for the folks on the phone, the
6 Bates number is FTC-MB2-055197.
7 MS. FINCHER: Thanks.
8 Q. Mr. Puckett, do you know whether
9 this -- strike that.
10 Mr. Puckett, do you know whether
11 CX4036 was attached to -- was the attachment to
12 the email represented in CX4067?
13 A. Yeah. I believe that was one of the
14 two that our -- I don't know actually. I don't
15 have it directly in front of me, so I
16 apologize.
17 Q. What don't you have directly in
18 front of you?
19 A. I don't -- I mean, I think this was,
20 but again, I don't have like the email -- I
21 don't have Microsoft Outlook in front of me.
22 Again, I think I put it on a package for y'all.
23 I don't remember which one was -- I thought
24 this one was an email from a guy named Tyler
25 that had an email and had this attached to

1 PUCKETT
2 CX4036?
3 MS. FINCHER: Object to the form,
4 leading, mischaracterizes the testimony.
5 Ronnie, he just said he's not even sure if
6 this is the one attached to the email.
7 A. Yeah, I don't remember this being a
8 problem. I don't remember this thing being a
9 specific problem.
10 Q. Turning back to Ms. Hight's email in
11 4067, I just want to direct your attention
12 there again for a moment. Did Ms. Hight ever
13 tell you that MB2 was in breach of its 2014
14 agreement because of its support for Dental
15 Gator?
16 MS. FINCHER: Object to the form,
17 leading.
18 A. Those specific words, no, were never
19 used.
20 Q. Do you recall what words Ms. Hight
21 used?
22 MS. FINCHER: Object to the form.
23 A. No.
24 Q. Are you familiar with the term
25 "MSO"?

1 PUCKETT
2 A. Yes.
3 Q. What do you understand MSO to be?
4 A. Management service organization.
5 Q. What is a management service
6 organization?
7 A. Same thing as a -- or sorry, same
8 thing as a DSO, provide services.
9 Q. Did Ms. Hight ever tell MB2 that
10 Dental Gator could only act as an MSO by
11 focusing on management services only?
12 MS. FINCHER: Object to the form --
13 A. No.
14 MS. FINCHER: -- leading. Ronnie,
15 again, this is a third-party witness.
16 Q. Do you recall ever discussing the
17 firing of a marketing manager with Ms. Hight?
18 MS. FINCHER: Object to the form.
19 A. I think -- I don't recall the firing
20 of a marketing -- no. I know there was a time
21 Patrick -- I think that was dealing with one of
22 those third-party guys that I think the guy
23 was -- it was very -- we didn't even control
24 these guys. So I think they were out there
25 kind of going wild, wild west in certain

1 PUCKETT
2 whether Dental Gator had fired any marketing
3 employee?
4 MS. FINCHER: Object to the form,
5 leading.
6 A. No.
7 Q. Did anyone from Schein ever tell you
8 that Schein would monitor Dental Gator's
9 compliance to confirm that it was not acting as
10 a buying group?
11 MS. FINCHER: Object to the form,
12 leading.
13 A. No.
14 Q. Did anyone from Schein ever tell you
15 that -- strike that.
16 Did Ms. Hight ever tell you that
17 Schein was shutting down other buying groups in
18 Texas?
19 MS. FINCHER: Object to the form,
20 leading.
21 A. No.
22 Q. Following this June 2014 email with
23 Ms. Hight, did you have any follow-up
24 discussions with Ms. Hight?
25 MS. FINCHER: Object to the form,

1 PUCKETT
2 things. I don't know what they were saying or
3 what they were not supposed to be saying, but I
4 know Patrick I think terminated at least one or
5 two of them.
6 Q. Do you know why?
7 A. They were doing things that, you
8 know, we kind of -- on our common agreement
9 upon. I don't remember what those specific
10 things were, but something that Schein did not
11 like, and Patrick and Schein, and at that
12 point, I think it was Daniel Hobson were
13 talking through, but we weren't involved in the
14 intricacies of that. That was Patrick.
15 Q. You referred to something a moment
16 ago to something that Schein didn't like. What
17 did you mean?
18 A. Something they didn't like us doing
19 as far as Dental Gator advertising. So I don't
20 know what those specifics were, but something
21 they did not like regarding our original
22 agreement, which was to advertise Dental Gator
23 as a company that provides value to dentists on
24 a broad spectrum of things.
25 Q. Did anyone from Schein ever ask you

1 PUCKETT
2 leading.
3 A. I'm sure I did. We talked a bunch.
4 I don't remember anything in a follow-up
5 conversation in regards to this specific email
6 thread.
7 Q. Do you recall any other
8 conversations that related to Dental Gator's
9 acting as a buying group?
10 A. Not specifically. Again, very well
11 could have been, it is just -- you know, this
12 was like one of, you know, a billion things
13 that we were dealt with every day.
14 Q. Is there anything you can look at
15 that might refresh your recollection as to some
16 of those discussions?
17 MS. FINCHER: Object to the form,
18 mischaracterizes testimony.
19 A. No. I mean, unless you have -- I
20 sent a bunch of emails to everyone. I'm sure
21 if there are emails saying I did something, I'm
22 sure -- again, I didn't read every single email
23 I sent, so...
24 Q. Do you recall having any follow-up
25 meetings in-person with Ms. Hight after this

1 PUCKETT
2 email communication in CX4067?
3 MS. FINCHER: Object to the form.
4 A. I think she was mostly, actually --
5 I thought by now she was close to getting off
6 the account, so I don't remember -- I haven't
7 seen her in years. I think Daniel -- I think
8 Daniel was involved at this point.
9 Q. If you look at -- I just want to
10 direct your attention, Mr. Puckett, to
11 CX4067-003.
12 A. Yes.
13 Q. And I just want to refer to
14 Ms. Hight's email to you on June 10th, 2014 at
15 1:59 p m. Do you see that?
16 A. Uh-huh.
17 Q. It looks like there is a discussion
18 here of a meeting in Utah. Do you see that?
19 A. Uh-huh.
20 Q. Do you recall whether you actually
21 met with Ms. Hight in Utah after these email
22 communications?
23 A. Yes, I do. We did.
24 Q. Do you recall what the nature of
25 that meeting was?

1 PUCKETT
2 Q. Is it possible that she did?
3 MS. FINCHER: Object to the form.
4 A. It is possible.
5 Q. So looking ahead after these June
6 2014 communications, were there any further
7 discussions between Dental Gator and Schein
8 about buying clubs?
9 MS. FINCHER: Object to the form,
10 mischaracterizes the testimony.
11 A. I mean, I still talk to Schein about
12 buying clubs, as far as like -- I mean, I would
13 give them a hard time -- at this point -- now,
14 this is later on -- go to '15, '16, it is
15 very -- the term "buying club," I think, it is
16 a different -- it has morphed into -- you know,
17 there is tons -- there is a million -- what I
18 call buying clubs, some call them DSOs, some
19 call them other -- that are very mainstream
20 now.
21 We were on the forefront of it when
22 it was a little bit different, a little less
23 prevalent, more taboo, whatever you call it.
24 There's certain things that -- again, it just
25 depends what they call it, but I still ask --

1 PUCKETT
2 A. It was myself, Dr. Trung Tang, and
3 Patrick Gill, we flew up there to meet with
4 Schein, and specifically it was regarding
5 Dentrix Enterprise, which is a practice
6 management software in Salt Lake, which is
7 where Andrea lived, but it's also where their
8 enterprise team was headquartered.
9 Q. Do you recall who attended that
10 meeting other than yourself, Dr. Tang, and
11 Andrea?
12 A. Vance Taylor was there, who was an
13 enterprise rep. I don't remember if Daniel
14 Hobson was there. I can't recall.
15 Q. Do you recall how long the meeting
16 lasted?
17 A. I flew in there in the morning, went
18 out there, did the dog and pony show, review
19 meeting stuff, went to dinner that night, and I
20 think we flew home the next morning.
21 Q. Do you recall whether Ms. Hight
22 asked you anything about Dental Gator at this
23 meeting?
24 MS. FINCHER: Object, form.
25 A. I did not.

1 PUCKETT
2 you know, I still tell them that, you know, I
3 see Schein doing business with buying clubs all
4 the time, so...
5 Q. And specifically after these June
6 2014 communications, did Schein continue to ask
7 questions about Dental Gator's model?
8 MS. FINCHER: Object to the form.
9 A. I don't recall. At this point,
10 Patrick was -- you know, this meeting was right
11 when -- I mean, I do remember Patrick had just
12 taken over, so that is when we were kind of all
13 gone.
14 Q. So it is possible -- or strike that.
15 So those conversations may have
16 occurred between Schein and Patrick?
17 MS. FINCHER: Objection to the form,
18 calls for speculation.
19 A. Any conversations regarding Dental
20 Gator on a day-to-day basis would have involved
21 Patrick at that point.
22 Q. You can put those two documents
23 aside.
24 I'm just going to hand you another
25 document.

1 PUCKETT
2 MR. SOLOMON: Off the record.
3 (Recess taken 11:13 a.m. to 11:19 a m.)
4 Q. Welcome back, Mr. Puckett.
5 MR. SOLOMON: Did someone just join?
6 MS. MASTERS: Hi. This is Ashley
7 Masters with the Federal Trade Commission.
8 MR. SOLOMON: Hi, Ashley.
9 MR. McDONALD: Is Lin still on?
10 MR. SOLOMON: Lin, are you still
11 there?
12 MS. KAHN: Still here.
13 MR. SOLOMON: Yes, she's here.
14 Q. Mr. Puckett, you mentioned earlier
15 today that you were involved in negotiating the
16 2014 agreement between MB2 and Schein. Do you
17 recall that?
18 A. Yes.
19 MR. SOLOMON: I am handing the
20 witness a document that was premarked as
21 Exhibit CX4001, and the Bates numbers on
22 this document are FTC-MB2-005096.
23 (Exhibit CX4001 marked.)
24 Q. Mr. Puckett, can you take a look at
25 that and let me know when you have had a chance

1 PUCKETT
2 to review it.
3 A. Yes, I have had a chance to review
4 it.
5 Q. Mr. Puckett, what is CX4001?
6 A. This is our signed agreement. It is
7 me sending -- well, it is me sending Patrick
8 Gill our signed agreement, which we signed in
9 March 2014 with Schein, our PPA or PVA,
10 depending on what they call it.
11 Q. Do you recall why you sent it to
12 Patrick?
13 A. I assume he was asking about
14 rebates, rebate structure, because we had --
15 Dental Gator had rebates -- the same rebates as
16 well, so he was, you know, paid on some of
17 this.
18 Q. And if you turn to the next page,
19 CX4001-2, is that the attachment to this email?
20 A. Yes, it is. This is our contract.
21 Q. I would like to direct your
22 attention to the third paragraph on CX4001-002,
23 starting with, dental practices which are not
24 owned in whole or in part by MB2 must have a
25 formal affiliate agreement in place with MB2.

1 PUCKETT
2 Do you see that?
3 A. Uh-huh.
4 Q. Do you recall why that provision
5 ended up in this agreement with Schein?
6 MS. FINCHER: Object to the form.
7 A. Yeah. They just didn't want any
8 random person -- I mean, again, this goes back,
9 we couldn't -- my brother-in-law is a private
10 practitioner, so I couldn't just throw him on
11 and get our -- you know, he was not a true part
12 of MB2.
13 Q. Did you understand this provision to
14 apply to Dental Gator as well?
15 MS. FINCHER: Object to the form.
16 A. No, I don't. I didn't think it was
17 specific to Dental Gator, if that is what --
18 no, I don't, just MB2.
19 Q. Did you think that this provision
20 affected MB2's ability to run Dental Gator?
21 MS. FINCHER: Object to the form,
22 leading.
23 A. No, not that section, no.
24 Q. Do you know why this provision was
25 added to the agreement between MB2 and Schein?

1 PUCKETT
2 MR. LONG: Object to the form.
3 A. I don't. I think this was about the
4 time we were going over the Dental Gator, so I
5 know that was a piece when they did ask our
6 structure, if Dental Gator clients were going
7 to be MB2 clients, which originally we said
8 yes, and then upon explaining the difference,
9 we said, no, they were not because they would
10 not have equity. It was not -- you know, for a
11 multitude of reasons.
12 We also -- if they're a client under
13 this agreement, we're responsible for paying
14 their bill as well. We don't -- we didn't --
15 that was not the case with Dental Gator
16 clients. They billed them directly.
17 Q. So MB2 is having discussions with
18 Schein about Dental Gator around the time this
19 agreement was being negotiated?
20 MS. FINCHER: Object to the form.
21 A. Uh-huh, yeah, early, early stages.
22 Q. Do you recall the nature of those
23 discussions?
24 A. Just that we were -- what we were
25 thinking of doing with Dental Gator, just the

1 PUCKETT
2 idea that we're starting it kind of thing.
3 Q. Do you recall whether or not Schein
4 added this provision into the agreement?
5 A. I do not recall if it was an
6 addition or if this was standard language at
7 the time. I do not recall.
8 Q. Do you know whether this language
9 appears in MB2's most recently signed prime
10 vendor agreement?
11 A. It does not appear in our recently
12 signed agreement.
13 Q. Do you know why it is not in the
14 most recently signed agreement?
15 MS. FINCHER: Object to the form.
16 A. I do not.
17 Q. Do you recall negotiating this
18 provision with Schein?
19 A. I do not recall.
20 Q. Do you recall any disagreements or
21 discussions with Schein about this specific
22 provision in the agreement?
23 MS. FINCHER: Object to the form,
24 asked and answered.
25 A. I do not.

1 PUCKETT
2 Q. And then I just want to turn your
3 attention to the next paragraph, specifically
4 the second sentence. It says, this agreement
5 may not be used to grow any group purchasing
6 organization, in paren, GPO-type relationship,
7 which is defined as a relationship whose
8 purpose is to generate revenue for the parent
9 company by allowing others to benefit from the
10 terms of the prime vendor relationship.
11 Do you see that, Mr. Puckett?
12 A. Yes.
13 Q. Do you recall why this provision
14 ended up in the agreement?
15 MS. FINCHER: Object to the form.
16 A. This was consistent with what they
17 had told us with regards to their concern over
18 Dental Gator.
19 Q. So do you recall whether or not
20 Schein inserted this provision?
21 MS. FINCHER: Object to the form.
22 A. I don't remember this being -- as I
23 mentioned, I do not remember this being as a
24 negotiated provision or the specifics upon
25 adding and subtracting it or editing it.

1 PUCKETT
2 Q. Do you recall whether or not this
3 was something that Schein was concerned about
4 at the time you were negotiating this
5 agreement?
6 MS. FINCHER: Object to the form,
7 leading.
8 A. I do not.
9 Q. Do you know whether this provision
10 appears in MB2's most recently negotiated prime
11 vendor agreement?
12 A. It does not.
13 Q. Do you know whether this provision
14 was in prior agreements between MB2 and Schein?
15 MS. FINCHER: Object to the form.
16 A. I do not.
17 Q. And then the same question for the
18 provision in the paragraph above that we looked
19 at earlier?
20 A. I do not recall. I was not aware of
21 that, other agreements.
22 Q. Do you recall after this agreement
23 was signed having discussions with anyone from
24 Schein about potential breaches of these two
25 provisions?

1 PUCKETT
2 MS. FINCHER: Object to the form,
3 leading.
4 A. I do not.
5 Q. Turning back a moment to Dental
6 Gator, do you know whether Dental Gator
7 converted customers from other distributors to
8 Schein?
9 MS. FINCHER: Object to the form.
10 A. Yes, we did.
11 Q. Can you tell me more about that?
12 A. Any time you got a customer from
13 Dental Gator, they were an existing dental
14 office; therefore, they ordered dental
15 supplies; therefore, they ordered them from a
16 distributor, usually Patterson, Schein, or
17 Benco or Burkhart or whoever else.
18 And so, you know, there was a -- I
19 will call it whatever -- I don't know the
20 percentages, but a certain percent chance every
21 time you converted someone, they were not a
22 customer of Schein, so they would become a
23 customer of Schein at their option to be there
24 on all or a portion of their supply agreement.
25 Q. And do you recall whether customers

1 PUCKETT
2 of Patterson and Benco converted their
3 purchases from those distributors over to
4 Schein after joining Dental Gator?
5 MS. FINCHER: Object to the form.
6 MR. LONG: Objection, form.
7 A. I do know at least -- I'm for sure
8 certain of a couple of Patterson offices that
9 converted. I do not recall specifics on Benco.
10 Q. What about Burkhart?
11 A. I do not recall as well.
12 Q. Would you say that Schein gained new
13 customers as a result of Dental Gator?
14 MS. FINCHER: Object to the form.
15 A. Yes, they would -- they did.
16 Q. Do you recall how many customers?
17 A. I do not.
18 Q. Would you say that Dental Gator
19 benefited Schein?
20 MS. FINCHER: Objection, form,
21 leading.
22 A. Yes. We brought in revenue that
23 they did not have, so yes, we benefited Schein.
24 Q. Do you recall -- or do you know how
25 much new revenue Dental Gator brought Schein?

1 PUCKETT
2 Q. Were they -- strike that.
3 How did they respond to -- strike
4 that.
5 Did they agree that the added
6 revenue was a benefit to Schein?
7 MS. FINCHER: Objection to form.
8 A. Again, I mean, I don't think they
9 agreed or disagreed. It is just they got a
10 customer who they did not have prior to joining
11 Dental Gator, so pretty black and white.
12 Q. You mentioned earlier that you
13 pitched the idea to Schein as well as some
14 other distributors. Do you recall that?
15 A. Yes.
16 Q. What other distributors did Dental
17 Gator pitch its model to?
18 MR. LONG: Object to the form.
19 A. Burkhart, Benco, Patterson, and
20 Schein were all pitched MB2's. We did an RFP
21 from all of them. As part of that, not -- I
22 don't think it was -- you know, as part of
23 that, you know, drag-ons were -- was a
24 conversation around Dental Gator, with those
25 being -- the primary purpose was obviously just

1 PUCKETT
2 A. I do not.
3 Q. Did you ever look at those numbers?
4 A. Patrick probably did, maybe I got
5 some -- no, not -- we are only presented with
6 total spend from -- on Dental Gator. It wasn't
7 broken out by customers who took them from, and
8 I don't even remember the numbers.
9 Q. Did you ever have discussions with
10 anyone from Schein about the added revenue that
11 Dental Gator was bringing to Schein?
12 MS. FINCHER: Objection to form.
13 A. Yes, we did. It was, you know, part
14 of our pitch to them about why and, you know, I
15 think we went out to every other distributor as
16 well, but, you know, hey, we can give you some
17 new clients you don't have. So yes, that was a
18 topic. It wasn't -- you know, it wasn't like
19 they highly discussed it. It was pretty black
20 and white.
21 Q. What was Schein's reaction to that?
22 MS. FINCHER: Objection, form.
23 A. I don't remember what they said to
24 me, just -- I mean, I don't know what there is
25 to say about it.

1 PUCKETT
2 MB2 supply spin, so...
3 Q. Was MB2 hoping to get distributor
4 support for Dental Gator as well?
5 MS. FINCHER: Objection, form.
6 A. As a secondary nature. I think when
7 we first went out, it was -- I don't think
8 Dental Gator was even thought of yet, but as it
9 came around to, like, interviews and all of
10 that, presentations, whatever you call it, we
11 would talk about Dental Gator.
12 Q. Why did Dental Gator seek to work
13 with distributors like Patterson, Benco, and
14 Burkhart?
15 MS. FINCHER: Objection to form.
16 MR. LONG: Object to the form.
17 A. Because you have to order dental
18 supplies in a dental office, and those are who
19 you order them from.
20 Q. Was Dental Gator looking for a full
21 service distributor?
22 MS. FINCHER: Objection, form.
23 A. To be honest, I don't think we
24 cared.
25 Q. Did Dental Gator ever have

1 PUCKETT
2 discussions with non-full service distributors?
3 MR. LONG: Object to the form.
4 A. I'm not aware of what you mean by
5 non-service distributors, but no, we only
6 talked to the four that I named.
7 Q. Okay. Have you ever heard of a
8 company called Darby?
9 A. Yes, I have.
10 Q. What is Darby?
11 MS. FINCHER: Objection, form.
12 A. I guess, yes, that would be -- I
13 believe they just sell supplies. I could be
14 wrong on that. I believe they are a supply
15 distributor.
16 Q. Do you have any knowledge as to what
17 type of distributor they are?
18 A. A supply distributor, I think.
19 Q. Have you ever heard them referred to
20 as an online or catalog distributor?
21 MS. FINCHER: Objection to form.
22 A. Yes.
23 Q. So Dental Gator didn't seek to do
24 business with distributors like Darby?
25 MS. FINCHER: Objection to form,

1 PUCKETT
2 mischaracterizes the testimony.
3 A. I don't -- I did not. Patrick may
4 have, but I don't -- I have never talked with
5 anyone from Darby ever.
6 Q. So turning to each of the
7 distributors you mentioned, when did Dental
8 Gator have discussions with Patterson?
9 MS. FINCHER: Objection to form --
10 MR. LONG: Object to form.
11 MS. FINCHER: -- mischaracterizes
12 the testimony.
13 A. We signed this agreement I think in
14 March, so if I remember right, I remember going
15 out to all of them in February.
16 Q. February of what year?
17 A. Of '14, maybe a little before that,
18 but I started it in December of '13. The first
19 thing I did was go out to RFPs to try to
20 renegotiate fees for supplies.
21 Q. So you had discussions with
22 Patterson in early 2014?
23 A. Yes, yes.
24 Q. And what ensued in those
25 discussions?

1 PUCKETT
2 A. Again --
3 MR. LONG: Objection, foundation.
4 A. -- with Patterson, with Benco, with
5 Schein, and with Burkhardt, it was all the same
6 conversation. It was, please give us your
7 pricing, please provide us your rebates, please
8 provide us your ancillary services you provide
9 us. It is an RFP process, which is a request
10 for production, request for process, around MB2
11 spend.
12 So that was -- that was kind of how
13 it was worked, and then in person throughout
14 that as it involved was when we were speaking
15 with Dental Gator, we would ask them, hey, what
16 are your thoughts on this as well. So they all
17 went through the same process, same purpose.
18 Q. So MB2 discussed Dental Gator
19 with --
20 A. Yes.
21 Q. -- Patterson, Benco, and Burkhardt?
22 A. MB2 employees and/or owners
23 discussed those.
24 Q. And what was the reaction to the
25 discussions -- or strike that.

1 PUCKETT
2 What was the reaction to MB2's
3 proposals relating to Dental Gator?
4 MS. FINCHER: Objection, form.
5 MR. LONG: Objection, foundation.
6 A. Yeah. I don't remember exact like
7 day-to-day reactions. I don't remember -- I
8 don't remember specifics about Dental Gator.
9 Q. Were Patterson and Benco interested
10 in Dental Gator?
11 MS. FINCHER: Objection to form.
12 MR. LONG: Same objection.
13 A. To be honest, no, I do not remember
14 specifics. I know Benco was definitely
15 interested at a later date, when Patrick came
16 on. Patrick was not involved in these
17 negotiations. Patrick came on in the summer,
18 July. He reached out -- when he was not
19 getting anywhere with Schein, kind of getting
20 frustrated, he reached out to Benco. I don't
21 know where it went, to be honest, but I know --
22 I don't remember the specifics with Patterson,
23 and we've talked about the specifics with
24 Schein.
25 MR. SOLOMON: I'm handing the

1 PUCKETT
 2 witness a document that has been premarked
 3 as CX4013, and it is Bates labeled
 4 FTC-MB2-002450. The topmost email is an
 5 email from February 17th, 2015 at 6:36 p.m.
 6 I'm doing that because you had asked me to
 7 do so, so I used some Bates numbers.
 8 MS. FINCHER: I just want to be able
 9 to see it before you ask him questions.
 10 MR. SOLOMON: I will read it into
 11 the record first.
 12 (Exhibit CX4013 marked.)
 13 Q. Mr. Puckett, let me know when you
 14 have had a chance to look this over.
 15 A. (Reviewing document.) Yes, I did.
 16 Q. Mr. Puckett, what is CX401 --
 17 MS. FINCHER: Object to form.
 18 A. This is an --
 19 Q. Sorry, Mr. Puckett, what is CX4013?
 20 A. This is an email from Daniel Hobson
 21 to myself and Dr. Villanueva, with Dr. Tang and
 22 Dr. -- or sorry, and Patrick Gill copied.
 23 Q. I would like to direct your
 24 attention to the February 16th, 2017 email at
 25 10:45 a.m. Do you see that?

1 PUCKETT
 2 A. Yes, I do.
 3 Q. And do you see your email address
 4 there in the "from" line?
 5 A. Yes, I do.
 6 Q. Did you draft this email?
 7 A. I did.
 8 Q. And did you draft this as part of
 9 your job at MB2?
 10 A. I drafted this as part of my
 11 ownership in Dental Gator.
 12 Q. At the time of this email, did you
 13 have personal knowledge of the contents of
 14 CX4013?
 15 A. Yeah, it was me, so I assume I
 16 knew -- sorry, I don't understand.
 17 Q. When you drafted this, you had
 18 personal knowledge of what you were writing?
 19 A. Yes.
 20 Q. And you wrote this document at or
 21 near the time the events described herein,
 22 right?
 23 A. Yes.
 24 Q. And CX4013 is a document that was
 25 kept in the regular course of MB2's business;

1 PUCKETT
 2 is that right?
 3 A. Yes, it is blended with my ownership
 4 of DG, so yes, this is a regular email on --
 5 yes.
 6 Q. And you had access to and retrieved
 7 this email that you ultimately sent to the FTC;
 8 right?
 9 A. Yes.
 10 Q. Okay. So directing your attention
 11 to this 10:45 a.m. email, it is to you -- it is
 12 from you to Daniel Hobson, and you say, will we
 13 be provided a breakdown of the changes in DG
 14 pricing? I just want to ensure it is a net-net
 15 wash since we have committed that to our
 16 customers. We can't all of a sudden raise
 17 prices. Do you see that?
 18 A. I do.
 19 Q. Why did you send this email to
 20 Mr. Hobson?
 21 A. This was when we -- as I mentioned
 22 earlier, pricing was raised by Henry Schein on
 23 Dental Gator customers, so that is why I sent
 24 this email.
 25 Q. And you say, we can't all of a

1 PUCKETT
 2 sudden raise prices. Were you frustrated with
 3 what Henry Schein had done in raising prices?
 4 MS. FINCHER: Objection, form.
 5 A. I was upset that they were raising
 6 prices unannounced on Dental Gator customers.
 7 Q. And why did you say it was
 8 unannounced?
 9 A. Because I wasn't aware of it. It
 10 just happened, and so the purpose of my email
 11 was to find out what was happening there, which
 12 I got clarification in the above email.
 13 Q. Do you recall how long prior to this
 14 email you found out about the price increases?
 15 MS. FINCHER: Object to the form.
 16 A. Repeat it.
 17 Q. Sure. Do you recall how long prior
 18 to this email you found out about the price
 19 increases?
 20 A. I don't.
 21 Q. Was it right around the time you
 22 sent this email?
 23 MS. FINCHER: Objection, form.
 24 A. I don't know.
 25 MR. SOLOMON: I'm handing the

1 PUCKETT
 2 witness a document premarked CX4015. It
 3 bears Bates labels FTCMB2-002414, and it is
 4 a Wednesday, February 18th, 2015 email.
 5 (Exhibit CX4015 marked.)
 6 Q. Mr. Puckett, let me know when you
 7 have had a chance to look this over.
 8 A. (Reviewing document.) Yes.
 9 Q. Mr. Puckett, do you recognize
 10 CX4015?
 11 A. Yes.
 12 Q. What is it?
 13 A. It is an email from Patrick Gill
 14 about pricing.
 15 Q. And are you copied on this email?
 16 A. I am copied, yes.
 17 Q. I would like to turn your attention
 18 to the third paragraph of Mr. Gill's email. He
 19 says, we really don't have anything special for
 20 DG on supplies. If a doctor is getting a
 21 decent deal on supplies right now, he will
 22 probably be paying a little more with DG for
 23 those same supplies. Do you see that?
 24 A. Yes, I do.
 25 Q. Does DG refer to Dental Gator?

1 PUCKETT
 2 after this email?
 3 MS. FINCHER: Objection to form.
 4 A. It is my understanding that any new
 5 people would pay more.
 6 Q. And you don't recall how much more?
 7 A. I don't. The only thing I can go
 8 off is the email you presented to me, which
 9 says any branded item came up to -- 3M,
 10 etcetera, came up 10 to 15 percent.
 11 Q. And you understand that to mean that
 12 the prices increased 10 to 15 percent?
 13 A. Yes.
 14 MS. FINCHER: Objection to form.
 15 Q. For --
 16 A. If the price was a dollar, it went
 17 up to \$1.10 or \$1.15.
 18 Q. Turning to the next paragraph of
 19 Mr. Gill's email, he says, I'm not sure if
 20 Schein is the best fit for DG moving forward.
 21 The reps and management are always going to
 22 fight us. They have the availability to come
 23 in and undercut us. There is no way to compete
 24 with this. Do you see that?
 25 A. Yep.

1 PUCKETT
 2 A. Yes, it does.
 3 Q. Okay. Is Patrick Gill talking about
 4 the price increases that you referred to
 5 earlier today?
 6 A. Yes --
 7 MS. FINCHER: Objection to form.
 8 A. -- he is.
 9 Q. Do you know what he meant when he
 10 said, we really don't have anything special for
 11 DG on supplies?
 12 MS. FINCHER: Objection to form.
 13 A. Meaning that the pricing -- the
 14 changes in pricing had basically taken the
 15 value of DG's savings out of it for -- on the
 16 supplies.
 17 Q. And did you ever have follow-up
 18 discussions with Mr. Gill about this statement
 19 here?
 20 A. Yes.
 21 Q. What did you guys talk about?
 22 A. He just reiterated that the value
 23 prop was -- we were losing it on supplies.
 24 Q. Is it your understanding that Dental
 25 Gator customers began to pay more for supplies

1 PUCKETT
 2 Q. Just turning to the first sentence:
 3 I'm not sure if Schein is the best fit for DG
 4 moving forward. Again, DG refers to Dental
 5 Gator?
 6 MS. FINCHER: Objection to form.
 7 A. Yeah.
 8 Q. Were you having discussions with
 9 Mr. Gill at this time about seeking another
 10 distributor to work with for Dental Gator?
 11 A. Right after this, yes, is when he
 12 went out to Benco, I believe. That is the one
 13 I'm aware of at least.
 14 Q. And do you know why he went out to
 15 Benco?
 16 MS. FINCHER: Objection to form.
 17 A. Because he didn't believe that
 18 Schein was the best fit for DG moving forward,
 19 because they raised pricing.
 20 Q. The next sentence: If a doctor is
 21 getting a decent deal -- oh, I'm sorry. The
 22 next sentence: The reps and management are
 23 always going to fight us. Do you see that?
 24 A. Yes.
 25 Q. Was Mr. Gill referring to Henry

1 PUCKETT
 2 Schein's management?
 3 MS. FINCHER: Objection to form,
 4 calls for speculation, leading.
 5 A. Yes.
 6 Q. Do you know what Mr. Gill meant by
 7 management?
 8 MS. FINCHER: Objection to form.
 9 A. Henry Schein management.
 10 Q. Was he referring to Schein's --
 11 A. Management.
 12 Q. -- corporate office?
 13 MS. FINCHER: Objection to form.
 14 A. Management. I don't know, corporate
 15 office, local office, people in management,
 16 non-reps.
 17 Q. Did you have any understanding as to
 18 whether he meant someone specifically here?
 19 A. I do not.
 20 MS. FINCHER: Objection to form.
 21 Q. Was it your understanding that Henry
 22 Schein's management was fighting MB2 about
 23 Dental Gator?
 24 MS. FINCHER: Objection to form,
 25 leading.

1 PUCKETT
 2 previous email that we just talked about,
 3 CX4013-001.
 4 Q. Do you recall what happened after
 5 this email exchange?
 6 MS. FINCHER: Objection to form.
 7 A. I do not.
 8 Q. Did MB2 seek bids from other
 9 distributors?
 10 A. MB2 did not, no.
 11 Q. Did Dental Gator?
 12 A. Yes, Dental Gator sought a bid
 13 from -- that I'm aware of, Benco, as I've
 14 mentioned a couple of times.
 15 Q. What about Patterson?
 16 MR. LONG: Objection, foundation.
 17 A. I'm not aware.
 18 Q. Do you recall if Dental Gator
 19 reached out to Patterson about --
 20 A. At this point, no, we did not.
 21 Patterson at this point had -- they did not end
 22 well when we did not choose Patterson for the
 23 MB2 contract, and so some of their local reps
 24 from Patrick's point of view were telling
 25 everyone Dental Gator sucked, so...

1 PUCKETT
 2 A. I don't -- I don't -- I don't know
 3 the deal. I mean, that is what he is saying,
 4 yeah. The reps -- he is saying that -- Patrick
 5 believed that Henry Schein reps would fight us
 6 because they would lose a commission, so if
 7 someone was selling the dental supplies to a
 8 Schein customer and they came as part of DG,
 9 that rep no longer got commissions. So the
 10 reps did not like that, so human nature, they
 11 made less money for their families.
 12 The management he felt like did not
 13 support us because of the previous day's email
 14 of Daniel saying that the prices were raised.
 15 That is what he is talking about.
 16 Q. So the concern of the reps was
 17 commissions?
 18 MS. FINCHER: Objection to form.
 19 A. Yes.
 20 Q. And do you recall specifically what
 21 the concerns of the management was?
 22 MS. FINCHER: Objection to form,
 23 asked and answered, calls for speculation.
 24 A. Yes. I believe I have answered
 25 that. They were -- he was frustrated with the

1 PUCKETT
 2 MR. LONG: I'm going to object as
 3 nonresponsive, but put in a foundation
 4 objection.
 5 Q. Anything else?
 6 A. That is it.
 7 MS. FINCHER: Objection to form.
 8 Q. What do you mean by that?
 9 MS. FINCHER: Objection to form.
 10 A. I just mean that I don't think he
 11 went out to Patterson. I think he went out to
 12 Benco, as I said a couple of times now.
 13 Q. So it is your belief that Dental
 14 Gator did not seek a bid from Patterson?
 15 A. Did not seek a second bid from
 16 Patterson.
 17 Q. What about Burkhart, did Dental
 18 Gator seek a bid from Burkhart?
 19 A. I have no idea.
 20 Q. Do you know what happened with the
 21 bid from Benco?
 22 A. I don't. If I remember, I think it
 23 just kind of died on the vine. It took a few
 24 months, and by that time, Patrick was kind of
 25 getting checked out, so I believe it just kind

1 PUCKETT
 2 of pattered out. I know they met and talked,
 3 but I believe it just kind of -- but by this
 4 time, I think Patrick was getting up on his
 5 year and was just kind of starting to die.
 6 Q. So it's your understanding that
 7 Dental Gator met with Benco?
 8 MS. FINCHER: Objection to form.
 9 A. Patrick met with Benco, yes, I know
 10 they did.
 11 Q. Do you know whether there was a bid?
 12 A. I believe there was a bid. I think
 13 I saw an email there was a bid. I did not
 14 review the bid. I don't remember reviewing the
 15 bid.
 16 Q. Do you recall when that bid was?
 17 A. I do not. It would be after this
 18 date.
 19 Q. So it would have been in 2015?
 20 A. Yeah.
 21 Q. So Patrick had discussions with
 22 Benco about the bid?
 23 A. Yeah, uh-huh.
 24 MS. FINCHER: Objection to form.
 25 Q. Do you recall reviewing the details

1 PUCKETT
 2 of the bid at any point?
 3 MS. FINCHER: Objection to the form,
 4 asked and answered.
 5 A. Yes.
 6 Q. Sorry, was that a --
 7 A. Yes.
 8 Q. Okay. Do you recall what kind of
 9 pricing Benco was offering?
 10 MS. FINCHER: Objection to form.
 11 A. I don't.
 12 Q. Do you recall Patrick ever talking
 13 to you about the pricing that Benco was
 14 offering Dental Gator?
 15 A. I don't.
 16 MS. FINCHER: Objection to form.
 17 Q. Did you want to take a break,
 18 Mr. Puckett?
 19 A. No, I'm good. I have a hard stop at
 20 1:30, so I hope we -- I know we need to get
 21 rolling, so --
 22 Q. Okay.
 23 MR. SOLOMON: How much time do we
 24 have left?
 25 MR. LONG: If he had as a hard stop

1 PUCKETT
 2 at 1:30, we've got an hour and 40 minutes.
 3 We need to be involved too, so...
 4 MR. SOLOMON: I understand. That's
 5 why I'm asking her how much time I have
 6 left so we can accommodate that.
 7 Go off the record for a second.
 8 (Recess taken 11:50 a.m. to 11:53 a.m.)
 9 MR. SOLOMON: I'm handing the
 10 witness a document premarked as CX4026,
 11 bearing Bates labeled FTC-MB2-003742, and
 12 it is an email, the topmost of which is
 13 from Monday, June 8th, 2015 at 1:59 p.m.
 14 (Exhibit CX4026 marked.)
 15 Q. Mr. Puckett, just let me know when
 16 you have had a chance to look that over.
 17 A. (Reviewing document.) Okay. I'm
 18 good.
 19 Q. Mr. Puckett, do you recognize this
 20 exhibit?
 21 A. Yes.
 22 Q. What is it?
 23 A. This is an email from Patrick Gill
 24 to us, to people, to the Dental Gator owners.
 25 Q. And does this relate to Benco's bid

1 PUCKETT
 2 for Dental Gator's business?
 3 MS. FINCHER: Objection to form.
 4 A. Yes, it appears to.
 5 Q. Okay. I would like to direct your
 6 attention to the fourth paragraph of this
 7 email. And just to confirm, you received this
 8 email; correct?
 9 A. Yes.
 10 Q. And your email address is here in
 11 the copy line?
 12 A. Uh-huh.
 13 Q. Just to direct your attention to the
 14 fourth paragraph, Mr. Gill says, I talked to
 15 Benco for over a month, but they were really
 16 apprehensive about supporting DG. Does DG --
 17 again, does that just refer to Dental Gator?
 18 A. Yes.
 19 Q. And do you know whether Mr. Gill is
 20 saying that Benco is apprehensive about
 21 supporting Dental Gator?
 22 MS. FINCHER: Objection to form.
 23 A. Yes, that is what the sentence says.
 24 Q. Do you know why Benco was
 25 apprehensive about supporting Dental Gator?

1 PUCKETT
 2 MS. FINCHER: Objection to form.
 3 A. I do -- I do not know the specific
 4 reasoning behind that sentence.
 5 Q. Did you ever talk to Mr. Gill about
 6 this?
 7 MS. FINCHER: Objection to form.
 8 A. I do not. I'm sure I did, but I
 9 don't recall the specifics of it, just given
 10 the length of time.
 11 Q. Do you recall him ever mentioning
 12 Benco being apprehensive about supporting
 13 Dental Gator?
 14 MS. FINCHER: Objection to form.
 15 A. His email says they were
 16 apprehensive about supporting DG.
 17 Q. Okay. Were you ever involved in
 18 discussions with Benco about Dental Gator?
 19 A. I may have been copied on an email
 20 from time -- or maybe a lunch. I think -- I
 21 think I went to lunch with a Benco guy and
 22 Patrick, but I don't remember specifics of any
 23 of those top-level conversations.
 24 Q. Do you remember when that lunch
 25 occurred?

1 PUCKETT
 2 A. Something in special markets.
 3 Q. So Mr. Klavon writes: There were
 4 outstanding questions surrounding ownership of
 5 the practices that I needed to discuss with my
 6 special markets team at Benco.
 7 Do you know whether Mr. Klavon was
 8 referring to Dental Gator there?
 9 MS. FINCHER: Objection to form.
 10 A. Yes, he was referring to Dental
 11 Gator there.
 12 Q. Do you recall what the nature of
 13 Mr. Klavon's concerns were?
 14 MS. FINCHER: Objection to form.
 15 A. I think it was clarification
 16 regarding whether Dental Gator was MB2 and vice
 17 versa. And so whether MB2 and our owners,
 18 people, etcetera, owned -- you know, were those
 19 dentists -- do we have ownership in DG's
 20 practices.
 21 Q. Was Benco concerned that Dental
 22 Gator was a buying group?
 23 MS. FINCHER: Objection to form,
 24 calls for speculation, leading.
 25 A. I'm unaware -- I'm unaware of their

1 PUCKETT
 2 A. I do not.
 3 MR. SOLOMON: I'm handing the
 4 witness a document that was premarked as
 5 CX4014, bearing Bates label FTC-MB2-006370,
 6 and it is a Wednesday, April 1st, 2015
 7 email.
 8 (Exhibit CX4014 marked.)
 9 A. (Reviewing document.) Yes, I'm
 10 good.
 11 Q. Mr. Puckett, do you recognize this
 12 email?
 13 A. Yes, I do.
 14 Q. Okay. What is it?
 15 A. It is an email from Patrick Gill to
 16 Dr. Tang and myself regarding Benco's pricing.
 17 Q. I want to direct your attention to
 18 the Wednesday, April 1st, 2015 email at 5:12
 19 p.m. Do you see that?
 20 A. Yeah.
 21 Q. Okay. And John Klavon, who is John
 22 Klavon?
 23 MS. FINCHER: Objection, form.
 24 A. He works for Benco special markets.
 25 Q. And do you know what his title is?

1 PUCKETT
 2 concerns.
 3 Q. Did you have any follow-up
 4 discussions with Mr. Klavon about this issue
 5 raised here?
 6 A. I did not. Again, as you can see,
 7 Patrick was running this -- the pricing here,
 8 so we were -- you know, I wasn't even on the
 9 email that he sent to them, so Patrick would
 10 just forward to us about the pricing, so...
 11 Q. Do you know whether or not Benco had
 12 a no buying group policy?
 13 MS. FINCHER: Objection to form,
 14 leading.
 15 A. I do not.
 16 Q. Did you ever hear that?
 17 MS. FINCHER: Objection to form.
 18 A. A no buying group policy, is that
 19 the question?
 20 Q. Right.
 21 A. I did not hear they had a no buying
 22 group policy, no.
 23 Q. Did you ever hear that Benco does
 24 not work with buying groups?
 25 MS. FINCHER: Objection to form.

1 PUCKETT
 2 A. All I knew is that they were -- at
 3 that time, I don't think they -- I think they
 4 told us they didn't work with any buying
 5 groups, yes.
 6 Q. Do you recall who told you that?
 7 A. My guess is -- no, I don't recall
 8 who -- people on the email were the -- kind of
 9 the Benco team, and that is who we dealt with.
 10 Q. So you just heard that generally?
 11 A. Yes.
 12 Q. But you don't recall hearing it from
 13 anyone specifically?
 14 A. Correct.
 15 Q. How did Dental Gator proceed with
 16 Benco's 2015 bid?
 17 MS. FINCHER: Objection to form.
 18 A. How did Benco proceed with MB2's
 19 bid?
 20 Q. Oh, sorry. My question is: How did
 21 Dental Gator proceed with Benco's 2015 bid?
 22 MS. FINCHER: Objection to form.
 23 A. I don't know. Seeing Patrick, this
 24 is all I know. I don't know. It seems like
 25 they didn't use it because it wasn't very good.

1 PUCKETT
 2 Q. When you say it wasn't very good,
 3 what do you mean?
 4 A. I will just read you from the email
 5 you gave me. It was Patrick saying, we are not
 6 even remotely close to what was proposed for
 7 MB2, and the previous email was that Schein's
 8 stuff is just as good -- Schein's new plan is
 9 about like this or better than this, so that
 10 is -- I mean, honestly that is where I'm
 11 getting that from.
 12 Q. So is it your understanding that
 13 Benco's bid was less aggressive than the
 14 pricing that Dental Gator was already getting
 15 through Schein?
 16 MS. FINCHER: Objection to form.
 17 A. That is my impression.
 18 Q. Did Benco also submit a bid for
 19 MB2's business?
 20 A. They did.
 21 Q. And how did MB2 proceed with that
 22 bid?
 23 A. We elected to not go with Benco.
 24 Q. Do you recall why?
 25 A. It was not a pricing issue. It was

1 PUCKETT
 2 more of a -- the size of them at that time and
 3 the ability to service similar offices in
 4 Alaska.
 5 Q. You can put that document aside,
 6 Mr. Puckett.
 7 Do you recall how many members
 8 Dental Gator had in 2015?
 9 A. I believe I answered this. I think
 10 at one point high 20s. The number I have in my
 11 head is about 27, maybe 30.
 12 Q. In 2015?
 13 A. At its highest point. I don't
 14 remember the dates.
 15 Q. Do you recall how many members
 16 Dental Gator had in 2016?
 17 A. I do not.
 18 Q. Was it less --
 19 A. Yes.
 20 Q. Strike that.
 21 Were there less members in 2016 than
 22 in 2015?
 23 A. At the end of 2016, we had less
 24 members than our highest point in 2015.
 25 Q. How did Dental Gator deal with the

1 PUCKETT
 2 declining membership?
 3 A. We offered it -- anyone who wanted
 4 to quit, we offered it to them at first for a
 5 less rate, and then for free.
 6 Q. And what was the reaction to that
 7 from customers?
 8 MS. FINCHER: Objection, form.
 9 A. Some said yes, that is great. Some
 10 said -- some didn't respond.
 11 Q. Did Patrick Gill end up leaving
 12 Dental Gator?
 13 A. Yes. As I've said previously, he
 14 left Dental Gator and went to work for Henry
 15 Schein in Austin, Texas.
 16 Q. Do you know why Mr. Gill left? I
 17 think you talked a little bit about it earlier,
 18 but I would like to follow up on that.
 19 MS. FINCHER: Objection to form.
 20 A. He left because he was not making
 21 any money here. He didn't see a future. He
 22 had a path to equity in Dental Gator, and he
 23 thought that it was worthless.
 24 Q. Do you know what he meant when he
 25 said it was worthless?

1 PUCKETT

2 MS. FINCHER: Objection to form.

3 A. That it was worth less than a
4 dollar, so therefore, it was worthless and not
5 worth anything.

6 Q. How did the partners in Dental Gator
7 react to the declining membership?

8 MS. FINCHER: Objection to form.

9 A. We thought it was not awesome,
10 because we invested money in it, and the
11 precipitous idea around it bringing people to
12 MB2, it didn't really -- it just didn't really
13 work. So it wasn't a huge deal, so it just
14 kind of stunk. We moved on.

15 Q. Did any MB2 partners lose money on
16 the Dental Gator venture?

17 MS. FINCHER: Objection to form.

18 A. Yes, we all lost money on it. I
19 believe we're at about an 80 -- I would have to
20 check accounting, but, you know, we got most of
21 our money back, but we haven't gotten all of it
22 back.

23 Q. When you say most of your money --

24 A. Above half, but less than all of it.

25 Q. And how did you get the money back?

1 PUCKETT

2 A. So the money would come into an
3 account. At the end of the month, we would
4 take the money in the account and wire it to us
5 through K-1 distributions.

6 Q. Would you say that Dental Gator is
7 an active buying group?

8 MS. FINCHER: Objection to form.

9 A. No, I would not.

10 Q. And just for the record, how much
11 revenue does Dental Gator currently generate on
12 a monthly basis?

13 A. I believe 0 dollars. I think we
14 get -- we have one customer maybe, and so I
15 think we get a rebate of a couple of bucks.

16 MR. SOLOMON: I'm handing the
17 witness a document that has been premarked
18 as CX4033, and it is a document bearing
19 Bates label FTC-MB2-017224, and it is a
20 Friday, February 16th, 2018 email at 10:55
21 a.m.

22 (Exhibit CX4033 marked.)

23 Q. Mr. Puckett, could you please look
24 it over and let me know when you have had a
25 chance to review its contents?

1 PUCKETT

2 A. (Reviewing document.) Yes, I'm
3 good.

4 Q. Mr. Puckett, what is CX4033?

5 A. This is an email from Greg Kelminson
6 to me containing your complaint, "you" being
7 the FTC's complaint against Benco, Henry
8 Schein, and Patterson Companies.

9 Q. Who is Greg Kelminson?

10 A. He's a lawyer here in Dallas. He's
11 also a classmate and a friend of mine.

12 Q. You went to school with
13 Mr. Kelminson?

14 A. I did.

15 Q. Does Mr. Kelminson represent you?

16 A. Justin Puckett, no.

17 Q. Does he represent MB2 or Dental
18 Gator?

19 A. He has represented MB2 on unrelated
20 matters. He doesn't -- he doesn't practice
21 litigation or anything, but no, not -- he has
22 never represented DG.

23 Q. Okay. This isn't -- would you --
24 strike that.

25 Would you say this is a privileged

1 PUCKETT

2 communication?

3 A. No, I would not say this is
4 privileged.

5 Q. Why was Mr. Kelminson emailing you a
6 copy of the FTC's complaint against Schein,
7 Patterson, and Benco?

8 MS. FINCHER: Objection to form,
9 calls for speculation.

10 A. I have a lot of friends who are
11 attorneys, and so anything that comes out with
12 anything to do with dental, they send to me
13 because they think I'm the dental attorney guy.

14 I don't know. Just like I'm sure
15 everyone sends -- like when one of our law
16 school buddies does something stupid, we send
17 it around. So I don't even know if I responded
18 to him. I think I responded to him, yeah, I
19 already saw this.

20 I think he just sent it because
21 attorneys check this stuff, the dockets and
22 pacers and all the other tickler things y'all
23 have that -- cases come out, and so I get
24 notifications anytime anything dental comes out
25 from my friends.

1 PUCKETT

2 Q. Did you have any follow-up
3 discussions with Mr. Kelminson about this email
4 and its attachment?

5 A. I think I said, ha ha, I've seen it
6 or something. Maybe it was on the phone. I
7 don't even know if I even responded to him.

8 Q. Are you aware of the FTC's complaint
9 against Schein, Patterson, and Benco?

10 MS. FINCHER: Objection to form.

11 A. Yes.

12 Q. Do you have an understanding as to
13 the allegations of the FTC's complaint against
14 Schein, Patterson, and Benco?

15 MS. FINCHER: Objection to form.

16 A. Yes, roughly.

17 Q. And what -- sorry, go ahead.

18 A. Yes, roughly. My understanding, as
19 I know this will be your next question, is that
20 the FTC thinks that Benco, Henry Schein, and
21 Patterson Companies got together to refuse to
22 offer services to buying groups. That is my --
23 in my sentence there, that is what I understood
24 it to be. I have not read every page of all
25 the ancillary filings, complaints, and

1 PUCKETT

2 responses.

3 Q. Do you believe that this complaint
4 relates at all to Dental Gator?

5 MS. FINCHER: Objection to form.

6 A. I do not.

7 Q. Why is that?

8 A. Because I didn't see Dental Gator's
9 name in there.

10 Q. Got it. Are there any other ways in
11 which the allegations of the complaint might
12 relate to Dental Gator?

13 MR. LONG: Objection, foundation.

14 MS. FINCHER: Objection to form.

15 A. Well, rough similarities regarding
16 buying the supplies and not being -- you know,
17 we had heard the word "group" and "GPO" and all
18 of that, but no. When I read this, I didn't
19 know if it was -- I didn't think it was Dental
20 Gator because I hadn't heard anything about it
21 yet.

22 Q. So you're saying -- what do you
23 mean -- strike that.

24 What do you mean by that?

25 A. I mean, I was familiar with the

1 PUCKETT

2 terms and the things they are using because
3 that -- Dental Gator was similar in that we
4 ordered supply -- you know, I'm not going to
5 give you specifics, but reading on page 2,
6 supplies, products, buying groups, GPOs, yes,
7 those terms were used, like you use all of our
8 PVA and other things. So I was familiar with
9 it, but I didn't think this was brought on
10 behalf or Dental Gator was involved at all in
11 this case. No, I did not.

12 Q. And you said you didn't have any
13 other follow-up discussions with Mr. Kelminson
14 about this complaint?

15 A. No. He's just a buddy. He probably
16 has a bunch of other cases he sent me, too. He
17 sends me stuff.

18 Q. Did you have discussions with anyone
19 else about this complaint?

20 A. Oh, quite a few. I mean, yeah, just
21 industry talk, right, so yeah, a bunch of
22 people. I mean, I work from reps to -- you
23 know, my parents still don't understand what I
24 do, so my dad even read it and asked if this
25 was my company.

1 PUCKETT

2 You know, just my old boss, you
3 know, people always send me stuff, so -- but
4 not like, what do you think of this, no.

5 Just people -- I mean, when this
6 came out, this was -- we operate a pretty
7 unsexy, boring business, so when this came out,
8 yeah, it is human nature. People send it
9 around and go, oh, boy, do you see this email
10 today or this thing. So that is what happens.

11 Q. Do you recall having any discussions
12 with Dr. Villanueva about the complaint in this
13 email?

14 A. Yeah. I think -- I think I told him
15 about it or texted them the complaint or
16 something, you know, when it came out or a
17 press release. I can't remember all the stuff.
18 Yeah, I told them about this.

19 Q. What did you discuss?

20 A. I think I said -- I think I just
21 sent it without just kind -- honestly, what
22 Greg did to me, I think I did to them, like
23 look at this. Schein and Patterson are
24 getting -- you know, they got a complaint filed
25 against them and Benco, so...

1 PUCKETT
 2 Q. Do you recall what Dr. Villanueva's
 3 reaction was?
 4 MS. FINCHER: Object to the form.
 5 A. I don't, no.
 6 Q. Did you have any discussions with
 7 Dr. Tang about this complaint?
 8 A. He was -- he was -- would be on the
 9 same text thread. I think they just laughed or
 10 said ha, you know. No.
 11 Q. In preparing for today's deposition,
 12 did you talk with Dr. Villanueva or Dr. Tang at
 13 all?
 14 A. Yes, I talked to both of them.
 15 Q. And can I ask what you discussed
 16 with them?
 17 A. I just said, hey, I'm being deposed
 18 by the FTC in regards to Dental Gator.
 19 Q. And what did they say?
 20 A. I think one said -- Dr. Tang said,
 21 that doesn't sound like fun. Dr. V said, that
 22 sucks. Do you need anything from me? So I
 23 said, no, and he goes, okay.
 24 MR. SOLOMON: I'm handing the
 25 witness a document that has been premarked

1 PUCKETT
 2 2017?
 3 A. Yes.
 4 Q. And how did you find out about that
 5 partnership?
 6 A. Just the web, internet.
 7 Q. And you emailed Mr. Hobson shortly
 8 thereafter?
 9 MS. FINCHER: Objection, form.
 10 A. I think after I found about it, I
 11 said, and we got crap for DG, so --
 12 Q. Did you think it was unfair that
 13 Schein was now partnering with a buying group
 14 like Smile Source?
 15 MS. FINCHER: Objection to form,
 16 leading.
 17 A. I would not use the word "unfair."
 18 I just was more frustrated that, you know, I
 19 don't -- I think he said it best that we --
 20 they stood with us, not as strong as we should
 21 have.
 22 That was my frustration is I felt
 23 like Schein gave us -- you know, allowed us to
 24 do DG, but not as, you know, not as strong as
 25 we wanted to, so...

1 PUCKETT
 2 CX4032 bearing Bates label FTC-MB2-014259,
 3 and it is an email from Friday, February
 4 24th, 2017 at 5:11 p.m.
 5 (Exhibit CX4032 marked.)
 6 Q. Mr. Puckett, can you let me know
 7 when you have had a second to review that?
 8 A. (Reviewing document.) Yeah, I
 9 remember this email.
 10 Q. And what is this email?
 11 A. This is an email from -- originally
 12 from me to Daniel -- or all from me to Daniel
 13 Hobson regarding Schein announcing they
 14 partnered formally with Smile Source.
 15 Q. Okay. Why did you send Mr. Hobson
 16 this email?
 17 A. To give him a hard time, since they
 18 gave us -- you know, we had to answer about
 19 DG -- answer questions, and they said they
 20 didn't work with buying groups. I've used
 21 Smile Source as a buying group specifically.
 22 I'm sure they don't, but, you know, again, it
 23 goes back to those definitions.
 24 Q. Are you referring to Schein's
 25 partnership with Smile Source that occurred in

1 PUCKETT
 2 Q. Were you surprised to learn that
 3 Schein had partnered with Smile Source in 2017?
 4 MS. FINCHER: Objection to form.
 5 A. Not surprised that the industry is
 6 changing a lot and has changed, and it
 7 continually will change, so I knew it was a
 8 matter of time before someone -- I mean, size
 9 ultimately matters, and I think, you know,
 10 they -- Smile Source is massive, so I don't
 11 blame them at all for doing it.
 12 It is just -- in everyone's -- in
 13 the industry's opinion, Smile Source was always
 14 the largest or one of the largest buying clubs
 15 for -- you know, put parentheses on the fake
 16 term. So yeah, I was a little surprised and
 17 frustrated, but, you know, as I said, I am just
 18 giving you a hard time, but I will give Hal a
 19 hard time as well.
 20 Q. What did you mean by that?
 21 A. Just to tell Hal I don't know what I
 22 meant by that, to be honest. I just meant that
 23 I'm going to -- I think the next time I saw
 24 Hal, I said -- probably said in some version of
 25 English of Hal, that was -- that is crappy

1 PUCKETT
 2 partnering with them and gave us a hard time.
 3 So just all in, you know, a good ribbing, I
 4 guess, is the terminology.
 5 Q. So you were saying that Hal Muller
 6 gave Dental Gator a hard time?
 7 MS. FINCHER: Objection to form.
 8 A. No. I was saying I was going to
 9 give Hal a hard time for obviously something as
 10 large as Smile Source that I assume Hal was
 11 involved with.
 12 Q. Mr. Puckett, earlier today you
 13 talked a little bit about something called
 14 Vision Source --
 15 A. Yes.
 16 Q. -- do you recall that? What is
 17 Vision Source?
 18 A. Vision Source is a company that is
 19 in the vision space. It is I think -- I
 20 believe it is a sister company or a related
 21 company of some kind of Smile Source. It is
 22 based in Kingwood, Texas.
 23 Q. Do you know whether it is a buying
 24 group?
 25 MS. FINCHER: Objection to form.

1 PUCKETT
 2 A. I do not.
 3 Q. Do you know whether it is a GPO?
 4 MS. FINCHER: Objection to form.
 5 A. I do not.
 6 Q. Do you know what it offers to its
 7 members?
 8 A. No. It is an -- it is -- its
 9 members are vision people. I'm a dental
 10 person.
 11 Q. Do you know whether -- who are its
 12 members?
 13 MS. FINCHER: Objection to form.
 14 A. Vision people.
 15 Q. When you say "vision people," do you
 16 mean vision doctors?
 17 A. Sure.
 18 Q. Do you know whether Vision Source is
 19 related to Smile Source?
 20 MS. FINCHER: Objection to form.
 21 A. I think I've answered that as well.
 22 I believe they are sister companies, related
 23 companies. They offer -- the only thing I know
 24 for certain is they office in the same
 25 building. It is in Kingwood, northwest of

1 PUCKETT
 2 Houston -- northeast of Houston.
 3 Q. Do you know whether Vision Source
 4 pulls the collective bargaining leverage of its
 5 members to secure discounts?
 6 MS. FINCHER: Objection to form,
 7 foundation.
 8 A. I know absolutely nothing about what
 9 Vision Source does or does not, its offerings,
 10 its pricing, what it stands for, what its logo
 11 looks like or anything.
 12 Q. I think you mentioned it earlier
 13 today when you were talking about the creation
 14 of Dental Gator?
 15 A. Yes. Vision Source I know was a
 16 company that was -- I guess I knew it was
 17 something like a group buying something of
 18 vision.
 19 I know, for example, my optometrist
 20 bought contacts through Vision Source. That is
 21 where I actually specifically know about it. I
 22 wear contacts. So I know Smile Source's CEO,
 23 and I know -- I think he -- and that is how I
 24 know he offices in the same building as Vision
 25 Source. It is an old Wal-Mart building.

1 PUCKETT
 2 Q. Who is Smile Source's CEO that you
 3 are referring to?
 4 A. Trevor Maurer.
 5 Q. Did you ever talk to Mr. Maurer
 6 about the buying group model?
 7 MS. FINCHER: Objection to form.
 8 A. No, we did not.
 9 Q. Did you ever talk to him about
 10 Dental Gator?
 11 A. No.
 12 Q. And I think when you talked about
 13 Vision Source earlier today, you spoke about it
 14 as it related to the creation of Dental Gator's
 15 buying program?
 16 A. That --
 17 MS. FINCHER: Objection, form.
 18 A. Yeah. We -- I think -- honestly, I
 19 think that was one of -- I think we had went --
 20 gone to -- that is what we thought of. Like we
 21 saw it, and we knew the whole contacts thing.
 22 Contacts got cheaper. You could buy cheaper
 23 contacts when you buy more at 1-800 Contacts
 24 kind of deal.
 25 Q. You are not certain as to how the

1 PUCKETT
 2 contacts got cheaper?
 3 A. I'm not familiar with the pricing.
 4 I know it increased -- I mean, I don't know.
 5 Like they get -- I know I can get them cheaper
 6 through 1-800 Contacts than I can -- which
 7 is -- that is the -- that is the large cheap
 8 buying company -- than I can at my, you know,
 9 fancy optometrist guy.
 10 Q. Did you ever meet with anyone from
 11 Vision Source? I know you said you talked to
 12 Trevor Maurer from Smile Source.
 13 A. I never met with anyone from Vision
 14 Source.
 15 MR. SOLOMON: We can go ahead and
 16 take a break, and then I will finish up, if
 17 that is okay with everyone.
 18 THE WITNESS: I will be quick.
 19 (Recess taken 12:20 p.m. to 12:33 p.m.)
 20 (Exhibit CX4024 marked.)
 21 Q. All right. Mr. Puckett, welcome
 22 back. I'm handing you a document that has been
 23 premarked as CX4024. Can you just flip this
 24 over and let me know when you have had a chance
 25 to review it.

1 PUCKETT
 2 A. Yes.
 3 Q. Was the name of the company that
 4 worked on the website Reputation Impression?
 5 A. Yeah, or maybe it is a family --
 6 maybe a wrong term -- parent, subsidiary --
 7 yeah. They do like reputation management,
 8 online presence in websites and platforms and
 9 landing pages and -- I'm not an IT guy, so yes.
 10 Q. Does this email refresh your
 11 recollection that Dental Gator changed its
 12 website in February of 2015 to add the
 13 statement referenced herein?
 14 A. Yes.
 15 Q. Did the statement, Dental Gator is
 16 not a buying group -- do you see that?
 17 A. Uh-huh.
 18 Q. Does that statement appear on the
 19 website prior to February of 2018?
 20 A. It doesn't look like it from this
 21 email. No, it does not.
 22 Q. And does this email refresh your
 23 recollection as to why Mr. Gill asked the
 24 change to be made on the website?
 25 MS. FINCHER: Objection to form.

1 PUCKETT
 2 MR. SOLOMON: And for the record, it
 3 is a document bearing Bates label
 4 FTC-MB2-002370. It is an email, the
 5 topmost of which is February 18th, 2015 at
 6 4:28 p.m.
 7 A. Yes. I'm ready when you are.
 8 Q. Okay. Mr. Puckett, what is CX4024?
 9 A. This is an email from Patrick Gill
 10 to two internet people who do our websites, as
 11 well as Anna Phillips, who is a marketing
 12 manager for MB2, asking for something to be
 13 added to the website, saying, is Dental Gator a
 14 buying group under frequently asked questions,
 15 and the answer is no, Dental Gator is not a
 16 buying group. Our members see significant
 17 savings on variable costs, but our main goal is
 18 to help doctors grow their practice.
 19 Q. You said it was sent to two internet
 20 people. Who are you referring to?
 21 A. Amanda Tomlinson and Cassidy
 22 Burrell. They made our websites for Dental
 23 Gator.
 24 Q. The email address references
 25 reputationimpression.com?

1 PUCKETT
 2 A. It does not. It does not. I don't
 3 remember exactly why or who or what caused it.
 4 Q. Is there anything you could look at
 5 that would refresh your recollection as to why
 6 the website was changed?
 7 MS. FINCHER: Objection to form.
 8 A. It would have to be another email
 9 that you have that I haven't seen.
 10 Q. Okay.
 11 MR. LONG: Carrie, are you back on?
 12 MS. AMEZCUA: I am. Thank you.
 13 MR. LONG: Thanks.
 14 Q. You said it would have been another
 15 email --
 16 A. Yes.
 17 Q. -- that you haven't seen?
 18 A. I just -- again, this is three and a
 19 half years ago, so I don't remember exactly.
 20 If there is another email, you know, that I --
 21 that Patrick wrote or something that I could
 22 refresh it, but I don't.
 23 I mean, obviously someone wanted us
 24 to put that there or he thought it was a good
 25 idea to put that there.

1 PUCKETT

2 It was around the time of some of
3 these other emails, so I imagine it was
4 something to do with that, but again, I
5 wasn't -- Patrick was running this -- this
6 business.

7 Q. Okay. You can put that document
8 aside.

9 MR. SOLOMON: I'm handing the
10 witness a document that has been premarked
11 as CX4016, bearing Bates label
12 FTC-MB2-002549. It is an email dated
13 February 18, 2015.

14 (Exhibit CX4016 marked.)

15 Q. Mr. Puckett, please just take a look
16 at that and let me know when you have had a
17 chance to review it.

18 A. Yes, I'm good.

19 Q. Mr. Puckett, what is CX4016?

20 A. This is an email from Patrick Gill
21 to me. The subject line says, this looks okay,
22 and he's asking my opinion on that frequently
23 asked questions.

24 Q. Do you know why Mr. Gill is asking
25 your opinion?

1 PUCKETT

2 A. I assume it was to get my opinion on
3 it. Again, I'm kind of his -- an investor and
4 direct report, whatever.

5 Q. Do you recall whether you had asked
6 Mr. Gill to add this language to the website?

7 MS. FINCHER: Objection to the form.

8 A. I do not. I don't remember if it
9 was me asking him or he just wanted my opinion
10 on it.

11 Q. Do you recall whether -- strike
12 that.

13 Does this email refresh your
14 recollection at all as to the circumstances
15 surrounding the change of the website in
16 February of 2015?

17 MS. FINCHER: Object to the form.

18 A. It does not.

19 Q. You can put that document aside.

20 Mr. Puckett, have you met with
21 counsel for Schein, Patterson, or Benco before
22 today?

23 MR. LONG: Object to the form.

24 A. No. I talked with them before once
25 or twice, once -- I think once over the phone.

1 PUCKETT

2 Q. Who did you speak with?

3 A. I spoke with I think John one time
4 for like really briefly, but I don't even know
5 that. I think maybe it was email. And then we
6 spoke last about a week ago, last week.

7 Q. When you say "we," who are you
8 referring to?

9 A. Sorry.

10 THE WITNESS: Can I ask what your
11 full name is?

12 MS. FINCHER: Lauren Fincher.

13 A. Lauren Fincher.

14 Q. And can I ask what you talked about?

15 A. Just kind of briefly my history,
16 where I came from, what I did, my -- you know,
17 some of -- some similarities on just my
18 thoughts, opinions on Dental Gator, what MB2
19 did, explanations, what the differences were
20 between Dental Gator and MB2, you know,
21 high-level question.

22 Q. Anything else?

23 A. I mean, just a lot of these same
24 topics of Schein and their relationship with
25 MB2, their relationship with Dental Gator.

1 PUCKETT

2 Q. Has anyone else from Schein,
3 Patterson, or Benco reached out to anyone from
4 MB2 about the FTC's allegations?

5 MS. FINCHER: Object to the form.

6 MR. LONG: Objection, form.

7 A. Not to my knowledge as to the basis
8 of the FTC, no. We talked to Schein a lot.
9 I've talked with reps about this case, just,
10 again, as in passing. No one from Schein
11 outside of Patrick Gill -- Patrick Gill does
12 know that I am -- that we were -- that we were
13 called into question -- or deposed, being --
14 Patrick knows I'm being deposed.

15 Q. And did you discuss that with
16 Mr. Gill?

17 A. No. I just told him, hey, I'm being
18 deposed. I felt like I owed it to him to tell
19 him that I was going through his emails and
20 turning them over to them.

21 Q. What did he say in response?

22 MS. FINCHER: Object to the form.

23 A. He didn't really -- he just said,
24 okay, let me know if you need anything. Hope
25 all is well.

1 PUCKETT

2 Q. Has anyone from Schein offered to
3 pay for Dental Gator's legal costs or fees?

4 A. No.

5 Q. Has anyone from Schein offered to
6 represent Dental Gator in any way?

7 A. No.

8 Q. Have you been in touch with anyone
9 from Schein on the business side in the last
10 year?

11 MS. FINCHER: Object to the form.

12 A. Yes, weekly.

13 Q. Are you friends with any Schein
14 employees?

15 A. Yes, quite a few.

16 Q. Any of the folks we've talked about
17 today?

18 A. I would consider myself friends --
19 this is a weird term -- with -- Daniel Hobson
20 is a friend of mine, Matt Zolfo is a friend of
21 mine, Patrick Gill is a friend of mine. I
22 would say as friends, that is probably it,
23 yeah.

24 Q. Are you friends with any former
25 Schein employees?

1 PUCKETT

2 A. No. I'm trying to think. I don't
3 think of any. No.

4 Q. Turning back to something we
5 discussed earlier today, you talked a little
6 bit about MB2's business model and the fact
7 that it is a DSO, and you talked a little bit
8 about there being a change sometime in 2017
9 when MB2 affiliated with a private equity
10 group. Do you recall that?

11 A. Yes, I do.

12 Q. Prior to that affiliation, was MB2
13 Dental still a dental service organization?

14 MS. FINCHER: Object to the form.

15 A. By the letter of the law, yes,
16 because we had a management services agreement
17 with dental practices.

18 Q. What was the nature of that
19 management service agreement?

20 A. They were the exact same as it is
21 today. We provided basically what is in this
22 building. We provided, you know, credentialing
23 services, operations services, marketing,
24 compliance, payroll, HR, accounting,
25 procurement, billing, aging receiving, CRM

1 PUCKETT

2 systems, which is called management, legal.
3 That is about it.

4 Q. Do you know how Schein categorized
5 MB2 prior to the affiliation with a private
6 equity group in 2017?

7 MS. FINCHER: Object to the form,
8 calls for speculation.

9 A. DSO.

10 Q. And has Schein always considered MB2
11 to be a DSO?

12 MS. FINCHER: Object to form, calls
13 for speculation.

14 A. As long as I've been a part of MB2,
15 yes, I believe so.

16 MR. SOLOMON: Court reporter, can I
17 ask how much time I've been on the record?

18 THE COURT REPORTER: You have gone
19 two hours and 27 minutes.

20 MR. SOLOMON: Okay. I will stop
21 here. I will reserve the rest of my time,
22 but you guys can -- if you plan to ask
23 questions, you can do that.

24 MS. FINCHER: Yes, we do. And I
25 would like to state on the record that we

1 PUCKETT

2 reserve all rights to move to exclude this
3 testimony on the basis that now all
4 respondents have only 15 minutes to ask
5 this witness questions.

6 EXAMINATION

7 BY MS. FINCHER:

8 Q. Mr. Puckett, has the FTC asked you
9 to come to trial in this matter in Washington,
10 D.C.?

11 A. No, they have not.

12 Q. Do you expect to come to trial in
13 this matter in Washington, D.C.?

14 A. If asked, yes. If not, no.

15 Q. Have you had any discussions with
16 anyone from the FTC prior to today's
17 deposition?

18 A. Yes.

19 Q. Who?

20 A. Ronnie Solomon.

21 Q. Were those communications email or
22 telephone conversations?

23 A. They were both email and telephone.

24 Q. Approximately how many times would
25 you say you have spoken or exchanged emails

1 PUCKETT

2 with Mr. Solomon?

3 A. Emails, I regard as substantive
4 form, maybe four. As far as technical, we
5 struggle with the whole uploading stuff, so a
6 good number of that, my IT team. I'm on the
7 phone, I'm going to guess we spoke eight to 10
8 times.

9 Q. Do you recall how long each of those
10 conversations lasted?

11 A. Not terribly long. You know, I
12 would say somewhere -- we probably had two
13 conversations above 15 minutes. They probably
14 reached 30 minutes apiece, and the rest were
15 very -- you know, again, being helpful with how
16 to pull stuff, how to, you know, top-level,
17 quick conversations, service level.

18 Q. Do you recall approximately what
19 time was your earliest conversation with
20 Mr. Solomon?

21 A. I can -- I can give you dates later.
22 I'm going to guess it was, maybe the first time
23 was three months ago.

24 Q. Did Mr. Solomon discuss with you any
25 Schein documents?

1 PUCKETT

2 A. No, he did not.

3 Q. Did Mr. Solomon express to you that
4 he wanted you to give testimony on any
5 particular topics?

6 A. Just my -- no, not give testimony.
7 He just asked questions about my relationships,
8 my thoughts.

9 Q. Do you know how many Dental Gator
10 customers were new to Schein?

11 A. I don't, not specifics.

12 Q. And you testified earlier today that
13 you viewed Dental Gator as a relatively new
14 concept in the market when it was first
15 developed; is that correct?

16 A. In my opinion, yes. It could be
17 complete morons in that statement, but I
18 thought -- on the earlier phase.

19 Q. In your view, are there more
20 entities similar to Dental Gator in the market
21 today than when Dental Gator was first formed?

22 A. I think, absolutely, yes, there is.

23 Q. And what are you basing that
24 understanding on?

25 A. Oh, I think just advertisements, and

1 PUCKETT

2 again, maybe this is more ahead of the scenes
3 of, you know, more -- everything, social media,
4 LinkedIn, all the stuff that I'm probably more
5 keen to looking at it, but it just seems like
6 it is more direct advertised versus it used to
7 have a study club where guys would do it on the
8 side kind of a thing.

9 Now it seems like there are some
10 real companies. And again, I do believe that
11 the words DSO and GPO are getting nebulous of
12 what do you do, that sort of thing.

13 Like Darby is now -- now there are a
14 ton of little local groups around that I'm
15 either, A, more aware of, or B, just got
16 started.

17 Q. So are you more aware than -- are
18 you aware today of more competition between
19 Dental Gator, I guess, and groups similar to
20 Dental Gator?

21 A. Absolutely, yes.

22 Q. Do you recall testifying earlier
23 today about certain questions that Andrea Hight
24 asked during -- about Dental Gator during the
25 MB2 contract negotiations?

1 PUCKETT

2 A. Yes.

3 Q. In your view, were any questions or
4 issues raised by Andrea ultimately resolved?

5 MR. SOLOMON: Object to the form.

6 A. You said -- could you -- were any
7 questions resolved?

8 Q. Sure. In your view, were the
9 questions or issues raised by Andrea Hight
10 during the MB2 negotiations about Dental Gator
11 ultimately resolved?

12 MR. SOLOMON: Object to the form,
13 and object, leading the witness.

14 A. Eventually, yes.

15 Q. Did Schein proceed to do business
16 with Dental Gator after the MB2 contract
17 negotiations?

18 A. Yes, they did.

19 MR. SOLOMON: Object to the form.

20 A. As part of that business
21 relationship, did Schein provide discounts to
22 Dental Gator customers?

23 MR. SOLOMON: Object to the form.

24 A. Yes, they did.

25 Q. Did Dental Gator have the ability to

1 PUCKETT
 2 control its members' purchasing decisions?
 3 A. We did not.
 4 Q. Did Dental Gator have the ability to
 5 require each dental practice who signed up with
 6 Dental Gator to purchase from Schein?
 7 A. We did not.
 8 Q. Do you recall seeing emails earlier
 9 today about changes in Schein pricing for
 10 Dental Gator around February 2015?
 11 A. I do.
 12 Q. Could you pull out briefly a
 13 document -- it was an email from Patrick Gill
 14 to yourself on June 8th, 2015.
 15 A. Yes.
 16 Q. The re line is Nova DG rollout.
 17 A. Yes, got it.
 18 Q. If you could look at the bottom of
 19 the page, the first page, it is Bates labeled
 20 FTC-MB2-003742.
 21 A. Yes.
 22 Q. Do you see an email from Dr. John
 23 Tang on Monday, June 5th, 2015?
 24 A. Yes.
 25 Q. Do you see in that email where

1 PUCKETT
 2 Dr. Tang writes, what has been recent outcome
 3 of HS pricing for new DG clients is nowhere
 4 near MB2 pricing. Do you see that?
 5 A. Yes.
 6 Q. If you wouldn't mind going back to
 7 the first page of this document.
 8 A. Okay.
 9 Q. Can you please take a look briefly
 10 at Patrick Gill's response at 1:59 p.m. Do you
 11 see where he writes, no, it is not close, but
 12 it is still competitive for an independent
 13 dentist. Do you see that?
 14 A. Yes.
 15 Q. Do you have an understanding of what
 16 Mr. Gill was referring to when he says "it"?
 17 MR. SOLOMON: Object to the form.
 18 A. It would be Henry Schein's new
 19 pricing for new DG members.
 20 Q. So in this email, Patrick Gill tells
 21 the group that the new Schein pricing is still
 22 competitive for an independent dentist;
 23 correct?
 24 MR. SOLOMON: Objection, leading.
 25 A. Yes, it does.

1 PUCKETT
 2 Q. And again, just for clarifying the
 3 record, the first page of that email that we
 4 were just discussing is labeled CX4026-001;
 5 correct?
 6 A. Yes.
 7 MS. FINCHER: That is all the
 8 questions I have.
 9 EXAMINATION
 10 BY MR. LONG:
 11 Q. Mr. Puckett, my name is Jim Long.
 12 We met earlier. I represent Patterson.
 13 You were asked if you had spoken to
 14 attorneys for Schein, Patterson, and Benco.
 15 You and I have never spoken before this
 16 deposition; correct?
 17 A. That's correct.
 18 Q. And you haven't spoken with any
 19 other attorneys representing Patterson in this
 20 matter concerning this matter, have you?
 21 A. No, sir, I have not.
 22 Q. I believe that you testified that in
 23 2014, Patterson bid on the MB2 business?
 24 A. Yes, sir.
 25 Q. Did you feel that was a legitimate

1 PUCKETT
 2 effort by Patterson to get that business --
 3 MR. SOLOMON: Objection,
 4 speculation.
 5 Q. -- in 2014?
 6 MR. SOLOMON: Objection --
 7 MR. LONG: Let me finish the
 8 question. Then you can put it on.
 9 MR. SOLOMON: I'm sorry, I thought
 10 you were done. Objection, speculation,
 11 calls for speculation.
 12 A. Yes.
 13 Q. Who had the MB2 business at that
 14 point in time?
 15 A. Henry Schein.
 16 Q. So this was an effort by Patterson
 17 to win business away from Henry Schein?
 18 MR. SOLOMON: Objection, calls for
 19 speculation.
 20 A. Yes.
 21 Q. Do you know who Neal McFadden is?
 22 A. I do.
 23 Q. And who was he?
 24 A. He is the former director of special
 25 markets for Patterson.

1 PUCKETT

2 Q. Okay. And after 2014, in 2015 and
3 on, did Mr. McFadden ever contact you?

4 A. Yeah, quite a few times.

5 Q. And why do you think he was
6 contacting you?

7 A. They were still trying to get our --
8 get our, being MB2's business to switch from
9 Schein to Patterson.

10 Q. And did that continue from 2015 up
11 until the present?

12 A. Yes.

13 Q. And did you feel that Patterson
14 legitimately has been trying to get MB2's
15 business?

16 A. Yes, very hard.

17 Q. And in doing that, they have been
18 trying very hard to take business away from
19 Henry Schein?

20 A. Yes. By gaining ours, they would
21 be, yeah, losing Schein.

22 Q. You testified earlier in the morning
23 about there being different grape flavors of
24 gloves. Do you remember that?

25 A. Yes.

1 PUCKETT

2 Q. And I think you testified that what
3 MB2 would do in conjunction with its dental
4 practices would be try to take 50 different
5 variations of gloves down to six --

6 A. Uh-huh.

7 Q. -- for the formulary?

8 A. Yes, sir.

9 Q. Did I have that right?

10 A. Yes, sir.

11 Q. Isn't a glove a glove?

12 A. In my nonclinical opinion, yes.

13 Many, many, many doctors that I've found,
14 clinicians disagree based on material, feel,
15 preference. So I've learned that a glove is
16 not a glove to people.

17 Q. It is your understanding from
18 working at MB2 for the last -- trying to do the
19 math -- four to five years, that dentists have
20 individual preferences on something that
21 laypeople might think are as simple as gloves?

22 MR. SOLOMON: Object to the form.

23 A. Yes. They have opinions on which
24 cotton rolls are better.

25 Q. And do those -- in your experience,

1 PUCKETT

2 did dentists have individual preferences on
3 more complex products like adhesives or
4 composites or blocks or things like that?

5 MR. SOLOMON: Object to the form.

6 A. Yeah. We, being MB2, offer -- or in
7 my opinion, the most involved clinical DSO
8 because they have true equity ownership. They
9 pay their portion of the money. They care
10 immensely more on the spectrum regarding -- you
11 know, disposals are on the least care spectrum,
12 and then you go into stuff that goes in
13 people's mouths for materials. You know, I
14 would say that is the most opinionated,
15 debated, whatever, clinical term that you --

16 Q. By getting your dentists together,
17 using the example of going from 50 glove
18 choices to six, what were you trying to do
19 there?

20 A. The goal would be that, you know, if
21 we are ordering 50 types of gloves, but
22 spending \$100, we are -- versus taking that
23 \$100 to six, we have a little bit more leverage
24 on those six products versus the 50 products.

25 Q. And when you say "leverage," you

1 PUCKETT

2 mean that because you're concentrating your
3 purchases in the six types of gloves, you might
4 be able to get better volume --

5 MR. SOLOMON: Object to the form,
6 leading.

7 Q. -- prices?

8 A. Yes. If we order more of a certain
9 item, we have more power from that manufacturer
10 as well as that distributor than Johnny dentist
11 down the street who orders one box, if we are
12 ordering now six boxes instead of one.

13 Q. That is something that MB2 as a DSO
14 tries to do?

15 MR. SOLOMON: Object to the form,
16 leading.

17 A. Yes. That is a value that we bring
18 to our clients, which are our dentist owners,
19 of savings procurement.

20 MR. LONG: I appreciate your time.
21 Those are the questions that I have, given
22 your hard stop. And where we are on the
23 timeframe here?

24 MS. FINCHER: Carrie, do you have
25 any questions?

1 PUCKETT
 2 MS. AMEZCUA: I do not have any
 3 questions at this time.
 4 MR. SOLOMON: So I think we should
 5 be done. I would like to just circle back
 6 with my colleague just to confirm, but
 7 assuming we have nothing else, we can
 8 reconvene and go off the record and be done
 9 for today. I will just take five minutes,
 10 if that is okay with y'all.
 11 THE WITNESS: Yes. I've got time.
 12 (Recess taken 12:56 p.m. to 1:02 p.m.)
 13 FURTHER EXAMINATION
 14 BY MR. SOLOMON:
 15 Q. So, Mr. Puckett, it is 1:02 p.m., or
 16 approximately 1:02 p.m. My understanding is
 17 you have a hard stop at 1:30?
 18 A. Yes.
 19 Q. So you have like another 28 minutes
 20 or so?
 21 A. Yes.
 22 MR. SOLOMON: I have no further
 23 questions. My understanding is that
 24 respondents don't have any further
 25 questions. So if that is the case, we can

1 PUCKETT
 2 just end here.
 3 THE WITNESS: Sounds good.
 4 (Deposition adjourned at 1:02 p.m.)
 5
 6
 7
 8
 9
 10 JUSTIN PUCKETT
 11
 12 Subscribed and sworn to before me
 13 this day of 2018.
 14 -----
 15
 16
 17
 18
 19
 20
 21
 22
 23
 24
 25

1 PUCKETT
 2 C E R T I F I C A T E
 3
 4 I, SUSAN S. KLINGER, a certified shorthand
 5 reporter within and for the State of Texas, do
 6 hereby certify:
 7 That JUSTIN PUCKETT, the witness whose
 8 deposition is hereinbefore set forth, was duly
 9 sworn by me and that such deposition is a true
 10 record of the testimony given by such witness.
 11 I further certify that I am not related to
 12 any of the parties to this action by blood or
 13 marriage; and that I am in no way interested in
 14 the outcome of this matter.
 15 IN WITNESS WHEREOF, I have hereunto set my
 16 hand this 6th of July, 2018.
 17
 18
 19 _____
 20 Susan S. Klinger,
 21 RMR-CRR, CSR
 22 Texas CSR# 6531
 23
 24
 25

1 PUCKETT
 2 NAME OF CASE: In the matter of Benco
 3 DATE OF DEPOSITION: June 25, 2018
 4 NAME OF WITNESS: Justin Puckett
 5 Reason Codes:
 6 1. To clarify the record.
 7 2. To conform to the facts.
 8 3. To correct transcription errors.
 9 Page ___ Line ___ Reason _____
 10 From _____ to _____
 11 Page ___ Line ___ Reason _____
 12 From _____ to _____
 13 Page ___ Line ___ Reason _____
 14 From _____ to _____
 15 Page ___ Line ___ Reason _____
 16 From _____ to _____
 17 Page ___ Line ___ Reason _____
 18 From _____ to _____
 19 Page ___ Line ___ Reason _____
 20 From _____ to _____
 21 Page ___ Line ___ Reason _____
 22 From _____ to _____
 23 Page ___ Line ___ Reason _____
 24 From _____ to _____
 25

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John C. Kois, DMD, MSD
UNITED STATES DISTRICT COURT
BEFORE THE FEDERAL TRADE COMMISSION
Office of the Administrative Law Judges

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

CONFIDENTIAL DEPOSITION OF
JOHN C. KOIS, DMD, MSD
Seattle, WA
Wednesday, June 27, 2018

Reported by:
LISA TRONCOSO, RPR, CSR, CLR
JOB NO. 143125

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1 John C. Kois, DMD, MSD
 2 June 27, 2018
 3 8:16 a.m.

4
 5 Deposition of JOHN C. KOIS, DMD,
 6 MSD, held at the offices of Byrnes Keller
 7 Cromwell, LLP, 1000 Second Avenue, 38th Floor,
 8 Seattle, Washington, before Lisa Troncoso, a
 9 Registered Professional Reporter, Certified
 10 Livenote Reporter, and Washington Certified
 11 Shorthand Reporter Number 3090.
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Page 3

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Page 4

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 22 BY: ADRIAN FONTECILLA, ESQ. (via telephone)
 23
 24 Also Present: John Kois, Jr.
 25

Page 5

1 John C. Kois, DMD, MSD
 2 JOHN C. KOIS, DMD, MSD,
 3 called as a witness, having first been sworn by
 4 the Certified Shorthand Reporter, was examined
 5 and testified as follows:
 6 -o0o-
 7 MS. BALBACH: Good morning, Mr.
 8 Kois. As we get started I would like to
 9 have the attorneys introduce themselves.
 10 I'm Jeanine Balbach on behalf of
 11 Complainant Counsel from the Federal Trade
 12 Commission. And with me is Danica Noble
 13 also from Complaint Counsel, the Federal
 14 Trade Commission.
 15 MR. GEORGE: I'm Andrew George. I'm
 16 from a law firm called Baker Botts in
 17 Washington, D.C., and we represent
 18 Patterson.
 19 MR. RACOWSKI: Ken Racowski from
 20 Buchanan, Ingersoll & Rooney representing
 21 Respondent, Benco Dental Supply Company.
 22 MR. RYAN-LANG: I'm Nick Ryan-Lang
 23 here for the witness, and I would just like
 24 to say for the record that we regard the
 25 testimony Dr. Kois is about to give as

1 John C. Kois, DMD, MSD
 2 confidential pursuant to the protective
 3 order.
 4 MS. BALBACH: And on the phone we
 5 have?
 6 MR. FONTECILLA: Good morning
 7 everyone. This is Adrian Fontecilla with
 8 Proskauer Rose. I represent Henry Schein.
 9 I'm calling from Washington D.C., here
 10 today.
 11 MS. BALBACH: Also in the room with
 12 us we have John Kois, Jr., and are all okay
 13 with the presence of Mr. John Kois, Jr.,
 14 for this deposition of his father.
 15 EXAMINATION BY:
 16 MS. BALBACH:
 17 Q. Could you state your name for the
 18 record?
 19 A. John C. Kois.
 20 Q. Have you ever been deposed before?
 21 A. Yes.
 22 Q. In what circumstances?
 23 A. Malpractice cases.
 24 Q. When was your most recent
 25 deposition?

1 John C. Kois, DMD, MSD
 2 down nods or shrugs, is that okay?
 3 A. Okay.
 4 Q. If you need a break at any point,
 5 please let me know and I'll be happy to break
 6 at the end of my line of questioning, but if
 7 there's a question pending I'll hope you can
 8 answer it before we take a break. Is that
 9 okay?
 10 A. Yes.
 11 Q. From time to time today attorneys
 12 may make objections to a question that's asked.
 13 Typically, unless your attorney instructs you
 14 not to answer, you will continue to answer the
 15 question. Just try to not talk over the
 16 objections, so when you get a question -- when
 17 I give a question you might pause a little bit,
 18 make sure they get their objections in if they
 19 have them and then you can answer. Do you
 20 understand that?
 21 A. Yes.
 22 Q. Is there any reason today that --
 23 anything that would interfere with your ability
 24 to testify under oath today?
 25 A. No.

1 John C. Kois, DMD, MSD
 2 A. I believe two years ago, 2016.
 3 Q. So you probably remember some of the
 4 ground rules, but I'll go over them again for
 5 today. If you answer a question, I'll assume
 6 you understood it.
 7 A. By the way, it wasn't a malpractice
 8 case against me. I was testifying in a
 9 malpractice case.
 10 Q. Were you the expert witness?
 11 A. Yes, expert witness.
 12 Q. Back to the ground rules. If you
 13 answer a question, I'll assume you understood
 14 that; is that okay?
 15 A. Yes.
 16 Q. And if you don't understand a
 17 question, please let me know and I'll be happy
 18 to rephrase it. Please let me finish asking a
 19 question before you begin to answer, and
 20 likewise, I'll do my best to let you finish an
 21 answer before I start the next question; is
 22 that okay?
 23 A. Yes.
 24 Q. You must answer audibly. We have a
 25 court reporter here today and she can't take

1 John C. Kois, DMD, MSD
 2 Q. Dr. Kois, are you currently a
 3 practicing dentist?
 4 A. I am, yes.
 5 Q. When did you start practicing
 6 dentistry?
 7 A. June of 1977.
 8 Q. Did you start in your own practice
 9 or were you employed by another practice?
 10 A. No, I was in the Air Force for nine
 11 years as a dentist.
 12 Q. What year did you join the
 13 Air Force?
 14 A. I joined the Air Force actually as a
 15 scholarship program in 1976, and then formally
 16 graduated dental school in 1977.
 17 Q. How long did you practice dentistry
 18 then for the Air Force?
 19 A. From 1977, then eight more years.
 20 Q. Was that your primary assignment
 21 with the Air Force, dentistry?
 22 A. Yes, it was.
 23 Q. What did you do after the Air Force?
 24 A. I started my private practice and I
 25 had a half-time teaching position at the

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1 John C. Kois, DMD, MSD
 2 University of Washington.
 3 Q. What year was that that you started
 4 your private practice?
 5 A. 1985.
 6 Q. Were there any dentists in practice
 7 with you or was it a solo practice?
 8 A. Solo practice.
 9 Q. Where was your practice located in?
 10 A. In Fife, Washington.
 11 Q. You mentioned you had a half time
 12 teaching position at University of Washington.
 13 What types of courses did you teach at
 14 University of Washington?
 15 A. I'm a duly trained specialist in
 16 both periodontics and prosthodontics, and I
 17 taught in the specialty program for
 18 prosthodontics at the University of Washington,
 19 and I still maintain assistant professor at the
 20 University of Washington.
 21 Q. Did you teach courses at the
 22 University of Washington in this most recent
 23 year?
 24 A. No.
 25 Q. How do you interact -- you mentioned

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1 John C. Kois, DMD, MSD
 2 you're an assistant professor with the
 3 University of Washington. When was the last
 4 time you taught a course?
 5 A. I don't currently teach at the
 6 University of Washington. Graduate students
 7 and current students come to the teaching
 8 center and I interact with them there.
 9 Q. Are those students doing internships
 10 with your son or --
 11 A. These are students attending the
 12 University of Washington as graduate students,
 13 and they come to the teaching center for
 14 questions or short answers to cases.
 15 Q. Do you continue to practice
 16 dentistry in Fife, Washington?
 17 A. I do.
 18 Q. Today?
 19 A. Yes.
 20 Q. How many offices do you have where
 21 you currently practice dentistry?
 22 A. Two offices.
 23 Q. I assume one is located in Fife?
 24 A. Yes, it is.
 25 Q. And where is the other office?

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1 John C. Kois, DMD, MSD
 2 A. Here in Seattle.
 3 Q. On average, how many days a week do
 4 you practice dentistry?
 5 A. I practice 65 days a year.
 6 Q. Are there other dentists who work
 7 with you in the Fife office?
 8 A. Yes, there are.
 9 Q. How many?
 10 A. One. They don't work with me
 11 personally, they're on premises in a separate
 12 practice. Or he doesn't, I should say.
 13 Q. Are there other dentists in the
 14 Seattle office?
 15 A. Yes.
 16 Q. How many dentists are in the Seattle
 17 office besides yourself?
 18 A. Three.
 19 Q. Do those three also have separate
 20 practices?
 21 A. Yes.
 22 Q. Are you currently also the director
 23 of the Kois Center?
 24 A. Yes.
 25 Q. Can you tell me briefly what is the

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1 John C. Kois, DMD, MSD
 2 Kois Center?
 3 A. The Kois Center is a teaching center
 4 based program for practicing dentists. It is
 5 -- the short version would be a graduate
 6 program for practicing dentists. You have to
 7 already be a dentist before you attend the Kois
 8 Center, and we work with dentists from all over
 9 the world.
 10 Q. How long have you been the director
 11 of the Kois Center?
 12 A. Since its inception, which was 1994.
 13 Q. Were you the sole founder of the
 14 Kois Center?
 15 A. Yes, I was.
 16 Q. Why did you establish the Kois
 17 Center?
 18 A. I felt there was a need to help
 19 practicing dentists get quality continuing
 20 education with a curriculum based system, not
 21 fragmented continuing education courses.
 22 Q. You mentioned this curriculum based
 23 system. Does that mean there is like a set
 24 number of classes in this full curriculum?
 25 A. Yes, it does. And we are approved

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1 John C. Kois, DMD, MSD
 2 by the American Dental Association and the AGD,
 3 it's the Academy of General Dentistry.
 4 Q. How many courses are in the full
 5 curriculum of the Kois Center?
 6 A. There are nine different courses.
 7 Q. I assume it varies, but each of
 8 these nine courses is there a set number of
 9 days that each course lasts?
 10 A. Yes, there are.
 11 Q. On average, how many days does the
 12 course last?
 13 A. They are either in a three day
 14 format or a five day format where we combine
 15 certain courses to maximize the efficiency of
 16 people traveling from long distances.
 17 Q. You mentioned you have students from
 18 all over the world. Is there a primary
 19 location where your students come from?
 20 A. The dominant amount of students come
 21 from Canada. The second highest outside number
 22 of dentists come from Europe.
 23 Q. So a smaller group of students come
 24 from the United States then from Canada or
 25 Europe?

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1 John C. Kois, DMD, MSD
 2 A. No, the most students are still in
 3 the United States trained students, but -- I'm
 4 sorry, I may have misunderstood the question.
 5 The students coming from outside the United
 6 States most are from Canada, second most are
 7 from Europe.
 8 Q. If you had to estimate, what
 9 percentage of the students would you say are
 10 from the United States?
 11 A. I would say about two thirds.
 12 Q. And from the U.S. is there like a
 13 region, like the west, where most of your
 14 students would come from?
 15 A. I don't have exact data on that.
 16 We're actually trying to compile that at this
 17 time. I can tell you that we don't advertise
 18 our courses so they typically come from areas
 19 of dentists where they have word of mouth
 20 communication options, that's how the center
 21 grew historically.
 22 Q. Was your goal in establishing the
 23 center of this education program to help dental
 24 patients?
 25 A. Yes.

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1 John C. Kois, DMD, MSD
 2 Q. And how would you help dental
 3 patients through these courses?
 4 A. By improving the quality of dental
 5 health care.
 6 Q. Once a dentist takes one of the nine
 7 courses would they repeat a course ever or?
 8 A. We have had some dentists repeat a
 9 course, so they come back as an audit
 10 participant. Most of the dentists, once they
 11 take several courses they complete our entire
 12 series.
 13 Q. Do you have an estimate for the
 14 percentage of dentists that have taken a course
 15 that have completed the entire series?
 16 A. I wish I could answer that with
 17 accurate information because some dentists they
 18 have families and children and so it takes a
 19 long time for them to complete courses. Some
 20 dentists have taken nine or ten years to
 21 complete the series, and some dentists have
 22 completed the series within three months, but I
 23 would say the majority of dentists that take
 24 courses at the center complete the series.
 25 Q. Do you know how many dentists over

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1 John C. Kois, DMD, MSD
 2 the years, since 1949, have completed the
 3 series?
 4 A. I don't have an exact number, but I
 5 believe it's over 600 graduates.
 6 Q. Do you know how many dentists have
 7 taken at least one of the courses?
 8 A. It's in the thousands. Probably a
 9 better answer for my son, who is the CEO of the
 10 company, he has access to that kind of data.
 11 Q. I want to turn to your private
 12 practice right now. You mentioned that you're
 13 practicing 65 days a year now; is that correct?
 14 A. That's correct.
 15 Q. When did you -- I assume when you
 16 started in 1985 you were practicing five days a
 17 week or full time?
 18 A. That's correct.
 19 Q. When did you cut back on your
 20 practice?
 21 A. I first started continuing education
 22 lecturing all over the world, going from
 23 several times a year to up to 50 times a year
 24 around the world until we started to
 25 consolidate the educational process to the

<p style="text-align: right;">Page 18</p> <p>1 John C. Kois, DMD, MSD 2 center which started in 1994. At that time I 3 still practiced mostly full-time, and we had 4 only 10 or 12 courses per year as the demand 5 started to grow. 6 I would say the practice didn't move 7 to the 65 days a year until about 2003 when the 8 new teaching center opened here in Seattle. 9 But, in essence, my practice time has dwindled 10 and my teaching time has increased. 11 Q. I assume you must use dental 12 supplies in your private dental practice; is 13 that correct? 14 A. I do. 15 Q. Who is your distributor, current 16 distributor for dental supplies? 17 A. Burkhart. 18 Q. And how long have you used Burkhart 19 as your distributor? 20 A. Since the beginning in 1985. 21 Q. Have you ever bought supplies from 22 Henry Schein? 23 A. Yes. 24 Q. What kinds of supplies have you 25 bought from Henry Schein?</p>	<p style="text-align: right;">Page 19</p> <p>1 John C. Kois, DMD, MSD 2 A. I don't recall specific items. Over 3 the years I've purchased from all dental supply 4 companies. 5 Q. So you've purchased dental supplies 6 from Benco Distribution? 7 A. Yes. 8 Q. Have you purchased dental supplies 9 from Patterson Distribution? 10 A. Yes. 11 Q. What about equipment, have you 12 purchased equipment from Burkhart? 13 A. Yes. 14 Q. Have you purchased equipment from 15 Schein? 16 A. I don't recall any specific 17 equipment. Yeah, I don't recall. 18 Q. What about equipment from Benco? 19 A. I don't recall. I haven't purchased 20 equipment for building the practice in quite a 21 while. 22 Q. And purchased -- have you purchased 23 equipment from Patterson, that you recall? 24 A. No, I don't recall. 25 Q. Would you say you've purchased the</p>
<p style="text-align: right;">Page 20</p> <p>1 John C. Kois, DMD, MSD 2 majority of your supplies from Burkhart over 3 the years? 4 A. Yes. 5 Q. Could you characterize at all when 6 you've had to purchase from Schein, Benco or 7 Patterson? 8 A. When Burkhart would not carry a 9 certain item that I could -- it was a specific 10 item that I could get only through a different 11 supply company. 12 Q. And compared to the volume of 13 supplies you've purchased from Burkhart over 14 the years, what percentage of supplies do you 15 think you've had to turn to Schein, Benco or 16 Patterson to purchase? 17 A. Less than a few percent, ever. 18 Q. Does Burkhart offer full 19 distribution to your office? 20 A. Yes. 21 Q. I assume to both your office in Fife 22 and Seattle? 23 A. Yes. 24 Q. And what is a full service 25 distributor?</p>	<p style="text-align: right;">Page 21</p> <p>1 John C. Kois, DMD, MSD 2 A. They not only are helping me with 3 disposable inventory supplies, they also 4 service all of my equipment. 5 Q. When you say they help you with your 6 inventory of disposable supplies, what 7 specifically does a full service distributor -- 8 what does Burkhart do for you to help with 9 inventory? 10 A. I purchase the majority of the 11 supplies I use for treating patients through 12 Burkhart and a small percentage through direct 13 companies. 14 Q. Does a Burkhart representative come 15 to your office? 16 A. Yes. 17 Q. How often does a Burkhart 18 representative come to your office? 19 A. Every two weeks. 20 Q. When that Burkhart representative is 21 in your office do they inventory your 22 disposable supplies? 23 A. No. 24 Q. Does the Burkhart rep interact with 25 your office to determine that you -- which</p>

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1 John C. Kois, DMD, MSD
2 disposable supplies you need to restock on?
3 A. Yes. Typically a dental assistant
4 might give the representative a few of the
5 items that are needed because I don't practice
6 that much the needs for many of the items are
7 limited.
8 Q. Does Burkhart have a distribution
9 center in your offices in Fife and Seattle?
10 A. I believe they do.
11 Q. Do you know where the distribution
12 center is?
13 A. Not exactly.
14 Q. Is the distribution center in the
15 state of Washington?
16 A. Yes.
17 Q. Is the distribution center in the
18 metropolitan area?
19 A. I think it's not far from my
20 practice.
21 Q. Does the sales rep from Burkhart
22 deliver supplies to your office?
23 A. He has.
24 Q. How fast do you get the supplies
25 once the service rep has visited your office?

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1 John C. Kois, DMD, MSD
2 company?
3 A. I have not done that because of the
4 time element. I don't have time or the
5 employee resources to delegate that
6 responsibility to a mail order system.
7 Q. Does that relate to how you said the
8 rep that comes to your office helps you with
9 inventory?
10 A. Yes. He can inform me of new
11 products and I essentially know what I want and
12 that's the most seamless way for me to
13 replenish my inventory.
14 Q. Do you also use your Benco rep to
15 help you get your equipment services?
16 MR. RACOWSKI: Objection to form. I
17 think you misspoke.
18 THE WITNESS: I do not have a Benco
19 rep.
20 BY MS. BALBACH:
21 Q. Do you also use your Burkhart rep to
22 help you with equipment servicing?
23 A. I do use the rep to help notify when
24 something is broken to help speed the service.
25 Q. We've talked about inventory

Page 23

1 John C. Kois, DMD, MSD
2 A. I would say within a day or two.
3 Q. Have you ever bought supplies for
4 your offices from a mail order company like
5 Darby?
6 A. I would say maybe historically, but
7 I can't recall the last time that was ever
8 done.
9 Q. Have you -- has your office ever
10 bought supplies from Amazon or other
11 Internet-based retailers?
12 A. I buy household items from Amazon,
13 and recently a few disposable items from Amazon
14 have been purchased mostly to try out their
15 quality.
16 Q. Other than these few recent
17 purchases from Amazon -- or why haven't you
18 bought from an Internet retailer?
19 MR. FONTECILLA: Objection.
20 THE WITNESS: I have purchased
21 disposable items from Amazon because I
22 thought the pricing was less expensive.
23 BY MS. BALBACH:
24 Q. Why haven't you purchased more
25 supplies from a mail order distribution

Page 25

1 John C. Kois, DMD, MSD
2 management, delivery that your Burkhart rep may
3 facilitate, equipment servicing that your
4 Burkhart rep may help facilitate. Is there
5 anything else that you rely on your full
6 service Burkhart representative for?
7 A. No. I rely on the full service rep
8 very little. I rely on my staff much more.
9 Q. But without the full service rep
10 would your staff have to do more work?
11 MR. FONTECILLA: Objection.
12 THE WITNESS: It would be just a
13 phone call.
14 BY MS. BALBACH:
15 Q. I don't understand.
16 A. In other words, having a direct
17 person to place the order with they'd have to
18 use a secondary device, telephone.
19 Q. To call the distribution company?
20 A. Yes, yes.
21 Q. Why have you stayed with Burkhart as
22 your distributor since 1985?
23 A. There are a number of reasons.
24 Number one, I've always liked the
25 representatives that they've provided for me.

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1 John C. Kois, DMD, MSD
 2 I have personally treated some of the people
 3 that work in the company, the service has been
 4 excellent throughout my whole career, so I feel
 5 a certain loyalty to the company.
 6 Q. You mentioned that you had recently
 7 purchased a few products from Amazon to try out
 8 the quality. How was the quality?
 9 A. For the items I purchased, which
 10 were micro brushes, I couldn't determine any
 11 compromises in the quality; they were
 12 disposable items.
 13 Q. Are you planning to make a switch to
 14 Amazon to provide some of your supplies?
 15 A. No.
 16 Q. And why not?
 17 A. At the moment, it's not as
 18 convenient.
 19 Q. Why is it not as convenient?
 20 A. Because I have to go on Amazon.
 21 Q. I want to turn to the Kois Buying
 22 Group. How did you come about deciding to set
 23 up a buying group?
 24 A. The concept of the buying group were
 25 based on a few key principles. At the Kois

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1 John C. Kois, DMD, MSD
 2 Center we also have a research arm to help
 3 determine what might be the best product
 4 choices to use, and once I determined what
 5 would be the best choices and build protocols
 6 for how the product could be used we tried to
 7 go through different companies, the
 8 manufacturing companies, to see if there were
 9 ways to distribute the product throughout the
 10 group, to use the buying power of a collective
 11 group of people, because I deal with most of
 12 the dentists who are solo practitioners or very
 13 small group practices of one, two, maybe three
 14 dentists.
 15 So their way to get discounted
 16 supplies would be typically at dental meetings,
 17 but they'd have to buy too much inventory to
 18 really be able to get the price reduction that
 19 might be available to large group practices, so
 20 the beginning was mostly to have individual
 21 practices be more competitive with large group
 22 practices in buying power because they didn't
 23 have the inventory purchasing power like
 24 Costco. It was the Costco model to use for
 25 dental practice.

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1 John C. Kois, DMD, MSD
 2 MR. RACOWSKI: Apologies, counsel.
 3 This might be a good time to take a break to
 4 get the real time up and working.
 5 MS. BALBACH: Yes, let's take a
 6 break.
 7 (Break from 9:14 to 9:28 a m.)
 8 BY MS. BALBACH:
 9 Q. We're back on the record. Dr. Kois,
 10 before I follow up on your last question, I
 11 asked you about the buying group you set up.
 12 Dr. Kois, I understand you wanted to
 13 update one of your answers? I had asked you
 14 how many graduates there were of the full
 15 curriculum at the Kois Center. How many
 16 graduates are there?
 17 A. Yes. I checked the data, it's 800.
 18 Q. Thank you. And I had asked you
 19 about your decision to set up the Kois Buying
 20 Group. You mentioned that you were interested
 21 in helping solo, small dental offices because
 22 they might have to purchase too much inventory.
 23 What would be the problem for a small practice
 24 having to purchase too much inventory, what did
 25 you mean by that?

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1 John C. Kois, DMD, MSD
 2 A. Well, there's several reasons for
 3 that particular answer. Number one, in a small
 4 practice, if they have to purchase a lot of
 5 inventory it will take a much longer time
 6 before they can run through the inventory and
 7 utilize it for their patients depending on the
 8 need for the practice.
 9 So I wanted to make sure that they
 10 didn't have to buy too much that would sit on
 11 the shelf unused before they get a chance to
 12 use it. Many of the products that we use also
 13 have expiration dates and they're time
 14 sensitive, so practitioners have to be careful
 15 how much inventory they create on the shelf
 16 that might become expired by the time they get
 17 to utilize it for their patients.
 18 The other reason was I wanted to try
 19 to ensure that it's not only the price that was
 20 important, it was also the convenience. So
 21 that we had many of the offices that they would
 22 maybe be able to purchase things because they
 23 would have some idea that these were quality
 24 items.
 25 Q. And you also mentioned you wanted to

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1 John C. Kois, DMD, MSD
 2 help the solo and small practices compete with
 3 large practices. What did you mean by that?
 4 A. Being able to compete based on how
 5 much time it would take to do all the research
 6 on many of the products, which I could expedite
 7 for them, and trying to ensure that at least
 8 they have competitive prices.
 9 Q. Do large offices get a better price
 10 or a price break?
 11 A. I've heard that from dentists that
 12 come to the center that belong to large groups.
 13 MR. FONTECILLA: I don't know if you
 14 heard my objection to that question.
 15 BY MS. BALBACH:
 16 Q. Did you belong to a buyers group
 17 before you set up KBG?
 18 A. No.
 19 Q. I'm sorry, I may have said -- strike
 20 that.
 21 Where did you get the idea to set up
 22 a buyers group?
 23 A. From a company called ProCare.
 24 Q. And who is ProCare?
 25 A. It's a Canadian company. I don't

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1 John C. Kois, DMD, MSD
 2 Qadeer?
 3 A. No, other than just trying to work
 4 through companies and helping any way they
 5 could.
 6 Q. And what do you mean by getting
 7 companies to help any way they could?
 8 A. Well, I know people from Benco, I
 9 know the ownership in Benco, I've lectured for
 10 the company, so I've had personal relationships
 11 with many of the dental supply companies, all
 12 good relationships.
 13 Q. Do you remember the approximate year
 14 that you met Qadeer Ahmed?
 15 A. Actually, I didn't meet him until he
 16 lectured at one of our symposiums, which was
 17 the first time I ever met him, and I believe
 18 that was 2015 or 2016, I don't recall the
 19 actual date.
 20 Q. When you say one of your symposiums,
 21 was this a course as part of the curriculum?
 22 A. No. We have an annual event that
 23 meets here in Seattle every July for graduates
 24 and above only.
 25 Q. And what is the purpose of an annual

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1 John C. Kois, DMD, MSD
 2 know actually much about the company other than
 3 they help facilitate things like this.
 4 Q. Is that company run by Qadeer Ahmed?
 5 A. Yes, it is.
 6 Q. When you say they help facilitate
 7 things like this, what did you mean?
 8 A. Well, turns out that one of our
 9 students who became a graduate knew of Qadeer
 10 and that's the referral, the introduction I
 11 received, that this is someone that has done
 12 things like this before and he might be able to
 13 help.
 14 Q. Do you know if Qadeer had done
 15 things like this before in dentistry?
 16 A. I do not know.
 17 Q. Do you know if he had set up buying
 18 groups for other industries?
 19 A. I don't know that.
 20 Q. Before you met ProCare and Qadeer
 21 Ahmed, had you done anything to start the
 22 process of trying to set up a buying group?
 23 A. No.
 24 Q. Had you talked to Benco about
 25 setting up a buying group before you met with

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1 John C. Kois, DMD, MSD
 2 symposium?
 3 A. It's an update of all the most
 4 current research that's been published in the
 5 last fiscal year.
 6 Q. What was Qadeer Ahmed's topic at the
 7 symposium he spoke at?
 8 A. It had to do with insurance and
 9 being able to provide better care options
 10 through insurance companies. It had nothing to
 11 do with the buyers club.
 12 Q. But one of your students let you
 13 know that Qadeer had worked with buyers clubs
 14 or buyers groups?
 15 A. No. Just let me know that he was a
 16 very good negotiator and that he might be able
 17 to help. I don't do those kind of things.
 18 Q. Prior to meeting Qadeer Ahmed at
 19 this symposium, do you remember when in
 20 conjunction or in relation to that symposium --
 21 do you remember when the student told you about
 22 Qadeer?
 23 A. I would think probably around 2014,
 24 about four years ago.
 25 Q. And was Qadeer's invitation to your

1 John C. Kois, DMD, MSD
 2 symposium based on that, your discussions with
 3 the student who knew him?
 4 A. Yes. We had exchanged e-mails and
 5 we had some telephone conversations prior to
 6 the symposium, but the symposium decision
 7 happened to turn out to be almost the last
 8 minute decision. We had a 30 minute time slot
 9 to fill at the symposium and he was able to
 10 come and do that.
 11 Q. So you were talking to Qadeer about
 12 buying groups before he appeared at the
 13 symposium?
 14 A. That's correct.
 15 Q. And you just hadn't met him in
 16 person until he was at the symposium?
 17 A. That's correct. That's correct.
 18 Q. When you started talking to Qadeer,
 19 what did he offer to do for Kois?
 20 A. He said that he could make contacts
 21 with many of the companies and reach out to
 22 them and see what he could be able to
 23 accomplish.
 24 Q. And what kind of instructions did
 25 you give to Qadeer about what you wanted?

1 John C. Kois, DMD, MSD
 2 MR. FONTECILLA: Objection.
 3 THE WITNESS: I don't recall the
 4 dates, I'm sorry.
 5 BY MS. BALBACH:
 6 Q. Do you remember if you were copied
 7 on any of the e-mails with either Benco,
 8 Schein, or Patterson that Qadeer had?
 9 MR. RACOWSKI: Objection, form,
 10 foundation.
 11 THE WITNESS: I remember being
 12 copied on many e-mails, but there are a lot
 13 of e-mails I received that I don't read and
 14 so I don't remember any specific e-mails.
 15 BY MS. BALBACH:
 16 Q. What did -- do you know what Qadeer
 17 asked Benco, Schein, or Patterson to do was --
 18 in relation to a buying group, setting up a
 19 buying group for Kois?
 20 MR. RACOWSKI: Objection to form.
 21 MR. FONTECILLA: Objection,
 22 foundation.
 23 THE WITNESS: I believe what he
 24 asked was to try to have dentists buy what
 25 he called at the time the sale price or

1 John C. Kois, DMD, MSD
 2 A. I didn't give him instructions.
 3 Q. Did you relate to him your concept
 4 of what you were looking for in a buying group
 5 that we just talked about?
 6 A. Actually, he was very perceptive
 7 because of the contact, so he was very familiar
 8 with dentistry and I did very little to
 9 influence his ability to reach out to these
 10 companies.
 11 Q. Do you -- so Qadeer made the first
 12 approaches to the distributors on behalf of the
 13 Kois Buyers Group; is that right?
 14 MR. FONTECILLA: Objection.
 15 THE WITNESS: Actually, to my
 16 knowledge, he referenced -- he did all the
 17 initiation of the contact and all the
 18 negotiation. I had nothing to do with any
 19 of that, so I don't actually know what the
 20 conversations were that he had with any of
 21 the companies.
 22 BY MS. BALBACH:
 23 Q. Do you know the dates about when he
 24 was -- this was taking place when he was
 25 talking to the companies?

1 John C. Kois, DMD, MSD
 2 black Friday price. So a dentist could buy
 3 an item at a sale price and not have to buy
 4 too many of the same items or the same item
 5 in order to get the same sale price.
 6 BY MS. BALBACH:
 7 Q. Do you know what the results of
 8 Qadeer's negotiations were with Benco?
 9 MR. RACOWSKI: Same objection.
 10 THE WITNESS: As far as I know, all
 11 of the negotiations with the companies that
 12 he interfaced with were all turned out to
 13 be negative. We had no response or no
 14 interest in the buyers club.
 15 BY MS. BALBACH:
 16 Q. Do you know why the -- all three,
 17 Benco, Schein and Patterson said they had no
 18 interest in the Kois Buyers Club or group?
 19 MR. RACOWSKI: Objection.
 20 MR. FONTECILLA: Objection, the
 21 witness has not testified who Mr. Qadeer
 22 had conversations with.
 23 THE WITNESS: It was my feeling, or
 24 my understanding, that it was because we
 25 were too small. And at the time the buyers

1 John C. Kois, DMD, MSD
2 club didn't even exist, so that many
3 companies would not want to take a risk on
4 engaging with something that isn't going to
5 even turn out to be anything. So we didn't
6 have the ability to negotiate with any of
7 the companies.

8 BY MS. BALBACH:

9 Q. Dr. Kois, I'd like to show you an
10 exhibit that's previously been marked CX4060,
11 and this is also Bates marked FTC-QA-0000001.
12 I'll ask the court reporter to mark that.

13 (Exhibit CX4060, marked.)

14 MR. RACOWSKI: Counsel, just a
15 housekeeping point. I see the Bates on
16 this document QA. I don't believe that's a
17 Bates prefix that's been produced by the
18 Kois Center in this case, and if it is
19 marked confidential, my understanding is
20 that the protective order is that no one
21 other than producing party should be able
22 to see this document without consent.

23 MS. BALBACH: Yes, and you see for
24 the -- that I have -- we have redacted the
25 part that Dr. Kois would not have seen.

1 John C. Kois, DMD, MSD

2 MR. RACOWSKI: So, I'm not aware of
3 an exception in the protective order
4 entered by Administrative Law Judge
5 Chappell in regards to the redaction in
6 this case, but if you can point us to that
7 we'll take a look at that.

8 MS. BALBACH: That's the standard
9 practice we've been using. Do you object
10 to the use of the exhibit at this point?

11 MR. RACOWSKI: Under the terms of
12 the protective order by Judge Chappell,
13 yes.

14 MS. BALBACH: My understanding is
15 this practice of redacting the part of the
16 exhibit that the witness has not seen is
17 acceptable under the protective order.

18 MR. RACOWSKI: Under what section?

19 MS. BALBACH: Under -- I would say
20 it's allowable under Section 7 where,
21 "Materials can be provided to the parties
22 who produced it or the parties whose
23 material it is or was."

24 MR. RACOWSKI: Right. I see that,
25 and it's a Bates stamped that is not the

1 John C. Kois, DMD, MSD
2 Kois Center. Producing party is not Kois
3 Center.

4 MS. BALBACH: If you look at
5 Section 7, point E there, "Any witness or
6 deponent who may have authored or received
7 the information in question."

8 Dr. Kois clearly received the
9 information that has not been redacted in
10 this exhibit.

11 MR. RACOWSKI: Okay. To the extent
12 you show that and have foundation for it.

13 BY MS. BALBACH:

14 Q. Dr. Kois, have you had a chance to
15 review what we've marked as CX4060?

16 A. I've just looked at it at this
17 moment.

18 Q. After the black box -- strike that.
19 Do you recognize this document,
20 CX4060?

21 A. I do not.

22 Q. After the black box, do you see the
23 e-mail header there from
24 qadeerahmed@hotmail.com?

25 A. I do.

1 John C. Kois, DMD, MSD

2 Q. Is that the Mr. Ahmed we've been
3 discussing?

4 A. I believe it is.

5 Q. And do you see the "to" line,
6 "Dr. Kois"?

7 A. I do.

8 Q. Do you have any reason to doubt that
9 that's you?

10 A. I do not.

11 Q. Do you believe that you received
12 this e-mail?

13 A. I do. This e-mail is -- appears to
14 be an update of a meeting that he had
15 previously with Patterson. It says, "Patterson
16 update" in the subject line.

17 Q. Do you see on the first page where
18 he writes, "John, this went out to Patterson
19 this morning"?

20 A. I do.

21 Q. Do you know what he's referring to
22 in that line?

23 A. I do not.

24 Q. Okay. Do you see what's marked as
25 page 5, CX4060-005?

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1 John C. Kois, DMD, MSD
 2 A. I do now.
 3 Q. Do you know what this document is
 4 from pages 5 to 13?
 5 A. I am familiar with the name
 6 Equalizer ProServices. In 2014 the buyers club
 7 really wasn't a real buyers club, we were just
 8 putting it together as a concept, and so that's
 9 one piece, and I don't know how long even
 10 Equalizer ProServices was in existence, but
 11 this is the beginning of when I became familiar
 12 with this company, around this time.
 13 Q. Do you know if Equalizer ProServices
 14 is Qadeer's company?
 15 MR. FONTECILLA: Objection, form.
 16 THE WITNESS: I don't know if it's
 17 his company, but I know he's involved is my
 18 understanding.
 19 BY MS. BALBACH:
 20 Q. Do you know if -- strike that.
 21 Had Qadeer shown you this part of
 22 the document that's marked -- starting at page
 23 CX4060, before he sent it to Patterson? I'm
 24 sorry, 4060, page 5.
 25 A. To be honest, even though I was sent

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1 John C. Kois, DMD, MSD
 2 the document, which is obviously what the
 3 e-mail says, I don't actually remember the
 4 document so I don't know the answer to that.
 5 Q. Did you help prepare the document
 6 that starts at page 5?
 7 A. I did not. I have nothing to do
 8 with the document.
 9 Q. Looking again at the first page of
 10 this document, at the e-mail, the e-mail is
 11 dated September 22, 2014. Does that refresh
 12 your memory as to when you were talking to
 13 Qadeer about setting up a Kois Buying Group?
 14 A. It would be consistent with the time
 15 frame of about four years ago.
 16 Q. And does this refresh your memory
 17 that Qadeer would have sent a proposal to
 18 distributor Patterson about the Kois Buying
 19 Group?
 20 MR. GEORGE: Object to form.
 21 THE WITNESS: When I review the
 22 e-mail I'm obviously aware of what was said
 23 in the e-mail, but I didn't keep track of
 24 whatever correspondence he had with any of
 25 the dental supply companies.

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1 John C. Kois, DMD, MSD
 2 BY MS. BALBACH:
 3 Q. And what was -- do you know the
 4 result of Qadeer's presentation of this
 5 proposal to Patterson -- what did Patterson
 6 say?
 7 MR. GEORGE: Object to form.
 8 THE WITNESS: I do not know the
 9 answer to that specifically.
 10 BY MS. BALBACH:
 11 Q. Would anyone else have kept track or
 12 know the answer to that question?
 13 A. Not to my knowledge. Not on my
 14 side. I just waited for whatever he would tell
 15 me as an outcome. So he would, from time to
 16 time, send me e-mails about the progress of
 17 meetings, and indicated there was some
 18 potential interest, but in the end there really
 19 wasn't enough interest for any of the other
 20 companies to move forward.
 21 Q. So would Qadeer know the outcomes of
 22 his negotiations with Patterson?
 23 MR. GEORGE: Object to form.
 24 THE WITNESS: I would suppose that
 25 would be -- yes.

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1 John C. Kois, DMD, MSD
 2 MS. BALBACH: I would like to
 3 introduce what we've marked as CX4061.
 4 This is previously also marked, Bates
 5 stamped FTC-QA-0000031. That's, I think,
 6 five zeros and a 31.
 7 (Exhibit CX4061, marked.)
 8 BY MS. BALBACH:
 9 Q. You can have a moment if you'd like
 10 to review what we've marked as CX4061. For the
 11 record, 4061 also contains a section at the top
 12 that's been redacted, and the document starts
 13 with what appears to be an e-mail that was sent
 14 to Dr. Kois. Do you recognize this document?
 15 A. I do.
 16 Q. What is this document?
 17 A. This document was regarding one of
 18 my clinical instructors that is part of the
 19 Kois Center, and some of the responses that he
 20 received I guess when he was looking at trying
 21 to implement the buying group in his practice.
 22 Q. Who is that student of your center?
 23 A. It says, "Dr. Scott Strommer" on the
 24 e-mail.
 25 Q. And what happened when he tried to

1 John C. Kois, DMD, MSD
 2 implement the buying group in his practice?
 3 A. I have to go back and read the
 4 e-mail carefully. I guess part of the e-mail
 5 indicates that there was concern on my part
 6 that I would be involved in something like
 7 this, because the Kois Center is known for not
 8 having any commercial support.
 9 We're not a foundation. We're a
 10 completely private teaching organization and so
 11 we don't use any commercial funds or
 12 commercially generated funds to help in
 13 furtherment of our educational research, so
 14 this looked like, to whoever is mentioning this
 15 in the e-mail, some conflict of interest.
 16 Q. Do you see on page 2 of the
 17 document, the bottom third where it says, "Hey,
 18 Scott, your wisdom an advice. As this is a
 19 long verbal conversation to discover what
 20 Patterson Corporate has concluded "we will not
 21 be entertaining participating in any buying
 22 group of this nature." Did I read that
 23 correctly?
 24 A. Yes, you did.
 25 Q. Do you understand -- is it your

1 John C. Kois, DMD, MSD
 2 understanding of this e-mail that Patterson
 3 Corporate had let Mr. -- or Dr. Strommer know
 4 through some source that Patterson was not
 5 likely to participate in the Kois Buying Group?
 6 MR. GEORGE: Object to form.
 7 THE WITNESS: That's my perception
 8 in reading the e-mail.
 9 BY MS. BALBACH:
 10 Q. And turning back to the first page,
 11 Qadeer's e-mail to you, it looks like the to
 12 line it says, "Dr. John Kois." Do you believe
 13 this e-mail is to you?
 14 A. Yes.
 15 Q. On October 13, 2014, he writes,
 16 "Guys, according to this guy, Guggenheim has
 17 already declined." Did I read that correctly?
 18 A. Yes.
 19 Q. Who is Guggenheim?
 20 A. I don't know.
 21 Q. Do you know if that's Paul
 22 Guggenheim from Patterson?
 23 MR. GEORGE: Object to form.
 24 THE WITNESS: I have no idea.
 25 BY MS. BALBACH:

1 John C. Kois, DMD, MSD
 2 Q. Okay. We can put that one aside.
 3 I'd like to introduce two more exhibits, and
 4 I'll ask the court reporter to mark them
 5 simultaneously because they relate to each
 6 other. The first one is CX4063, and it has a
 7 Bates stamp of FTC-QA-0000063 through 69, and
 8 there's a second document, CX4064, which has a
 9 Bates stamp of FTC-QA-0000053.
 10 (Exhibit CX4063 and CX4064, marked.)
 11 BY MS. BALBACH:
 12 Q. I'd ask you, Dr. Kois, to take a
 13 minute to review both of those documents. And
 14 for the record, I will represent that what is
 15 marked as CX4064 in our original production was
 16 an attachment for what is marked as CX4063,
 17 although the e-mail that is on CX4063 is not
 18 referenced in the body of the e-mail that it
 19 had an attachment. In the form it was produced
 20 to the FTC that had an attachment which was
 21 4064.
 22 Dr. Kois, starting with CX4063 --
 23 MR. FONTECILLA: Sorry to interrupt,
 24 have you introduced the CX4064? I just
 25 want to confirm.

1 John C. Kois, DMD, MSD
 2 MS. BALBACH: I thought I did. It
 3 was Bates marked FTC-QA-000053.
 4 MR. FONTECILLA: Okay. Thank you.
 5 THE WITNESS: Sorry, can you repeat
 6 the question?
 7 BY MS. BALBACH:
 8 Q. Yes. Looking at CX4063, do you
 9 recognize this document?
 10 A. I see my name in the CC column, but
 11 I don't remember the document.
 12 Q. What is this document?
 13 MR. GEORGE: Object to form.
 14 THE WITNESS: It -- just looking at
 15 the subject line, it refers to a follow-up
 16 call in the Equalizer program. That's all
 17 I know.
 18 BY MS. BALBACH:
 19 Q. Is this an e-mail you received on
 20 October 28, 2014?
 21 A. It appears that's correct.
 22 Q. And you were a CC on this e-mail?
 23 A. That's correct.
 24 Q. Is the e-mail to Tim Sullivan?
 25 A. That's what it says in the e-mail.

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1 John C. Kois, DMD, MSD
 2 Q. Do you know who Tim Sullivan is?
 3 A. No.
 4 Q. Do you know if Tim Sullivan is
 5 employed with or a representative of Henry
 6 Schein?
 7 MR. RACOWSKI: Object to form.
 8 THE WITNESS: I've never heard that
 9 name.
 10 BY MS. BALBACH:
 11 Q. And is the e-mail from Qadeer Ahmed?
 12 A. Yes.
 13 Q. Do you see on the first page where
 14 it says, "Please find an attached proposal"?
 15 A. Yes.
 16 Q. Okay. Looking at CX4064, do you
 17 recognize this exhibit?
 18 A. I do not.
 19 Q. Do you see at the top where it says,
 20 "Proposal for Henry Schein. Initial Supply
 21 Deal"?
 22 A. I do.
 23 Q. Dated October 28, 2014. Do you see
 24 that?
 25 A. I do.

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1 John C. Kois, DMD, MSD
 2 this has been redacted, and starting on page 2
 3 there appears to be an e-mail from John Kois.
 4 Have you had a chance to review that?
 5 A. I have.
 6 Q. Do you recognize this document,
 7 CX0290?
 8 A. I do.
 9 Q. What is CX0290?
 10 A. At this time, what we were trying to
 11 do is figure out a way how the buyers club
 12 could actually be run. This was -- the content
 13 of this document was actually prepared by
 14 ProCare, and we were looking at the levels of
 15 different offices in terms of accumulating
 16 three tiers that they potentially would spend
 17 on inventory per month.
 18 And the basis of the document was
 19 trying to come up with a monthly fee, or what
 20 we would ultimately wind up charging for
 21 membership in the buyers club. This ultimately
 22 turned out to be a complete failure. I don't
 23 know where these numbers actually came from,
 24 and they never worked so they were never really
 25 utilized.

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1 John C. Kois, DMD, MSD
 2 Q. Do you know if this is a proposal
 3 that Qadeer Ahmed prepared for Henry Schein for
 4 the Kois Buying Group?
 5 MR. GEORGE: Object to form.
 6 BY MS. BALBACH:
 7 Q. Let me rephrase that question.
 8 Do you know if this is a proposal
 9 prepared by Qadeer Ahmed asking Henry Schein to
 10 be a distributor for Kois Buying Group?
 11 MR. GEORGE: Object to form.
 12 MR. FONTECILLA: Objection.
 13 THE WITNESS: To be very honest, I
 14 don't remember any of these documents. I
 15 don't pay attention to many documents of
 16 this nature because I don't understand a
 17 lot of data that's on these documents
 18 anyway.
 19 BY MS. BALBACH:
 20 Q. Now I'd like to introduce what we
 21 have marked as CX0290. This has a Bates number
 22 of PDCO00021741.
 23 (Exhibit CX0290, marked.)
 24 BY MS. BALBACH:
 25 Q. For the record, the first page of

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1 John C. Kois, DMD, MSD
 2 Q. This document is -- seems to be
 3 dated Wednesday, October 8, 2014. Do you see
 4 that?
 5 A. I do.
 6 Q. And it appears to be an e-mail to --
 7 well, first, let me ask. From John C Kois, and
 8 the e-mail address is koistrike@koiscenter.com.
 9 Is that your e-mail?
 10 A. It is not my e-mail.
 11 Q. Whose e-mail is that?
 12 A. Well, it was an e-mail that was set
 13 up to run the buyers club, but not my personal
 14 e-mail.
 15 Q. But the from John C Kois, is that
 16 you?
 17 A. Yes, it is.
 18 Q. This e-mail is sent to Jeff Gray,
 19 jgraydds@aol.com. Who is Jeff Gray?
 20 A. He is also one of our clinical
 21 instructors.
 22 Q. What was your purpose in sending out
 23 this e-mail?
 24 A. At this time we were trying to
 25 survey the upper echelon of our community of

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1 John C. Kois, DMD, MSD
 2 dentists that have attended the Kois Center.
 3 Jeff is one of the individuals that has been
 4 involved in the Kois Center for quite a long
 5 period of time, and we trusted his feedback to
 6 be honest. So we were trying to get an idea of
 7 how this program might benefit private
 8 practitioners like himself.
 9 Q. Did this e-mail go out to -- or
 10 versions of it go out to more than just Jeff
 11 Gray?
 12 A. I don't recall that answer.
 13 Q. So you don't know if this was like a
 14 form e-mail?
 15 A. I don't -- I honestly don't remember
 16 that.
 17 Q. Were you -- strike that.
 18 Did you announce a Kois Tribal
 19 membership program to a broader audience at
 20 this time?
 21 A. I'm not sure I understand the
 22 question. You mean to other people at the
 23 center or?
 24 Q. Did you communicate with -- well,
 25 strike that.

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1 John C. Kois, DMD, MSD
 2 Q. Do you see in CX0290, on the page --
 3 what is page 2, the first page of this e-mail?
 4 A. I do.
 5 Q. Where it says, "Step one: Save
 6 money"?
 7 A. Yes.
 8 Q. "One: Our data indicates that we
 9 buy \$153 million a year in supplies as a Tribe.
 10 The average office buys under 90,000 a year."
 11 Did I read that correctly?
 12 A. You did.
 13 Q. Where did those numbers come from?
 14 Where did you get the \$153 million?
 15 A. They were put together again by
 16 ProCare and surveying dentists that he's worked
 17 with in his company through the individual that
 18 I was -- that introduced Qadeer to me.
 19 And also, we sent out surveys to
 20 dentists, get an idea of what they spend
 21 through different supply companies, so we had
 22 limited resources to do that. I think at the
 23 time we might have surveyed about 100 dentists
 24 in terms of what their inventory spend per year
 25 would be, because we are trying to figure out

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1 John C. Kois, DMD, MSD
 2 I see references in your document to
 3 the Tribe. Who is the Tribe?
 4 A. The Tribe are what we refer
 5 affectionately to the people that have --
 6 represent our community of dentists that take
 7 courses at the center and move on into graduate
 8 and above status, and so we have utilized that
 9 word Tribe from an author Seth Godin in his
 10 book called, "The Tribe." So we're a community
 11 of people to help support each other.
 12 Q. What did you, in the fall of 2014,
 13 so like in October of 2014, what did you
 14 announce to the Tribe about setting up a buying
 15 group?
 16 A. So at this time we were trying to
 17 come up with some sort of cost, monthly spend
 18 that might be appealing to dentists so that
 19 they could take advantage of the buyers club in
 20 some way, and this basically comes from
 21 ProCare, what they decided. We didn't --
 22 eventually we didn't continue on with ProCare.
 23 It was not consistent with our Tribe and so we
 24 separated our relationship, so this all went
 25 for nothing.

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1 John C. Kois, DMD, MSD
 2 how we could represent the buyers club also to
 3 other companies so we could become attractive
 4 as a buying group. Because at this time, as I
 5 mentioned, we didn't even exist as a true
 6 buying group, we only existed as a concept.
 7 Q. Did you -- when you started working
 8 with Qadeer, did you share that survey
 9 information with him?
 10 A. I did.
 11 Q. What other types -- what other type
 12 of Kois Center information did you share with
 13 Qadeer when you started working with him?
 14 A. We have no financial information at
 15 the Kois Center on any of the practices, so
 16 they had to volunteer data on what they might
 17 spend per month, and many people didn't reply
 18 to the request.
 19 Q. How big was the Tribe in 2014?
 20 A. I would say roughly in the five
 21 to -- well, I guess it depends on how you
 22 define the Tribe. At the moment, if we're just
 23 looking at the Tribe as graduates and above, I
 24 would say at that time it would be in the 5-600
 25 range.

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1 John C. Kois, DMD, MSD
 2 Q. For the buying group that you
 3 envisioned, would it -- the Tribe -- would the
 4 dentist you would invite to join have been just
 5 the graduates, or would it have been everybody
 6 who took courses?
 7 A. No. At the time we were even trying
 8 to define the level at which you would be able
 9 to belong to the group, and then it was decided
 10 that anyone that had attended a course could
 11 become part of the group because you would be
 12 exposed to the research that was done at the
 13 center.
 14 Q. And do you have an estimate for, at
 15 that time, how many had taken a course?
 16 A. I would say by that time it was at
 17 least 2,000 dentists.
 18 Q. Looking again at CX0290, under the
 19 paragraph -- so this is page 2 of the exhibit,
 20 the first page of the e-mail. Under the
 21 paragraph, "First the partners," do you see
 22 where it says, "I've been working on this plan
 23 with partners from ProCare Dental Services"?
 24 A. I do.
 25 Q. And then further down in that

Page 60

1 John C. Kois, DMD, MSD
 2 other than ways that he was organizing how
 3 some of the businesses could be set up.
 4 MS. BALBACH: Can we go off the
 5 record for a second?
 6 (Break from 10:21 to 10:23 a.m.)
 7 MS. BALBACH: I'm introducing what
 8 we've marked as CX4062, which has Bates
 9 number of FTC-QA-00000, so that's five
 10 zeros, 42. And it's 42 through 45.
 11 (Exhibit CX4062, marked.)
 12 BY MS. BALBACH:
 13 Q. For the record, CX4062 appears to be
 14 an e-mail dated October 21, 2014, from Qadeer
 15 Ahmed to Dr. John Kois. If you want a minute
 16 to review, Dr. Kois.
 17 A. That's correct.
 18 Q. Do you recognize this document,
 19 CX4062?
 20 A. Now that it's in front of me.
 21 Q. What is CX4062?
 22 A. It says the subject is, "Group
 23 purchase."
 24 Q. And what is this set of e-mails
 25 about?

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1 John C. Kois, DMD, MSD
 2 paragraph it says, "Their "hit list" includes
 3 multi-billion dollar "wins" in retail
 4 (Wal-Mart, Home Depot, Loblaws, Metro, Best
 5 Buy) media (Sony Music, CanWest) Distribution
 6 (Ingram, Globelle, Office Max) and Technology."
 7 Did I read that correctly?
 8 A. Yes.
 9 Q. Does that refresh your memory about
 10 the background of Qadeer Ahmed?
 11 MR. GEORGE: Object to form.
 12 THE WITNESS: Yes, I'm aware of
 13 this.
 14 BY MS. BALBACH:
 15 Q. What are you aware of?
 16 A. I'm aware of what this says, that he
 17 did engage in other business deals with
 18 companies like this only through what he's told
 19 me.
 20 Q. And do you have an understanding of
 21 were those buying groups he was setting up with
 22 businesses like that?
 23 MR. GEORGE: Object to form.
 24 THE WITNESS: I actually don't
 25 recall it being specifically buyers groups

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1 John C. Kois, DMD, MSD
 2 A. This appears to be correspondence
 3 with Benco regarding some potential involvement
 4 in the Buyers Group at the time. The only way
 5 that that would really work is if the center
 6 was able to make a group purchase. We didn't
 7 have any other way to do that and we didn't
 8 want to be involved in that way.
 9 I mean, I know Chuck personally.
 10 He's always been a good person for me and I
 11 enjoy his company, and so that's what I think
 12 this was in reference to, to see if they would
 13 have interest in the Buyers Group.
 14 Q. Let me direct your attention to the
 15 last page, CX4062-004, which appears to be an
 16 e-mail dated October 21, 2014. It's from
 17 johnkois@hotmail.com. Is that your e-mail
 18 address?
 19 A. Yes, it is.
 20 Q. The e-mail appears to be to Chuck
 21 Cohen?
 22 A. Yes.
 23 Q. Ccohen@benco.com?
 24 A. Yes.
 25 Q. Who is Chuck Cohen?

1 John C. Kois, DMD, MSD
 2 A. I believe he is the CEO of Benco.
 3 Q. You see on that last page where it
 4 says, "Hi Chuck, I have been approached by a
 5 company to organize our members for group
 6 purchase opportunities." Did I read that
 7 correctly?
 8 A. Yes.
 9 Q. What does that refer to?
 10 A. It refers to the whole concept of
 11 the buying group.
 12 Q. Is that Qadeer's -- the --
 13 A. Yes, it was in reference to Qadeer's
 14 company, Equalizer ProServices.
 15 Q. So in reference to the buying group
 16 that Qadeer was trying to set up for you,
 17 correct?
 18 A. Yes, yes.
 19 Q. And then it continues, "I know we
 20 tried this before, but I wanted you to talk to
 21 him to see if there would be an opportunity to
 22 work with your company." Did I read that
 23 correctly?
 24 A. Yes.
 25 Q. What were you writing about there?

1 John C. Kois, DMD, MSD
 2 A. When we have our annual symposium we
 3 were trying to figure out if we could find any
 4 particular items that we could make a group
 5 purchase, because there could be several
 6 hundred dentists in the audience and if they
 7 were willing to buy a particular product were
 8 we able to get a discounted price. And the
 9 problem was only if it was bought through the
 10 center, and the center could not afford to do
 11 it that way so we never went ahead with
 12 anything like that.
 13 Q. And were you using Qadeer to try to
 14 negotiate with Benco?
 15 A. Well, in the beginning, the way I
 16 remember is Qadeer was first talking to the
 17 companies we've already mentioned, Henry Schein
 18 and Patterson, because they were larger
 19 companies and we have a more global footprint
 20 and we were trying to look at a bigger company
 21 to help us in the buyers club, and then we went
 22 to ask Benco when we were turned down by the
 23 other companies.
 24 Q. And turning back to page 2, and then
 25 continuing on to 3, there's an e-mail that

1 John C. Kois, DMD, MSD
 2 appears to be from Chuck Cohen dated
 3 October 21, 2014, to johnkois@hotmail.com.
 4 And is it says on what is
 5 page 4062-003, the e-mail writes, "So, with
 6 your permission I'm going to politely give
 7 Qadeer our standard answer of thanks, but we
 8 don't do buying groups."
 9 A. Yes, I see that.
 10 Q. Do you understand what -- and then
 11 this e-mail is from Chuck Cohen. Do you
 12 understand what Chuck Cohen is writing there?
 13 MR. RACOWSKI: Objection to form.
 14 THE WITNESS: My understanding was
 15 he essentially is telling us that he's not
 16 going to be able to help in our buying
 17 group.
 18 BY MS. BALBACH:
 19 Q. And would this have been a buying
 20 group that -- where membership was eligible to
 21 the Tribe Members?
 22 A. Yes. It's the same Buyers Group
 23 that we've been talking about all along.
 24 Q. The same Buyers Group where we saw a
 25 proposal to Patterson and we saw a --

1 John C. Kois, DMD, MSD
 2 A. Yes, yes, yes.
 3 Q. -- proposal to Schein?
 4 A. Yes.
 5 Q. So your understanding -- is it your
 6 understanding from this e-mail that Benco said
 7 no then to setting up a Buyers Group with Kois?
 8 A. Yes.
 9 MR. RACOWSKI: Objection to form.
 10 That's not what it says.
 11 BY MS. BALBACH:
 12 Q. Why would a larger distributor be
 13 better for setting up a buying group?
 14 MR. GEORGE: Object to form.
 15 THE WITNESS: The reason that I was
 16 trying to have a larger distributor is that
 17 they would have more reach for servicing
 18 more of the dentists that are members of
 19 the Kois Center.
 20 BY MS. BALBACH:
 21 Q. And by more reach, do you mean for
 22 geographic reach?
 23 A. Yes.
 24 Q. Why is that important to have more
 25 geographic reach?

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1 John C. Kois, DMD, MSD
 2 A. Because many of the offices depend
 3 on the personal service that the dental supply
 4 companies offer and we were looking for a
 5 company that could have access to as many
 6 practices as possible.
 7 Q. Is this personal service through
 8 having a local representative that they would
 9 come to a dentist office?
 10 A. Yes, it is.
 11 Q. What about the number of SKUs or
 12 items that distributors might have, is that
 13 important?
 14 A. I'm sorry, SKU?
 15 Q. I think it's for shop keeping unit,
 16 you know, the different numbers of types of
 17 tooth brushes or gloves, or different numbers
 18 of products?
 19 A. That part of the business I'm not
 20 familiar with, that's why many of the e-mails
 21 that you're referring to look like a foreign
 22 language to me because I don't participate in
 23 any of that understanding.
 24 Q. This series of e-mails we've been
 25 talking about, would you have forwarded them to

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1 John C. Kois, DMD, MSD
 2 anybody else at Kois?
 3 MR. RACOWSKI: Objection, form.
 4 Which series?
 5 THE WITNESS: No.
 6 BY MS. BALBACH:
 7 Q. What was the result of Qadeer's
 8 negotiation on your behalf in setting up a Kois
 9 Buying Group?
 10 MR. FONTECILLA: Objection.
 11 THE WITNESS: Well, although I was
 12 very hopeful, because Qadeer is a very
 13 smart businessman, it doesn't result in any
 14 relationships in the companies that he was
 15 talking to at this point.
 16 BY MS. BALBACH:
 17 Q. Who were those companies?
 18 A. That was Henry Schein, Patterson,
 19 and Benco.
 20 Q. And ultimately you set up a buying
 21 group in the fall of 2014 -- or did you set up
 22 a buying group in the fall of 2014?
 23 A. We did set up a buying group. I
 24 believe it didn't happen until 2015, maybe,
 25 because then we asked also Burkhart, which is

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1 John C. Kois, DMD, MSD
 2 the distributor that I've worked with basically
 3 my whole time and practice to become a partner
 4 with us even though they were a very small
 5 company.
 6 Q. And did Qadeer negotiate with
 7 Burkhart on your behalf?
 8 A. Yes, he did.
 9 Q. What was the result -- you said you
 10 asked Burkhart to be the distributor and what
 11 did -- how did they respond?
 12 A. So at first they actually weren't
 13 very positive to Qadeer. They basically just
 14 responded on my behalf because of the
 15 relationship I had with the company, so it
 16 turned out that in the end we didn't use any of
 17 Qadeer's expertise. We relied more on my
 18 personal relationship and reputation that I
 19 built my whole life in practice and teaching.
 20 Q. Why didn't you start with Burkhart?
 21 A. My thinking at the time was, as I
 22 mentioned, they weren't able to service many
 23 dentists outside just the Pacific Northwest, so
 24 it would only have application to a very small
 25 number of dentists in our Tribe.

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1 John C. Kois, DMD, MSD
 2 Q. Ultimately, you did set up a buying
 3 group with Burkhart; is that correct?
 4 A. We did.
 5 Q. I would like to introduce what we've
 6 marked as CX1032, which has a Bates number of
 7 BD, so boy, David, FTC0000153, and it's pages
 8 153 through 159. I'll ask the court reporter
 9 to mark that.
 10 (Exhibit CX1032, marked.)
 11 BY MS. BALBACH:
 12 Q. I've introduced what appears to be
 13 an agreement. It says, "ProCare Dental
 14 Services" on the top. It's got an effective
 15 date of November 14, 2014, and it mentions
 16 Parties Burkhart Dental Supply and Dr. John
 17 Kois. Have you had a chance to review this?
 18 A. I have.
 19 Q. Do you recognize this document,
 20 CX1032?
 21 A. I do. Yes, I do.
 22 Q. What is CX1032?
 23 A. This actually is the agreement that
 24 I signed to initiate the relationship with
 25 Burkhart in the buying group.

1 John C. Kois, DMD, MSD
 2 Q. If I could direct your attention to
 3 page 4 of this document, CX1032-004.
 4 A. Yes.
 5 Q. Do you see the paragraph titled,
 6 "Renewal"?
 7 A. Yes.
 8 Q. "The parties will draft and execute
 9 a contract reflecting the terms of this LOI and
 10 any other necessary terms no later than 90 days
 11 from the effective date of this LOI." Did I
 12 read that correctly?
 13 A. Yes.
 14 Q. Do you know if there was a separate
 15 contract executed after this letter of intent?
 16 A. I don't recall.
 17 Q. And then I wanted to direct your
 18 attention to page 2 of the document under the
 19 paragraph marked, "Deferral of Margin and
 20 Written Guarantee of Savings." Do you see
 21 that?
 22 A. Yes.
 23 Q. It reads, "Burkhart agrees to limit
 24 its margins to 25 percent on any and all brand
 25 dental supplies and 36 percent on any Burkhart

1 John C. Kois, DMD, MSD
 2 Private Label dental supplies sold to Tribe
 3 Members." Did I read that correctly?
 4 A. Yes.
 5 Q. What does that sentence mean?
 6 A. I assume it means just what it says,
 7 but what it's referring to I don't actually
 8 know.
 9 Q. So is that paragraph meant to give a
 10 discount to the buying group members and it's
 11 setting out the different discounts on the
 12 different types of supplies, 25 and 36 percent?
 13 MR. RACOWSKI: Objection, form,
 14 foundation.
 15 MR. FONTECILLA: Objection, form.
 16 THE WITNESS: I assume so, but I
 17 think before we go much further we need to
 18 make sure that what's clear is at this
 19 point in time the dentists that are
 20 agreeing to be part of the buying group are
 21 only agreeing to be part of the buying
 22 group to support the Tribe and it had
 23 nothing more than that.
 24 So it was mostly to help support
 25 what we were trying to do, because at this

1 John C. Kois, DMD, MSD
 2 point nobody would have any assurance that
 3 anything would work for them because many
 4 of the dentists that actually even belonged
 5 to the buying group, they don't all use the
 6 buying group, so I don't know -- I don't
 7 really know what happens in the real world
 8 other than I know we have a group of very
 9 supportive people that have tried to create
 10 loyalty for the center.
 11 BY MS. BALBACH:
 12 Q. When you said this was to be for
 13 supporting the Tribe, what did you mean by
 14 support the Tribe?
 15 A. Hopefully, that if they could belong
 16 maybe more people would eventually belong to
 17 the Tribe and maybe that would be helpful
 18 because it would help to fund our research and
 19 our products and product development and
 20 protocols. It was a way to just give back to
 21 the center.
 22 Q. Were you interested in saving
 23 dentists money on their supplies?
 24 A. I was. I was, yes. I am.
 25 Q. And was it your hope that with the

1 John C. Kois, DMD, MSD
 2 savings that the dentist achieved they might be
 3 able to take more courses at the center?
 4 A. That's correct, yes.
 5 Q. Which would support the efforts of
 6 the center?
 7 A. Yes.
 8 Q. And were the dentists themselves,
 9 the Tribe Members interested on saving on their
 10 supplies?
 11 A. I would assume so.
 12 Q. In the first year of the roll out of
 13 the Kois Buyers Group with ProCare Dental
 14 Services, who ran sort of the day-to-day
 15 operations of the buying group?
 16 A. It's a little bit cloudy, so based
 17 on this agreement it was signed November of
 18 2014, but it was really rolling out -- 2015 is
 19 really when it got started, to my recollection.
 20 So all we were doing was tracking the people
 21 that would sign up through the buyers club
 22 through the center. We did that at the center
 23 and then relayed that information to ProCare.
 24 I think there may have been a time
 25 where they were thinking about having dentists

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1 John C. Kois, DMD, MSD
 2 sign up directly through ProCare, but since our
 3 dentists were not as familiar with that
 4 particular company they were not willing to do
 5 that.
 6 Q. You had said earlier -- you talked
 7 about the program didn't really work. I forget
 8 what you said. What did you mean by that?
 9 A. Well, at the time we initiated a
 10 buyers club we didn't really have the resources
 11 at the center to inventory payment methods and
 12 many of the other things that were necessary to
 13 have this actually work quite well because the
 14 center is burdened by all the education. This
 15 became a total distraction from the core
 16 business model of the center, so that's why
 17 it's a bit cloudy to me because we don't have
 18 the personnel to implement the program such as
 19 this.
 20 Q. Do you mean that the program as was
 21 described in CX1032?
 22 A. Yes, yes. And the way it was to be
 23 implemented it put too much responsibility and
 24 burden on the center to some degree.
 25 Q. Was the program as envision in

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1 John C. Kois, DMD, MSD
 2 CX1032, was it popular with the Tribe Members?
 3 A. No, it was not.
 4 Q. Why was it not popular?
 5 A. I think in the beginning they
 6 certainly didn't see the value of the program,
 7 because it's not just dental supply companies
 8 that dentists purchase from, it's also direct
 9 companies that they work with, and so until we
 10 enlisted other direct companies to be involved
 11 in our buyers club, then the appeal for the
 12 buyers club option became much greater.
 13 Q. Who do you mean by direct companies,
 14 would those be manufacturers?
 15 A. Yes, that don't actually sell
 16 through dental distributors. If I might add,
 17 dentists are a very unique group. They always
 18 think they have the best way, and when they
 19 have a particular preference for certain
 20 products and we weren't able to offer those
 21 products it tends to devalue the benefits of
 22 the buyers club.
 23 Q. What percentage of a dentists
 24 supplies are -- would you typically get from a
 25 manufacturer direct?

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1 John C. Kois, DMD, MSD
 2 MR. FONTECILLA: Objection.
 3 THE WITNESS: I don't know the
 4 answer to that. I can tell you in my
 5 practice most of my disposable supplies
 6 come all from Burkhart, that then supply
 7 company, but the major spend on inventory
 8 comes from direct companies. Many of those
 9 companies sell items that are more
 10 expensive, like implant supplies, and
 11 things that are not sold directly through
 12 dental supply companies. So if you're
 13 looking at the number of dollars, I would
 14 say I spend more money from direct
 15 companies today than I spend from the
 16 dental supply company today.
 17 BY MS. BALBACH:
 18 Q. In the first year of 2015, when the
 19 program was rolling out, did you hear
 20 complaints from your Tribe Members about the
 21 buying group?
 22 A. I always heard complaints. They
 23 were complaints, for example, do I have to work
 24 with the supply company that you've listed
 25 because I've been working with my supply

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1 John C. Kois, DMD, MSD
 2 company and I like my supply representative,
 3 and I don't want to have to force -- I don't
 4 want to be forced to make a change.
 5 And that's why offering direct
 6 companies as an alternative in the Buyers Group
 7 became more appealing so you can maintain your
 8 relationship with your current supply, dental
 9 supply company, and then maybe take advantage
 10 of additional savings through direct companies.
 11 Q. And did they have to work with -- in
 12 that first year, did they have to buy through
 13 Burkhart?
 14 A. They did not.
 15 Q. Did they have to buy a certain
 16 minimum through Burkhart?
 17 A. They did not. There were no
 18 requirements on what they needed to purchase
 19 through the buyers club.
 20 Q. Can I turn your attention back to
 21 what we marked as CX1032.
 22 A. Yes.
 23 Q. And on page 3 of the document,
 24 probably about a third of the way up from the
 25 bottom it says -- there's a paragraph, "Tribe

<p style="text-align: right;">Page 78</p> <p>1 John C. Kois, DMD, MSD 2 Member minimum threshold of purchases with 3 Burkhart." 4 And it reads, "ProCare agrees that 5 Tribe Members must purchase dental supplies 6 from Burkhart above the minimum threshold 7 defined in Schedule 4 to maintain their status 8 as Tribe Members." Did I read that correctly? 9 A. You did. 10 Q. What does that mean? 11 A. So based on what you're saying, that 12 there was some minimum purchase necessary, but 13 we've never utilized that and that's why the 14 relationship with ProCare was disbanded because 15 we -- the dentists were uncomfortable being 16 directed of who they would have to buy from or 17 what they had to purchase and give an amount of 18 what they had to purchase. So that was never 19 something that was a worth while endeavor in 20 the buyers club. It was sabotaging what the 21 buyers club was really intended to do. 22 Q. Now, I'd like to introduce what 23 we've marked as CX4048, which has a Bates stamp 24 of KIOS001712. 25 (Exhibit CX4048, marked.)</p>	<p style="text-align: right;">Page 79</p> <p>1 John C. Kois, DMD, MSD 2 BY MS. BALBACH: 3 Q. I'm introducing CX4048, what appears 4 to be an e-mail from Qadeer Ahmed to John Kois 5 dated November 16, 2015. 6 A. Yes. 7 Q. And I'll give you a chance to review 8 it. 9 A. I have. 10 Q. Do you recognize this document? 11 A. Yes. 12 Q. What is CX4048? 13 MR. GEORGE: Object to form. 14 THE WITNESS: The title of the 15 e-mail says, "Update," and it basically 16 refers to what I've just said, that the 17 Burkhart special pricing alone is not 18 enough to entice new members because they 19 purchase from so many other companies, so 20 many other direct companies. We weren't 21 offering many times, in many cases, enough 22 incentive to be part of the buyers club. 23 BY MS. BALBACH: 24 Q. So I direct your attention to the 25 e-mail from John Kois to Qadeer Ahmed dated</p>
<p style="text-align: right;">Page 80</p> <p>1 John C. Kois, DMD, MSD 2 Monday, November 16, 2015, 6:51 p m., "Hi Q." 3 Do you see where that is? 4 A. Yes. 5 Q. It then it says, "The center has 6 spoken to several dentists about the program 7 and their three occurring themes." Did I read 8 that correctly? 9 A. Yes. 10 Q. And then it reads, "The current 11 pricing is too high." Did I read that 12 correctly? 13 A. Yes. 14 Q. What do you mean by that? 15 A. The current pricing of the buyers 16 club, to become a member of the buyers club, I 17 was reacting to the artificial way that he set 18 up what it would require to become a member of 19 the buyers club that we've completely disbanded 20 because it didn't work. 21 Q. The next line reads, "No minimum 22 purchase quantity is a huge deal." Did I read 23 that correctly? 24 A. Yes. 25 Q. What did you mean there?</p>	<p style="text-align: right;">Page 81</p> <p>1 John C. Kois, DMD, MSD 2 A. What I referred to earlier, the idea 3 was they didn't have to purchase an item in 4 quantity to get a good competitive price. They 5 could buy one of something to get a competitive 6 price. 7 Q. So that was something the dentists 8 liked about the buyers club? 9 A. That's correct. 10 Q. And then it reads, "3. Burkhart 11 special pricing alone is not enough to" -- 12 A. "To entice new members." 13 Q. "To entice new members." Did I read 14 that correctly? 15 A. Yes, you did. 16 Q. What did you mean there? 17 A. At that point we were struggling 18 with very few -- the adoption rate of the 19 buyers club was very slow, and it was a very 20 small number, and a lot of it is based on what 21 I referred to earlier, there wasn't enough 22 versatility in what they could order. The 23 direct companies weren't participating at that 24 time, so there wasn't enough items that they 25 could purchase.</p>

<p style="text-align: right;">Page 82</p> <p>1 John C. Kois, DMD, MSD 2 Q. In the next paragraph it reads, "Our 3 tribal membership program is therefore 4 struggling because we do not have a supply 5 company that has enough reach to service enough 6 of our members." Did I read that correctly? 7 A. Yes. 8 Q. When did you mean there? 9 A. That was what we referred to 10 earlier, to provide better customer service for 11 equipment. Dentists, many times, are not 12 always on top of their inventory and sometimes 13 they need an item the very next day the patient 14 is about to arrive. 15 And they prefer to be within an area 16 where a representative of a given company can 17 drive a product to their practice in any given 18 day, so they could not have to cancel the 19 patient deployment because they weren't 20 prepared. So that was an important incentive 21 for dentists that Burkhart couldn't provide 22 because they didn't have that kind of reach. 23 Q. And by reach do you mean geographic 24 reach? 25 A. Geographic reach.</p>	<p style="text-align: right;">Page 83</p> <p>1 John C. Kois, DMD, MSD 2 Q. And the next sentence, you probably 3 explained this, "The incentive, therefore, to 4 join is reduced for those potential members 5 that can only use it limited to certain 6 supplies." 7 A. Yes. 8 Q. What did you mean there? 9 A. In other words, basically what they 10 could order given the timely way that were, for 11 many practices, inefficient representations of 12 what their needs would be. 13 Q. What about the Tribe Members in the 14 Pacific Northwest, how did they feel about the 15 buyers club? 16 A. So they were thrilled -- 17 MR. FONTECILLA: Objection. 18 THE WITNESS: They were thrilled 19 with the buyers club because many of them, 20 or I should say probably most of them, 21 although I don't know that for sure, were 22 already purchasing from Burkhart. It's 23 been one of the dominant dental supply 24 companies here in the Pacific Northwest, so 25 for them it just reinforced what they</p>
<p style="text-align: right;">Page 84</p> <p>1 John C. Kois, DMD, MSD 2 already had. 3 BY MS. BALBACH: 4 Q. And then continuing on with that 5 bottom paragraph of the e-mail, it says, "I 6 want to propose a major change in the strategy 7 to provide more opportunity even with the 8 current supply chain." And it goes on on the 9 next page to say, "We have been able to engage 10 direct global companies to join in and offer 11 substantial savings for our members that do not 12 require service options or significant volume 13 of product sales. 14 "In order for that to work, I 15 want to have a program at a much reduced cost 16 of \$299 per year. This low fee would make 17 it -- would make it make sense to many more 18 people. The following is a list of companies 19 that have already committed?" 20 And then there's a list. "Zimmer, 21 Brasseler, Straumann, Carifree, Keysmile." Did 22 I read that correctly? 23 A. Yes. 24 Q. So what were you telling Qadeer 25 here?</p>	<p style="text-align: right;">Page 85</p> <p>1 John C. Kois, DMD, MSD 2 A. This is the beginning of the 3 separation of the ProCare Services, because I 4 felt that the cost to the dentist was too high. 5 This was my proposal to try to change the value 6 of the buyers club, and this is when ProCare 7 decided to opt out of the buyers club and he 8 was -- not long after this, I don't remember 9 exactly, we separated our relationship. 10 These are the companies that were -- 11 the first companies that I mentioned earlier 12 that became part of the direct companies that 13 created more appeal for the buyers club and our 14 individual Tribe Members. 15 Q. So today in the Kois Buyers Group 16 you no longer have a relationship with Qadeer 17 for the Buyers Group; is that correct? 18 A. That's correct. 19 Q. But you still -- are you still in 20 some business relationship with Qadeer? 21 A. I am not. 22 Q. Are you -- did you work with Qadeer 23 at developing a system to do risk assessment on 24 dental patients? 25 A. So the -- the entire teaching center</p>

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1 John C. Kois, DMD, MSD
 2 has been developing a risk assessment model
 3 from the entire inception of the center, and
 4 it's what I'm known for throughout the world in
 5 building a risk assessment model for dentists
 6 and moving dentists to a medical based
 7 platform.
 8 I only exposed Qadeer to what a risk
 9 assessment model was about so that maybe he
 10 could look into what could be done to improve
 11 dental healthcare, because what we were
 12 interested in is building an outcome model for
 13 dental health care services so dentists could
 14 be compensated based on outcomes rather than
 15 what they advertised they can do.
 16 Real, real outcomes that were
 17 generated by data, and so my whole focus at the
 18 center has been attempting to collect the
 19 necessary data to give credibility to this
 20 whole concept. In other words, very few lay
 21 people, the public doesn't really know how to
 22 choose a dentist other than what they read on
 23 the Internet, which I think in many cases is
 24 irresponsible.
 25 And I'm trying to find a better way

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1 John C. Kois, DMD, MSD
 2 for dentists to be accountable for what they
 3 provide patients in care, and this is what the
 4 center is built on. It's built on a dentist
 5 being able to establish their worth based on
 6 their outcome, and until that's really going to
 7 be done it's very difficult to really trust the
 8 person that's working on you.
 9 Q. Okay. But you have no formal
 10 business relationship with Qadeer --
 11 A. I do not.
 12 Q. -- involving this risk assessment
 13 today?
 14 A. I do not.
 15 Q. Who runs the Buyers Group today?
 16 A. That would mostly be my son, the CEO
 17 of the company, Johnny Kois.
 18 Q. And by CEO of the company, do you
 19 mean the --
 20 A. Kois Center.
 21 Q. Do you have day-to-day roles with
 22 the buying group today?
 23 A. I do not.
 24 Q. Do you know how many members joined
 25 the buying group in 2015 when it was the

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1 John C. Kois, DMD, MSD
 2 program described in CX1032?
 3 A. I do not, no.
 4 Q. Do you know how many members there
 5 are in the buying group today?
 6 A. I do not know for sure. That would
 7 be a better question for Johnny Kois.
 8 Q. Do you have any knowledge of the
 9 types of savings that Tribe Members are
 10 realizing today as members of the buying group?
 11 A. Yes.
 12 Q. What do you know about savings?
 13 A. I only hear from the data from
 14 Burkhart. I shouldn't say actually Burkhart.
 15 I hear from dentists that are actually part of
 16 the buyers club that tell me they've saved
 17 money in a given year being part of the buyers
 18 club.
 19 Q. In your opinion, are you happy with
 20 the success or how the buyers club is running
 21 today?
 22 A. To be honest, I'm happy that it's
 23 helping dentists that are part of the buyers
 24 club, but I actually thought maybe we'd have
 25 more involvement, so I'm not thrilled.

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1 John C. Kois, DMD, MSD
 2 Q. When you say we'd have more
 3 involvement, who do you mean by we?
 4 A. The Tribe.
 5 Q. By more involvement, what do you
 6 mean?
 7 A. Maybe more dentists would be
 8 members.
 9 Q. Do you think if a national full
 10 service distributor was a partner instead of
 11 Burkhart you'd have more members today?
 12 MR. RACOWSKI: Object to form.
 13 MR. GEORGE: Object to form.
 14 THE WITNESS: At this point, I don't
 15 think so.
 16 BY MS. BALBACH:
 17 Q. And why don't you think so?
 18 A. I don't think so, because now we
 19 have so many direct companies that offer
 20 alternatives, because now the center is global.
 21 In fact, we're introducing our global footprint
 22 this year at the symposium and so I feel that
 23 relationships we have with all the current
 24 companies are very equitable, so I don't think
 25 a different supply company would make any

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1 John C. Kois, DMD, MSD
 2 difference.
 3 Q. By different supply company you mean
 4 a different distributor?
 5 A. Yes, correct.
 6 Q. Would a different distributor make a
 7 difference for Tribe Members who have offices
 8 perhaps on the east coast?
 9 MR. RACOWSKI: Objection to form.
 10 MR. FONTECILLA: Objection.
 11 THE WITNESS: I think for the
 12 offices that require more service that
 13 would definitely be more appealing.
 14 BY MS. BALBACH:
 15 Q. What would be appealing?
 16 A. To have more service. In other
 17 words, more local representation in a given
 18 location for the issues I've mentioned in --
 19 previously. But many of the offices don't seem
 20 to require that kind of service any more. We
 21 live in a new world today. I would add,
 22 dentists use the Internet now and they shop
 23 online, and so having maybe specific local
 24 representation is maybe less critical than it
 25 was when we started the group.

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1 John C. Kois, DMD, MSD
 2 to be an e-mail from Chuck Cohen to John Kois
 3 dated Saturday, December 26, 2015. Do you
 4 recognize CX1035?
 5 A. I do now.
 6 Q. What is this document?
 7 A. This document is notifying me of a
 8 new group option that Benco was putting
 9 together with Cain Watters at this time.
 10 Q. If I direct your attention to the
 11 second paragraph, "One more note: In addition
 12 to a check-on on how we're doing so far, and
 13 what we could be doing better together, my
 14 objective is to review the new GPO/Buying Club
 15 that we've put together with Cain Watters.
 16 "When I spoke with you guys
 17 previously, I told him that we weren't ready
 18 yet, but would be soon, on a buying club.
 19 We're ready. I remember at the time you were
 20 working with a consultant, whose name I don't
 21 recall, on putting your Tribe offering
 22 together." Did I read that correctly?
 23 A. Yes, you did.
 24 Q. What is the new GPO buying club that
 25 Benco was putting together?

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1 John C. Kois, DMD, MSD
 2 Q. Do you remember in late 2015 talking
 3 to Benco about a replacement buying group or
 4 doing a new relationship with Benco for a
 5 buying group?
 6 MR. RACOWSKI: Objection to form,
 7 foundation.
 8 THE WITNESS: I only recall the
 9 basis of the e-mail that we already looked
 10 at where I asked -- I reached out to Chuck
 11 to see if his company would be interested,
 12 and at that time he was not interested and
 13 I didn't reach out after that.
 14 MR. LANG: Can I just ask how much
 15 more time you have because I think we're
 16 butting up on your two and a half hours.
 17 MS. BALBACH: I'm basically on my
 18 last topic, my last page.
 19 BY MS. BALBACH:
 20 Q. I would like to introduce what we've
 21 marked as CX1035, and this has a Bates number
 22 of BDS00385252.
 23 (Exhibit CX1035, marked.)
 24 BY MS. BALBACH:
 25 Q. What we've marked as CX1035, appears

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1 John C. Kois, DMD, MSD
 2 A. As I recall, the details of the
 3 buying club are still fuzzy to me, but I
 4 couldn't engage with any other company at the
 5 time because we had a signed contract with
 6 Burkhart, so I made that clear to Chuck when we
 7 met, but they were working with Cain Watters.
 8 I think that's an investment
 9 company, and trying to work with maybe
 10 enhancing the buyers club option with some
 11 other way of utilizing the financial aspects of
 12 Cain Watters. I don't remember exactly what
 13 the details of that were because at that point
 14 we weren't interested.
 15 Q. Was it your understanding that the
 16 Tribe Members would be invited to join this
 17 buying group?
 18 A. That our Tribe Members would be
 19 invited? I don't remember moving forward with
 20 any relationship with this option.
 21 Q. So you didn't move forward with
 22 this?
 23 A. I did not.
 24 Q. But did you meet with Benco to talk
 25 about this opportunity?

1 John C. Kois, DMD, MSD
 2 A. There was a meeting. You know, I've
 3 also lectured for Benco in several
 4 opportunities, so I've met with Chuck
 5 personally on several occasions, and so from
 6 time to time we may talk about what option may
 7 be available, but after we started the buyers
 8 club there were no other options for us.
 9 Q. And there were no other options
 10 because of your exclusive agreement with
 11 Burkhart?
 12 A. Yes, and I wanted to honor that.
 13 Q. I'd like to introduce CX4042. It's
 14 Bates number KOIS001039.
 15 (Exhibit CX4042, marked.)
 16 BY MS. BALBACH:
 17 Q. CX4042 appears to be an e-mail from
 18 Chuck Cohen to johnkois@hotmail, Johnny Kois,
 19 dated January 8, 2016.
 20 MR. RYAN-LANG: Can I just say for
 21 the record that I noticed this document is not
 22 marked confidential and that we produced this
 23 document at a time that we assumed everything
 24 we were giving to the FTC would be
 25 confidential, so even though this document is

1 John C. Kois, DMD, MSD
 2 Q. Does this e-mail relate to the last
 3 e-mail we were discussing about Benco setting
 4 up a buying group?
 5 A. It seems it does.
 6 Q. And do you -- is it your
 7 understanding that Benco's buying group, if you
 8 were to join, and I understand the exclusivity
 9 with Burkhart, but that Benco's buying group
 10 would be open to members of the Tribe?
 11 MR. RACOWSKI: Objection to form.
 12 THE WITNESS: That's what the e-mail
 13 says.
 14 BY MS. BALBACH:
 15 Q. Did your discussions with Benco
 16 about this buying group, did you have extensive
 17 discussions with him about the buying group?
 18 A. I wouldn't say extensive
 19 discussions. I remember Chuck verbally trying
 20 to describe what the relationship would be with
 21 Cain Watters. It was very convoluted and
 22 wasn't clear to me. As I said, that's not my
 23 area of expertise and I was not interested in
 24 moving forward in that regard at all.
 25 Q. Do you recall if it would be set up

1 John C. Kois, DMD, MSD
 2 not labeled that way, we regard it as
 3 confidential.
 4 MS. BALBACH: I agree that -- this
 5 document --
 6 MR. RYAN-LANG: I'm not blaming you,
 7 I'm just saying.
 8 MS. BALBACH: -- is confidential
 9 under the protective order.
 10 BY MS. BALBACH:
 11 Q. Do you recognize this document?
 12 A. Again, I see it now. I don't
 13 remember the document actually.
 14 Q. I wanted to call your attention to
 15 the first bullet point there. So there's an
 16 opening. "Based on our conversation, I spoke
 17 with Darrell Cain, and we made the following
 18 changes to the proposal."
 19 First bullet, "Assuming that the
 20 Kois Center wanted to participate, we would
 21 open membership to any member of the Tribe;
 22 however, we'd like to discuss potentially
 23 narrowing, if only slightly, the definition of
 24 Tribe Member." Did I read that correctly?
 25 A. Yes.

1 John C. Kois, DMD, MSD
 2 at least in part as a buying group that would
 3 allow the Tribe Members to save money on their
 4 dental supplies?
 5 A. I don't remember any details being
 6 discussed at this time other than he was
 7 letting me know their relationship that was a
 8 potential option with Cain Watters. Other than
 9 that, we never discussed any other details.
 10 Q. And so how did you ultimately
 11 respond to Benco in early 2016?
 12 A. We never went forward with any
 13 agreement and stayed with Burkhart.
 14 Q. Did Benco follow up with you at --
 15 after this point, like a year or so later, to
 16 let you know how their buying group was going?
 17 A. I don't know the answer to that.
 18 Q. I guess I could rephrase it. Have
 19 you had any more recent conversations with
 20 Benco about a buying group -- with doing a
 21 buying group with Benco?
 22 A. I don't actually recall when the
 23 last discussion was regarding a buyers club. I
 24 don't know the answer to that.
 25 Q. You mentioned earlier that you did

1 John C. Kois, DMD, MSD
2 have a relationship with Benco, a partnership
3 that somehow involved the Kois Center. Can you
4 describe what that agreement was?

5 A. Yes, and I would assume I still have
6 a relationship with Benco. They've always been
7 good to us, and we agreed to do some lecture
8 opportunities in their facility to help the
9 dentists that were clients of Benco, and I was
10 providing education for them and Benco
11 sponsored the educational opportunity. They
12 set up the room, they made all the
13 arrangements. It was a very nice relationship.

14 Q. Is the relationship limited to
15 education and you speaking for them and it's
16 not about supplies?

17 A. That's correct. It's completely
18 about education.

19 Q. And do you still have a formal
20 contractual relationship with them about the
21 Kois Center?

22 A. We do not, it expired.

23 Q. And when did that relationship
24 expire, do you know?

25 A. I'd have to go back and look at the

1 John C. Kois, DMD, MSD
2 document, but I think I would say probably
3 September or October of 2016, or somewhere
4 wherever -- whatever the contract had
5 stipulated, when that expired it was never
6 renewed, and I'm speaking of the teaching
7 contract.

8 MS. BALBACH: Can we go off the
9 record?

10 (Break from 11:22 to 11:29 a.m.)

11 MS. BALBACH: I think we're going to
12 stop at this point. We might want to come
13 back with some redirect as I might have it.

14 CROSS-EXAMINATION

15 BY MR. RACOWSKI:

16 Q. Good morning, Dr. Kois. My name is
17 Ken Racowski. We've met this morning, I'm a
18 lawyer for Benco Dental. I'm going to ask you
19 some questions, and similar to the instructions
20 and ground rules that you've discussed with
21 Ms. Balbach, I would encourage you to follow
22 those same instructions and guidelines. Do you
23 understand that?

24 A. I do.

25 Q. You had testified earlier today that

1 John C. Kois, DMD, MSD
2 you were the founder of the Kois Center; is
3 that correct?

4 A. Yes.

5 Q. And when was that?

6 A. Originally, in 1994.

7 Q. And did you start teaching on a
8 national level prior to 1994?

9 A. I did.

10 Q. Okay. And so at the time you
11 founded the Kois Center in 1994, you were
12 already a nationally established lecturer,
13 teacher?

14 A. That's correct.

15 Q. And what was the purpose of founding
16 the Kois Center?

17 A. To provide a curriculum -- a
18 graduate program for practicing dentists; that
19 didn't exist anywhere in the world at that
20 time.

21 Q. It was the first of its kind?

22 A. Yes, it was.

23 Q. And since that time in 1994, has the
24 Kois Center succeeded in meeting that goal?

25 A. Yes, it has.

1 John C. Kois, DMD, MSD

2 Q. And sitting here today, could you
3 describe how the Kois Center has grown either
4 in scale or scope and prominence?

5 A. I can tell you in 1994 we would have
6 no more than a dozen courses per year. There
7 were only four core courses and we'd have
8 anywhere from 12 to 16 participants. Now we've
9 moved to nine core courses, there are
10 additional auxiliary courses that we offer at
11 the center.

12 We have seating capacity for 38
13 dentists at a time with additional capacity up
14 to 65, and we've opened up a new facility, so
15 we've grown enormously in the last 24 years.
16 In fact, next month we are celebrating our 20th
17 symposium anniversary; that's only when
18 graduates come back. It took several years for
19 students to become graduates.

20 Q. And sitting here today, is it still
21 accurate to say that the Kois Center is unique
22 and that there's nothing like it in the world?

23 A. I believe that's correct.

24 Q. Are there other centers like the
25 Kois Center that offer the same services to the

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1 John C. Kois, DMD, MSD
2 dental profession?
3 A. I would say there are other
4 services -- other centers, excuse me, but to my
5 knowledge those other centers are taught by a
6 variety of different people and they don't have
7 a common core philosophy, common core message.
8 In the Kois Center, I'm the core teacher for
9 all the courses.
10 Q. And is it fair to say that in the
11 time since 1994 that your reputation and demand
12 as a speaker and teacher of the dental industry
13 has only grown?
14 A. I believe that's correct. In fact,
15 now most of our new students are coming from
16 the siblings or associates of dentists I've
17 trained 20 years ago.
18 Q. You've mentioned earlier today that
19 you've known Chuck Cohen on the personal level.
20 When did you first meet Chuck Cohen?
21 A. I don't actually recall the original
22 meeting. I don't know the answer to that, but
23 I'm going to say at least five or six years
24 I've known him.
25 Q. Five or six years back from today?

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1 John C. Kois, DMD, MSD
2 A. Yes.
3 Q. Okay. At the time of the founding
4 of the center in the '90s, you did not know him
5 at the time?
6 A. No.
7 Q. Did you know Larry Cohen?
8 A. No. I had met him only after I met
9 Chuck Cohen and I was at one of their
10 facilities. He came to one of the courses and
11 we also had a dinner together. You're speaking
12 about Chuck's father; is that correct?
13 Q. Correct.
14 A. Yes, yes.
15 Q. And so then prior to the first
16 meeting with Chuck did you have any
17 relationship with Benco Dental?
18 A. No.
19 Q. Did you have any knowledge of Benco
20 Dental before that meeting with Chuck?
21 A. I've heard of -- I always heard of
22 Benco Dental.
23 Q. If you can think about that time
24 period before you met Mr. Cohen, what is it
25 that you knew about Benco at that time?

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1 John C. Kois, DMD, MSD
2 A. That it was primarily an east coast
3 dental supply company.
4 Q. And would you say that that
5 understanding is still true today, that Benco
6 is an east coast supply company?
7 A. I would say in general that's my
8 perception, although I know they branched out
9 to come to the west coast as well.
10 Q. What was the occasion when you first
11 met Chuck Cohen, if you recall?
12 A. I don't recall, I'm sorry.
13 Q. Did there come a time where the Kois
14 Center entered into a business relationship
15 with Benco Dental?
16 A. The only business relationship we
17 had with Benco Dental was the educational
18 opportunities that we had with Benco Dental.
19 And there was another option to see if we can
20 offer courses through their dental sales
21 representative.
22 Q. And when about did that business
23 relationship that you just described begin?
24 A. I'm assuming shortly after my
25 initial meeting with Chuck, so I'm thinking it

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1 John C. Kois, DMD, MSD
2 would be prior to any of the buyers club
3 agreements that were established. So I'm
4 thinking also in that six year or five -- or
5 six year ago time frame.
6 Q. Did the Kois Center enter into any
7 written agreement formalizing this
8 relationship?
9 A. Yes, I did.
10 Q. Do you remember the date of that
11 first agreement?
12 A. I do not.
13 Q. Would you have reason to doubt that
14 agreement was first entered in May of 2012?
15 A. No, that's consistent with the time
16 frame that I've already reported.
17 Q. Can you tell me a little bit about
18 the nature of that business relationship?
19 A. The relationship was primarily
20 offering educational opportunities to many of
21 his existing clients, and I lectured in two
22 facilities, one on the east coast, another one
23 on the west coast, and I also did -- I think
24 they called it a spring fling, something like
25 that, where they have a bigger meeting, and

<p style="text-align: right;">Page 106</p> <p>1 John C. Kois, DMD, MSD 2 that was also held on the east coast. 3 Q. And you understand that pursuant to 4 this agreement you became what Benco calls a 5 success partner? 6 A. That's correct. 7 Q. Do you know how many success 8 partners Benco had at that time? 9 A. I do not. 10 Q. During the course of negotiating 11 that agreement did you have discussions with 12 Mr. Cohen about the agreement? 13 A. Yes. 14 Q. Do you recall Mr. Cohen ever telling 15 you that it was important to have a 16 relationship with the Kois Center due to Kois 17 Center and your reputation nationally in the 18 dental industry? 19 A. I do. 20 Q. That was the driving force why Benco 21 wanted the relationship, correct? 22 A. Correct. 23 Q. Do you recall that Benco undertook 24 marketing and promotion obligations to the Kois 25 Center as part of the agreement?</p>	<p style="text-align: right;">Page 107</p> <p>1 John C. Kois, DMD, MSD 2 A. Yes. 3 Q. Do you remember what they did from a 4 marketing and promotion perspective? 5 A. I believe they educated their sales 6 force on what our courses were about, and so 7 many of the individual sales personnel would 8 provide opportunities for their clients to get 9 some understanding of what the Kois Center was. 10 Especially, at that time we were not 11 as well known on the east coast, so it was an 12 option for us to increase our visibility on the 13 east coast as well because we don't advertise 14 at all. 15 Q. Right. You had said that earlier in 16 your testimony this morning that the Kois 17 Center didn't advertise and you primarily gain 18 new students by word of mouth? 19 A. That's correct. 20 Q. Is this the first time there was 21 marketing and promotion of the Kois Center from 22 coast to coast? 23 A. Yes. 24 Q. And -- 25 A. It wasn't done through the Kois</p>
<p style="text-align: right;">Page 108</p> <p>1 John C. Kois, DMD, MSD 2 Center, it was done through what Benco did as a 3 success partner. 4 Q. Correct. I understand that. As 5 part of that agreement, did Benco receive any 6 compensation? 7 A. No. 8 Q. Was there any agreement to pay 9 commission to Benco for new students that it 10 drove to the Kois Center? 11 A. Yes, there was an agreement to try 12 to compensate their sales personnel for anyone 13 that they would get to become a student at the 14 center. 15 Q. And is it fair to say though that 16 during the course of the relationship that was 17 a relatively small number? 18 A. Yes. 19 Q. Okay. It was difficult to track 20 whether the new student came through Benco or 21 other -- 22 A. Yes, it was very problematic in 23 terms of the way to implement, so it was not 24 continued. 25 Q. But is it also fair to say from May,</p>	<p style="text-align: right;">Page 109</p> <p>1 John C. Kois, DMD, MSD 2 2012, to present, the Kois Center has expanded 3 in terms of the number of students? 4 A. Yes. 5 Q. Earlier today Ms. Balbach showed you 6 a document that appeared to be sales pitches 7 from Mr. Ahmed to Patterson and Schein. Do you 8 recall looking at those documents? 9 A. I do. 10 Q. Are you aware of Mr. Ahmed ever 11 sending any kind of sales pitch similar to that 12 to Benco? 13 A. No. 14 Q. Let's look back at one of the 15 exhibits you were asked about earlier this 16 morning. The exhibit number, I believe, is 17 CX4062-001. It's got a big black box at the 18 top. 19 MR. RYAN-LANG: 406? 20 MR. RACOWSKI: 2-001. 21 BY MR. RACOWSKI: 22 Q. The e-mail starting below the black 23 box is starting from Qadeer Ahmed to Dr. Kois 24 dated October 21, 2014. Do you have that one 25 in front of you?</p>

1 John C. Kois, DMD, MSD
 2 A. Yes.
 3 Q. If we go back to the end of the
 4 document, which is the first e-mail in the
 5 thread, that e-mail is dated October 21, 2014.
 6 Do you see that one?
 7 A. I do.
 8 Q. And in this e-mail you're
 9 introducing Qadeer Ahmed to Chuck Cohen; is
 10 that correct?
 11 A. That's right.
 12 Q. Do you have any understanding that
 13 prior to this e-mail that you sent to Mr. Cohen
 14 that Mr. Ahmed had any contact with Kois about
 15 the buying group?
 16 A. I don't believe so.
 17 Q. Why is it you sent this e-mail to
 18 Mr. Cohen, if you remember?
 19 A. Because I was not involved in any of
 20 the negotiations with any of the supply
 21 companies, that's what Qadeer was doing, and so
 22 I was just making the introduction.
 23 Q. And so then if we turn over to the
 24 second page of that document, to the e-mail in
 25 the middle of the page from Chuck Cohen to you,

1 John C. Kois, DMD, MSD
 2 Ccing Julie Radzyminski. Do you see that one?
 3 A. Yes.
 4 Q. Mr. Ahmed is not on this e-mail. It
 5 appears Mr. Cohen had dropped Mr. Ahmed and
 6 inserted Julie Radzyminski in this response to
 7 you; is that right?
 8 A. Yes.
 9 Q. And he writes, "Confidentially,
 10 we're looking at buying club options and should
 11 have some ideas to discuss some time in early
 12 2015. That said, whatever we do, I don't think
 13 we'll need to involve an outside company like
 14 Equalizer ProServices or anyone else, they'll
 15 just take a cut of the savings." Did I read
 16 that right?
 17 A. Yes.
 18 Q. What did you understand that e-mail
 19 to be communicating to you?
 20 A. Exactly what it says.
 21 Q. And in the second paragraph, turn it
 22 over to next page, it continues, "So, with your
 23 permission I'm going to politely give Qadeer
 24 our standard answer of thanks, but we don't do
 25 buying groups. And then I'll make a note to

1 John C. Kois, DMD, MSD
 2 reconnect on this issue in early 2015." Did I
 3 read that correctly?
 4 A. Yes.
 5 Q. Did you understand Mr. Cohen to be
 6 saying we're interested in having this
 7 discussion about participating with your buying
 8 group but we don't need this third party
 9 involved?
 10 A. Yes.
 11 Q. And is that response consistent with
 12 your prior dealings and view of Mr. Cohen?
 13 MS. BALBACH: Objection.
 14 THE WITNESS: Yes, subsequent to
 15 this time, or referring from this time
 16 forward.
 17 BY MR. RACOWSKI:
 18 Q. Even before this time period you had
 19 an ongoing relationship with Benco in
 20 continuing education, correct?
 21 A. Yes.
 22 Q. I think you said that you had a
 23 positive relationship with Mr. Cohen, correct?
 24 A. Yes.
 25 Q. And here he's offering to have a

1 John C. Kois, DMD, MSD
 2 discussion with you in saying we don't need a
 3 third party to take a cut, correct?
 4 A. Yes.
 5 Q. That's consistent with everything
 6 you knew about Mr. Cohen and his personality?
 7 A. Absolutely. I never presented it
 8 from the previous time, that's all I'm saying.
 9 Q. Understand. If we look at the top
 10 e-mail in that thread from Mr. Ahmed back to
 11 you, the same date, October 21, 2014, he says,
 12 "Well I guess Chuck knows our secret plans
 13 better than you and I do. Anyway, life is too
 14 short to deal with guys who believe they know
 15 everything. Appreciate the intelligence, we'll
 16 proceed with people who want to make a
 17 difference and make money too." Do you see
 18 that?
 19 A. I'm sorry?
 20 Q. If we go back to the very first page
 21 of the document under the big black box.
 22 A. I see. I got it now. I picked up
 23 on it. Okay.
 24 Q. Sorry, I cut out a step. Let's go
 25 back to page 2. Mr. Cohen had wrote to you

1 John C. Kois, DMD, MSD
 2 dropping Mr. Ahmed, but then you forward the
 3 e-mail individually to Mr. Ahmed, correct?
 4 A. Yes.
 5 Q. Okay. And so then what I was
 6 focusing on and read a moment ago was
 7 Mr. Ahmed's response just to you. Do you see
 8 that now?
 9 A. Yes.
 10 Q. And it says, "Well I guess Chuck
 11 knows our secret plan better than you and I do.
 12 Anyway, life is too short to deal with guys who
 13 believe they know everything. Appreciate the
 14 intelligence, we'll proceed with people who
 15 want to make a difference and make money, too."
 16 Do I read that correctly?
 17 A. Yes.
 18 Q. What is your understanding Mr. Ahmed
 19 is communicating to you there?
 20 A. I don't know. That's the way he
 21 speaks? I don't know what to say.
 22 Q. Did you understand the thrust of
 23 that e-mail to be that Mr. Ahmed did not want
 24 to deal with Mr. Cohen or Benco?
 25 MS. BALBACH: Objection.

1 John C. Kois, DMD, MSD
 2 THE WITNESS: Well, there was an
 3 original e-mail that said they didn't do
 4 buyer buying groups, that was in 2014. But
 5 in early of 2015 there was an opportunity,
 6 that was my understanding as I go back,
 7 because we're going back four years ago,
 8 but I remember the e-mail that we looked at
 9 a couple of hours ago.
 10 BY MR. RACOWSKI:
 11 Q. Right. Apologies, bad question. I
 12 got us confused. Let's go back to the same
 13 document, pages 2 of the e-mail where Mr. Cohen
 14 wrote to you where he dropped Mr. Ahmed.
 15 He said, "Again, in summary, happy
 16 to have this discussion with you. We don't
 17 need a third party, so I'll tell the third
 18 party thanks, but we don't do buying groups."
 19 Do you see that that?
 20 A. Yes, that's correct.
 21 Q. Okay. So he never actually told you
 22 or the Kois Center that he was not interested,
 23 Benco was not interested in having any
 24 discussions about the buying group you were
 25 forming; is that correct? He just didn't want

1 John C. Kois, DMD, MSD
 2 THE WITNESS: It was my
 3 understanding he would not be able to
 4 proceed working with Chuck.
 5 BY MR. RACOWSKI:
 6 Q. And after the date of this e-mail,
 7 October 21, 2014, are you aware of Mr. Ahmed
 8 making any efforts to engage Benco in the
 9 buying group that the Kois Center was forming
 10 at this time?
 11 A. I am not.
 12 Q. Okay. So Mr. Cohen told you, "Happy
 13 to have the discussion, we don't need third a
 14 party." Then Mr. Ahmed, who is the third party
 15 says, "We don't need to talk to Chuck and
 16 Benco," correct?
 17 A. Correct.
 18 MS. BALBACH: Objection.
 19 BY MR. RACOWSKI:
 20 Q. Isn't it correct that at no time did
 21 Benco ever tell you or Mr. Ahmed, to your
 22 knowledge, that they didn't want to participate
 23 with you and the Kois Center in this buying
 24 group in 2014?
 25 MS. BALBACH: Objection, form.

1 John C. Kois, DMD, MSD
 2 to have them with Mr. Ahmed?
 3 MS. BALBACH: Objection, form.
 4 THE WITNESS: I'm a little confused.
 5 I thought -- could we just review this
 6 whole line of questioning again?
 7 BY MR. RACOWSKI:
 8 Q. Of course. Take all the time you
 9 need.
 10 A. I just want to make sure I'm
 11 answering this correctly. So, it is true that
 12 based on the date of this what you're saying is
 13 they were looking at buying club options, but
 14 this is now after the time we signed with
 15 Burkhart so we didn't have any other
 16 opportunities, and they said this would come in
 17 early of 2015, that is correct.
 18 Q. Okay. I think you lost me with that
 19 answer, but let's just try to wrap this up
 20 quickly if we can. So in this e-mail, in the
 21 center of the document, Mr. Cohen to you, he
 22 says to you, his success partner, who he has an
 23 agreement on continuing education with, "Happy
 24 to have this discussion with you and the Kois
 25 Center in 2015, but we don't need a third

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1 John C. Kois, DMD, MSD
 2 party," correct?
 3 A. Yes, yes, that's correct.
 4 Q. And he then says in the second
 5 paragraph, "I'll tell the third party thanks,
 6 but no thanks." Did you understand that to
 7 mean that then he could come back to you
 8 without Mr. Ahmed in 2015?
 9 A. Yeah, yeah, so that is correct.
 10 Q. And then in the e-mail above that
 11 that Mr. Ahmed wrote to you informative
 12 substance he says, "I don't want to deal with
 13 Chuck Cohen or Benco anymore," correct?
 14 A. Yes.
 15 MS. BALBACH: Objection.
 16 BY MR. RACOWSKI:
 17 Q. And so ultimately, during this time
 18 period when Mr. Ahmed and ProCare were running
 19 -- or attempting to form the buying group, the
 20 supply company that was ultimately chosen was
 21 Burkhart Dental, right?
 22 A. That's correct.
 23 Q. And you've testified earlier today
 24 that Burkhart had been your primary supplier
 25 since very early in your practice, correct?

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1 John C. Kois, DMD, MSD
 2 A. Yes.
 3 Q. Okay. And you buy the large
 4 majority of supplies from Burkhart over your
 5 three plus decades in your career as a dentist?
 6 A. Yes.
 7 Q. Whose decision was it to select
 8 Burkhart as the supply company or distributor
 9 in late 2014 for the buying group?
 10 A. That would be mine.
 11 Q. So after Mr. Ahmed had attempted to
 12 reach out to Schein and Patterson, and then the
 13 attempt that we just looked at with Benco, you
 14 stepped in and went to Burkhart, correct?
 15 A. That's correct.
 16 Q. And that was based on I think you
 17 said your long history with them and your
 18 personal relationship, right?
 19 A. Yes.
 20 Q. Earlier today you testified that one
 21 of your students at the Kois Center brought
 22 Mr. Ahmed and ProCare to your attention; is
 23 that right?
 24 A. Yes.
 25 Q. Who was that student?

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1 John C. Kois, DMD, MSD
 2 A. Rob Capell (phonetic), Robert
 3 Capell.
 4 Q. And how did that come about?
 5 A. He was a student. He came as a
 6 student after attending a course I gave
 7 somewhere in Toronto, and then during the
 8 course he told me he had a history with this
 9 business person and there's a group of dentists
 10 that use Qadeer as a consultant for business
 11 opportunities, and that's how I learned about
 12 Qadeer.
 13 Q. Did you first tell Mr. Capell that
 14 you and the Kois Center wanted to form a buying
 15 group, or was it Mr. Capell that came to you
 16 with the idea of Mr. Ahmed to form a buying
 17 group?
 18 MS. BALBACH: Objection.
 19 THE WITNESS: I'm not sure I
 20 actually specifically recall that answer,
 21 but I think it was my idea.
 22 BY MR. RACOWSKI:
 23 Q. Okay. And at that time did you have
 24 any understanding of Mr. Ahmed's experience in
 25 the dental industry?

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1 John C. Kois, DMD, MSD
 2 A. I did not. To my knowledge, he did
 3 not have experience other than working
 4 personally with other dentists.
 5 Q. In what capacity?
 6 A. I don't know.
 7 Q. And is that still true today that
 8 other than the Kois Buying Group and working
 9 personally with other dentists, that your
 10 understanding is Mr. Ahmed has no other dental
 11 experience?
 12 A. I don't know.
 13 Q. Okay. Did you or the Kois Center do
 14 any due diligence about Mr. Ahmed's background
 15 prior to bringing him in to form the buying
 16 group?
 17 A. I did not.
 18 Q. Did you have any discussion with
 19 Mr. Ahmed on the phone before you signed an
 20 agreement with ProCare?
 21 A. I did.
 22 Q. And do you recall what the substance
 23 of any of those discussions were?
 24 A. I thought he was a very bright
 25 business person that was very skillful in

1 John C. Kois, DMD, MSD
 2 negotiation. He seemed to be even very
 3 knowledgeable about dentistry even though he
 4 wasn't a dentist. He's very well read and he
 5 was impressive to listen to.
 6 Q. So very positive first impression he
 7 made?
 8 A. Yes.
 9 Q. So sitting here today and looking
 10 back on the course of the relationship between
 11 the Kois Center and the buying group and
 12 Mr. Ahmed, what's your impression of Mr. Ahmed
 13 and his business acumen?
 14 A. He is a very smart businessman.
 15 Q. Do you still believe he's a very
 16 good negotiator that might be able to help the
 17 Kois Center?
 18 A. I do.
 19 Q. Did he help the Kois Center?
 20 A. No. Ultimately.
 21 Q. What's your view of why he didn't
 22 help the Kois Center?
 23 A. I don't think we were big enough.
 24 Q. So is it your view that it wasn't
 25 anything Mr. Ahmed himself did, but that it was

1 John C. Kois, DMD, MSD
 2 the Kois Center's composition or existence
 3 itself at the point in time it was trying to
 4 form this buying group that led to the initial
 5 failure?
 6 MS. BALBACH: Objection, form.
 7 THE WITNESS: So let me think about
 8 that for a minute because it's an
 9 interesting question. I think Kois Center
 10 certainly has the reputation it has for
 11 education, but certainly doesn't have any
 12 track record regarding a buyers club.
 13 So at that point we were very new to
 14 the opportunity, so I think that was not so
 15 positive, and I think it's possible from
 16 maybe what I heard from Burkhart is the
 17 negotiation with Mr. Ahmed is not easy and
 18 so the relationship to the Kois Center was
 19 ultimately becoming the deciding factor.
 20 BY MR. RACOWSKI:
 21 Q. So ultimately the Kois Buying Group
 22 obtained a dental distributor, Burkhart,
 23 through your efforts, correct?
 24 A. That's correct.
 25 Q. And then your son, Johnny Kois,

1 John C. Kois, DMD, MSD
 2 ultimately took over for Mr. Ahmed running the
 3 buying group, correct?
 4 A. Yes.
 5 Q. When was that date, approximately?
 6 A. Johnny became the CEO of the Kois
 7 Center March of 2015, and since then he's taken
 8 care of all the responsibilities regarding the
 9 business aspects of the center, that includes
 10 the buyers club.
 11 Q. And I believe Mr. Kois testified
 12 earlier in this case that around March, 2015,
 13 there were approximately 170 members of the
 14 Kois Buying Group at the time; does that sound
 15 right to you?
 16 A. Yes, it does.
 17 Q. How many members are there today?
 18 A. As I said, I don't know an exact
 19 number. You can probably ask Johnny. I'm
 20 thinking it's around 600.
 21 Q. Fair enough. We will, but is it
 22 fair to say that from the time that Johnny took
 23 over from March of 2015 to present that the
 24 buyers club has been successful?
 25 A. Yes.

1 John C. Kois, DMD, MSD
 2 MS. BALBACH: Objection.
 3 BY MR. RACOWSKI:
 4 Q. Earlier today you testified that the
 5 Kois Center's separation with ProCare was
 6 because it, quote, wasn't consistent with our
 7 Tribe. Do you remember that?
 8 A. Yes.
 9 Q. What did you mean by that?
 10 A. It had too much of a business feel
 11 and not a feel -- a relationship feel that we
 12 have with our Tribe Members, so I was
 13 uncomfortable with the relationship.
 14 Q. Sorry. And isn't it true that one
 15 of the first things that Johnny did when he
 16 took over running the buying club is he slashed
 17 the cost to the dentist members?
 18 A. That's correct.
 19 Q. What were the financial terms of the
 20 relationship between the Kois Center and
 21 ProCare?
 22 A. Originally, I think it was intended
 23 to be a fifty-fifty split in the commission of
 24 the buyers club.
 25 Q. I'm sorry, what do you mean by

1 John C. Kois, DMD, MSD
2 commission of the buyers club?

3 A. In other words, there was --
4 dentists were initially going to pay based on
5 how much -- what level of inventory they were
6 purchasing, and from that relationship they
7 would establish what his company would get
8 versus what our company would get from that and
9 that never worked out.

10 Q. So is what you're describing some
11 type of split between the Kois Center and
12 ProCare of the membership fees that the member
13 dentist brought to the buying group?

14 A. Yes, only membership fees. We had
15 no relationship with any of the companies in
16 any of the products.

17 Q. Was there any other compensation or
18 financial incentives that the Kois Center
19 offered to Mr. Ahmed and ProCare other than the
20 split that you just described?

21 A. No.

22 Q. Ultimately, did the Kois Center wind
23 up paying Mr. Ahmed and ProCare any money?

24 A. Yes.

25 Q. How much?

1 John C. Kois, DMD, MSD

2 A. I'd have to go back and look at the
3 exact amount of money, but we did pay what he
4 was owed.

5 Q. And do you recall, recognizing you
6 don't remember the specific amounts, do you
7 recall whether what the Kois Center paid to
8 Mr. Ahmed and ProCare was substantially the
9 terms that you had agreed to with him up front,
10 the split of the membership fees?

11 A. Yes.

12 Q. And do you know when that payment
13 was made?

14 A. Sorry, I don't.

15 Q. And let's look at another exhibit
16 that you discussed with Ms. Balbach this
17 morning. Actually, it's two exhibits. First
18 one is CX1035 and next one is CX4042. Both are
19 e-mails involving you and Mr. Cohen and others.

20 A. Okay. I have it.

21 Q. The first exhibit, CX1035, that's an
22 e-mail dated December 26, 2015, from Mr. Cohen
23 to you, correct?

24 A. Yes.

25 Q. And so at that time, in December 26,

1 John C. Kois, DMD, MSD
2 2015, Burkhart was the exclusive supplier of
3 dental supplies to the Kois Buying Group,
4 correct?

5 A. The exclusive dental supply company,
6 but not of all the supplies.

7 Q. Right, because you had some direct
8 manufacturers?

9 A. Correct.

10 Q. But in terms of what I call
11 distributors and you seem to be calling supply
12 companies, Burkhart was the exclusive one of
13 those at the time?

14 A. Yes.

15 Q. And the agreement that the Kois
16 Center, the buying Group had with Burkhart
17 prevented the Kois Center and the buying group
18 from adding a second supply company or
19 distributor?

20 A. Correct.

21 Q. And that's why these discussions
22 that Mr. Cohen initiated in December of 2015
23 ultimately ended, correct?

24 A. Yes.

25 MS. BALBACH: Objection.

1 John C. Kois, DMD, MSD

2 BY MR. RACOWSKI:

3 Q. Is it fair to say that these two
4 exhibits show Benco approaching you and the
5 Kois Center with an opportunity, and the Kois
6 Center and Kois Center Buying Group politely
7 informing Benco they were not contractually
8 able to form such a relationship at that time
9 due to the Burkhart contract?

10 A. Correct.

11 Q. Okay. Who is Jerry Ritsema? Is
12 that a name you know?

13 A. Can you put a context around that?

14 Q. No, that's okay. Do you know who
15 Ovinia Gagsits (phonetic) is?

16 A. Yes, that's Linea. That's one of
17 the individuals at the Kois Center that was in
18 management.

19 Q. What role, if any, did she have in
20 the buying group?

21 A. She helped with just relaying
22 correspondence with Chuck or Julie, or any of
23 the folks that we were in contact with at
24 Benco. She was on the e-mail chain.

25 Q. I had asked if she had any role with

<p style="text-align: right;">Page 130</p> <p>1 John C. Kois, DMD, MSD 2 the buying group and I think you answered a 3 different question, so let me go back to the 4 question I asked. 5 A. The answer is no. 6 Q. So she had a role in the 7 relationship that the Kois Center had with 8 Benco regarding continuing education? 9 A. Yes, yes, because she's my outside 10 lecture coordinator. 11 Q. And, you know, just to close the 12 loop where we began with the relationship with 13 Benco, did there come a point in time when the 14 contractual relationship between Benco and the 15 Kois Center ended? 16 A. Yes. 17 Q. Do you recall approximately when 18 that was? 19 A. I don't remember exactly, but I'm 20 thinking in the fall of 2016 or 2017. It 21 probably would be in the fall of 2016 was 22 probably one of my last lectures. 23 Q. Okay. And you testified earlier 24 today that you believe, sitting here today, 25 that you still have a relationship with Benco,</p>	<p style="text-align: right;">Page 131</p> <p>1 John C. Kois, DMD, MSD 2 correct? 3 A. Absolutely. 4 Q. And do you recall Mr. Cohen 5 communicating to you that after the contract 6 ended that Benco was still going to honor their 7 side of the deal and try to direct students to 8 the Kois Center? 9 A. Absolutely. 10 MS. BALBACH: Objection. 11 BY MR. RACOWSKI: 12 Q. And didn't he tell you that's 13 because the Kois Center is unique in the world 14 and that it's a benefit to Benco's customers 15 and sales team to continue to go to courses at 16 the Kois Center? 17 MS. BALBACH: Objection. 18 THE WITNESS: Yes. 19 BY MR. RACOWSKI: 20 Q. Do you know who a Dr. Felipe 21 (phonetic) is? 22 A. Yes, he's one of our students. 23 Q. Do you know if Mr. Felipe was or is 24 a member of the buying group? 25 A. I don't know with certainty.</p>
<p style="text-align: right;">Page 132</p> <p>1 John C. Kois, DMD, MSD 2 Q. Okay. After March of 2015, when 3 Johnny took over running the buying group, what 4 role and involvement, if any, did you have in 5 the buying group? 6 MS. BALBACH: Objection. 7 THE WITNESS: In terms of the 8 implementation, the structure, none. Only 9 involved in what research we'd be doing for 10 the group. 11 BY MR. RACOWSKI: 12 Q. So in terms of the day-to-day 13 management, which dentists were in, which 14 dentist were out, whether it was growing, what 15 the relationships with the vendors were, that 16 was all Johnny and you didn't have any 17 involvement in any of that, correct? 18 A. That's correct. 19 Q. Who's Darrell Cain, if you know? 20 A. I'm assuming just by the last name 21 he's part of Cain Watters, an investment 22 company. 23 Q. Have you ever met Mr. Cain? 24 A. I have not. 25 Q. Have you ever had any discussions</p>	<p style="text-align: right;">Page 133</p> <p>1 John C. Kois, DMD, MSD 2 with Mr. Cain? 3 A. I have not. 4 Q. What's the relationship, if any, 5 between the Kois Center and Seattle Study Club? 6 A. A teaching relationship. I've done 7 many lectures for the Seattle Study Club groups 8 and been involved in many of their symposiums, 9 education only. 10 Q. Do you or the Kois Center have any 11 other business or financial relationship with 12 the Seattle Study Club other than teaching? 13 A. Absolutely not. 14 Q. What's Sinclair Dental Company, LTD? 15 A. That's a Canadian dental supply 16 company, Canadian based dental supply company. 17 Q. And whereas Burkhart is the 18 exclusive U.S. supply company for the buying 19 group, is Sinclair the exclusive Canadian 20 supply company for the buying group? 21 A. Yes. 22 Q. And do you know what role Arjang 23 Nowtash has at Sinclair? 24 A. I believe he's either one of the 25 owners or one of the principals in the company.</p>

1 John C. Kois, DMD, MSD
 2 I've never had any discussions with the
 3 company, that's completely with Johnny.
 4 Q. Do you know Frank Nowtash?
 5 A. The name I don't recall.
 6 Q. Do you have any dealings, you or the
 7 Kois Center, with Arnold Dental Company?
 8 A. I don't know the company.
 9 Q. In the time that you've been in the
 10 dental industry, have you known Patterson,
 11 Schein and Benco to behave as anything other
 12 than fierce competitors?
 13 MS. BALBACH: Objection.
 14 THE WITNESS: I have not.
 15 BY MR. RACOWSKI:
 16 Q. Are you aware that the FTC, in its
 17 complaint in this action, alleges that
 18 Patterson, Schein and Benco entered into an
 19 agreement not to do business with buying
 20 groups?
 21 A. I'm aware now.
 22 Q. Prior to my telling you that, were
 23 you aware of that?
 24 A. I've been aware, yes.
 25 Q. Okay. You don't have any personal

1 John C. Kois, DMD, MSD
 2 knowledge of any such agreement, do you?
 3 A. I do not.
 4 MR. RACOWSKI: Subject to any follow
 5 up questions after Ms. Balbach goes, I cede
 6 my time to Patterson and Schein's counsel.
 7 CROSS-EXAMINATION
 8 BY MR. GEORGE:
 9 Q. I'll be quick, so it probably makes
 10 sense to just keep going. Thank you, Dr. Kois.
 11 My name is Andrew George, again, and I
 12 represent Patterson. Do you understand that
 13 all the same ground rules apply that have
 14 already been discussed today?
 15 A. I do.
 16 Q. Great. You said the Kois Buying
 17 Group didn't exist before October, 2014; is
 18 that right?
 19 A. Correct.
 20 Q. And I believe you said that the
 21 buying group didn't actually start until 2015?
 22 A. I believe that's correct.
 23 Q. It definitely --
 24 A. Physically, yes. I believe that's
 25 correct.

1 John C. Kois, DMD, MSD
 2 Q. As more than a concept?
 3 A. Yes, yes.
 4 Q. With any members?
 5 A. Correct.
 6 Q. And it definitely didn't start in
 7 2013?
 8 A. Correct.
 9 Q. Didn't exist at all in 2013?
 10 A. Correct.
 11 Q. And so the Kois Buying Group didn't
 12 seek a supply contract with Patterson in 2013;
 13 is that right?
 14 A. Yes.
 15 Q. Nor before 2013?
 16 A. Correct.
 17 Q. Okay. I'd like to show you what
 18 we'd mark as Respondent's Kois Exhibit 1.
 19 (Exhibit 1, marked.)
 20 BY MR. GEORGE:
 21 Q. And if you could -- let me tell you
 22 what this is first. You're not on this
 23 document. This was a document that was
 24 submitted by complaint counsel, the FTC, during
 25 this matter. If you could flip to page 9.

1 John C. Kois, DMD, MSD
 2 MS. BALBACH: Can I ask a question?
 3 Is this a public version or?
 4 MR. GEORGE: This is not marked
 5 confidential. I have an extra to the
 6 appendix which was marked confidential.
 7 MS. BALBACH: Thank you.
 8 BY MR. GEORGE:
 9 Q. If you could please refer to the
 10 first full paragraph on the top of page 9. It
 11 starts, "Subject to and without waiving these
 12 objections." Do you see that?
 13 A. Yes.
 14 Q. Okay. And so the second sentence of
 15 that paragraph, I'm going to read it. It says,
 16 "Buying groups that continue to seek supply
 17 contracts with Patterson," end quote, "in 2013,
 18 as alleged in paragraph 51 of the complaint
 19 includes the Kois Buying Group." And then the
 20 sentence goes on to list other entities; is
 21 that correct?
 22 A. Yes.
 23 Q. That's just not true, right?
 24 A. Correct.
 25 Q. You can put that aside, thank you.

1 John C. Kois, DMD, MSD
2 If you could please take out complaint
3 counsel's Exhibit 4062, which is the one with
4 the big black box, and flip to the back side,
5 the last page.

6 Now, we discussed this a little bit
7 earlier. The reference to, quote, "I know we
8 tried this before," end quote. Second
9 sentence?

10 A. I see. Second sentence, okay.

11 Q. When you were referring to having
12 tried this before, this was the effort in which
13 the Kois Center would have itself bought high
14 volumes of inventory for its members; is that
15 right?

16 A. Yes.

17 Q. Okay. And the problem with that
18 approach was that the Kois Center just couldn't
19 afford it; is that right?

20 MS. BALBACH: Objection.

21 THE WITNESS: Yeah, we couldn't
22 implement it. We couldn't make such a
23 large purchase and then have to ship it to
24 all our members. It was not realistic.

25 BY MR. GEORGE:

1 John C. Kois, DMD, MSD
2 Q. Okay. So that would have been a
3 centralized commitment to purchase the
4 inventory on the Kois Center's part and not its
5 individual members; is that right?

6 A. Correct.

7 Q. And that's very different from what
8 ended up becoming the Kois Buying Group?

9 A. That's correct.

10 Q. Because the Kois Buying Group has no
11 buying power; is that right?

12 A. That's correct.

13 Q. And the Kois Buying Group members
14 have no commitment to buy anything, right?

15 A. That's correct.

16 Q. They don't have any commitment to
17 buy anything in any volume?

18 A. Correct.

19 Q. Or to buy exclusively from any
20 distributor or supplier?

21 A. Correct.

22 Q. And the Kois Buying Group members
23 can deal directly with distributors or
24 suppliers?

25 A. Correct.

1 John C. Kois, DMD, MSD
2 Q. And they can join other buying
3 groups?
4 A. Correct.
5 Q. Okay. Sticking with this exhibit
6 for one moment -- excuse me, let's move on from
7 that exhibit and turn to 4060, which is this
8 one. Can you turn to -- well, first of all, on
9 the first page of this exhibit, end of the
10 second paragraph of Qadeer Ahmed's e-mail do
11 you see the sentence, "What you see in this
12 deck is basically a replay of the face-to-face
13 I had with him last week"? Do you see that?

14 A. Yes.

15 Q. Okay. And when you got this e-mail,
16 did you understand this to mean that this was a
17 replay of what was told to Patterson during
18 their meeting -- during Qadeer Ahmed and
19 Patterson's meeting?

20 A. I would assume. Repeat the
21 question, please?

22 Q. Sure. I'm sorry about that. So
23 when you got this e-mail, did this e-mail mean
24 to you that what is included in it is basically
25 a replay of what -- of a face-to-face meeting

1 John C. Kois, DMD, MSD
2 Qadeer Ahmed and a person from Patterson had
3 had?

4 A. Yes.

5 Q. Okay. Can you turn to page -- it's
6 marked as page 007 of the exhibit, which I'm
7 holding up in case you have trouble.

8 A. I'm here.

9 Q. Okay. Great. And looking at the
10 second sentence -- excuse me, third sentence.
11 First bullet point it says, "We invite one
12 distributor to join our pilot program before
13 expansion across the industry." Do you see
14 that?

15 A. Yes.

16 Q. Did I read that correctly?

17 A. Yes.

18 Q. And, to your understanding, was that
19 accurate as far as what the Kois Buying Group
20 originally intended to do?

21 A. Yes.

22 Q. Can you please turn to Exhibit
23 CX0290. Let me know once you've got it.

24 A. Okay.

25 Q. So looking at page 003?

1 John C. Kois, DMD, MSD

2 A. Yes.

3 Q. You see the header in the middle,
4 quote, "How you order," end quote? Do you see
5 that in the middle of the page?

6 A. Yes.

7 Q. Do you see number one reads, "We
8 will pick one distribution partner from between
9 Patterson Dental, Henry Schein, and smaller
10 distributors"?

11 A. Yes.

12 Q. And this is also consistent with
13 your memory of what Kois -- the Kois buying
14 group originally intended to do?

15 A. Yes. I want to make sure what's
16 becoming clear is the name Kois Buyers Club or
17 Group. The only thing that's similar to other
18 groups of the same name, buying group, is the
19 name buying group. This is a very different
20 structure. All of the structures that had to
21 do with the business relationships that you see
22 on many of these forms were not actually what
23 happened because it was a failure in terms of
24 what we were able to implement.

25 So I hope what's becoming clear is

1 John C. Kois, DMD, MSD

2 it was just an opportunity to give dentists
3 another way, that's really what it was. And
4 unfortunately, it has the term buying club or
5 group, which gives it a very different
6 connotation than it was actually intended to be
7 in reality in my mind, and so it's hard for me
8 to look at this -- these papers and understand
9 the relationship that these infer to what the
10 current situation actually is, so I hope that
11 that's becoming very clear.

12 Q. As originally conceived at the time
13 when this e-mail was sent was the phrase, "We
14 will pick one distribution partner," accurate?

15 A. Yes.

16 Q. Could you flip to the previous page
17 of the exhibit. The reference to, "Buying
18 \$125 million per year in supplies as a
19 Tribe" --

20 A. Yes.

21 Q. Do you see that? We talked about
22 that a bit earlier.

23 A. I don't know where that came from.

24 Q. That's just what I was going to ask
25 you.

1 John C. Kois, DMD, MSD

2 A. Yeah.

3 Q. These were Mr. Ahmed's calculations,
4 not yours?

5 A. They have nothing to do with me.

6 Q. Right. And you have no idea whether
7 they're valid?

8 A. That's correct.

9 Q. If you can turn to Exhibit 1032,
10 which is this one, top of the second page, "The
11 exclusivity provision." Do you see that?

12 A. Yes.

13 Q. So, ultimately, the Kois Buying
14 Group went with Burkhart as its exclusive
15 distributor, correct?

16 A. Yes.

17 Q. And that was consistent with the
18 plan to have one distributor all along; is that
19 right?

20 A. Yes.

21 Q. And Kois Buying Group couldn't have
22 worked with another distributor as long as this
23 agreement was in effect?

24 A. Correct.

25 Q. I forgot to ask you one question

1 John C. Kois, DMD, MSD

2 about number 4060. This is the pitch that was
3 made to Patterson by Mr. Ahmed; is that right?

4 A. I assume so, because it says,
5 "Patterson update."

6 Q. You don't recall Patterson giving
7 any response to this; is that right?

8 A. I have no knowledge of working
9 specifically with any of the companies. I
10 didn't deal with them at all.

11 Q. And you don't even know what, if
12 any, response they gave to this pitch?

13 A. I do not. Other than what might
14 have been in an e-mail, I was not personally
15 involved.

16 Q. Right. In terms of what you
17 personally remember yourself?

18 A. Yeah, I don't know. I don't know.
19 I don't remember anything about that. I'm
20 not -- yeah, I have no information about that.

21 MR. GEORGE: I have nothing else.
22 Thank you.

23 CROSS-EXAMINATION
24 BY MR. FONTECILLA:

25 Q. Dr. Kois, my name is Adrian

1 John C. Kois, DMD, MSD
 2 Fontecilla. I'm on the phone from DC. As you
 3 know, I represent Henry Schein. Are you okay
 4 to continue?
 5 A. I am.
 6 Q. Or do you need a quick break?
 7 A. No, I'm fine.
 8 Q. Okay. I will endeavor to be quick
 9 and not ask anything that's already been asked;
 10 is that fair?
 11 A. Yes.
 12 Q. And if I can't -- if you can't hear
 13 me at all or I cut out because of the phone
 14 line please just ask me to repeat the question,
 15 okay?
 16 A. Yes.
 17 Q. Okay. Earlier you testified about a
 18 student who told you about Mr. Ahmed in 2014.
 19 Do you remember what month in 2014 that was?
 20 A. I do not. It would have been
 21 consistent with one of the courses he attended.
 22 Q. Okay. And how soon after that did
 23 you meet with Mr. Ahmed or talk -- I guess
 24 talked to him for the first time?
 25 A. I don't remember how long that would

1 John C. Kois, DMD, MSD
 2 be. I do remember we only had e-mail and phone
 3 conversation for -- somewhere between one and
 4 two plus years before we actually met
 5 face-to-face.
 6 Q. Right. When did you -- about how
 7 long after you heard about Mr. Ahmed did you
 8 end up finalizing a deal with his company?
 9 A. I want to say somewhere in the range
 10 of six months. Six, eight months maybe, at the
 11 most. I mean, at the outside. I don't recall
 12 exact dates, but since we signed the agreement
 13 in October of 2014, I would say something
 14 probably began earlier than that, obviously,
 15 and I remember most of it was in the earlier
 16 part of that same year.
 17 Q. Got it. So you signed an agreement
 18 with his company ProCare in October, 2014; is
 19 that right?
 20 A. No, I'm sorry. I signed an
 21 agreement with Burkhart that included the
 22 agreement with ProCare in the relationship in
 23 October of 2014.
 24 Q. Are you referring to the agreement
 25 with Burkhart that we looked at earlier?

1 John C. Kois, DMD, MSD
 2 A. Yes, I am.
 3 Q. And if you -- do you mind pulling
 4 that up just to confirm the date? I want to
 5 make sure you're staying accurate and
 6 consistent with what you've said before. I
 7 believe that is --
 8 MR. RYAN-LANG: CX1032.
 9 BY MR. FONTECILLA:
 10 Q. Yes. 1032, thank you. If you can
 11 flip to the signature page and take a look next
 12 to the signatures, you signed that agreement
 13 November, 2014, right?
 14 A. Yes. November 14th of 2014, that is
 15 correct, sorry.
 16 Q. Right. And so that was the first
 17 agreement you had signed with Mr. Ahmed?
 18 A. Yes.
 19 Q. And this is the agreement that
 20 contains the 50-50 commission split of
 21 membership fees that you referenced earlier?
 22 A. That was -- I don't know if we
 23 actually signed an agreement regarding that or
 24 that was just a verbal agreement regarding
 25 that.

1 John C. Kois, DMD, MSD
 2 Q. Sure. And I guess that's what I'm
 3 trying to get at is when did you and Mr. Ahmed
 4 come to an agreement or an understanding that
 5 you were going to try to turn this idea of a
 6 buying group into a reality?
 7 A. I would say earlier in the same
 8 year.
 9 Q. And that's exactly my question,
 10 about how much earlier before? I think we saw
 11 some e-mails from about September, October,
 12 2014. Does that refresh your recollection?
 13 A. Yes, but I think there could have
 14 been some discussion even in August, maybe.
 15 So, as I said, there was some discussion
 16 earlier on about what the intention was, but
 17 then I don't remember when he actually started
 18 negotiating with many of the individual supply
 19 companies.
 20 Q. But at the earliest, it was late
 21 summer 2014?
 22 A. Yes, that's correct.
 23 Q. And did you give him any
 24 instructions or directions regarding how to
 25 reach out to potential partners that were

1 John C. Kois, DMD, MSD
2 distribution companies?

3 A. No. Actually, he had all the
4 connections for Henry Schein and Patterson.
5 The only connection I made was the Benco
6 connection, and then ultimately the Burkhart
7 connection.

8 Q. Okay. And with regards to the
9 Burkhart agreement that you reached on
10 November 14, 2014, about how long did it take
11 to iron out that contract, if you can recall?
12 Was it a few weeks, a month?

13 A. You mean the one that was ultimately
14 signed?

15 Q. Yeah, the one that you have in front
16 of you.

17 A. That we're looking at in front of
18 us, I would say this did not take very long to
19 iron out once all the parties came together. I
20 think there may have been some early revisions.
21 I would say in the -- within a month this
22 document was completed.

23 Q. Within a month. If you can pull out
24 the stack of the documents next to you, a
25 document that is stamped Exhibit CX4063. Let

1 John C. Kois, DMD, MSD
2 me know when you have that in front of you.

3 A. I have it.

4 Q. Okay. And if you can go to the
5 third page of the document.

6 A. Excuse me, third page?

7 Q. Third page. It should have a stamp
8 at the bottom that ends in 65, and you see the
9 e-mail from Sullivan?

10 A. Tim Sullivan? Yes, I do.

11 Q. And do you see where it says, "I had
12 the initial internal team meeting to explore
13 the opportunity based on our brief
14 introductions last week." Do you see that?

15 A. Yes.

16 Q. And do you recall Mr. Ahmed ever
17 telling you that he had been introduced to
18 folks at Schein to discuss the opportunity?

19 A. I do.

20 Q. And do you recall him telling you
21 that Schein was interested in exploring the
22 opportunity?

23 A. I do.

24 Q. And do you see in the next sentence
25 of Mr. Sullivan's e-mail where he says, "The

1 John C. Kois, DMD, MSD
2 good news is that our interest continues to
3 remain high." Do you see that?

4 A. Yes.

5 Q. Was it your understanding in late
6 October, 2014, that Schein had a high interest
7 in exploring the opportunity of partnering with
8 the core buying group?

9 A. Yes, at that time.

10 Q. Okay. And did you instruct
11 Mr. Ahmed to pursue the opportunity with
12 Schein?

13 A. I was in agreement, yes.

14 Q. And what, if any, follow up
15 discussions do you know of that Mr. Ahmed had
16 with Schein about the opportunity?

17 A. I don't know of follow-up
18 conversations.

19 Q. So you don't know if Mr. Ahmed ever
20 followed up with Schein about their high
21 interest in pursuing an opportunity with the
22 core buying group?

23 A. I do not know what happened after
24 this e-mail.

25 Q. And, in fact, soon after this you

1 John C. Kois, DMD, MSD
2 actually agreed with Burkhart that they would
3 be your sole distributor; is that correct?

4 A. Yes, it is.

5 Q. Okay. After you reached that
6 agreement with Burkhart you never instructed
7 Mr. Ahmed to reach back out to Schein about
8 Mr. Sullivan's high interest in the
9 opportunity?

10 A. That's correct.

11 Q. Who is Terra Kois?

12 A. Terra? That's my daughter-in-law.

13 Q. Yeah, Terra. Does she work for you?

14 A. There was a time where she worked
15 within the practice, but she does not work for
16 me. She works with my son, that's her husband.

17 Q. Got it. And did Ms. Kois'
18 responsibilities when she worked with you at
19 the practice involve ordering dental supplies?

20 A. Never.

21 Q. Would it be possible that an account
22 with Schein would be in her name?

23 A. Yes.

24 Q. And who is Dean Kois?

25 A. That would be her husband, my son.

Page 154

1 John C. Kois, DMD, MSD
 2 Q. Okay. And did Dean also work at the
 3 practice?
 4 A. He works in the same location as the
 5 Seattle office, but has an independent
 6 practice.
 7 Q. Does that practice make purchases on
 8 its own or in coordination with your practice?
 9 A. On its own.
 10 Q. For dental supplies?
 11 A. That's correct.
 12 Q. I'm sorry, did you say on its own?
 13 A. On its own, correct.
 14 Q. And is your practice at 1001
 15 Fairview Avenue, Suite 2000?
 16 A. That is actually for my practice,
 17 the teaching center address, and my actual
 18 clinic practice location is the one at Fife,
 19 Washington, at 5615 Valley Avenue East. So my
 20 dental supplies come through the Tacoma office,
 21 Tacoma address, which is in Fife.
 22 Q. Got it. What dental supplies would
 23 be purchased for the 1001 Fairview Avenue
 24 office?
 25 A. Those would be supplies that ran --

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1 John C. Kois, DMD, MSD
 2 that building. I think they're also labeled,
 3 A, B, C, D, potentially, but all suite 2200.
 4 Q. And are you aware that those -- both
 5 those suites purchased dental supplies from
 6 Schein?
 7 A. I am.
 8 Q. And do you know if they have a
 9 Schein representative?
 10 A. I believe they do.
 11 Q. And do you have any understanding of
 12 why those suites purchased dental supplies from
 13 Schein?
 14 A. I think they like the dental supply
 15 representative.
 16 Q. And would it be fair to say they get
 17 competitive and fair pricing on the dental
 18 supplies that they purchase?
 19 A. To my knowledge, yes.
 20 Q. And do you have any understanding of
 21 whether the pricing that they get includes a
 22 discount?
 23 A. I have no idea. I would assume my
 24 son's capable of making smart purchases.
 25 Q. Are you aware that Schein offers

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1 John C. Kois, DMD, MSD
 2 that are used in the teaching center for the
 3 dentists that come as students of the center,
 4 and there may be also supplies that came to the
 5 same address that were used in my son's -- Dean
 6 and Terra's practice.
 7 Q. At that address, 1001 Fairview
 8 Avenue address, who would be responsible,
 9 generally, for purchasing dental supplies and
 10 managing relationships with the vendors?
 11 A. I guess it would depend on the
 12 specific invoice. It would either be from
 13 Dean's practice, that could involve Terra,
 14 which is his wife, could be responsible for
 15 ordering supplies that were used in his
 16 specific practice.
 17 If it was related to supplies used
 18 in the teaching center there would be other
 19 staff members on the teaching side involved.
 20 We have a clinical staff and we have a teaching
 21 staff and they don't really mix.
 22 Q. Sure. And is the clinical center,
 23 do you have two suites in that building,
 24 Suite 2000 and Suite 2200?
 25 A. We have several different suites in

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1 John C. Kois, DMD, MSD
 2 aggressive discounting to individual dental
 3 practices?
 4 A. Yes.
 5 Q. And have you ever availed yourself
 6 of the discounted pricing that Schein offers to
 7 dentists?
 8 A. I've purchased from Schein.
 9 Q. Okay. I'm just checking my notes to
 10 see if I have anything else.
 11 What is your understanding of the
 12 value that representatives from companies like
 13 Schein, Patterson, and Benco and Burkhart offer
 14 to dental practices and their staff?
 15 A. That's a pretty broad question. The
 16 value that you phrased it -- or framed it as
 17 the value, so my answer to that would be framed
 18 around competitive pricing, ethical business
 19 opportunities, knowledgeable customer service
 20 representatives, timely service, good service.
 21 All of the things that would
 22 normally require anyone from working with a
 23 company, especially companies that I've had
 24 loyalty service with for so many years, I think
 25 that would be standard in the industry.

1 John C. Kois, DMD, MSD
 2 Q. Of course. Sure. I think you
 3 mentioned earlier -- you talked about how
 4 purchasing through a representative would be
 5 more efficient for the practice; is that right?
 6 A. Yes.
 7 Q. And could the representative often
 8 provide consulting or advice beyond just
 9 purchasing supplies?
 10 A. Yes. Avail me of maybe new product
 11 opportunities, you know. I have a very small
 12 staff. I don't have time to be searching the
 13 web, so I rely on the supply representatives.
 14 Q. And, in fact, it's your
 15 understanding that distributor representatives,
 16 sale representatives actually come to the
 17 practice fairly regularly, right?
 18 A. Yes, mine comes once every two
 19 weeks.
 20 Q. And is it your understanding that
 21 these sales representatives, when they visit,
 22 can also offer practice solution services
 23 advising the practice on how to be more
 24 efficient or drive more patients or revenue; is
 25 that right?

1 John C. Kois, DMD, MSD
 2 confusing, because that's what dentists would
 3 do. They would pick one item and say I can get
 4 it cheaper at Schein, or I can get it cheaper
 5 at Patterson at one point in time, which would
 6 tend to devalue the idea, where the essence of
 7 the buyers club was just to have a company or a
 8 representation of what you could feel good
 9 about without having to shop and be competitive
 10 against pennies in the purchase and spend time
 11 devoting an employee to that kind of scrutiny.
 12 Q. Right. And the core buying group
 13 either in its initial phase, idea, form, or
 14 even today, doesn't actually maintain any
 15 central purchasing for its members, right?
 16 A. That's correct, we do not.
 17 Q. And it doesn't require any of its
 18 members and never has a purchase from any one
 19 supplier, right?
 20 A. That's correct. We built the center
 21 on being as generic as we can, so we pride
 22 ourselves on making decisions based on what's
 23 the best opportunities in the market, not based
 24 on just who we have alliances with.
 25 Q. And earlier you mentioned generally

1 John C. Kois, DMD, MSD
 2 A. Yes, they offer that.
 3 Q. Did you or Mr. Ahmed ever do any
 4 analysis of any Kois Tribe Members purchasing
 5 of dental supplies?
 6 A. Analysis in compared to what?
 7 Q. So did you ever, for example, ask a
 8 Tribe Member to submit their, you know,
 9 purchases of dental supplies and the pricing
 10 they had gotten different supplies at from
 11 their different suppliers of vendors and then
 12 compare it to what they were able to get with
 13 the Kois buyers discount for Burkhardt?
 14 A. I can tell you we did look at
 15 specific pricing on items and found it very
 16 difficult at one point in time any other
 17 companies would always have maybe a slightly
 18 more competitive price on a single item.
 19 We were looking for a cumulative
 20 pricing, so we stayed away from being concerned
 21 that one company had an item one dollar
 22 cheaper, or whatever it was, because in the
 23 long run it didn't make any difference.
 24 So we didn't look at -- we didn't
 25 look at specific items because it became very

1 John C. Kois, DMD, MSD
 2 that the pricing about other customers
 3 depending on their size, and I just want to be
 4 absolutely clear about what you have personal
 5 knowledge of.
 6 Do you have any personal knowledge
 7 of what discounts or pricing are offered by
 8 Patterson, Benco or Schein to larger group
 9 practices?
 10 A. No.
 11 MR. FONTECILLA: Okay. I have no
 12 further questions. And thank you for your
 13 time, Dr. Kois.
 14 MS. BALBACH: I have just a couple
 15 of clean up questions.
 16 REDIRECT EXAMINATION
 17 BY MS. BALBACH:
 18 Q. Take you back again to the fall of
 19 2014 when you were --
 20 A. Yes.
 21 Q. -- working at setting up the Kois
 22 Buying Group with Mr. Ahmed. Did you turn to
 23 Burkhardt to be the distributor only after you
 24 found out from Qadeer that Benco, Schein and
 25 Patterson were not willing to do a contract?

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1 John C. Kois, DMD, MSD
 2 MR. FONTECILLA: Objection,
 3 misstates the testimony.
 4 MR. GEORGE: Object to form.
 5 MR. RACOWSKI: Objection, misstates
 6 testimony.
 7 THE WITNESS: Yes.
 8 BY MS. BALBACH:
 9 Q. If Benco, Schein or Patterson had
 10 agreed to do a contract with ProCare with the
 11 Kois Buying Group would you have ever gone out
 12 to Burkhart?
 13 A. That's a great question.
 14 MR. FONTECILLA: Objection.
 15 THE WITNESS: It's a great question,
 16 because even at that time I was undecided.
 17 I dealt with Burkhart for so many years; I
 18 had such a strong personal relationship; I
 19 was actually very reluctant to move away
 20 from doing business with Burkhart because I
 21 owed them the heritage and the legacy that
 22 we had for -- for me now it's 32 years.
 23 So I actually was resistant on going
 24 to other companies because I didn't want to
 25 break my relationship with Burkhart. For

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1 John C. Kois, DMD, MSD
 2 manufacturers that sell through dental
 3 supply companies and so we wanted access to
 4 both.
 5 BY MS. BALBACH:
 6 Q. Do the companies that sell direct,
 7 do you know if they also sell through
 8 distributors?
 9 A. They do not.
 10 Q. Could you use a single manufacturer
 11 to supply all the needs of a dental practice?
 12 A. I do not believe so. I think that
 13 would be impossible.
 14 Q. Could you rely on multiple
 15 manufacturers to supply the needs of a dental
 16 practice?
 17 A. Well, if you multiply that number by
 18 enough, I would assume that would be the case,
 19 but it would be really inconvenient.
 20 Q. I'm sorry, what would be
 21 inconvenient?
 22 A. To have to go through so many
 23 different companies for all the inventory that
 24 dentists typically utilize.
 25 Q. So is that why a distributor becomes

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1 John C. Kois, DMD, MSD
 2 me to go to a buyers club and then not be
 3 able to work with Burkhart was not
 4 appealing to me, personally, but it was
 5 something that we were willing to at least
 6 look at as an opportunity for other members
 7 in the buyers club because of what maybe a
 8 bigger company could offer our members.
 9 BY MS. BALBACH:
 10 Q. Was that because of the full service
 11 national reach of the bigger distributor like
 12 Henry, Schein, or Patterson or Benco?
 13 A. Yes, yes.
 14 Q. Do manufacturers typically offer the
 15 same products directly and through
 16 distributors?
 17 MR. RACOWSKI: Objection to form.
 18 MR. FONTECILLA: Objection.
 19 THE WITNESS: So if I understand the
 20 question, there are companies that do not
 21 sell through dental distributors, they sell
 22 directly to dental practices and so they
 23 have their own sales force and their own
 24 marketing that they utilize to accomplish
 25 that endeavor. And then there are

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1 John C. Kois, DMD, MSD
 2 more efficient for a dental practice to use?
 3 A. I would say that's why I use a
 4 dental distributor. I don't want to spend
 5 time, as I said, on the Internet, the phone and
 6 searching the web. I work through a more
 7 efficient purchasing system.
 8 Q. Do manufacturers offer same day
 9 service?
 10 A. Manufacturers? Only -- no. There
 11 aren't any manufacturers that I'm aware of that
 12 are in close enough proximity that they
 13 could -- well, I shouldn't say that. Now that
 14 I think about it, yes, there are company reps
 15 that are local that work for direct companies
 16 and they have small inventory, and many times
 17 they can come within the same day, especially
 18 implant companies.
 19 Q. So it depends where the manufacturer
 20 is located and the customer is located?
 21 MR. GEORGE: Object to form.
 22 THE WITNESS: And where their
 23 service representation is.
 24 BY MS. BALBACH:
 25 Q. Do manufacturers offer same day

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1 John C. Kois, DMD, MSD
 2 service for repairs?
 3 A. Manufacturers? I get all my repairs
 4 through the dental supply company.
 5 Q. So you get all your repairs through
 6 Burkhart?
 7 A. Yes, I do. They service all my
 8 equipment.
 9 MS. BALBACH: That's all I have.
 10 MR. GEORGE: I have one recross
 11 question.
 12 **RECCROSS-EXAMINATION**
 13 **BY MR. GEORGE:**
 14 Q. Dr. Kois, you were asked a moment
 15 ago did you turn to Burkhart to be the
 16 distributor only after you found out from
 17 Qadeer that Benco, Schein and Patterson were
 18 not willing to do a contract and you answered
 19 yes. You told me earlier that you don't know
 20 what Patterson's response to Mr. Ahmed was;
 21 isn't that right?
 22 A. That's correct.
 23 Q. So you don't know that -- you never
 24 found out from Mr. Ahmed that Benco, Schein and
 25 Patterson were not willing to do a contract?

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1 John C. Kois, DMD, MSD
 2 MS. BALBACH: Objection, form.
 3 THE WITNESS: That's correct. I did
 4 not hear with any certainty.
 5 **BY MR. FONTECILLA:**
 6 Q. In fact, you personally didn't hear
 7 back from anyone at Schein with regards to
 8 whether they were interested in pursuing
 9 partnership with the Kois Buying Group?
 10 A. I never had any correspondence --
 11 any direct correspondence with any of the
 12 dental supply companies.
 13 Q. And you had no understanding -- at
 14 that time when you selected Burkhart, you had
 15 no understanding of whether Schein would
 16 actually sign a deal or would not; is that
 17 correct?
 18 A. Yes, that's correct. Yes.
 19 MR. FONTECILLA: Okay. No further
 20 questions. Thank you.
 21 MS. BALBACH: I have one redirect.
 22 **FURTHER REDIRECT EXAMINATION**
 23 **BY MS. BALBACH:**
 24 Q. But, Mr. Kois, you did have some
 25 understanding that Mr. Ahmed, who you hired, or

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1 John C. Kois, DMD, MSD
 2 A. Correct. I didn't have that
 3 information with certainty.
 4 Q. For all you know Benco could have
 5 said it was willing?
 6 A. Yes.
 7 MR. GEORGE: Nothing further. Thank
 8 you.
 9 MR. FONTECILLA: I just have one
 10 question.
 11 **RECCROSS-EXAMINATION**
 12 **BY MR. FONTECILLA:**
 13 Q. Dr. Kois, along the same lines as
 14 Mr. George's question, the answer you gave
 15 counsel for the FTC about why you turned to
 16 Burkhart, we went through the document where it
 17 showed that since Kois had expressed high
 18 interest on behalf of Schein and the
 19 opportunity and you testified that you were
 20 unaware of any response from Schein after that
 21 or any follow up by Mr. Ahmed with Schein, so
 22 just so the record is absolutely clear, when
 23 you decided to turn to Burkhart and select
 24 Burkhart as the distributor you had not heard
 25 back from Schein; is that correct?

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1 John C. Kois, DMD, MSD
 2 you engaged to do this relationship, had told
 3 you that they -- Benco, Schein and Patterson,
 4 were not interested in setting up a buying
 5 group with Kois?
 6 MR. GEORGE: Objection, he never
 7 said that.
 8 MR. RACOWSKI: Objection, misstates
 9 testimony.
 10 MR. FONTECILLA: Objection.
 11 **BY MS. BALBACH:**
 12 Q. Let me rephrase. Dr. Kois, do you
 13 have some understanding that Mr. Ahmed, whom
 14 you hired to engage to set up a buying group,
 15 do you have some understanding from him that
 16 Benco, Schein and Patterson said they were not
 17 interested in doing a buying group with Kois?
 18 MR. GEORGE: Same objection.
 19 MR. RACOWSKI: Objection to form.
 20 Go ahead.
 21 THE WITNESS: My understanding was
 22 that it didn't look favorable from Ahmed
 23 and so at that point we pursued the
 24 relationship with Burkhart.
 25 MS. BALBACH: Okay. I have nothing

1 John C. Kois, DMD, MSD
 2 further.
 3 MR. RACOWSKI: Adrian?
 4 MR. FONTECILLA: No further
 5 questions. Thank you, Dr. Kois.
 6 (Time noted: 12:59 p m.)
 7
 8 _____
 9 JOHN C. KOIS, DMD, MSD
 10 Subscribed and sworn to before me this ____ day
 11 of _____ 2018.
 12
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 25

1 John C. Kois, DMD, MSD
 2 C E R T I F I C A T E
 3 S T A T E O F W A S H I N G T O N)
 4) s s .
 5 C O U N T Y O F K I N G)
 6
 7 I, LISA TRONCOSO, a Certified
 8 Shorthand Reporter in and for the State of
 9 Washington, do hereby certify:
 10 That, JOHN C. KOIS, DMD, MSD, the
 11 witness whose deposition is hereinbefore set
 12 forth, was duly sworn by me and that such
 13 deposition is a true record of the testimony
 14 given by such witness.
 15 I further certify that I am not
 16 related to any of the parties to this action by
 17 blood or marriage; and that I am in no way
 18 interested in the outcome of this matter.
 19 IN WITNESS THEREOF, I have hereunto
 20 set my hand this 11th day of July, 2018.
 21
 22 _____
 23 LISA TRONCOSO, RPR
 24 Washington CSR 3090
 25

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 12 Exhibit CX4060:
 13 Complainant Counsel's Responses;
 14 27 pages.....38
 15 Exhibit CX4061:
 16 E-mail dated 10-13-15;
 17 Bates FTC-QA-000000-33.....45
 18 Exhibit CX4063:
 19 E-mail dated 10-28-14;
 20 Bates FTC-QA-0000063-69.....48
 21 Exhibit CX4064:
 22 Proposal for Henry Schein:
 23 Initial Supply Deal;
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 4 Exhibit CX1032:
 5 ProCare Dental Distribution
 6 and Tribal Membership Program;
 7 Bates FTC00000153.....69
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 9 Exhibit CX4048:
 10 E-mail dated 11-16-2015;
 11 Bates KOIS001712-14.....78
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 13 Exhibit CX1035:
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 17 Exhibit CX4042:
 18 E-mail dated 01-08-2016;
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 21 R E S P O N D E N T ' S PAGE
 22 Respondent's Exhibit 1:
 23 E-mail dated 09-22-14;
 24 Bates FTC-QA-0000001-0000013.....136
 25

1 ERRATA SHEET FOR THE TRANSCRIPT OF:
 2 Case Name: In Re: Benco Dental
 3 Depo Date: June 27, 2018
 4 Deponent: JOHN C. KOIS, DMD, MSD
 5 CORRECTIONS:

6	Pg	Ln	Now Reads	Should Read	Reason
7	---	---	-----	-----	-----
8	---	---	-----	-----	-----
9	---	---	-----	-----	-----
10	---	---	-----	-----	-----
11	---	---	-----	-----	-----
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16	---	---	-----	-----	-----
17	---	---	-----	-----	-----
18	---	---	-----	-----	-----
19	---	---	-----	-----	-----

20 _____
 21 Signature of Deponent
 22 SUBSCRIBED AND SWORN BEFORE ME
 23 THIS ____ DAY OF _____, 2018
 24 _____
 25 (Notary Public) MY COMMISSION EXPIRES: _____

CONFIDENTIAL

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John C. Koiss, Jr.
UNITED STATES DISTRICT COURT
BEFORE THE FEDERAL TRADE COMMISSION
Office of the Administrative Law Judges

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

CONFIDENTIAL DEPOSITION OF
JOHN C. KOISS, JR.
Seattle, WA
Wednesday, June 27, 2018

Reported by:
LISA TRONCOSO, RPR, CSR, CLR
JOB NO. 143125

Page 2

1 John C. Kois, Jr.
 2 June 27, 2018
 3 1:51 p m.
 4
 5 Deposition of JOHN C. KOIS, JR.,
 6 held at the offices of Byrnes Keller Cromwell,
 7 LLP, 1000 Second Avenue, 38th Floor, Seattle,
 8 Washington, before Lisa Troncoso, a Registered
 9 Professional Reporter, Certified Livenote
 10 Reporter, and Washington Certified Shorthand
 11 Reporter Number 3090.
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Page 3

1 John C. Kois, Jr.
 2 A P P E A R A N C E S
 3
 4 BYRNES KELLER CROMWELL
 5 Attorneys for the Witness
 6 1000 Second Avenue
 7 Seattle, Washington 98104
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 9
 10
 11 FEDERAL TRADE COMMISSION
 12 Attorneys for Complainant Counsel
 13 600 Pennsylvania Avenue, NW
 14 Washington, DC 20580
 15 BY: JEANINE BALBACH, ESQ.
 16 - and -
 17 DANICA NOBLE, ESQ.
 18 901 Market Street
 19 San Francisco, California 94103
 20
 21
 22
 23
 24 (Continued)
 25

Page 4

1 John C. Kois, Jr.
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 3 BAKER BOTTS
 4 Attorneys for Patterson
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 6 Washington, DC 20004
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 14 Philadelphia, Pennsylvania 19102
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 16
 17
 18 PROSKAUER ROSE
 19 Attorney for Henry Schein
 20 1001 Pennsylvania Ave, NW
 21 Washington, DC 20004
 22 BY: ADRIAN FONTECILLA, ESQ. (via telephone)
 23
 24
 25

Page 5

1 John C. Kois, Jr.
 2 JOHN C. KOIS, JR.,
 3 called as a witness, having first been sworn by
 4 the Certified Shorthand Reporter, was examined
 5 and testified as follows:
 6 MS. BALBACH: Good afternoon,
 7 Mr. Kois. I'm Jeanine Balbach for
 8 Complainant Counsel of the Federal Trade
 9 Commission. With me is Danica Noble, also
 10 an attorney with the Federal Trade
 11 Commission.
 12 And I would ask the other attorneys
 13 present to please introduce themselves and
 14 who they represent.
 15 MR. GEORGE: I'm Andrew George, I
 16 represent Patterson.
 17 MR. RACOWSKI: Ken Racowski from
 18 Buchanan, Ingersoll & Rooney, counsel for
 19 Respondent, Benco Dental Supply Company.
 20 MR. RYAN-LANG: Rick Ryan-Lang here
 21 for the witness. And just for the record,
 22 we regard the testimony that Johnny's about
 23 to give as covered by the protective order,
 24 confidential.
 25 MS. BALBACH: And on the phone?

1 John C. Kois, Jr.
 2 MR. FONTECILLA: Hello again. My
 3 name is Adrian Fontecilla. I'm with
 4 Proskauer Rose from Washington, D.C. We
 5 represent Henry Schein.
 6 EXAMINATION BY
 7 MS. BALBACH:
 8 Q. Mr. Kois, could you state your name
 9 for the record?
 10 A. John C. Kois, Jr.
 11 Q. And I know that we -- you were
 12 deposed last summer in this matter.
 13 A. Yes.
 14 Q. Have you ever been deposed before
 15 that?
 16 A. Yes.
 17 Q. And in what circumstances?
 18 A. I was an expert witness in a
 19 software trial.
 20 Q. So you probably remember the ground
 21 rules from last summer, and you've heard them
 22 again this morning, but I'll go through them.
 23 If you answer a question I'll assume you
 24 understand it, is that okay?
 25 A. Yes.

1 John C. Kois, Jr.
 2 We just ask that you give us some time to get
 3 our objections out, is that okay?
 4 A. Yes.
 5 Q. And is there any reason anything
 6 would interfere with your ability to testify
 7 today?
 8 A. No.
 9 Q. Mr. Kois, are you the CEO of the
 10 Kois Center?
 11 A. Yes.
 12 Q. And when did you assume the position
 13 of CEO of the Kois Center?
 14 A. March 16, 2015.
 15 Q. Did you have a role with the Kois
 16 Center before March 16, 2015?
 17 A. I was a youth counselor. As part of
 18 their -- the annual symposium has three
 19 sections, a scientific meeting, a youth program
 20 and a success program, and I was one of the
 21 counselors for the youth program.
 22 Q. What are your duties as CEO of the
 23 Kois Center?
 24 A. I manage all the day-to-day
 25 operations at the center, marketing efforts,

1 John C. Kois, Jr.
 2 Q. And tell me if you don't understand
 3 a question, I'll be happy to rephrase it, is
 4 that okay?
 5 A. Yes.
 6 Q. Please let me finish speaking before
 7 you begin your answer and I'll do my best to
 8 let you finish before I ask my next question,
 9 is that okay?
 10 A. Yes.
 11 Q. You must answer audibly. We have a
 12 court reporter here today, so she can't take
 13 down any head shrugs or nods of the head, is
 14 that okay?
 15 A. Yes.
 16 Q. If at any point you need a break,
 17 just let us know and I'll be happy to take a
 18 break at end of the line of questioning. I'll
 19 ask you to answer the question and then we can
 20 take a break, is that okay?
 21 A. Yes.
 22 Q. From time to time the attorneys may
 23 object to a question that's asked. Typically,
 24 unless your attorney instructs you not to
 25 answer, you'll continue to answer the question.

1 John C. Kois, Jr.
 2 financial planning, the Kois Buyers Group, and
 3 any pieces that don't directly -- any pieces
 4 that aren't direct result of teaching.
 5 Q. What is the Kois Tribal Management?
 6 A. Kois Tribal Management is a separate
 7 company, that's what the Kois Buyers Group is
 8 operated under. It's a separate company from
 9 the Kois Center.
 10 Q. And do you have a title in the Kois
 11 Tribal Management Company?
 12 A. I don't serve as an official title;
 13 there are no employees as part of the company.
 14 My father's the wholly-owner of the company,
 15 but I act as manager of the Kois Tribal
 16 Management.
 17 Q. Is the Kois Buyers Group not really
 18 a company, or is it a separate company?
 19 A. The Kois Buyers Group is operated
 20 under Kois Tribal Management. Kois Tribal
 21 Management is the name of the company that
 22 operates the Kois Buyers Group, so any
 23 agreements are made under Kois Tribal
 24 Management.
 25 Q. You became CEO of the Kois Center in

Page 10

1 John C. Kois, Jr.
 2 March of 2015. When did you start working with
 3 the Kois Buyers Group?
 4 A. Shortly after July of 2015.
 5 Q. And why did you start working with
 6 the Kois Buyers Group in July of 2015?
 7 A. I wanted more information about the
 8 buying group in general and it wasn't as
 9 successful as my father hoped, so I hoped I
 10 could make it more successful.
 11 Q. When did you take over running the
 12 Kois Buyers Group?
 13 A. Approximately, August, September of
 14 2015.
 15 Q. Who was running the Kois Buyers
 16 Group before you took over?
 17 A. I didn't see any clear definitive
 18 person. I can speculate that that was Qadeer
 19 or ProCare Services.
 20 Q. Who is the distributor for the Kois
 21 Buyers Group?
 22 A. Which country?
 23 Q. In the United States.
 24 A. Burkhart Dental Supply.
 25 Q. And Kois Buyers Group has a group in

Page 11

1 John C. Kois, Jr.
 2 Canada; is that correct?
 3 A. Yes.
 4 Q. And who is the distributor for the
 5 Kois Buyers Group in Canada?
 6 A. Sinclair.
 7 Q. Does the Kois Buyers Group have any
 8 presence outside of the U.S. and Canada?
 9 A. Some of the manufacturers will ship
 10 to customers outside of the U.S. and Canada,
 11 that's the extent of our presence outside of
 12 those countries.
 13 Q. Does the Kois Buyers Group have
 14 members that are outside of the U.S. and
 15 Canada?
 16 A. Yes.
 17 Q. Do you have an approximation of how
 18 many members are outside of the U.S. and
 19 Canada?
 20 A. I can give you an approximate
 21 number, 30.
 22 Q. And currently, how many members are
 23 in the Kois Buyers Group in the U.S.,
 24 approximately?
 25 A. Approximately, 500.

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1 John C. Kois, Jr.
 2 Q. And how many Kois Buyers Group
 3 members in Canada?
 4 A. Approximately, 75.
 5 Q. For Burkhart being the distributor
 6 for the Kois Buyers Group, do you have a
 7 contract with Burkhart?
 8 A. Yes.
 9 Q. And that's between the Kois Tribal
 10 Management Company and Burkhart; is that
 11 correct?
 12 A. Correct.
 13 Q. In general, what does that contract
 14 provide for?
 15 A. That contract provides an agreement
 16 between Burkhart and Kois Tribal Management for
 17 a set margin that Burkhart will mark up their
 18 supplies for any Kois tribal members, and they
 19 offer \$299 credit for new sign-ups as part of
 20 the program, and in exchange the Kois Buyers
 21 Group does not have any other U.S. based dental
 22 supply company as part of it.
 23 Q. Burkhart is the exclusive
 24 distributor for the core buyers group; is that
 25 correct?

Page 13

1 John C. Kois, Jr.
 2 A. Yes.
 3 Q. Do the group members in the U.S.
 4 have an obligation to buy from Burkhart or the
 5 other companies in the Kois Buyers Group?
 6 A. They do not. In fact, I encourage
 7 them to find the lowest price anywhere since
 8 there's no exclusivity as part of the buying
 9 group. I tell them -- if a member tells me
 10 they found a cheaper price somewhere else I
 11 tell them they should buy it there.
 12 Q. Anything else that you can think of
 13 that you want to highlight that the contract
 14 with Burkhart provides for?
 15 A. I don't recall any other special
 16 pieces.
 17 Q. What is the current term of the --
 18 your contract with Burkhart?
 19 A. I think it renewed in 2016, and I
 20 believe that this is the final -- this is the
 21 first of the renewal since I've been managing
 22 the contract. So it was renewed, I believe,
 23 in -- for 2018 through 2020 for Burkhart.
 24 Q. So the current term of the contract
 25 is two years and you're one year approximately

Page 14

1 John C. Kois, Jr.
 2 through that?
 3 A. Six months.
 4 Q. I would like to go ahead and
 5 introduce an exhibit. We have premarked this
 6 as CX4058, and it has a Bates number of
 7 KOIS00001. I think it's five zeros and a one,
 8 so Kois 1, essentially. It's a one-page
 9 document.
 10 (Exhibit CX4058, marked.)
 11 MR. RYAN-LANG: Just for the record,
 12 this document doesn't have a confidential
 13 designation on it, but it should. We're
 14 marking it confidential under the
 15 protective order.
 16 BY MS. BALBACH:
 17 Q. I've introduced CX4058, what appears
 18 to be an e-mail from Dave Anderson to Johnny
 19 Kois dated December 30, 2015. I will note for
 20 the record that while the e-mail has an
 21 attachment, "Kois Buyers Group Burkhart
 22 contract IRV2013.pdf," no attachment was
 23 provided in the production to the FTC. Have
 24 you had a chance to review this document?
 25 A. Yes.

Page 16

1 John C. Kois, Jr.
 2 margins. We have agreed to maintain the
 3 margins as described in the 2015 agreement. We
 4 have also introduced performance incentives
 5 which will lower margins." Did I read that
 6 correctly?
 7 A. Yes.
 8 Q. What does that mean, the first part
 9 about, "Agreed to maintain the margins of the
 10 2015 agreement"?
 11 A. So in the original agreement there
 12 were margins that Burkhart dictated from their
 13 opinion that these were the best margins they
 14 can offer our purchasing group. I don't know
 15 what they've offered to other people, but they
 16 said this was the best they can offer us.
 17 Further, they said that if a certain
 18 amount of purchases were made through the
 19 buyers group that they would agree to consider
 20 lowering their margins further.
 21 Q. So that -- the performance
 22 incentive, is that if there's a certain number
 23 of purchases they'll lower margins?
 24 A. Correct.
 25 Q. The original agreement that you just

Page 15

1 John C. Kois, Jr.
 2 Q. Do you recognize CX4058?
 3 A. Yes.
 4 Q. What is this document?
 5 A. This was the final discussion I had
 6 with Dave Anderson, who is my main contact at
 7 Burkhart, on the renewal of the contract. And
 8 on this version of the contract we took out
 9 some of the portions of the original contract
 10 that I thought were a little complex in an
 11 effort to try to streamline some of the fee
 12 structure and also to try to get some
 13 additional incentive for the members.
 14 Q. So we just talked about the most
 15 recent contract, which I think you testified
 16 you renewed, so it started in 2018?
 17 A. '18.
 18 Q. Does this e-mail refer to the
 19 previous version from 2016?
 20 A. Yes. In this one I don't believe
 21 there are any significant changes between this
 22 final revised version and the one that was
 23 resigned.
 24 Q. So I'll call your attention to the
 25 first bullet where it says, "Paragraph 3

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1 John C. Kois, Jr.
 2 mentioned, was that the agreement that -- you
 3 talked about ProCare Services running the
 4 buying group before you took over, is that an
 5 agreement that they signed with Burkhart?
 6 MR. RACOWSKI: Object to form.
 7 THE WITNESS: The original agreement
 8 was signed as a three-way agreement between
 9 ProCare Services, Burkhart Dental and Kois
 10 Center. This agreement is -- we corrected
 11 some of those pieces, and this one is Kois
 12 Tribal Management and Burkhart only.
 13 BY MS. BALBACH:
 14 Q. Second bullet reads, paragraph 5,
 15 "Manufacturers discount. We have decided to
 16 pass through any and all additional discounts
 17 that we receive from manufacturers so as to
 18 have the greatest impact of lowering the
 19 pricing to members." Did I read that
 20 correctly?
 21 A. Yes.
 22 Q. What does that mean?
 23 A. The original contract had ProCare
 24 Services as an active negotiator with
 25 the manufacturers. I thought it better to have

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1 John C. Kois, Jr.
 2 any negotiations between manufacturers and the
 3 dental supply company to be between the
 4 manufacturer and the dental supply company.
 5 This is an area that I have expertise in.
 6 Q. So you took over negotiating with --
 7 when you took over the Kois Buyers Group you
 8 took over negotiating with the manufacturers
 9 for the Kois Buyers Group?
 10 A. Only manufacturers that were direct
 11 to the consumer. I don't do any negotiations
 12 with manufacturers that go through a dental
 13 supply company.
 14 Q. And that dental supply company being
 15 Burkhart; is that correct?
 16 A. Correct.
 17 Q. Third bullet, paragraph 6, "New
 18 member incentives. We will provide a
 19 merchandise credit to new members in the same
 20 amount as the first years annual dues provided
 21 the new member is willing to attend a meeting
 22 teleconference with our representative that
 23 will introduce them to the buyers program. Our
 24 company and our philosophy of how we can help
 25 them reduce cost."

Page 20

1 John C. Kois, Jr.
 2 Burkhart Dental Supply Company. Have you had a
 3 chance to review?
 4 A. I have. And this would appear to be
 5 the agreement referenced in the previous
 6 exhibit's attachment.
 7 Q. This may be the attachment, or if
 8 it's not the attachment, this was what the
 9 attachment looked like -- should have looked
 10 like for CX4058?
 11 A. Minus any signatures.
 12 Q. Flipping to the last page, the
 13 signature for the Kois Tribal Management, is
 14 that your signature as CEO?
 15 A. Yes.
 16 Q. We just talked about Burkhart
 17 agreeing to limit margins, so I want to direct
 18 your attention to paragraph 3 on the first page
 19 of CX0287. Where it says, "Dental supply
 20 margin. "Burkhart agrees to limit its margin
 21 to 28 percent on any and all brand dental
 22 supplies, and 39 percent on any Burkhart
 23 Private Label dental supplies sold to buyers
 24 group provided that the volume of purchases
 25 exceeds the current pace of \$5.3 million

Page 19

1 John C. Kois, Jr.
 2 Did I read that correctly?
 3 A. Yes.
 4 Q. What is that about?
 5 A. Burkhart had agreed to offer \$299
 6 merchandise credit on new customer accounts if
 7 they attended an on-boarding meeting with them
 8 to introduce Burkhart to the new member. There
 9 were complaints initially that when people
 10 signed up they weren't familiar with Burkhart
 11 as a supply company, so this was a way to
 12 introduce them to new members.
 13 Q. I would like to introduce what we've
 14 marked as CX0287. This has a Bates stamp of
 15 KOIS001622, it's 1622 through 1625.
 16 MR. RYAN-LANG: Same thing with the
 17 previous document. Just for the record,
 18 this is confidential.
 19 (Exhibit CX0287, marked.)
 20 BY MS. BALBACH:
 21 Q. I've introduced in CX0287 what
 22 appears to be Exclusive Supplier Agreement
 23 dated the 4th day of January, 2016. It appears
 24 to be signed by -- or the parties to the
 25 agreement are the Kois Tribal Management and

Page 21

1 John C. Kois, Jr.
 2 annually." Did I read that correctly?
 3 A. Yes.
 4 Q. What does that mean, that sentence?
 5 A. There are several parts to the
 6 sentence. Can you rephrase, please?
 7 Q. Let's start with -- good question.
 8 Let's start with the part where, "Burkhart
 9 agrees to limit its margin to 28 percent on any
 10 and all brand dental supplies." What does that
 11 mean to limit margins to 28 percent?
 12 A. Would you like my understanding of
 13 what that means?
 14 Q. For example, if you had a product
 15 that had like a wholesale cost of \$10, how does
 16 the 28 percent relate to that wholesale cost,
 17 the cost at which the distributor would acquire
 18 from the manufacturer?
 19 A. My understanding is that the dental
 20 supply companies add a margin to any product
 21 they sell, so my understanding of this
 22 statement is that Burkhart is limiting their
 23 margin to 28 percent.
 24 Q. They would take the \$10 wholesale
 25 cost and they would add on 28 percent of the

Page 22

1 John C. Kois, Jr.
2 \$10 to be the price at which they sold to the
3 Kois Buyers Group?
4 A. That would be my understanding for
5 branded dental supplies.
6 Q. And what is a branded dental supply?
7 A. It would be anything that's not a
8 Burkhart Private Label dental supply.
9 Q. If the 28 percent margin limit was
10 reduced to 26 percent, or something less than
11 28 percent, does that mean that the Kois Buyers
12 Group Members are getting a -- paying a lower
13 price for their dental supplies?
14 A. I would assume that, but I have no
15 way to track that. All the agreement says is
16 they'll limit it to 28 percent. If they limit
17 it below that I have no way of knowing.
18 Q. I guess I tried to ask a more
19 simpler question in theory, that if something
20 has a 28 percent margin, and then margin is
21 reduced to 26 percent, does that, for the end
22 consumer, represent a lower price?
23 MR. FONTECILLA: Objection.
24 THE WITNESS: I guess it depends on
25 how much Burkhart is paying for the

Page 23

1 John C. Kois, Jr.
2 wholesale item.
3 BY MS. BALBACH:
4 Q. Let me try this again. If it's --
5 if the item has -- the price of the item, the
6 wholesale price hasn't changed, and there's
7 a -- in one contract there's a 28 percent
8 margin limit, and in the next contract the
9 margin limit is changed to 26 percent for the
10 end consumer, Kois Buyers Group Members, does
11 that mean they are paying a lower price?
12 A. I would believe it would.
13 MR. FONTECILLA: Objection, form,
14 inappropriate hypothetical.
15 BY MS. BALBACH:
16 Q. Is it better for the Kois members if
17 the margin limit goes down in terms of their
18 pricing or if the margin limit goes up?
19 MR. GEORGE: Object to form.
20 MR. FONTECILLA: Objection.
21 BY MS. BALBACH:
22 Q. Let me try that again. So comparing
23 if the margin is reduced from one year to the
24 next, does -- strike that.
25 As a member of the Kois Buyers

Page 24

1 John C. Kois, Jr.
2 Group, would you prefer a contract with a
3 20 percent margin limit or a 30 percent margin
4 limit?
5 MR. FONTECILLA: Objection.
6 THE WITNESS: That question doesn't
7 have all the information. I would prefer
8 whichever contract leads to the lower price
9 to the consumer. There's also a factor of
10 how much the supply company is being
11 charged from the manufacturer for a
12 product, so if the 30 percent margin
13 product is tacked on to a lower wholesale
14 price it could still end with a lower
15 dollar amount product for the consumer, in
16 which case I would prefer that.
17 BY MS. BALBACH:
18 Q. But other things equal, would you
19 prefer a contract with a 20 percent margin or a
20 30 percent margin?
21 MR. GEORGE: Object to form.
22 MR. FONTECILLA: Objection.
23 THE WITNESS: My preference is
24 whatever equals the cheapest amount for the
25 consumer in that that is a combination of

Page 25

1 John C. Kois, Jr.
2 the price of the wholesale item and the
3 mark above for the supply company.
4 BY MS. BALBACH:
5 Q. Okay. Moving on to the part where
6 it says, "Margin limit of 39 percent on any
7 Burkhart Private Label dental supply." What is
8 a Private Label dental supply?
9 A. Burkhart has dental supplies that
10 are labeled manufacturer by Burkhart, which is
11 different than a product labeled by another
12 manufacturer.
13 Q. Do you know if they make a higher
14 profit than on private labeled supplies, a
15 distributor makes a higher profit on Private
16 Label?
17 MR. FONTECILLA: Objection,
18 foundation, form.
19 THE WITNESS: Based on the margins
20 represented in Section 3, my opinion is
21 that Private Label products have a higher
22 profit margin.
23 BY MS. BALBACH:
24 Q. Turning again to CX0287,
25 paragraph 1, the "exclusivity" paragraph, it

<p style="text-align: right;">Page 26</p> <p>1 John C. Kois, Jr. 2 refers to -- 1.1 says, "Buyers group agreed 3 that Burkhart will be the exclusive supplier 4 for dental supplies in the United States of 5 America, USA." Did I read that correctly. 6 A. Yes. 7 Q. What does that refer to? 8 A. We only have one dental supply 9 company for the United States of America as 10 part of the buyers group, so any dentist that's 11 a member of the buyers group and resides in the 12 United States of America we ask -- we tell them 13 that to get a discount on your supplies through 14 a dental supply company they would have to go 15 through Burkhart. 16 Q. And does it mean that the only 17 distribution company that the buyers group will 18 sign an agreement with is Burkhart? 19 A. No. 20 Q. Let me ask that again. Just 21 distribution companies, not talking about 22 manufacturers, does the Kois Buyers Group, have 23 they agreed to be exclusive -- have an 24 exclusive relationship with Burkhart for just 25 distribution?</p>	<p style="text-align: right;">Page 27</p> <p>1 John C. Kois, Jr. 2 A. No. 3 Q. Who -- what other distributors does 4 the Kois Buyers Group have an agreement with? 5 A. Sinclair in Canada. 6 Q. Okay. So for the United States, 7 does the Kois Buyers Group only -- for the 8 United States, is Burkhart the exclusive 9 distributor for the Kois Buyers Group? 10 A. Yes. 11 Q. And then 1.2 in that same paragraph, 12 "Members are not required to participate with 13 Burkhart exclusively for any product or service 14 except as needed when participating in a 15 Burkhart supply savings guarantee." Did I read 16 that correctly? 17 A. Yes. 18 Q. And is that -- you testified earlier 19 about members of the buyers group not having to 20 purchase from Burkhart. Is that what this 21 relates to, or what does this relate to? 22 A. There are two pieces to this. One 23 of them is, to be clear, that we don't care 24 which dental supply company any members of the 25 buyers group purchase from, but Burkhart has</p>
<p style="text-align: right;">Page 28</p> <p>1 John C. Kois, Jr. 2 additional savings that they asked to be 3 exclusive for the dental supply companies, but 4 that's a separate agreement between the dental 5 office and Burkhart that we don't -- we're not 6 a party to. 7 Q. What is that additional savings 8 program called? 9 A. The Burkhart supply savings 10 guarantee. 11 Q. Okay. Do you know how many of 12 your -- the Kois Buying Group Members have also 13 signed that agreement with Burkhart for the 14 supply savings guarantee? 15 A. I can approximate. 16 Q. What's your approximation? 17 A. Approximately, 20. 18 MR. FONTECILLA: Objection. 19 BY MS. BALBACH: 20 Q. Is that 20 members, or did I say 21 20 percent? 22 A. I believe it's twenty members. 23 Twenty members of the Kois Buying Group are 24 also members of the Burkhart Supply Saving 25 Guarantee. You do not have to be a member of</p>	<p style="text-align: right;">Page 29</p> <p>1 John C. Kois, Jr. 2 the Kois Buyers Group to be a part of Burkhart 3 Supply Savings Guarantee. 4 Q. And I want to call your attention 5 now to the paragraph 2, "Service levels." 2.1 6 starts, "Full service -- Burkhart agrees to 7 provide full service dental supply and 8 equipment distribution sales and support with 9 account managers, equipment specialists, 10 equipment service technicians and branch 11 support associates to members, with offices in 12 support areas designated as full service on 13 Burkhart's website." Did I read that 14 correctly? 15 A. Yes. 16 Q. And what does it mean to provide 17 full service dental supply and equipment 18 distribution? 19 A. It might be easier to highlight the 20 differences between Section 2.1 and 2.2, the 21 limited service. 22 Q. Let's read 2.2 into the record. 23 "Limited service. Burkhart agrees to provide 24 limited service dental supply and equipment 25 distribution, sales phone support to members</p>

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1 John C. Kois, Jr.
 2 with offices in support areas designated as
 3 limited service on Burkhart's website." Did I
 4 read that correctly?
 5 A. Yes.
 6 Q. What's the comparison between full
 7 service and limited service?
 8 A. Burkhart services the United States
 9 via their Internet sales. You have ability to
 10 purchase sales online, but they don't have an
 11 account managers, equipment specialist,
 12 equipment service technicians, or branch
 13 support associates in areas that are not
 14 designated as full service.
 15 So anybody outside of those areas
 16 that would still like to purchase from Burkhart
 17 can, but it has to be online. You will not
 18 have a representative come into your office as
 19 part of this agreement.
 20 Q. So if you're -- limited service
 21 means you won't have a representative coming to
 22 your office; is that correct?
 23 A. It's essentially Internet sales
 24 only, and I would say limit that, but there has
 25 been some trips that I know Burkhart's sales

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1 John C. Kois, Jr.
 2 Q. Let me try another question. Does
 3 Burkhart offer full service in the state of
 4 Washington?
 5 A. Yes.
 6 Q. Does Burkhart offer full service in
 7 other states on the west coast?
 8 A. Yes.
 9 Q. Does Burkhart offer full service on
 10 the east coast?
 11 A. I don't believe there are any states
 12 on the east coast.
 13 Q. What about the middle of the
 14 country, do you have knowledge of any states
 15 that Burkhart has full service in?
 16 A. My understanding is that they are
 17 primarily a west coast dental supply company.
 18 I'm not sure how far into the middle of the
 19 country that they go for full service.
 20 Q. I'd like to introduce what we've
 21 marked as CX1032.
 22 (Exhibit CX1032, marked.)
 23 BY MS. BALBACH:
 24 Q. CX1032 has a Bates number of B, as
 25 in boy, D as in David, FTC00000153. It's pages

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1 John C. Kois, Jr.
 2 representatives have made to areas outside of
 3 their full service area.
 4 Q. Do you know what areas are in the
 5 full service area? It suggests it's available
 6 on the Burkhart's website. Do you know what
 7 areas -- in what areas Burkhart has full
 8 service?
 9 A. I could tell you approximately, but
 10 without a reference I couldn't tell you
 11 exactly.
 12 Q. But if I went to the Burkhart
 13 website, would that tell me the full service
 14 areas, to your knowledge?
 15 A. Yes.
 16 MR. FONTECILLA: Objection.
 17 BY MS. BALBACH:
 18 Q. When approximately in -- what
 19 approximate areas does Burkhart offer full
 20 services?
 21 MR. RACOWSKI: Object to form.
 22 MR. FONTECILLA: Objection.
 23 THE WITNESS: I can tell you to the
 24 best of my knowledge, if that's acceptable.
 25 BY MS. BALBACH:

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1 John C. Kois, Jr.
 2 153 through 159.
 3 MR. FONTECILLA: Can I just get the
 4 the letters?
 5 MS. BALBACH: B as in boy, D as in
 6 David, FTC00000153, and it's what we've
 7 marked as CX1032.
 8 MR. FONTECILLA: Thank you.
 9 BY MS. BALBACH:
 10 Q. I'm introducing CX1032, which
 11 appears to be an agreement. It says across the
 12 top, "ProCare Dental Services." Parties to the
 13 agreement appear to be Burkhart Dental Supply
 14 and Dr. John Kois, and it looks like it has an
 15 effective date of November 14, 2014. Let me
 16 know when you've had a chance to review the
 17 document.
 18 A. Okay.
 19 Q. Do you recognize CX1032?
 20 A. Yes.
 21 Q. What is CX1032?
 22 A. This was the original basis of the
 23 Kois Buyers Group.
 24 Q. And by original, you mean the
 25 agreement between ProCare Dental Services,

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1 John C. Kois, Jr.
 2 Burkhart Dental Supply and Dr. Kois; is that
 3 correct?
 4 A. Yes, this is -- this agreement, it's
 5 my understanding, is the one that preceded
 6 Exhibit KOIS001622.
 7 Q. Were you involved in the negotiation
 8 of what we've marked as CX1032, the original
 9 agreement?
 10 A. I was not.
 11 Q. When you took over as I guess
 12 manager of the Kois Buyers Group, when you got
 13 involved in August or September of 2015, was
 14 this the effective agreement for the Kois
 15 Buyers Group in its dealing with Burkhart?
 16 A. Yes.
 17 Q. I want to call your attention to
 18 page 4 of this agreement. The paragraph that
 19 reads, "Renewal. The parties will draft and
 20 execute a contract reflecting the terms of this
 21 LOI and any other necessary terms no later than
 22 90 days from the effective date of this LOI."
 23 Did I read that correctly?
 24 A. Yes.
 25 Q. Do you know if the parties did in

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1 John C. Kois, Jr.
 2 fact execute a contract reflecting the terms of
 3 this letter of intent?
 4 A. I don't. This is all I've seen.
 5 Q. Had you seen this document, CX1032,
 6 before today?
 7 A. I believe so.
 8 Q. And then I wanted to call your
 9 attention to -- on page 2 of the document
 10 there's a, "Full Service Dental Distribution
 11 Sales and Support." Near the top, "Burkhart
 12 agrees to provide full service dental supply
 13 and equipment distribution, sales and support
 14 with Account Managers (full service) to Tribe
 15 Members with offices in the states listed in
 16 Schedule 2." Did I read that correctly?
 17 A. Yes.
 18 Q. And does that refer to the full
 19 service distribution we've been talking about
 20 already?
 21 A. That would be my understanding.
 22 Q. Okay. And moving to Schedule 2,
 23 which appears to be on page 7 of this document,
 24 do you see Schedule 2 there? "Burkhart agrees
 25 to provide Full Service in the following states

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1 John C. Kois, Jr.
 2 within the United States of America: Alaska,
 3 Arizona, California, Colorado, Idaho, Nevada,
 4 Oklahoma, Oregon, Texas, Utah and Washington."
 5 Did I read that correctly?
 6 A. Yes.
 7 Q. What's your understanding of what
 8 this list means?
 9 A. My understanding is that as of the
 10 date of this agreement these are the states
 11 that Burkhart is able to provide full service
 12 to -- to members.
 13 Q. Do you know if Burkhart provides
 14 full service in each of these states today?
 15 A. I would have to check their website,
 16 but I would -- I would say yes.
 17 Q. And do you know of any states that
 18 are missing from this list in which Burkhart
 19 would provide full service today? Have they --
 20 let me rephrase.
 21 To your knowledge, has Burkhart
 22 added any states to this list in which they
 23 provide full service today?
 24 A. I don't know if they've added or
 25 removed.

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1 John C. Kois, Jr.
 2 Q. Does the Kois Buyers Group run a
 3 website for Kois Buyers Group Members to order
 4 their supplies on?
 5 A. No.
 6 Q. How do Kois -- now just talking in
 7 terms of supplies from Burkhart, how do Kois
 8 Center members order their Burkhart supplies?
 9 A. They contact Burkhart directly.
 10 Q. And does Burkhart have its own
 11 website ordering?
 12 A. Yes.
 13 Q. Could they also order supplies if
 14 the rep comes to the office?
 15 A. Yes.
 16 Q. At one time did the Kois Buyers
 17 Group run a website that included ordering for
 18 Burkhart's supplies on it?
 19 A. No.
 20 MR. GEORGE: Objection.
 21 BY MS. BALBACH:
 22 Q. I'd like to introduce what we've
 23 marked as CX1034, which has a Bates number of
 24 BDS, that's B as in boy, D as in David, S as in
 25 Sam, FTC00017014, and I'll ask the court

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1 John C. Kois, Jr.
 2 reporter to mark that, and the exhibit goes
 3 through page 17017.
 4 (Exhibit CX1034, marked.)
 5 BY MS. BALBACH:
 6 Q. For the record, CX1034 appears to be
 7 an e-mail from info@koisbuyersgroup.com dated
 8 Monday, February 1st, 2016, to Paul Jackson.
 9 Have you had a chance to review?
 10 A. Yes.
 11 Q. Okay. Do you recognize what we've
 12 marked as CX1034?
 13 A. Yes.
 14 Q. What is this document?
 15 A. This was an announcement launching
 16 the koisbuyersgroup.com website.
 17 Q. And whose e-mail is
 18 info@koisbuyersgroup.com?
 19 A. Those e-mails go to me.
 20 Q. Who is Paul Jackson?
 21 A. My guess is that is one of the
 22 members of the Kois Buyers Group or from the
 23 Kois Center at large.
 24 Q. Was this an e-mail that you sent out
 25 to a -- like a bulk distribution list?

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1 John C. Kois, Jr.
 2 the Kois Buyers Group. If you refer to the
 3 ProCare agreement that's labeled CX1032-007,
 4 you'll notice there were different pricing
 5 structures based on the amount of dental
 6 supplies purchased. This was removed in the
 7 new agreement.
 8 Q. So in the new agreement there's no
 9 more spending tiers; is that correct?
 10 A. There's no spending tiers. A flat
 11 annual fee as opposed to a tiered monthly fee
 12 and deposit based on your dental supply
 13 spending.
 14 Q. In the second paragraph you write
 15 after the first sentence -- second sentence,
 16 "We learned that many of our east coast and
 17 international students were not able to benefit
 18 from the lower cost offered by ordering through
 19 Burkhart.
 20 "To that end, we have added
 21 Brasseler, Bisco, Carifree, KeySmile,
 22 Pharmadent, SML - Space Maintainers Lab,
 23 Straumann and Zimmer to our vendors list, all
 24 of which sell directly nationwide." What did
 25 you mean in those sentences?

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1 John C. Kois, Jr.
 2 A. Yes.
 3 Q. Who were the recipients of this
 4 e-mail?
 5 A. These would have either been current
 6 members of the Kois Buyers Group or people who
 7 have attended courses at the Kois Center. I
 8 don't recall which list was used.
 9 Q. You write, "Dear Tribe Members, We
 10 are happy to announce the Buyers Group is now
 11 100 percent managed by the Kois Center." Did I
 12 read that correctly?
 13 A. Yes.
 14 Q. What do you mean there by
 15 100 percent managed?
 16 A. ProCare was no longer involved.
 17 Q. So this was when you had taken over
 18 as manager of the Kois Center?
 19 A. This is when we made a public
 20 announcement regarding it.
 21 Q. You write, "The annual fee is only
 22 \$299 and there's no limit to practice spending
 23 or purchasing." So what does that mean?
 24 A. This is a response to complaints we
 25 received of the original pricing structure of

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1 John C. Kois, Jr.
 2 A. These were the first manufacturers
 3 that do not go through a dental supply company
 4 but sell direct to the dentist. These were the
 5 first ones to be added to the vendor list for
 6 the Kois Buyers Group.
 7 Q. And what did you mean when you
 8 wrote, "We learned that many of our east coast
 9 and international students were not able to
 10 benefit from lower costs"?
 11 A. Originally, Burkhart didn't have a
 12 good way to service accounts outside their full
 13 service areas and there were complaints about
 14 shipping times and product availability for
 15 people on the east coast.
 16 So if people weren't using Burkhart
 17 in any capacity they didn't feel like they
 18 could benefit from the buyers group. Whereas
 19 these other companies had a nationwide presence
 20 and if we added these we could increase the
 21 size of the buyers group by giving more options
 22 to the members.
 23 Q. And you mentioned in this document,
 24 it says, "Navigating the new website,
 25 koisbuyersgroup.com," and I think is where I

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1 John C. Kois, Jr.
 2 was confused before. What is on -- or what's
 3 the purpose of the koisbuyersgroup.com website?
 4 A. The Kois Buyers Group serves two
 5 purposes. It's an online reference to every
 6 vendor and every discount available to the Kois
 7 Buyers Group Members. It is also where you
 8 would sign up for a subscription to Kois Buyers
 9 Group. Subscription is the only product
 10 available for the purchase on the Kois Buyers
 11 Group site. There are no other products for
 12 sale.
 13 Q. And that's the \$299 per year
 14 subscription; is that correct?
 15 A. Correct.
 16 Q. So if you're a new member and you
 17 have the -- take the time to meet with the
 18 Burkhart representative you get a \$299 credit
 19 from Burkhart; is that correct?
 20 A. Specifically, a merchandise credit.
 21 Q. And that's only for the new members;
 22 is that correct?
 23 A. Correct. To clarify, as in there is
 24 no refund available, you need to use it for
 25 products.

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1 John C. Kois, Jr.
 2 to review this document?
 3 A. Yes.
 4 Q. Do you recognize this document?
 5 A. Yes.
 6 Q. What is CX4045?
 7 A. This is a list of all the
 8 participating vendors and the offered discounts
 9 to any member of the Kois Buyers Group.
 10 Q. Is this the information we would see
 11 on the Kois Buyers Group website?
 12 A. Yes.
 13 Q. Do you think this form -- was this a
 14 document you may have sent out to prospective
 15 members?
 16 A. This form is sent out to anybody who
 17 e-mails me and asks for more information about
 18 the buyers group. It's also presented to any
 19 participant who attends a course at the Kois
 20 Center.
 21 Q. And at the top it states, "The
 22 mission of the Kois Buyers Group is to provide
 23 dentists with the lowest price for a product
 24 without having to buy large quantities or wait
 25 for a special trade show price." Do you see

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1 John C. Kois, Jr.
 2 Q. Who is the \$299 a year fee paid to?
 3 A. Kois Tribal Management.
 4 Q. And what do you do with the \$299
 5 that you collect from the members?
 6 A. It covers expenses for Kois Tribal
 7 Management such as website fees, legal fees.
 8 Q. Does the Kois Tribal Management pay
 9 any money to Burkhart out of these fees?
 10 A. They do not.
 11 Q. Who can join the Kois Buyers Group?
 12 A. Anybody who has taken at least one
 13 course at the Kois Center is eligible to join
 14 the buyers group regardless of geographical
 15 location.
 16 Q. I'd like to introduce CX4045. It
 17 also has a Bates stamp of KOIS001626, and this
 18 one is marked confidential.
 19 (Exhibit CX4045, marked.)
 20 BY MS. BALBACH:
 21 Q. CX4045 appears to be a document with
 22 the title, "Kois Buyers Group" on the top.
 23 Underneath www.koisbuyersgroup.com and has a
 24 list of participating vendors. It runs through
 25 Bates number KOIS001629. Have you had a chance

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1 John C. Kois, Jr.
 2 that?
 3 A. Yes.
 4 Q. Did I read that correctly?
 5 A. Yes.
 6 Q. And what did you mean there when you
 7 talked about the mission of the Kois Buyers
 8 Group?
 9 A. The purpose is to offer the best
 10 price for a dentist without them waiting for a
 11 trade show sale regardless of quantity.
 12 Q. And do you have -- is this aimed at
 13 -- particularly at solo practitioners or small
 14 practice groups?
 15 A. It's aimed at everybody. We have
 16 members that have multiple locations. We don't
 17 charge per location, it's per doctor, so if the
 18 doctor works at multiple locations and the
 19 vendors want to extend the discount to the
 20 other locations that's at their discretion. As
 21 far as we're concerned, one membership is one
 22 membership.
 23 Q. Do you have a sense of what
 24 percentage of Kois Buyers Group Members are
 25 solo dentist practices?

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1 John C. Kois, Jr.
2 A. I don't have any factual
3 information.
4 Q. Do you think it's more than
5 50 percent?
6 A. Would you like me to speculate?
7 Q. Yes.
8 A. I think it's less than 50 percent.
9 Q. And what about small practices, like
10 three dentists or less, what percentage -- so
11 that would include the solo practitioners?
12 MR. FONTECILLA: Objection, form,
13 vague.
14 THE WITNESS: I don't have good data
15 on who is practicing in which locations.
16 Specifically, some dentists are in the same
17 location, but they have separate accounts
18 with the dental supply companies so that
19 they may have two different memberships.
20 BY MS. BALBACH:
21 Q. Do you have any DSOs that belong to
22 the Kois Buyers Group?
23 MR. GEORGE: Object to form.
24 THE WITNESS: Can you please define
25 DSO?

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1 John C. Kois, Jr.
2 BY MS. BALBACH:
3 Q. Do you know what DSO stands for?
4 A. Yes.
5 Q. What does it stand for?
6 A. Dental service organization.
7 Q. And do you know what a dental
8 service organization is?
9 A. Well, I do. But for clarification,
10 you asked me if I knew what a DSO was, but I
11 wanted to make sure we're talking about the
12 same thing.
13 Q. What's your understanding of what
14 DSO was?
15 A. DSO is a broad term that people use
16 rather loosely to define any dental
17 organization that has either more than one
18 dentist or more than one location, but the
19 definition of how many of each I don't know if
20 there's been any defining elements to that.
21 Q. What about a large corporate
22 practice where a company may own 30 office --
23 dental offices, do some people refer to those
24 as DSOs?
25 MR. GEORGE: Object to form.

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1 John C. Kois, Jr.
2 MR. FONTECILLA: Objection.
3 THE WITNESS: Are you asking if -- I
4 guess it would be if I personally would
5 refer to them as a DSO, is that what you're
6 asking?
7 BY MS. BALBACH:
8 Q. Yeah. Would you refer to something
9 like that as a DSO or --
10 A. I would refer to their practice
11 organization in however means that they refer
12 to themselves.
13 Q. Do you have any large corporate
14 practices that are members of the Kois Buyers
15 Group?
16 A. I don't have accurate information
17 for that.
18 Q. Turning to the list of participating
19 vendors, let's start with -- this is on CX4045.
20 Let's start with Burkhart Dental. The first
21 bullet, "\$299 merchandise credit for all new
22 Kois Buyers Group Members." Does that refer to
23 what we already talked about, the \$299
24 merchandise credit?
25 A. Yes.

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1 John C. Kois, Jr.
2 Q. And next bullet, "Free two day
3 shipping for direct market members if they
4 purchase more than \$450 in product." Did I
5 read that correctly?
6 A. No.
7 Q. Let me reread it then. "Free two
8 day shipping for the direct market members if
9 they purchase more than \$750 in product." Did
10 I read it correctly that time?
11 A. Yes.
12 Q. Okay. What -- who are the direct
13 market members?
14 A. Based on the agreement with Burkhart
15 and the Kois Tribal Management, the direct
16 market members are members outside of the full
17 service market.
18 Q. And the third bullet, "15 percent or
19 more off retail price for most manufacturers."
20 Did I read that correctly?
21 A. Yes.
22 Q. What does that refer to?
23 A. Specifically, the price that
24 Burkhart considers the retail price for a
25 product. This is 15 percent or more off of

<p style="text-align: right;">Page 50</p> <p>1 John C. Kois, Jr. 2 what they consider their listed retail price. 3 Q. Is that a -- 15 percent is an 4 average, would you say? Strike that. 5 In the contracts we've been looking 6 at earlier today, Burkhart agreed to limit its 7 margin, so how do you get from a margin limit 8 of 28 percent to the 15 percent off of retail 9 price? 10 MR. GEORGE: Object to form. 11 THE WITNESS: It's a question better 12 served for a dental supply company. I'm 13 not sure how their margin price or margin 14 percentage translates into retail price, 15 which is then the subtraction for the 16 15 percent. 17 BY MS. BALBACH: 18 Q. The fourth bullet, "31 manufacturers 19 offering additional discounts," and there's a 20 list of three columns bullet pointed. Who are 21 these manufacturers in terms of their 22 relationship with Burkhart and the Kois Buyers 23 Group? 24 A. These are manufacturers that based 25 on the size of the Kois Buying Group, Kois</p>	<p style="text-align: right;">Page 51</p> <p>1 John C. Kois, Jr. 2 Buyers Group, and the amount of purchases that 3 they've made historically with Burkhart have 4 agreed to an additional discount only available 5 to Kois Buyers Group Members. 6 Q. And is that discount passed through 7 100 percent to the Kois Buyers Group Members by 8 Burkhart? 9 A. Are you asking for my opinion? I 10 don't have a way to verify it. 11 MR. GEORGE: Object to form. Sorry. 12 BY MS. BALBACH: 13 Q. Has Burkhart made any 14 representations to the Kois Buyers Group about 15 these additional discounts for manufacturers? 16 A. They've made -- they've told me 17 there's additional discounts. What the actual 18 discount is to Burkhart versus what's being 19 passed along to the dental practice I have no 20 way of verifying which is which. 21 Q. Do these manufacturers in these 22 three columns offering additional discounts, do 23 they sell direct? 24 MR. FONTECILLA: Objection. 25 THE WITNESS: Some of them do.</p>
<p style="text-align: right;">Page 52</p> <p>1 John C. Kois, Jr. 2 BY MS. BALBACH: 3 Q. Which ones, to your knowledge, sell 4 direct? 5 A. I believe that Ivoclar sells direct 6 to labs, but for the dental practice it must go 7 through a supply company. 8 Q. Are there others that sell direct to 9 dental practices? 10 A. I'm unsure. I think Danville and 11 Butler might, but I don't know for sure. 12 Q. Turning back onto CX4045, there's a 13 lot of other companies on this list besides 14 Burkhart. We've got almost three full pages of 15 companies. Who are these companies? 16 A. These are manufacturers that do not 17 go through -- well, with the exception of 18 Sinclair, who is its -- it's a dental supply 19 company in their own right. The other ones are 20 manufacturers that sell -- or companies that do 21 not sell through a supply company. 22 Q. Sinclair Dental is the distribution 23 company in Canada; is that correct? 24 A. Correct. 25 Q. And so does this document then</p>	<p style="text-align: right;">Page 53</p> <p>1 John C. Kois, Jr. 2 incorporate all the discounts that the Kois 3 Buyers Group gets on all these companies? 4 A. Correct. 5 Q. Do you have -- do you know what the 6 date that this document was created? 7 A. I could give you an approximate 8 date. 9 Q. Yes, please. 10 A. It's approximately first quarter of 11 2018. 12 Q. Are there any things that jump out 13 to you that have changed since this document 14 was produced in terms of your relationships 15 with these participating vendors? 16 A. Kettenbach has an additional offer. 17 That's the only one that jumps out for me. 18 Q. Okay. So this list is pretty 19 current? 20 A. Yes. 21 Q. Did you negotiate on behalf of Kois 22 Buyers Group these discounts with these 23 companies? 24 A. Yes. 25 Q. As far as the manufacturers under --</p>

1 John C. Kois, Jr.
 2 the 31 manufacturers under the Burkhart Dental
 3 section, did you negotiate those discounts or
 4 did Burkhart negotiate those?
 5 A. Burkhart negotiated all the
 6 discounts listed for the 31 manufacturers. The
 7 Kois Center has a relationship with DMG, which
 8 is at the bottom of the first column, but as
 9 far as what the negotiating process was with
 10 Burkhart we have no insight into that other
 11 than we asked DMG if they would consider to be
 12 part -- to provide a discount through Burkhart
 13 that we hoped would ultimately be passed
 14 through to the dental practice, but we have no
 15 way of knowing what the negotiated discount was
 16 and how much of that, if any, was actually
 17 passed on to the dental practice.
 18 Q. Okay. So going back, for these 31
 19 manufacturers you -- you negotiated additional
 20 discounts with Burkhart, you don't know the
 21 value of any of those discounts; is that
 22 correct?
 23 A. Specifically a value on what point
 24 in the sale process? Because I know that
 25 there's additional discounts to the dental

1 John C. Kois, Jr.
 2 A. Correct, in this hypothetical.
 3 MR. RACOWSKI: Counsel, when you're
 4 at a good spot for a break, that would be
 5 great.
 6 MS. BALBACH: I can be there soon.
 7 BY MS. BALBACH:
 8 Q. Are there any manufacturers that
 9 won't discount to the Kois Buying Group,
 10 leaving aside the relationships first with
 11 Burkhart Dental, are there any direct sell
 12 manufacturers that you've been trying to get a
 13 discount with that won't discount to Kois
 14 Buyers Group?
 15 A. I can think of one that has told us
 16 that they don't have an interest in giving a
 17 discount to a buying group.
 18 Q. Who is that?
 19 A. That would be Ultradent. I believe
 20 they are a direct to -- a direct to consumer
 21 manufacturer, and their explanation in a phone
 22 conference I had with them is they had been
 23 part of a buyers group in the past and they
 24 didn't have favorable results. It had nothing
 25 to do with us. As a group, they decided to not

1 John C. Kois, Jr.
 2 office, but I don't know what the ultimate
 3 discount was to Burkhart.
 4 Q. Right. That's my question. Do you
 5 know the terms of Burkhart's --
 6 A. No.
 7 Q. -- deals with these 31
 8 manufacturers?
 9 A. No. I only know what the ultimate
 10 discount is to the practice.
 11 Q. What do you mean the ultimate
 12 discount to the practice?
 13 A. Can I provide an example?
 14 Q. Yes.
 15 A. If Danville offered a discount to
 16 Burkhart of let's say ten percent, and Burkhart
 17 told us that there's an additional discount
 18 offer to Buyers Group Members for nine percent,
 19 I wouldn't know that the discount between
 20 passed through to Burkhart was ten percent. I
 21 only know what the actual discount is to the
 22 dental practice, and that's only because they
 23 tell us so we can tell the members.
 24 Q. And Burkhart tells you it's the nine
 25 percent discount?

1 John C. Kois, Jr.
 2 do them for anything because of a previous
 3 experience.
 4 Q. Did they give you any more detail by
 5 what they meant by didn't have favorable
 6 results?
 7 A. No.
 8 Q. What about manufacturers that would
 9 sell through a dental distribution company like
 10 Burkhart, are you aware of any that won't give
 11 a discount for a buying group to Burkhart?
 12 A. I'm not aware of any nos. I'm not
 13 aware of any companies yet to respond, but I'm
 14 not aware of any definitive answers in the
 15 negative.
 16 Q. What about 3M?
 17 A. In what sense?
 18 Q. Do you have any knowledge of --
 19 they're not -- does 3M sell direct to Kois
 20 Buyers Group Members?
 21 A. I don't believe they do. I believe
 22 they are to the supply companies first, and we
 23 have a generally favorable relationship with 3M
 24 on the Kois Center side.
 25 Q. Does 3M sell to Burkhart Dental, to

1 John C. Kois, Jr.
 2 your knowledge?
 3 A. I believe so.
 4 Q. And -- but 3M is not listed here in
 5 this list as a manufacturer that's giving
 6 additional discounts to the buying group; is
 7 that correct?
 8 A. Correct.
 9 Q. Do you have any -- for the --
 10 leaving aside again Burkhart and Sinclair, do
 11 you have any formal contracts with these
 12 manufacturers for the discount they provide to
 13 the Kois Buyers Group?
 14 A. There are no formal contracts aside
 15 from Sinclair and Burkhart. All vendors are
 16 approached the same way, that we are
 17 comfortable with a handshake and a stated
 18 discount that they'd like to offer the members,
 19 but any request for a contract would come from
 20 the vendor's side. The only two companies that
 21 have requested a contract are Sinclair and
 22 Burkhart.
 23 Q. Are there any terms on your
 24 handshake agreement with the manufacturers?
 25 MR. GEORGE: Objection.

1 John C. Kois, Jr.
 2 Dental section that the discount -- the third
 3 bullet, "There is 15 percent or more off retail
 4 price for the most manufacturers," and where
 5 did you get the 15 percent number?
 6 A. That text I got directly from
 7 Burkhart.
 8 Q. Do you know how Burkhart has
 9 calculated the 15 percent savings?
 10 A. I can guess, but I don't know what
 11 their math was behind that.
 12 Q. Do you have regular updates with
 13 Burkhart that where you might talk about how
 14 the buyers group is doing?
 15 A. Yes, we meet quarterly.
 16 MR. FONTECILLA: Objection.
 17 BY MS. BALBACH:
 18 Q. Who do you meet with at Burkhart
 19 quarterly?
 20 A. Dave Anderson.
 21 Q. And who is Dave Anderson?
 22 A. Dave Anderson is my primary contact
 23 at Burkhart, and I don't recall his title off
 24 the top of my head.
 25 Q. Do you meet by phone or in person?

1 John C. Kois, Jr.
 2 THE WITNESS: When you say terms,
 3 are you regarding the time of the agreement
 4 or the stated discounts? Can you please be
 5 a little more specific?
 6 BY MS. BALBACH:
 7 Q. In terms of time limits -- or have
 8 any of the manufacturers said, you know, for
 9 example, we'll give you this discount for the
 10 next year, or is it -- can it change
 11 day-to-day?
 12 MR. GEORGE: Objection.
 13 THE WITNESS: The agreement is that
 14 they can provide the discount until they
 15 decide not to. There is no stated
 16 agreement time. If they'd like to cancel
 17 tomorrow, that's up to them.
 18 MS. BALBACH: We can go off the
 19 record.
 20 (Break from 3:09 to 3:16 p.m.)
 21 MS. BALBACH: Back on the record.
 22 BY MS. BALBACH:
 23 Q. When we were looking at CX4045, the
 24 listing of the participating vendors in the
 25 Kois Buyers Group, we read under the Burkhart

1 John C. Kois, Jr.
 2 A. We meet in person.
 3 Q. Does he provide you written updates
 4 from Burkhart about the Kois Buyers Group?
 5 A. Yes.
 6 Q. What do those updates contain? What
 7 types of information do the written updates
 8 contain?
 9 A. It contains a break down of full
 10 service and direct service members as a group,
 11 that's as detailed as it gets. Over the course
 12 of the past quarter how the sales are going in
 13 relation to those groups only and how it
 14 relates to what the goal is for supplied
 15 purchases in general, and that supply goal is
 16 created by Burkhart. I don't have any input
 17 into it.
 18 Q. Is that the -- we talked about how
 19 in the previous year there -- in the contract
 20 there was an incentive clause for a reduced
 21 further limited margin if Burkhart met a -- I'm
 22 sorry, if the Kois Buyers Group met a certain
 23 supply level. Do you remember that testimony?
 24 A. Yes.
 25 Q. Is that what you're talking about

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1 John C. Kois, Jr.
 2 here within the quarterly update, you get an
 3 update on where you are in terms -- where the
 4 buyers group is in terms of meeting that goal?
 5 A. Yes, and I don't have any say on
 6 what the difference in margins are or what the
 7 goal amount is. They tell me if the buyers
 8 group hits a certain revenue amount for the
 9 year they would lower their margins by a
 10 certain percentage, but those come out of
 11 Burkhart directly.
 12 Q. In this written update I'm wondering
 13 what information you receive on the full
 14 service members. Do you receive for each
 15 member -- each full service member how much
 16 they've purchased from Burkhart in the quarter?
 17 A. No.
 18 Q. Do you receive an aggregate then of
 19 how much the full service members have
 20 purchased in the quarter from Burkhart?
 21 A. Yes. Sometimes it's -- the number
 22 is -- sometimes the number is less helpful. If
 23 people were previous Burkhart members and then
 24 they become Burkhart members the numbers aren't
 25 really that accurate.

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1 John C. Kois, Jr.
 2 retail, what the savings are. It's just a
 3 collective of that group of dentists.
 4 BY MS. BALBACH:
 5 Q. So is the number that you see, the
 6 dollars that Burkhart is collecting from the
 7 Kois Buyers Group Members in that -- or that
 8 they've billed in that quarter?
 9 A. I don't know if it's everything
 10 they've billed. Like my previous statement, I
 11 don't know how much of that -- I don't believe
 12 there's any service revenue or equipment
 13 rental. It's my understanding that it's dental
 14 supplies only.
 15 Q. I'd like to introduce what we've
 16 marked as CX4051. I'll ask the court reporter
 17 to mark that exhibit.
 18 (Exhibit CX4051, marked.)
 19 BY MS. BALBACH:
 20 Q. For the record, what we've marked as
 21 CX4051 has Bates stamp KOIS002325, and it is a
 22 two-page document, so it goes through 2326. It
 23 appears to be an e-mail from Dave Anderson to
 24 Johnny Kois dated July 14, 2017, regarding
 25 total savings.

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1 John C. Kois, Jr.
 2 Q. And do they break down the -- does
 3 Burkhart break down the sales for the quarter
 4 by -- into two groups, full service versus
 5 direct members, or do they combine it into just
 6 all the members?
 7 A. All three. It's full service,
 8 direct members and combined.
 9 Q. Is the number then the sales by
 10 Burkhart for the quarter, is that correct, or
 11 what is the number that you get?
 12 A. I believe it's the gross supply
 13 sales. I don't know if that includes service
 14 equipment. It's my understanding it is
 15 supplies only.
 16 Q. And is it in a dollar value?
 17 A. Yes.
 18 Q. Does that dollar value include the
 19 discounts that Burkhart has passed on to the
 20 dentists?
 21 MR. FONTECILLA: Objection,
 22 foundation, form.
 23 THE WITNESS: It's the gross amount
 24 charged to the practices as a group only.
 25 I don't know how much of that is off of

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1 John C. Kois, Jr.
 2 Have you had a chance to review the
 3 document?
 4 A. Yes.
 5 Q. Do you recognize CX4051?
 6 A. Yes.
 7 Q. What is this document?
 8 A. As part of our annual symposium in
 9 July I tried to update all the attendees with
 10 any updates from the buyers group in general.
 11 One of the updates I asked from the dental
 12 supply companies and all the vendors is if they
 13 can share with me any information for how much
 14 members of the group have saved as part of the
 15 Kois Buyers Group.
 16 Q. In this e-mail were you asking
 17 Burkhart to give you an estimate of how much
 18 Kois members had saved?
 19 A. Yes.
 20 Q. And were you asking for savings --
 21 it says -- the bottom e-mail from you to Dave
 22 Anderson, do you see that it says, "How much do
 23 you think the Buyers Group Members have saved
 24 since the program started? \$500,000." So were
 25 you asking for the savings since 2014?

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1 John C. Kois, Jr.
 2 A. Yes.
 3 MR. FONTECILLA: Objection.
 4 BY MS. BALBACH:
 5 Q. And you see in the top -- beginning
 6 of the top e-mail, "Johnny, that is difficult
 7 to say with any accuracy because it is an issue
 8 of what to use as the basis for savings. In
 9 the case study illustration that I sent you
 10 that conveyed the supplied percentage of gross
 11 production. We had very accurate numbers to
 12 work as these practices are buying all their
 13 products from Burkhart and we knew what the
 14 supply percentage was prior to working with us
 15 and using the buyers group." Do you see that?
 16 A. Yes.
 17 Q. What did he mean there in terms of
 18 his ability to get to a number?
 19 MR. FONTECILLA: Objection.
 20 BY MS. BALBACH:
 21 Q. Or what is your understanding of
 22 what he was saying -- or what Dave Anderson was
 23 writing to you?
 24 A. The 15 percent savings number needs
 25 to be based on something to be validated, and

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1 John C. Kois, Jr.
 2 smaller than if they're in an area where
 3 there's less competition.
 4 Also depends on if they're coming
 5 from a competitor to Burkhart or they're a
 6 current Burkhart member. And the reference
 7 he's referring to they have the supply -- their
 8 supply savings program is where I believe the
 9 dental practice elects to the purchase all of
 10 their dental supplies through Burkhart.
 11 They will take the previous spend of
 12 the dental practice and compare it to what
 13 their new spending is with everything going
 14 through Burkhart, but that percentage can be
 15 either from an old Burkhart customer to the
 16 supply savings guarantee Burkhart customer, or
 17 from a competitor to Burkhart.
 18 So the basis of the 15 percent is a
 19 difficult number to track down because you
 20 don't know what the basis is. It varies
 21 customer to customer.
 22 Q. Okay. So it's complicated?
 23 A. On average, we thought it might be
 24 15 percent. So what Dave Anderson did was take
 25 all of the purchases from all the Kois Buyers

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1 John C. Kois, Jr.
 2 what he's referring to is what the basis is of
 3 the savings. Retail might not be the number
 4 that normal Burkhart reps give, and retail has
 5 no relevance to competitive dental supply
 6 companies.
 7 So for the basis of our Kois Buyers
 8 Group document, CX4045, it was a number based
 9 on the retail prices for Burkhart specifically,
 10 but when you talk about the actual savings to
 11 the members you need to know where they're
 12 coming from.
 13 For instance, if a member -- if
 14 before they are a Kois Buyers Group Members
 15 they purchase their supplies from Burkhart in a
 16 small quantity they may receive a larger
 17 percentage discount. But if they're already
 18 purchasing in large quantity Burkhart may have
 19 elected to give them additional discounts off
 20 of retail anyway, so they might not see the
 21 savings. It also matters geographically.
 22 If you're in an area of the country
 23 where there's a lot of competition from supply
 24 companies, we've seen that the difference that
 25 the Burkhart people save as part of members is

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1 John C. Kois, Jr.
 2 Group Members and deduct what 15 percent of
 3 that was. That might not be the actual
 4 savings, but that is what 15 percent of 16 --
 5 the \$2,448,328 is 15 percent of \$16,322,192.
 6 That doesn't mean it's an accurate
 7 representation of actual savings for the
 8 members.
 9 Q. Okay. So you mentioned in that
 10 first bullet, "Dental supplies purchased from
 11 Burkhart by Buyers Group Members since
 12 November, 2014, inception." The number there
 13 is \$16,322,192.
 14 So, to your knowledge, Kois Buyers
 15 Group Members, as of the date this e-mail, had
 16 purchased approximately \$16 million in supplies
 17 through the Kois Buyers Group program from
 18 Burkhart; is that correct?
 19 MR. RACOWSKI: Object to form.
 20 MR. GEORGE: Object to form.
 21 MR. FONTECILLA: Objection, doesn't
 22 say through the program.
 23 THE WITNESS: That's my
 24 understanding.
 25 BY MS. BALBACH:

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1 John C. Kois, Jr.
 2 Q. Let me ask again.
 3 A. To clarify, that objection is
 4 correct. It does not say -- people can be
 5 Burkhart members and then become Kois Buyers
 6 Group Members and still be Burkhart customers,
 7 so I don't know with certainty if those numbers
 8 were divided out as part of this number or if
 9 it's just everybody that has purchased from
 10 2014 forward that are current members, and it
 11 doesn't take into account when they signed up
 12 to be members.
 13 Q. Right. I remember you mentioning
 14 that before that -- that a member might have
 15 come in after the inception in November, 2014.
 16 Is it your understanding that he
 17 looked at everybody that was currently, in July
 18 of 2017, or whenever he prepared this analysis
 19 of Buyers Group Members and looked at their
 20 total purchases for Burkhart in this time
 21 period?
 22 MR. GEORGE: Object to form.
 23 MR. FONTECILLA: Objection.
 24 THE WITNESS: That's my
 25 understanding, but without regard to when

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1 John C. Kois, Jr.
 2 pricing for that evaluation comes from, but
 3 then they total up the difference at the
 4 bottom. If you read further in that line
 5 they talk about the difference where
 6 Burkhart adds a percentage to the wholesale
 7 where competitors have slightly different
 8 pricing.
 9 There's a variance in pricing, some
 10 are more expensive, some are less, but when
 11 you follow it down to the bottom it's been
 12 their experience that typical savings is
 13 15 percent, but I don't know what that
 14 number is based on.
 15 BY MS. BALBACH:
 16 Q. Do you have a sense if the
 17 15 percent discount estimate is conservative or
 18 liberal?
 19 MR. GEORGE: Objection.
 20 MR. RACOWSKI: Objection.
 21 THE WITNESS: I don't have a sense
 22 either way. I know the number provided by
 23 Burkhart, and in this case it's 15 percent.
 24 BY MS. BALBACH:
 25 Q. Now I'd like to introduce what we've

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1 John C. Kois, Jr.
 2 they became Kois Buyers Group members.
 3 BY MS. BALBACH:
 4 Q. He says in the second paragraph,
 5 "When I have done line item product pricing for
 6 members, the saving is typically around
 7 15 percent on the total spend that was shared
 8 with me for the analysis." Did I read that
 9 correctly?
 10 A. Yes.
 11 Q. Do you have an understanding of what
 12 he's talking about here in terms of when he has
 13 done product pricing analysis?
 14 A. Yes.
 15 Q. What is the product pricing analysis
 16 that he's done?
 17 A. They will ask a --
 18 MR. FONTECILLA: Objection.
 19 THE WITNESS: They will ask a dental
 20 supply -- dental practice to provide
 21 invoices from either earlier purchases with
 22 Burkhart or from a competitor and compare
 23 the product line by line with what the
 24 pricing is with Burkhart.
 25 I don't know where the Burkhart

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1 John C. Kois, Jr.
 2 marked as CX4053.
 3 (Exhibit CX4053, marked.)
 4 BY MS. BALBACH:
 5 Q. CX4053 is Bates marked KOIS002473.
 6 It's a two page document through page 27 --
 7 strike that.
 8 Through page 2474. For the record,
 9 this appears to be an e-mail from Johnny Kois,
 10 on December 27, 2017, to Dave Anderson, with a
 11 subject of, "Agreement renewal." Have you had
 12 a chance to review that?
 13 A. Yes.
 14 Q. Do you recognize CX4053?
 15 A. Yes.
 16 Q. What is this document?
 17 A. This was the final -- this is where
 18 Dave Anderson sent me -- it's a response to the
 19 e-mail Dave Anderson sent me with the renewal
 20 agreement that we began on January 4th, 2018,
 21 which is renewal of the agreement signed 2016.
 22 Q. In the bottom e-mail from Dave
 23 Anderson to you, the second paragraph, "The
 24 Kois Buyers Group ended with a strong finish
 25 with supply purchases up 28 percent through the

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1 John C. Kois, Jr.
 2 end of November and December's tracking to see
 3 the same range of increase over 2016." Did I
 4 read that correctly?
 5 A. Yes.
 6 Q. And what is -- what's your
 7 understanding of what he means there?
 8 A. That supply purchases are up
 9 28 percent through the end of November and
 10 December is tracking to see the same range of
 11 increase over 2016.
 12 Q. And whose supply purchases would
 13 those be?
 14 A. The Kois Buyers Group Members.
 15 Q. Is this -- we talked about your
 16 quarterly meetings. Is that the type of
 17 information you would get in a quarterly
 18 meeting about how much supply purchases have
 19 increased from quarter to quarter?
 20 MR. FONTECILLA: Objection.
 21 THE WITNESS: This e-mail
 22 specifically is in regards to the final
 23 changes of the agreement itself. We don't
 24 discuss percentage of margin. I get a
 25 stated amount of how much the groups have

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1 John C. Kois, Jr.
 2 incentive level." What does that bullet refer
 3 to?
 4 A. That's in reference to a specific
 5 section in the agreement regarding the margins
 6 or the agreement between the Kois Tribal
 7 Management and Burkhart for the renewed
 8 contract that started in 2018.
 9 Q. What does the 26 percent refer to?
 10 MR. FONTECILLA: Objection.
 11 THE WITNESS: I'd have to refer to
 12 the specific agreement. I can tell you
 13 what I believe it to be.
 14 BY MS. BALBACH:
 15 Q. When you say you'd have to refer to
 16 the specific agreement, I should note for the
 17 record -- hold that thought. I'll state for
 18 the record that this CX4053 is an e-mail that
 19 purports to have an attachment,
 20 IC-415-C1060239.PDF.
 21 I'll represent for the record that
 22 this e-mail is in the form that we received it
 23 and we did not at the FTC receive that
 24 attachment. Okay. With that said, that you'd
 25 have to refer to the specific agreement, which

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1 John C. Kois, Jr.
 2 purchased as a whole and whether it's on
 3 track to maintain certain pricing.
 4 BY MS. BALBACH:
 5 Q. Maybe you misunderstood the question
 6 or I misunderstood your answer. You said
 7 something about we don't get a -- information
 8 about the percentage of margin. The 28 percent
 9 there refers to -- does it refer to volume of
 10 purchases increasing?
 11 A. Yes.
 12 MR. FONTECILLA: Objection.
 13 BY MS. BALBACH:
 14 Q. 28 percent does not refer to the
 15 margin; is that correct?
 16 A. Correct. But lower, the first
 17 bullet point has stated margins.
 18 BY MS. BALBACH:
 19 Q. First bullet point reads, "Change
 20 Section 3, dental supply margin." Did I read
 21 that correctly?
 22 A. Yes.
 23 Q. And the indented first bullet says,
 24 "26 percent slash 37 percent, as long sales
 25 remain at \$6.6 million or more, the 2016

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1 John C. Kois, Jr.
 2 specific agreement would you have to refer?
 3 A. This is in reference specifically to
 4 the renewed agreement that began January 4,
 5 2018. I believe the 26 percent refers
 6 specifically to branded dental supplies, and
 7 the 37 percent would refer specifically to the
 8 Burkhart Private Label supplies.
 9 Q. If I still have CX0287 in front of
 10 you, which is the exclusive supplier agreement
 11 dated the 4th of January, 2016. If you have
 12 that in front of you and compare the two, and
 13 then in CX0287 I draw your attention to
 14 paragraph three at the bottom, "dental supply
 15 margins," is it correct in the 2016 agreement
 16 Burkhart agreed to limit its margins to
 17 28 percent on all brand dental supplies; is
 18 that correct?
 19 A. In which agreement?
 20 Q. In the 2016 agreement.
 21 A. Yes.
 22 Q. And now in -- according to CX4053 --
 23 A. Sorry. To clarify, Section 3.1,
 24 "growth incentive," should the sales be in
 25 excess over 25 percent over 2015 levels

1 John C. Kois, Jr.
 2 Burkhart agrees to limit its margins to
 3 26 percent.
 4 Q. Okay. In the CX4053, in that bullet
 5 that says, "26 slash 37 percent, as long as
 6 sales remain at \$6.6 million or more, 2016
 7 incentive level," is that -- that 26 percent
 8 there in CX4053, does that correspond to the
 9 26 percent we see in CX0287 on the bottom line
 10 of page 1?
 11 A. Yes. And specifically in
 12 CX0287-002, the top, "37 percent on any
 13 Burkhart label dental supplies," it's my
 14 understanding that that is a reference to the
 15 37 percent in the contract is a reference to
 16 the first bullet point on CX4053-001.
 17 Q. Putting this all together, is it
 18 true for the current agreement, which was
 19 effective January 4, 2018, Kois -- Burkhart has
 20 reduced the margin -- its limit on the margins
 21 from 28 to 26 percent on branded dental
 22 supplies?
 23 MR. GEORGE: Objection.
 24 BY MS. BALBACH:
 25 Q. Would you like me to restate?

1 John C. Kois, Jr.
 2 A. Well, specifically to the -- it
 3 aligns with the growth incentive numbers listed
 4 in the 2016 contract.
 5 Q. So did the Kois Buyers Group meet
 6 that 2016 incentive level for sales?
 7 MR. GEORGE: Objection.
 8 BY MS. BALBACH:
 9 Q. Or purchases?
 10 A. I believe they did.
 11 Q. Is that what -- is he reporting to
 12 you -- in the CX4053, in that first bullet and
 13 then the first indented bullet below that where
 14 it says, "26 percent slash 37 percent, as long
 15 as sales remain at \$6.6 million or more," do
 16 you see that?
 17 A. Yes.
 18 Q. Does that \$6.6 million there
 19 correspond to the incentive level mentioned in
 20 CX0287, which is the 2016 agreement?
 21 A. Yes.
 22 Q. And did the Kois Buyers Group meet
 23 the 2016 incentive level?
 24 A. Based on the information from
 25 Burkhart, they did. I don't have any actual

1 John C. Kois, Jr.
 2 data what the dental supply practices
 3 purchased, the dental practice purchased, just
 4 what Burkhart told me they purchased.
 5 Q. Does your new agreement, or your
 6 current effective agreement with Burkhart
 7 include margin limits of 26 percent and
 8 37 percent?
 9 A. Yes.
 10 Q. In the next bullet down on CX4053,
 11 the first bullet, "Change Section 3," and then
 12 the second bullet there, "Remove growth
 13 incentive," what does that mean?
 14 A. There's no additional reduction in
 15 margins as there was in the 2016 contract, as
 16 long as the growth is at least \$6.6 million,
 17 that the margins will stay the same.
 18 Q. So this reduction from 28 percent to
 19 26 percent, and from 39 to 37 percent, does
 20 that mean the Kois Buyers Group Members are
 21 getting additional two percent discount on
 22 Burkhart's supplies irrespective of that other
 23 supply program member?
 24 MR. GEORGE: I just want to state
 25 for the record I think we're misreading,

1 John C. Kois, Jr.
 2 because 3.1 does not have that reduction in
 3 it. If you look at 3.1, that may clear
 4 this up a little bit.
 5 MS. BALBACH: Which CX are you
 6 looking at?
 7 MR. GEORGE: CX0287.
 8 BY MS. BALBACH:
 9 Q. Okay. Let's turn back to CX0287,
 10 which is the 2016 agreement. And we're -- I'm
 11 trying to compare the 2016 and the 2018
 12 agreements and the margin limit specifically.
 13 Okay. So in CX0287, paragraph 3,
 14 "Dental supply margins. Burkhart agrees to
 15 limit its margins to 28 percent on any and all
 16 brand dental supplies, and 39 percent on any
 17 Burkhart Private Label dental supplies sold to
 18 buyers group, et cetera." Did I read that
 19 first part correctly?
 20 A. Yes.
 21 Q. Okay. And then looking at CX4053
 22 where it says, "Change section 3, dental supply
 23 margins, 26 slash 37 percent," how do the
 24 margins of 26 and 37 in CX4053 compare to the
 25 margins of 28 and 39 percent in 0287? Are

1 John C. Kois, Jr.
 2 those related or am I missing a point here?
 3 MR. GEORGE: Object to form. Sorry
 4 to be a pain about this, but I would check
 5 out Section 3.1.
 6 BY MS. BALBACH:
 7 Q. What is Section 3.1, in your
 8 understanding, saying?
 9 MR. GEORGE: Object to form.
 10 BY MS. BALBACH:
 11 Q. And this is in CX0287.
 12 A. That the total spend for the Kois
 13 Buyers Group and Burkhart was in excess of
 14 \$6.6 million per year for the previous year,
 15 then Burkhart agreed to limit its margins to
 16 26 percent on any all brand dental supplies and
 17 37 percent on any Burkhart Private Label dental
 18 supplies.
 19 Q. So does that mean that in 2016 if
 20 the goal was met, that it would -- you would
 21 get the 26 margin limit?
 22 A. "Further stated, performance will be
 23 checked 12-31-16, and the margin limit changed
 24 beginning 01-01-17. Sales must be maintained
 25 in excess of \$6.6 million annually for the

1 John C. Kois, Jr.
 2 contract as a growth incentive, so these
 3 aren't new limits for 2018.
 4 This is a continuation of the margin
 5 limits that were set in 2017 because the
 6 growth incentive goals were hit at the end
 7 of 2016. My understanding is the margin of
 8 26 percent slash 37 percent listed in
 9 CX4053-001 is stated as a continuation of
 10 the margins that were enjoyed by the
 11 members in 2017. The difference is there's
 12 no additional growth incentive. It's a
 13 stated amount provided that the sale remain
 14 at \$6.6 million.
 15 BY MS. BALBACH:
 16 Q. But the margin limit was reduced
 17 from 2016 to 2017?
 18 A. Yes.
 19 Q. And why was the margin limit reduced
 20 from 2016 to 2017?
 21 A. The buyers group as a whole
 22 generated sales based on Burkhart's numbers in
 23 excess of \$6.6 million per year, as stated in
 24 3.1 growth incentive on document CX0287-001.
 25 Q. I would like to introduce what we've

1 John C. Kois, Jr.
 2 margins to be limited at this level."
 3 Q. Okay. Does that mean starting in
 4 January of 2017, assuming that you met the
 5 incentive level for 2016, the 28 percent margin
 6 on branded dental supplies was reduced in 2017
 7 to 26 percent?
 8 MR. GEORGE: Object to form.
 9 THE WITNESS: Yes.
 10 BY MS. BALBACH:
 11 Q. And then, so for the contract -- the
 12 current contract that's effective January 4,
 13 2018, and back on the e-mail CX4053, the
 14 current limits on margin in the contract are 26
 15 and 37 percent; is that correct?
 16 MR. GEORGE: Object to form.
 17 THE WITNESS: Yes.
 18 BY MS. BALBACH:
 19 Q. And is that 26/37 percent, as
 20 mentioned in CX4053, a two percent reduction
 21 from the original margin limits in the 2016
 22 agreement of -- or CX0287?
 23 MR. GEORGE: Objection.
 24 THE WITNESS: I would say it's not
 25 because those limits were stated in the

1 John C. Kois, Jr.
 2 marked as CX4055.
 3 (Exhibit CX4055, marked.)
 4 BY MS. BALBACH:
 5 Q. For the record, what we've marked as
 6 CX4055 has a Bates number of KOIS002850, and
 7 it's through page 2855. This appears to be an
 8 e-mail from Thaddeas S. Michalski dated
 9 April 12, 2018, to Dave Anderson, with a CC to
 10 John Kois, Jr., and Ally Miller. The subject
 11 is "RE: Leaving the Kois Buyers Group." Do
 12 you recognize this document, CX4055?
 13 A. Rings a bell once I reread it. I
 14 didn't recognize it at first.
 15 Q. What is this document?
 16 A. This is a response to a doctor from
 17 Burkhart who was interested in no longer using
 18 Burkhart as their dental supply company.
 19 Q. Who is Thaddeaus S. Michalski?
 20 A. I would assume this is a Kois Buyers
 21 Group Members. Or rather, based on the e-mail
 22 I would say a previous member. It appears that
 23 they are no longer a member based on the
 24 correspondence in this e-mail.
 25 Q. Okay. Calling your attention to

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1 John C. Kois, Jr.
 2 page -- I guess it's page 5, CX4055-005, you
 3 see an e-mail there at the bottom of the page
 4 from Dave Anderson dated April 6, 2018 to
 5 doctor@michalskimd.com?
 6 A. Yes.
 7 Q. And the e-mail starts, "The Kois
 8 Center has notified us you have not renewed
 9 your Kois Buyers Group membership." Do you see
 10 that?
 11 A. Yes.
 12 Q. Is this a form of an e-mail that you
 13 recognize?
 14 A. Yes.
 15 Q. What is this e-mail -- this form
 16 used for?
 17 A. So several of the vendors will send
 18 an e-mail to the dental practices when they
 19 have not renewed their membership with the
 20 buyers group. If they are a regular customer
 21 or someone they're hoping to do business with,
 22 so I send out lists to all the vendors with the
 23 updated member list -- updated with whether or
 24 not they're active or expired memberships.
 25 This e-mail is a response to one of

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1 John C. Kois, Jr.
 2 those e-mails. My assumption is based on this
 3 date somewhere, previously to April 6, this
 4 doctor had recently let their buyers group
 5 membership lapse.
 6 Q. And do you see the e-mail above
 7 dated April 9, where Dr. Michalski writes to
 8 Dave Anderson with a CC to you, "Good morning,
 9 Dave. I understand it has been a while since
 10 we ordered from Burkhart. Being on the east
 11 coast it is just not working for us for several
 12 reasons." Did I read that correctly?
 13 A. Yes.
 14 Q. Do you have an understanding of what
 15 Dr. Michalski is writing about there?
 16 A. Not here. In his continuing e-mails
 17 I get a better sense.
 18 Q. Okay. Is -- so in that e-mail, too,
 19 we see Dr. Michalski's address. Is he located
 20 in Rocky Hill, Connecticut?
 21 A. I would assume so.
 22 Q. Were you referring to the first
 23 e-mail at the top of the chain, the April 12
 24 e-mail that Dr. Michalski writes to Dave, is
 25 that where you were looking?

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1 John C. Kois, Jr.
 2 A. Specifically on CX4055-003, you see
 3 Dr. Michalski's response to Dave Anderson. And
 4 he lists some of the items that -- some of the
 5 issues that he had that led to him ultimately
 6 to stop using Burkhart as their supply company.
 7 Q. Okay. I'll read that into the
 8 record.
 9 A. I'm not familiar if there are other
 10 things with the buyers group that they had a
 11 problem with, but specifically this is in
 12 reference to any issue they had with Burkhart.
 13 Q. He writes -- Dr. Michalski writes,
 14 "Dave, I'm sure it works for some folks, not
 15 just for us. Other than the intangibles of a
 16 local rep, the distance issue came up a few
 17 times. An example is shipping times. Orders
 18 took several days, up to a week to receive,
 19 whereas our local supplier was typically next
 20 day delivery. Also, if you look, you would see
 21 there are quite a few returns." And then he
 22 goes on. Did I read that part correctly?
 23 A. Yes.
 24 Q. And what is your understanding of
 25 what he's complaining about or talking about

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1 John C. Kois, Jr.
 2 there in terms of shipping times?
 3 A. It's my understanding that the
 4 shipping time was longer than he would have
 5 preferred for a company that's doing mail
 6 order.
 7 Q. And as we talked about earlier
 8 today, out in Connecticut, to your knowledge,
 9 Burkhart does not have a distribution center?
 10 A. To my knowledge.
 11 Q. Okay. I wanted to ask you about on
 12 page -- CX4055-003, so same page we were on
 13 there's a table. And the first column is
 14 labeled, "Case study 1, 2, 3, 4, 5, 6" going
 15 down. And this is in -- what looks to be an
 16 e-mail from Dave Anderson dated April 9 to the
 17 dentist and copying you again.
 18 The table also includes columns.
 19 "Number of products compared. Total dollars on
 20 invoices. Invoices from Burkhart slash Kois
 21 Buyers Group dollar saving and percentage of
 22 savings." Do you know who prepared this table?
 23 A. My understanding is that table was
 24 prepared by Dave Anderson, the sender of the
 25 e-mail.

1 John C. Kois, Jr.
 2 Q. Do you know what this table is
 3 trying to represent?
 4 A. I would assume.
 5 MR. FONTECILLA: Objection.
 6 THE WITNESS: I would assume that
 7 any dental supply company has tables
 8 similar to this that they send to their
 9 members. Specifically, they took a
 10 collection of invoices from the
 11 competitor's listed and compared them to
 12 the pricing they would have received if
 13 they were part of the Kois Buyers Group.
 14 BY MS. BALBACH:
 15 Q. "Case study one," does that
 16 encompass one dental practice, whereas case
 17 study two is a separate dental practice?
 18 A. I don't know. I just know the
 19 number of products that are listed. I don't
 20 know where they came from.
 21 MR. FONTECILLA: Objection.
 22 BY MS. BALBACH:
 23 Q. Have you seen other types of case
 24 studies from Dave Anderson like this?
 25 A. Yes.

1 John C. Kois, Jr.
 2 is referencing into this. I can assume that
 3 because it's coming from Burkhart that the
 4 numbers are favorable to Burkhart.
 5 Q. What do you mean the numbers are
 6 favorable to Burkhart?
 7 A. My assumption is if Burkhart is
 8 sending this to a dental practice that they're
 9 hoping to win back they're not going to show
 10 them that their average savings is 15 percent
 11 if they go to a supply company outside of
 12 Burkhart.
 13 Q. So they're trying to show -- to your
 14 knowledge, they're trying to show the dentist
 15 here that if you were to stay with Burkhart --
 16 or that these -- I'm sorry, let me start again.
 17 Is it your understanding that Dave
 18 Anderson here is trying to show in this table
 19 that across these six case studies there's been
 20 an average of negative 14.96 percent savings?
 21 MR. FONTECILLA: Objection.
 22 THE WITNESS: My assumption is
 23 that's what it's trying to show. It's
 24 missing some data to be a complete table.
 25 It shows the number of products, but it

1 John C. Kois, Jr.
 2 Q. And in what form have you seen other
 3 case studies like this?
 4 A. Like this? I've seen -- these
 5 numbers, I don't recall if they're the same of
 6 the ones I've seen before. On occasion, in our
 7 meetings on the screen he would show a
 8 comparison of monthly spend for a particular
 9 practice, but the name of the practice was not
 10 available. I don't know who they were talking
 11 about. This is an exercise that they do with
 12 any customer that's part of the supply side
 13 savings guarantee, regardless if they're a Kois
 14 Buyers Group or not.
 15 Q. In the last row it says -- in the
 16 last two columns, "Average minus
 17 14.96 percent." Do you know what that means?
 18 A. Based on the table, I would say
 19 that's the average of the above numbers listed
 20 in the column percent savings.
 21 Q. And does that negative 14.96 percent
 22 relate to the 15 percent savings that we've
 23 been talking about for Kois Buyers Group
 24 Members from Burkhart?
 25 A. I don't know which way the negative

1 John C. Kois, Jr.
 2 doesn't say the time frame that those
 3 products were purchased, and the pricing
 4 was compared so I don't know how -- what
 5 time span these products span a case study
 6 or if they are multiple offices.
 7 MR. RYAN-LANG: I don't want to
 8 break up your stride. You've got another
 9 25 more minutes into your hours. We can
 10 keep going for that and then take a break
 11 or whatever you want.
 12 MR. RACOWSKI: We're actually done
 13 at --
 14 MS. BALBACH: Can we go off the
 15 record.
 16 (Break from 4:09 to 4:17 p m.)
 17 BY MS. BALBACH:
 18 Q. Mr. Kois, is the Kois Buyers Group
 19 membership growing today?
 20 A. Yes.
 21 Q. How would you describe the growth
 22 over the last year of the Kois Buyers Group?
 23 A. Is there a metric you'd like me to
 24 compare it to?
 25 Q. I think earlier today you testified

1 John C. Kois, Jr.
2 that you have about 500 members currently in
3 the Kois Buyers Group; is that correct?

4 A. No, it's approximately 500 in the
5 United States.

6 Q. And I should state this, let's just
7 talk about the members in the United States.
8 In all these questions if I forget to mention
9 the United States that's what I mean. If I'm
10 going to talk about Canada I'll specifically
11 ask about Canada, is that okay?

12 A. Okay.

13 Q. You said that you currently have
14 about 500 members in the U.S.; is that correct?

15 A. Yes.

16 Q. Has that -- where were you in
17 membership a year ago?

18 MR. GEORGE: Objection.

19 THE WITNESS: For the United States
20 only, I believe that number was around 400.
21 BY MS. BALBACH:

22 Q. Why is the membership in the Kois
23 Buyers Group growing?

24 A. Dental practices enjoy saving money.

25 Q. And do the dentists tell you this

1 John C. Kois, Jr.
2 directly?

3 A. That they enjoy getting their
4 products for cheaper?

5 Q. Let me rephrase. Do the Burkhart
6 members tell you directly that they're saving
7 money?

8 A. Burkhart members?

9 Q. I'm sorry, one more time. Do the
10 Kois Buyers Group Members tell you they are
11 saving money directly with the program?

12 A. Yes.

13 Q. How often do you interact with
14 members of the Kois Buyers Group?

15 A. Depending on how often they come,
16 because some of the members are attending
17 classes, so if they come to the Kois Center for
18 our course and they're a member of the buyers
19 group there's an opportunity that I may have
20 interaction with them, but I don't actively
21 solicit it.

22 MS. BALBACH: We are done with our
23 questions for now. We'll reserve any
24 remaining time we have for redirect.

25 CROSS-EXAMINATION

1 John C. Kois, Jr.
2 BY MR. RACOWSKI:

3 Q. Good afternoon, Mr. Kois. My name
4 is Ken Racowski. I'm an attorney for Benco.
5 We met earlier today. I just have some
6 questions for you with the same instructions
7 and caveats that Ms. Balbach gave you. Do you
8 agree and understand to the same ground rules
9 that she laid out earlier today?

10 A. Yes.

11 (Exhibit 1, marked.)

12 BY MR. RACOWSKI:

13 Q. Handing you what we'll mark as
14 Respondent's Kois Jr. 1, can you take a look at
15 the document and tell me what it is?

16 (Exhibit 1, marked.)

17 THE WITNESS: This appears to be a
18 printout of my previous deposition.

19 BY MR. RACOWSKI:

20 Q. Just to be clear, the investigation
21 hearing which they took of you last year,
22 July 26, 2017, right?

23 MR. FONTECILLA: Do you have me on
24 mute?

25 MS. BALBACH: Sorry. We can hear

1 John C. Kois, Jr.
2 you. Can you hear us now?

3 MR. FONTECILLA: Yeah, how long have
4 you guys been going?

5 MS. BALBACH: Approximately one
6 minute, 30 seconds.

7 MR. FONTECILLA: All right. Thank
8 you.

9 MS. BALBACH: Do you want to catch
10 him up, Ken?

11 MR. RACOWSKI: No, we're fine. Do
12 you need me to repeat my question?

13 THE WITNESS: Yes, please.

14 BY MR. RACOWSKI:

15 Q. Is it correct that the Federal Trade
16 Commission took your deposition, which they
17 called an investigational hearing, last year on
18 July 26, 2017?

19 A. Yes.

20 Q. Does Respondent's Kois Jr. 1 in
21 front of you appear to be the transcript of
22 that deposition?

23 A. Yes.

24 Q. Have you seen the transcript of that
25 deposition before?

1 John C. Kois, Jr.
 2 A. Yes.
 3 Q. Have you reviewed it?
 4 A. Yes.
 5 Q. During that deposition slash
 6 investigational hearing you were sworn under
 7 oath, correct?
 8 A. Yes.
 9 Q. And everything that you testified to
 10 in that 2017 deposition was true and accurate
 11 at the time that you gave it, correct?
 12 A. Yes.
 13 Q. And is it your belief and
 14 understanding that everything in there you
 15 testified to in that 2017 deposition is true
 16 and accurate today?
 17 A. Yes.
 18 Q. Is there anything in there that you
 19 know to be inaccurate that needs to be
 20 corrected?
 21 A. Not to my recollection.
 22 Q. You can put that one aside. And so
 23 this morning we took the deposition of your
 24 father, Dr. Kois, and you were in the room and
 25 present for the entirety of that deposition,

1 John C. Kois, Jr.
 2 then my discussions went into I believe the
 3 spring of 2016 when I went down for their
 4 summit in Texas.
 5 Q. Okay. And so we looked at two of
 6 the agreements today that involved Burkhart.
 7 One was the ProCare agreement with Burkhart,
 8 and then the second one was an agreement just
 9 between Kois Buyers Group and Burkhart; is that
 10 right?
 11 A. Specifically, the Kois Tribal
 12 Management, which is the company that operates
 13 the Kois Buyers Group.
 14 Q. So what you're talking about,
 15 negotiations with Benco, could have been for
 16 what became the second agreement, the one with
 17 just Kois Tribal Management and Burkhart?
 18 A. Correct.
 19 Q. Have you ever met Qadeer Ahmed?
 20 A. Yes.
 21 Q. When?
 22 A. July of 2015, when he was a speaker
 23 at the Kois Center Annual Symposium.
 24 Q. And before that time did you know
 25 him in any capacity?

1 John C. Kois, Jr.
 2 correct?
 3 A. Yes.
 4 Q. And was there anything in your
 5 father's testimony today that you believe was
 6 inaccurate or needs to be corrected based on
 7 your knowledge?
 8 A. I would say some of the negotiations
 9 regarding the -- having Benco included in the
 10 Kois Buyers Group, I managed all those
 11 negotiations and that wasn't quite clear in
 12 Dr. Kois' deposition.
 13 Q. Any other issues or topics?
 14 A. Nothing that I can think of in
 15 relation to that. At that time we entertained
 16 the idea of Benco being the supply company as
 17 part of the buyers group, but ultimately that's
 18 not the direction we went.
 19 Q. Okay. And in your prior two answers
 20 when you talk about negotiations with Benco,
 21 what is the time period that you're referring
 22 to?
 23 A. It was approximately fall of 2015 is
 24 when I first started discussions with Benco,
 25 specifically for the Kois Buyers Group, and

1 John C. Kois, Jr.
 2 A. Only in reference to his work on the
 3 Kois Buyers Group.
 4 Q. Prior to meeting him in person, how
 5 many communications, if any, e-mail, cell
 6 phone, et cetera, had you had with him?
 7 A. Not very many. I would say
 8 conservative estimate would be less than five,
 9 and I haven't had very -- all my communications
 10 have been sporadic at best.
 11 Q. And what's your understanding of
 12 when Mr. Ahmed and ProCare were removed from
 13 involvement with the Kois Buyers Club?
 14 A. My understanding is when I started
 15 negotiating directly with Burkhart in the fall
 16 is when we began to distance ourselves from
 17 ProCare.
 18 Q. And I think earlier you put that in
 19 August, September of 2015?
 20 A. Correct.
 21 Q. And then since that time, where you
 22 stepped in and actively were involved in
 23 managing Kois Tribal Management, how would you
 24 describe the role that your father, Dr. Kois,
 25 had in Kois Tribal Management?

<p style="text-align: right;">Page 102</p> <p>1 John C. Kois, Jr. 2 A. I would describe his involvement as 3 zero, zero involvement. 4 Q. Okay. When it comes to post Tribal 5 Management, post August, September, 2015, you 6 were the one that was involved in any 7 activities, not your father, correct? 8 A. Correct. He had served as a place 9 for me to get advice, but any of the actual 10 business decisions were made through me. 11 Q. When you had discussions with Benco 12 in the 2015-2016 time period, could you briefly 13 describe what those discussions were, where 14 they began and where they ended? 15 A. I had been in contact with Benco for 16 -- partly with my dad's travel schedule with 17 his speaking on Benco's behalf. In part of 18 those conversations Benco came out to check in 19 with us and asked if there was any 20 opportunities for us to work together. 21 And I told them that the Kois Buyers 22 Group agreement with Burkhart was coming up for 23 renewal, and I approached them about the idea 24 of having more than one -- if they'd be willing 25 to be a second dental supply company as part of</p>	<p style="text-align: right;">Page 103</p> <p>1 John C. Kois, Jr. 2 Kois Buyers Group. I also approached Burkhart 3 and asked them if they would be willing to be 4 in a buyers group with more than one dental 5 supply company. 6 Q. And the response from both Benco and 7 Burkhart to that question was no? 8 A. Correct. 9 Q. Mr. Kois, handing you what's been 10 marked as Respondent's Kois Jr., 2. 11 (Exhibit 2, marked.) 12 BY MR. RACOWSKI: 13 Q. Do you recognize this document? 14 A. Yes. 15 Q. Looking at the top, it appears to be 16 an e-mail from you to your father dated 17 October 20, 2015; is that right? 18 A. Yes. 19 Q. And so just focusing on the top 20 e-mail between you and Dr. Kois you write, 21 "He's ex-ing you out of the buyers group. We 22 can discuss when you are free." Did I read 23 that right? 24 A. Yes. 25 Q. What did you mean by that?</p>
<p style="text-align: right;">Page 104</p> <p>1 John C. Kois, Jr. 2 A. If you look at what Qadeer's e-mail 3 is they're talking about some additional 4 programs that Qadeer was looking to launch with 5 the Kois Members Buyers Group. I think he 6 calls it an insurance alternative, but these 7 were starting to go out from -- after he spoke 8 at the Kois symposium these e-mails start, 9 which is July of 2015. These type of e-mails 10 started to go out more regularly from ProCare 11 specifically and not with any preview to the 12 Kois Center, but the members still had the 13 understanding that everything that Qadeer had 14 sent in was with the approval of the Kois 15 Center, and that's not the direction we wanted 16 to take things. 17 Q. Just to make sure I understand it, 18 put differently, was it the case that Mr. Ahmed 19 was using the Kois Tribal Management e-mail 20 lists to pitch or sell other non-Kois related 21 products? 22 A. I don't know where his list came 23 from. I think it was partly from the Kois 24 Buyers Group, because in the beginning he was 25 getting a list of all the members of the buyers</p>	<p style="text-align: right;">Page 105</p> <p>1 John C. Kois, Jr. 2 group. It's my understanding, as part of his 3 presentation at the symposium, he asked people 4 to e-mail him if they were interested in 5 additional information and he directed them to 6 his website where they can add themselves to 7 the members list. 8 So they may not -- his mailing list 9 may not be all Kois Buyers Group Members. It 10 may be some, but certainly some that had 11 attended the annual symposium. 12 Q. After the date of this e-mail, 13 October 20th, 2015, did you address this issue 14 to Mr. Ahmed? 15 A. I did not. 16 Q. Was this issue part of what, in your 17 mind, led to Mr. Ahmed and ProCare's departure 18 from Kois Tribal Management? 19 A. Yes. The way the Kois Center 20 conducts things is less about a revenue source 21 for the Kois Center and more about adding value 22 to the members, and it was my opinion that some 23 of the things that Qadeer had been discussing 24 with the members was starting to divert from 25 the Kois Center philosophy.</p>

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1 John C. Kois, Jr.
 2 Q. On that same date, in which your
 3 father and Mr. Ahmed was talking about a video
 4 which you called a marketing tool for him and
 5 not good for the center?
 6 A. Yes.
 7 Q. And did you have the same issue
 8 there as with the e-mail that we were just
 9 discussing?
 10 A. Yes. There has been times in the --
 11 in my dad's past where anything that he puts
 12 his name on has an automatic view of
 13 endorsement whether that's correct or not, so
 14 since my involvement with the center I've been
 15 very careful about what my dad puts his name on
 16 and his face on because the Kois Center itself
 17 doesn't take any sponsorship dollars.
 18 So anything that has a quote or his
 19 picture next to people assume, incorrectly or
 20 not, that it was a paid advertisement. I'm
 21 very careful about what he puts his name on,
 22 and the program that Qadeer had presented at
 23 the symposium I had questions that I didn't get
 24 answered. So I asked -- I told my dad that it
 25 might be wise to distance themselves from that

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1 John C. Kois, Jr.
 2 of products, but in an upward trajectory, and
 3 they're usually focused around when we do
 4 announcements for additional vendors, so if a
 5 dental practice thinks they can make -- if they
 6 think they can make up the \$300 a year in
 7 supply from a particular vendor that just
 8 joined it, I believe it would give them
 9 incentive to join the Kois Buyers Group even if
 10 they were not utilizing Burkhart.
 11 Q. Is it fair to say that the two
 12 biggest factors in the increase in members
 13 between those two time points that we've been
 14 discussing was your slashing the fee to \$299
 15 and adding the list of direct manufacturers
 16 that we've looked at several times today?
 17 A. My opinion is that that's a fair
 18 assumption.
 19 Q. Is it correct, or do you think
 20 there's another factor?
 21 A. If you wanted to add another factor,
 22 it was clarity of how the program was set up.
 23 There was a bit of confusion early on of when
 24 people paid, what offer they got and from whom.
 25 You even see that in some of the information

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1 John C. Kois, Jr.
 2 program until we got some more clarity.
 3 Q. So you testified a little bit
 4 earlier today, and I think at more length in
 5 your prior deposition, about the number of
 6 members in the United States of Kois Tribal
 7 Management at various times. I just want to
 8 thumb through that to try to lay down a clear
 9 timeline.
 10 At the time you took over, which
 11 we're still putting August or September, 2015,
 12 how many U.S. members were there?
 13 A. Approximately, 174.
 14 Q. Okay. How about sitting here today?
 15 A. In the U.S. --
 16 Q. Yes.
 17 A. -- there's approximately 500.
 18 Q. And has the growth been steady or up
 19 and down between those two time periods?
 20 A. More up than down. We don't have
 21 very many cancellations for members. If they
 22 do, they're generally from people who no longer
 23 practice or signed up and realize the products
 24 they use aren't offered for the program.
 25 Lab technicians use a different set

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1 John C. Kois, Jr.
 2 from Burkhart directly, where there was some
 3 less than ideal communication with the dental
 4 practices. If I could add a third factor I
 5 would say probably the clarity of the program.
 6 Q. Thank you for that. Just to try to
 7 expedite the process a bit, there's an e-mail
 8 that Kois produced starting in March of 2015
 9 through November of 2015 that recounts
 10 departures from Burkhart to you. And it seems,
 11 by my count, about 22 dentists that Burkhart
 12 notified you departed during that time period.
 13 Do you know that e-mail?
 14 A. No.
 15 Q. Does that number sound about right
 16 of the cancellation during that time period?
 17 A. I wasn't much involved in the first
 18 part of that year and I didn't start getting
 19 regular updates of the member list until later
 20 in the year, and certainly until February of
 21 2006 when I relaunched the Kois Buyers Group
 22 website, up until then there wasn't an easy way
 23 to generate an accurate list of members.
 24 Q. What was the date, the closest you
 25 recall, that you changed the membership fee

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1 John C. Kois, Jr.
 2 structure to the \$299?
 3 A. That changed in -- we announced it
 4 February 1st, 2016, to be effective March 1st,
 5 2016, and we elected -- everybody who had been
 6 a member prior to that had made one payment,
 7 and that was taken as a deposit, and we elected
 8 to extend their membership based on the current
 9 membership fee of \$299 and round it up to the
 10 nearest year. So if people spent \$499 as a
 11 deposit we rounded that up to a two-year
 12 membership.
 13 Q. That's very generous. What's the
 14 date, to the best of your recollection, when
 15 you rolled out a -- what you would consider
 16 robust list of direct manufacturers into the
 17 program?
 18 MS. BALBACH: Objection, form.
 19 THE WITNESS: It depends on if you
 20 base that from percentage gain from vendors
 21 from report to report. My opinion is that
 22 every time we add a vendor it's a better
 23 list than the previous one, but percentage
 24 gain, when we first launched in February of
 25 2016, had the largest percentage increase

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1 John C. Kois, Jr.
 2 Q. Any that stick out in your mind?
 3 A. Sinclair Dental Supply in Canada,
 4 Straumann is an implant company that was
 5 another big one that was popular, and the
 6 vendors we choose are mostly based on feedback
 7 from the members. So people asked me if we can
 8 add this vendor to the group, usually my
 9 response is do you have somebody I can contact
 10 there because that expedited the process a bit.
 11 Q. To be clear, Sinclair is a supply
 12 company or distributor only for members based
 13 in Canada, correct?
 14 A. Correct.
 15 Q. So the addition of Sinclair wouldn't
 16 have had any impact on the U.S. members of Kois
 17 Tribe?
 18 A. Correct. Also, the manufacturers
 19 that we choose are also manufacturers that my
 20 dad recommends in his lectures, so it kind of
 21 has a built-in marketing piece. So that's one
 22 of the areas we focus on for if we're looking
 23 for members -- or for vendors.
 24 Q. And the date of the agreement
 25 between Burkhart and Kois Tribal Management,

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1 John C. Kois, Jr.
 2 because we went from essentially one to I
 3 think there was six or seven.
 4 BY MR. RACOWSKI:
 5 Q. And then following that
 6 February 1st, 2016 date, you would roll out an
 7 announcement of the direct to manufacturers who
 8 were being added in real time as you were
 9 adding them?
 10 A. Mostly, unless it was close to our
 11 symposium where if it was a big name we may
 12 elect to wait and announce it at our annual
 13 symposium in July. We find that with all the
 14 means of communication it's still the most bang
 15 for your buck when you tell a large group of
 16 people as opposed to an e-mail or a social
 17 media update.
 18 Q. Between February 1st, 2016 and
 19 present, are there any other dates in your mind
 20 where there was a roll out or disclosure of
 21 either a large number or what you considered
 22 significant number or significant direct
 23 manufacturer that you added to the program?
 24 A. Not a number, but particular
 25 manufacturers were notable additions.

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1 John C. Kois, Jr.
 2 the one that didn't include ProCare was
 3 January 4th of 2016; is that right?
 4 A. Correct.
 5 Q. When, in your mind, did negotiations
 6 end with Benco about becoming a potential
 7 partner in that cycle or iteration of the
 8 program?
 9 A. I believe that was somewhere in
 10 November of 2015.
 11 Q. So any correspondence that Burkhart
 12 was sending to you after that time in November,
 13 up through when the agreement was signed or
 14 disclosed in January, would have been for
 15 not -- as your mind had been made up, that you
 16 were not going to go with Benco as a supplier?
 17 MS. BALBACH: Objection.
 18 THE WITNESS: They were also talking
 19 about their own buyers group I think about
 20 that time, and their -- we didn't get full
 21 clarity of what their intention was until
 22 we met with them in January of 2016.
 23 BY MR. RACOWSKI:
 24 Q. Got it. And is it fair to say that
 25 the Cain Watters Buying Group was something

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1 John C. Kois, Jr.
 2 different and separate from being a supplier
 3 for Kois Tribal Management?
 4 A. Yes. And I believe they had even
 5 offered to allow -- as part of the agreement,
 6 current Kois Buyers Group Members to enjoy
 7 discounts at Benco if -- because that's with
 8 Kois Tribal Management, if Kois Center agreed
 9 to be part of their buyers group.
 10 But we ultimately declined because
 11 that's on the education level and it required
 12 discounts on our courses and we didn't feel
 13 that the reduction in revenue for the courses
 14 justified -- we didn't see the upside of that
 15 for us.
 16 Q. Got it. Did you ever instruct
 17 Mr. Ahmed to contact the Seattle Study Club for
 18 any reason?
 19 A. I don't believe so.
 20 Q. Was Mr. Ahmed still working on
 21 behalf of the Kois Buyers Club in March of
 22 2016?
 23 A. Not to my knowledge. His
 24 involvement was on his insurance process,
 25 insurance company idea, but as far as I know

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1 John C. Kois, Jr.
 2 2016 date, because there were no requirements
 3 that members buy only from Burkhart, you're
 4 aware of members that still purchased supplies
 5 from Schein, Patterson and Benco, correct?
 6 A. Sure. The Kois Center purchases
 7 products from different supply companies. If a
 8 member would tell us that they got a better
 9 price with a supply company other than Burkhart
 10 I would tell them congratulations.
 11 Q. Since you've been involved with the
 12 Kois Center have you known Patterson, Schein
 13 and Benco to behave as anything other than
 14 fierce competitors?
 15 A. I don't know what you mean by fierce
 16 competitors.
 17 Q. Sure. Can you think of any examples
 18 where Patterson, Schein and Burkhart did not
 19 try to take customers -- sorry, strike that.
 20 Let me start over.
 21 Can you think of any examples where
 22 Patterson, Schein and Benco did not try to take
 23 customers from each other and/or from Burkhart
 24 and Kois Tribal Management?
 25 A. No.

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1 John C. Kois, Jr.
 2 that hasn't gone anywhere. The Kois Center or
 3 Kois Tribal Management is not involved.
 4 Q. Just to go back and touch briefly
 5 again on Kois Tribal Management member
 6 cancellations, you testified during your last
 7 deposition that there was some cancellations
 8 because other distributors matched the
 9 program's pricing and dentists wanted to stick
 10 with distributors with which they were already
 11 working; is that accurate?
 12 A. Yes.
 13 Q. After -- let's use your
 14 February 1st, 2016 date. Were there instances
 15 of cancellations for that reason that you know
 16 of?
 17 A. I can't think of any specific
 18 cancellations because people were getting the
 19 same or better pricing than dental supply
 20 company. What I would hear is people would
 21 continue to use their current dental supply
 22 company and use the buyers group for the
 23 independent manufacturers that we had as part
 24 of it.
 25 Q. So then even after the February 1,

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1 John C. Kois, Jr.
 2 Q. Are you aware that the FTC in this
 3 action is alleging that Patterson, Schein and
 4 Benco entered into an agreement not to do
 5 business with buying groups?
 6 A. Yes.
 7 Q. Did you know that prior to today?
 8 A. Yes.
 9 Q. And you don't have any personal
 10 knowledge of the existence of any such
 11 agreement, do you?
 12 A. Any what kind of agreement?
 13 Q. Any agreement between Patterson,
 14 Schein and Benco to not do business with buying
 15 groups?
 16 A. I have no knowledge of that.
 17 MR. RACOWSKI: Barring any follow-up
 18 questions, I cede the rest of my time for
 19 counsel for Schein and Patterson.
 20 CROSS-EXAMINATION
 21 BY MR. GEORGE:
 22 Q. Hello again, Dr. Kois. I'm Andrew
 23 George, I represent Patterson.
 24 MR. RACOWSKI: Mr. Kois.
 25 BY MR. GEORGE:

1 John C. Kois, Jr.
 2 Q. Are you not a dentist?
 3 A. No.
 4 Q. Mr. Kois, sorry about that. You
 5 said your father has essentially no role in
 6 managing Kois Buyers Club; is that right?
 7 A. Correct.
 8 Q. Okay. And outside of the time
 9 you've spent on this -- or on legal cases, you
 10 spend relatively little time on the buying
 11 group compared to your work at the Kois Center;
 12 is that right?
 13 A. Are you looking for an actual number
 14 of hours per week? Do you have a -- what do
 15 you consider a relatively low?
 16 Q. I think you testified in your
 17 previous deposition that it was around five
 18 percent of your time. Does that sound about
 19 right?
 20 A. That's probably about accurate.
 21 Q. Okay. And if that's the case, is it
 22 safe to assume that Kois Buyers Club is not a
 23 significant part of Kois Center's operations?
 24 MS. BALBACH: Objection.
 25 THE WITNESS: Yes.

1 John C. Kois, Jr.
 2 my understanding they were written by Qadeer
 3 and sent out on behalf of the Kois Center.
 4 Q. You testified in your earlier
 5 deposition that Qadeer wasn't very good about
 6 contacting people; does that ring a bell?
 7 A. Yes.
 8 Q. Okay. What did you mean by that?
 9 A. I had heard from members that came
 10 for courses that they had reached out to Qadeer
 11 and they hadn't heard back. That was in direct
 12 response to questions regarding the buyers
 13 group and how to get set up, what were their
 14 discounts, et cetera.
 15 Q. And actually, even for the members
 16 that did join, they didn't even get charged
 17 like until March, 2016, because of problems
 18 with the structure of the program; is that
 19 right?
 20 MS. BALBACH: Objection.
 21 THE WITNESS: They were charged as a
 22 deposit and their money wasn't applied to
 23 their membership until we officially
 24 launched and we started accruing their
 25 charges in March of 2016. But there's some

1 John C. Kois, Jr.
 2 BY MR. GEORGE:
 3 Q. And you stepped into manage Kois
 4 Tribal Management in 2015; is that right?
 5 A. Yes.
 6 Q. And the reason you were brought in
 7 was because at the time the buying group lacked
 8 direction and clarity, right?
 9 A. And structure.
 10 Q. And structure. It didn't have a
 11 website?
 12 A. No.
 13 Q. The website that we saw being
 14 launched in Exhibit CX1034, that didn't exist
 15 at the time you took over?
 16 A. That's correct.
 17 Q. There were no hand outs for
 18 attendees for courses at the Kois Center?
 19 A. No.
 20 Q. No e-mail, newsletters to attendees
 21 or members of the Kois Center?
 22 A. I believe there were newsletters.
 23 Q. Okay.
 24 A. But I wasn't very familiar with what
 25 they were other than that they were -- it was

1 John C. Kois, Jr.
 2 confusion. Some members thought they were
 3 being charged a monthly fee for the
 4 program.
 5 BY MR. GEORGE:
 6 Q. Is it fair to say it was pretty
 7 disorganized before you came on board?
 8 MS. BALBACH: Objection to form.
 9 THE WITNESS: I would say I would
 10 have preferred a bit more structure in it.
 11 BY MR. GEORGE:
 12 Q. Okay. The adding of vendors that we
 13 saw in Exhibit CX1034, which is the one that
 14 describes the website launch, and Exhibit 4045,
 15 CX4045, do you -- how do those vendors come to
 16 be added, is that your doing?
 17 A. Yes.
 18 Q. And I assume that you had to wait
 19 for the expiration of Burkhart's exclusivity,
 20 or was that not an issue?
 21 A. It wasn't an issue. That was
 22 specifically for a dental supply company.
 23 These vendors don't operate -- they sell
 24 direct -- they are manufacturers that sell
 25 direct to a consumer.

<p style="text-align: right;">Page 122</p> <p>1 John C. Kois, Jr. 2 And I was clear with Burkhart up 3 front that we were going to be adding members, 4 since they didn't have a problem -- since they 5 didn't sell those products any way. 6 Q. So it would have been a problem to 7 add a distributor, like another company that 8 was a competitor of Burkhart? 9 MS. BALBACH: Objection, form. 10 THE WITNESS: Yes. 11 BY MR. GEORGE: 12 Q. Now, you mentioned when you 13 testified in your earlier deposition that some 14 of the trouble with recruiting members for the 15 buying group was that potential members are 16 happy with existing membership with 17 distributors; is that right? 18 A. Yes. 19 Q. And you still would say that that's 20 the case? 21 A. Yes. I would say that there are 22 dental practices that it doesn't matter what 23 kind of savings that you offer them on a 24 supply, they're staying with their rep and 25 they're happy with that relationship.</p>	<p style="text-align: right;">Page 123</p> <p>1 John C. Kois, Jr. 2 Q. It's safe to say, for some of them, 3 the personal relationship is a significant part 4 of it? 5 A. Yes. 6 Q. That there's a loyalty factor there? 7 A. Yes. 8 Q. And also some significant practical 9 benefit such as the reps helping the dentist 10 manage their inventories; is that right? 11 A. I can't speak to the benefits of 12 what value a rep brings to a dental practice. 13 I'm not a dentist; I've never run a dental 14 practice. 15 Q. Fair. 16 A. I would tell you that there are 17 dentists that have a personal connection with 18 their reps, but to what extent they add value I 19 can't speak to it. 20 Q. But it is true that the reps do 21 often help dentists manage their inventory; is 22 that right? 23 A. I've never had -- I've never worked 24 with a rep in the practice. I could tell you 25 that's what the dental practices told me, but</p>
<p style="text-align: right;">Page 124</p> <p>1 John C. Kois, Jr. 2 I've never seen it myself. 3 Q. That's what you've heard from dental 4 practices? 5 A. Yes. 6 Q. Got it. It's also true that members 7 of the Kois Buyers Club -- let me ask this, 8 actually. Prior to the website's development, 9 members of the Kois Buyers Club had to contact 10 vendors directly even when buying through the 11 buying group; is that right? 12 MS. BALBACH: Objection, form. 13 THE WITNESS: I'm sorry, can you 14 restate that? 15 BY MR. GEORGE: 16 Q. Sure. Before you had a website, if 17 a member was to buy a product through the 18 buying group they would have to contact a 19 vendor directly, they wouldn't be able to buy 20 it through the buying group? Like there's no 21 central ordering platform that you had; is that 22 right? 23 MS. BALBACH: Objection. 24 THE WITNESS: There is no central 25 ordering platform and there was never.</p>	<p style="text-align: right;">Page 125</p> <p>1 John C. Kois, Jr. 2 BY MR. GEORGE: 3 Q. And there still isn't, right? 4 A. Correct. 5 Q. And it is the case that from time to 6 time other distributors have been known to 7 match prices with the price offer to buying 8 group members, right? 9 A. Yes. 10 Q. And that includes Schein and 11 Patterson to match those prices? 12 A. I don't always hear who the reps are 13 that are matching prices. I just hear existing 14 reps have given them the same price. 15 Q. Is it safe to say that there's going 16 to be at least one example of that happening 17 for Schein and Patterson? 18 A. I would say there's probably at 19 least one example for all the dental supply 20 companies, including the smaller ones that you 21 never hear about. 22 Q. And for a member of a buying group, 23 if they can get the same price from a 24 distributor outside the buying group it 25 somewhat undermines the benefit of memberships;</p>

1 John C. Kois, Jr.
 2 is that right?
 3 MS. BALBACH: Objection, form.
 4 THE WITNESS: I guess it depends on
 5 what value they're getting and from which
 6 manufacturers.
 7 BY MR. GEORGE:
 8 Q. Okay.
 9 A. All the vendors are designed to give
 10 a dental group at least their annual feedback
 11 in a savings, so depending on how many of those
 12 used it, it varies how much people save per
 13 year.
 14 Q. Turning to Exhibit CX4055 and 4051,
 15 looking at 4055, page 003, let me know when
 16 you're ready.
 17 A. Okay. I'm ready.
 18 Q. The numbers in these case studies, I
 19 just want to make sure I understood. You don't
 20 know how accurate these savings numbers are; is
 21 that right?
 22 A. No. I don't know what time period
 23 they cover, so I don't know when the savings
 24 are compared and what the time frame is that
 25 these invoices were pulled from.

1 John C. Kois, Jr.
 2 would say that the total number on the invoices
 3 is comparatively -- I would say that's a small
 4 percentage based on the number of the total
 5 amount spent.
 6 Q. So you don't have any way to know
 7 how representative these particular case
 8 studies are of overall savings that may or may
 9 not have occurred for members of the buying
 10 group?
 11 A. It requires the actual invoices to
 12 compare and I don't have any of that.
 13 Q. I believe you said before members of
 14 your buying group can buy dental supplies and
 15 services from whomever they want?
 16 A. Whoever and whatever quantity.
 17 Q. And some buy from Patterson; is that
 18 right?
 19 A. I would assume that.
 20 Q. And some from Schein?
 21 A. I have no data on who buys from
 22 what, but based on the fact that we have
 23 members that don't spend with Burkhart and are
 24 still members, my assumption is they buy from
 25 somewhere other than Burkhart.

1 John C. Kois, Jr.
 2 Q. And you don't know what the savings
 3 were relative to other prices that the buyer
 4 could have gotten from other vendors in a given
 5 situation, correct?
 6 A. Correct.
 7 Q. Okay. And it's pretty hard to know
 8 that, right? That data -- you don't have that
 9 data; is that right?
 10 A. I personally do not.
 11 Q. In comparing the total of the
 12 invoices in column three on Exhibit 4055,
 13 versus total dental supplies purchased number,
 14 which is about \$16 million on Exhibit 4051, the
 15 case studies mentioned on 4055 are a very small
 16 fraction of the overall purchases made through
 17 the buying group; is that right?
 18 A. You're asking if the total number of
 19 invoices listed on CX4055-003 is a small number
 20 compared to the \$16 million number on
 21 CX4051-001?
 22 Q. Yes, or to the total purchases
 23 that -- if you know that number roughly in your
 24 head?
 25 A. I don't know the total number. I

1 John C. Kois, Jr.
 2 Q. And I believe you testified at your
 3 deposition, your earlier deposition, that you
 4 believed that Patterson originally may not have
 5 been interested in working with Kois Buyers
 6 Club because it had no members at the time; is
 7 that right?
 8 A. Yes.
 9 Q. Okay. Same for Schein?
 10 A. Same for all of them, including
 11 Burkhart.
 12 Q. And in the case of Patterson and
 13 Schein, you haven't gone back to either of them
 14 since the Kois Buyers Club obtained members to
 15 try to do business with them; is that right?
 16 A. I've been contacted by Schein Canada
 17 in relation to being a supplier in Canada.
 18 Q. And you declined to do business with
 19 Schein Canada; is that right?
 20 A. No. I said I just signed a deal
 21 with Sinclair, which is approximately two
 22 years, so call me in two years.
 23 Q. As for the United States, you
 24 haven't approached Schein or Patterson since
 25 obtaining any members?

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1 John C. Kois, Jr.
 2 A. I have not.
 3 Q. Okay. And you're not interested in
 4 working with Schein or Patterson at the moment
 5 in the United States; is that right?
 6 MS. BALBACH: Objection, form.
 7 THE WITNESS: I guess am I
 8 interested in having them be the exclusive
 9 dental supply company to the buyers group
 10 because we work with them as part of Kois
 11 Center.
 12 I'm not interested -- it's not that
 13 I'm not interested in working with them as
 14 much as I've put a lot of time and effort
 15 into the relationship I have now with
 16 Burkhart, so I don't want to spend more
 17 time to change.
 18 BY MR. GEORGE:
 19 Q. And I should have been more
 20 specific. I meant with respect to the buying
 21 group that you're not interested in having
 22 Patterson or Schein as the distributor for the
 23 buying group?
 24 A. To clarify, it's not that I'm not
 25 interested. I don't want to take the time to

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1 John C. Kois, Jr.
 2 you'd like I can point you to the testimony,
 3 but you were asked the question -- the question
 4 is, "Is Kois interested in partnering with a
 5 variety of vendor? In other words, is it
 6 important to have as many vendors as possible?"
 7 And the answer you gave was "no." Can you just
 8 help me to understand what you meant there?
 9 A. So we tried to only add vendors that
 10 add specific value, and a good example is from
 11 my discussions with Burkhart and Benco, neither
 12 one was interested in giving the best possible
 13 price if there was another dental supply
 14 company as part of the group.
 15 That's not always the case on
 16 particular products. I found that my opinion
 17 is people's choices of implant systems is very
 18 specific, where people don't necessarily move
 19 implant system to implant system. So a buyers
 20 group can support more than one implant system
 21 as multiple vendors, so people have multiple
 22 choices.
 23 But that doesn't mean anybody who
 24 sells products to dental companies are welcome
 25 vendors. We only want people that we think

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1 John C. Kois, Jr.
 2 change what I have now.
 3 Q. You testified today, I think the
 4 line was every time we add a vendor it's
 5 better, and you had testified at your
 6 deposition that it's not important for the Kois
 7 Buying Groups to have as many vendors as
 8 possible.
 9 When you said vendor today, did you
 10 mean manufacturer? I can read the line to you
 11 if you'd like. You said, "Every time we add a
 12 vendor, it's better." I'm just trying to
 13 reconcile those two.
 14 A. I think that a manufacturer can sell
 15 to a supply company and a manufacturer can sell
 16 direct to a consumer, so for the purposes of
 17 this discussion a vendor is the direct
 18 relationship in the buyers group where there
 19 are distribution companies and -- that sell to
 20 consumers and manufacturers that sell to
 21 consumers.
 22 Q. So you're saying that vendor would
 23 cover both distributors and manufacturers?
 24 A. Potentially.
 25 Q. Okay. So what did you mean? If

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1 John C. Kois, Jr.
 2 will add value to the practice. Some vendors
 3 will want to just get the name as a certified
 4 Kois Buyers Group Members to get the list to
 5 market from. We don't have any marketing
 6 companies.
 7 Several products we floated to our
 8 members and they didn't see value in it and
 9 we've elected to pass on their inclusion as a
 10 vendor. It's not because they weren't willing,
 11 it's just we didn't think it was a good fit for
 12 our membership as a whole.
 13 We're very particular and very
 14 protective of what our -- the inclusion in the
 15 buyers group means in terms of some sort of
 16 unspoken endorsement from the Kois Center.
 17 Q. Have you, up until now, seen any
 18 specific value that would have been added, or
 19 that would be added by having Patterson as a
 20 vendor?
 21 A. I'm not very familiar with what the
 22 value adds are with Patterson as opposed to the
 23 value adds that we get with Burkhart, so I
 24 haven't done any research to know what that
 25 would be.

1 John C. Kois, Jr.
 2 Q. And absent having some answer to
 3 that question, some specific value in mind,
 4 there's no reason for you to add Patterson as a
 5 vendor?
 6 A. I think more than that, that added
 7 value would have to outweigh the effort it
 8 would take to explain to our members that we've
 9 been telling for the last three and a half,
 10 four years that go to Burkhart to go to a
 11 different supply company. That's not an easy
 12 ask.
 13 Q. So it's a combination of that
 14 difficult ask and also the lack of specific
 15 added value that has caused you -- causes you
 16 not to think that Patterson would be -- should
 17 be added as a vendor?
 18 MS. BALBACH: Objection, form.
 19 THE WITNESS: I don't have an
 20 opinion whether or not they would be a fit
 21 or not. I just have a good relationship
 22 with Burkhart and I haven't moved in any
 23 direction to change that.
 24 BY MR. GEORGE:
 25 Q. And not working with Schein and

1 John C. Kois, Jr.
 2 Patterson or Benco has not impacted the success
 3 of your buying group in any way; is that right?
 4 MS. BALBACH: Objection, form.
 5 THE WITNESS: Not that I can tell.
 6 MR. GEORGE: Nothing further.
 7 MS. BALBACH: Schein's counsel?
 8 CROSS-EXAMINATION
 9 BY MR. FONTECILLA:
 10 Q. Mr. Kois, thank you for your
 11 patience today. I know it's been a long day.
 12 Do you want to take a break or can you keep
 13 going? I probably have 10 to 15 minutes.
 14 A. I can keep going.
 15 Q. Okay. Great. Like I said, my name
 16 is Adrian Fontecilla. I'm with Proskauer Rose.
 17 I'm in D.C. Earlier -- and I'll try not to
 18 cover everything that's been covered before,
 19 but I apologize in advance if perhaps there's
 20 an overlap a little bit. Is that okay?
 21 A. Sure.
 22 Q. Okay. And if you can't hear
 23 anything I say just, you know, because of the
 24 phone line, just let me know and I'll repeat
 25 it.

1 John C. Kois, Jr.
 2 A. I understand.
 3 Q. Great. Earlier you mentioned that
 4 one of the requirements for someone to be
 5 eligible to join the buying group was that they
 6 needed to take a class at the center; is that
 7 correct?
 8 A. Correct.
 9 Q. And what types of classes does the
 10 center offer?
 11 A. The center offers continuing
 12 education classes specifically. We ask that
 13 they take what we consider a core course, which
 14 is one of the courses that is taught
 15 specifically by Dr. Kois, Dr. John Kois, my
 16 father. In reference -- instead of like an
 17 adjunct course.
 18 Q. And those are taught in person at
 19 the center?
 20 A. Correct. We do no online learning.
 21 Q. Okay. And so for someone to take a
 22 course they have to be in Seattle and be in
 23 person at the course with your father?
 24 A. Correct.
 25 Q. Okay. And so for dentists on the

1 John C. Kois, Jr.
 2 east coast, they would have to fly out to
 3 Seattle and take the course, right?
 4 A. Correct.
 5 Q. And what is the price range for
 6 those core courses that are the requirement to
 7 be eligible to join the buying group?
 8 A. A three day course is \$5,395. A
 9 five day course is \$9,995.
 10 Q. And those are the only two options?
 11 A. Yes.
 12 Q. Okay. So just so I have it right,
 13 to be eligible to join the buying group
 14 dentists on the east coast, for example, just
 15 as a hypothetical, would have to pay for the
 16 airfare and hotel to fly out because the center
 17 doesn't cover that, right?
 18 A. Correct.
 19 Q. And then they'd also have to pay on
 20 top of that the cost of the course itself,
 21 right?
 22 A. Correct.
 23 Q. Do you charge tax on top of that or
 24 any fees?
 25 A. We do not.

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1 John C. Kois, Jr.
2 Q. Okay. And none of that is recouped
3 or reimbursed depending on how long the dentist
4 is a member or how much they purchased from any
5 of the approved vendors of the group, right?
6 A. Are you talking about a specific
7 reimbursement from the Kois Center to a Kois
8 Tribal -- Kois Buyers Group Members?
9 Q. Right.
10 A. There are no reimbursements.
11 Q. Okay. Can you pull up one of the
12 documents that is in that big stack next to
13 you. It's CX4055, and I think Andrew was just
14 asking you a couple questions about that chart
15 on page 3 of that e-mail.
16 A. Yes.
17 Q. Okay. Do you have that chart in
18 front of you again?
19 A. Yes.
20 Q. Okay. You didn't actually prepare
21 the chart yourself, right?
22 A. Correct.
23 Q. And you didn't ask Mr. Anderson to
24 send you the underlying data or invoices you
25 used to compile the chart, right?

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1 John C. Kois, Jr.
2 A. Correct.
3 Q. And you don't know anything about
4 the dentists or the dental offices that are
5 supposedly represented in this chart, right?
6 A. Correct.
7 Q. And you never, after receiving this,
8 asked him to send you any of that information?
9 A. I never ask for any information that
10 I can't send to other people.
11 Q. Right. Okay. That makes sense.
12 You didn't do any calculations of your own to
13 double check any of his math that's in this
14 chart?
15 A. No. And as true for any vendor, any
16 information that they give to me I take as the
17 correct information. I don't do any fact
18 checking.
19 Q. Sure. Now, of course, you would
20 also agree that it's in Burkhart's interest and
21 Mr. Anderson's interest to represent to you
22 that they're delivering as much savings as they
23 can represent to you through numbers, right?
24 A. Are you referring specifically to
25 this case study?

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1 John C. Kois, Jr.
2 Q. I'm saying generally. You
3 understand Mr. Anderson's incentive is to
4 demonstrate to you as a vendor pitching for
5 your business that he could be delivering or
6 can deliver the max amount of savings that he
7 can represent through any data he has, right?
8 MS. BALBACH: Objection.
9 THE WITNESS: He's not pitching me.
10 This is another conversation with another
11 dentist. I rely on the dentist to tell me
12 whether or not they're saving.
13 BY MR. FONTECILLA:
14 Q. Okay. Let me ask it this way.
15 Burkhart sells its Private Label products to
16 these dentists as well, right?
17 A. This particular dentist I don't know
18 what they sold them.
19 Q. No, I know. Just take a step back
20 with me here. Just generally, the products
21 that Burkhart sells to the Kois Buyers Group
22 that could be represented here, they include
23 Burkhart Private Label products, right?
24 A. I would assume that.
25 MS. BALBACH: Objection.

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1 John C. Kois, Jr.
2 BY MR. FONTECILLA:
3 Q. And we saw in the contract that
4 there was a different discount offered for
5 the -- or a different margin level range for
6 the products that Kois Buying Group Members
7 would buy for products that were Burkhart
8 Private Label?
9 A. Yes.
10 Q. Okay. So it's possible that
11 Mr. Anderson could be comparing, you know, a 3M
12 or identified products sold by Schein or
13 Patterson to a comparable Private Label product
14 sold by Burkhart, right?
15 MS. BALBACH: Objection.
16 THE WITNESS: I don't know what
17 products are represented, so I would say
18 that that is a possibility.
19 BY MR. FONTECILLA:
20 Q. Sure. If it was in fact what you --
21 and I understand you don't know because you
22 don't have access to the data, but if it was in
23 fact what he did for some of these products it
24 could inflate the level of savings; is that
25 correct?

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1 John C. Kois, Jr.
 2 MS. BALBACH: Objection.
 3 THE WITNESS: I don't know what the
 4 savings are based on.
 5 BY MR. FONTECILLA:
 6 Q. Sure, and I know that. I'm just
 7 asking you if that's what he did, and you
 8 learned that what was represented here, to some
 9 extent that would mean savings are inflated,
 10 right?
 11 MS. BALBACH: Objection.
 12 THE WITNESS: I'm not sure how to
 13 answer that. You're asking me -- are you
 14 asking me to speculate that if they are
 15 comparing branded products to non-branded
 16 products that that would affect these
 17 savings in this case study, or are you
 18 suggesting it's a hypothetical? I'm not
 19 sure --
 20 BY MR. FONTECILLA:
 21 Q. That's exactly what I'm asking you.
 22 A. I don't know how the margin
 23 percentage translates into the actual price,
 24 and based on this, it looks like it's comparing
 25 invoice to invoice, so I don't know how much

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1 John C. Kois, Jr.
 2 the margin affects the actual price of the
 3 product. So I don't know if a Private Label
 4 product would make a difference.
 5 Q. Sure, and that's fair enough. You
 6 don't know whether Mr. Anderson used private
 7 labels or different products to compare to
 8 those that were on the invoice he's
 9 referencing, right?
 10 A. That's correct. I have no knowledge
 11 of what products are being compared to what.
 12 Q. And you understand that sometimes
 13 some manufacturers only offer certain products
 14 or certain sizes of products through specific
 15 authorized distributors and not through others?
 16 MS. BALBACH: Objection.
 17 THE WITNESS: I don't know the
 18 particulars of -- I'm not familiar with the
 19 catalogs of other dental supply companies.
 20 I primarily deal with Burkhart.
 21 BY MR. FONTECILLA:
 22 Q. I'm just asking generally. You've
 23 been in the industry for a while, you've been
 24 involved in this, and I'm asking based on your
 25 personal knowledge and if you don't know you

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1 John C. Kois, Jr.
 2 don't know, but do you have an understanding of
 3 whether some manufacturers sell certain product
 4 or sizes of product, or SKUs, whether they sell
 5 those through some authorized distributors but
 6 not through others?
 7 A. I don't have any knowledge of that.
 8 Q. Do you see in the chart some of the
 9 rows combine Henry Schein with other
 10 distributors?
 11 A. Yes.
 12 Q. And is it your understanding, for
 13 example, the products and invoices used for
 14 that row, that particular case study, are a
 15 combination of not just Schein's prices?
 16 A. That would be my understanding.
 17 Q. When you took over as CEO in 2015,
 18 you stated that you wanted to see if you could
 19 make the buying group successful; is that
 20 right?
 21 A. Yes.
 22 Q. Okay. And, you know, if you can
 23 think back to 2015, do you recall considering
 24 and, you know, brainstorming through various
 25 options for how to do that?

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1 John C. Kois, Jr.
 2 A. Yes.
 3 Q. And did you consider restructuring
 4 the buying group?
 5 A. Restructuring what?
 6 Q. I mean, in any way. Did you think
 7 about restructuring the buying group in any
 8 way?
 9 A. I did. I changed the pricing
 10 structure, I added additional vendors, both of
 11 which can be considered restructuring.
 12 Q. Sure. And I'm more getting at
 13 things you ultimately considered but you
 14 decided weren't the right thing to do for the
 15 group and so you chose not to do them even
 16 though you may have considered them when you
 17 were trying to think about all the ways that
 18 you could possibly, you know, make this buying
 19 group successful. Did you consider any other
 20 ways that you could restructure the group?
 21 A. Yes.
 22 Q. What were some of those ways?
 23 A. I looked at the -- how realistic it
 24 would be to do some sort of group purchase,
 25 where we would get a --

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1 John C. Kois, Jr.
 2 Q. You mean through centralized
 3 purchasing -- I'm sorry, I didn't mean to
 4 interrupt you.
 5 A. Well, where we get a commitment from
 6 dental practices that were members and see if
 7 that commitment would allow for a discounted
 8 price.
 9 Q. Sure. You considered changing the
 10 membership terms to kind of include a
 11 commitment or a requirement or obligation by
 12 the members regarding their purchasing and who
 13 they purchase from and how much, right?
 14 A. Yes.
 15 Q. And why did you ultimately decide
 16 against that?
 17 A. I thought in, in my opinion, it went
 18 against some of the values of the Kois Center.
 19 We don't want to direct anybody to buy anything
 20 that isn't best for their practice, so if the
 21 brand of -- pick a dental supply -- that we
 22 would get the best price on, I wouldn't want
 23 people to feel obligated to purchase to get a
 24 better price if it's not a product they used in
 25 their practice.

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1 John C. Kois, Jr.
 2 that members would have to purchase that others
 3 would not be available to eliminate the options
 4 for members in order to try to get some charge
 5 backs from the manufacturers to the distributor
 6 that you would choose?
 7 A. It's not something we considered. I
 8 know that that's an option that I'm sure
 9 would -- if I had to guess, I would say that
 10 that would be an option that would elicit
 11 better pricing if you can guarantee certain
 12 products, but in the end we make
 13 representations on Kois Center's side, but we
 14 don't have anybody use any product they're not
 15 comfortable with, so we would rather give less
 16 of a discount and give people the option to get
 17 what they want.
 18 Q. Did you consider centralizing on
 19 behalf of all your members to perhaps reduce
 20 the cost of the distributor of having to --
 21 multiple different ship to locations and ship
 22 to kind of fees?
 23 A. No.
 24 Q. Do you understand that, you know,
 25 that may have reduced the pricing obtained from

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1 John C. Kois, Jr.
 2 Also, a commitment without any money
 3 behind it for people isn't always a very strong
 4 commitment, so then there's the thought of
 5 building the infrastructure available to take
 6 deposits for products that may or may not go
 7 forward.
 8 If you get a commitment for a better
 9 price if you order 10,000 units of -- pick your
 10 product -- and you get 9,000 and the pricing
 11 isn't what you agreed on you'd have to figure
 12 out how to return all those deposits to people.
 13 It's not a situation I've -- I wanted to move
 14 forward on.
 15 Q. That makes sense. I think you and
 16 your father have talked about that, doing what
 17 you thought was right for the group and
 18 inconsistency with his principles. Did you
 19 consider the idea of limiting the products
 20 available to members to a specific formulary,
 21 if you are familiar with that term?
 22 A. I'm not. Can you please define it?
 23 Q. Yeah. Formulary being like a list
 24 of products, one or two or three for each
 25 category of products, or a particular brand

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1 John C. Kois, Jr.
 2 whatever distributor you ultimately decided to
 3 go with?
 4 MS. BALBACH: Objection.
 5 THE WITNESS: It's a different
 6 structure for a company. We try to stick
 7 to our core competency as much as possible.
 8 We're an education, we're not a logistics
 9 company. And there's a perception in the
 10 dental community that we are a teaching
 11 center first and not a revenue generator
 12 first.
 13 So I would be nervous that people
 14 would consider any products that they
 15 purchased through us as a revenue generator
 16 for us whether or not we passed all of that
 17 revenue directly to the supply companies to
 18 get a better price for people.
 19 BY MR. FONTECILLA:
 20 Q. Sure. Did you consider opening up
 21 additional offices that would be managed or
 22 owned by the organization or your father?
 23 A. What kind of offices?
 24 Q. Other dental practices, offices in
 25 addition to the one or two he was running at

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1 John C. Kois, Jr.
 2 the time?
 3 A. No.
 4 Q. Did you consider taking equity or
 5 some kind of ownership stake in some of the
 6 member's offices?
 7 A. No, I have no interest in being a
 8 part owner in dental practices. My time is
 9 focused on the teaching center primarily.
 10 Q. And all these options that we've
 11 just discussed over the last few minutes about
 12 changing the membership terms and the
 13 commitments, you know, compliance with volume
 14 threshold or the formularies, you could have
 15 done that, there's nothing preventing the
 16 organization from having to choose that other
 17 than what you mentioned about it not being
 18 consistent with the image and principles of the
 19 organization, right?
 20 MS. BALBACH: Objection.
 21 THE WITNESS: That's correct. It's
 22 ultimately not the direction we decided to
 23 move the buyers group forward in.
 24 BY MR. FONTECILLA:
 25 Q. Sure. And even if you had done any

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1 John C. Kois, Jr.
 2 Q. And so you would agree, just as a
 3 general principle as a starting point, that the
 4 term buying group would be used to refer to
 5 Kois as it exists today?
 6 A. Yes, the Kois -- I would say the
 7 Kois Buyers Group, the name we have on it as a
 8 Kois Buyers Group is represented in its current
 9 form. I don't know what form a group takes
 10 when there's equity taken in other companies
 11 with multiple locations; that's not what I
 12 would view what the Kois Buyers Group would be,
 13 ultimately.
 14 Q. Sure. I guess what I'm asking is,
 15 you know, if you had -- if any of the options
 16 that you were considering for different
 17 structure, or that we discussed, do you think
 18 that would change your view of whether --
 19 whether you would do it or not, whether Kois
 20 would be a buying group, in your view?
 21 MS. BALBACH: Objection.
 22 THE WITNESS: I guess it depends on
 23 what you would consider the alternative
 24 structure. If you're saying that the
 25 buyers group is a broad structure for any

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1 John C. Kois, Jr.
 2 of those and chosen to select one or more of
 3 those options for the group, or tried them out,
 4 you would still consider Koi (sic) to be a
 5 buying group, right?
 6 A. I'm sorry, if we did one of the
 7 options that you laid out would be consider the
 8 Kois Buyers Group to still be a buyers group?
 9 Q. Yeah, would that change the
 10 perception of the group, in your view, as a
 11 buying group?
 12 A. I guess I'm not sure what you mean
 13 as what the definition of a buying group is.
 14 Q. Sure. So let me ask it this way.
 15 You understand that the term buying group is a
 16 broad term that has, you know, a range of --
 17 you can use to refer to a range of
 18 organizations or business models or structures,
 19 right?
 20 A. Yes.
 21 Q. And that can include Koi (sic); is
 22 that your view?
 23 A. First of all, it's Kois, like boys.
 24 Q. I'm so sorry, Kois.
 25 A. Yes, with an S.

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1 John C. Kois, Jr.
 2 group that offers discounts regardless of
 3 how they get them and how many locations
 4 they have, and what ownership they have and
 5 other locations, is it your understanding
 6 that all of those scenarios are all buyers
 7 groups?
 8 BY MR. FONTECILLA:
 9 Q. That's actually my question to you.
 10 A. I wouldn't consider all of those to
 11 be grouped under a buyers group.
 12 Q. And do you view Kois to be
 13 structured the same way as every other entity
 14 that you have heard referred to as a buyers
 15 groups or buying group?
 16 MS. BALBACH: Objection.
 17 THE WITNESS: Are you -- when you
 18 say Kois, are you specifically referring to
 19 the Kois Buyers Group?
 20 BY MR. FONTECILLA:
 21 Q. Yes. When I say Kois -- you know, I
 22 understand the center is part of Kois, but I
 23 will ask a couple of questions about the center
 24 later. For now when I say Kois I mean Kois
 25 Buyers Group.

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1 John C. Kois, Jr.
 2 A. Sure. It's my understanding that
 3 there are other types of groups out there that
 4 have different structures, and I don't know
 5 whether or not they consider themselves a
 6 buying group. I just know that they get a
 7 discount on products.
 8 Q. Sure. So there are -- you are aware
 9 of different groups that have been referred to
 10 as buyers group that have structures that are
 11 not like Kois, they're different, right?
 12 A. Yes.
 13 Q. Okay. In your -- this may have been
 14 briefly covered, but in your prior deposition
 15 that you gave to the FTC you mentioned
 16 specifically that you were aware of instances
 17 where dentists had told you that Schein had
 18 matched the prices offered by Burkhardt through
 19 the buyers group, do you recall that?
 20 MS. BALBACH: Objection,
 21 mischaracterizes his testimony.
 22 THE WITNESS: Yes.
 23 BY MR. FONTECILLA:
 24 Q. And have you -- are you changing
 25 that testimony in any way?

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1 John C. Kois, Jr.
 2 be the vendor for the Kois Buyers Club, or at
 3 least be considered to be the vendor for the
 4 Kois Buyers Club?
 5 A. I can't recall a specific, but I
 6 would say I've probably heard that from all the
 7 dental supply company people or the people that
 8 use other supply companies.
 9 Q. Okay. Just a few more questions.
 10 You don't have any personal knowledge of anyone
 11 at Schein ever declining to consider doing the
 12 deal with Kois Buyers Club, correct?
 13 A. I don't have any factual evidence.
 14 I have hearsay from other dental practices.
 15 Q. About Schein declining to consider a
 16 deal with -- with Kois Buyers Club?
 17 You were in the deposition with your
 18 father this morning, right?
 19 A. Yes.
 20 Q. Okay.
 21 A. So I've heard from members -- Kois
 22 Buyers Group Members, or -- I don't know if
 23 they were members, but participants that came
 24 to the Kois Center that said that they've --
 25 their Schein rep told them that if they joined

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1 John C. Kois, Jr.
 2 A. That -- are you asking if I'm
 3 changing the testimony that I've heard that
 4 Schein's reps have matched the pricing of
 5 Buyers Group Members?
 6 Q. That's right.
 7 A. I'm not changing that.
 8 Q. Okay. Are you aware of any Schein
 9 rep ever having offered lower prices or bigger
 10 discounts on any product to a Buyers Group
 11 Members?
 12 A. Yes.
 13 MS. BALBACH: Objection.
 14 BY MR. FONTECILLA:
 15 Q. Have you ever heard of any buyers
 16 group -- Kois Buyers Group Members saying that
 17 they use Schein to purchase the majority of
 18 their supplies?
 19 A. Yes.
 20 Q. And have you ever heard any Kois
 21 Buyers Club member say that they like their
 22 Schein rep?
 23 A. Yes.
 24 Q. Have you ever had a Kois Buyers Club
 25 Members request or suggest that Schein should

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1 John C. Kois, Jr.
 2 the buyers group that they would not be allowed
 3 to sell to them.
 4 Q. And are you aware of Schein or any
 5 Schein reps ever not selling to a Kois Buyers
 6 Club member?
 7 MS. BALBACH: Objection.
 8 THE WITNESS: Are you looking for a
 9 factual proven thing --
 10 BY MR. FONTECILLA:
 11 Q. I'm looking for a -- you're a fact
 12 witness. We only care about what you know,
 13 have personal knowledge about. That's what I'm
 14 trying to figure out, if you have any personal
 15 knowledge of Schein or a Schein rep ever
 16 declining to do business with a Kois Buyers
 17 Group Members?
 18 A. No. It's limited to a member
 19 telling me that that's what their rep told
 20 them, and I would respond that there is no
 21 exclusivity agreement as part of the buyers
 22 group, so any limit on what their rep can sell
 23 them would be a choice of their rep and I
 24 haven't had any follow up.
 25 Q. And part of not having any follow up

1 John C. Kois, Jr.
2 is you've never heard that buying group member
3 that may have said that to you ever being
4 unable to purchase or receive a discount from
5 their Schein rep, right?

6 A. Correct.

7 Q. And you don't have any personal
8 knowledge of Schein ever declining to offer
9 discounts of any kind to the Kois Buying Group
10 Members?

11 A. Correct.

12 Q. And you don't have any personal
13 knowledge of Schein ever declining to offer
14 services or sell equipment to any Kois Buying
15 Group Members?

16 A. I've heard that Schein reps have
17 told people that if they purchase their product
18 from other vendors they would not service them.
19 I don't know if they actually follow through
20 with that.

21 Q. Have you ever heard complaints from
22 Burkhart, or including Dave Anderson, about the
23 lack of purchasing, or purchase volume, from
24 Kois Buying Group Members?

25 A. Complaint? I haven't heard of

1 John C. Kois, Jr.

2 any -- I wouldn't say it's a complaint, but he
3 has notified me of a number of members that
4 are -- members of the group, but their
5 purchasing level with Burkhart was zero.

6 Q. And has he ever expressed similar
7 information to you about Kois Buying Group
8 Members that might be purchasing a very low
9 volume, or might not be purchasing from
10 Burkhart as their primary full service
11 distributor?

12 A. Yes. Based on the percentage of
13 practices purchasing, he would say there's a
14 good chance they're purchasing from other
15 vendors.

16 Q. Has anyone at Burkhart, including
17 Dave Anderson, ever expressed any concern or
18 complaint to you about any Kois Buying Group
19 member visiting with the Burkhart rep or using
20 Burkhart's services but then ordering supplies
21 from Schein, Patterson or Benco?

22 A. No, it happens all the time.

23 Q. Just to confirm, you've never
24 extended an offer or invitation to Schein
25 United States to bid on the business of the

1 John C. Kois, Jr.
2 Kois Buying Group?

3 A. I have not.

4 Q. And you don't track how much Kois
5 Buying Group Members are buying from Burkhart
6 relative to other suppliers or distributors,
7 right?

8 A. I don't have access to that
9 information.

10 Q. And so it's not tracked by anyone at
11 the Kois Buying Group?

12 A. Not by the Kois Buyers Group, no.

13 Q. And earlier you mentioned that you
14 had worked with Schein in connection with the
15 Kois Center?

16 A. Yes.

17 Q. Do you recall that?

18 A. Yes.

19 Q. Can you describe how you've worked
20 with Schein at the Kois Center?

21 A. We've purchased supplies from them.

22 Q. Sure. And so can you describe what
23 types of supplies you purchased from Schein for
24 the Kois Center?

25 A. They would be supplies that we would

1 John C. Kois, Jr.

2 use in our courses.

3 Q. And would those be the same type of
4 supplies that Schein or Schein's reps would
5 sell to Kois Buying Group Members?

6 A. Probably. The items that we
7 purchase from Schein, if I had to guess, are
8 items that are not available through Burkhart,
9 so we just go through a different dental supply
10 company.

11 Q. Sure. And in your testimony in your
12 prior deposition you mentioned a company named
13 Brasseler. Are you familiar with Brasseler?

14 A. Yes.

15 Q. And Brasseler is a vendor of Kois
16 Buyers Club?

17 A. They are also wholly owned by Henry
18 Schein.

19 Q. And is it your understanding that
20 Brasseler has offered discounts to the Kois
21 Buying Group and its members, right?

22 A. Yes.

23 Q. And do you know, sitting here today,
24 what that discount is or has been?

25 A. I can tell you the range. It ranges

1 John C. Kois, Jr.
2 from 40 to about 60 percent.
3 Q. And can you describe the types of
4 supplies on which that discount is available to
5 Kois Buying Club Members?
6 A. Burs and hand motors.
7 Q. And those products are also sold by
8 Henry Schein and Burkhart, right?
9 A. I believe they're sold by all dental
10 supply companies.
11 Q. Sure. And Brasseler has in --
12 what's your understanding of when Schein took
13 an ownership stake in Brasseler?
14 A. It's my understanding they didn't
15 take an ownership stake, they purchased the
16 company in its entirety.
17 Q. What is your understanding of when
18 that happened?
19 A. I think that was sometime last year.
20 Q. Has Brasseler continued to offer its
21 discount in the same range you described and on
22 the same products to the Kois Buying Group and
23 its members since then?
24 A. Yes. And Brasseler's response to
25 the purchase has been that Henry Schein has no

1 John C. Kois, Jr.
2 MR. RYAN-LANG: You can answer if
3 you can. If you can't answer --
4 THE WITNESS: I don't care.
5 MR. FONTECILLA: I have no further
6 questions. Thank you, Mr. Kois.
7 MS. BALBACH: Off the record.
8 (Break from 5:39 to 5:47 p.m.)
9 REDIRECT EXAMINATION
10 BY MS. BALBACH:
11 Q. I have just a couple of follow ups.
12 If I could direct your attention again to what
13 respondent's marked as Respondent's Kois Jr. 2,
14 that exhibit, it was an e-mail that you sent to
15 your father on October 20th, 2015.
16 A. Yes.
17 Q. And I want to call your attention to
18 the second page of this. There's an e-mail
19 from Qadeer Ahmed to John Kois dated
20 October 15, 2015. In the first sentence Qadeer
21 writes, "If you check out www.procare.com
22 you'll see we're flying now on the patient
23 group program." Did I read that correctly?
24 A. Yes.
25 Q. What is your understanding of -- or

1 John C. Kois, Jr.
2 interest in any kind of management of the
3 company and they are -- they're operating as if
4 they were still independently owned.
5 Q. Earlier you also testified that
6 Henry Schein Canada had approached you to seek
7 a potential deal to sell to Kois Buying Group
8 and its members, right?
9 A. Yes.
10 Q. Are you aware that the FTC has
11 alleged in this case that Schein, Henry Schein,
12 has a practice or policy of not selling to or
13 offering discounts to buying groups?
14 A. Yes.
15 Q. And doesn't it seem a little odd to
16 you that they're making that allegation given
17 that Henry Schein Canada has approached you,
18 given that Brasseler is offering discounts to
19 you, and given that Schein sells supplies to
20 the Kois Center?
21 MS. BALBACH: Objection, form.
22 MR. RYAN-LANG: You're asking just
23 for his opinion?
24 MR. FONTECILLA: I'm asking what he
25 thinks of that.

1 John C. Kois, Jr.
2 do you have an understanding of what Qadeer
3 means by the patient group program?
4 A. I have a high level view. There's
5 some pieces of it that were a little murky, as
6 far as I'm concerned, but I can tell you it
7 appeared to be something -- it was something of
8 an insurance company or insurance based
9 alternative. I wasn't quite clear what they
10 were going for for that. To my knowledge, it
11 hasn't been launched yet.
12 Q. Is that a separate program from the
13 Kois Buyers Group?
14 A. Yes.
15 Q. And does the Kois Tribal Management
16 or the Kois Center have any financial interest
17 in this -- Qadeer's patient group program?
18 A. No. Qadeer had approached my
19 father, Dr. Kois, about designing a risk
20 assessment to be part of this, but to my
21 knowledge that hasn't gone off the ground yet.
22 No work has been done and there is no financial
23 interest.
24 Q. Has lack of a national distributor
25 impacted the Kois Buying Groups rate of growth

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1 John C. Kois, Jr.
 2 of members?
 3 MR. GEORGE: Objection to form.
 4 MR. RACOWSKI: Object to form.
 5 THE WITNESS: Specifically the lack
 6 of a distribution company with a
 7 national -- I'm not sure what you're asking
 8 me.
 9 BY MS. BALBACH:
 10 Q. I'll rephrase. Has the lack of a
 11 distributor that has national full service
 12 representation impacted the Kois Buyer Groups
 13 rate of growth?
 14 MR. RACOWSKI: Objection to form.
 15 MR. GEORGE: Objection to form.
 16 THE WITNESS: I don't believe it
 17 has, but I also don't have a metric to
 18 compare it to. I could tell you we're
 19 growing.
 20 BY MS. BALBACH:
 21 Q. Have you lost members, and I guess I
 22 could call your attention back to CX4055, which
 23 we talked about earlier today. Has the Kois
 24 Center -- actually, I think you answered this
 25 question before, the Kois -- Kois Buyers Group

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1 John C. Kois, Jr.
 2 Buyers Group, and my opinion is there are
 3 other factors.
 4 BY MS. BALBACH:
 5 Q. Is the factor of whether you have a
 6 full service rep one of the factors that
 7 impacts a dentist's decision whether to join
 8 the Kois Buyers Group?
 9 MR. GEORGE: Object to form.
 10 MR. RACOWSKI: Object to form.
 11 THE WITNESS: It's member specific.
 12 I know members that continue to work with
 13 supply companies other than Burkhart, and
 14 are members and purchase through Burkhart
 15 even though they don't have a Burkhart rep.
 16 I know members that that's a bridge
 17 that they don't want to cross unless their
 18 rep comes with them, so it's really
 19 practice specific. I can't tell you as a
 20 whole what are the deciding factors.
 21 I can tell you there are definite
 22 deciding factors, but which ones weigh the
 23 most is practice to practice specific.
 24 BY MS. BALBACH:
 25 Q. You testified earlier in response to

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1 John C. Kois, Jr.
 2 lost members because the members didn't have
 3 access to a full service Burkhart
 4 representative?
 5 A. Yes.
 6 MR. GEORGE: Object to form.
 7 THE WITNESS: I guess I can clarify.
 8 It wouldn't matter if they had a Burkhart
 9 representative or not. It's specifically a
 10 full service representative, so if this
 11 buyers group was represented with a supply
 12 company that did not have representation in
 13 an area where there was a member we'd get
 14 the same complaint.
 15 BY MS. BALBACH:
 16 Q. But if you had partnered with
 17 Schein, or Benco or Patterson that had national
 18 full service there would have been a rep for
 19 those members, correct?
 20 MR. RACOWSKI: Objection to form,
 21 misstates testimony.
 22 THE WITNESS: Correct. You're also
 23 assuming that whether you have or don't
 24 have a rep is the only decision that
 25 affects somebody's choice to join the Kois

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1 John C. Kois, Jr.
 2 one of respondent counsel's questions that you
 3 had heard from Kois Buyers Group Members
 4 requesting that either Schein, Benco or
 5 Patterson be the distribution partner with the
 6 buying group; is that correct? Do you recall
 7 that testimony?
 8 A. Yes.
 9 Q. Did those members tell you why they
 10 wanted Schein, Benco or Patterson to be the
 11 Kois Buying Groups distributor?
 12 A. It's the distributor that they were
 13 using. I don't know the reason behind that, if
 14 it's their rep, or that's the pricing, but
 15 there was just the request to have that
 16 representation. I hear it more from companies
 17 outside the U.S. and outside of Canada, where I
 18 believe Henry Schein has representation in
 19 Europe, where we don't have an option for them.
 20 Q. Based on what you hear from Kois
 21 Buying Group Members, is 15 percent a
 22 reasonable number to represent the average
 23 savings?
 24 MR. RACOWSKI: Objection to form.
 25 THE WITNESS: I can't speak to what

1 John C. Kois, Jr.
2 the members consider a reasonable number.
3 I hear members that think that the savings
4 number is great, I hear members that think
5 that the savings number is just okay. I
6 hear members that are saving money and
7 don't realize it until you show them on
8 paper. I would say the 15 percent average
9 was -- is probably enough to entice people,
10 but I don't know how much of it is a
11 deciding factor for people.

12 BY MS. BALBACH:

13 Q. 15 percent savings is the number you
14 use in your marketing material for the Kois
15 Buyers Group; is that correct?

16 A. Yes.

17 Q. And do you have any reason to doubt
18 that that's the number you should be using?

19 A. Well, to clarify, that's 15 percent
20 off of the retail of Burkhart, that's not
21 15 percent of the competitor's pricing. So
22 when you say it's a 15 percent savings, that's
23 not necessarily the savings that a member will
24 get when they move over.

25 Q. So let me rephrase my question. Do

1 John C. Kois, Jr.
2 you have any -- strike that.

3 MR. RYAN-LANG: How much more do you
4 have? I think you have maybe a few more
5 minutes.

6 MS. BALBACH: I think this is my
7 last question.

8 BY MS. BALBACH:

9 Q. Do you have any reason to doubt that
10 a 15 percent off retail price for Burkhart
11 supplies is a number -- is the number you
12 should be using?

13 MR. RACOWSKI: Objection to form.

14 MR. FONTECILLA: Object to form.

15 THE WITNESS: I don't have an
16 opinion on what the best number is. I have
17 the number that Burkhart told me is the
18 basis of the discount based on their retail
19 pricing and discount for the buyers group.

20 BY MS. BALBACH:

21 Q. And Burkhart gave you the 15 percent
22 off retail price number; is that correct?

23 A. Yes.

24 Q. Based on what you hear from Tribe
25 Members and not from Burkhart, is 15 percent a

1 John C. Kois, Jr.
2 reasonable estimate?

3 MR. RACOWSKI: Object to form.

4 MR. GEORGE: Objection to form.

5 THE WITNESS: The 15 percent off of
6 retail number given from Burkhart loses
7 some of its effectiveness as a
8 communication tool when you start comparing
9 it to the prices that other dental
10 practices are getting.

11 Their prices aren't based on the
12 retail price necessarily for Burkhart.
13 They're using the pricing they're paying
14 now and comparing it to the pricing they
15 are getting if they switch to Burkhart.

16 So 15 percent off retail is what
17 they're offering, but I don't know how much
18 they discount from retail for everybody
19 else. I don't know how much 15 percent off
20 at Burkhart compares to any of the other
21 supply companies.

22 MS. BALBACH: I'm done. Do you guys
23 have anything further?

24 MR. GEORGE: Nothing from me.

25 MS. BALBACH: Anything from Schein?

1 John C. Kois, Jr.
2 Any further?

3 MR. FONTECILLA: Just one last
4 question.

5 RE-CROSS-EXAMINATION

6 BY MR. FONTECILLA:

7 Q. Mr. Kois, do you have any personal
8 knowledge of any agreement between Schein,
9 Patterson and Benco to not offer discounts to
10 buying groups?

11 A. Nothing that isn't stated in the
12 complaint.

13 Q. No, no, no. My question is not
14 whether you're -- are you saying that -- you're
15 saying that you've read the allegation in the
16 complaint?

17 A. Correct.

18 Q. Okay. I'm asking separately whether
19 you have any personal knowledge of any
20 agreement, not allegations. Do you have any
21 personal knowledge of any actual agreements
22 between Schein, Patterson and/or Benco to not
23 offer discounts to buying groups?

24 A. No.

25 MR. FONTECILLA: Okay. Thank you

1 John C. Kois, Jr.
 2 very much for your time and patience today.
 3 THE WITNESS: You're welcome.
 4 MS. BALBACH: Anything further from
 5 Benco?
 6 MR. RACOWSKI: Nothing here.
 7 MS. BALBACH: Okay. We are
 8 concluded. We'll read and sign.
 9 (Time noted: 6:00 p m.)

10
 11 _____
 12 JOHN C. KOIS, JR.

13
 14 Subscribed and sworn to before me this ____ day
 15 of _____ 2018.
 16
 17
 18
 19
 20
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 22
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 24
 25

1 John C. Kois, Jr.
 2 C E R T I F I C A T E
 3 S T A T E O F W A S H I N G T O N)
 4) s s .
 5 C O U N T Y O F K I N G)
 6
 7

8 I, LISA TRONCOSO, a Certified
 9 Shorthand Reporter in and for the State of
 10 Washington, do hereby certify:

11 That, JOHN C. KOIS, JR., the witness
 12 whose deposition is hereinbefore set forth, was
 13 duly sworn by me and that such deposition is a
 14 true record of the testimony given by such
 15 witness.

16 I further certify that I am not
 17 related to any of the parties to this action by
 18 blood or marriage; and that I am in no way
 19 interested in the outcome of this matter.

20 IN WITNESS THEREOF, I have hereunto
 21 set my hand this 11th day of July, 2018.
 22

23 _____
 24 LISA TRONCOSO, RPR
 25 Washington CSR 3090

1 John C Kois, Jr

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 2 ERRATA SHEET FOR THE TRANSCRIPT OF:
 3 Case Name: In Re: Benco Dental Supply
 4 Depo Date: June 27, 2018
 5 Deponent: JOHN C KOIS, JR
 6

7 CORRECTIONS:

8 Pg Ln	Now Reads	Should Read	Reason
9	_____	_____	_____
10	_____	_____	_____
11	_____	_____	_____
12	_____	_____	_____
13	_____	_____	_____
14	_____	_____	_____
15	_____	_____	_____
16	_____	_____	_____
17	_____	_____	_____
18	_____	_____	_____
19	_____	_____	_____

20 _____
Signature of Deponent

21
22 SUBSCRIBED AND SWORN BEFORE ME
23 THIS ____ DAY OF _____, 2018

24 (Notary Public) MY COMMISSION EXPIRES: _____
25

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CONFIDENTIAL - JAMES BRESLAWSKI

UNITED STATES OF AMERICA

BEFORE THE FEDERAL TRADE COMMISSION

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In the Matter of Docket No. D09379

Benco Dental Inc., et al.

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* * *CONFIDENTIAL* * *

DEPOSITION OF JAMES BRESLAWSKI

New York, New York

July 10, 2018

Reported by:

KATHY S. KLEPFER, RMR, RPR, CRR, CLR

JOB NO. 142924

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1 CONFIDENTIAL - JAMES BRESLAWSKI
 2 July 10, 2018
 3
 4 * * *CONFIDENTIAL* * *
 5
 6 Deposition of JAMES BRESLAWSKI,
 7 held at Proskauer Rose LLP, Eleven Times
 8 Square, New York, New York, before Kathy
 9 S. Klepfer, a Registered Professional
 10 Reporter, Registered Merit Reporter,
 11 Certified Realtime Reporter, Certified
 12 Livenote Reporter, and Notary Public of
 13 the State of New York.
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Page 3

1 CONFIDENTIAL - JAMES BRESLAWSKI
 2 A P P E A R A N C E S:
 3
 4 FEDERAL TRADE COMMISSION
 5 Attorneys for the Federal Trade Commission
 6 600 Pennsylvania Avenue Northwest
 7 Washington, DC 20580
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 9 KAREN GOFF, ESQ. (Telephonically)
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 11 LOCKE LORD
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 13 2200 Ross Avenue
 14 Dallas, TX 75201
 15 BY: JOHN McDONALD, ESQ.
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1 CONFIDENTIAL - JAMES BRESLAWSKI
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 13 1299 Pennsylvania Avenue Northwest
 14 Washington, DC 20004
 15 BY: JANA SEIDL, ESQ.
 16
 17
 18 ALSO PRESENT:
 19 MARGIE HAN, In-House Counsel, Henry Schein
 20
 21
 22
 23
 24
 25

Page 5

1 CONFIDENTIAL - JAMES BRESLAWSKI
 2 JAMES BRESLAWSKI, called as a
 3 witness, having been duly sworn by a Notary
 4 Public, was examined and testified as
 5 follows:
 6 EXAMINATION BY
 7 MS. ROSNER:
 8 Q. Good morning, Mr. Breslawski. How are
 9 you?
 10 A. Good morning. Well, thanks.
 11 Q. Great. I understand that you have
 12 taken a deposition -- you've been at a
 13 deposition before; is that right?
 14 A. Yes, that's correct.
 15 Q. You're familiar with how these things
 16 work?
 17 A. Yes.
 18 Q. I'm just going to review the two most
 19 important rules of the deposition today. The
 20 first one is that I want you to tell the truth;
 21 and if I ask a question and you don't know, you
 22 can just tell me that you don't know the answer
 23 to it.
 24 A. Uh-huh.
 25 Q. And everything else I presume you're

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 2 going to be telling me is the absolute truth.
 3 Do you understand that?
 4 A. Agreed. Yes.
 5 Q. And then the second rule is that we
 6 have a court reporter here who is recording
 7 everything that we say. Let's try to make her
 8 job easiest by not talking over each other and
 9 making sure all of our answers are verbal.
 10 A. I will do my best. I'm learning.
 11 Q. From time to time, your counsel may
 12 speak up, so try also not to talk over him.
 13 A. I will, again, I will do my best. I'm
 14 from New York from the Bronx, so there's a whole
 15 rhythm, but we'll try to work on it. Okay.
 16 MR. McDONALD: Just pause.
 17 THE WITNESS: Okay.
 18 BY MS. ROSNER:
 19 Q. Great. So we're here today to talk
 20 about Henry Schein's dental business. You
 21 understand that; is that correct?
 22 A. Yes.
 23 Q. We'll be talking about a couple of
 24 different types of customer segments in the
 25 dental business, and just to make sure we're on

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 2 the same page, I want to review some of the
 3 dental customer segments. Okay?
 4 Schein's largest dental customer
 5 segment by revenue and by number is Independent
 6 Private Practices; is that right?
 7 A. In the United States, the largest
 8 revenue segment in our dental business in the
 9 United States is Private Practice.
 10 Q. Is that also the largest dental
 11 segment by number of customers?
 12 A. Yes, it is.
 13 Q. What percentage of Schein's dental
 14 revenues come from Independent Private Practice?
 15 MR. McDONALD: Object to the form.
 16 A. I'm not sure.
 17 Q. Do you have a guesstimate? Is it more
 18 than half? Less than half?
 19 MR. McDONALD: Object to the form.
 20 A. So let me estimate. I would say, and
 21 again, I can get this information very
 22 specifically, but I would say that it is
 23 probably about two-thirds.
 24 Q. What is Schein's profit margin on the
 25 independent dental practice customer segment?

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 2 A. Depends on how you define "profit
 3 margin."
 4 Q. How do you define "profit margin"?
 5 A. Well, I'm not sure what your question
 6 is.
 7 Q. What's Schein's profit margin on the
 8 independent dental practice customer segment for
 9 merchandise?
 10 MR. McDONALD: Object to the form.
 11 A. We don't calculate Private Practice as
 12 a separate P&L. We have, in our United States
 13 dental business, we have three major segments.
 14 We have a segment that we call Special Markets,
 15 which is the most significant large customer,
 16 dental support organizations, government and
 17 other customers, and then we have Private
 18 Practice combined with large group practices
 19 that are not large dental support organizations.
 20 So we don't have a separate P&L just for our
 21 Private Practice.
 22 Q. Can you describe for me what are those
 23 large group practices that you combine with the
 24 Private Practice segment?
 25 A. So it's everything that is outside of

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 2 what we define as, first of all, Special
 3 Markets, which includes the largest dental
 4 support organizations, or DSOs, and those
 5 organizations -- again, I don't have these --
 6 I'm giving you my -- off the top of my head what
 7 I believe the splits are, but those
 8 organizations are typically central
 9 decision-making across many different locations,
 10 and then included in that Special Market segment
 11 is the federal government, dental schools, state
 12 and local institutions, and also such customers
 13 as community health centers. That defines the
 14 Special Markets segment.
 15 Within our Henry Schein Dental,
 16 non-Special Market segment in the United States
 17 we have carved out a separate team that focuses
 18 on large group practices that may be as small as
 19 just a few offices, but are under common control
 20 all the way up, perhaps, to dozens, a couple of
 21 dozen offices, maybe that's -- maybe a little
 22 bit less than that, that are under common
 23 control, and that segment of the business, the
 24 middle kind of market, is the fastest growing
 25 overall organic segment in the marketplace.

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 2 Q. Do you track the margins of that
 3 Middle Market segment?
 4 A. We don't track --
 5 MR. McDONALD: Hang on.
 6 Object to the form.
 7 Go ahead.
 8 A. We don't track the overall
 9 profitability of that particular segment. We
 10 track the profitability of a combined segment of
 11 Private Practice and the Middle Market, for lack
 12 of a better term, the Middle Market segment ex
 13 Special Markets.
 14 Q. How much in revenues does Schein
 15 generate in the independent and Mid Market
 16 segment of its business?
 17 MR. McDONALD: Object to the form.
 18 You're referring to the North America,
 19 United States?
 20 MS. ROSNER: North America.
 21 Everything we talk about today --
 22 THE WITNESS: I assumed that the scope
 23 was U.S.
 24 BY MS. ROSNER:
 25 Q. Sorry. Everything that we talk about

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 2 today will be U.S., yes.
 3 A. Okay.
 4 MR. McDONALD: And the timeframe? You
 5 want to tell him the timeframe?
 6 BY MS. ROSNER:
 7 Q. Today what is Schein's revenues in the
 8 independent and Mid Market Division?
 9 A. Again, off the top of my head, I would
 10 say it's north of \$2 billion.
 11 Q. What is the profit margin in the
 12 independent and --
 13 A. Please define "profit margin."
 14 Q. Does Schein report its profit margin?
 15 A. No. We report -- we're a public
 16 company, so we report our profit margin for the
 17 company. We don't report this level of
 18 information.
 19 Q. What is Schein's profit margin for
 20 independent and Mid Market dentists with respect
 21 to merchandise sales?
 22 MR. McDONALD: Object to the form.
 23 A. Perhaps I'm not being clear, but we
 24 don't report or we don't track our P&L by these
 25 customer segments.

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 2 Q. So you have no idea what your profit
 3 margin is for a particular customer segment?
 4 A. Again, define what "profit margin" is.
 5 Q. How do you define "profit margin"?
 6 A. So profitability at the pretax level
 7 is for our Henry Schein Dental business. It
 8 would include all of the costs of all of our
 9 direct operating costs of our U.S. dental
 10 business, plus all of the infrastructure that
 11 actually services not only the dental business,
 12 but also services our medical business as well
 13 as our animal health business. So that's how we
 14 would, you know, define the profit margin.
 15 And again, this information is not
 16 public information.
 17 Q. I understand this information is not
 18 public information, but using your definition of
 19 "profit margin," what is Henry Schein's profit
 20 margin with respect to its HSD business?
 21 MR. McDONALD: Object to the form.
 22 That's a different question than you just
 23 asked him.
 24 THE WITNESS: I just want to
 25 understand what -- so this is actually not

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 2 public information. It's not something that
 3 we disclose on a regular basis.
 4 We have segment reporting that does
 5 include the Special Markets and we have
 6 reporting that includes the HSD business.
 7 MR. McDONALD: So why don't we take a
 8 second. Let me talk to him.
 9 MS. ROSNER: Let's go off the record.
 10 MR. McDONALD: Because he's clearly
 11 wanting to discuss this.
 12 (Pause in the Proceedings. Time
 13 Noted: 9:25 a.m.)
 14 (Time Noted: 9:29 a.m.)
 15 MS. ROSNER: Could you read back my
 16 last question?
 17 (Record read.)
 18 MR. McDONALD: Object to the form.
 19 Vague as to time.
 20 THE WITNESS: Our net income from our
 21 combination of Private Practice and Mid
 22 Market business is approximately 6 percent.
 23 BY MS. ROSNER:
 24 Q. Has that number changed over time?
 25 A. Of course.

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 2 Q. What has been the highest and what has
 3 been the lowest net income for HSD?
 4 A. During what period of time?
 5 Q. During the last ten years.
 6 A. It has likely stayed within that
 7 relevant range, up and down, depending upon
 8 performance in any given year.
 9 Q. And you mentioned the net income
 10 includes some of the infrastructure that is used
 11 to serve veterinary business and maybe some
 12 other businesses?
 13 A. The infrastructure costs, such as
 14 distribution that has the warehousing for all of
 15 the businesses, is allocated based upon a
 16 methodology to each of the businesses.
 17 Q. What is Schein's approximate market
 18 share in the independent dental practice
 19 segment?
 20 MR. McDONALD: Object to the form.
 21 Vague as to time.
 22 A. We have no information that would
 23 really allow us to determine what that is.
 24 Q. You don't track Schein's market share?
 25 MR. McDONALD: Object to the form.

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 2 A. I believe the question was about what
 3 is Schein's market share in Independent Private
 4 Practice.
 5 Q. Do you track Schein's market share at
 6 all?
 7 A. We use limited available information
 8 that's out there about the overall dental
 9 market, and we have a rough sense, it's very
 10 imprecise, and we believe that we have a leading
 11 market share in the U.S. dental business for
 12 consumable products.
 13 Q. What do you believe your percentage
 14 market share is in the U.S. business for
 15 consumable products?
 16 MR. McDONALD: Object to the form.
 17 Asked and answered.
 18 A. Again, it's an estimate because there
 19 really is no good independent information that's
 20 available, so I would estimate that it's in the
 21 mid 30s, mid 30 percent.
 22 Q. What is the market share of your
 23 competitors in the U.S. dental consumables
 24 market?
 25 A. I don't have access to that

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 2 information.
 3 Q. You mentioned that Schein is somewhere
 4 in the mid 30s. Who else makes up the rest of
 5 the pie chart?
 6 MR. McDONALD: Object to the form.
 7 A. So the dental market in the U.S. is
 8 served by many different distributors along with
 9 manufacturers that also sell their products
 10 directly.
 11 The collection of full service
 12 distributors, which includes ourselves along
 13 with Patterson, Benco and maybe 25 other
 14 full-service dealers that service various
 15 regions in the country, collectively make up the
 16 largest percentage, the full service channel, if
 17 you will, and then there are an untold number of
 18 other companies that are selling consumable
 19 products primarily through various methods:
 20 Direct marketing, catalog, telesales, Internet
 21 marketing, and other methods.
 22 Q. What percentage of the market is made
 23 up of the full service group that you mentioned?
 24 MR. McDONALD: Object to the form.
 25 A. I don't have a precise answer. I

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 2 think it's the largest share, definitely the
 3 largest share by -- I would be guessing. It's a
 4 meat -- it's by far the largest share of all the
 5 channels.
 6 Q. Are we talking 90 percent?
 7 A. That's high.
 8 MR. McDONALD: Object to the form.
 9 Q. Three-quarters of the market?
 10 MR. McDONALD: Object to the form.
 11 A. Possible.
 12 Q. How do you calculate market share?
 13 You mentioned you consult a variety of
 14 sources. How do you go about doing it?
 15 A. There have been some independent
 16 reports that include certain distributor
 17 information that's confidentially submitted that
 18 allows us to see for that particular report how
 19 our market share would compare, and that report
 20 has changed quite a bit over the course of the
 21 last I'm not sure how many years, but a major
 22 contributor to that report no longer provides
 23 information, which, in my opinion, renders that
 24 report very ineffective and not reliable.
 25 Q. What is the name of that report?

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2 A. It was the Strategic Dental Marketing
3 Report, SDM.

4 Q. Other than the SDM Report, are there
5 other sources that Schein uses to calculate its
6 market share?

7 A. Anecdotal information that we may
8 receive from time to time from manufacturers
9 that we -- whose products we represent. They
10 provide us with information as to how we're
11 doing with their business, and that's just their
12 business. So it's not a picture of the market;
13 it's just their business.

14 Q. Anything else?

15 A. Public -- well, not really. That's it
16 as far as the whole market. There's -- it's
17 very, very difficult to determine market share
18 in the United States dental market. There just
19 isn't good information that's available,
20 independent information.

21 Q. Going back to the Private Practice
22 segment, you understand Independent Private
23 Practice dentists to be for-profit dentists?

24 MR. McDONALD: Object to the form.

25 A. Independent -- generally speaking,

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2 Independent Private Practice dentists are in
3 business to be a successful business.

4 Q. Private Practice dentists typically
5 are small business owners?

6 A. Yes.

7 Q. They are dentists who maintain
8 ownership in their practice?

9 A. Yes.

10 Q. Independent dental practices typically
11 are not affiliated with larger corporate
12 dentistry chains?

13 A. Independent, by definition of
14 independence, the way that we're using "private
15 practice" means their private. Now, what their
16 form of ownership is I don't know, but they're,
17 typically, they're in one location, maybe two
18 locations, a doctor, perhaps an associate that
19 are working together. Those people that went to
20 school to learn how to be a healthcare
21 professional, and they find themselves not only
22 looking to provide the best healthcare possible,
23 but also they find themselves in business. So
24 one of our goals is to help our customers
25 actually be successful in business.

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2 Q. And of your customers who are Private
3 Practice dentists, they typically do not have an
4 affiliation with a DSO?

5 MR. McDONALD: Object to the form.

6 A. A Private Practice dentist typically
7 is a Private Practice dentist, an independent
8 private practitioner without group affiliation.

9 Q. We talked about DSOs today.

10 What are DSOs?

11 A. I'm sorry. Repeat the question,
12 please.

13 Q. What is a DSO?

14 A. A DSO is a dental support organization
15 that provides services in support of practices
16 that are part of their organization. There is a
17 network of locations providing dentistry, and
18 the dental support organization provides
19 typically a lot of the administrative support
20 for their network of practices, and it varies
21 depending upon who the DSO is.

22 Some of the DSOs have common branding
23 for all of their locations. So Aspen Dental is
24 a very large DSO that has maybe 700 or so
25 locations throughout the country, and they are

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2 all branded Aspen Dental, and they provide the
3 infrastructure allowing the local dentists to
4 really focus on practicing dentistry.

5 Q. DSOs are distinct from Independent
6 Private Practice dentists?

7 A. DSOs distinguish themselves from
8 Private Practice Dentists.

9 Q. Approximately what percentage of
10 Schein's U.S. dental revenues are made up of DSO
11 customers?

12 MR. McDONALD: Object to the form.

13 A. I would be estimating. I have that
14 information that I could provide, but right now,
15 I would estimate that that is approximately
16 between 12 and 15 percent, something like that.

17 Q. DSOs generate approximately how much
18 in revenue for Schein's U.S. dental business?

19 MR. McDONALD: Object to the form.

20 Vague as to time.

21 A. Please repeat the question.

22 MS. ROSNER: Could you read the
23 question?

24 (Record read.)

25 MR. McDONALD: Same objection.

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 2 THE WITNESS: Again, I would be
 3 estimating. I would say that it's probably
 4 about a half a billion dollars.
 5 BY MS. ROSNER:
 6 Q. What is Schein's profit margin on the
 7 DSO customer segment?
 8 MR. McDONALD: Object to the form.
 9 A. We also don't -- well, so it's higher
 10 than our Private Practice business because the
 11 cost to serve for a DSO, typically, some of what
 12 the DSO does for the dental practices allows us
 13 to, for the very large ones especially, allows
 14 us to have less costs associated with serving
 15 those practices. They feel sales consultants in
 16 many of those customers is not necessary. We
 17 have more of a corporate-to-corporate management
 18 program or customer care model.
 19 So I don't have that number, but it
 20 would be north of that number that I mentioned
 21 for the Private Practice --
 22 Q. You previously mentioned --
 23 A. -- which was the net income of
 24 approximately 6 percent.
 25 Q. How far north? Are we talking 7

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 2 percent? Are we talking about 12 percent?
 3 Double?
 4 MR. McDONALD: Object to the form.
 5 A. I'm not sure. I would say it could be
 6 double. It could be double.
 7 Q. What is Schein's approximate market
 8 share in the DSO segment?
 9 MR. McDONALD: Object to the form.
 10 Vague as to time.
 11 Are you asking him currently?
 12 Well, Jasmine, you need to clarify the
 13 question.
 14 Currently?
 15 BY MS. ROSNER:
 16 Q. Do you understand the question?
 17 MR. McDONALD: Object to the form.
 18 You should give him a timeframe.
 19 Then just answer as vague and as
 20 broadly as you want to answer if she's going
 21 to be ridiculous and not give you timeframe.
 22 THE WITNESS: So let me -- sorry. I
 23 keep talking over you. Sorry.
 24 So we have been, for more than 20
 25 years, we have been a leader in serving very

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 2 large customers. Very large customers
 3 today, the largest of them, call themselves
 4 DSOs. Over the years, they have changed
 5 their nomenclature, so that has changed
 6 quite a bit over time, but back more than 20
 7 years ago, we created a separate business
 8 within our business just to focus on this
 9 aspect of the industry.
 10 By doing that, during that 20 years,
 11 we were really invested in helping that
 12 segment be successful and those customers be
 13 successful, and many of those that we
 14 compete with were not as focused as we are.
 15 So we have a very meaningful share.
 16 It's very hard to measure exactly what that
 17 share is. I would say that we clearly have
 18 the largest share in the United States.
 19 BY MS. ROSNER:
 20 Q. When you say it's the largest share,
 21 are we talking 90 percent? 60 percent? 30
 22 percent?
 23 MR. McDONALD: Again, object to the
 24 form. Vague as to time.
 25 A. I'll answer as of today.

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 2 As of today, we certainly don't have
 3 90 percent share. Also, the DSOs continue to
 4 grow as a segment of the marketplace. There are
 5 more -- it's a very competitive segment of the
 6 business. There are more and more dealers, both
 7 full service and other kinds of dealers, that
 8 are doing business with that overall segment,
 9 and I would say that our share is less today
 10 than it was five years ago. It is substantially
 11 higher than our share in Private Practice, but
 12 very difficult to put a number on.
 13 Q. You mentioned your share in Private
 14 Practice was somewhere in the 30s.
 15 Are we talking 50s, 60s for today's
 16 market share in the DSO segment?
 17 MR. McDONALD: Objection.
 18 Q. Is it double?
 19 MR. McDONALD: Objection to the form.
 20 A. It's substantially higher, so I would
 21 be comfortable saying probably -- probably 50
 22 percent, but it's hard to say because in the
 23 Middle Market that I described, that's part of
 24 the same business team that's looking after
 25 Private Practice, there are small group

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2 practices that are calling themselves DSOs.

3 In that segment we believe we're doing
4 well, but our share in that segment is not
5 nearly as large as our share in the largest of
6 the DSOs, the national DSOs, because we have
7 been there for so long.

8 Q. Would you say that your share in the
9 Mid Market DSO segment is more in line with your
10 share in the HSD customer segment overall?

11 MR. McDONALD: Object to the form.

12 Vague as to time.

13 A. The H -- I'm not sure what you mean by
14 the HSD segment.

15 Q. You previously mentioned that your
16 share in the HSD segment is somewhere in the
17 30s. Would you --

18 A. I mentioned that our share in Private
19 Practice is about -- is approximately in the mid
20 30s, and this is my estimation -- there's no
21 good information -- on consumable products, and
22 that the Mid Market is part of that group. So
23 it's in the same business, we report it the
24 same, but in that larger group practice that's
25 not in our Special Markets I would say that we

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2 have a higher share than the 30 percent.

3 Q. How do you go about measuring market
4 share for the DSO segment? You mentioned --

5 A. Again, there's a list. In the very
6 large DSOs and Special Markets, there's a pretty
7 discrete list of the largest of those, so we
8 know who we're doing business with. We know
9 those customers that we believe we have the
10 leading share.

11 Even in those large DSOs, many other
12 distributors, both full service distributors and
13 also all kinds of other distributors that are
14 selling products, are also doing business in
15 those DSOs. But we believe that we have the
16 largest share. So, in that segment, we can take
17 a look and see we're still doing business with
18 most of those very large DSOs, so we feel we
19 have a very strong position.

20 Q. Are there --

21 A. When it comes -- you asked me about
22 the -- so when it comes to the smaller DSOs or
23 the Middle Market, it's very difficult to
24 determine how we're doing specifically compared
25 to others because there isn't such a

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2 discreteness. It's a much bigger list. My
3 feeling, my feeling is that we're doing
4 better than others and better than we're doing
5 in Private Practice. I could be wrong.

6 Q. Does Schein consult third-party
7 resources to get a sense of its market share in
8 the DSO segment?

9 A. Please repeat. I couldn't understand
10 your question.

11 (Record read.)

12 A. To the best of my knowledge, the only
13 third party that we're still working with is the
14 SDM business, and we're concerned about the
15 usefulness of that service.

16 Q. Are you familiar with the term "buying
17 group"?

18 A. Yes.

19 Q. In dental, buying groups are made up
20 of Independent Private Practice dentists; is
21 that right?

22 MR. McDONALD: Object to the form.
23 Mischaracterizes the record.

24 A. The "buying group" definition, the
25 term "buying group" is used in many different

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2 ways, and sometimes the "buying group"
3 definition is used to include the terminology of
4 GPO, and sometimes even in our own company, in
5 our own team, these teams are used
6 interchangeably.

7 I believe that they're actually quite
8 different. And a buying group within the dental
9 business can come in many, many different forms.
10 It can come in a form that it's just a
11 collection of customers that are looking to ban
12 together just to focus on getting a price from
13 someone to other organizations that are actually
14 aligned with what we're trying to do in helping
15 provide value to the dentists to help the
16 dentists be successful.

17 So there's more to their offering than
18 just a discount on price, and so the "buying
19 group" definition, there isn't a simple
20 definition of what a buying group may mean in
21 the dental marketplace.

22 Q. Is it your understanding that buying
23 groups are typically made up of independent
24 private practice dentists?

25 MR. McDONALD: Object to the form.

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2 Mischaracterizes the record.

3 A. I don't know what's typical. We've
4 been doing business with buying groups for a
5 very long time, and we have a long list of
6 buying groups that have different structures and
7 have different membership affiliations, and I
8 would say that it's more likely than not that
9 private practitioners are involved in buying
10 groups. And DSOs, by the nature of the DSO
11 organization, is typically not connected with a
12 buying group, but that's not completely accurate
13 because there are some DSOs that are -- that
14 look to spin off some other efforts around the
15 buying group.

16 Q. Buying groups typically do not have an
17 ownership interest in their members' practices;
18 is that right?

19 MR. McDONALD: Object to the form.

20 A. Buying groups do not typically have an
21 ownership interest. That's probably right. I
22 don't know, but that's probably right.

23 Q. You understand the initials "BG" to be
24 shorthand for the term "buying group"?

25 MR. McDONALD: Object to the form.

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2 A. I don't know that.

3 Q. Have you ever used the initials "BG"
4 to refer to "buying group"?

5 A. I have never, not that -- not that I
6 can recall. I would never in conversation just
7 talk to my colleagues about the BGs. That's not
8 something I would do.

9 Q. If someone were to in conversation
10 refer to "BGs" to you or in an e-mail, would you
11 understand that that meant buying group?

12 A. I would have to understand the context
13 of the communication. It could be a person they
14 are referring to. It could be -- I don't know.

15 Q. Is "buying club" another term meaning
16 buying group?

17 MR. McDONALD: Object to the form.

18 A. It could. Could be.

19 Q. Schein has different pricing programs
20 for buying groups than it does for DSOs; is that
21 right?

22 A. Every customer has a negotiated term
23 that they're doing business with. It could
24 include a pricing program. It could include
25 value added services. Could include our terms

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2 for our equipment service. It's very -- there's
3 no standard. It's, you know, one customer is
4 one customer.

5 Q. Are there certain formularies that
6 apply to DSOs that Schein would not offer to
7 buying groups?

8 MR. McDONALD: Object to the form.

9 A. I'm trying to understand the question.

10 Q. Do you understand what formulary is?

11 A. A formulary is a list of products that
12 a customer has available to them at special
13 pricing that typically, customer-by-customer, is
14 discussed and agreed upon, and also, we would be
15 working closely with manufacturers to have
16 appropriate pricing for a particular customer, a
17 particular segment of customers.

18 So that formulary is something that a
19 customer can buy from, doesn't have to buy from,
20 and it's accustomed to each customer. So, in
21 working with any customer, we would look to
22 develop a relevant list of products that are
23 important to them that may or may not be similar
24 products that are on a DSO buying group, but by
25 definition, we don't have a policy that says

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2 something that the DSO is doing is not available
3 to a buying group.

4 Q. On the whole, is pricing to DSOs lower
5 than pricing to buying groups?

6 A. I don't know that. I don't know. We
7 have business with many -- I'm not familiar with
8 all of the terms that we have with the many
9 buying groups that we're doing business with and
10 how that matches up to the pricing that we may
11 have for various DSOs. Because again, DSOs come
12 in many, many different sizes from, you know,
13 700 offices to maybe 50 offices, and their
14 pricing is different based upon each customer's
15 situation.

16 Q. What percentage of Schein's dental
17 revenues come from buying groups?

18 MR. McDONALD: Object to the form.

19 A. I don't know.

20 Q. Does Schein track its revenues from
21 buying groups?

22 A. During what period of time?

23 Q. Does Schein track its revenues from
24 buying groups today?

25 A. We have created a new discipline

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 2 within the company, a new functional
 3 responsibility within the company, and some team
 4 members that are responsible for us for a
 5 particular segment of customers that are other
 6 than a private practice, other than DSO, but
 7 they're alternate kinds of entities that come in
 8 many, many different sizes and flavors that are
 9 looking to do business with us, and that person
 10 is responsible for helping us in a uniform way
 11 evaluate how each of those entities' businesses
 12 fit with what our overall value goal is in
 13 helping our customers grow and run a business
 14 and have value as elements of their offering,
 15 and it's not just about price and us being just
 16 a box-mover for a lower price.

17 And so today, and going forward, we
 18 have a team that's responsible for that, which
 19 would include a certain amount of reporting as
 20 to, you know, the scope of that business and
 21 what's in that business.

22 Q. Are you referring to the Alternate
 23 Purchasing Channel?

24 A. I am.

25 Q. And the Alternate Purchasing Channel

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 2 is tracked by the Mid Market group; is that
 3 right?

4 A. No.

5 Q. Who tracks the Alternate Purchasing
 6 Channel?

7 A. There's a leader. Her name is Darci
 8 Wingard. I'm not sure exactly how to spell her
 9 name.

10 Q. Prior to Darci --

11 A. But Darci reports to a leader who is
 12 part of the HSD with the Private Practice
 13 business as well, his name is Joe Cavaretta, and
 14 those two know the most about how that, you
 15 know, the reporting is actually working within
 16 our U.S. dental businesses.

17 Q. So buying group reporting goes through
 18 Darci Wingard to Joe Cavaretta?

19 A. Yes.

20 Q. Prior to Darci starting at Schein, did
 21 anybody else systematically conduct reporting
 22 for buying groups?

23 A. It was --

24 MR. McDONALD: Object to the form.
 25 Go ahead.

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 2 A. It was distributed across our Private
 3 Practice Management Team and Mid Market and also
 4 within our Special Markets business as well,
 5 because, as I mentioned before, we've been doing
 6 business with buying groups for many years in
 7 all kinds of different forms.

8 So some of those customers found
 9 themselves in the Private Practice and Mid
 10 Market area and some of those customers found
 11 themselves in our Special Markets area based
 12 upon whatever their operating model was.

13 So, over the years, we've had a lot of
 14 internal dialogue about where should certain
 15 customers go, should they be in Special Markets,
 16 should they be in the Private Practice and the
 17 Mid Market area, and because there has been an
 18 increased level of the emergence of different
 19 kinds of entities that are looking to do
 20 business with us, we said we need to have
 21 someone that's totally focused on the whole
 22 segment of Alternate Purchasing Channels.

23 Q. Do you have any sense of Schein's
 24 profit margin with respect to the buying group
 25 customer segment?

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 2 A. I do not.

3 Q. Do you have any sense of Schein's
 4 approximate market share in the buying group
 5 customer segment?

6 A. I do not.

7 Q. There are no third-party resources
 8 that Schein could use to evaluate its market
 9 position for buying groups?

10 A. None that I'm aware of.

11 Q. You mentioned earlier that you
 12 distinguish between buying groups and GPOs.
 13 Can you tell me a little bit more
 14 about that?

15 A. So the "GPO" terminology -- and again,
 16 we, even internally, there's some interchange
 17 that is utilized. Sometimes people utilize the
 18 term "GPO" in a way where they're really
 19 referring to a buying group or a buying club,
 20 but GPOs emerged in the Henry Schein world
 21 actually outside of our dental business and they
 22 have been resident in our medical business for
 23 many, many years.

24 The group purchasing organization,
 25 separate entities were borne out of the dynamic

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 2 of the acute care hospitals and manufacturers
 3 making contracts actually with the group
 4 purchasing organization itself is a separate
 5 entity, and that dynamic of manufacturers having
 6 contract pricing for classes of customers is
 7 something that has been in place in the medical
 8 industry for quite some time.

9 So whenever I'm asked about a GPO, I'm
 10 automatically thinking of that model that's
 11 resident within the medical business. If
 12 someone asks me about GPO and dental, to the
 13 best of my knowledge, GPO of that kind of model
 14 is not very prevalent, if prevalent at all, in
 15 the dental business based upon my knowledge.

16 Q. Does Schein have any GPO customers in
 17 the dental segment today?

18 And I'm using "GPO" as the way you
 19 defined GPO.

20 A. Not in any meaningful way that I'm
 21 aware of.

22 Q. When you say "not in any meaningful
 23 way," does that suggest that there are --

24 A. I don't know, because there could be
 25 somebody discovered something and something is

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 2 there that I'm not aware of.

3 Q. I understand that you're the CEO of
 4 Schein's dental business; is that right?

5 A. No longer.

6 Q. What is your current title?

7 A. I'm the vice chairman now of Henry
 8 Schein, and I'm also, and have been for a number
 9 of years, the president of Henry Schein, and
 10 recently, within the last two months, a new
 11 executive has joined our team, his name is John
 12 Koch, K-O-C-H, and John Koch is the global CEO
 13 for our Dental Distribution business.

14 Q. Was your move a promotion?

15 A. So John reports to me. I don't think
 16 of it as a promotion, but I'm -- could be.

17 Q. Was --

18 A. I'm still responsible through John
 19 now, so I'm no longer the CEO of the Global
 20 Dental Distribution business.

21 Q. Was your move something that you were
 22 happy about?

23 A. We are all responsible for succession
 24 planning. I have been with Henry Schein for 38
 25 years. We have a great team of people, and we

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 2 have people that have grown from within as we
 3 transition the company over those 38 years from
 4 one location and 150 people when I joined the
 5 company that was totally focused on just
 6 consumable products selling mail order to
 7 becoming a full service dental company, not only
 8 in the United States, but around the world, and
 9 many of my colleagues have been able to grow
 10 within but sometimes need to recruit from the
 11 outside in succession planning, and now we have
 12 someone who is capable to take what my job. So
 13 it's really a product of succession planning,
 14 given my years of experience.

15 Q. Was Tim Sullivan considered for your
 16 prior job?

17 A. Tim Sullivan was not considered nor
 18 was he interested.

19 Q. Tim Sullivan used to be one of your
 20 direct reports?

21 A. Tim Sullivan was one of my direct
 22 reports up until John Koch joined the
 23 organization.

24 Q. Is Tim Sullivan still the president of
 25 Henry Schein Dental?

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2 A. Tim Sullivan is the president of our
 3 Henry Schein North American Distribution
 4 business, so Canada is also part of his
 5 responsibility. Tim Sullivan does not have
 6 direct responsibility for the Special Markets
 7 business, which reports to Hal Muller.

8 Q. While you were still CEO of the Dental
 9 business, what were the differences in duties
 10 between you and Mr. Sullivan?

11 A. So Tim Sullivan is a business unit
 12 leader who is responsible for the largest
 13 business unit of Henry Schein, and he's directly
 14 responsible for strategy, for operations, for
 15 budgeting, for performance, and, of course,
 16 reporting to me, I'm accountable for his
 17 performance.

18 So what I also do is I also, as the
 19 CEO, when I was the CEO of the Global Dental
 20 business, I was responsible for the Global
 21 Dental business outside of North America as well
 22 with regions of Europe, APAC, and also we had a
 23 business in Brazil.

24 Q. When you were CEO of Henry Schein's
 25 Dental business, did you regularly consult on

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 2 individual customer accounts?
 3 MR. McDONALD: Object to the form.
 4 Vague.
 5 A. Not often.
 6 Q. Did you consult on opportunities to
 7 bid?
 8 MR. McDONALD: Object to the form.
 9 A. Not part of my job normally.
 10 Q. Did you know about each RFP or
 11 customer price quote?
 12 A. No.
 13 Q. Did you set pricing for customers?
 14 A. No.
 15 Q. Did you approve responses to RFPs or
 16 customer price quotes?
 17 A. No.
 18 Q. Did you have to approve decisions not
 19 to bid?
 20 A. No.
 21 Q. Was there a threshold customer account
 22 size that would have required your approval in
 23 any way?
 24 A. Not specifically.
 25 Q. I presume that a team of people at

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 2 Schein come up with a business strategy for HSD?
 3 A. Yes.
 4 Q. Are you a member of that team or were
 5 you a member of that team?
 6 A. That would be Tim's team, and I'm
 7 responsible for -- I was responsible for Tim's
 8 team.
 9 Q. And Tim's team would come up with a
 10 strategy, and you would ultimately approve it?
 11 A. Yes.
 12 Q. Do you monitor whether the strategy
 13 that you approve for HSD is being followed?
 14 A. We monitor performance of all of our
 15 business units, including progress towards
 16 strategic goals.
 17 Q. Do you personally monitor whether
 18 strategic goals are being met?
 19 A. I'm personally involved as part of the
 20 executive team that would monitor that, yes, and
 21 I'm direct -- I would have been directly
 22 accountable given Tim reported to me.
 23 Q. How did you monitor whether or not
 24 there was progress on strategic goals?
 25 A. Through periodic reporting of status

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 2 of the team; providing input back to Tim;
 3 evaluating their course correction plans, if in
 4 fact they were off-plan; and supporting them as
 5 best as I could.
 6 Q. Anything else?
 7 A. Not that I can think of.
 8 Q. You relied on others to provide you
 9 information to help you determine whether or not
 10 progress was being made on strategic plans?
 11 A. I have a team that also would include
 12 a CFO on the global basis and also some
 13 administrative colleagues that would help with
 14 the overall administration of the worldwide
 15 Global Dental business, which would have
 16 included more than 6,000 direct team members and
 17 probably \$6 billion or something like that in
 18 business, and so our team would work with all of
 19 the business unit leaders in all of the
 20 different countries and we would work with them,
 21 understanding how they're performing through
 22 their plans, and we would help them where we
 23 could help them with regard to ideas as to how
 24 to improve, should that be required.
 25 Q. Have you ever discovered an instance

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 2 where a strategy set for HSD was not being
 3 followed?
 4 And I want to be clear that my
 5 question relates not to a problem of execution,
 6 but actions that are inconsistent with an
 7 approved strategy.
 8 MR. McDONALD: Object to the form.
 9 A. Not that I can think of.
 10 Q. If you had discovered such an
 11 instance, what would be your recourse? What
 12 would you do?
 13 MR. McDONALD: Object to the form.
 14 A. Depends on what the particular
 15 strategy is. Some of our strategies are
 16 long-term in nature, and some of those
 17 strategies really require nurturing over a good
 18 number of years. They are long-term priorities,
 19 and sometimes short-term urgencies and things
 20 that are important from a short-term performance
 21 point of view has a team delaying some of the
 22 longer term strategies, and I would either
 23 support that or not or ask them to, you know,
 24 find a way to focus on those longer term
 25 strategies as well.

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Q. Has Schein ever had a policy on whether and when to work with buying groups?

A. No.

Q. Does Schein work with buying groups?

A. Yes.

Q. How does it determine what buying groups to work with?

MR. McDONALD: Object to the form.

A. The responsibility for determining which customers to work with and how to work with those customers resides at the business unit operating level, and our overall business model and our strategy is one of high value for our customers, recognizing that our customers, again, as we mentioned before, are in business, and we want to help them to be successful in their business. And so we provide a lot of resource related to helping them understand how to be successful in the business, and it's much more than -- it's much more about value than it is about a specific price for consumable products and us just being a distributor.

We have to be a good distributor, but what our focus is is on high value. So our

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teams would be looking to align with entities that have some alignment with high value, and it's not just about price. That decision to work with those businesses or those entities is delegated to the various operating team leaders.

Q. How does Schein identify which buying group entities are aligned with high value?

MR. McDONALD: Object to the form.

A. It's delegated to the business unit leaders. So --

Q. You don't have an understanding of how you identify high value buying groups?

MR. McDONALD: Object to the form.

A. The essence of it is that our business model of high value and not just price is the most important thing for us to understand what the goals are of any of those customers, and we would expect that our team is learning and understanding about what that entity is looking to do for the members that might become part of their group, and are they about helping those members in ways that are just beyond getting the cheapest price for any particular product.

Q. Is there some manual or cheat sheet or

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guidance that Schein has issued to help its team members identify which buying group entities are aligned with high value?

A. In what time period?

Q. In any time period.

A. So, therefore, the answer is yes and no. So there's no formal program or policy or document that I could point to over the 20 years that we've been involved with buying groups that provided that very specific guidance.

Today there is, because we have created this alternate purchasing channel leadership and team within our team, and Darci and her team have articulated the kinds of things we want to make sure that we see are part of that decision-making process.

Q. When did Darci and her team articulate the particular characteristics that would apply to APCs who are aligned with high value?

MR. McDONALD: Object to the form.

A. So Darci has probably been with us in this leadership position for a year or two, so within that window of time.

Q. Prior to a year or two ago, did Henry

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Schein have any formal guidance for its team to help identify entities aligned with high value in the buying group segment?

A. The guidance was focused on alignment with our value proposition. We have never wanted to stray from our overall value proposition with the customers, and we feel that to the extent that -- and we'll talk to anybody. So if anybody is out there that's looking to do business in the dental business, we'll listen to them, and to the extent that they are also about value -- and that's what the conversation has been about before it's been more, for lack of a better term, codified by Darci, that's what the team would have been focused on.

Q. So, prior to Darci coming onboard, there was guidance, but it wasn't codified, is that what you're saying?

A. Yeah, there was guidance and we were all driving to high value and looking to work with partners that were also aligned, and we could feel that it was fitting within our overall business model and that the teams that we -- or the businesses that we might be working

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2 with would also be able to demonstrate to us
3 that the members that would be considering
4 becoming part of that organization would feel
5 value so that they would actually be loyal to
6 that organization, and therefore, business would
7 naturally inure to us if we were aligned with
8 them or come to us if we were aligned with them.

9 Q. How has the guidance about aligning
10 with entities focused on high value in the
11 buying group segment conveyed to Schein's
12 operations teams?

13 MR. McDONALD: Object to the form.

14 A. Again, this would have been delegated
15 through the business unit leaders and through
16 the dialogue and the planning that Tim would
17 have had with his team and, in the United
18 States, the dialogue and the planning that Hal
19 would have had with his team.

20 Q. Is it your understanding that it was
21 codified orally?

22 MR. McDONALD: Object to the form.

23 A. I'm sure oral was part of it. I'm
24 sure from time to time they were writing to each
25 other. I'm sure from time to time they were

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2 also talking to each other about these entities
3 that were in Special Markets, and were they in
4 Tim's business and should one be in one area and
5 one be in another area.

6 This whole area of buying groups and
7 alternate purchasing entities has been around
8 for us and we've been doing business with them
9 for many, many years, and figuring out how to
10 have it best fit with us and be aligned with our
11 business model has been a pretty active
12 conversation, I would say, leading up to the
13 point to say that we need to actually put -- it
14 would be good for us to put more structure
15 around it and ownership. That's why we created
16 Darci's leadership.

17 Q. Has Schein's definition of what
18 constitutes these value added buying groups
19 changed over time?

20 MR. McDONALD: Object to the form.

21 A. I don't think so.

22 Q. Is it Schein's policy to do business
23 with all value added buying groups?

24 MR. McDONALD: Object to the form.

25 A. Each entity is case-by-case, and the

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2 decision-making is delegated to the operating
3 unit leaders.

4 Q. So there may be value added buying
5 groups that Schein has decided not to do
6 business with?

7 MR. McDONALD: Object to the form.

8 A. I don't know.

9 MR. McDONALD: Go ahead.

10 A. I don't know.

11 Q. When would Schein not work with a
12 value added buying group?

13 MR. McDONALD: Object to the form.

14 Vague. Overly broad.

15 A. I don't know. I could speculate that
16 if a mission to be value added was articulated,
17 but there wasn't evidence that there are value
18 added components, that the team would say, okay,
19 they're claiming to be value added, but there's
20 no evidence of it, so it doesn't make sense for
21 us to move right now. But that's speculation.

22 Q. If there was evidence that a buying
23 group was a value added buying group, would it
24 be your expectation that Schein would do
25 business with that buying group?

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2 MR. McDONALD: Object to the form.

3 A. Would --

4 MR. McDONALD: Overbroad. Vague.
5 Go ahead.

6 A. If our teams, to include Hal's team
7 and also, separately, Tim's team, if they were
8 engaged with an entity that they felt was
9 interesting because it seemed that they were
10 going to be a good value for the members and be
11 able to have the members be loyal to the buying
12 group, I would expect that Tim would and Hal
13 would expect that their teams would look to see
14 if there's a possibility of doing business.
15 Because doing business is always also a
16 negotiation.

17 Q. Have you heard the term "price-only
18 buying group"?

19 A. Not specifically in the way that you
20 just said it, but I have -- I would distinguish
21 between the buying groups that I've been talking
22 about, the buying groups that have more to their
23 overall proposition to their members beyond
24 price, and then there are others that may be
25 focused only on price.

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2 I may not have heard the term exactly
3 the way you said it, but that's -- but there may
4 be dynamics of that out there that...

5 Q. Does Schein have a policy against
6 working with buying groups that are focused only
7 on price?

8 MR. McDONALD: Object to the form.

9 A. We don't have a policy. I would say
10 that our team, in their judgment, they would
11 lean towards buying groups that actually have
12 value that fit with our model that also provide
13 us with comfort that their members are also
14 going to be loyal to the group, and there's some
15 mechanisms that help bring that about, and there
16 are other value added elements associated in the
17 buying group.

18 Q. So Schein's team shies away from doing
19 business with buying groups that are focused
20 only on price?

21 MR. McDONALD: Object to the form.

22 Mischaracterizes his testimony.

23 A. Again, we could very well have active
24 dialogue with any kind of buying group that
25 presents itself to us or alternate purchasing

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2 entity, and we would evaluate whether or not it
3 makes sense and it fits and is aligned with our
4 overall value propositions and there are
5 elements associated with it that would lead to
6 loyalty within the group itself.

7 The likelihood of us pursuing buying
8 entities that don't have a value proposition and
9 are only focused on price is not something that
10 our team would spend a lot of time on. They
11 would spend time on the other opportunities that
12 we have with different kinds of buying groups
13 that do have this value.

14 Q. In setting HSD's strategic goals, if
15 Tim Sullivan were to approach you and say that
16 he wanted to add a focus on buying groups that
17 focused only on price, what would be your
18 reaction?

19 MR. McDONALD: Object to the form.

20 Improper hypothetical.

21 A. I would ask my -- it would be
22 inconsistent for Tim to be focused on changing
23 our overall model, and I would ask him has
24 something changed in the marketplace that has
25 you thinking differently and let's analyze it,

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2 and maybe there's something here I don't
3 understand that we need to learn more about, and
4 we would -- we would talk it through.

5 Q. Can price-focused buying groups also
6 be beneficial for Schein?

7 MR. McDONALD: Object to the form.

8 Vague. Overly broad.

9 A. I would say that price-only buying
10 groups are just not aligned with our business
11 model and would not -- we are extremely focused
12 and putting a tremendous amount of investment
13 into the broad-based, full-service elements of
14 what we provide our customers. So price only
15 is -- it's just very inconsistent with what we
16 do.

17 Q. If a price-only buying group brought
18 new customers to Schein, is it possible that
19 that relationship could increase Schein's
20 revenues?

21 MR. McDONALD: Object to the form.

22 A. By definition, if someone brought a --
23 if there was a buying group that we weren't
24 working with -- not saying that we are -- that
25 brought incremental business, if we had gone

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2 away from our policy, it could bring incremental
3 business at a low level, yeah. Could.

4 Q. If a price-only buying group brought
5 new customers to Schein, is it possible that
6 that relationship could increase Schein's
7 profitability?

8 MR. McDONALD: Object to the form.

9 A. It's complex. I don't know. I would
10 have to really look at all of the circumstances
11 and the context and what the impact would be,
12 where the area of business is being done and why
13 that value proposition might make sense for us
14 because it's inconsistent with the business
15 model that we have. It could be negative
16 effects elsewhere. I don't know.

17 Q. I'm just asking whether or not a
18 buying group that brought new customers to
19 Schein could increase profitability?

20 MR. McDONALD: Object to the form.

21 A. I don't know.

22 MR. McDONALD: Hang on. Object to the
23 form. Asked and answered.

24 Go ahead.

25 A. It -- without really understanding the

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 2 complete circumstances about that opportunity,
 3 every opportunity has to be looked at as a
 4 separate customer, potential customer or
 5 potential entity that we're going to do business
 6 with, and we would have to make a decision based
 7 upon -- alignment is the overriding thing that
 8 we think about, and we look to make sure that we
 9 are, you know, not losing our focus on that; and
 10 so if a price-only buying group came to us, we
 11 don't really want to be just a fulfillment house
 12 and not -- not really being in a position to
 13 work directly with those customers, you know,
 14 helping them grow their business.

15 Q. If a price-only buying group were to
 16 bring new customers to Schein, would that take
 17 away from Schein's profitability?

18 MR. McDONALD: Object to the form.

19 Asked and answered. I mean, you have asked
 20 this --

21 A. It's possible.

22 MR. McDONALD: Hang on.

23 THE WITNESS: Okay. Sorry.

24 MR. McDONALD: You have asked a
 25 similar question about five times now. So

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 2 move along or we'll stop. This is your last
 3 shot at this question.

4 Can you repeat it for him, please?

5 (Record read as follows:

6 "Q If a price-only buying group were to
 7 bring new customers to Schein, would that take
 8 away from Schein's profitability?")

9 MR. McDONALD: Same objections.

10 (Record read.)

11 THE WITNESS: Not necessarily.

12 BY MS. ROSNER:

13 Q. Why does Schein choose to do business
 14 with buying groups?

15 A. Again, we have to pay attention to all
 16 trends that are in the marketplace. We have to
 17 understand all possibilities of doing business
 18 with potential customers, and we feel that as
 19 long as our local teams that are responsible for
 20 their different business units feel that it fits
 21 within their overall current plans, that that
 22 business can work for us. And so, therefore, we
 23 have been doing business with buying groups of
 24 all kinds for a really long time.

25 Q. What benefits does Schein get from

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 2 doing business with buying groups?

3 MR. McDONALD: Object to the form.

4 Overly broad. Vague.

5 A. We get the -- assuming that the buying
 6 group is a buying group that has value elements
 7 associated with it, where the members appreciate
 8 the value brought by the buying group, it gives
 9 us an opportunity to be introduced to that
 10 customer, also adding the additional opportunity
 11 for us to convince those customers to buy even
 12 more of our value-added services, perhaps buy
 13 practice management technology.

14 It's a door-opener for us in some
 15 respects, and if the local team has determined
 16 that there's enough potential in that value, it
 17 could really work for us.

18 Q. Have you ever seen the benefits that
 19 you're describing actually manifest in any of
 20 your buying group relationships?

21 A. I'm sure that they have. I can't
 22 point to any specific examples.

23 Q. Are there any drawbacks to doing
 24 business with buying groups?

25 MR. McDONALD: Object to the form.

1 CONFIDENTIAL - JAMES BRESLAWSKI
 2 Overly broad. Vague.

3 A. Buying groups that our team has
 4 determined for the various reasons that I have
 5 mentioned before, we believe by moving ahead
 6 with them that they can work for us because of
 7 the value elements associated with those buying
 8 groups.

9 It could work out that that buying
 10 group doesn't actually achieve their goals and
 11 their members become dissatisfied, and being
 12 that we're not directly in control of what the
 13 buying group directly is doing with the other
 14 value elements that are their responsibility,
 15 there could be a negative impact.

16 MR. McDONALD: If you're moving on,
 17 let's take a break.

18 MS. ROSNER: Last question before the
 19 break.

20 BY MS. ROSNER:

21 Q. If there are potential negative
 22 impacts to doing business with buying groups,
 23 then why does Schein do business with buying
 24 groups?

25 MR. McDONALD: Object to form. Overly

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 2 broad. Vague. Improper hypothetical.
 3 A. It's important for us to always
 4 understand what's happening in the marketplace
 5 with various customer segments, new customer
 6 models that might be developing, and again, as
 7 long as we adhere to our high value standards
 8 and our business model and don't lose track of
 9 that, we believe we can do business and have
 10 done business with business models without
 11 hurting our ability to achieve our overall goals
 12 of high value service providers to our customers
 13 and we have actually proven it out in our
 14 performance.
 15 MS. ROSNER: Let's go ahead and take a
 16 break. Off the record.
 17 (Recess; Time Noted: 10:27 a m.)
 18 (Time Noted: 10:50 a m.)
 19 BY MS. ROSNER:
 20 Q. Mr. Breslawski, you're familiar with
 21 the group Smile Source?
 22 A. I am familiar with the -- to a certain
 23 extent, I'm familiar with Smile Source.
 24 Q. Smile Source is a buying group of
 25 independent private practice dentists?

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 2 MR. McDONALD: Object to the form.
 3 A. I'm familiar somewhat. I am not that
 4 familiar with the complete structure of Smile
 5 Source and what all of their customers base is,
 6 but I am aware of Smile Source.
 7 Q. What do you know Smile Source to be?
 8 A. I know Smile Source to be an entity
 9 that is a customer today, was a customer years
 10 ago, stopped being a customer, and is back
 11 working with us. So I just don't know all of
 12 the structure of their business.
 13 Q. You don't know whether Smile Source
 14 has an ownership interest in its affiliate
 15 dentists?
 16 A. I do not.
 17 Q. Do you know that Smile Source is a
 18 franchise model?
 19 A. I don't know -- I do not know Smile
 20 Source's business structure virtually at all.
 21 Q. Do you know any of the benefits that
 22 Smile Source provides to its members?
 23 A. I do not. That is something that Tim
 24 Sullivan and his team would be much more
 25 familiar with than me.

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 2 Q. Do you know that Smile Source was
 3 modeled off of a buying group in a division
 4 industry?
 5 MR. McDONALD: Object to the form.
 6 A. I heard that there was some history in
 7 the division business, but I don't know much
 8 about that either.
 9 Q. Do you have any views, either positive
 10 or negative, about Smile Source's business
 11 structure?
 12 A. The only thing I would know is that
 13 our team is interested in doing business with
 14 Smile Source, so assuming Tim and his team have
 15 gone through their overall evaluation process as
 16 to whether or not this makes sense for us, I
 17 would be supportive.
 18 Q. Is it your understanding that Smile
 19 Source is a value-added buying group?
 20 MR. McDONALD: Object to the form.
 21 A. Again, I don't know that much about --
 22 I am relying on Tim and his team and, at this
 23 point, Darci being part of that and Joe
 24 Cavaretta making their decisions.
 25 Q. You mentioned that at various points

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 2 in time Smile Source has been a Schein customer.
 3 I want to focus on the time from the sort of mid
 4 2000s to the 2012 timeframe.
 5 For the majority of that time, Smile
 6 Source --
 7 A. The mid- -- please, the mid 2000s to
 8 2012?
 9 Q. Yes.
 10 A. Okay.
 11 Q. For the majority of that time, Smile
 12 Source was a customer in Schein's Special
 13 Markets division; is that right?
 14 MR. McDONALD: Object to the form.
 15 A. I don't know. I don't know which
 16 business group they were working with. I don't
 17 recall. I may have known at one time.
 18 Q. Do you recall any disagreements
 19 between Tim Sullivan and Hal Muller regarding
 20 Smile Source in the 2010-2012 timeframe?
 21 A. Could be, in that anytime that our
 22 team is looking to determine how we're going to
 23 work with a particular entity, given that our
 24 U.S. Dental business is split between Special
 25 Markets and the rest of the business, that Tim

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2 and Hal would have had frequent conversations
3 about, whether it's Smile Source or any other
4 customers, as to the appropriate placement of a
5 customer or a potential customer in either our
6 Special Markets business or within Tim's scope.

7 Q. I'm asking you specifically whether
8 you recall a disagreement between Tim and Hal
9 regarding Smile Source.

10 A. I don't recall details of any specific
11 disagreements with Hal and Tim.

12 Q. Do you recall whether there was a
13 disagreement between Hal and Tim on Smile
14 Source?

15 MR. McDONALD: Object to the form.

16 A. It's not something that's been on my
17 mind in any significant way.

18 Q. Do you understand that in the 2010 to
19 2012 timeframe, Hal Muller wanted to continue
20 doing business with Smile Source?

21 MR. McDONALD: Object to the form.

22 A. I don't recall the details of any
23 conversation between Tim and Hal regarding Smile
24 Source.

25 Q. Do you recall whether Tim Sullivan

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2 wanted to end Schein's relationship with Smile
3 Source?

4 MR. McDONALD: Object to the form.

5 A. I don't recall that.

6 Q. Do you recall whether Mr. Muller told
7 Mr. Sullivan that Smile Source could bring more
8 volume to Schein?

9 MR. McDONALD: Object to the form.

10 A. I don't recall details of conversation
11 and debate between Hal and Tim on a detailed
12 level with regard to Smile Source or any other
13 specific customer. This is something that is
14 delegated to the president of Special Markets
15 and the president of the balance of our U.S.
16 Dental business, and typically they work these
17 things out.

18 Q. Mr. Sullivan's understanding was that
19 Smile Source did not have ownership in its
20 members' practices.

21 If Smile Source had ownership in its
22 members' practices, would Schein have been
23 amenable to working with Smile Source?

24 MR. McDONALD: Object to the form.
25 Improper hypothetical.

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2 A. Again, I'm not familiar with those
3 details. We work with all kinds of entities
4 where there's ownership, where there's not
5 ownership. I don't -- don't understand the
6 context of the conversation Tim may have been
7 having with Hal.

8 Q. Is it your testimony that if a group
9 does not have an ownership interest in its
10 member practices, then Schein will not work with
11 those members?

12 MR. McDONALD: Object to the form.

13 A. No, that's not my testimony.

14 Q. I'm going to show you a document
15 that's been previously marked as Exhibit CX2111.
16 (Complaint Counsel Exhibit CX2111-001
17 through011, an e-mail chain bearing Bates
18 Nos. Henry Schein-000866230 through 240,
19 marked for identification, as of this date.)

20 BY MS. ROSNER:

21 Q. This is a multi-page e-mail string.
22 The Bates number on the first page is Henry
23 Schein-000866230.

24 Please take a moment to review this
25 document and let me know when you're done.

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2 (Document review.)

3 THE WITNESS: Okay.

4 BY MS. ROSNER:

5 Q. You've had an opportunity to review
6 CX2111?

7 A. Yes.

8 Q. I'm going to refer you to the bottom
9 of page CX2111-003.

10 A. Yes.

11 Q. There's an e-mail from Tim Sullivan at
12 the bottom of that page at 3:01 p m. to you and
13 Lynne McHugh.

14 Who is Lynne McHugh?

15 A. Lynne McHugh was an executive who had
16 certain operating responsibility but also had
17 certain general administrative responsibility
18 working directly for me.

19 Q. In this e-mail, Mr. Sullivan says,
20 beginning with the second sentence, "Hal seems
21 to feel confident with this group and wants to
22 support this. It feels like a buying club to
23 me. Yes, they do a lot more, but part of their
24 approach is better pricing on supplies. Not
25 good."

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2 Did I read that correctly?

3 A. "Feels like a buying club to me. Yes,
4 they do have" --

5 Yep, you read it correct. Yes.

6 Q. What do you understand him to mean by
7 saying, "Yes, they do a lot more"?

8 MR. McDONALD: Object to the form.

9 A. Well, I think this communication is
10 indicative of our teams, the two leaders of the
11 major parts of our business, sorting through and
12 evaluating whether or not this entity actually
13 fits and where it fits. And so it looks like a
14 good debate or discussion between the two of
15 them as to the level of value beyond just price
16 that this entity provides to its membership, and
17 they're searching for agreement amongst
18 themselves as to how we might want to move
19 forward with this entity.

20 Q. I think you just answered a different
21 question. I want you to focus on my specific
22 question, which is the language, "Yes, they do a
23 lot more."

24 What's your understanding of what that
25 means?

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2 MR. McDONALD: Object to the form.

3 A. I would be speculating.

4 MR. McDONALD: Well, don't speculate.

5 You're not here to speculate. You're here
6 to tell the truth and give your answers. So
7 if you don't know, tell her you don't know.

8 A. I don't know.

9 Q. You receive e-mails from Tim Sullivan
10 on a regular basis, right?

11 A. Of course.

12 Q. And when he writes something to you
13 that you don't understand, do you ask him for
14 clarification?

15 A. If -- from time to time.

16 Q. So are you saying that he wrote this
17 to you, you didn't understand what he meant, and
18 you didn't ask him for clarification?

19 MR. McDONALD: Object to the form.

20 Vague. The e-mail is from eight years ago.

21 A. When this e-mail was received by my
22 colleague Lynne McHugh is the person that I
23 would have relied on typically what her role is
24 to help shepherd these conversations across our
25 business unit leaders, and it's highly unlikely

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2 that I would have done anything with this
3 specific e-mail.

4 Q. If you could turn to page CX2111-05.
5 I'm going to refer you to the Tim Sullivan
6 e-mail at the bottom of that page from September
7 2, 2010 at 12:58 p m.

8 Do you see that?

9 A. Yes.

10 Q. In the middle of his e-mail, he's
11 referring to Smile Source, and he says, "This
12 becomes a buying group. If they buy a practice
13 and own it... no problem. That's how it works."

14 Did I read that correctly?

15 A. Yes.

16 Q. What do you understand him to mean by
17 saying, "If they buy a practice and own it... no
18 problem. That's how it works"?

19 MR. McDONALD: Object to the form.

20 A. Not sure what he means by that.

21 Q. Does Schein have a policy that they
22 only do business with groups in 2010 that own
23 practices?

24 A. We do not have that policy. Did not
25 have that policy. I believe that Tim was

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2 talking about whether or not -- I think they
3 were debating whether it's in Hal's business
4 group or it's in Tim's.

5 Q. Where do you understand the debate
6 was?

7 A. Well, I shouldn't speculate. I was
8 reading into it, so I don't know.

9 Q. So if there was ownership, are you
10 saying that the group would be in Special
11 Markets at this time?

12 A. Generally, Special Markets accounts,
13 with exceptions, are accounts where there is
14 ownership, generally, but there's exceptions.

15 Q. Does Henry Schein Dental have a
16 limitation that its customer segments have to
17 have ownership?

18 MR. McDONALD: Object to the form.

19 Vague as to time.

20 A. No.

21 Q. I'm going to refer you to CX2111-007.
22 It's an e-mail from Hal Muller, August 31, 2010,
23 at 9:12 p.m.

24 Do you see that?

25 A. Yes.

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Q. He starts this e-mail, "After Randy's call, I do think we continue the relationship with Smile Source. They are going to expand and they just have a slightly different model, but they are not by far the first group that we have had that doesn't own the offices."

Did I read that correctly?

A. Yes.

Q. So Mr. Muller is telling the group in that e-mail that he wants to continue the relationship with Smile Source; is that right?

MR. McDONALD: Object to the form.

For the record, the witness is not on that e-mail.

(Pause.)

THE WITNESS: I'm sorry, was there a question for me?

MS. ROSNER: Can you repeat the question?

(Record read.)

MR. McDONALD: Same objections.

THE WITNESS: His first sentence appears to be saying that.

BY MS. ROSNER:

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Q. And in the e-mail from Tim Sullivan on page 2111-005, the e-mail that we just looked at, Mr. Sullivan appears to disagree with Mr. Muller; is that right?

MR. McDONALD: Object to the form.

A. Which e-mail?

Q. The e-mail that we just looked at on September 2, 2010 at 12:58 p m. Mr. Sullivan appears to disagree with Mr. Muller about whether Schein should continue doing business with Smile Source?

MR. McDONALD: Object to the form.

A. It's clear they are debating this issue. I don't have the full context of their conversation.

Q. You just spent a moment reading the full e-mail; is that right?

MR. McDONALD: Well, and for the record, as you very well know, there's many other e-mails about this issue, and the company did do business with Smile Source for another year and a half. I think this is a colossal waste of time, but go ahead.

Q. I'm just trying to better understand

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that, "If they buy a practice and own it... no problem. That's how it works" comment?

A. Again, I don't know --

MR. McDONALD: Objection. Asked and answered.

Go ahead.

A. I don't know what Tim is referring to.

Q. Does this seem contrary to your understanding of Schein's strategy with respect to buying groups?

MR. McDONALD: Object to the form.

A. Every decision about an entity that we're either doing business with or considering doing business with stands on its own, and some of those decisions are made within Hal Muller's business and some of those decisions are made in Tim's business. And sometimes there is a discussion as to whether or not the customer's in the right place and it's a complex matter, and so there's some dialogue here between Hal and Tim, where they're looking to understand what the best next steps are with Smile Source.

Q. So I understand that every customer decision is independent of that customer for

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that customer.

Tim seems to be suggesting a broader rule, which is if they buy a practice and own it, no problem. Is that your understanding --

A. There is no --

MR. McDONALD: Hang on. Hang on. Object to the form. Asked and answered.

MS. ROSNER: Can I finish my question?

MR. McDONALD: Well, sure, why don't you go ahead.

MS. ROSNER: Can you repeat what I said before?

MR. McDONALD: Well, you're reading the question. Why don't you just read it again.

(Record read.)

MR. McDONALD: Are you done?

MS. ROSNER: I'll pose that same question.

MR. McDONALD: Object to the form. Asked and answered.

He already told you this was a debate between whether it's in Special Markets or

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 2 HSD, but tell her that again.
 3 THE WITNESS: This is a debate that
 4 Hal and Tim are having as to the right the
 5 appropriate placement of this customer in
 6 either Hal's business or Tim's business.
 7 BY MS. ROSNER:
 8 Q. You do not understand this e-mail
 9 chain to be a debate about whether Schein should
 10 do business with Smile Source?
 11 A. No.
 12 MR. McDONALD: Object to the form.
 13 A. No.
 14 Q. You can put that document aside.
 15 In late 2010, Schein was considering
 16 dropping Smile Source as a customer; is that
 17 right?
 18 A. I don't know.
 19 Q. In late 2010, Schein was considering
 20 discontinuing Smile Source's discount; is that
 21 right?
 22 MR. McDONALD: Objection.
 23 A. I didn't hear the question.
 24 Q. In late 2010, Schein was considering
 25 discontinuing Smile Source's discount?

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 2 MR. McDONALD: Object to the form.
 3 A. I don't know.
 4 Q. The president of Smile Source
 5 requested a meeting to explain why Schein should
 6 not drop Smile Source as a customer; is that
 7 right?
 8 MR. McDONALD: Object to the form.
 9 A. From my point of view, this is
 10 primarily delegated to the leaders of our U.S.
 11 Dental business, Hal Muller and Tim Sullivan,
 12 and I --
 13 Q. You met --
 14 A. Go ahead.
 15 Q. I'm sorry. I cut you off. Please
 16 continue.
 17 A. No.
 18 Q. You met with the owners of Smile
 19 Source in October 2010; is that right?
 20 MR. McDONALD: Object to the form.
 21 A. I actually don't recall meeting the
 22 owners of Smile Source in person. I may have
 23 participated on a phone call.
 24 Q. After the meeting with Smile Source,
 25 you thought that Smile Source was much more than

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 2 simply a buying group, right?
 3 MR. McDONALD: Object to the form.
 4 A. I don't recall the details of that
 5 phone call.
 6 Q. Do you recall whether or not you
 7 considered Smile Source to be much more than a
 8 buying group?
 9 A. I don't recall when, but over time,
 10 I've learned more that Tim and Hal, and Tim in
 11 particular, believes that Smile Source is a
 12 value-added entity that it would be good for us
 13 to be doing business with.
 14 Q. Has Smile Source's business model
 15 changed over time, to your knowledge?
 16 A. I don't know.
 17 Q. In the 2010 timeframe, you guessed
 18 that Smile Source's volume with Schein would
 19 grow over time?
 20 MR. McDONALD: Object to the form.
 21 A. I didn't think of it.
 22 Q. What do you mean?
 23 A. You're asking me in 2010 what was I
 24 thinking about Smile Source and their business
 25 with Schein. I wasn't thinking about it. That

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 2 was, again, something I delegated to Hal and to
 3 Tim.
 4 Q. You never said that Smile Source's
 5 volume with Schein would grow over time?
 6 MR. McDONALD: Object to the form.
 7 If you've got a document, show him.
 8 If you recall, tell her.
 9 A. I don't recall. I don't recall saying
 10 that, but maybe I did. I don't recall it.
 11 Q. You believe that working with Smile
 12 Source in 2010 would be a win-win situation for
 13 Schein and Smile Source?
 14 MR. McDONALD: Object to the form.
 15 If you recall, tell her.
 16 A. I don't recall. I don't recall.
 17 (Complaint Counsel Exhibit CX2298-001
 18 through 003, an e-mail chain bearing Bates
 19 Nos. Henry Schein-000735259 through 261,
 20 marked for identification, as of this date.)
 21 BY MS. ROSNER:
 22 Q. Let me hand you a document that's been
 23 previously marked as CX2298. It's an e-mail
 24 with the first Bates page being Henry
 25 Schein-000735259.

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 2 Please take a moment to review this
 3 document and let me know when you've finished.
 4 (Document review.)
 5 THE WITNESS: Okay.
 6 BY MS. ROSNER:
 7 Q. You've had an opportunity to review
 8 CX2298?
 9 A. Yes.
 10 Q. CX2298 is an e-mail chain. The top
 11 e-mail on the chain is dated October 18, 2010.
 12 If you look to page CX22 --
 13 A. I'm sorry, which page?
 14 MR. McDONALD: She's at the very first
 15 page.
 16 THE WITNESS: On the top?
 17 MR. McDONALD: Yes.
 18 BY MS. ROSNER:
 19 Q. And now I'm going to refer you to page
 20 CX2298-003.
 21 A. Okay.
 22 Q. At the top of that page.
 23 MR. McDONALD: Slow down. Slow down,
 24 Jasmine.
 25 Q. It's an e-mail written by you on

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 2 October 15, 2010 at 4:05 p m.
 3 Do you see that e-mail?
 4 A. I do.
 5 Q. You drafted this e-mail as part of
 6 your job; is that right?
 7 A. I'm sorry? Say again.
 8 Q. You drafted this e-mail as part of
 9 your job?
 10 A. I'm sure I did, yes.
 11 Q. It's part of your job to communicate
 12 about customer inquiries when they rise to your
 13 level; is that right?
 14 A. I didn't understand every word you
 15 said. Can you please say that again?
 16 Q. Is it part of your job to respond to
 17 customer inquiries when they rise to your level?
 18 A. It's part of my job to respond to
 19 customer inquiries, but also, this is an
 20 employee, Scott, who I believe was an FSC, who
 21 wrote to me, and I'm pretty accessible to
 22 people, so if a -- a team member writes to me, I
 23 will typically either do something myself to
 24 follow up or delegate it to someone to follow
 25 up.

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 2 Q. You had knowledge of the contents of
 3 this e-mail at the time you drafted it; is that
 4 right?
 5 A. At the time I drafted it, I'm sure I
 6 did. I wrote it.
 7 Q. And you drafted this e-mail at or near
 8 the time you looked into the Smile Source
 9 question that Scott was raising to you?
 10 MR. McDONALD: Object to the form.
 11 Don't nod your head at him, trying to
 12 suggest an answer. It may be a tick, but
 13 don't do it, please.
 14 Did you hear her question?
 15 THE WITNESS: I'm sorry. Repeat the
 16 question, please.
 17 (Record read.)
 18 BY MS. ROSNER:
 19 Q. I'm simply asking about --
 20 A. All of this is in a relevant
 21 timeframe.
 22 MR. McDONALD: Jasmine, I've told you
 23 guys I don't know how many times we're not
 24 going to object to the authenticity. If an
 25 e-mail is from him, he did it in his

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 2 capacity as an employee of Henry Schein.
 3 The date is what it is. You know, I mean,
 4 come on.
 5 MS. ROSNER: There are a variety of
 6 reasons why it's important to establish this
 7 as a business record, and that's all that
 8 I'm trying to do.
 9 THE WITNESS: But I thought I said
 10 that this is my e-mail, and I wrote this
 11 e-mail.
 12 BY MS. ROSNER:
 13 Q. And you wrote it near the time that --
 14 A. People don't write e-mails for me. I
 15 write my own.
 16 Q. I'm trying to establish the timing of
 17 when you wrote this e-mail, and that simply you
 18 wrote it near the time that this issue bubbled
 19 up for you?
 20 MR. McDONALD: The record speaks for
 21 itself.
 22 A. It appears that way.
 23 Q. You maintained this e-mail in the
 24 course of Schein's regularly conducted business;
 25 is that right?

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 2 MR. McDONALD: Object to the form.
 3 A. I maintained this e-mail -- say it
 4 again.
 5 Q. This e-mail was maintained in Schein's
 6 regularly conducted course of business?
 7 A. Sure.
 8 Q. And this is a true and correct copy of
 9 CX2298?
 10 A. I assume so.
 11 Q. In CX2298, you say that you, Tim and
 12 Hal met with the owners of Smile Source earlier
 13 this week. You learned a lot more about their
 14 model in this meeting. They are really much
 15 more than simply a buying group.
 16 Do you see that?
 17 A. I do.
 18 Q. You are referring to Smile Source as
 19 more than simply a buying group; is that right?
 20 A. I have learned a lot more about their
 21 model in this meeting. They're really much more
 22 than simply a buying group, yes.
 23 Q. What do you mean by Smile Source being
 24 more than simply a buying group?
 25 A. I don't recall all the details of this

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 2 meeting. I don't actually recall meeting them
 3 in person. It could have been on the phone.
 4 But I believe what they showed is more services
 5 that they provide as sort of a management
 6 services group to help customers beyond just
 7 getting a better price on consumable supplies.
 8 Q. What were some of the services that --
 9 A. I don't recall.
 10 Q. Why is it significant that Smile
 11 Source is more than simply a buying group?
 12 MR. McDONALD: Object to the form.
 13 A. Smile Source is more, as I mentioned
 14 before, as we evaluated whether or not doing
 15 business with entities makes sense for us,
 16 aligning with value for customers, and it is
 17 important to us, and so that would be an
 18 important element of us feeling comfortable
 19 doing business with Smile Source.
 20 Q. If Smile Source was just a buying
 21 group, would Schein consider working with them?
 22 MR. McDONALD: Object to the form.
 23 A. I would rely on Hal and with -- and
 24 Tim. This is something that they would be
 25 responsible for, and to the extent that an

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 2 entity is not aligned with our model, it's more
 3 likely than not that we wouldn't do business
 4 with them.
 5 Q. The second-to-last sentence of your
 6 e-mail on CX2298-003 reads, "My guess is that
 7 we'll see their overall volume with us grow,
 8 thereby making this a win/win."
 9 Did I read that correctly?
 10 A. Yes. Yes.
 11 Q. You expected that volume from Smile
 12 Source was going to increase?
 13 MR. McDONALD: Object to the form.
 14 Mischaracterizes the document.
 15 A. My conclusion here is that their
 16 members would appreciate the value of Smile
 17 Source, and thereby they would be -- that
 18 membership support would also provide us with
 19 access to these customers to also sell beyond
 20 what Smile Source services may be for the full
 21 value of what it is that we could provide to
 22 those customers.
 23 Q. What do you mean by "win/win"?
 24 A. That it would be good for Henry Schein
 25 and it would be good for our customer.

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 2 Q. Going back up your e-mail, in the
 3 middle of your e-mail you say, "That said, I
 4 need to circle back with Tim and Hal to find the
 5 right balance."
 6 Do you see that?
 7 A. Yes.
 8 Q. If Smile Source is a win/win, why do
 9 you need to circle back with Tim and Hal?
 10 MR. McDONALD: Object to the form.
 11 A. I believe this relates to, again, as I
 12 had mentioned before, who would be the primary
 13 owner of the relationship, whether it be Tim or
 14 Hal.
 15 Q. Did you ever actually circle back with
 16 Tim and Hal?
 17 A. I don't recall specifically doing
 18 that. Again, primarily delegating and relying
 19 on Hal and Tim to work out what's next with this
 20 customer.
 21 Q. Okay. You can put CX2298 aside.
 22 In 2011, Smile Source received private
 23 equity investments and hired some new
 24 executives; is that right?
 25 MR. McDONALD: Object to the form.

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 2 A. I don't know.
 3 Q. The CEO of Smile Source reached out to
 4 Schein to schedule an opportunity to introduce
 5 these new executives; is that right?
 6 MR. McDONALD: Object to the form.
 7 A. Again, I don't recall.
 8 Q. You definitely thought Schein should
 9 meet with Smile Source --
 10 MR. McDONALD: Object to the form.
 11 Q. -- to meet these new executives?
 12 MR. McDONALD: Object to the form.
 13 A. Could be.
 14 Q. Why would you be interested in meeting
 15 Smile Source's new executives?
 16 A. Relying on Tim and Hal's
 17 recommendation, I would be supportive of
 18 learning more about this -- this business would
 19 be logical for me.
 20 Q. Did Tim Sullivan ever express to you
 21 any concern about Smile Source's business model?
 22 MR. McDONALD: Object to the form.
 23 A. I don't recall specifics.
 24 (Complaint Counsel Exhibit CX2299-001
 25 through 002, an e-mail chain bearing Bates

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 2 Nos. Henry Schein-000183494 through 495,
 3 E-mail chain, marked for identification, as
 4 of this date.)
 5 BY MS. ROSNER:
 6 Q. I'm going to hand you a document
 7 that's been previously marked as CX2299. This
 8 is an e-mail string. The top page of the e-mail
 9 is marked Henry Schein-000183494.
 10 Please take a moment to familiarize
 11 yourself with CX2299.
 12 A. Okay. I read it.
 13 Q. You've had an opportunity to review
 14 CX2299?
 15 A. Yes.
 16 Q. At the top of the e-mail string is an
 17 e-mail from you dated October 1, 2011. This
 18 e-mail you drafted as part of your job; is that
 19 right?
 20 A. Yes.
 21 Q. And it's part of your job to
 22 communicate about customer opportunities that
 23 arise?
 24 MR. McDONALD: Object to the form.
 25 A. It's part of my responsibility to

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 2 respond to e-mails that I get.
 3 Q. You have knowledge of the contents of
 4 this e-mail?
 5 MR. McDONALD: Object to the form.
 6 A. I have just read this e-mail.
 7 Q. At the time that you drafted your
 8 response, you had knowledge of the contents?
 9 A. I would have read the e-mail.
 10 Q. You drafted this e-mail and Schein
 11 kept it in the ordinary course of its regularly
 12 conducted business?
 13 A. I'm sure --
 14 MR. McDONALD: Hang on.
 15 Object to the form. He drafted the
 16 top e-mail.
 17 Q. This is a true and correct copy of the
 18 e-mail that you drafted?
 19 A. I'm sure it is.
 20 Q. In the e-mail below, Tim Sullivan
 21 responds to a request from Smile Source for a
 22 meeting saying, "Interesting... these guys
 23 certainly aren't going away, but their model
 24 does concern me."
 25 Tim Sullivan is telling you that the

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 2 Smile Source model concerned him. Is that how
 3 you read that e-mail?
 4 MR. McDONALD: Object to the form.
 5 A. I read that Tim Sullivan has open
 6 questions, yes.
 7 Q. Do you agree with Mr. Sullivan that
 8 the Smile Source model is concerning?
 9 A. I wouldn't know.
 10 Q. What about the Smile Source model
 11 concerns --
 12 A. I don't know.
 13 Q. Were you curious about why the Smile
 14 Source model caused concern for Mr. Sullivan?
 15 A. I --
 16 MR. McDONALD: Hang on.
 17 Objection to form.
 18 A. It is very usual for me to encourage
 19 spending time with people and meeting people and
 20 understanding, and so that's why I would have
 21 encouraged a meeting.
 22 Q. About a year prior to this, you
 23 mentioned that the Smile Source relationship was
 24 going to be a win/win.
 25 Did you remind Mr. Sullivan of your

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 2 impression of that?
 3 MR. McDONALD: Object to the form.
 4 Mischaracterizes the document.
 5 A. Not that I recall directly.
 6 Q. Was there anything that changed about
 7 the Smile Source model from October 2010 to
 8 September 2011 that would change a win/win into
 9 something that caused concern?
 10 MR. McDONALD: Object to the form.
 11 A. Not aware directly.
 12 Q. You can put aside Exhibit CX2299.
 13 I want to move forward in time. At
 14 some point in time around 2011 or 2012, the
 15 relationship between Schein and Smile Source
 16 ended.
 17 Is it your understanding that Smile
 18 Source eventually formed a supplier relationship
 19 with Burkhart?
 20 A. Yes.
 21 Q. In the fall of 2014, do you recall
 22 asking your direct reports whatever happened to
 23 Smile Source?
 24 A. I think I did ask them that.
 25 Q. Why would you ask them about Smile

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 2 Source?
 3 A. Just curious about Smile Source.
 4 Q. Why would you be curious about Smile
 5 Source?
 6 A. When we lose a customer, every now and
 7 then, I remember customers that we have lost,
 8 and I may have just asked, so what's up with
 9 Smile Source?
 10 Q. Do you recall that Mr. Muller informed
 11 you that Smile Source was growing and doing well
 12 at that time?
 13 A. I don't recall those details.
 14 Q. Mr. Muller mentioned to you that Smile
 15 Source would love to get back with Schein.
 16 Does that sound familiar to you?
 17 MR. McDONALD: Object to the form.
 18 A. I don't recall that specifically.
 19 Q. Would you be interested in knowing
 20 whether or not Smile Source was delivering for
 21 Burkhart?
 22 MR. McDONALD: Object to the form.
 23 A. Would I be -- can you please restate
 24 the question?
 25 (Record read.)

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 2 MR. McDONALD: Same objection.
 3 THE WITNESS: I would be interested to
 4 know what the latest developments were of a
 5 customer who fired us, sure.
 6 BY MS. ROSNER:
 7 Q. Why would you be interested to know
 8 what the latest developments were from a
 9 customer that you are no longer working with?
 10 MR. McDONALD: Object to the form.
 11 You just mischaracterized what he just said.
 12 Go ahead.
 13 A. If it made sense for us, if we had an
 14 opportunity to speak with a former customer
 15 about current circumstance and whether or not it
 16 made sense for us to see if there's a way to
 17 continue to do business, that would not be
 18 unusual.
 19 Q. Is it your understanding that Mr.
 20 Sullivan also thought that Smile Source was a
 21 successful group?
 22 A. I don't recall that.
 23 Q. Is it your understanding that Mr.
 24 Sullivan was still not willing to work with
 25 Smile Source, despite them being a successful

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 2 group?
 3 MR. McDONALD: Object to the form.
 4 A. I don't, don't recall that.
 5 Q. Is it your understanding that Mr.
 6 Sullivan didn't want to be the first in the game
 7 with buying groups?
 8 MR. McDONALD: Object to the form.
 9 A. I don't know what that means.
 10 (Complaint Counsel Exhibit CX2309-001
 11 through 003, an e-mail chain bearing Bates
 12 Nos. Henry Schein-001544812 through 814,
 13 marked for identification, as of this date.)
 14 BY MS. ROSNER:
 15 Q. Let me hand you a document that's been
 16 previously marked as CX2309. It is a multi-page
 17 e-mail string, with the first e-mail bearing the
 18 Bates label Henry Schein-001544812.
 19 Please take a moment to review CX2309
 20 and let me know when you're done.
 21 (Document review.)
 22 THE WITNESS: Okay.
 23 BY MS. ROSNER:
 24 Q. You've had an opportunity to review
 25 CX2309?

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 2 A. Yes.
 3 Q. There are multiple e-mails in this
 4 chain and some e-mails are drafted from you.
 5 You drafted these e-mails in CX2309 as
 6 part of your job?
 7 A. Any e-mail from me I would have
 8 drafted as part of my job.
 9 Q. You had knowledge of the contents of
 10 the e-mails at the time that you drafted them?
 11 A. Yes; they're my e-mails, yes.
 12 Q. You drafted the e-mails in CX2309 at
 13 or near the time of the events described
 14 therein?
 15 MR. McDONALD: Object to the form.
 16 A. I drafted these e-mails as indicated.
 17 Q. You drafted the e-mails in CX2309 and
 18 kept them in the course of Schein's regularly
 19 conducted business?
 20 A. Yes.
 21 Q. CX2309 is a true and correct copy of
 22 the e-mails that you drafted?
 23 A. They appear to be.
 24 Q. I want to start on page CX2309-002.
 25 Hal Muller is forwarding an e-mail at

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 2 6:11 p.m. referring to the Kois Group. The
 3 second sentence of his e-mail reads, "The times
 4 are changing we might need to start thinking of
 5 a buying group strategy."
 6 Did I read that correctly?
 7 A. Yes, you did.
 8 Q. Mr. Muller is a president of a major
 9 division within Schein Dental, right?
 10 MR. McDONALD: Object to the form.
 11 A. Yes.
 12 Q. He is --
 13 A. Actually, no longer, but he was at
 14 this time.
 15 Q. He is saying that "we need to start
 16 thinking of a buying group strategy."
 17 Does Schein not have a buying group
 18 strategy at this time?
 19 MR. McDONALD: Object to the form.
 20 A. I'm not sure what he's referring to
 21 there because we were doing buying -- we were
 22 doing business with buying groups for many, many
 23 years.
 24 Q. What was Schein's buying group
 25 strategy at this time?

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 2 A. On a case-by-case basis, an entity
 3 would approach us. The individual business unit
 4 leaders would determine whether or not it made
 5 sense for us to do business with them, and they
 6 would make that decision and either begin doing
 7 business or not.
 8 Q. Is it strange to you that he's saying
 9 Schein needs to start thinking about a strategy
 10 for buying groups?
 11 MR. McDONALD: Object to the form.
 12 A. I'm not sure what he is specifically
 13 thinking about with that statement.
 14 Q. Did you respond to him and say, "Hal,
 15 what are you thinking about? We have a
 16 strategy?"
 17 MR. McDONALD: Object to the form.
 18 The document speaks for itself.
 19 A. I don't recall responding directly to
 20 Hal in that way.
 21 Q. The e-mail above that comes from Tim
 22 Sullivan at 7:17 p.m. In the second paragraph,
 23 Mr. Sullivan says, "I forwarded to a few
 24 internally for discussion also. I still believe
 25 this is slippery slope and have yet to see a

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 2 successful one in dental and don't plan to take
 3 the lead role."
 4 Did I read that correctly?
 5 A. Yes.
 6 Q. What's your understanding of what Mr.
 7 Sullivan is calling a slippery slope?
 8 MR. McDONALD: Object to the form.
 9 A. I believe what he is referring to is
 10 starting to do business with buying groups that
 11 are just really focused on a price without
 12 the -- without the other elements that would
 13 help us, you know, be aligned with our overall
 14 business model.
 15 Q. What leads you to the conclusion that
 16 he's referring to price-only buying groups?
 17 A. Because up until this point in time,
 18 we had been doing business with buying groups,
 19 and we had gone through the process to make
 20 decisions about which groups to work with. I
 21 think that he was concerned about possibly
 22 changing that direction and moving away from our
 23 model and do we want to do that, and at this
 24 time, he's expressing concern that it doesn't
 25 feel right for us to go down that road right now

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 2 to change the approach that we have taken so
 3 far.
 4 Q. Is this something in the e-mail that
 5 makes you think he's referring to price-only
 6 buying groups?
 7 MR. McDONALD: Object to the form.
 8 A. I'm not -- I'm not sure. I would have
 9 to know more about the details of -- of what
 10 this group was offering myself, but I think that
 11 that's what Tim was referring to.
 12 Q. So Tim was responding to an e-mail
 13 from Hal saying that we need to start thinking
 14 of a buying group strategy.
 15 Is Hal then recommending that Schein
 16 participate with price-only buying groups?
 17 MR. McDONALD: Object to the form.
 18 A. I think Hal is encouraging us to, as
 19 we have been, continuing our overall internal
 20 dialogue to understand how we best participate
 21 with buying groups going forward as we have in
 22 the past, but also making sure we're learning as
 23 much about what's happening in the marketplace
 24 as more and more different types of entities
 25 have been emerging; and so, therefore, maybe we

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 2 need to think more about devoting some specific
 3 resource to it and really talk it through, is
 4 there something more we should be doing than we
 5 have been doing up to that point.
 6 Q. Sorry. I didn't quite follow.
 7 Are you suggesting that Hal is
 8 referencing the need to potentially work with
 9 price-only buying groups?
 10 MR. McDONALD: Object to form.
 11 A. No, I'm -- what I'm saying is Hal is
 12 encouraging further internal dialogue about
 13 buying groups and our history of having worked
 14 with them for a long time and what's currently
 15 happening in the marketplace.
 16 Q. You're referring to buying groups
 17 generally?
 18 A. Generally.
 19 Q. Not necessarily value-added versus
 20 price-only buying groups?
 21 A. Again, I don't know exactly what Hal
 22 is referencing here.
 23 Q. But you think that Tim is specifically
 24 referencing price-only buying groups in the
 25 "slippery slope" comment?

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 2 A. I believe that's so.
 3 Q. And is there anything in the e-mail
 4 that leads you to believe that the "slippery
 5 slope" comment is directed only towards
 6 price-only buying groups?
 7 MR. McDONALD: Object to the form.
 8 Asked and answered.
 9 A. I think I did answer that question.
 10 MR. McDONALD: You did.
 11 Q. Mr. Sullivan says he does not plan to
 12 take the lead role.
 13 What do you understand him to mean
 14 there?
 15 MR. McDONALD: Object to the form.
 16 A. I'm not sure what he's referring to
 17 there.
 18 Q. Did you ask him to clarify?
 19 A. I don't recall asking him to clarify.
 20 Q. When your direct reports talk about a
 21 direction or strategy for their business and you
 22 don't understand what they're saying, is it
 23 common practice for you not to ask for
 24 clarification?
 25 MR. McDONALD: Object to the form.

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 2 A. If it's very material, I would likely
 3 follow up.
 4 Q. Would deciding whether to take the
 5 lead role on a customer segment be a material
 6 direction?
 7 A. In this case, I didn't recall treating
 8 that as a material item. I thought that he -- I
 9 don't recall following up specifically with him
 10 on that.
 11 Q. Does it surprise you that you didn't
 12 follow up with Tim on that?
 13 MR. McDONALD: Object to the form.
 14 A. No.
 15 Q. At the very top of the e-mail string,
 16 the e-mail from Tim Sullivan at 9:25 p m. in
 17 CX2309, in his second paragraph, he says, "I'm
 18 open to discussing this topic, but I don't think
 19 we want to be the first in the game. We can
 20 always be second to the party and win in the
 21 long run if this truly becomes a major trend and
 22 threat."
 23 Did I read that correctly?
 24 A. Yes.
 25 Q. What do you understand Mr. Sullivan to

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 2 mean he doesn't want to be first in the game?
 3 A. The same thing as -- similar to the
 4 "slippery slope" comment.
 5 Q. That he doesn't want to be first to
 6 deal with price-only buying groups?
 7 A. I think that he wants to maintain our
 8 model, our business model of high value, and be
 9 aligned with entities and customers that are
 10 also aligned in value and is not ready to
 11 compromise that. That's the way I read this.
 12 Q. The second sentence is, "We can always
 13 be second to the party and win in the long run
 14 if this truly becomes a major trend and threat."
 15 Is that to say if a Patterson or
 16 Burkhart or Benco or someone else were to start
 17 dealing with price-only buying groups, Schein
 18 might consider entering price-only buying
 19 groups?
 20 MR. RACOWSKI: Objection to form.
 21 MR. McDONALD: Object to form.
 22 A. That's to say that it's always -- my
 23 read of this is to say it's always important for
 24 us to be paying attention to what's happening in
 25 the marketplace and to how the landscape is

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 2 changing and how we need to make sure that we
 3 understand how our customers are moving in
 4 whatever direction that they may be moving, and
 5 at some point in time in the future maybe
 6 something like this might make sense, but right
 7 now, we're dedicated to our high value approach.
 8 We think that it's our business model that's
 9 worked for us for a long time. It still holds
 10 true today, and I think that's what Tim was
 11 talking about.
 12 Q. I want to back up one sentence. Tim
 13 is actually talking about Smile Source.
 14 He says, "Yes, I believe they are a
 15 successful group. I actually like these guys
 16 too. We did work for them for a while and it
 17 just caused too many issues. I'm open to
 18 discussing this topic, but I don't think we want
 19 to be the first in the game."
 20 Why wouldn't Schein want to be the
 21 first to work with Smile Source?
 22 MR. McDONALD: Object to the form.
 23 Mischaracterizes the document.
 24 A. I'm not sure what Tim is referring to.
 25 I think he -- my assumption is that he is

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 2 looking to understand more about what the Smile
 3 Source model is, and depending upon what it is
 4 and how it fits with our value model, he may or
 5 may not be supportive of it.
 6 Q. We've already discussed today how you
 7 thought that Smile Source would be a win/win,
 8 and in this e-mail in particular, Tim actually
 9 says, "I believe they are a successful group."
 10 What's stopping Schein from being
 11 first in the game with Smile Source if they're a
 12 successful group and a win/win?
 13 MR. McDONALD: Object to the form.
 14 Mischaracterizes the document.
 15 Mischaracterizes the testimony.
 16 If you understand the question, answer
 17 it.
 18 A. I'm not sure exactly what Tim is
 19 saying in his statement.
 20 Q. Did you ever follow up with Tim to ask
 21 what he meant by being first in the game?
 22 A. Not specifically as to his words in
 23 this statement.
 24 Q. Did you ever follow up with Tim about
 25 the idea of Schein not being first to work with

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 2 buying groups?
 3 MR. McDONALD: Object to the form.
 4 Mischaracterizes the evidence and his
 5 testimony.
 6 A. I don't recall specifically following
 7 up with Tim in that particular manner, but also
 8 frequently following up with Tim on the
 9 importance and the consistency of our business
 10 model and how it's important for us to continue
 11 to be open and listen to everyone about what's
 12 happening in the marketplace and possibly have
 13 new entities that we might work with to add to
 14 the buying groups that we had been working with
 15 that fit with our overall model.
 16 Q. So one thing I don't understand about
 17 CX2309 is that Schein already worked with Smile
 18 Source; is that right?
 19 A. Years prior to this.
 20 Q. Schein had a relationship with Smile
 21 Source.
 22 Why is it that Tim is now saying he
 23 doesn't want to be the first in the game if you
 24 have already worked with Smile Source?
 25 A. I'm not sure --

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 2 MR. McDONALD: Hang on.
 3 Object to the form. Mischaracterizes
 4 the document. Asked and answered.
 5 A. I'm not sure what he's referring to.
 6 Q. You have no understanding of what he's
 7 referring to.
 8 Why don't you simply remind Mr.
 9 Sullivan that you have already worked with Smile
 10 Source?
 11 MR. McDONALD: Object to the form.
 12 A. I don't recall doing that.
 13 Q. You can put CX2309 aside.
 14 MR. McDONALD: Let's take a break.
 15 We've been going an hour.
 16 MS. ROSNER: Off the record.
 17 (Luncheon Recess; Time Noted: 11:54
 18 a.m.)
 19
 20
 21
 22
 23
 24
 25

1 CONFIDENTIAL - JAMES BRESLAWSKI
 2 AFTERNOON SESSION
 3 (Time Noted: 12:49 p.m.)
 4 JAMES BRESLAWSKI, resumed and
 5 testified further as follows:
 6 EXAMINATION BY (Cont'd.)
 7 MS. ROSNER:
 8 Q. Mr. Breslawski, before the break, we
 9 were talking about some of the e-mail chains
 10 between you and Mr. Sullivan, and in particular,
 11 there were some comments from Mr. Sullivan about
 12 not wanting to be first in the game, not wanting
 13 to take a lead role, and you weren't sure what
 14 those referred to; is that right?
 15 A. That's correct.
 16 Q. Is there anything that could refresh
 17 your recollection as to what that refers to?
 18 A. Not that I'm aware of.
 19 Q. I want to continue talking about Smile
 20 Source.
 21 Is it your understanding that even
 22 after you met with the executives of Smile
 23 Source, that Mr. Muller and Mr. Sullivan
 24 continued to disagree about whether to work with
 25 Smile Source?

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 2 MR. McDONALD: Object to the form.
 3 A. I don't recall the details of what Hal
 4 and Tim were debating about Smile Source.
 5 Q. Upon hearing that Smile Source was
 6 continuing to grow, do you recall Mr. Muller
 7 suggesting attempting to win back Smile Source
 8 business?
 9 A. I don't recall specifically Hal having
 10 a particular position that would be different to
 11 Tim's. I'm just not sure.
 12 Q. You don't recall Mr. Muller asking to
 13 win back Smile Source as a Special Markets
 14 customer?
 15 MR. McDONALD: Objection. Asked and
 16 answered.
 17 A. I believe -- well, we are now doing
 18 business with Smile Source. So at some point in
 19 time Hal and Tim, in their responsibilities,
 20 found a way for us to start to do business again
 21 with Smile Source.
 22 (Complaint Counsel Exhibit CX2310-001
 23 through 002, an e-mail chain bearing Bates
 24 Nos. Henry Schein-000605589 through 590,
 25 marked for identification, as of this date.)

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 2 BY MS. ROSNER:
 3 Q. I'm going to hand you a document
 4 that's been previously marked as Exhibit CX2310.
 5 This is an e-mail chain that's on multiple sides
 6 of the one page, and the first Bates number is
 7 Henry Schein-000605589.
 8 Please take a moment to familiarize
 9 yourself with CX2310 and let me know when you're
 10 done.
 11 (Document review.)
 12 THE WITNESS: Okay.
 13 BY MS. ROSNER:
 14 Q. You've had an opportunity to review
 15 CX2310?
 16 A. Yes.
 17 Q. This is an e-mail chain. The top
 18 e-mail in the chain is from you dated October
 19 26, 2014.
 20 You wrote this e-mail as part of your
 21 job?
 22 A. I'm sorry, what was it?
 23 Q. You wrote the e-mail in CX2310 as part
 24 of your job?
 25 A. Yes.

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2 Q. It's part of your job to respond to
3 e-mails that you receive?
4 A. Yes.
5 Q. You have knowledge of the contents of
6 this e-mail at the time that you wrote it?
7 A. Yes.
8 Q. You drafted CX2310 at or near the time
9 these questions were --
10 A. Sorry, your words are coming together
11 on me. Just slow down a little bit.
12 Go ahead.
13 Q. You drafted CX2310 at or near the time
14 the issue described therein arose?
15 MR. McDONALD: Object to the form.
16 A. October -- three days later.
17 Q. You drafted the e-mail in CX2310 and
18 maintained it in the course of regularly
19 conducted business at Schein?
20 A. Yes.
21 Q. CX2310 is a true and accurate copy of
22 your e-mail correspondence?
23 A. I believe so.
24 Q. Going to the second page, CX2310-002,
25 it starts with an e-mail from Hal Muller saying,

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2 "Are we sure we don't want to let SM to try to
3 get this business back under SM rules of play?"
4 And he attaches or pasted in a blurb
5 about Smile Source; is that right?
6 A. Yes.
7 Q. "SM" refers to Special Markets?
8 A. Correct.
9 Q. And Mr. Muller is recommending trying
10 to win back Smile Source under SM rules of play?
11 A. That's what I read.
12 Q. What are Special Markets rules of
13 play?
14 MR. McDONALD: Object to the form.
15 A. I'm not sure exactly what he's
16 referring to.
17 Q. Is it your understanding that he's
18 referring to Special Markets pricing?
19 A. No.
20 MR. McDONALD: Object to the form.
21 A. I'm not sure what he's -- what he's
22 referring to.
23 Q. If you turn the page to the first
24 page, CX2310-001, Mr. Sullivan responds, and you
25 are CC'd on this e-mail, "What's the difference

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2 between now and then? What do we do when a Priv
3 customer joins their GPO?"
4 You understand "Priv" to mean private
5 customer?
6 MR. McDONALD: Object to the form.
7 A. I'm not sure. It could be privileges
8 customer. It's a loyalty program, but I'm not
9 sure.
10 Q. So Mr. Muller is suggesting that
11 Schein win back Smile Source under Special
12 Markets rules of play, and Mr. Sullivan is
13 disagreeing; is that right?
14 MR. McDONALD: Object to the form.
15 The document speaks for itself.
16 A. Looks like they're just having a
17 conversation.
18 Q. In their conversation, does it seem
19 like they're in agreement?
20 MR. McDONALD: Object to the form.
21 The document speaks for itself.
22 A. Tim's asking a question.
23 Q. Mr. Muller then responds to Tim's
24 question, "They are all private customers. What
25 do we do when we have over 1,000 offices? Just

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2 throwing it out there." Smiley face.
3 A. Uh-huh.
4 Q. What's your understanding of what Mr.
5 Muller is trying to say?
6 A. I believe it's important that Hal's
7 looking to continue the dialogue with Tim as to
8 what to do about this entity and should this be
9 a customer for Henry Schein.
10 Q. In trying to continue the dialogue
11 with Tim, what kind of message is Hal trying to
12 send to Tim, at least your understanding of it?
13 MR. McDONALD: Object to the form.
14 A. I don't -- I don't know.
15 Q. Mr. Sullivan responds, "Then we wave
16 flag and commit."
17 What's your understanding of what Mr.
18 Sullivan is saying there?
19 MR. McDONALD: Object to the form.
20 A. Again, I'm not sure exactly what Tim
21 is referring to there.
22 Q. In the first e-mail, in the earliest
23 e-mail in the string, Mr. Muller is referencing
24 a blurb that says that Smile Source had opened
25 252 offices, and now in his most recent e-mail

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 2 he's saying, "What do we do when they open over
 3 1,000 offices?"
 4 Does Henry Schein have some threshold
 5 number of offices that it would require when
 6 working with a group purchaser?
 7 A. We do not. Not that I'm aware of.
 8 Q. Mr. Sullivan seems to object to
 9 working with Smile Source when they have 250
 10 offices, but is willing to wave flag and commit
 11 when Smile Source has over 1,000 offices.
 12 Is that based on guidance that you
 13 gave to Mr. Sullivan?
 14 A. No.
 15 MR. McDONALD: Hang on.
 16 Object to the form. Mischaracterizes
 17 the document.
 18 Go ahead.
 19 A. No.
 20 Q. Where would Mr. Sullivan get guidance
 21 that a buying group with 250 affiliates was not
 22 enough, but 1,000 affiliates would be enough?
 23 MR. McDONALD: Object to the form.
 24 Mischaracterizes the document.
 25 A. We have no guidance. No such

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 2 guidance.
 3 Q. Did you inform Mr. Sullivan that there
 4 was no such rule with respect to the number of
 5 offices that a group purchaser must have to work
 6 with Schein?
 7 MR. McDONALD: Object to the form.
 8 Mischaracterizes the document.
 9 A. There's no such policy.
 10 Q. Did you ever inform Mr. Sullivan that
 11 there was no such policy?
 12 MR. McDONALD: Object to the form.
 13 A. I don't recall specifically talking to
 14 him about number of offices, but we have no such
 15 policy.
 16 Q. Can you name any buying groups that
 17 Schein did business with at the time of this
 18 e-mail on October 2014?
 19 A. So there's a list of buying groups
 20 that we did business with that includes --
 21 there's a whole host of them.
 22 You want me to give you the names? I
 23 don't know if I can remember the names off the
 24 top of my head.
 25 Q. Do you personally remember any of the

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 2 groups that you did business with in 2014?
 3 A. In 2014, there's -- let's see, the
 4 Alpha Omega group is a group we have done
 5 business with for a long period of time.
 6 There's the Council Connections Group. I don't
 7 really know much about these -- these detailed
 8 buying groups, their ownership structure or
 9 their size, but I know there's quite a number of
 10 them.
 11 Q. You mentioned that you don't
 12 necessarily know all the details, including the
 13 size.
 14 Any sense of how many offices Alpha
 15 Omega has?
 16 MR. McDONALD: Object to the form.
 17 A. No, I don't.
 18 Q. Any sense of how many offices Council
 19 Connections has?
 20 A. I don't.
 21 Q. In 2014, did Schein have any buying
 22 group customers that had more than 250 offices?
 23 MR. McDONALD: Object to the form.
 24 A. Please repeat the question.
 25 (Record read.)

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 2 THE WITNESS: I don't know.
 3 MS. ROSNER: Did someone just join?
 4 MS. GOFF: Yes. This is Karen. I got
 5 cut off.
 6 BY MS. ROSNER:
 7 Q. At any point in time, who has been
 8 Schein's largest buying group customer?
 9 MR. McDONALD: Object to the form.
 10 A. I don't know.
 11 Q. Going back to the e-mail CX2310, you
 12 respond to this disagreement between Mr.
 13 Sullivan and Mr. Muller by saying, "Can we
 14 brainstorm a little about this during our off
 15 site time together? This is not just about
 16 Smile Source."
 17 Did I read that correctly?
 18 A. Yes.
 19 Q. What do you mean when you say, "This
 20 is snot just about Smile Source"?
 21 A. My recollection of what I was talking
 22 about here is that the overall dynamic of the
 23 development of different purchasing entities and
 24 possible customers of Henry Schein was changing
 25 and that there are entities that might be

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2 similar to Smile Source that are out there, and
3 it would be good for us to talk about it in a
4 broader sense rather than just focusing on this
5 particular issue.

6 Q. When you say it's not just about Smile
7 Source, you're referencing other buying groups
8 that may be in the market?

9 MR. McDONALD: Object to the form.

10 A. I'm referencing that there may be
11 other buying groups in the market; what our
12 current status is with the current groups that
13 we're doing business with; which ones may be
14 resident within Special Markets; how we're
15 making decisions; if they were in Special
16 Markets; are they in Tim's business; how the
17 FSCs are involved; are they not involved.

18 There's a whole host. It's a very
19 complex matter. So it's easier to talk and
20 brainstorm about different things if we're all
21 together.

22 Q. These issues that you're talking about
23 are where to put group customers and whether
24 FSCs should be involved?

25 A. Yes.

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2 Q. These are not new issues for Schein,
3 right?

4 A. It's always an outstanding issue
5 that's evolving over time, because as customers
6 are changing, generally speaking, customers that
7 are the largest customers in our Special Markets
8 group actually do not require the FSC to have
9 the same kind of contact that the customers in
10 Tim Sullivan's group require, but overall,
11 customers are becoming more and more complex and
12 there are likely certain customers in Hal
13 Muller's group that have certain FSC involvement
14 and certain customers in Tim's group that are
15 also now starting to not have FSC involvement,
16 so it's a complex matter.

17 Q. Are you aware of FSCs raising
18 complaints up the chain when their customer
19 accounts join buying groups?

20 A. I am aware of questions that are on
21 FSCs' minds about what may happen with customers
22 they're currently assigned with that are working
23 directly with Henry Schein that may at some
24 point not be working directly with Schein but
25 through another entity, and how that might

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2 affect their involvement with that customer.

3 Q. And how do you become aware of these
4 instances?

5 A. In various ways. Sometimes, like we
6 saw, there was a message from that FSC in
7 earlier documents, or there may just be
8 conversation that Tim would have with us at a
9 particular meeting, saying that this topic may
10 be coming up, some of the complications that
11 exist with signing on a buying group.

12 Q. And is there some sort of conflict
13 that needs to be resolved when these issues
14 arise?

15 MR. McDONALD: Object to the form.

16 A. Sometimes.

17 Q. Does this conflict also arise when a
18 private customer joins a Schein DSO customer?

19 MR. McDONALD: Object to the form.

20 A. Sometimes.

21 Q. And is there a discussion about how to
22 resolve the conflict when a private customer
23 joins a Schein DSO customer?

24 A. Hal and Tim would typically work
25 through that together. They and their teams

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2 would decide how to handle that.

3 Q. So you're not involved in those
4 conversations?

5 A. Typically, I would not be involved in
6 those detailed level of conversations as a
7 matter of course.

8 Q. You can put aside CX2310.

9 At some point in time, Schein did win
10 back the Smile Source account, is that your
11 understanding?

12 A. Yes.

13 Q. Was that approximately in 2016?

14 A. I don't recall.

15 Q. Do you know anything about the terms
16 of the 2016 agreement with Smile Source?

17 A. I do not.

18 Q. You don't know the discount rate?

19 A. I do not.

20 Q. You don't know whether there was a
21 volume commitment?

22 A. I do not.

23 Q. Has Smile Source changed its business
24 model in any way since Schein first started
25 dealing with Smile Source?

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 2 MR. McDONALD: Object to the form.
 3 Lack of foundation.
 4 A. I wouldn't be aware of those details.
 5 Q. Is Smile Source a current customer of
 6 Schein today?
 7 A. I believe so.
 8 Q. Who manages the Smile Source
 9 relationship today?
 10 MR. McDONALD: You mean individual or
 11 the group?
 12 Q. To the extent you know. To the extent
 13 you know.
 14 A. So, to the extent I know, I believe
 15 Tim Sullivan is the lead relationship manager
 16 with the leadership of Smile Source. I'm not
 17 sure exactly where the accounts reside.
 18 Q. I want to switch gears right now and
 19 talk a little bit about Dental Gator.
 20 You're familiar with Dental Gator?
 21 A. I am somewhat familiar with Dental
 22 Gator.
 23 Q. How are you somewhat familiar with
 24 Dental Gator?
 25 A. It is, as I recall, it is something

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 2 that is connected to a very large DSO customer
 3 of ours, and it was an initiative that that
 4 customer was looking to undertake with our
 5 involvement. That was outside of their normal
 6 business operations as a DSO.
 7 Q. The DSO you're referring to is MB2?
 8 A. MB2.
 9 Q. MB2 has an ownership interest in its
 10 affiliated dental practices; is that right?
 11 A. I'm not sure of what MB2's ownership,
 12 overall ownership structure is, but MB2 is a DSO
 13 customer that's part of our Special Markets
 14 business, part of Hal's business.
 15 Q. Dental Gator does not have an
 16 ownership interest in its affiliated members
 17 practices; is that right?
 18 MR. McDONALD: Object to the form.
 19 A. I believe that's correct.
 20 Q. MB2 planned to use Dental Gator as a
 21 way to be introduced to and to recruit potential
 22 new MB2 affiliates?
 23 MR. McDONALD: Object to the form.
 24 A. I have heard that.
 25 Q. Do you have any reason to doubt that

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 2 might be true?
 3 A. I have just heard that.
 4 Q. Dental Gator was not a price-only
 5 buying group; is that right?
 6 MR. McDONALD: Object to the form.
 7 A. I'm not aware of the details of the
 8 offering of Dental Gator.
 9 Q. You're not aware of any of the
 10 services that Dental Gator provided its members?
 11 A. Not that I can think of. Not that I'm
 12 aware of.
 13 Q. MB2 opened Dental Gator without
 14 Schein's knowledge; is that right?
 15 MR. McDONALD: Object to the form.
 16 A. I'm not sure. I don't know for sure.
 17 Q. MB2 allowed Dental Gator access to its
 18 Schein discounts without Schein's knowledge; is
 19 that right?
 20 MR. McDONALD: Object to the form.
 21 A. I believe, based upon my recollection,
 22 I believe that that is accurate.
 23 Q. Schein eventually found out about
 24 Dental Gator, right?
 25 A. Yes.

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 2 Q. And Schein wanted to stop Dental Gator
 3 from accessing MB2's negotiated prices?
 4 MR. McDONALD: Object to the form.
 5 A. Again, I'm not sure what the level of
 6 communication and detail was with MB2 related to
 7 going outside of our relationship with them.
 8 MB2 had a deal with us for them and
 9 their structure as MB2, and those -- those terms
 10 were for that group of offices, and the best of
 11 my recollection, again, were not extended,
 12 available beyond what our deal was with MB2.
 13 Q. And that would include those prices
 14 were not extended to Dental Gator?
 15 A. Again, I'm not sure how the Dental
 16 Gator question and complication was resolved,
 17 but it was not our intention when we created a
 18 deal with MB2 that those prices and the deal
 19 that we had would go outside of the deal that we
 20 made with them.
 21 Q. Are you aware that Mr. Muller wanted
 22 to continue working with Dental Gator as long as
 23 it was part of the MB2 DSO customer?
 24 A. I don't recall all of the details of
 25 Hal's point of view, but certainly MB2 was a

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 2 very important customer, and really
 3 understanding what that customer was looking to
 4 accomplish and finding a way to continue to have
 5 a complete and good relationship with MB2 would
 6 naturally be in Hal's interest.

7 Q. If Dental Gator was not affiliated
 8 with MB2, Schein likely would not have supported
 9 Dental Gator on its own?

10 MR. McDONALD: Object to the form.

11 Improper hypothetical.

12 A. I don't know enough about the details
 13 of Dental Gator to conclude that.

14 Q. You were willing to accommodate Dental
 15 Gator for unique reasons; is that right?

16 MR. McDONALD: Object to the form.

17 A. I don't recall all of the details of
 18 what my involvement may have been, but I could
 19 understand how it would be important for us,
 20 with a very large DSO customer, to continue to
 21 maintain a good relationship with that DSO
 22 customer.

23 Q. Had it not been for the relationship
 24 with this important DSO customer, would you have
 25 been in favor of working with Dental Gator?

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2 MR. McDONALD: Object to the form.

3 A. I wouldn't have enough information to
 4 determine that and would expect that the team
 5 that evaluates entities on a case-by-case basis
 6 would be making that decision.

7 Q. And the same time that you were
 8 willing to accommodate Dental Gator because of
 9 its relationship with MB2, you didn't want to
 10 open the floodgate on buying groups; is that
 11 right?

12 MR. McDONALD: Object to the form.

13 A. Buying groups, again, have been a part
 14 of our business for a very long time. We have
 15 done business with many different buying groups,
 16 and I believe that it has been important for us
 17 to have the buying groups be aligned with the
 18 value model that we -- that we drive, and if in
 19 fact it is a price-only with no other value and
 20 not fitting with our model, most likely would
 21 not be supportive.

22 Q. Did you ever say you didn't want to
 23 open the floodgates on buying groups?

24 MR. McDONALD: Object to the form.

25 If you have a document, you ought to

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 2 show it to him.

3 A. It's possible if in the context of
 4 going outside of our value proposition.

5 (Complaint Counsel Exhibit CX2311-001
 6 through 004, an e-mail chain bearing Bates
 7 Nos. Henry Schein-000762037 through 040,
 8 marked for identification, as of this date.)

9 BY MS. ROSNER:

10 Q. I'm going to hand you a document
 11 that's been previously marked as CX2311. This
 12 is a document with a first page Bates number of
 13 Henry Schein-000762037.

14 Please take a moment to review CX2311
 15 and let me know when you're finished.

16 THE WITNESS: Okay.

17 BY MS. ROSNER:

18 Q. You've had an opportunity to review
 19 CX2311?

20 A. Yes.

21 Q. CX-2311, the very top is an e-mail
 22 from you dated January 28, 2015 at 6:58 in the
 23 morning.

24 And throughout the e-mail string,
 25 there are e-mails from Mr. Muller, Mr. Sullivan

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 2 and yourself.

3 The e-mails that you drafted you
 4 drafted as part of your job; is that right?

5 A. Yes.

6 Q. It's part of your job to respond to
 7 e-mails that you get regarding the business?

8 A. Yes.

9 Q. You had knowledge of the contents of
 10 your e-mails at the time that you drafted them?

11 A. Yes.

12 Q. And you drafted the e-mails in CX2311
 13 at or near the time of the events therein
 14 described arose?

15 A. I don't understand --

16 MR. McDONALD: Object to the form.

17 A. I don't understand that question.

18 Q. You drafted the e-mail --

19 A. As indicated here. One is at 6:58
 20 after the 7:53.

21 MR. McDONALD: Obviously there's a
 22 different time zone because he didn't go
 23 back in time.

24 THE WITNESS: Okay. Well, I don't
 25 understand that question, though, but

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 2 these -- as you see the e-mails, that's how
 3 I drafted them.
 4 BY MS. ROSNER:
 5 Q. I just wanted to understand that you
 6 draft these e-mails while you were having these
 7 discussions with Mr. Sullivan and Mr. Muller;
 8 this wasn't years later that you went back and
 9 drafted these e-mails?
 10 A. Oh, no. Yes, they're contemporaneous
 11 with the time.
 12 Q. You drafted these e-mails and
 13 maintained them in Schein's course of regularly
 14 conducted business?
 15 A. Yes.
 16 Q. And CX2311 is a true and correct copy
 17 of your e-mail correspondence?
 18 A. I believe so.
 19 Q. I'm going to refer you to CX2311-002.
 20 At the top of the e-mail, page 002 is
 21 an e-mail from Mr. Muller, it's on January 28,
 22 2015, at 7:36 in the morning?
 23 A. Uh-huh. Yes.
 24 Q. He's discussing Dental Gator, and in
 25 his second paragraph, he begins, "This is not a

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 2 pure buying group -- they have 12 services they
 3 offer -- as an example, recently offices have
 4 joined Dental Gator and stayed with their
 5 current supplier and did not use the product
 6 savings plan."
 7 Did I read that correctly?
 8 A. Yes.
 9 Q. So is Mr. Muller trying to tell you
 10 that this is not a -- Dental Gator is not a
 11 price-only buying group?
 12 A. He's mentioning that they have
 13 additional services, yes.
 14 Q. Do you have any reason to doubt what
 15 Mr. Muller is telling you?
 16 A. No.
 17 Q. And then if we could turn to the first
 18 page, CX2311-001, at the very bottom of that
 19 page, you write, "Thanks. It is important that
 20 while accommodating for unique reasons here, we
 21 don't help open the floodgates on buying
 22 groups."
 23 What do you mean by "don't help open
 24 the floodgates on buying groups"?
 25 A. Specifically, they're really referring

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 2 to price-only groups that are not adding
 3 additional value.
 4 Q. Where in CX2311 do you use the words
 5 "price-only buying groups"?
 6 A. I'm sorry, you see my -- the e-mail
 7 there. That's -- I'm not sure what -- what is
 8 your question?
 9 Q. Where does the term "price only" come
 10 into play in CX2311?
 11 MR. McDONALD: Objection to form. You
 12 asked him what he meant and he told you.
 13 A. Yeah, I don't understand. You asked
 14 me what I meant by that, not what I wrote.
 15 Q. I'm asking whether or not you wrote
 16 "price only" anywhere in CX2311?
 17 MR. McDONALD: Object to the form.
 18 The document speaks for itself.
 19 A. I don't see that specifically written.
 20 Q. Did anybody else in CX2311 write
 21 "price-only buying groups"?
 22 MR. McDONALD: Well, the documents
 23 speak for themselves, but do you really want
 24 him to spend the time to see if those words
 25 are in there, Jasmine?

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 2 Yes? If you do, then he'll read it.
 3 Okay. It's your time.
 4 THE WITNESS: Please repeat the
 5 question.
 6 (Record read.)
 7 THE WITNESS: Anyone else? I didn't
 8 see those words.
 9 BY MR. McDONALD:
 10 Q. But Mr. Muller specifically mentions a
 11 buying group that is not a pure buying group,
 12 but offers additional services, correct?
 13 MR. McDONALD: Object to the form.
 14 A. He's written that.
 15 MR. McDONALD: Asked and answered.
 16 Q. So why are you responding to Mr.
 17 Muller about price-only buying groups when he's
 18 telling you about a value-added buying group?
 19 A. It's not unusual for me to think more
 20 broadly than just the specific message that I
 21 might be sent on any topic, and it's important
 22 for me to periodically remind our team of our
 23 model and the importance of us continuing to
 24 adhere to our model while at the same time
 25 learning and understanding everything that's out

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2 in the marketplace.

3 Q. So what you're telling your team is
4 you don't want to open the floodgates on
5 price-only buying groups?

6 MR. McDONALD: Object to the form.
7 Asked and answered.

8 A. I think that price-only buying groups
9 do not align naturally with our value
10 proposition, and that's what I've said here.

11 Q. You can put aside CX2311.

12 It's your understanding that Mr.
13 Sullivan reluctantly agreed to continue to do
14 business with Dental Gator assuming Dental Gator
15 could no longer have access to MB2 pricing?

16 A. I believe that Hal and Tim reached an
17 agreement as to how to move forward with Dental
18 Gator and MB2.

19 Q. Are you familiar with any of the terms
20 of the agreement?

21 A. I'm not. I am not.

22 Q. Did Mr. Sullivan ever warn you that
23 doing business with Dental Gator would mean that
24 Schein was in on approving buying groups?

25 MR. McDONALD: Object to the form.

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2 A. I don't recall that specifically.

3 (Complaint Counsel Exhibit CX2144-001
4 through 002, an e-mail chain bearing Bates
5 Nos. Henry Schein-000195206 through 207,
6 E-mail chain, marked for identification, as
7 of this date.)

8 BY MS. ROSNER:

9 Q. I'm going to hand you a document
10 that's been previously marked as CX2144, with an
11 e-mail string with the first page of the e-mail
12 string bearing the Bates stamp Henry
13 Schein-000195206.

14 Please take a moment to review CX2144
15 and let me know when you're finished.

16 (Document review.)

17 THE WITNESS: Okay.

18 BY MS. ROSNER:

19 Q. You've had an opportunity to review
20 CX2144?

21 A. Yes.

22 Q. I want to refer you to the top e-mail,
23 last in time, dated January 28, 2015. The
24 date -- the time is marked as 6:33 a.m. from Tim
25 Sullivan to just you regarding Dental Gator.

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2 Mr. Sullivan writes, "Just us. I'm
3 going to approve moving forward with his
4 proposal, but we are then 'in' on approving
5 buying groups. This won't stop with Dental
6 Gator."

7 Did I read that correctly?

8 A. Yes.

9 Q. What did you understand Mr. Sullivan
10 to mean when he said that, "We are then 'in' on
11 approving buying groups"?

12 A. I believe Mr. Sullivan was concerned
13 that Dental Gator may not on its own, without
14 the relations with MB2, meet all of the
15 different criteria that he would be interested
16 in in terms of value alignment with a buying
17 group.

18 Q. Is there anything in this e-mail
19 string that leads you to believe that?

20 A. You asked me what I thought Tim meant
21 by this sentence, and I thought that I just said
22 that.

23 Q. So your answer is that --

24 A. What I believe Tim was referencing.

25 Q. And Tim would not believe that Schein

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2 would work with Dental Gator absent the MB2
3 relationship?

4 MR. McDONALD: Object to the form.

5 Mischaracterizes the testimony.

6 A. I believe that Tim, as with any entity
7 that's approaching us, would want to make sure
8 he understood the value proposition of Dental
9 Gator and whether it would fit with our model,
10 and then he and his team would make their
11 decision.

12 Q. Wasn't Schein already, quote, "in" on
13 approving buying groups?

14 A. There had been many buying groups that
15 Tim and his team, and also separately Hal and
16 his team, had determined that they were going to
17 do business with over the years.

18 Q. Here Mr. Sullivan is expressing some
19 idea that doing Dental Gator would create this
20 change that would enable Schein to be in on
21 buying groups.

22 What is it that's changing with
23 accepting Dental Gator?

24 MR. McDONALD: Object to the form.

25 You're testifying and characterizing the

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2 document and so mischaracterizing the
3 document.

4 A. I don't think that Tim would want and
5 still today, going forward, is very dedicated to
6 staying to working with groups that align with
7 value in addition to price, and he would be
8 concerned if we moved away from that, and
9 possibly because of the connection with MB2 and
10 a buying group that might not come up to that
11 standard, he's concerned that that might set a
12 precedent.

13 Q. So we just previously looked at an
14 e-mail where Mr. Muller was saying that Dental
15 Gator's members aren't taking full advantage of
16 the MB2 pricing and that Dental Gator offers 12
17 services to its members.

18 Why wouldn't you correct Mr. Sullivan
19 to say that Dental Gator is not a price-only
20 buying group?

21 MR. McDONALD: Object to the form.

22 A. I don't recall what further
23 conversation I may have had with Tim after this.

24 Q. Mr. Sullivan ended the e-mail with,
25 "This won't top with Dental Gator."

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2 What did you understand him to mean by
3 that?

4 A. Didn't think much of it, so I don't
5 know what he meant.

6 Q. Did you want Dental Gator to be the
7 last buying group that Schein would work with?

8 A. No.

9 Q. Is it a concern that working with
10 buying groups would not stop with Dental Gator?

11 MR. McDONALD: Object to the form.

12 A. No.

13 Q. Did you tell Mr. Sullivan that Schein
14 would continue to do business with buying groups
15 after Dental Gator?

16 A. I don't recall specifically any of the
17 specific conversations.

18 Q. You can put aside CX2144.

19 I want to return to this idea of
20 Schein's practice with respect to buying groups.

21 You have stated that there was no
22 formal policy, but there certainly was a
23 practice to deal with buying groups that made
24 business sense for Schein; is that right?

25 A. Yes.

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2 Q. In January 2010, going back in time,
3 you received an e-mail directly from an FSC
4 about the Pugh Dental Alliance.

5 Do you recall that?

6 MR. McDONALD: Object to the form.

7 A. I don't specifically recall. It could
8 be possible. I don't specifically recall it.

9 Q. Do you know what the Pugh Dental
10 Alliance is?

11 A. I do not.

12 (Complaint Counsel Exhibit CX2296-001
13 through 003, an e-mail chain bearing Bates
14 Nos. Henry Schein-000737600 through 602,
15 marked for identification, as of this date.)

16 BY MS. ROSNER:

17 Q. I'm going to hand you a document
18 that's been previously marked as CX2296. It is
19 a multi-page e-mail string. The first page
20 bears the Bates number Henry Schein-000737600.

21 Please you take a moment to
22 familiarize yourself with CX2296 and let me know
23 when you're done.

24 (Document review.)

25 THE WITNESS: Okay.

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2 BY MS. ROSNER:

3 Q. You've had an opportunity to review
4 CX2296?

5 A. Yes.

6 Q. The top e-mail on the first page
7 latest in time is from you dated January 6,
8 2010.

9 You drafted this e-mail as part of
10 your job; is that right?

11 A. Yes.

12 Q. It's part of your job to respond to
13 e-mails that you get from the business?

14 A. Yes.

15 Q. You had knowledge of the contents of
16 the e-mail when you drafted it?

17 A. Yes.

18 Q. You drafted the e-mail at or near the
19 time the events therein bubbled up to you?

20 A. Yes.

21 Q. You drafted CX2296, the e-mail at the
22 top, and maintained it in the course of Schein's
23 regularly conducted business?

24 A. Yes.

25 Q. CX2296 is a true and correct copy of

1 CONFIDENTIAL - JAMES BRESLAWSKI
2 the e-mail correspondence?

3 A. I believe so.

4 Q. I want to go to the last -- the
5 earliest-in-time e-mail. It expands from page
6 CX2296-002 to 003. This is an e-mail from Scott
7 Schenker.

8 Do you know who Scott Schenker is?

9 A. I believe he's an FSC. I don't really
10 know him very well.

11 Q. And Mr. Schenker is complaining about
12 one of his larger customers joining the Pugh
13 Dental Alliance. Is that your understanding?

14 A. Yes.

15 Q. Pugh Dental Alliance was a Special
16 Markets customer at the time; is that right?

17 MR. McDONALD: Object to the form.

18 A. I believe in reading this, yes.

19 Q. And in this instance, if Mr.
20 Schenker's customer was to join Pugh, his
21 customer would then be transferred to the
22 Special Markets division?

23 MR. McDONALD: Object to the form.

24 A. I'm not sure exactly how Tim and Hal
25 would have -- would have worked out or resolved

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2 issue with the customer.

3 Q. Is it your understanding that Mr.
4 Schenker is reaching out to you because he's
5 afraid he's going to lose his customer and any
6 commissions that he earns from that account?

7 MR. McDONALD: Object to the form.

8 A. He's definitely -- he's concerned
9 about what's going to happen to his involvement
10 with the account if in fact the doctor joins the
11 program.

12 Q. He's also concerned that Pugh could
13 take others of his accounts; is that right?

14 MR. McDONALD: Object to the form.

15 The document speaks for itself.

16 A. He references other customers that
17 could be interested.

18 Q. Mr. Schenker also says, "I am sure HS
19 would not allow this to occur."

20 I'm reading from the end of the first
21 line on page CX2296-003. Do you see that?

22 A. I'm sorry, 003?

23 Q. Yes. How the end of the first line
24 reads "...I'm sure HS would not allow this to
25 occur."

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2 A. I see that.

3 Q. "HS" refers to Henry Schein?

4 A. I'm not sure. I think so. I don't --
5 I'm not sure.

6 Q. In the last line of Mr. Schenker's
7 e-mail, he tells you that this is a potentially
8 cancerous situation?

9 A. That's what I see having been written
10 here.

11 Q. If Schein had a practice of working
12 with buying groups at the time, why didn't this
13 FSC, Mr. Schenker, know about it?

14 MR. McDONALD: Object to the form.

15 A. I don't know.

16 Q. If Mr. Schenker did not know about
17 Schein's practice in dealing with buying groups,
18 why didn't someone simply explain that to him?

19 MR. McDONALD: Object to the form.

20 A. I don't know.

21 Q. Is it common that FSCs are not aware
22 that Schein has a practice of doing business
23 with buying groups?

24 MR. McDONALD: Object to the form.

25 A. Some may know. Some may not. I don't

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2 know.

3 Q. And when you come across an FSC who
4 doesn't know about Schein's practice of doing
5 business with buying groups, what do you
6 typically do?

7 MR. McDONALD: Object to the form.

8 A. Again, these issues are the
9 responsibility of Tim and Hal and their teams,
10 and to the extent any customers that are part of
11 a buying group are also connected with the FSC
12 team, they would be responsible for the
13 communication to the team.

14 Q. Would you expect Tim and Hal to inform
15 their teams that Schein does business with
16 buying groups?

17 A. I'm not sure what specifically they
18 would communicate, but certainly that's
19 possible.

20 Q. I'm just speaking generally. Is it
21 your expectation that Mr. Muller and Mr.
22 Sullivan keep their teams in the dark about the
23 fact that Schein does business with buying
24 groups?

25 MR. McDONALD: Object to the form.

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A. No.

Q. So the question that Mr. Schenker raises to your attention is an easy problem to fix because someone could just tell him that Schein does business with buying groups; is that right?

MR. McDONALD: Objection to form.

A. It's not as simple as that. Depending on what the nature of the, as I've mentioned many times before, the nature of the particular buying group.

Q. In this instance, Schein has already decided to do business with Pugh Dental Alliance. It is a current customer at the time of this e-mail, that's right, right?

MR. McDONALD: Object to the form.

A. I'm not aware of the details of all of the history of the Pugh Dental Alliance and how it was working with our Special Markets team, but it was a customer.

Q. And if the Pugh Dental Alliance was a customer of your Special Markets team, does that tell you then that it must have been some sort of value-added buying group?

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A. It tells me that Hal and his team would have been responsible to determine that it fit our operating model.

Q. Would you be surprised to know or would you be surprised to find out if Pugh Dental Alliance did not fit within the broader strategy of Schein to work with value-added buying groups?

MR. McDONALD: Object to the form.

A. Again, I'm not familiar with the Pugh Dental Alliance and how far back the relationship goes because we've been doing business with buying groups for a very long period of time, and as, you know, time has gone on, the criteria that the team is using to determine the alignment that buying groups have with our operating model continues -- has continued to evolve. So I just don't have enough information to know what Pugh was.

Q. I believe I asked you earlier today if the criteria for value-added buying groups had changed over time with Schein, and I believe your testimony was no.

Are you amending that testimony to say

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that it has changed over time?

MR. McDONALD: Object to the form.

Mischaracterizes the testimony.

A. We've been doing business with buying groups for over 20 years, and I think now, today, when we actually take a look at what the methodology the teams are using to determine whether or not a buying group is a good fit could definitely be -- could be different to what was done 20 years ago, which I don't recall all of what those details were, as we were working with those buying groups in the early years.

Q. When you talk about the methodology, are you talking about the process by which you determine, or are you talking about the individual characteristics of a particular buying group?

A. Could be both.

Q. What are some of the characteristics of the buying group that have changed over time that would change the definition of whether or not the buying group was a value-added buying group?

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A. So today I think the team is looking more to ensure that the buying group is working closely with its members to stay in touch with its members as a group that is taking advantage of the scope of offerings within that particular buying group, and that there's more of an involvement rather than just making a price list available should they be, you know, signing up to be a member of a buying group, that there's a real relationship management element associated with the buying group.

Q. Anything else?

A. I'm sure there are other things that relate to it. The kinds of services that might be provided helping the customers with different aspects of their business.

Q. Anything else?

A. I'm sure there are other things that I can't think of right now.

Q. These are the characteristics that Schein looks at today to determine whether or not a group is a value-added buying group.

How have these characteristics changed over time? Were some of these characteristics

1 CONFIDENTIAL - JAMES BRESLAWSKI
2 less important? Were there other
3 characteristics?

4 MR. McDONALD: Object to the form.

5 A. Twenty years ago. I'm really not
6 sure. So what -- I wouldn't know 20 years ago
7 what the buying group criteria, the details of
8 the buying group criteria were that the team was
9 utilizing back then.

10 Q. What about five years ago?

11 MR. McDONALD: Object to the form.

12 A. I think, in a less formal way, now
13 with Darci having been added and more of the
14 formal process being put in place. I think the
15 basic fundamental elements of this would have
16 been true; that we're looking for -- that we
17 were looking for buying groups that were
18 actually going to be able to have loyal members
19 that would actively participate in the buying
20 group and actually take advantage of the
21 products and services offered through the buying
22 group.

23 Q. And you wanted buying groups five
24 years ago that offered a variety of services to
25 its members?

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2 MR. McDONALD: Object to the form.

3 A. Variety of services to its members and
4 also ongoing engagement in nurturing the
5 relationship with its members.

6 Q. I'm just trying to understand were
7 there any differences between today and five
8 years ago with respect to the types of buying
9 group Schein would want to do business with.

10 It doesn't sound like there were any
11 actual differences. It sounds like Schein has
12 codified those characteristics now through Darci
13 Wingard; is that right?

14 MR. McDONALD: Object to the form.

15 A. I believe that now there is greater
16 codification of it. There are a larger number
17 of entities out there to be put through a
18 process to screen to determine the fit with our
19 business model than there were five years ago,
20 and there's more discipline to make sure that
21 those decisions -- all of those decisions about
22 whether to work or not work with a buying group
23 are going through this process, where five years
24 ago, there might not have been that level of
25 discipline associated with it.

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2 Q. But the characteristics of the buying
3 groups themselves that are attractive today have
4 been attractive to Schein in the past?

5 A. Generally speaking, I would say yes.

6 Q. Returning back to CX2296, Mr. Schenker
7 raises an issue about Pugh Dental Alliance with
8 you. You understand Pugh Dental Alliance to be
9 an existing Schein customer.

10 There's a disagreement between Mr.
11 Muller and Mr. Sullivan about whether to
12 continue working with Pugh Dental Alliance, is
13 that your understanding?

14 A. It's my understanding, yes, that they
15 were discussing what to do here.

16 Q. It's also your understanding that Mr.
17 Muller is aware of Schein's policy to do
18 business with value-added buying groups and not
19 price-only buying groups, right?

20 A. Please repeat the question.

21 (Record read.)

22 THE WITNESS: I would say so.

23 BY MS. ROSNER:

24 Q. So if Mr. Muller had decided to do
25 business with Pugh Dental Alliance, we can

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2 assume that it is a value-added buying group.

3 Why would Mr. Sullivan object?

4 MR. McDONALD: Object to the form.

5 Mischaracterizes the evidence. Unless
6 you're testifying about what the facts are.

7 A. I'm not sure of exactly what the
8 nature of Tim's understanding of what Pugh had
9 been and what it was going to be.

10 Q. Are you saying that you suspected Tim
11 thought that Pugh might be a price-only buying
12 group?

13 A. I think he felt he needed more
14 information.

15 Q. In the second e-mail down from the top
16 on page CX2296-001, an e-mail from Mr. Sullivan
17 at 11:27, he says, "We need to chat live. I do
18 not support us opening buying clubs."

19 By "buying clubs," you understand him
20 to mean buying groups?

21 MR. McDONALD: Object to the form.

22 A. I believe he was referring there to
23 price-only buying clubs.

24 Q. Why do you think he's referring to
25 price-only buying clubs?

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2 A. Because that's what he's supporting.
3 He's not in support of price-only buying clubs,
4 and that's what he's saying here.

5 Q. Does he use the words "price only" in
6 his response?

7 A. No, he doesn't use that.

8 Q. At the top e-mail, the last in line,
9 you respond, "Should we separate the discussion
10 about buying groups?" And then in parentheses
11 you write, "I fundamentally agree with Tim
12 without better info to feel otherwise."

13 Did I read that correctly?

14 A. Yes.

15 Q. So you fundamentally agree with Tim
16 about not supporting buying clubs?

17 MR. McDONALD: Objection to form.

18 Mischaracterizes his testimony.

19 A. Fundamentally agree in our value model
20 and making sure we're going through a process
21 that's a careful process and not just supporting
22 price-only buying clubs.

23 Q. You mentioned that with better info
24 you might feel otherwise. So are you opening
25 the door to potentially supporting price-only

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2 buying groups if you had better information?

3 A. I needed more information. They're
4 always looking for more information to
5 understand completely what the nature of this
6 particular group is and so, you know, want to
7 have a dialogue.

8 Q. And if you received more information,
9 could you be convinced to work with price-only
10 buying groups?

11 MR. McDONALD: Object to the form.

12 A. As of right now, again, price-only
13 buying groups do not fundamentally fit with our
14 business model.

15 Q. Tim mentions the need to chat live.

16 Did you ever chat live about this
17 account?

18 A. I actually don't recall.

19 Q. You can put aside CX2296.

20 I want to fast forward in time a
21 little bit to 2015. We talked a little bit
22 about MB2 and Dental Gator earlier today.

23 In 2015, do you recall that MB2 was
24 planning to visit with Adec?

25 A. I don't recall that.

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2 Q. Who is Adec?

3 A. Adec is a manufacturer of dental
4 equipment.

5 Q. Do you recall there being a concern
6 that Adec would learn about Dental Gator?

7 MR. McDONALD: Object to the form.

8 A. I don't recall that in particular.

9 Q. Do you recall there was a concern that
10 Adec would learn that buying groups had received
11 discounts on Adec supplies without Adec's
12 knowledge?

13 A. I don't recall that in particular.

14 (Complaint Counsel Exhibit cx2135-001
15 through 003, an e-mail chain bearing Bates
16 Nos. Henry Schein-000601936 through 938,
17 marked for identification, as of this date.)

18 BY MS. ROSNER:

19 Q. I'm going to provide you with a
20 document that's been previously marked as
21 CX2135. It's a multi-page e-mail string. The
22 first page of the document bears a Bates stamp
23 Henry Schein-000601936.

24 Please take a moment to review CX2135
25 and let me know when you're finished.

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2 (Document review.)

3 THE WITNESS: Okay.

4 BY MS. ROSNER:

5 Q. Have you had an opportunity to review
6 CX2135?

7 A. Yes.

8 Q. It's an e-mail string. The top e-mail
9 is from you dated May 20, 2015 at 11:47 a.m.
10 The e-mail string is between you, Mr. Sullivan,
11 and Mr. Muller. I believe there are e-mails
12 throughout.

13 You drafted the e-mails in this string
14 as part of your job?

15 A. Yes.

16 Q. It's part of your job to respond to
17 e-mails that you get in business?

18 A. Yes.

19 Q. You have knowledge of the contents of
20 CX2135?

21 A. Yes.

22 Q. You drafted the e-mails in CX2135 at
23 the time the events arose?

24 A. Yes.

25 Q. You drafted the e-mails in CX2135 and

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 2 maintained them in Schein's ordinary course of
 3 business?
 4 A. Yes.
 5 Q. CX2135 is a true and correct copy of
 6 the e-mail correspondence?
 7 A. I believe so.
 8 Q. Turning to pages 2135-002 ending with
 9 003, you see there's a discussion about MB2
 10 visiting Adec?
 11 A. Yes.
 12 Q. And Mr. Sullivan raises a concern
 13 about Adec learning about Dental Gator?
 14 A. He's raising a question about Dental
 15 Gator and the visit of -- in relation to the
 16 visit of Adec, yes.
 17 Q. Would it be a problem for Schein if
 18 one of its manufacturers found out that Schein
 19 was doing business with a buying group?
 20 MR. McDONALD: Object to the form.
 21 A. Not necessarily.
 22 Q. Do you think it would be a problem
 23 here if Adec learned that Schein was doing
 24 business with Dental Gator?
 25 MR. McDONALD: Object to the form.

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 2 A. Adec and other manufacturers would
 3 have special pricing that would have been part
 4 of the role that we played in between the
 5 manufacturer and our DSO customer MB2, so Adec
 6 would have had an understanding of how they fit
 7 into that.
 8 Dental Gator is now different, and how
 9 does that affect how Adec sells or if they sell.
 10 That's up to them, to Dental Gator, at what
 11 price. It's a different thing. So that
 12 probably is what Tim was talking about.
 13 Q. And Tim wanted to ensure that Adec
 14 didn't hear about Schein doing business with
 15 Dental Gator and getting Adec special pricing to
 16 Dental Gator?
 17 MR. McDONALD: Object to the form.
 18 A. I don't think that's so. I don't
 19 think that's so.
 20 Q. Mr. Muller proposes an easy solution
 21 to the Adec problem and simply said that they
 22 would talk to MB2 before the trip; is that
 23 right?
 24 Let me refer you to the first page,
 25 CX- --

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 2 A. I'm sorry. Please repeat the
 3 question. What e-mail are we referring to?
 4 Q. I'm going to refer you to page
 5 CX2135-001.
 6 A. Okay.
 7 Q. In the middle of the page, there's an
 8 e-mail from Mr. Muller at 11 a m., and he
 9 proposes a solution to the problem by saying,
 10 "We could have a talk with MB2 before the trip";
 11 is that right?
 12 MR. McDONALD: Object to the form.
 13 A. Okay.
 14 Q. Mr. Muller then goes on to change the
 15 topic a little bit, and he says that, "Dental
 16 Gator is just one of the many buying groups that
 17 we're engaged with, I just think it is more
 18 obvious -- it's funny as we are discussing this,
 19 I got the following from Randy and I am passing
 20 it on -- the real question we need to answer
 21 (and maybe for the off-site) is how solid a
 22 stance do we want to have?"
 23 Did I read that correctly?
 24 A. Yes.
 25 Q. And then below that, do you understand

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 2 that he's pasted part of an e-mail from Randy?
 3 A. I'm sorry, where is the Randy
 4 reference?
 5 Q. I believe it begins with the quotation
 6 marks, "One thing I have noticed," and then it
 7 ends that paragraph with the name Randy.
 8 A. "I got the following from Randy."
 9 Okay. Got it.
 10 Q. Is that your understanding, that he's
 11 just pasted in one paragraph from Randy?
 12 A. It appears that way.
 13 Q. And you understand Randy to be Randy
 14 Foley?
 15 A. Yes.
 16 Q. And Mr. Foley works with Mr. Muller,
 17 or did, in the Special Markets group at this
 18 time?
 19 A. Correct.
 20 Q. Before we get to Randy's e-mail, Mr.
 21 Muller says, "The real question we need to
 22 answer (and maybe for the off-site) is how solid
 23 a stance do we want to have?"
 24 This is with regards to buying groups,
 25 is that your understanding?

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2 A. I'm not sure exactly what he's
3 referring to.

4 Q. Well, you tell him that he's proposing
5 a very relevant topic at the top e-mail,
6 "Definitely not for e-mail, but a very relevant
7 topic."

8 What is it that you think he's
9 referring to?

10 A. My e-mail relates to his
11 second-to-last paragraph.

12 Q. Okay.

13 A. Where he says, "I am looking into
14 creating a real GPO as a new corporation and
15 what that would entail -- so we could have that
16 in our back pocket should a real GPO..."

17 So that whole aspect of the e-mail,
18 you know, prompted me to say this is relevant.
19 It's complicated, this whole situation is
20 complicated, and it's best for us to have a
21 conversation about it.

22 Q. So up above in Mr. Muller's e-mail,
23 his second full paragraph that begins, "Dental
24 Gator is just one of many buying groups," he
25 ends that paragraph with, "The real question we

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2 need to answer (and maybe for the off-site) is
3 how solid a stance do we want to have?" And so
4 he's suggesting this topic be discussed at the
5 off-site.

6 In your e-mail you say, "If we choose
7 to discuss at the off-site, let's do whatever
8 homework necessary to utilize time as best as
9 possible."

10 What's the question that's being
11 discussed at the off-site?

12 MR. McDONALD: Objection to form.

13 Asked and answered.

14 A. That particular sentence, "if we
15 choose to discuss at the off-site" and the
16 "homework," I was referring to the brainstorming
17 idea about creating something in a new
18 corporation that doesn't exist, which is very
19 complicated and didn't want to get to the
20 off-site without having some real homework done
21 about it.

22 Q. So you're not responding at all to Mr.
23 Muller's question about how solid a stance
24 should Schein have in its buying groups?

25 MR. McDONALD: Object to the form.

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2 Asked and answered twice now.

3 A. I'm telling you what my -- my
4 recollection of what my e-mail was about.

5 Q. Going into the paragraph that Mr.
6 Muller pastes from Randy's e-mail, Mr. Foley's
7 e-mail, he says, "One thing I've noticed getting
8 back into my in inbox is the volume of questions
9 on BGs."

10 You understand "BGs" to mean buying
11 groups?

12 A. I believe so.

13 Q. Mr. Muller then asks, "Can we come up
14 with some type of plan, either from us or from
15 HSD?"

16 Do you understand Mr. Foley to be
17 asking for some type of plan on buying groups?

18 A. I'm not exactly sure what he's asking
19 for.

20 Q. Would it surprise you to hear Mr.
21 Foley asking for some type of plan on buying
22 groups?

23 MR. McDONALD: Object to the form.

24 A. Based upon what Randy has written,
25 it's indicative of the fact that there is, over

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2 this window of time and a little bit before,
3 there has been an acceleration of all kinds of
4 new entities out there, and it would be
5 beneficial for us to really understand this as
6 best as possible and how it actually fits with
7 Henry Schein today and going forward, and I
8 think that's what he was looking for.

9 Q. Henry Schein already has a practice at
10 this point about how and whether to engage with
11 buying groups, right?

12 MR. McDONALD: Object to the form.

13 Asked and answered.

14 A. Yes.

15 Q. Would there be any reason to change
16 how Henry Schein engages and when Henry Schein
17 engages with buying groups?

18 A. The marketplace is always changing.
19 The level of activity of different kinds of
20 entities taking on all different kinds of forms
21 is constantly changing, and so we have to make
22 sure that we're paying attention to what's
23 happening in the marketplace, and this, I
24 believe, and this issue of there being a lot
25 more activity of various kinds and in various

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2 forms further led us to creating a more
3 structured and functionally resourced team to
4 focus on what we call this alternate purchasing
5 channel group.

6 Q. After the e-mail from Mr. Foley that's
7 pasted in, Mr. Muller goes on to say, "Brian
8 Brady tells me that the West Coast is busting
9 with groups that are looking for purchasing
10 deals and Schein is losing out."

11 Is it your understanding that Schein
12 is losing out on these West Coast purchasing
13 deals because it's not bidding on buying groups?

14 MR. McDONALD: Object to the form.

15 THE WITNESS: I'm not sure exactly
16 what Brian is referring to.

17 Q. By "losing out," does that mean that
18 Schein is not winning volume from these
19 customers?

20 MR. McDONALD: Object to the form.

21 He just told you he's not sure what it
22 means.

23 A. Yeah, I'm not sure.

24 Q. In the top e-mail where you respond,
25 "Definitely not for e-mail," why is this a topic

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2 not for e-mail?

3 A. Because it's, again, this is, in
4 particular, related to -- so, at the conclusion,
5 related to something creating a GPO that doesn't
6 exist, a new corporation, something totally
7 different. It's a very complex topic,
8 impossible, in my view, to dialogue about on
9 e-mail.

10 So I said we should not talk about
11 this on e-mail, let's have a meeting, but let's
12 be prepared for the meeting. Do the homework.

13 Q. Did you ever have the meeting?

14 A. We had our off-site meeting, and the
15 concept of our creating our own GPO and a new
16 corporation did not go very far, and there
17 really wasn't much in the way of preparation
18 done, and so it really -- it's not something
19 that has, at that time, it's not something that
20 had much in the way of legs.

21 Q. When you say that it didn't go very
22 far, what was the discussion at the meeting
23 regarding creating your own GPO?

24 A. I don't recall the details of that.
25 It didn't turn out to be a very significant

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2 agenda item because the team was not very well
3 prepared, as I recall.

4 Q. Who was involved in the discussion
5 about creating Schein's GPO?

6 A. The off-site meeting would have been
7 the leadership team of -- it would have included
8 the people on this e-mail and a few other of the
9 senior executives responsible for the U.S.
10 Dental business and possibly even people from
11 some other markets.

12 Q. Who would have been some of those
13 people that you're referencing?

14 A. So it would have been likely -- I
15 don't recall the exact list of those who would
16 have attended the off-site, but it would have
17 included the direct reports of mine and it would
18 have included some of our other colleagues that
19 support the business, like our IT director and a
20 Human Resource colleague and things of that
21 nature. So it was a list of maybe ten or so
22 people, but the primary commercial people would
23 have been my direct reports.

24 Q. You can put that document aside.

25 MR. McDONALD: Would you like to take

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2 a break?

3 MS. ROSNER: Sure.

4 (Recess; Time Noted: 2:10 p.m.)

5 (Time Noted: 2:30 p.m.)

6 BY MS. ROSNER:

7 Q. Mr. Breslawski, you report to Stanley
8 Bergman; is that right?

9 A. Yes, I do.

10 Q. What is Mr. Bergman's reaction to the
11 Dental business?

12 MR. McDONALD: Objection to form.

13 Vague.

14 A. Well, Stanley is our CEO, so Stan --
15 and our Dental business is our largest business
16 of Henry Schein, and so he is involved with
17 periodic reporting to him as to the status and
18 performance of business, and he would also
19 periodically visit various locations and
20 participate in different meetings, such as our
21 national sales meeting.

22 And he also is very actively involved
23 in supporting the profession that we serve in
24 the Dental business and helping us stay very
25 well connected to the profession, understanding

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 2 what the profession's goals and needs are, and
 3 helping to align the resources of Henry Schein
 4 to help our customers achieve those goals.
 5 Q. Is Mr. Bergman involved on individual
 6 dental customer accounts?
 7 A. Not as a matter of a regular course.
 8 Q. Would Mr. Bergman be aware of Schein's
 9 practice of working with buying groups?
 10 A. Not to any detail.
 11 Q. Would he know the general practice
 12 that Schein engages with buying groups?
 13 A. Absolutely.
 14 MR. McDONALD: Object to the form.
 15 A. Absolutely. He would know that we
 16 have been working with buying groups for a very
 17 long time. He also would have a good
 18 understanding of what our Special Markets
 19 business is about and how we work with large
 20 customers in that respect.
 21 Q. Would Mr. Bergman have to approve
 22 Schein's practice of working with buying groups?
 23 A. Typically, he would not.
 24 Q. I want to go back to something you
 25 mentioned earlier today when we were talking

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 2 about value-added buying groups over time.
 3 You mentioned that there's more
 4 discipline now than there was in the past.
 5 What do you mean by that statement?
 6 A. What I was referring to is that today
 7 a level of activity in the marketplace with
 8 regard to different kinds of entities that are
 9 representing that they can pull together
 10 customers to be part of an affiliation or a
 11 group is greater than it used to be, and we felt
 12 that it would be important for us to create a
 13 separate group of resources internally to
 14 understand that space as best as possible and to
 15 put more structure and process and procedure
 16 around managing that aspect of the business.
 17 Q. As Schein has more discipline today
 18 than it did in the past, is that to say that in
 19 the past Schein said yes to buying groups that
 20 it should have said no to?
 21 MR. McDONALD: Object to the form.
 22 A. I'm not sure. I know that we have
 23 been working with many different buying groups
 24 over the years, and I'm not aware of all of the
 25 attributes of all of those different buying

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 2 groups and how they would match up specifically
 3 to the discipline or the new structural process
 4 that Darci and the team are working today. I
 5 just don't know.
 6 Q. Is that to say that Schein in the past
 7 said no to buying groups that it should have
 8 said yes to?
 9 MR. McDONALD: Object to the form.
 10 A. I don't know. I don't know.
 11 Q. Who would know?
 12 MR. McDONALD: Object to the form.
 13 A. I'm not sure who would know.
 14 Q. Does Mr. Bergman have knowledge about
 15 each of Schein's buying group customers?
 16 MR. McDONALD: Object to the form.
 17 A. I don't believe so.
 18 Q. Would Mr. Bergman have any reason to
 19 be aware of the Dental Co-op of Utah?
 20 MR. McDONALD: Object to the form.
 21 A. I don't know. I don't know myself,
 22 and I don't know if he would.
 23 Q. Are you familiar that the Dental Co-op
 24 of Utah as a buying group?
 25 A. I'm really not familiar with them.

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 2 Q. Do you recall whether Schein did
 3 business with the Dental Co-op of Utah?
 4 A. I can't think of any details right
 5 now. I can't recall anything in particular
 6 about the -- a dental buying group in Utah.
 7 Q. Do you recall Mr. Bergman learning
 8 about the Dental Co-op of Utah and Schein's
 9 relationship with them and saying that it did
 10 not feel right?
 11 MR. McDONALD: Object to the form.
 12 A. I don't recall.
 13 (Complaint Counsel Exhibit CX2315-001
 14 through 004, an e-mail chain bearing Bates
 15 Nos. Henry Schein-000110472 through 475,
 16 marked for identification, as of this date.)
 17 BY MS. ROSNER:
 18 Q. I'm going to hand you a document
 19 that's been previously marked as CX2315. This
 20 is a multi-page e-mail string. The first page
 21 is Bates-labeled Henry Schein-000110472.
 22 Please take a moment to review CX2315
 23 and let me know when you're finished.
 24 (Document review.)
 25 THE WITNESS: Okay.

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 2 BY MS. ROSNER:
 3 Q. You've had an opportunity to review
 4 CX2315?
 5 A. Yes.
 6 Q. This is an e-mail string. The
 7 latest-in-time e-mail at the top of the first
 8 page is from you dated October 20, 2015. There
 9 are some other e-mails in the string that were
 10 authored by you.
 11 You drafted the e-mails in 2315 as
 12 part of your job?
 13 A. Yes.
 14 Q. It's part of your job to respond to
 15 e-mails that you get at this business account?
 16 A. Yes.
 17 Q. You have knowledge of the contents of
 18 CX2315?
 19 A. Yes.
 20 Q. You drafted the e-mails in CX2315 at
 21 or near the time the events therein arose for
 22 you?
 23 A. Yes.
 24 Q. You drafted e-mails in CX2315 and
 25 maintained them in the course of Schein's

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 2 regularly conducted business?
 3 A. Yes.
 4 Q. CX2315 is a true and correct copy of
 5 your e-mail correspondence?
 6 A. I believe so.
 7 Q. Okay. At the bottom of CX2315-001,
 8 Mr. Cavaretta is talking about the Dental Co-op
 9 of Utah, the group that we were just mentioning,
 10 and mentions that at one point in time Schein
 11 did business with the Dental Co-op of Utah and
 12 then Schein terminated the contract when the
 13 Dental Co-op of Utah started to negotiate
 14 directly with manufacturers.
 15 Do you have any reason to discount
 16 that telling of Schein's history with the Dental
 17 Co-op of Utah?
 18 A. I really don't know myself anything of
 19 the history, so I'm reading what you're reading.
 20 Q. Going after that e-mail chain up the
 21 page towards Stanley Bergman's e-mail --
 22 A. Yes.
 23 Q. -- at 6:42 p m.
 24 A. Yes.
 25 Q. He says, "Hi, JB. Can you please

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 2 look."
 3 And "JB" refers to you?
 4 A. That's me, yes.
 5 Q. "Does not feel right. Am concerned
 6 that this could have ripple effects."
 7 What is your understanding of what
 8 does not feel right?
 9 A. What I believe Stanley is referring to
 10 here and what I responded to is the overall take
 11 of the author of the CR newsletter and the
 12 reference that Stanley is concerned about that
 13 they may not really understand the value that we
 14 provide and that it would be important for us to
 15 find ways to help make sure that CR and Gordon
 16 Christiansen, who is the principal at CR, really
 17 does understand it, and so I said I'll follow up
 18 on that. That's what that was related to.
 19 Q. So it's your understanding that Mr.
 20 Bergman's e-mail doesn't relate to the
 21 information about the Dental Co-op of Utah,
 22 specifically?
 23 A. I don't believe so.
 24 Q. You think he's referring to the CR
 25 Newsletter article?

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 2 A. I took it as the subject, "CR
 3 Newsletter - October 2015," and his concern that
 4 overall this doesn't feel right. Doesn't feel
 5 right that they don't understand what our total
 6 value proposition is, and it would be important
 7 for us to follow up on that.
 8 Q. What do you interpret Mr. Bergman is
 9 saying when he says, "Am concerned that this
 10 could have ripple effects"?
 11 A. I'm not sure exactly what he meant by
 12 that, but responded more specifically to him
 13 feeling that this doesn't feel right. So when
 14 Stanley says something doesn't feel right to him
 15 and he asked me to look into it, that's what I
 16 do.
 17 Q. Did you look into it?
 18 A. Yes, we worked with a number of team
 19 members and I -- and I believe, I'm not sure if
 20 I have the dates right, but I believe we were
 21 able to spend some time with them to better
 22 understand our total value proposition around
 23 the education we provide for customers, the
 24 training and technical service that we provide
 25 for customers, the relationships that are

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 2 critical as part of a full-service dealer, and
 3 helping dealers become effective in adopting
 4 digital dentistry in their practice, and I think
 5 that was valuable to have him understand that.
 6 Q. You can set CX2315 aside.
 7 What is --
 8 A. I'm sorry, what did you say?
 9 Q. You can set aside that document.
 10 A. Okay. I'm sorry. My ears aren't the
 11 best. I'm an older man. Okay.
 12 Q. What is an off-site planning meeting?
 13 A. Twice a year, the team that I work
 14 with, and throughout the company, there's, you
 15 know, we have more than 22,000 team members in
 16 the company, so there are lots of leaders that
 17 have off-site meetings, but with my team, twice
 18 a year we go to the local hotel or we go to
 19 another site and we do some short-range and
 20 long-range planning with each other.
 21 Primarily, the attendees, as I
 22 mentioned before, would be my direct reports and
 23 the senior colleagues from the other functional
 24 areas in the business that we have to partner
 25 with.

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 2 happened at the meeting.
 3 Q. And why is it important to have a
 4 writing of some of the dialogue from the
 5 planning meeting?
 6 MR. McDONALD: Object to the form.
 7 A. It allows us to keep continuity in the
 8 ongoing running dialogue that we have with each
 9 other. This is a team of people that works very
 10 closely together, so it just helps keep some
 11 continuity in our conversation with each other.
 12 Q. Do you ever refer back to the planning
 13 meeting notes?
 14 A. Ever? Of course.
 15 Q. For what purpose?
 16 A. Not always.
 17 Sometimes to do some followup.
 18 Certainly on the action items, there's followup
 19 on the action items. Sometimes on the
 20 documented notes, looking back on the notes is
 21 done and sometimes not.
 22 Q. So you mentioned there are these two
 23 sets, the notes and the followup action items.
 24 Are these two separate documents?
 25 A. It's very informal. Sometimes it's

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 2 Q. You make it a practice of yours to
 3 attend these off-site planning meetings?
 4 A. Up until very recently, the planning
 5 meetings that I'm referring to, the global
 6 dental planning meetings, they were my meetings.
 7 Q. Does Mr. Bergman generally attend the
 8 planning meetings?
 9 A. No.
 10 Q. What is the purpose of off-site
 11 planning meetings?
 12 A. As I mentioned, the purpose of the
 13 planning meeting is short-term planning and
 14 long-term planning for the business.
 15 Q. Does someone regularly take notes
 16 during the planning meeting?
 17 A. Usually at the off-site planning
 18 meetings we will have some notes and some
 19 followup actions.
 20 Q. Starting with the notes, what's the
 21 purpose of someone taking the notes during the
 22 planning meeting?
 23 MR. McDONALD: Object to the form.
 24 A. The notes that would be circulated
 25 represent some of the dialogue that would have

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 2 all on one document. Sometimes it relates,
 3 depending upon where we are, it could relate to
 4 a strategic planning document. There could be
 5 multiple documents.
 6 Q. What's the purpose of having followup
 7 action items?
 8 MR. McDONALD: Object to the form.
 9 A. To give us a good chance of running a
 10 good business.
 11 Q. For HSD planning meetings, is there
 12 someone in particular who is designated as the
 13 note-taker?
 14 MR. McDONALD: Object to the form.
 15 Vague as to time.
 16 A. Sometimes there are different people
 17 that do it. There's probably one person over
 18 the course of the last handful of years that did
 19 it more than others.
 20 Q. Is that Jim Huether?
 21 A. Jim Huether, yeah.
 22 Q. H-U-E-T-H-E-R?
 23 A. That's correct.
 24 Q. Have you ever known Graham Stanley to
 25 be the note-taker for HSD planning meetings?

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 2 A. It's not usual that Graham would be
 3 the designated note-taker. It would -- Jim
 4 Huether reports to Graham Stanley, so Jim
 5 Huether is more the administrative note-taker
 6 and record keeper.
 7 Q. If Jim Huether did not attend an HSD
 8 planning meeting, who would be the next natural
 9 person to be the note-taker?
 10 A. Could be anyone.
 11 MR. McDONALD: Object to form.
 12 A. Could be anyone.
 13 Q. Do you ever share planning meeting
 14 notes with Mr. Bergman?
 15 A. Rarely.
 16 Q. Do you ever share planning meeting
 17 notes with anyone who doesn't attend the
 18 meeting?
 19 A. Again, not usually.
 20 Q. Is it important that planning meeting
 21 notes are accurate?
 22 MR. McDONALD: Object to the form.
 23 A. It's important that, topically, that
 24 the topics are captured. Oftentimes, there's a
 25 lot of conversation, and the notes are not

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 2 necessarily specifically accurate, but the
 3 topics that are identified are usually on point
 4 as to the topics that were discussed.
 5 Q. I just want to make sure I understand
 6 what you're saying. You're saying that the
 7 topics are accurate, but it's not as important
 8 that the specifics on those topics are not
 9 accurate?
 10 MR. McDONALD: Object to the form.
 11 Misstates the testimony.
 12 THE WITNESS: Can you please repeat,
 13 not this question, but the question before
 14 that?
 15 (Record read as follows:
 16 "Q Is it important that planning meeting
 17 notes are accurate?")
 18 THE WITNESS: So my answer to the
 19 question of is it important that they are
 20 accurate, my answer was that it's important
 21 that the topics are represented in the
 22 notes, but sometimes because there's so many
 23 aspects of any kind of a dialogue, the
 24 actual details may not be all the specific
 25 accurate details, but the topic is something

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 2 that we would expect to actually see.
 3 BY MS. ROSNER:
 4 Q. Would you like it for the details to
 5 also be accurate?
 6 MR. McDONALD: Object to the form.
 7 A. Again, it depends on the detail. Some
 8 of them that find their way into the notes are
 9 not that material, and it doesn't matter if it's
 10 accurate as long as the topic is covered.
 11 Q. What's the purpose of taking notes if
 12 it doesn't matter if some of them are not
 13 accurate?
 14 A. I think I --
 15 MR. McDONALD: Object to the form.
 16 Asked and answered. So.
 17 Tell her again.
 18 A. I think I did answer that question.
 19 It helps us keep our running -- we're with each
 20 other very frequently, and it just helps us keep
 21 our conversation with each other going.
 22 The more important thing is action
 23 items and owners and commitments to dates to
 24 follow up on specific things that might have
 25 come out of any particular meeting.

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 2 Q. So if the purpose of the notes is to
 3 keep the dialogue running, you would want to
 4 have some confidence that the dialogue
 5 represented in the notes is accurate so you
 6 could continue on the right direction; is that
 7 right?
 8 MR. McDONALD: Object to the form.
 9 You have asked him essentially the
 10 same question half a dozen times now, and I
 11 got to tell you, I mean, at this rate, I'm
 12 not going to agree to give you a minute over
 13 your time period. You're just wasting time.
 14 Go ahead. Answer again.
 15 THE WITNESS: Can I hear the question?
 16 (Record read.)
 17 MR. McDONALD: Objection. Asked and
 18 answered.
 19 THE WITNESS: Our notes are not
 20 perfect. Generally, we look for notes to
 21 contain the most important topics. At
 22 times, there's a lot of perhaps other
 23 details that are not that important, and if
 24 those details are not accurate but the topic
 25 is relevant, then it's important that that

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 2 topic stays in the conversation.
 3 BY MS. ROSNER:
 4 Q. You attended an HSD planning meeting
 5 on November 2, 2015; does that sound right?
 6 A. It's possible. Off the top of my
 7 head, I'm not sure what the dates of our
 8 meetings were.
 9 Q. Sure.
 10 (Complaint Counsel Exhibit CX2316-001
 11 through 003, an e-mail chain bearing Bates
 12 Nos. Henry Schein-000537458 through 460,
 13 marked for identification, as of this date.)
 14 BY MS. ROSNER:
 15 Q. I'm going to hand you a document
 16 that's been premarked as CX2316. It's a
 17 multi-page e-mail. The first Bates number is
 18 Henry Schein-000537458.
 19 Please take a moment to review CX2316
 20 and let me know when you've had a chance to
 21 familiarize yourself with the document.
 22 (Document review.)
 23 THE WITNESS: Okay.
 24 BY MS. ROSNER:
 25 Q. You've had an opportunity to review

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 2 CX2316?
 3 A. Yes.
 4 Q. This is an e-mail. The last-in-time
 5 e-mail chain at the top of the first page was
 6 sent by you on November 4, 2015.
 7 You wrote this e-mail as part of your
 8 job?
 9 A. Yes.
 10 Q. It's part of your job to respond to
 11 e-mails about off-site planning meetings?
 12 A. Yes.
 13 Q. You had knowledge of the contents of
 14 this e-mail?
 15 A. Yes.
 16 Q. You drafted the e-mail on CX2316 at or
 17 near the time that you got the notes from the
 18 planning meeting?
 19 A. Yes.
 20 Q. You drafted and maintained the e-mails
 21 in CX2316 as part of Schein's regularly
 22 conducted business?
 23 A. Yes.
 24 Q. And CX2316 represents a true and
 25 correct copy of your e-mail correspondence?

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 2 A. I believe so.
 3 Q. Below your e-mail is an e-mail from
 4 Graham Stanley, and Mr. Stanley is forwarding
 5 notes from an off-site planning meeting; is that
 6 right?
 7 A. I'm not sure. The reason why I say
 8 that is that, in looking at this, it doesn't
 9 strike me as one of our off-site planning
 10 meetings. It might have been a different
 11 meeting that we had. It could have been.
 12 Because some of the people that are copied here,
 13 I'm just not sure. I'm not sure if it was an
 14 off-site planning meeting. It was definitely a
 15 meeting amongst this group of people, but it
 16 might not have been one of those two meetings
 17 that I referred to where we have a two-day
 18 session each, you know, twice a year.
 19 Q. Mr. Sullivan has previously testified
 20 that these were notes from an off-site planning
 21 meeting.
 22 Do you have any reason to think that
 23 he might have been mistaken?
 24 A. That may --
 25 MR. McDONALD: Hang on.

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 2 Object to the form.
 3 A. That may have been -- this could be an
 4 off-site meeting that perhaps was actually held
 5 in Wisconsin. I'm just saying that the meetings
 6 that I have just -- to be clear, the meetings
 7 that I was referring to we have twice a year.
 8 They're typically two-day long meetings.
 9 The Global Dental business, just
 10 looking at the addressees, this would indicate
 11 to me that this meeting, and it could have been
 12 off-site, I'm not saying Tim's wrong, but it's
 13 not the meeting that I was referring to.
 14 Q. The people that are included in the
 15 addressee line of Mr. Graham -- Stanley
 16 Graham -- Graham Stanley's e-mail, who are these
 17 people?
 18 A. So these are people that are involved
 19 in the U.S. Dental business, primarily Tim's
 20 team, looks like. Primarily Tim's team.
 21 Q. And --
 22 A. So, again, this is not that off-site
 23 meeting that I was referring to before the
 24 Global Dental planning meetings.
 25 Q. And it appears that Mr. Stanley took

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2 notes at this meeting that occurred with Tim's
3 team?
4 A. He took notes, and he asked whether or
5 not there were other things that others would
6 like to add, but I don't know if people did add
7 notes or not.
8 Q. But you added notes? Your e-mail at
9 the top of the -- chain offers some amendments?
10 A. Okay.
11 Q. -- to Mr. Stanley's notes?
12 A. Yeah; that's my comment, right.
13 Q. You suggested a correction on the
14 reinvented loyalty program, right?
15 A. Right.
16 Q. You also noted that Mr. Stanley forgot
17 to mention the long-term plan structure?
18 A. Yes.
19 Q. These were topics that you pointed
20 out, because when you reviewed Mr. Stanley's
21 notes, they jumped out at you as being
22 inaccurate?
23 A. I don't know if they jumped out at me.
24 Just when I read Graham Stanley's notes, it
25 occurred to me to write this e-mail with this

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2 content.
3 Q. You made these suggestions to Mr.
4 Stanley and provided this content because you
5 wanted his notes to be accurate?
6 MR. McDONALD: Object to the form.
7 Asked and answered.
8 A. I wanted my thoughts at that moment,
9 and if I spent some more time, I might have had
10 other thoughts, but I wanted these particular
11 thoughts to also be recognized by Graham.
12 Q. Did anybody tell you to write this
13 e-mail to Mr. Stanley?
14 A. Not that I recall.
15 Q. Did anybody tell you what to say in
16 your e-mail to Mr. Stanley?
17 A. Not that I recall.
18 Q. Looking at Mr. Stanley's e-mail,
19 turning to the second page, CX2316-002, about
20 three-quarters down the way of that page, he has
21 a heading that says "Buying Groups," and then
22 under that heading it says, "Tim clearly set out
23 that HS should not be first to cooperate with
24 GPOs, but also don't want to be the last."
25 Did I read that correctly?

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2 A. Yes.
3 Q. When he refers to Tim, he's referring
4 to Tim Sullivan?
5 A. I believe so, yes.
6 Q. And "HS" refers to Henry Schein?
7 A. I think so, yes.
8 Q. And so at the meeting on November 2,
9 Tim said that Henry Schein should not be the
10 first to cooperate with GPOs?
11 MR. McDONALD: Object to the form.
12 A. Again, I believe this particular
13 reference, in context, has to do with GPOs as
14 compared to what we were talking about before
15 with regard to, in the medical world, the
16 separate structure of GPOs as opposed to buying
17 groups, and there is no real presence of a
18 traditional medical like GPO in the Dental
19 business, and I think that Tim is -- I believe
20 that's what Tim was referencing.
21 Q. You attended the meeting. Do you
22 recall this statement?
23 A. No.
24 Q. When in the notes it refers to GPOs,
25 you're referring -- you think that Tim is

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2 referring to a medical GPO, is that your
3 testimony?
4 A. My recollection is that this comment
5 specifically relates to the medical form of GPO.
6 That is my recollection.
7 Q. Sorry. You just said that you don't
8 remember Tim making this statement?
9 A. No, this is what I believe that this
10 refers to. I can't recall his statement.
11 Q. The heading is "Buying Groups."
12 Is it the case that sometimes people
13 confuse GPOs and buying groups or use those
14 terms interchangeably?
15 A. I believe I mentioned that earlier in
16 my testimony that internally within the company
17 that there is sometimes utilization of buying
18 groups and GPOs and buying clubs that are used
19 in an interchangeable way.
20 I personally, whenever speaking about
21 GPOs, specifically focus on the GPO model, as I
22 understand it, on the medical side of the
23 business.
24 Q. Is it possible that this reference of
25 GPOs actually means buying groups?

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 2 MR. McDONALD: Object to the form.
 3 Asked and answered.
 4 A. I don't think so. I think it relates
 5 to the medical. That's my take on it.
 6 Q. Underneath this bullet, underneath
 7 this sentence, there's a bullet that says "CDA
 8 bid likely soon."
 9 Is CDA a GPO?
 10 MR. McDONALD: Object to the form.
 11 A. That is a -- I believe that that is a
 12 reference to the California Dental Association.
 13 I believe. I could be wrong, but I think that's
 14 what that is.
 15 Q. Is the California Dental Association a
 16 GPO?
 17 A. No.
 18 Q. Was the California Dental Association
 19 starting a buying group?
 20 MR. McDONALD: Object to the form.
 21 A. The California Dental Association was
 22 starting some form of a group, yes. I believe,
 23 I'm not sure, again, of the timing, but I
 24 believe that that's true.
 25 Q. The next bullet is, "Possible solution

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 2 could be redefinition of loyalty program."
 3 Does Schein have a GPO loyalty program
 4 in the Dental unit?
 5 A. No.
 6 Q. Does Schein have a buying group
 7 loyalty program?
 8 A. We have an overall loyalty program for
 9 customers, and sometimes the loyalty program is
 10 baked into the unique deal that a customer or an
 11 entity, a buying group or whatever, may have as
 12 part of their overall offering.
 13 Q. This isn't the first time today we
 14 have seen this idea of Tim saying Schein should
 15 not be the first to cooperate, but also don't
 16 want to be the last.
 17 Is there some Schein policy about not
 18 being the first in the market and waiting for
 19 others to enter first?
 20 MR. McDONALD: Object to the form.
 21 A. There's no broad-based policy as you
 22 referenced.
 23 Q. Does it seem strange to you that
 24 someone from Schein would be advocating not
 25 being the first in a market?

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 2 MR. McDONALD: Object to the form.
 3 A. I think that Tim is very focused, as
 4 his team, as am I, on the overall value
 5 proposition and strategy that we have in the
 6 business model of high value, helping our
 7 customers grow their business, focusing across a
 8 broad array of products and services beyond
 9 merchandise to include all of their technical
 10 service, business consulting services, practice
 11 management and on and on and on, and I think
 12 that Tim wants to not lose sight of that as our
 13 primary high-value focus, and so to stray from
 14 that, I think Tim just wants to be very
 15 cautious.
 16 Q. Would being first in a market
 17 necessarily mean you'd have to stray from your
 18 value-focused proposition?
 19 A. It depends on what that activity would
 20 be.
 21 Q. Tim says that he also doesn't want to
 22 be the last.
 23 What would be so bad about being the
 24 last in any market?
 25 A. Markets are always changing. Things

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 2 are happening on a regular basis in a market,
 3 and if there is some particular trend that, for
 4 whatever reason, we didn't participate in soon
 5 enough and we were very late to market, it could
 6 be something that we would regret.
 7 Q. Do you agree that Schein should not be
 8 the first to welcome medical GPOs in Dental?
 9 MR. McDONALD: Object to the form.
 10 A. I believe that there's a natural
 11 reason that exists on the medical side of the
 12 business as to how GPO structures were created,
 13 as I believe I testified to before, coming out
 14 of the acute care space.
 15 I believe that, generally speaking, we
 16 play, in large part, a role of a GPO with our
 17 customers and the value that we provide to the
 18 manufacturers we represent, and also the
 19 products and services that we provide our
 20 customers. So inserting another entity for us
 21 in the Dental business doesn't seem needed.
 22 Q. So would you agree with Tim then that
 23 you don't want to be the group that introduces
 24 GPOs to Medical -- excuse me. You don't want to
 25 be the group that introduces GPOs to Dental?

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 2 MR. McDONALD: Object to the form.
 3 A. I believe that it's very important for
 4 us to pay close attention to what's happening
 5 with regard to GPO development on the medical
 6 side of the business; continue to, you know,
 7 identify how, if at all, a medical GPO model is
 8 moving into dentistry, if it is or not; and make
 9 prudent decisions based upon what we see
 10 happening in the marketplace.
 11 Q. You can put that document aside.
 12 Schein has Worldwide Business
 13 Standards that address communications with
 14 competitors; is that right?
 15 A. We do have Worldwide Business
 16 Standards, yes, training, compliance, in all
 17 kinds of forms.
 18 Q. And is there some component of your
 19 compliance training that addresses
 20 communications with competitors?
 21 A. Yes.
 22 Q. Schein executives are required to
 23 undergo these trainings on Worldwide Business
 24 Standards on a regular basis?
 25 A. Yes.

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 2 Q. Do you attend those trainings?
 3 A. Yes, I do.
 4 Q. Does Stanley Bergman attend those
 5 trainings?
 6 A. Yes, he does.
 7 Q. Do your direct reports attend these
 8 trainings?
 9 A. Yes, they do.
 10 Q. What do those trainings say about
 11 communications with competitors?
 12 A. You should not have them.
 13 Q. Why is there a standard against
 14 communicating with competitors?
 15 MR. McDONALD: Object to the form.
 16 A. It's important for us to make sure
 17 that we're actively competing in the
 18 marketplace, that we are focused on our
 19 business, and really recognizing that it's
 20 important for us to compete with our
 21 competitors.
 22 Q. Does Schein take that guidance
 23 seriously?
 24 A. Of course.
 25 Q. What's the consequence for having a

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 2 communication with a competitor that would
 3 violate Schein's Worldwide Business Standards?
 4 MR. McDONALD: Object to the form.
 5 A. So it depends on the circumstance and
 6 it depends -- and on a case-by-case basis, I'm
 7 sure that would be addressed.
 8 Q. What are some of the consequences that
 9 could result from improper communications with
 10 competitors?
 11 MR. McDONALD: Object to the form.
 12 A. Someone could be terminated.
 13 Q. Anything else?
 14 MR. McDONALD: Object to the form.
 15 A. Certainly someone could be counseled
 16 in terms of not adhering to compliance standards
 17 and, you know, be provided ongoing training and
 18 coaching to make sure that compliance is adhered
 19 to.
 20 Q. Anything else?
 21 MR. McDONALD: Object to the form.
 22 A. I'm not sure of any other specific
 23 consequential details -- consequential detail,
 24 and so I'm not aware of it. It could be
 25 happening, but I don't know.

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 2 Q. Has anyone suffered such consequences
 3 for these -- for such communications that you're
 4 aware of?
 5 MR. McDONALD: Object to the form.
 6 A. I actually don't know specifically off
 7 the top of my head. I don't know.
 8 Q. If someone had suffered consequences
 9 for improper communications with competitors,
 10 who would know?
 11 MR. McDONALD: Object to the form.
 12 A. Our HR and Legal team for sure would
 13 know.
 14 Q. How do you identify when a
 15 communication violates Schein's Worldwide
 16 Business Standards?
 17 MR. McDONALD: Object to the form.
 18 Calls for a legal conclusion.
 19 THE WITNESS: Please repeat the
 20 question.
 21 (Record read.)
 22 MR. McDONALD: Same objection.
 23 THE WITNESS: It depends on what the
 24 content of that communication may be.
 25 BY MS. ROSNER:

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2 Q. You've been trained on not having
3 improper communications with competitors.

4 What are the telltale signs that you
5 try to avoid?

6 A. Well, I try to avoid communicating
7 with competitors, generally speaking.

8 Q. Are there instances in which you find
9 yourself in a situation where you have to
10 communicate with someone at a competitor?

11 A. Over time, I'm sure that I've had some
12 connections with competitors -- communications
13 with competitors that involved in the dental
14 trade association. There might be some
15 association business.

16 Sometimes what happens also is a
17 competitor becomes part of a company over time,
18 and we, you know, we've grown our business in a
19 combination of organic growth internally, but
20 also through a host of joint ventures and
21 various M&A activities and acquisitions. And in
22 fact, that's how Tim Sullivan became part of the
23 Henry Schein organization, as we acquired his
24 company back in 1997.

25 Q. So when you have communications or you

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2 find yourself in a situation that would require
3 you to have communications with competitors, are
4 there topics that you personally try to avoid so
5 as not to violate Schein's Worldwide Business
6 Standards?

7 MR. McDONALD: Object to the form.

8 A. Sure.

9 Q. What are some of those topics?

10 MR. McDONALD: Object to the form.

11 A. I really wouldn't talk about our
12 business with our customers, with our pricing or
13 any kind of things that we, you know, clearly
14 should not be talking about.

15 Q. Anything else?

16 A. We keep whatever conversation totally
17 separate to competing with each other in the
18 marketplace.

19 Q. Anything else?

20 A. Not that comes to mind.

21 Q. Would that include aspects that might
22 give Schein a competitive advantage such as its
23 deals with manufacturers?

24 A. Yeah, we would not -- I would not be
25 talking with my competitors about deals with

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2 manufacturers.

3 Q. What about other aspects that keep
4 Schein competitive, such as its hiring terms for
5 FSCs?

6 MR. McDONALD: Object to the form.

7 A. Typically wouldn't be talking to my
8 competitors about that either.

9 Q. Why is that?

10 A. Just --

11 MR. McDONALD: Object to the form.

12 A. Just not appropriate.

13 Q. Have you ever witnessed communications
14 with competitors that you think may violate
15 Schein's Worldwide Business Standards?

16 A. Per se violations of our Worldwide
17 Business Standards, not that I recall.

18 Q. Have you ever personally spoken to
19 anyone about violating or their violating
20 Schein's Worldwide Business Standards with
21 respect to competitor communications?

22 A. Not that I recall right now.

23 Q. Has anyone ever spoken to you about
24 your violating Schein's Worldwide Business
25 Standards with respect to --

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2 A. No, not that I recall.

3 Q. Have you ever witnessed Stanley
4 Bergman having conversations with competitors
5 that violated Schein's Worldwide Business
6 Standards?

7 A. No.

8 Q. Have you ever witnessed Stanley
9 Bergman encourage others to have conversations
10 with competitors that might violate Schein's
11 Worldwide Business Standards?

12 A. No.

13 Q. Would calling on a competitor and
14 proposing a, quote, full-blown war or ceasefire
15 constitute an improper competitor communication?

16 MR. McDONALD: Object to the form.

17 A. I don't know what the context of that
18 is.

19 Q. Is there a context in which directing
20 someone to call a competitor and propose a
21 full-blown war or ceasefire would not violate?

22 A. I don't understand what -- sorry.

23 MR. McDONALD: Object to the form.

24 A. Repeat the question.

25 Q. Is there an instance in which

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 2 directing someone to call a competitor and
 3 proposing a, quote, "full-blown war or a
 4 ceasefire" would not violate Schein's Worldwide
 5 Business Standards?
 6 MR. McDONALD: Object to the form.
 7 A. Again, I don't know what the topic is.
 8 I don't -- I just don't know the context. I
 9 don't know the topic. I don't know what it's
 10 about, what you're referring to.
 11 Related to a particular business
 12 matter? Related to something unrelated to
 13 business? I don't know.
 14 Q. Would it be appropriate --
 15 A. I don't know.
 16 Q. -- for someone to call a competitor
 17 related to a business matter and propose either
 18 a full-out war or a ceasefire?
 19 MR. McDONALD: Objection to the form.
 20 Asked and answered.
 21 A. Again, I don't know the context of --
 22 I can't envision that, that circumstance.
 23 (Complaint Counsel Exhibit CX2320-001
 24 through 003, an e-mail chain bearing Bates
 25 Nos. Henry Schein-001243322 through 325,

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 2 marked for identification, as of this date.)
 3 BY MS. ROSNER:
 4 Q. I'm going to hand you a document that
 5 has been previously marked as CX2320. It is a
 6 multi-page e-mail string. The first page is
 7 marked Henry Schein-001243323.
 8 Please take a moment to review the
 9 document and let me know when you're finished.
 10 I apologize. I handed you the wrong
 11 document. I'm going to hand you a separate
 12 document. You can put that one aside.
 13 CX2332.
 14 The Bates on this is Henry
 15 Schein-001119026.
 16 Please take a moment to review CX2332
 17 and let me know when you are done.
 18 (Complaint Counsel Exhibit CX2332-001
 19 through 003, an e-mail chain bearing Bates
 20 Nos. Henry Schein-001119026 through 028,
 21 marked for identification, as of this date.)
 22 (Document review.)
 23 THE WITNESS: Okay.
 24 BY MS. ROSNER:
 25 Q. You've had an opportunity to review

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 2 CX2332?
 3 A. Yes.
 4 Q. It's a multi-page e-mail string. The
 5 last-in-time e-mail, the top of the first page
 6 is an e-mail from you dated December 12, 2010.
 7 There are a couple of e-mails that you
 8 have written throughout this chain.
 9 You drafted the e-mails in CX2332 as
 10 part of your job?
 11 A. Yes.
 12 Q. It's part of your job to respond to
 13 e-mails at work?
 14 A. Yes.
 15 Q. You have knowledge of the contents of
 16 CX2332?
 17 A. Yes.
 18 Q. You drafted the e-mails in CX2332 at
 19 or near the time that the events unfolding were
 20 discussed?
 21 A. Yes.
 22 Q. You drafted and maintained e-mails in
 23 CX2332 in Schein's regularly conducted business?
 24 A. Yes.
 25 Q. CX2332 is a true and correct copy of

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 2 your e-mail correspondence?
 3 A. I believe so.
 4 Q. I want to turn your attention to the
 5 last page, CX2332-003. It starts with an e-mail
 6 from Stanley Bergman at 11:15 a.m. He
 7 enumerates a couple of points to Tim and the
 8 team, and you are one of the folks on the team.
 9 In point (B) he says, "Do we have any
 10 major Benco FSC players to go after at this
 11 time? If yes, let's be aggressive. If no, then
 12 Tim should call Chuck to tell him 'we could have
 13 a full-blown war' or we can have a ceasefire.
 14 We have the resources and he has to understand."
 15 Did I read that correctly?
 16 A. Yes.
 17 Q. Mr. Bergman is instructing Chuck to --
 18 excuse me, Mr. Bergman is instructing Tim to
 19 call Chuck, is that your understanding?
 20 MR. McDONALD: Object to the form.
 21 A. Yes.
 22 Q. "Tim" is Tim Sullivan?
 23 A. Tim Sullivan.
 24 Q. "Chuck" is Chuck Cohen?
 25 A. I believe so, yes.

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2 Q. Chuck Cohen works at Benco?

3 A. Yes.

4 Q. And Mr. Bergman is directing Mr.
5 Sullivan to tell Benco we can have a full-blown
6 war or we can have a ceasefire.

7 What does he mean by "ceasefire"?

8 MR. McDONALD: Object to the form.

9 A. I'm not sure of exactly what was on
10 Stanley's mind at the time.

11 Q. Would you interpret "ceasefire" to be
12 the opposite of a full-blown war?

13 MR. McDONALD: Object to the form.

14 A. The way it's written here, it's the --
15 looks like the opposite, yeah.

16 Q. Tim responds to Mr. Bergman's e-mail
17 that, "We are far from sitting." If you go down
18 one, two, three, four bullet points in his
19 e-mail from 11:47 on page CX2332-002, he says,
20 "We can discuss non-hire agreement with them.
21 I've been thinking about the same thing."

22 Do you see that?

23 A. Yes.

24 Q. What's the non-hire agreement?

25 MR. McDONALD: Object to the form.

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2 A. I believe there was a period of time
3 during which there was some kind of -- I don't
4 recall all of the details, but some kind of an
5 understanding that should someone move from
6 Benco to us or us to Benco, that there would be
7 a window of time within which that
8 representative would be out of territory. I
9 think there was -- it was an agreement related
10 to that.

11 Q. You respond to Mr. Sullivan's e-mail
12 saying, "Thanks, Stan and Tim, for both
13 energizing this topic. Tim, team and I will
14 keep all informed about what we are doing and
15 brainstorm with colleagues regarding additional
16 options."

17 So you support Tim reaching out to
18 Benco about the non-hire agreement?

19 MR. McDONALD: Object to the form.

20 Mischaracterizes the document.

21 A. The topic that I'm referring to is
22 Benco going national and for us to make sure
23 that we're doing the best we possibly can to
24 compete with Benco.

25 Q. Do you disagree with the advice that

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2 Tim should reach out to Benco about the non-hire
3 agreement?

4 MR. McDONALD: Object to form.

5 A. I think it's -- I think it's not
6 something I would do.

7 Q. Would you --

8 A. It's not something I would naturally
9 do; pick up the phone and call Chuck.

10 Q. Why not?

11 A. I just wouldn't. Just wouldn't pick
12 up the phone, typically, and call Chuck. It's
13 not -- it's not something that I would do.

14 Q. Would it make you feel --

15 A. Tim is in a different position with
16 running that sales force, the U.S. dental sales
17 force, and --

18 Q. If you were in Tim's position running
19 the U.S. sales force, would you feel more
20 comfortable calling Chuck Cohen to talk about a
21 non-hire agreement?

22 MR. McDONALD: Object to the form.

23 A. Back in 2010, I know that there was
24 some dialogue about the aggressive hiring and
25 competing that was happening for sales reps, and

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2 perhaps I would have called, but I don't -- I
3 don't know for sure.

4 Q. You understand that --

5 A. I was --

6 Q. -- there was a formal agreement
7 between Schein and Benco involving not hiring of
8 FSCs?

9 A. I don't recall the exact nature of
10 what that agreement was. My recollection is
11 that the agreement was not about not hiring. I
12 don't think there was an agreement related to
13 not hiring, but should there be hiring, that
14 there was an understanding that for certain
15 window of time, that those reps were not to work
16 in the territories that they came from.

17 Q. Is that the 120-day sit-out period?

18 MR. McDONALD: Object to the form.

19 A. I don't recall those details. It
20 could be.

21 Q. In that agreement, were there any
22 limitations on the number of representatives
23 that could be hired from the competitor in a
24 given quarter?

25 A. I don't recall the details.

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 2 MR. McDONALD: Hang on.
 3 Object to the form.
 4 Go ahead.
 5 A. I don't recall the details of that
 6 particular agreement from back at that time.
 7 Q. Did Mr. Sullivan ever face
 8 consequences for his communications with Benco
 9 on the non-hire agreement?
 10 MR. McDONALD: Object to the form.
 11 MR. RACOWSKI: Object to the form.
 12 Foundation.
 13 A. I actually don't know what -- what
 14 communication Tim actually had or didn't have
 15 directly himself with Chuck.
 16 Q. Did Mr. Bergman ever face consequences
 17 for encouraging Mr. Sullivan to negotiate a
 18 non-hire agreement with Benco?
 19 MR. McDONALD: Object to the form.
 20 A. After this communication here, I'm not
 21 sure exactly how any communications between
 22 Benco or Benco's counsel, you know, took place.
 23 I don't know who spoke to who.
 24 Q. You're not aware of any consequences
 25 that Mr. Bergman faced as a result of this

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 2 e-mail?
 3 MR. McDONALD: Object to the form.
 4 Asked and answered.
 5 He just told you he wasn't even sure
 6 it happened. I'm not even sure how he can
 7 answer that question.
 8 MS. ROSNER: I'm not asking about
 9 whether it happened. I'm asking about were
 10 there any consequences from this e-mail.
 11 MR. McDONALD: Were there any
 12 consequences for something that may or may
 13 not have happened? That's absurd.
 14 Object to the form.
 15 THE WITNESS: I'm not, from just
 16 writing this e-mail, I'm not aware of any --
 17 I'm not aware of any consequences.
 18 BY MS. ROSNER:
 19 Q. Did you ever communicate with Benco on
 20 other sensitive business topics?
 21 You can put this e-mail aside.
 22 A. I don't believe so.
 23 Q. Did you ever communicate with
 24 Patterson on other sensitive business topics?
 25 MR. McDONALD: Object to the form.

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 2 A. I don't believe so.
 3 Q. How do you know Paul Guggenheim?
 4 A. Paul Guggenheim I know from back in
 5 the early 1990s, probably. He was with
 6 Guggenheim Dental, a family business, and he was
 7 also involved in the trade association. So he
 8 was the leader of the distributor section of the
 9 trade association at the time, and Paul was --
 10 and his business was one of the businesses that
 11 we were at one point thinking about possibly
 12 becoming part of Henry Schein.
 13 Ultimately, he and his family sold the
 14 business to Patterson, and then he became a
 15 leader in various levels in Patterson over time.
 16 Q. Are you friendly with Mr. Guggenheim?
 17 A. I wouldn't say so. I know Paul.
 18 Paul, if I saw Paul, I would greet Paul.
 19 Q. Do you interact with Mr. Guggenheim
 20 socially?
 21 A. No.
 22 Q. Have you ever given Mr. Guggenheim
 23 reason to think that he could call you directly
 24 on a business issue?
 25 A. Please repeat that question.

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 2 (Record read.)
 3 THE WITNESS: He knew me so he knew my
 4 number. He could call me. I never said,
 5 Paul, anytime, you would -- you know, please
 6 call me anytime you want on a business
 7 issue. I never opened that up.
 8 BY MS. ROSNER:
 9 Q. Did you regularly speak with Mr.
 10 Guggenheim about business issues?
 11 MR. McDONALD: Object to the form.
 12 A. Definitely not.
 13 Q. Did you ever speak with Mr. Guggenheim
 14 about a business issue?
 15 A. The only contact I ever had with Paul
 16 that I can recall related to business after --
 17 this was after, you know, knowing him from the
 18 trade association -- was a number of years ago
 19 he gave me a call to ask me if I knew about the
 20 fact that Amazon was coming into the business.
 21 I received one phone call from him.
 22 Q. This was in December 2013?
 23 A. I don't know exactly what the date is.
 24 It would have been close to when Patterson --
 25 sorry, when Amazon would have been joining the

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 2 trade association, whenever that exactly
 3 happened, and I told him that I didn't know much
 4 about it and never really followed up. There
 5 was no followup conversation.
 6 Q. I want to back up a little bit.
 7 You were the one who actually called
 8 Mr. Guggenheim; is that correct?
 9 MR. McDONALD: Object to the form.
 10 A. No. Incorrect.
 11 Q. Mr. Guggenheim called you and left a
 12 message --
 13 A. Ah.
 14 Q. -- and you called him back?
 15 A. Okay. That could be true, right.
 16 Right. Mr. Guggenheim reached out to me. I did
 17 not reach out to Mr. Guggenheim. I returned his
 18 call. That's correct.
 19 Q. How did you get Mr. Guggenheim's
 20 number?
 21 A. I don't know. I don't recall. My
 22 secretary might have gotten it. I don't have
 23 his number in my, to the best of my knowledge,
 24 in my phone.
 25 Q. How did he get your number?

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 2 MR. McDONALD: Object to the form.
 3 A. Pretty easy to find. I worked for
 4 Henry Schein.
 5 Q. What number did you call Mr.
 6 Guggenheim from?
 7 MR. McDONALD: Object to the form.
 8 A. I believe I called him when I was
 9 driving in my car, so it would have been from my
 10 cell phone.
 11 Q. Were you driving home from work?
 12 A. Probably.
 13 Q. How long did that take, usually?
 14 A. Driving home from work? About 40
 15 minutes or something like that, 45 minutes.
 16 Q. Your cell phone, is that a phone that
 17 you carry on your person?
 18 A. Usually.
 19 Q. Does anybody else have access to your
 20 cell phone?
 21 A. Not normally.
 22 Q. Do you let your wife or your kids make
 23 phone calls from your cell phone?
 24 A. Not normally.
 25 Q. Would there be any reason for your

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 2 wife or kids or anyone else to call Patterson?
 3 A. Not that I'm aware of.
 4 Q. Is there anyone else who might have
 5 access to your cell phone?
 6 A. The only -- I usually have my cell
 7 phone all the time, but, you know, sometimes
 8 it's -- the tech people take it at work and they
 9 do something with it. So, other than that, I
 10 would have it.
 11 Q. Any reason you would think that tech
 12 people at work might call someone at Patterson?
 13 A. Not that I can think of.
 14 Q. What is your cell phone number?
 15 A. It's 631-662-6788.
 16 Q. When you called Mr. Guggenheim back,
 17 what did he say to you?
 18 A. I don't recall exactly. It was
 19 something to the effect, Did you hear that
 20 Amazon was coming into the business?
 21 Q. Anything else?
 22 A. That's actually all that I really
 23 recall.
 24 Q. Did he say that he was afraid about
 25 Amazon coming into the business?

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 2 A. I don't recall him being afraid.
 3 Q. Did he say that the dental companies
 4 needed to ban together or against Amazon coming
 5 into the business?
 6 A. Absolutely not. He asked me what I
 7 knew about it from what I recall.
 8 Q. So he mentioned to you that Amazon was
 9 coming into the business. He asked you what you
 10 knew about it?
 11 A. He said, "Did you hear" -- I think he
 12 said, I believe he said, "Did you hear that
 13 Amazon was coming into the business?" And I
 14 believe that in November, around that time, they
 15 might have entered the business.
 16 Q. What else did he say?
 17 A. I don't recall much of that
 18 conversation other than what I've told you.
 19 Q. What did you say in response to what
 20 he was asking you about Amazon?
 21 A. I recall telling him that I've heard
 22 they have entered the business, and that's about
 23 it.
 24 Q. Did you --
 25 A. There was really no conversation about

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 2 what -- beyond that, really. It would have been
 3 a pretty short phone call, I think.
 4 Q. Did you elaborate where you heard the
 5 information from? Who told it to you?
 6 A. There's a chance that I could have
 7 said that I saw them at the New York show and
 8 that may have said something relative to, They
 9 might be joining the trade association, which
 10 would be fine, so that was about it.
 11 Q. Anything else?
 12 A. Not that I can recall.
 13 Q. Did he respond to your mentioning them
 14 at the New York show or wanting to join the
 15 trade association?
 16 MR. McDONALD: Object to the form.
 17 He said he may have said that. He
 18 didn't say he actually did.
 19 A. I'm sorry, say that again.
 20 Q. Did, to the extent that you mentioned
 21 that Amazon might be joining the New York trade
 22 association -- or, excuse me, might be attending
 23 the New York show or joining the trade
 24 association, did Mr. Guggenheim have any
 25 reaction?

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 2 A. I don't recall.
 3 Q. Was there anything else said on the
 4 call?
 5 A. So the only other thing that I can
 6 think of that Paul and I do know each other from
 7 a long time ago, and so I could have asked him
 8 how his family's doing.
 9 I know that at a point in time he
 10 enjoyed playing hockey, so I could have asked
 11 him about his hockey. Could have, you know, had
 12 a little bit of personal conversation before he
 13 asked me the question about Amazon.
 14 Q. Do you specifically recall whether you
 15 asked him about any of those topics?
 16 A. I don't recall.
 17 Q. Is there anything else you could have
 18 talked about?
 19 A. I don't recall. I didn't follow up
 20 with him on that. What I did was I, you know,
 21 just did not connect with him. I haven't really
 22 connected with him except seeing him maybe once
 23 since then at an industry event.
 24 Q. How did it make you feel for Mr.
 25 Guggenheim to be asking you about Amazon?

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 2 MR. McDONALD: Object to the form.
 3 A. I actually didn't think much about it,
 4 so I wanted to, you know, just make sure that
 5 when -- I didn't want to get involved in a
 6 discussion with him about a competitor or
 7 potential competitor, so I really didn't want to
 8 be on the call for long and in talking about
 9 that, so -- and therefore, I also didn't want to
 10 follow up.
 11 Q. You didn't want to extend the call in
 12 any way to continue talking about Amazon?
 13 A. No.
 14 Q. How did you end the call?
 15 A. Again, I don't exactly remember how I
 16 ended the call. I just don't recall exactly how
 17 I ended the call.
 18 Q. How long did the call last? Are we
 19 talking about five minutes? Are we talking
 20 about half hour? Was this like the duration of
 21 your commute?
 22 A. No. No. Couldn't -- I would be
 23 shocked if it was -- it was a relatively -- my
 24 recollection, it was a relatively short call.
 25 Q. What does "relatively short" mean?

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 2 MR. McDONALD: Object to the form.
 3 It's five years ago.
 4 A. I don't know. Five, ten minutes.
 5 Five minutes, ten minutes. I really don't,
 6 don't recall, but my recollection is that it was
 7 relatively short, short. My commute home is
 8 maybe 35, 40 minutes, and I don't recall being
 9 on the phone with Paul for the length of my
 10 commute, for sure.
 11 Q. You mentioned you were uncomfortable
 12 talking about Amazon with Mr. Guggenheim.
 13 Did you report the call?
 14 A. I mentioned the call to my counsel.
 15 Q. Who?
 16 A. That I believe at the time I mentioned
 17 to Stanley Komaroff at the time.
 18 Q. Was that an in-person discussion, was
 19 that by phone, or was that an e-mail?
 20 MR. McDONALD: You can tell her the
 21 form, but don't tell her what you discussed.
 22 A. I actually don't remember the form,
 23 but I remember that --
 24 MR. McDONALD: Don't tell her the
 25 contents.

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A. I remember the form. Sorry. I remember that I notified Stanley Komaroff. I believe it was Stanley Komaroff.

Q. How long after the call with Mr. Guggenheim did you report this call?

A. I believe it was the next morning. I was busy when I went home. That's my recollection.

Q. You mentioned just the two things you recall discussing: That Amazon was in the business and that potentially you had heard about them attending the New York trade show or joining the trade association.

How long do you think that took?

MS. SEIDL: Object to form.

MR. McDONALD: Objection. Asked and answered.

A. I really don't know. It could have been other -- as I said, I know Paul, and there could have been some personal conversation. We could have talked about, you know, his, as I mentioned, his interest in hockey, and he knows that I have an interest as well. It could have been some personal things, but I don't believe

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that the -- the substance of our conversation relating to Amazon I recall as being very short. I didn't really want to be in a detailed conversation about that with him.

MS. ROSNER: Let's take a break.

Off the record.

(Recess; Time Noted: 3:43 p.m.)

(Time Noted: 4:04 p.m.)

BY MS. ROSNER:

Q. We talked a lot about buying groups today, but I want to now focus on the medical-based GPOs that we have touched on a little bit.

And it's your understanding that the medical GPOs tend to be different entities than the buying groups in Dental, correct?

A. Correct.

Q. GPOs are very common in the medical industry; is that right?

A. Correct.

Q. Approximately what percentage of Schein's medical customers are members of GPOs?

A. I don't know.

Q. In Schein's medical group, is there a

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large representation of GPOs?

A. I would say it's a good representation of GPOs. We work with a good number of the GPOs.

Q. Why does Schein's medical division work with GPOs?

MR. McDONALD: Object to the form.

A. So the medical business is very different to the dental business, and the GPOs originated in the acute care business were very large hospitals, very large volumes. GPOs were borne in that space where manufacturers created contract pricing for certain groups of customers.

The medical business has changed quite a bit over the course of the last ten years, where many hospitals now have actually acquired physician offices. Before that happened, the medical business that we were in, because we're not in the acute care business, we don't sell to the hospitals, where we sell to the alternate sites to the hospital: Ambulatory surgery centers, urgent care centers, and physician offices.

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As those physician offices became more connected with overall what's known as IDNs, more and more of the GPOs created offerings beyond the hospital setting and moved the same contracts but at different levels of pricing for the ambulatory and non-acute settings, and so that's how GPOs have really grown up in the medical business.

Q. Does Schein choose to do business with GPOs because they can bring volume to Schein?

A. We choose to do business with GPOs in the medical space because, in large part, the medical customers have been signed up by the GPOs into these contracts, and so in order for us to really be an effective player in the medical distribution business, we have to be involved more so with the GPOs because of the current structural dynamic that exists in the medical business.

Q. So Schein really doesn't have an option to not deal with GPOs in medical?

A. I would say that's true.

Q. Is it your understanding that the mission of a GPO is to provide a range --

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A. Can you please speak a little bit more slowly? I just want to make sure I follow.

Q. Is it fair to say that the mission of a GPO is to provide a range of products and services for their members?

MR. McDONALD: Object to form.

A. I'm not that familiar with all the details of the medical GPOs, but I believe that some of the GPOs or the GPOs provide contract pricing and also some form of services, and really I'm not familiar with the details of those kinds of services.

Q. Through GPO contracts, the average price of medical customers pricings has come down; is that right?

MR. McDONALD: Object to the form.

A. I don't know enough about where pricing was and where it is, but generally speaking, contract pricing is lower than where we are selling off-contract. Because we do have a certain amount of business that flows through, locally, without GPO contracts. So GPO contracts are typically lower pricing.

Q. And in Schein's medical business, the

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aggregate gross profit percentage is lower than the aggregate gross profit percentage of Schein's Dental business?

MR. McDONALD: Object to the form.

A. So I don't think those comparisons are relevant because the businesses are so starkly different in that, on the medical side of the business, we don't have the level of investment and cost associated with the FSC networks. We have also very limited support for equipment and technology services.

On the dental side of the business, there is a substantially higher cost in providing the full-service model to the dentists, which includes not only the field sales consultant but then also a series of other field-based specialists that are specialists in equipment, in technology, in practice management, in financial service.

So there's a lot of costs associated with providing our overall offering to the dental marketplace that doesn't exist in the medical side of our business. So I don't think that that comparison is a relevant comparison.

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Q. Regardless of whether Schein, in its ordinary course, compares the gross profit of its dental versus medical businesses, is one higher or lower than the other?

MR. McDONALD: Object to the form.

A. On average, the medical business gross profit would be lower than the dental business gross profit.

Q. Has Schein ever contemplated what would happen if medical GPOs started to enter the dental space?

MR. McDONALD: Object to the form.

He's not here as a corporate representative.

A. When we think about our dental business and we think about the role that we play and the services and value that we provide both for suppliers and also for the customers, we actually see the role of a GPO in large part being played by us.

So we don't necessarily see how it's easy for a GPO to make a value argument in the dental business. So we don't really, within running our dental business, we're not spending

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a lot of time thinking about the medical GPO model. That's not something that is high on our list of priorities to spend a lot of time on.

Q. Are you aware that Schein is engaged with talks with Premier?

MR. McDONALD: Object to the form.

Vague.

A. I'm not sure exactly what you're talking about.

Q. Do you know Premier as a medical GPO?

A. I know of Premier. I do not know the people at Premier, and I'm not in detail aware of any specific discussion that we may be having that I can recall in any meaningful way with Premier.

Q. Would it be surprising to you to learn that the Schein Dental business is discussing doing business with Premier, a medical GPO?

MR. McDONALD: Object to the form.

Vague as to time.

A. It wouldn't surprise me that our team is talking to anyone about possibilities. And there may be desires of medical GPOs to look at the possibilities of doing business in the

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 2 dental space, and if our teams are talking to
 3 them and evaluating whether or not that makes
 4 any sense for us, I wouldn't be surprised about
 5 that.
 6 Again, I don't think that is a very
 7 significant aspect of our activity today.
 8 Q. Has Schein ever created a strategy or
 9 plan around how it would respond if GPOs entered
 10 dental?
 11 A. I go back to fundamentally believing
 12 that the role that we currently play today fills
 13 a space of value that minimizes the need for
 14 another party to be involved as a structural
 15 part of the dental marketplace.
 16 Periodically, our team is looking at
 17 all kinds of options for us to fortify that
 18 value proposition. For instance, from time to
 19 time, and I think we referred to this later --
 20 sorry, earlier, when Hal in particular was
 21 mentioning maybe we should have our own GPO and
 22 maybe we should more formalize what that means
 23 and create a separate business.
 24 We haven't really developed that to
 25 any significant extent, but that is something

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 2 that we could do in the future.
 3 Q. So today there is no specific plan,
 4 but there has been some discussions about how
 5 Schein would respond to GPOs in dental?
 6 MR. McDONALD: Object to the form.
 7 Mischaracterizes his testimony.
 8 A. There has been some discussion about
 9 GPOs and the role that they play in medical and
 10 how, again, we see our role in dental being
 11 different, but also, we want to keep our eyes
 12 open and continue to think about how do we, you
 13 know, further strengthen our value proposition
 14 so there's actually no need for the -- for
 15 another entity to enter the marketplace between
 16 ourselves and our customer because we believe
 17 that if we are directly connected with our
 18 customer, without being -- having some other
 19 entity in the middle, it gives us the best
 20 chance to tell our full value story.
 21 Q. Would Schein prefer that medical GPOs
 22 stay out of dental?
 23 MR. McDONALD: Objection to form.
 24 A. I think that we don't see a need. We
 25 fill, in large part, that need, both for the

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 2 manufacturers and for the customers.
 3 Q. Bringing a medical GPO into the dental
 4 world would risk the camel's nose being allowed
 5 into the tent; is that your understanding?
 6 MR. McDONALD: Objection to the form.
 7 Why don't you show him the document
 8 and not play games at this late hour.
 9 THE WITNESS: Please repeat the
 10 question.
 11 (Record read.)
 12 MR. McDONALD: Object to the form.
 13 THE WITNESS: If a medical GPO were
 14 brought in by us, without really thinking
 15 through the value of doing that, how that
 16 would fit with our business model could be
 17 irresponsible.
 18 BY MS. ROSNER:
 19 Q. The phrase "bringing the camel's nose
 20 into the tent" is a figure of speech; is that
 21 right?
 22 MR. McDONALD: Object to the form.
 23 A. Yeah, I've heard that's a figure of
 24 speech.
 25 Q. It generally means to allow a small

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 2 act that opens the door to greater undesirable
 3 things?
 4 MR. McDONALD: Object to the form.
 5 Q. Is that your understanding of the
 6 figure of speech?
 7 MR. McDONALD: Object to the form.
 8 A. I don't know. The figure of speech
 9 "the camel's nose in the tent" doesn't have a
 10 positive connotation.
 11 MS. ROSNER: I have no further
 12 questions at this moment.
 13 Do you like to take a break or do you
 14 want to --
 15 MR. McDONALD: Do you have questions?
 16 MS. SEIDL: I was going to see what
 17 you were going to cover.
 18 MR. McDONALD: Okay.
 19 EXAMINATION BY
 20 MR. McDONALD:
 21 Q. Mr. Breslawski, how are you?
 22 A. I'm okay. How are you?
 23 Q. Good.
 24 Has Henry Schein ever had a policy
 25 about working with buying groups?

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 2 A. No.
 3 Q. Have you ever had a communication --
 4 and I mean that in the broadest sense,
 5 telephone, in person, text, whatever, okay --
 6 with anyone at Patterson regarding buying
 7 groups?
 8 A. No, absolutely not.
 9 Q. Have you ever had a communication,
 10 again, in the broadest sense -- with anyone at
 11 Benco regarding buying groups?
 12 A. No, I have not.
 13 Q. The FTC alleges in this action that
 14 Henry Schein had an agreement with Patterson and
 15 Benco to not do business with buying groups.
 16 Do you have any knowledge of such an
 17 agreement?
 18 A. I do not.
 19 Q. Would such an agreement be contrary to
 20 Henry Schein's business practices about working
 21 with buying groups?
 22 A. It would.
 23 Q. How long have you known Tim Sullivan?
 24 A. For 21 years.
 25 Q. And during that 21 years, have you

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 2 been, for the most part, Mr. Sullivan's boss?
 3 A. Correct.
 4 Q. Do you believe that Mr. Sullivan would
 5 have ever had an agreement with a competitor to
 6 not do business with any customer?
 7 A. Absolutely not.
 8 Q. Is Benco a competitor of Henry Schein?
 9 A. Yes.
 10 Q. Does Henry Schein compete against
 11 Benco?
 12 A. Aggressively.
 13 Q. Is Patterson a competitor of Henry
 14 Schein?
 15 A. Absolutely.
 16 Q. Does Henry Schein compete against
 17 Patterson?
 18 A. Aggressively.
 19 MR. McDONALD: That's all the
 20 questions I have at this time.
 21 EXAMINATION BY
 22 MS. SEIDL:
 23 Q. Hi. My name is Jana Seidl. I'm here
 24 representing Patterson. I just have a few
 25 questions.

1 CONFIDENTIAL - JAMES BRESLAWSKI
 2 A. Sure.
 3 Q. So you testified that you were not
 4 aware of anyone at Schein entering into an
 5 agreement with anyone at Patterson to refuse to
 6 deal with buying groups, correct?
 7 A. Correct.
 8 Q. And you certainly didn't enter into an
 9 agreement with anyone at Patterson not to deal
 10 with buying groups, correct?
 11 A. That's correct.
 12 Q. And are you aware of anyone at Schein
 13 entering into an agreement or arrangement or
 14 understanding of any kind with someone from
 15 Patterson regarding any customer?
 16 A. I'm not aware of any arrangement.
 17 Q. And you did not enter into an
 18 agreement with anyone at Patterson regarding any
 19 customer?
 20 A. That's correct.
 21 Q. Do you know of anyone at Schein
 22 communicating with anyone at Patterson about
 23 whether or not Schein was going to offer
 24 discounts for any specific customer?
 25 A. Please repeat that.

1 CONFIDENTIAL - JAMES BRESLAWSKI
 2 MS. SEIDL: Could you read back the
 3 question?
 4 (Record read.)
 5 THE WITNESS: I am not aware of that.
 6 BY MS. SEIDL:
 7 Q. And do you know of anyone at Schein
 8 communicating with anyone at Patterson to learn
 9 whether or not Patterson would be competing for
 10 any customers or offering discounts to any
 11 particular customer?
 12 MS. ROSNER: Objection to form.
 13 A. I am not.
 14 Q. You can go ahead.
 15 MR. McDONALD: Do you have the
 16 question?
 17 THE WITNESS: One more time.
 18 (Record read.)
 19 MS. ROSNER: Objection. Form.
 20 THE WITNESS: Okay. I am not aware of
 21 that.
 22 BY MS. SEIDL:
 23 Q. And did you ever speak with anyone at
 24 Patterson about whether or not any particular
 25 customer is a buying group?

1 CONFIDENTIAL - JAMES BRESLAWSKI
 2 A. I have never spoken to anyone at
 3 Patterson about that.
 4 Q. And do you know if anyone at Schein
 5 coordinating their conduct with anyone at
 6 Patterson regarding any customer?
 7 MS. ROSNER: Objection. Form.
 8 A. I am not aware of any of that.
 9 MS. SEIDL: That's all I have.
 10 EXAMINATION BY
 11 MR. RACOWSKI:
 12 Q. Good afternoon, Mr. Breslawski. I'm
 13 Ken Racowski representing Benco. I just have a
 14 couple of questions for you.
 15 A. Okay.
 16 Q. If you could pull out an exhibit that
 17 you looked at earlier today. It's labeled
 18 CX2332.
 19 A. Got it.
 20 Q. And if we turn over to page 3 of that
 21 document, you testified at length in response
 22 to --
 23 A. Yeah.
 24 Q. -- questions from Complaint Counsel
 25 regarding an alleged suggestion by Mr. Bergman

1 CONFIDENTIAL - JAMES BRESLAWSKI
 2 to Mr. Sullivan about reaching out to Benco, do
 3 you remember that testimony?
 4 A. Yes.
 5 Q. I just wanted to make sure it's
 6 absolutely crystal clear for the record. You
 7 don't have any knowledge that Mr. Sullivan
 8 actually made the phone call or the
 9 communication that Mr. Bergman was suggesting in
 10 this e-mail, do you?
 11 A. I do not, no.
 12 Q. And you're not aware of any
 13 communications that Mr. Sullivan may have had
 14 directly with Mr. Cohen about the topic in this
 15 e-mail, are you?
 16 MS. ROSNER: Objection. Leading.
 17 A. I am not aware of that, no.
 18 Q. And then I think the last question,
 19 your counsel may have already cleared that up,
 20 but again, so we have a clear record, you don't
 21 have any personal knowledge of any agreement
 22 between Henry Schein and Benco not to do
 23 business with or to give discounts to buying
 24 groups, do you?
 25 MS. ROSNER: Objection. Leading.

1 CONFIDENTIAL - JAMES BRESLAWSKI
 2 A. I have no such knowledge.
 3 Q. And you're not aware of anyone at
 4 Schein having ever formed or made such an
 5 agreement with Benco, are you?
 6 MS. ROSNER: Objection. Leading.
 7 A. I am not aware of any such agreement.
 8 MR. RACOWSKI: That's all I have.
 9 Thank you for your time.
 10 MS. ROSNER: Can we take a quick
 11 break?
 12 (Recess; Time Noted: 4:24 p.m.)
 13 (Time Noted: 4:25 p.m.)
 14 MS. ROSNER: Mr. Breslawski, I don't
 15 have any other questions for you today.
 16 Thank you for appearing for this deposition.
 17 Do you have any questions for me?
 18 (Continued on the next page to include
 19 the jurat.)
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1 CONFIDENTIAL - JAMES BRESLAWSKI
 2 THE WITNESS: No, I don't. Thank you.
 3 MS. ROSNER: All right. We can close
 4 the record?
 5 MR. McDONALD: Yes.
 6 (Whereupon, the deposition concluded
 7 at 4:26 p m.)
 8 oOo
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JAMES BRESLAWSKI

Subscribed and sworn to
 before me this day
 of 2018.

1 CONFIDENTIAL - JAMES BRESLAWSKI
2
3 CERTIFICATE
4 STATE OF NEW YORK)

: ss
5 COUNTY OF NEW YORK)

6 I, Kathy S. Klepfer, a Registered
7 Merit Reporter and Notary Public within and
8 for the State of New York, do hereby
9 certify:

10 That JAMES BRESLAWSKI, the witness
11 whose deposition is herein before set forth,
12 was duly sworn by me and that such
13 deposition is a true record of the testimony
14 given by such witness.

15 I further certify that I am not
16 related to any of the parties to this action
17 by blood or marriage and that I am in no way
18 interested in the outcome of this matter.

19 In witness whereof, I have hereunto
20 set my hand this 13th day of July, 2018.

21 -----
22 KATHY S. KLEPFER, RPR, RMR, CRR, CLR
23
24
25

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12 Exhibit CX2298-001 through 003, an e-mail chain 81
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14 Exhibit CX2299-001 through 002, an e-mail chain 91
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6 Exhibit CX2315-001 through 004, an e-mail chain 177
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8 Exhibit CX2316-001 through 003, an e-mail chain 190
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10 Exhibit CX2320-001 through 003, an e-mail chain 210
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12 Exhibit CX2332-001 through 003, an e-mail chain 211
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1 NAME OF CASE:
2 DATE OF DEPOSITION:
3 NAME OF WITNESS:
4 Reason Codes:
5 1. To clarify the record.
6 2. To conform to the facts.
7 3. To correct transcription errors.
8 Page _____ Line _____ Reason _____
9 From _____ to _____
10 Page _____ Line _____ Reason _____
11 From _____ to _____
12 Page _____ Line _____ Reason _____
13 From _____ to _____
14 Page _____ Line _____ Reason _____
15 From _____ to _____
16 Page _____ Line _____ Reason _____
17 From _____ to _____
18 Page _____ Line _____ Reason _____
19 From _____ to _____
20 Page _____ Line _____ Reason _____
21 From _____ to _____
22 Page _____ Line _____ Reason _____
23 From _____ to _____
24
25

ERRATA SHEET

DEPOSITION OF: James Breslawski

DATE DEPOSITION: July 10, 2018

CASE NAME: In the Matter of Benco Dental, Inc., et al., Docket No. D09379

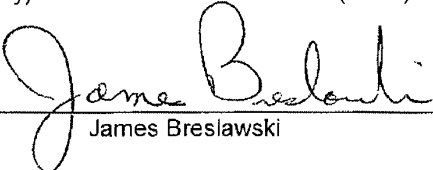
The following are the corrections which I have made to my transcript:

PAGE	LINE #	CORRECTION	REASON FOR CORRECTION
10	12-13	Delete "ex Special Markets"	Typographical error/clarification
28	3	Delete "to"	Typographical error
29	11	Change "ban" to "band"	Typographical error
34	4	Delete "for us"	Typographical error/clarification
38	4	Change "is a separate" to "as a separate"	Typographical error
38	10-11	Change "that's resident" to "that's a resident"	Typographical error
40	10	Change "sometimes need to recruit" to "sometimes we need to recruit"	Typographical error
40	12	Change "to take what" to "to take over"	Typographical error
56	12	Change "putting" to "put"	Typographical error/clarification
64	7	Change "division" to "vision"	Typographical error
123	22	Change "assigned with" to "assigned to"	Typographical error
137	21	Change "sent on" to "sending on"	Typographical error/clarification
159	3	Change "They're" to "I'm"	Typographical error/clarification
163	18-19	Delete "I don't think that's so."	Typographical error/clarification
188	19	Change "keep our running" to "keep our running dialogue"	Typographical error/clarification
206	12	Delete "connections with competitors—"	Clarification/misspoke
206	13	Delete "in"	Typographical error

I, James Breslawski, declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

EXECUTED this _____ day of August, 2018.

at _____
(City) (State)



James Breslawski

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

In the Matter of Docket No. D09379
Benco Dental Inc., et al.

VIDEOTAPED DEPOSITION OF TIM SULLIVAN
Chicago, Illinois
Thursday, July 19, 2018
C O N F I D E N T I A L

Reported by:
JANET L. ROBBINS, CSR, RPR
JOB NO. 142938

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1 TIM SULLIVAN

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8 July 19, 2018

9 9:04 a m.

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12 Videotaped deposition of TIM SULLIVAN, at

13 Locke Lord LLP, 111 South Wacker Drive,

14 Chicago, Illinois, pursuant to notice, before

15 JANET L. ROBBINS, Illinois Certified Shorthand

16 Reporter, Registered Professional Reporter.

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19

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23

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25

Page 3

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Page 5

1 TIM SULLIVAN

2 I N D E X

3 WITNESS:

4 TIM SULLIVAN

5 PAGE

6 EXAM BY MR SOLOMON 9

7 E X H I B I T S

8 EXHIBITS DESCRIPTION PG LN

9 Exhibit CX0174 E-mail Chain Subject: 249 9

10 Co-Op summary of

11 conference call

12 Henry Schein-000011439

13 to 441

14 Exhibit CX0196 Text Messages 407 3

15 Henry Schein-000068325

16 to 337

17 Exhibit CX0197 AT&T Wireline 407 3

18 FTC-AT&T-0031706 to

19 709

20 Exhibit CX2113 9/15/10 E-mail from 125 9

21 Tim Sullivan to Jim

22 Breslawski

23 Subject: Smile Source

24 Henry Schein-000740470

25 Exhibit CX2122 E-mail Chain 278 2

 Subject: Checking-in

 on Smile Source

 Henry Schein-000184295

 to 296

 Exhibit CX2143 E-mail Chain 317 9

 Subject: Dental Gator

 Henry Schein-000194341

 to 343

 Exhibit CX2225 E-mail Chain 229 2

 Subject: Our Meeting

 today PGMS

 Henry Schein-000090449

 to 454

 Exhibit CX2251 7/7/14 E-mail from 223 14

 Kathleen Titus to Glen

 Showgren

 Subject: PGMS

 Agreement

 HS-00017154 to 17162

EXHIBITS	DESCRIPTION	PG LN
Exhibit CX2299	E-mail Chain Subject: Smile Source Update Henry Schein-000183494 to 495	178 21
Exhibit CX2422	E-mail Chain Subject: FYI: Quick P&G Issue Henry Schein-001247954 to 956	356 24
Exhibit CX2440	E-mail Chain Subject: FYI Henry Schein-000091189 to 192	329 15
Exhibit CX2452	E-mail Chain Subject: April 1 Kavos Website HS-00072699 to 701	350 9
Exhibit CX2453	E-mail Chain Subject: Smile Source HS-00491516 to 518	148 5
Exhibit CX2454	E-mail Chain Henry Schein-001556694 to 694	110 7
Exhibit CX2456	E-mail Chain Subject: Follow up on Dental GPO Henry Schein-001594941 to 946	192 4
Exhibit CX2457	E-mail Chain Subject: Vegas Buying Group Henry Schein-000266350	206 18
Exhibit CX2458	E-mail from Joe Cavaretta to Steve Dutson Subject: Merit Dent HS-00232391	208 18
Exhibit CX2459	E-mail Chain Subject: Confidential: A Matter of Mutual Interest Henry Schein-001249896 to 897	362 17

TIM SULLIVAN

THE VIDEOGRAPHER: This is the start of DVD No. 1 of the video recorded deposition of Tim Sullivan in the matter In Re Benco Dental, Inc., et al., in the United States of America, Before the Federal Trade Commission, Docket No. D09379.

This deposition is being held at 111 South Wacker Drive, Chicago, Illinois, on Thursday, July 19th, 2018, at approximately 9:04 a.m.

My name is Jeff Wilhite, legal video specialist from TSG Reporting, headquartered at 747 Third Avenue, New York, New York. The court reporter is Janet Robbins in association with TSG Reporting.

Will counsel please introduce yourselves.

MR. SOLOMON: Ronnie Solomon on behalf of the Federal Trade Commission.

MS. KHAN: Lin Khan with the FTC, counsel.

MR. McDONALD: John Donald and

EXHIBITS	DESCRIPTION	PG LN
Exhibit CX2462	E-mail Chain Subject: Did you meet with Smile Source Henry Schein-000145566 to 568	447 20
Exhibit CX2467	E-mail Chain Subject: Oral B NM state meeting Henry Schein-000209558 to 559	251 17
Exhibit CX2470	E-mail Chain Subject: Kois Center Henry Schein-000195529 to 533	290 19
Exhibit CX4088	AT&T Wireline FTC-AT&T-0030895	388 14

TIM SULLIVAN

Lauren Fincher with Locke Lord and Tim Muris with Sidley Austin on behalf of Henry Schein and the witness.

MR. RACOWSKI: Ken Racowski from Buchanan Ingersoll & Rooney representing Respondent Benco Dental Supply Company.

MR. SCHLOSSER: Jay Schlosser from Briggs and Morgan representing Patterson Companies.

THE VIDEOGRAPHER: Will the court reporter please swear in the witness. (Witness sworn.)

TIM SULLIVAN, called as a witness herein, having been first duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. SOLOMON:

Q. Good morning, Mr. Sullivan.

A. Good morning.

Q. I'm Ronnie Solomon. We met earlier. I'm an attorney at the Federal Trade Commission. With me this morning is also my colleague, Lin Kahn, who's also an attorney,

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1 TIM SULLIVAN
 2 who I assume you know.
 3 A. Yes.
 4 Q. Mr. Sullivan, you've had your
 5 deposition taken before, correct?
 6 A. Correct.
 7 Q. So you understand how this works.
 8 You're a pro at this point, but I just want to
 9 go over a few rules just for the record.
 10 First, it's important that in
 11 response to all of my questions today you
 12 provide clear, verbal responses and try to
 13 avoid any head nods or gestures that the court
 14 reporter can't take down in the transcript,
 15 okay?
 16 A. Okay.
 17 Q. Second, if you need to take a break
 18 at any point, just let me know and we can go
 19 off the record, okay?
 20 A. Okay.
 21 Q. If there's a question pending,
 22 however, I'll just ask that you answer the
 23 question first before we go off the record,
 24 okay?
 25 A. Okay.

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1 TIM SULLIVAN
 2 Q. The third thing is, when I ask a
 3 question, it's really important that you let me
 4 just finish the question so that we have a
 5 clear record. Let your counsel object and
 6 then -- if he wishes, and then you can answer
 7 the question.
 8 Does that make sense?
 9 A. It does.
 10 Q. Mr. Sullivan, you've provided sworn
 11 testimony to the FTC before, correct?
 12 A. Correct.
 13 Q. And that was on May 25th, 2017 at
 14 the FTC's offices in Chicago, right?
 15 A. I assume that's the date. I'd have
 16 to look, but it sounds right.
 17 Q. I'm going to refer to that today as
 18 the investigational hearing, okay?
 19 A. Okay.
 20 Q. I just want to get a few preliminary
 21 things on the record today before we start.
 22 First, you told the truth during
 23 your investigational hearing last year,
 24 correct?
 25 A. Correct.

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1 TIM SULLIVAN
 2 Q. And after your investigational
 3 hearing in May of 2017, did you ever read the
 4 transcript?
 5 A. I did.
 6 Q. And when did you read the
 7 transcript?
 8 A. Within 30 or 60 days of the
 9 deposition.
 10 Q. Why did you read it?
 11 A. On advice of counsel.
 12 Q. And how many times did you read it?
 13 A. Once.
 14 Q. Did you notice any inaccuracies in
 15 your testimony?
 16 MR. McDONALD: He's provided an
 17 errata sheet, I think.
 18 THE WITNESS: I provided comments to
 19 counsel on corrections in there.
 20 BY MR. SOLOMON:
 21 Q. So everything that you thought
 22 needed to be corrected or that was inaccurate
 23 was on your errata sheet, is that correct?
 24 A. That's my understanding.
 25 Q. Okay. Anything else that was in

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1 TIM SULLIVAN
 2 your IH transcript that you've subsequently
 3 found after providing the errata sheet that you
 4 think may be inaccurate?
 5 MR. McDONALD: Object to the form,
 6 assumes facts not in evidence, that is,
 7 that he's read it again.
 8 THE WITNESS: I don't believe so.
 9 BY MR. SOLOMON:
 10 Q. So you haven't read it since then?
 11 A. Correct.
 12 Q. And you didn't read the IH
 13 transcript to prepare for today's deposition,
 14 correct?
 15 A. What's the IH transcript?
 16 Q. Sorry. The investigational hearing
 17 transcript, you didn't read that to prepare for
 18 today's testimony, correct?
 19 A. There's portions of my transcript
 20 that I read in preparation for this --
 21 Q. Okay.
 22 A. -- but not the entirety, no.
 23 Q. So you read portions of the
 24 investigational hearing transcript, is that
 25 right?

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1 TIM SULLIVAN
 2 MR. McDONALD: Object to the form.
 3 THE WITNESS: I believe so, yes.
 4 BY MR. SOLOMON:
 5 Q. Which portions did you read?
 6 A. I would have to look at them.
 7 Q. You don't recall, sitting here
 8 today, which portions you read?
 9 A. No.
 10 Q. When did you read them?
 11 A. Last week.
 12 Q. How many times did you read those
 13 portions of your investigational hearing
 14 transcript?
 15 MR. McDONALD: Object. Again,
 16 object to the form.
 17 THE WITNESS: Once.
 18 BY MR. SOLOMON:
 19 Q. Why did you review it?
 20 MR. McDONALD: Don't discuss --
 21 don't discuss anything you've conferred
 22 with counsel about.
 23 THE WITNESS: These are items that I
 24 spoke to counsel, about so I don't think I
 25 can discuss those.

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1 TIM SULLIVAN
 2 BY MR. SOLOMON:
 3 Q. Is there any reason to believe that
 4 any portion of your testimony in your
 5 investigational hearing was not truthful?
 6 A. No.
 7 Q. Is there any reason to believe that
 8 any portion of your testimony in your
 9 investigational hearing was not accurate?
 10 MR. McDONALD: Object to the form.
 11 Again, subject to his errata sheet?
 12 THE WITNESS: No.
 13 BY MR. SOLOMON:
 14 Q. And you were also deposed by the
 15 Texas Attorney General's Office in June of
 16 2016, is that right?
 17 A. Sounds right.
 18 Q. And you were also deposed by the
 19 plaintiffs in the SourceOne litigation,
 20 correct?
 21 A. Correct.
 22 Q. As well as in the class action
 23 litigation, correct?
 24 A. Correct.
 25 Q. Okay. And you told the truth during

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1 TIM SULLIVAN
 2 your depositions in those cases, is that right?
 3 A. Yes.
 4 Q. And you have no reason to believe
 5 that any portion of your testimony in those
 6 cases is not truthful, right?
 7 A. Correct.
 8 Q. And you have no reason to believe
 9 that your testimony in those cases was not
 10 accurate, correct?
 11 MR. McDONALD: Well, again, he
 12 has -- Ronnie, I really don't know what
 13 you're doing here, but it's your time to
 14 spend.
 15 He's had errata sheets in the class
 16 action/SourceOne. He was not given an
 17 opportunity to read and sign his EUO in
 18 Texas. So he's never reviewed that
 19 transcript for accuracy. That's not an
 20 available option to an EUO proceeding.
 21 BY MR. SOLOMON:
 22 Q. So I understand then, you were not
 23 able to review the transcript of your
 24 examination under oath in the investigation by
 25 the Texas Attorney General, is that right?

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1 TIM SULLIVAN
 2 A. Sounds right.
 3 Q. Okay. Then focusing just on the
 4 SourceOne and plaintiffs class action
 5 litigations, you were able to review the
 6 transcripts of your testimony in those cases,
 7 right?
 8 MR. McDONALD: Well, I think he only
 9 gave one. I may be -- I may be wrong, but
 10 there was one deposition, right? Is that
 11 right?
 12 MR. SOLOMON: I'm not sure.
 13 Maybe --
 14 MR. McDONALD: Well, you said
 15 "depositions," and I think there's only
 16 one.
 17 MR. SOLOMON: Right.
 18 BY MR. SOLOMON:
 19 Q. So you were deposed in the SourceOne
 20 litigation, correct?
 21 A. Let me put it this way: It's not
 22 clear to me -- these all kind of run together.
 23 I don't know which ones are which. They talk
 24 about the same topics in all of them.
 25 Q. Sure.

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1 TIM SULLIVAN
2 A. So I'm not sure which ones are which
3 exactly.
4 Q. Sure.
5 A. I'm happy to look at any documents
6 to confirm.
7 Q. Sure. So you --
8 A. At this point, I don't know.
9 Q. You're aware of the SourceOne case,
10 correct?
11 A. Yes.
12 Q. And you were deposed in that
13 litigation, correct?
14 A. Yes.
15 Q. And your testimony in that
16 deposition was truthful and accurate, correct?
17 A. Correct.
18 Q. You were also deposed in an class
19 action in the Western District of New York, In
20 Re Antitrust Litigation, is that right?
21 MR. McDONALD: No --
22 MR. RACOWSKI: Objection.
23 MR. McDONALD: -- that's not right.
24 It's the Eastern District.
25 MR. SOLOMON: Thank you for that

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1 TIM SULLIVAN
2 clarification.
3 BY MR. SOLOMON:
4 Q. So you were deposed in a class
5 action in the Eastern District of New York
6 entitled "In Re Antitrust Litigation," is that
7 right?
8 A. Sounds right.
9 Q. Okay. And your testimony in that
10 deposition was truthful and accurate, correct?
11 MR. McDONALD: Again, I object to
12 the form.
13 THE WITNESS: Correct.
14 BY MR. SOLOMON:
15 Q. And you have no reason to believe
16 that any portion of your testimony in those two
17 depositions was not truthful or accurate,
18 correct?
19 MR. McDONALD: Object to the form.
20 I don't think there was two, but if you
21 want to make that representation.
22 THE WITNESS: Correct.
23 BY MR. SOLOMON:
24 Q. Okay. Thank you.
25 Mr. Sullivan, how did you prepare

Page 20

1 TIM SULLIVAN
2 for today's deposition?
3 A. Well, as I just mentioned, I
4 reviewed portions of my transcript from last
5 night -- or last week, earlier this week, and
6 then had a preparation day with our attorneys
7 yesterday.
8 Q. And how long was that preparation
9 session?
10 A. Several hours.
11 Q. Did you review any documents during
12 that preparation session?
13 A. Yes.
14 Q. What documents did you review?
15 MR. McDONALD: I object to the form.
16 Do not answer that question.
17 THE WITNESS: I cannot answer that
18 question.
19 MR. McDONALD: It reveals my work
20 product of what documents I chose of the
21 millions of documents in this case to show
22 him.
23 BY MR. SOLOMON:
24 Q. Was anyone present -- strike that.
25 Was anyone else present at this

Page 21

1 TIM SULLIVAN
2 meeting other than your outside attorneys?
3 A. No.
4 Q. Okay. What else did you do to
5 prepare for today's deposition other than the
6 meeting you referenced yesterday?
7 A. Got a good night's sleep.
8 Q. Anything else?
9 A. No.
10 Q. Did you speak to anyone at Henry
11 Schein about your testimony today?
12 A. No.
13 Q. Did you meet with anyone at Henry
14 Schein in reference to your testimony today?
15 A. No.
16 Q. Mr. Sullivan, you're the president
17 of Schein's North American Dental Group,
18 correct?
19 A. Correct.
20 Q. And you've held that title for some
21 time at this point, correct?
22 A. Correct.
23 Q. Your title has not changed since you
24 last provided sworn testimony in May of 2017,
25 right?

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1 TIM SULLIVAN
2 A. Correct.
3 Q. And your duties and responsibilities
4 continue to remain the same, right?
5 A. That's correct.
6 Q. And there's been no changes to your
7 duties and responsibilities since May of 2017?
8 A. Correct.
9 Q. Henry Schein is your employer,
10 correct?
11 A. Correct.
12 Q. And Henry Schein is a full-service
13 distributor of dental products and services,
14 correct?
15 A. And -- on the medical side and on
16 the health side as well, but my
17 responsibilities are on the dental side, yes.
18 Q. Okay. And Patterson and Benco are
19 Schein's primary competitors in the market for
20 dental distribution, correct?
21 MR. McDONALD: Object to the form.
22 THE WITNESS: They are our largest
23 competitors. I don't know if I would put
24 them in the primary category.
25 ///

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1 TIM SULLIVAN
2 THE WITNESS: Online-only
3 distributors, consumables-only
4 distributors --
5 BY MR. SOLOMON:
6 Q. Is it --
7 A. Not -- not full service.
8 Q. Okay. Is it fair to say that those
9 distributors do not offer value-added
10 services -- strike that.
11 Is it fair to say that those
12 distributors do not offer the same value-added
13 services that Schein does?
14 MR. McDONALD: Object to the form,
15 overly broad, vague.
16 THE WITNESS: That is my general
17 understanding, yes.
18 BY MR. SOLOMON:
19 Q. And what's your understanding based
20 on?
21 A. 30 years in the dental industry.
22 Q. What additional services does Henry
23 Schein provide to its customers that Internet
24 distributors do not?
25 MR. McDONALD: Object to the form.

Page 23

1 TIM SULLIVAN
2 BY MR. SOLOMON:
3 Q. When you say "largest," what do you
4 mean by that?
5 A. As far as size of their
6 organizations, they're the largest competitors
7 that we have in the industry.
8 Q. Are Patterson and Benco the only
9 other national full-service distributors in the
10 industry?
11 A. That is my understanding.
12 Q. Okay. And you have an understanding
13 of what mail order distributors are, correct?
14 A. Well, in a sense, though, they're
15 still referred to as mail order, but very
16 little is done mail order anymore. So it's
17 more there's full service and non-full service.
18 Q. Are mail order distributors
19 sometimes called Internet distributors?
20 MR. McDONALD: Object to the form.
21 THE WITNESS: Can be.
22 BY MR. SOLOMON:
23 Q. Any other names that are used to
24 refer to mail order distributors?
25 MR. McDONALD: Object to the form.

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1 TIM SULLIVAN
2 THE WITNESS: We sell capital
3 equipment, practice management software.
4 We provide technical service, and we
5 provide business solutions for our
6 customers.
7 BY MR. SOLOMON:
8 Q. And Internet distributors don't do
9 that?
10 MR. McDONALD: Object to the form,
11 assumes facts not in evidence, lack of
12 foundation.
13 THE WITNESS: Some may claim to,
14 some may. Not all do. Some -- some may.
15 I'm not -- I don't know which ones
16 specifically you're referring to. But in
17 general, that is accurate.
18 BY MR. SOLOMON:
19 Q. You're not aware of any that offer
20 those services to customers?
21 MR. McDONALD: Object to the form,
22 lack of foundation.
23 THE WITNESS: Darby, as an example,
24 is a primary consumable company, but they
25 have added equipment lines to their

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1 TIM SULLIVAN
 2 offering that customers can order, but they
 3 don't do the service and provide the
 4 installation of that. The customers will
 5 then do that on their own. So there's an
 6 example of kind of a hybrid of the two.
 7 BY MR. SOLOMON:
 8 Q. Any other examples you can think of
 9 sitting here today?
 10 A. Not off the top of my head.
 11 Q. Is it fair to say that Internet
 12 distributors do not have field sales
 13 consultants or sales representatives?
 14 MR. McDONALD: Again, object to the
 15 form, lack of foundation.
 16 THE WITNESS: None that I'm aware
 17 of.
 18 BY MR. SOLOMON:
 19 Q. Is it fair you to say that Internet
 20 distributors do not provide equipment servicing
 21 to their customers?
 22 MR. McDONALD: Object to the form,
 23 lack of foundation.
 24 THE WITNESS: None that I'm aware
 25 of.

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1 TIM SULLIVAN
 2 Q. Within Schein's dental business, am
 3 I correct that private practice dentists
 4 traditionally were the main customers for Henry
 5 Schein Dental?
 6 A. Yes.
 7 Q. And Henry Schein Dental is sometimes
 8 referred to by the acronym HSD, correct?
 9 A. Correct.
 10 Q. And you are the head of HSD or Henry
 11 Schein Dental, right?
 12 MR. McDONALD: Object to the form.
 13 THE WITNESS: I'm the president of
 14 Henry Schein Dental for --
 15 BY MR. SOLOMON:
 16 Q. So you --
 17 A. -- our North American, so U.S. and
 18 Canada.
 19 Q. And so you oversee that division
 20 within Schein, correct?
 21 MR. McDONALD: Object to the form.
 22 He just said North America. So if you want
 23 to say -- if you want to narrow this to
 24 North America so we don't have that issue
 25 anymore, then it's fine.

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1 TIM SULLIVAN
 2 BY MR. SOLOMON:
 3 Q. Okay. Any other differences you can
 4 think of, sitting here today, between a
 5 full-service distributor, such as Henry Schein,
 6 and an Internet or mail order distributor?
 7 A. No.
 8 Q. I just would like to go through some
 9 definitions with you, Mr. Sullivan, just so
 10 we're clear about some of the terms I'm going
 11 to be using today.
 12 If I say "Schein," you understand
 13 today that I'm referring to Henry Schein,
 14 right?
 15 A. Yes.
 16 Q. And I understand Henry Schein has
 17 multiple divisions, as you mentioned, medical,
 18 veterinary, dental.
 19 Today when I talk about Schein, I'll
 20 be referring to Schein's dental business only,
 21 okay?
 22 A. Okay.
 23 Q. And if I refer to medical, I'll let
 24 you know, or veterinary.
 25 A. Okay.

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1 TIM SULLIVAN
 2 MR. SOLOMON: Sure.
 3 BY MR. SOLOMON:
 4 Q. So you have primary responsibility
 5 for HSD in North America, correct?
 6 A. Correct.
 7 Q. You've heard the term "buying group"
 8 before, right?
 9 A. I have.
 10 Q. And do you understand a buying group
 11 to be a collection of independent private
 12 practice dentists?
 13 MR. McDONALD: Object to the form.
 14 THE WITNESS: That's a definition of
 15 them.
 16 BY MR. SOLOMON:
 17 Q. Would you agree with that
 18 definition?
 19 MR. McDONALD: Object to the form.
 20 THE WITNESS: To some extent.
 21 BY MR. SOLOMON:
 22 Q. Have you used the term "buying
 23 group" to refer to those types of entities?
 24 A. Yes.
 25 Q. Do you understand that independent

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1 TIM SULLIVAN
 2 dentists may choose to become members of buying
 3 groups, correct?
 4 A. Correct.
 5 Q. And you understand that buying
 6 groups may offer a variety of services to their
 7 members, right?
 8 A. Yes.
 9 Q. And you understand that one service
 10 offered by buying groups is to negotiate lower
 11 supply prices on behalf of their members,
 12 right?
 13 MR. McDONALD: Object to the form.
 14 THE WITNESS: I believe that to be
 15 true.
 16 BY MR. SOLOMON:
 17 Q. And you understand that buying
 18 groups pool their members' purchasing power to
 19 search for discounts on dental products from
 20 distributors, right?
 21 THE COURT REPORTER: I'm sorry. Say
 22 that again.
 23 MR. SOLOMON: Sure.
 24 BY MR. SOLOMON:
 25 Q. You understand that buying groups

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1 TIM SULLIVAN
 2 pool their members' purchasing power to seek
 3 for discounts on dental products from
 4 distributors --
 5 MR. McDONALD: Object --
 6 BY MR. SOLOMON:
 7 Q. -- right?
 8 MR. McDONALD: Object to the form.
 9 THE WITNESS: I believe that's what
 10 they attempt to do.
 11 BY MR. SOLOMON:
 12 Q. You understand that having greater
 13 purchasing power may allow a buying group to
 14 get lower prices for its members, correct?
 15 MR. McDONALD: Object to the form.
 16 THE WITNESS: That's what they
 17 attempt to do, yes.
 18 BY MR. SOLOMON:
 19 Q. Okay. When you --
 20 MR. McDONALD: Do you need him to
 21 slow down?
 22 THE COURT REPORTER: Please, you're
 23 talking real fast. I'm not understanding
 24 you.
 25 MR. SOLOMON: Sure. I'll do my

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1 TIM SULLIVAN
 2 best.
 3 MR. McDONALD: When she's shaking
 4 her head, that might be a clue you're going
 5 too fast.
 6 MR. SOLOMON: I'm not looking at
 7 her, so...
 8 MR. McDONALD: Okay. I'll tell you.
 9 If I tell you to slow down, just trust me,
 10 I can see her.
 11 BY MR. SOLOMON:
 12 Q. You say they attempt to do those
 13 things.
 14 What do you mean by that?
 15 A. Well, some buying groups attempt to
 16 bring groups of customers together with -- one
 17 of their initiatives is to provide lower
 18 pricing. Not many of them actually have the
 19 resources behind actually to make sure that
 20 that happens.
 21 So they can tell a story as an
 22 attempt that that's what they're going to do,
 23 but they don't have the infrastructure or they
 24 don't have the value for the members to
 25 actually get any compliance with their members

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1 TIM SULLIVAN
 2 to actually support that buying group's
 3 initiative.
 4 Q. When you say they don't have the
 5 resources, what do you mean by that?
 6 A. I'm sorry. It's the wrong word.
 7 Structure or other value to their members to
 8 provide compliance with their own members to
 9 follow those -- to follow the purchasing
 10 program.
 11 Q. What is your understanding of what's
 12 wrong with the structure?
 13 A. I'm not saying anything is wrong
 14 with it. They don't have the structure in
 15 place for their members to comply with the
 16 agreements that they're making with their
 17 distributors.
 18 Q. And what do you mean by that? What
 19 specifically is missing from their structure
 20 that would allow their members to comply with
 21 purchasing from distributors?
 22 MR. McDONALD: Object to the form.
 23 THE WITNESS: I can't speak to
 24 what -- I don't know which group you're
 25 referring to. They're all structured

1 TIM SULLIVAN
 2 differently. We've seen some that work.
 3 We have a history of working with
 4 buying groups, as you know, many of them.
 5 And we've seen some where they work, where
 6 the members actually then end up do
 7 increasing their purchases to then earn
 8 that special pricing discount. We've
 9 some -- we've seen some that the buying
 10 habits of their members don't change.
 11 And typically what the difference is
 12 is the other value-added services that the
 13 buying groups themselves provide.
 14 BY MR. SOLOMON:
 15 Q. You said typically what happens is
 16 they offer value-added services a second ago,
 17 right?
 18 A. Correct.
 19 Q. What were you meaning by that
 20 distinction?
 21 A. So some will do -- if it's more
 22 than -- some will offer just dental supply
 23 pricing only. There's no other member value
 24 for their members to comply with that program.
 25 Others have actually compliance

1 TIM SULLIVAN
 2 A. My understanding is Smile Source is
 3 now structured that way.
 4 Q. Any others?
 5 A. That's -- that's the one that comes
 6 to mind.
 7 Q. When you say "Smile Source is now
 8 structured that way," what do you mean? Was
 9 there a change in Smile Source's model at any
 10 point?
 11 A. That's my understanding.
 12 Q. Do you know when that change
 13 occurred?
 14 A. When Trevor Mauer came into Smile
 15 Source, he changed the structure and the
 16 membership requirements.
 17 Q. And do you know when that was
 18 approximately?
 19 MR. McDONALD: Object to the form.
 20 THE WITNESS: I'd have to be looking
 21 at some documents to understand it.
 22 BY MR. SOLOMON:
 23 Q. And what is your understanding based
 24 on?
 25 A. Discussions that I had with Trevor

1 TIM SULLIVAN
 2 minimums that say, and, by the way, if you're
 3 going to join this group, you actually have to
 4 then purchase through the programs they have
 5 set up. It could be using the labs that
 6 they've set up, the dental supply sponsor that
 7 they've negotiated with. It could a cell phone
 8 coverage, everyone's going to use AT&T. It
 9 could be, you know, who knows, what other type
 10 of buying power that they're looking to put
 11 together.
 12 If the members are forced to then
 13 comply with that, those are typically more
 14 successful than the ones that are simply on
 15 price only.
 16 Q. So when you say members are forced
 17 to comply, what do you mean?
 18 MR. McDONALD: Object to the form.
 19 THE WITNESS: Again, some are forced
 20 to comply, meaning if they don't, they will
 21 kick them out of the group.
 22 BY MR. SOLOMON:
 23 Q. Can you give me an -- strike that.
 24 Can you give me an example of a
 25 buying group that has that structure?

1 TIM SULLIVAN
 2 prior to re-engaging with them.
 3 Q. Anything else?
 4 A. Primarily that.
 5 Q. Okay. And you can't recall the
 6 approximate time period when you began
 7 re-engaging with Mr. Mauer?
 8 A. I believe it was around --
 9 MR. McDONALD: Object to form.
 10 THE WITNESS: I believe it was in
 11 the 2016 time period.
 12 BY MR. SOLOMON:
 13 Q. So a moment ago you mentioned
 14 there's some buying groups that are price-only
 15 and have no other value, right? And then there
 16 are other buying groups that do offer other
 17 programs to their members, right?
 18 A. Yes.
 19 Q. So you're saying that there's two
 20 types of buying groups, one that is focused on
 21 price and the other that's focused on price as
 22 well as offering other programs and value to
 23 their members. Am I understanding that
 24 correctly?
 25 MR. McDONALD: Object to the form.

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1 TIM SULLIVAN
2 THE WITNESS: So let me be clear. I
3 think price is a component of value. It is
4 not the only component of value.
5 So each group is their own group.
6 They're each structured; they offer
7 different programs for their members.
8 The ones that are primarily focused
9 on price-only on dental supplies are ones
10 that I have not seen work in the long run.
11 The ones that add other pieces to
12 the value component are typically more
13 successful, will last longer, and actually
14 then drive compliance through their
15 members.
16 BY MR. SOLOMON:
17 Q. Does Schein refuse to work with
18 price-only buying groups?
19 MR. McDONALD: Object to the form.
20 THE WITNESS: No.
21 BY MR. SOLOMON:
22 Q. Has Schein ever refused to work with
23 price-only buying groups?
24 MR. McDONALD: Object to the form.
25 THE WITNESS: No.

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1 TIM SULLIVAN
2 BY MR. SOLOMON:
3 Q. When you say that historically
4 you've seen price-only buying groups not work
5 out, what is your understanding based on? Is
6 that personal experience?
7 A. Yes.
8 Q. Can you give me an example of some
9 experience you've had with price-only buying
10 groups that have not been successful?
11 A. So this goes back quite a ways.
12 Buying groups started as study clubs. Eight
13 dentists in Milwaukee, Wisconsin golf every
14 Saturday. They say, hey, let's get together
15 and form a group to then negotiate all of our
16 purchasing with someone. We've worked with
17 some of those in the past. It could be a local
18 study club. I don't have any names for you.
19 And we've attempted that. We leave that
20 decision up to the local leadership. And some
21 have worked; most don't.
22 The history is when once they -- we
23 put it together, the dentists don't change
24 their purchasing habits if they had a great
25 relationship with their existing supplier.

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1 TIM SULLIVAN
2 Q. So you haven't been involved in any
3 of those relationships with price-only buying
4 groups. You just mentioned those are set up in
5 the field. Am I correct in understanding that?
6 MR. McDONALD: Object to the form,
7 assumes facts not in evidence.
8 THE WITNESS: Yeah, I can't say
9 never. Sometimes I'll get involved, you
10 know, the management might reach out to me;
11 sometimes they're making the decision
12 locally.
13 BY MR. SOLOMON:
14 Q. So how did you learn that these
15 buying groups that are price-only were not
16 successful? Did someone tell you?
17 A. Typically, yes.
18 Q. So a regional manager or someone in
19 the field would come to you and let you know
20 that a price-only buying group was not
21 successful?
22 A. I wouldn't refer to it as they came
23 to me. It comes up in discussions, in a
24 meeting.
25 Q. So can you think of any particular

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1 TIM SULLIVAN
2 discussion or meeting when that came up?
3 A. No. This is just general concepts
4 we talk about from time to time.
5 Q. Have you ever done any independent
6 research into whether these price-only buying
7 groups can be successful?
8 A. Not that I'm aware of.
9 Q. Have you ever conducted your own
10 diligence as to how price-only buying groups
11 can be successful?
12 A. Not that I'm aware of.
13 Q. So your understanding of price-only
14 buying groups that were not successful was
15 comments you've heard from other people within
16 Schein, is that right?
17 MR. McDONALD: Object to the form.
18 THE WITNESS: Primarily, yes.
19 BY MR. SOLOMON:
20 Q. Okay.
21 MR. McDONALD: Can you pause a
22 second?
23 Did somebody join or drop off?
24 MR. LONG: My guess is that Jay
25 Schlosser dropped off.

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1 TIM SULLIVAN
 2 MR. McDONALD: Did anybody join?
 3 Thank you.
 4 BY MR. SOLOMON:
 5 Q. So how did Schein, in your
 6 experience, handle price-only buying groups
 7 that, as you said, in your experience, have not
 8 been successful?
 9 MR. McDONALD: Object to the form,
 10 overly broad, vague.
 11 THE WITNESS: Yeah, I'm not sure how
 12 to answer that. I mean, it's -- their
 13 relationship, for whatever reason, the
 14 local leader or one of our sales reps, we
 15 may give them the flexibility to give it a
 16 shot.
 17 BY MR. SOLOMON:
 18 Q. Did you want your sales reps to work
 19 with those groups?
 20 MR. McDONALD: Object to the form.
 21 THE WITNESS: It really depends on
 22 what the opportunity was.
 23 BY MR. SOLOMON:
 24 Q. What do you mean by that?
 25 A. I'm not sure how else to answer it.

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1 TIM SULLIVAN
 2 If there was an opportunity to grow our
 3 business that we have -- where those customers
 4 in this group are already customers or not, it
 5 was an opportunity to get new customers, an
 6 opportunity to get a deeper share of their
 7 business than we have today. It could be a
 8 multitude factors that go into it.
 9 Q. So there were a number of factors
 10 that people at Schein would look to in
 11 determining whether to do business with a
 12 price-only buying group; am I correct in
 13 understanding that?
 14 MR. McDONALD: Object to the form.
 15 THE WITNESS: We are flexible in
 16 understanding the structure and opportunity
 17 within each group that approaches us.
 18 BY MR. SOLOMON:
 19 Q. And has that always been the case?
 20 A. Yes.
 21 Q. You've encouraged people within
 22 Schein to pursue price-only buying groups?
 23 MR. McDONALD: Object to the form,
 24 misstates his testimony.
 25 THE WITNESS: I wouldn't state it

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1 TIM SULLIVAN
 2 that way, no.
 3 BY MR. SOLOMON:
 4 Q. Why not?
 5 A. Those are your words, not mine.
 6 Q. I'm just asking you if you would
 7 agree with that statement.
 8 MR. McDONALD: He said no.
 9 BY MR. SOLOMON:
 10 Q. So what -- sorry. You can answer.
 11 A. Restate it.
 12 Q. Sure. My question is just have you
 13 encouraged others within Schein to pursue
 14 price-only buying groups?
 15 A. No.
 16 Q. Why not?
 17 A. I think I've just stated, we've seen
 18 very inconsistent performance of those type of
 19 groups.
 20 Q. Any other reason why you would not
 21 encourage people within Henry Schein to pursue
 22 price-only buying groups?
 23 A. It's not a fast growing segment of
 24 our business. It's not a key priority.
 25 There's plenty of opportunities for us to

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1 TIM SULLIVAN
 2 pursue, and that does not hit the radar.
 3 Q. Any other reasons?
 4 A. Those are the two that I'll give
 5 you.
 6 Q. Okay. I just want to go through a
 7 more definitions for the record.
 8 While at Schein, you've used the
 9 term "group purchasing organization" or "GPO"
 10 to refer to buying groups of independent
 11 dentists, correct?
 12 A. Correct.
 13 Q. And you've used the term "group
 14 purchasing organization" interchangeably with
 15 "buying group," correct?
 16 A. That's correct.
 17 Q. You're familiar with the term
 18 "dental service organization," also referred to
 19 as a DSO?
 20 A. Yes.
 21 Q. Okay. And DSOs have a common
 22 ownership structure, is that right?
 23 MR. McDONALD: Object to the form,
 24 mischaracterizes all the evidence in the
 25 case and all the other witnesses on Henry

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1 TIM SULLIVAN
 2 Schein's behalf that have already
 3 testified.
 4 THE WITNESS: They're all structured
 5 differently.
 6 BY MR. SOLOMON:
 7 Q. Generally speaking, is there some
 8 common ownership structure to them, in your
 9 experience?
 10 MR. McDONALD: Object to the form,
 11 vague, lack of foundation.
 12 THE WITNESS: They're all structured
 13 differently.
 14 BY MR. SOLOMON:
 15 Q. Do some have common ownership?
 16 A. That's my understanding, yes.
 17 Q. Are some -- strike that.
 18 Do some not have common ownership?
 19 A. That's my understanding, yes.
 20 Q. Can you think of any that do not
 21 have common ownership?
 22 MR. McDONALD: Object to the form,
 23 lack of foundation.
 24 THE WITNESS: Not off the top of my
 25 head.

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1 TIM SULLIVAN
 2 BY MR. SOLOMON:
 3 Q. Have you ever referred to DSOs as
 4 entities that have common ownership?
 5 MR. McDONALD: Object to the form.
 6 THE WITNESS: I don't recall if I
 7 have.
 8 BY MR. SOLOMON:
 9 Q. You may have?
 10 MR. McDONALD: Object to the form,
 11 asked and answered.
 12 THE WITNESS: I don't recall that I
 13 have.
 14 BY MR. SOLOMON:
 15 Q. You just don't recall one way or the
 16 other, sitting here today?
 17 A. I don't recall if I've used those
 18 exact words that you just said. I don't know.
 19 Q. Do you understand that DSOs employ
 20 dentists under a contract?
 21 MR. McDONALD: Object to the form,
 22 lack of foundation.
 23 THE WITNESS: Some do.
 24 BY MR. SOLOMON:
 25 Q. Do you understand that DSOs are not

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1 TIM SULLIVAN
 2 comprised of independent private practice
 3 dentists?
 4 MR. McDONALD: Object to the form,
 5 lack of foundation.
 6 THE WITNESS: Some do; some don't.
 7 BY MR. SOLOMON:
 8 Q. So some DSOs are comprised of
 9 private practitioners?
 10 MR. McDONALD: Asked and answered.
 11 THE WITNESS: That's my
 12 understanding.
 13 Again, I don't work directly with
 14 that segment. I'm not responsible for that
 15 segment, never have been responsible for
 16 that segment. So that's my understanding,
 17 but I don't know for a fact.
 18 BY MR. SOLOMON:
 19 Q. Okay. So you're speculating?
 20 MR. McDONALD: Object to the form.
 21 He gave you his understanding.
 22 THE WITNESS: I just provided you my
 23 understanding. I'm not sure how else to
 24 answer you.
 25 ///

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1 TIM SULLIVAN
 2 BY MR. SOLOMON:
 3 Q. Okay. You've heard the term
 4 "private practice dentists," correct?
 5 A. Correct.
 6 Q. And private practice dentists are
 7 the core of HSD's customer base, is that right?
 8 A. It's our largest segment, yes.
 9 Q. When you say it's your largest
 10 segment, what do you mean?
 11 MR. McDONALD: Object to the form.
 12 THE WITNESS: So the largest space
 13 of our customer base are private practice
 14 dentists, a single-office space
 15 practitioner that might own one, two, three
 16 type of locations. Over the years,
 17 particularly the last ten years or so,
 18 there have become more large group
 19 practices.
 20 So a dentist or two or three might
 21 come together as a small group. That does
 22 not qualify in this elite kind of DSO
 23 space. So some are single-office space
 24 practitioners; some are in this mid-market
 25 segment.

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1 TIM SULLIVAN
 2 BY MR. SOLOMON:
 3 Q. Okay. So single-office
 4 practitioners, you wouldn't group those in with
 5 a DSO, correct?
 6 MR. McDONALD: Object to the form.
 7 THE WITNESS: Correct.
 8 BY MR. SOLOMON:
 9 Q. Okay. Do you understand that
 10 private practices account for the largest share
 11 of Schein's sales to customers?
 12 A. I believe that to be true.
 13 Q. And do you understand that private
 14 practices account for the majority of Schein's
 15 sales to customers?
 16 A. Yes.
 17 Q. Are they Schein's most profitable
 18 customer segment?
 19 MR. McDONALD: Object to the form.
 20 THE WITNESS: Not necessarily, no.
 21 BY MR. SOLOMON:
 22 Q. Which is Schein's most profitable
 23 customer segment?
 24 MR. McDONALD: Object to the form.
 25 THE WITNESS: They're both --

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1 TIM SULLIVAN
 2 they're both profitable. We don't have a
 3 separate P&L on just the elite DSOs when
 4 you put all in. So we have the HSD P&L.
 5 There's a special markets P&L.
 6 They're very intertwined, and it has
 7 created actual -- a lot of internal
 8 conflict, quite honestly, because there are
 9 issues when Hal and his team and special
 10 markets would sign a deal with a large DSO,
 11 and the consumables ix on that P&L or the
 12 equipment service, the service technicians,
 13 the local facilities, vans, everything else
 14 is on the HSD P&L.
 15 BY MR. SOLOMON:
 16 Q. Okay. Have you ever heard anyone
 17 within Schein state that private practices are
 18 Schein's most -- strike that.
 19 Have you ever heard anyone within
 20 Schein state that private practices are
 21 Schein's most profitable customer segment?
 22 MR. McDONALD: Object to the form,
 23 overly broad.
 24 THE WITNESS: I don't recall
 25 specifically. I'd have to see what you're

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1 TIM SULLIVAN
 2 referring to.
 3 BY MR. SOLOMON:
 4 Q. Have you ever -- I'm not referring
 5 to anything in particular.
 6 A. Okay.
 7 Q. I'm just asking a question.
 8 Have you ever referred to private
 9 practices as Schein's most profitable customer
 10 segment?
 11 A. I don't recall using that exact
 12 terminology, no.
 13 Q. Another definition I'd just like to
 14 cover, community health centers or CHCs as
 15 they're sometimes called.
 16 You're familiar with those entities?
 17 A. Yes.
 18 Q. Okay. And a community health center
 19 is a federally qualified group that provides
 20 care to the indigent, is that correct?
 21 A. I'm not sure that they're all
 22 exactly that, but I believe that to be
 23 accurate, yes.
 24 Q. Are you aware of any that do not fit
 25 that definition?

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1 TIM SULLIVAN
 2 MR. McDONALD: Object to the form.
 3 THE WITNESS: Again, I don't recall.
 4 I just don't want to -- I don't know if
 5 it's narrowly just to the indigent
 6 population. I don't know that for a fact.
 7 BY MR. SOLOMON:
 8 Q. I see.
 9 And it's your understanding that
 10 CHCs are not made up of independent private
 11 practice dentists, right?
 12 MR. McDONALD: Object to the form,
 13 lack of foundation.
 14 THE WITNESS: That's my
 15 understanding.
 16 BY MR. SOLOMON:
 17 Q. And do you understand that some CHCs
 18 are members of CHC-specific buying groups,
 19 right?
 20 A. I'm not sure I would -- how would
 21 you define that?
 22 Q. I'm referring to buying groups whose
 23 members are individual CHCs.
 24 MR. McDONALD: Object to the form,
 25 lack of foundation.

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1 TIM SULLIVAN
2 THE WITNESS: I believe that to be
3 true, yes.
4 BY MR. SOLOMON:
5 Q. Okay. Are you aware of any of those
6 types of buying groups that are comprised of
7 CHCs?
8 MR. McDONALD: Object to the form.
9 THE WITNESS: Not specifically, no.
10 MR. McDONALD: Lack of foundation.
11 BY MR. SOLOMON:
12 Q. Okay. Are those sometimes called
13 CHC GPOs --
14 MR. McDONALD: Object to the --
15 BY MR. SOLOMON:
16 Q. -- to your understanding?
17 MR. McDONALD: Object to the form,
18 lack of foundation.
19 THE WITNESS: Not that I recall, no.
20 BY MR. SOLOMON:
21 Q. And do you have any knowledge as to
22 whether -- strike that.
23 Mr. Sullivan, you stated that HSD
24 has had buying group customers going back many
25 years, was that right?

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1 TIM SULLIVAN
2 A. Yes.
3 Q. How many years -- strike that.
4 When did HSD first start working
5 with buying groups?
6 MR. McDONALD: Object to the form,
7 lack of foundation.
8 THE WITNESS: Well, I became part of
9 Henry Schein in 1997. The special markets
10 division had already been started prior to
11 my joining in 1997. I believe there were
12 buying groups that Hal and his team had
13 been working with dating pre, you know,
14 before my joining.
15 BY MR. SOLOMON:
16 Q. Okay. I'm asking you specifically
17 about HSD.
18 A. Well -- sorry. So -- all right. So
19 not Henry Schein Dental -- well, we weren't
20 defined as HSD back in 1997. There was a
21 special markets division at that time and what
22 was, well, I guess Henry Schein Dental at that
23 time.
24 And there were groups that we were
25 working with at the time. I don't know -- I

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1 TIM SULLIVAN
2 can't tell you the names of them, but some
3 resided in special markets. Some at the time
4 we didn't really define as buying groups, but
5 there were groups of dentists, like I
6 mentioned, study clubs. There was a study club
7 that we had done some business with that would
8 fit that type of definition.
9 Q. And that was within HSD?
10 A. Correct.
11 Q. That was as early as 1997?
12 A. Correct.
13 Q. Can you think of any specific
14 examples of buying groups that Schein or HSD
15 worked with in the '90s and 2000s?
16 MR. McDONALD: Object to the form.
17 THE WITNESS: Not by name, no.
18 BY MR. SOLOMON:
19 Q. What was the first buying group that
20 you can recall that HSD worked with?
21 A. Probably the earliest one that comes
22 to mind is called Alpha Omega.
23 Q. And when did Schein form a
24 relationship with Alpha Omega?
25 A. I don't have a specific day, but I

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1 TIM SULLIVAN
2 believe it was early 2000s.
3 Q. Any other buying groups you can
4 think of that Schein worked with in that time
5 frame?
6 A. I know we provided a long list. I
7 don't know -- none at top of mind right now.
8 None come to mind.
9 Q. As head of H -- as head of HSD, you
10 have had decision-making authority relating to
11 buying groups that came to HSD, is that right?
12 MR. McDONALD: Object to the form,
13 mischaracterizes the evidence.
14 THE WITNESS: Yeah, that's not --
15 that's not correct.
16 BY MR. SOLOMON:
17 Q. Why is that not correct?
18 A. So I'm the president of Henry Schein
19 Dental. Hal Muller is the president of special
20 markets. We've had internal conflicts as to
21 how we're going to work with certain groups.
22 So Hal had made some of those
23 decisions. I'd make some of those decisions.
24 Some of those decisions were made locally. I
25 wasn't even aware of them. So they're -- we do

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1 TIM SULLIVAN
2 provide our local leadership team authority to
3 make decisions in the field. So they're --
4 it's -- they don't all roll up to me.
5 Q. So you were involved in some of
6 those decisions?
7 A. Some, yes.
8 Q. In what instances would you be
9 involved in a decision as it relates to working
10 with a buying group?
11 A. It would vary. If it was --
12 depending on the size of the opportunity, if
13 for whatever reason the regional manager or the
14 zone manager at the time didn't feel
15 comfortable making the decision or wanted some
16 input on it, they'd come to me or to Dave
17 Steck, or Joe or Jake at the time might have
18 gotten involved.
19 Q. Why would they come to you?
20 MR. McDONALD: Object to the form.
21 THE WITNESS: I don't know. You'd
22 have to ask them.
23 BY MR. SOLOMON:
24 Q. You have no understanding as to why
25 someone in the field might come to you with

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1 TIM SULLIVAN
2 to buying groups?
3 A. No.
4 Q. Has that been happening for the last
5 ten years?
6 A. Yes.
7 Q. Okay. You also mentioned that you
8 had some disagreements with Mr. Muller as it
9 relates to buying groups.
10 Do you recall that?
11 MR. McDONALD: Object to the form,
12 mischaracterizes his testimony.
13 THE WITNESS: Hal and I had
14 conflicts between our P&Ls and our -- our
15 strategy of approaching various groups,
16 yes.
17 BY MR. SOLOMON:
18 Q. And when you had those conflicts,
19 did you and Mr. Muller come together to try to
20 resolve the conflicts in a mutually beneficial
21 way?
22 A. Interesting way to phrase it. We
23 would attempt to most often, yes.
24 Q. Would he seek your input on buying
25 group opportunities?

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1 TIM SULLIVAN
2 questions about a buying group?
3 MR. McDONALD: Object to the form,
4 asked and answered.
5 THE WITNESS: It would vary. I
6 don't know.
7 BY MR. SOLOMON:
8 Q. Did anyone ever come to you seeking
9 your approval as to whether to work with a
10 buying group?
11 A. Yes.
12 Q. How often did that happen?
13 A. Not very as it relates to the number
14 of groups that we ultimately worked with, but
15 some would come to me. And I wouldn't
16 necessarily say it was always about getting
17 approval. It was more of what would you
18 suggest, what do you think we should do. I'd
19 give my guidance.
20 But in most cases if whoever came to
21 me about it really wanted to give it a shot,
22 I'd allow them the opportunity to give it a
23 shot.
24 Q. And do you recall when people in the
25 field first started coming to you as it relates

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1 TIM SULLIVAN
2 A. Sometimes he would and sometimes he
3 wouldn't.
4 Q. Why did he seek your input in some
5 cases?
6 MR. McDONALD: Object to the form,
7 lack of foundation.
8 THE WITNESS: Depending on the
9 commitment that the group was looking for
10 relative to the broader array of offerings
11 that we have.
12 If they were looking -- if they
13 needed equipment and pricing on equipment,
14 if they're looking for service, for
15 business solutions, the deeper into the
16 basket of offerings of our value
17 proposition that the group was looking for,
18 Hal knew at that point if it's going to --
19 portions of that were going to hit my P&L.
20 He wanted to make sure that I was involved
21 in some of those decisions. Sometimes he'd
22 check; sometimes he didn't. Hal was on his
23 own quite often.
24 BY MR. SOLOMON:
25 Q. Were you involved in decision-making

<p style="text-align: right;">Page 62</p> <p>1 TIM SULLIVAN 2 as it related to buying groups of independent 3 dentists? 4 MR. McDONALD: Object to the form. 5 THE WITNESS: Sometimes yes; 6 sometimes no. 7 BY MR. SOLOMON: 8 Q. In 2010, do you recall that you and 9 Mr. Muller had discussions about whether to 10 continue doing business with a buying group 11 called Smile Source? 12 A. Yes. 13 Q. And at the time, Smile Source fell 14 within the special markets division, is that 15 right? 16 A. Yes. 17 Q. Okay. And you provided input to 18 Mr. Muller regarding how to proceed with Smile 19 Source in the 2010 time frame. 20 Do you recall that? 21 MR. McDONALD: Object to the form, 22 vague as to time. 23 THE WITNESS: Yeah, I'd have to take 24 a look at the dates and what you're 25 referring to.</p>	<p style="text-align: right;">Page 63</p> <p>1 TIM SULLIVAN 2 BY MR. SOLOMON: 3 Q. Okay. Do you recall in the 2010 4 time frame having discussions with Mr. Muller 5 about how to proceed with Smile Source? 6 A. Again, I don't know -- I'd like to 7 look at a document that you're referring to to 8 say it was 2010 or 2012 versus '14 versus '16. 9 We had -- there's a long history of in and out 10 with Smile Source. 11 Q. Okay. Did you ever provide input to 12 Mr. Muller regarding how to handle Smile Source 13 when it fell within the special markets 14 division? 15 MR. McDONALD: Object to the form, 16 vague, lack of foundation. 17 If you have a document, you ought to 18 show it to him. 19 THE WITNESS: Yeah, I'd like to take 20 a look at what you're referring to. 21 BY MR. SOLOMON: 22 Q. I'm not -- I'm not -- I'm actually 23 not referring to a document. I'm just asking 24 general questions right now. 25 MR. McDONALD: So you're not going</p>
<p style="text-align: right;">Page 64</p> <p>1 TIM SULLIVAN 2 to show any of these documents later? So I 3 can -- so later when you slap down a 4 document with this quote or this question 5 there, then I can object and you will 6 not -- you will take it back and not show 7 it to him; is that what you're doing? 8 BY MR. SOLOMON: 9 Q. You can answer the question. 10 MR. McDONALD: Ask the question 11 again. 12 MR. SOLOMON: Court Reporter, would 13 you mind just reading back the question? 14 MR. McDONALD: Don't play games, 15 Ronnie. 16 (Court Reporter read the record as 17 requested: 18 "Q Okay. Did you ever provide 19 input to Mr. Muller regarding how to 20 handle Smile Source when it fell 21 within the special markets 22 division.") 23 MR. McDONALD: Object to the form, 24 vague, overly broad. 25 Again, if you have a document, you</p>	<p style="text-align: right;">Page 65</p> <p>1 TIM SULLIVAN 2 should show it to him and not play games. 3 THE WITNESS: I'd like to see a 4 document that you're referring to. I don't 5 recall. 6 BY MR. SOLOMON: 7 Q. I'm not referring to a document. 8 I'm asking you just a question. 9 A. I -- 10 MR. McDONALD: Asked and answered. 11 He said I don't recall. 12 THE WITNESS: I don't recall. 13 BY MR. SOLOMON: 14 Q. Okay. If you and Mr. Muller ever 15 disagreed regarding a specific buying group 16 customer or opportunity, would that 17 disagreement ever be elevated to 18 Mr. Breslawski? 19 MR. McDONALD: Object to the form, 20 vague. 21 THE WITNESS: It could. 22 BY MR. SOLOMON: 23 Q. Do you recall any instances when 24 that happened? 25 A. Not specifically.</p>

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1 TIM SULLIVAN
2 Q. Okay. And Mr. Breslawski is your
3 boss, is that right?
4 A. Correct.
5 Q. You report to him directly?
6 A. Up until early this year, yes.
7 Q. So there was a change in your
8 reporting structure earlier this year?
9 A. Correct.
10 Q. To whom do you now report?
11 A. John Koch --
12 Q. Okay.
13 A. -- who is now the CEO of our global
14 dental business.
15 Q. So you no longer report to
16 Mr. Breslawski directly?
17 A. Correct. Jim Breslawski is now the
18 vice chair of Henry Schein, Inc. and president
19 of Henry Schein, Inc.
20 And Koch is K-O-C-H.
21 Q. Would you say that you saw an
22 increase in the number of buying groups in the
23 dental industry in the last five to ten years?
24 A. Yes.
25 Q. Can you quantify what the increase

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1 TIM SULLIVAN
2 buying group, Schein could lose business to
3 competitors that do work with them, is that
4 right?
5 MR. McDONALD: Object to the form.
6 THE WITNESS: It's possible.
7 BY MR. SOLOMON:
8 Q. And that would pose a risk to
9 Schein's business, correct?
10 A. In that instant, yes.
11 Q. Can working with buying groups also
12 have a negative impact where Schein lowers its
13 margins on existing business, but the new
14 business doesn't flow to offset the incremental
15 opportunity?
16 MR. McDONALD: Object to the form.
17 THE WITNESS: In that scenario, yes.
18 BY MR. SOLOMON:
19 Q. Okay. And would you refer to that
20 as margin erosion?
21 A. Yes.
22 Q. Have you ever referred to that as
23 cannibalization of existing business?
24 MR. McDONALD: Object to the form.
25 If you have a doubt, you ought to

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1 TIM SULLIVAN
2 was?
3 MR. McDONALD: Object to the form,
4 lack of foundation --
5 THE WITNESS: No way.
6 MR. McDONALD: -- vague.
7 BY MR. SOLOMON:
8 Q. How did you know that there was an
9 increase in buying groups in the last five or
10 ten years?
11 A. Just the number of individuals,
12 representative group that would approach our
13 organization to -- if they wanted to create
14 one. We call it, if you would, the noise level
15 increased relative to people approaching us.
16 Q. Would you say that buying groups can
17 affect Schein's business?
18 MR. McDONALD: Object to the form,
19 vague.
20 THE WITNESS: Yes.
21 BY MR. SOLOMON:
22 Q. How so?
23 A. Well, in particular, ones that we
24 choose to work with to help grow our business.
25 Q. If Schein decides not to work with a

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1 TIM SULLIVAN
2 show it to him.
3 THE WITNESS: I'd like it -- if you
4 see me use that terminology, I'd like to
5 understand in what context you're referring
6 to.
7 BY MR. SOLOMON:
8 Q. Again, I'm just asking a general
9 question.
10 MR. McDONALD: Then object to the
11 form, overly broad, vague, asked and
12 answered.
13 THE WITNESS: Yeah, again, I'd like
14 to understand in what context you're
15 referring to where -- I've used that word
16 before. But in that exact context, I'd
17 like to understand what you're referring
18 to.
19 BY MR. SOLOMON:
20 Q. You've used that word as it relates
21 to buying groups?
22 MR. McDONALD: Object to the form.
23 If you have a document, you should
24 show it to him. If you refuse to do that,
25 then I'm going to object when you put it

<p style="text-align: right;">Page 70</p> <p>1 TIM SULLIVAN 2 down in front of him. 3 Do not play games, Mr. Solomon. 4 This is not a game playing event. 5 BY MR. SOLOMON: 6 Q. You can answer the question. 7 A. I'd like to understand more 8 specifically what you're referring to. 9 Q. Okay. Have you ever stated that 10 working with buying groups -- strike that. 11 Do you think that working with 12 buying groups can lead to a price war between 13 Schein and its competitors? 14 MR. McDONALD: Object to the form, 15 lack of foundation. 16 If you have a document, show it to 17 him. 18 THE WITNESS: I don't recall using 19 that exact language, but I'd like to 20 understand what you're referring to better. 21 BY MR. SOLOMON: 22 Q. My question is a little different. 23 Do you think that working with buying groups 24 can lead to a price war between Schein and its 25 competitors?</p>	<p style="text-align: right;">Page 71</p> <p>1 TIM SULLIVAN 2 MR. McDONALD: Object to the form. 3 It's a different question. Your 4 question before is have you ever stated 5 that and you ripped off this question. Now 6 you're saying something different. 7 BY MR. SOLOMON: 8 Q. You can answer the question, 9 Mr. Sullivan. 10 MR. McDONALD: Ask it again because 11 it's a different question. 12 BY MR. SOLOMON: 13 Q. Do you recall the question? 14 MR. McDONALD: Ask it again. 15 THE WITNESS: He's asking -- 16 MR. McDONALD: Ask it again. 17 THE WITNESS: Please ask it again. 18 BY MR. SOLOMON: 19 Q. Sure. Do you think that working 20 with buying groups can lead to a price war 21 amongst Schein and its competitors? 22 MR. RACOWSKI: Objection, form. 23 THE COURT REPORTER: Wait. Who said 24 that? 25 MR. McDONALD: Ken.</p>
<p style="text-align: right;">Page 72</p> <p>1 TIM SULLIVAN 2 THE WITNESS: I'd like to understand 3 what you're referring to. I don't recall 4 using that type of language, but I'd like 5 to understand what you mean by it. 6 BY MR. SOLOMON: 7 Q. Which part of my question confuses 8 you? 9 A. Do I believe it would lead to a 10 price war? I don't know how you would define a 11 price war. I don't know how I would define a 12 price war. 13 Q. Have you ever used the term "price 14 war"? 15 MR. McDONALD: Object to the form. 16 THE WITNESS: It's possible. I 17 don't recall. I'd like to -- if you have 18 something you'd like to show me that refers 19 to where I used it, if you know I have 20 based on documents that you've reviewed, 21 I'd like to see that. 22 BY MR. SOLOMON: 23 Q. Do you think that working with 24 buying groups can lead to competitive 25 discounting between Schein and its competitors?</p>	<p style="text-align: right;">Page 73</p> <p>1 TIM SULLIVAN 2 A. It could lead to great 3 opportunities. It could lead to getting 4 business that we don't have in existing 5 customers, deeper share of wallet, if you 6 would. It could lead to getting new customers 7 that we don't have. 8 It could also lead to existing 9 business that doesn't change, you know, nothing 10 changes with their buying habits other than 11 it's now at a lower price. So there's a 12 multitude of outcomes from working with the 13 various buying groups. 14 Q. And specific to competitive 15 discounting between Schein and its competitors, 16 do you think that's one possible result of 17 working with a buying group? 18 MR. McDONALD: Object to the form, 19 asked and answered, vague. 20 THE WITNESS: I don't know what our 21 competitors would do. 22 BY MR. SOLOMON: 23 Q. So you've never -- that's never 24 factored into your analysis as it relates to 25 buying groups?</p>

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1 TIM SULLIVAN
 2 MR. McDONALD: Object to the form.
 3 THE WITNESS: As the president of
 4 the company, yes, I'm responsible for and
 5 part of what I do is look at, so what's
 6 happening competitively in the marketplace.
 7 We need to understand what's happening
 8 competitively.
 9 So if we're -- if it's a
 10 single-office space practitioner, we know
 11 we're bidding against our competitors. If
 12 it's a large DSO, we're competing -- we're
 13 competing -- we're competing; it's our
 14 competitors.
 15 If it's a mid-market, every scenario
 16 and every segment of the marketplace we
 17 have competition. So yes, in every single
 18 case we know we are bidding against our
 19 competitors for the opportunity to do
 20 business with that single office, that
 21 mid-market, or the large DSO.
 22 BY MR. SOLOMON:
 23 Q. Do you think that if a full-service
 24 distributor begins selling to a buying group,
 25 that others will have to follow that course in

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1 TIM SULLIVAN
 2 Q. I'm asking you about what Schein
 3 would do.
 4 MR. McDONALD: Object to the form,
 5 lack of foundation.
 6 He's already told you it does
 7 business with buying groups, so the
 8 question makes absolutely zero sense.
 9 THE WITNESS: So that wasn't your
 10 question. You asked if -- what would other
 11 distributors -- if you recall, I don't
 12 think you said --
 13 BY MR. SOLOMON:
 14 Q. Sure.
 15 A. -- what would Henry Schein do.
 16 Q. I'll ask another way.
 17 If your competitors are working with
 18 buying groups, do you feel that Schein would
 19 need to do the same in order to compete in the
 20 marketplace?
 21 MR. McDONALD: Object to the form --
 22 THE WITNESS: We have been --
 23 MR. McDONALD: -- improper
 24 hypothetical.
 25 THE WITNESS: And we've been work --

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1 TIM SULLIVAN
 2 order to compete in the marketplace?
 3 MR. McDONALD: Object to the form,
 4 lack of foundation.
 5 THE WITNESS: I don't know what our
 6 competitors would do if we decided to do
 7 it.
 8 BY MR. SOLOMON:
 9 Q. Say that again.
 10 A. Could you repeat the question. I
 11 might have misunderstand.
 12 Q. Sure.
 13 MR. SOLOMON: Court Reporter, can
 14 you repeat the question.
 15 (Court Reporter read the record as
 16 requested.)
 17 MR. McDONALD: Object to the form.
 18 THE WITNESS: Not necessarily.
 19 BY MR. SOLOMON:
 20 Q. Why not?
 21 A. When you referred to any
 22 distributor, are you asking what we would do or
 23 what any other distributor would do?
 24 I can't answer what any other
 25 distributor would do. I can't.

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1 TIM SULLIVAN
 2 we already work with buying groups. We
 3 have been working with buying groups. So I
 4 don't know how to answer that if we're
 5 already in the space.
 6 BY MR. SOLOMON:
 7 Q. Okay. Have you ever stated that
 8 buying groups were a slippery slope for Schein?
 9 MR. McDONALD: Again, object to the
 10 form.
 11 If you've got a document, show it to
 12 him. And I will object when you show it to
 13 him later. I may instruct him not to
 14 answer if you're going to play this game,
 15 Mr. Solomon. And you can go to the ALJ and
 16 explain to him why you're doing this.
 17 THE WITNESS: Could you repeat the
 18 question?
 19 BY MR. SOLOMON:
 20 Q. Have you ever stated that buying
 21 groups were a slippery slope for Schein's
 22 business?
 23 MR. McDONALD: Same objection.
 24 THE WITNESS: If you're referring --
 25 if you know that I have in some type of

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1 TIM SULLIVAN
 2 communication, I'd like to read it and
 3 understand it because I'd like to
 4 understand the full context of what that
 5 was stated in.
 6 So I don't know how to answer that
 7 because there's buying groups, as I
 8 mentioned, when it's price-only versus
 9 those that add further value. So I need to
 10 understand the context of which buying
 11 group model you're referring to.
 12 BY MR. SOLOMON:
 13 Q. Have you ever said that buying
 14 groups generally are a slippery slope for
 15 Schein's business?
 16 MR. McDONALD: Same objection.
 17 THE WITNESS: I just don't know how
 18 to answer it any differently than I just
 19 did.
 20 BY MR. SOLOMON:
 21 Q. I just want your recollection
 22 sitting here today.
 23 MR. McDONALD: Same objection.
 24 THE WITNESS: Of what?
 25 ///

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1 TIM SULLIVAN
 2 BY MR. SOLOMON:
 3 Q. My question, whether you've ever
 4 referred to buying groups as being a slippery
 5 slope for Schein's business.
 6 MR. McDONALD: Object to the form,
 7 asked and answered.
 8 THE WITNESS: I need to understand
 9 what context you're referring to because,
 10 again, if it's the price-only versus those
 11 that add additional value that can drive
 12 compliance within the groups, I would
 13 answer that differently than the price-only
 14 buying groups.
 15 BY MR. SOLOMON:
 16 Q. Okay. So you may have said it in
 17 some context, is what you're telling me?
 18 A. I may have in some context, yes.
 19 Q. Sitting here today, you can't recall
 20 one way or the other?
 21 A. I may have in some context.
 22 Q. Okay. Have you ever stated that you
 23 did not want Schein to be the first to work
 24 with buying groups?
 25 MR. McDONALD: Same objection.

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1 TIM SULLIVAN
 2 Object to the form.
 3 THE WITNESS: Ronnie, in each one of
 4 these, I need to understand the context of
 5 what you're referring to. As a stand-alone
 6 statement, I wouldn't just on a stand-alone
 7 make that type of statement. If it's in
 8 reference to something specific you'd like
 9 to review, let's do that.
 10 BY MR. SOLOMON:
 11 Q. So, again, I just want your
 12 recollection, sitting here today, have you used
 13 those words in a specific context?
 14 MR. McDONALD: Object to the form.
 15 If you have a document, show it to
 16 him.
 17 THE WITNESS: I may have.
 18 BY MR. SOLOMON:
 19 Q. Have you ever said that Schein would
 20 be second to working with buying groups?
 21 MR. McDONALD: Object to the form.
 22 If you have a document, show it to
 23 him.
 24 THE WITNESS: I may have. I'd like
 25 to understand what context you're referring

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1 TIM SULLIVAN
 2 to.
 3 BY MR. SOLOMON:
 4 Q. You testified earlier that Schein
 5 has already worked with buying groups, right?
 6 A. I can't say Schein has always worked
 7 with buying groups. I've been with the company
 8 for 21 years. In my history with Henry Schein,
 9 yes, we have worked with buying groups.
 10 Q. Why would you say that Schein would
 11 not want to be the first to work with a buying
 12 group if Schein has always worked with buying
 13 group customers?
 14 MR. McDONALD: Object to the form.
 15 If you've got a document, you should
 16 show it to him. If you refuse to do that,
 17 I'm going to object when you do so.
 18 THE WITNESS: I just answered that
 19 question.
 20 BY MR. SOLOMON:
 21 Q. I don't think you did.
 22 A. I did. It was, when talking about
 23 specific buying groups, I may have in that -- I
 24 don't know which spectrum of a buying group
 25 that you're referring to.

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1 TIM SULLIVAN
 2 So if you show me something where
 3 the context of that particular discussion I
 4 might have been having with someone or e-mail
 5 exchange, I can speak to that incident and that
 6 specific scenario that we were referring to.
 7 The e-mail may be vague in its response, but
 8 the intent behind it I can speak to, if you
 9 want to show me something that we can look at.
 10 Q. Do you ever -- strike that.
 11 Do you recall ever telling others
 12 internally at Schein that you were closely
 13 watching buying groups and GPOs in the dental
 14 industry?
 15 MR. McDONALD: Object to the form.
 16 If you have a document, show it to
 17 him.
 18 THE WITNESS: I'd like to understand
 19 the context fully before I -- I don't know.
 20 I may have said something like that.
 21 MR. McDONALD: How much more of this
 22 do you have, this little mind memory game?
 23 MR. SOLOMON: Well, we're going --
 24 MR. McDONALD: Because we -- because
 25 we may stop --

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1 TIM SULLIVAN
 2 A. I don't know. I don't know
 3 specifically.
 4 Q. You can't recall any specific buying
 5 groups that you're aware of that Benco has
 6 worked with, is that right?
 7 MR. McDONALD: Object to the form,
 8 asked and answered.
 9 THE WITNESS: Well, there is one on
 10 the East Coast that I know that we -- that
 11 they do business with in the Virginia area.
 12 BY MR. SOLOMON:
 13 Q. What's it called?
 14 A. I believe it's Atlantic Dental Care
 15 or something to that effect.
 16 Q. And you believe Atlantic Dental Care
 17 to be a buying group?
 18 MR. McDONALD: Object to the form.
 19 THE WITNESS: In some format of one,
 20 yes.
 21 BY MR. SOLOMON:
 22 Q. What do you mean by that?
 23 A. There's buying groups that are
 24 price-only. There's buying groups that
 25 have more -- I've explained it. I'll keep

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1 TIM SULLIVAN
 2 MR. SOLOMON: Okay.
 3 MR. McDONALD: -- and may not come
 4 back --
 5 MR. SOLOMON: We're going --
 6 MR. McDONALD: -- if this is what
 7 you're going to do.
 8 BY MR. SOLOMON:
 9 Q. Mr. Sullivan --
 10 MR. McDONALD: This is not the
 11 proper use of a deposition. It's abusive
 12 of the witness; it's abusive of the
 13 process. You would not do this if the ALJ
 14 was sitting here.
 15 BY MR. SOLOMON:
 16 Q. Mr. Sullivan, have you ever known
 17 Benco to work with any buying groups?
 18 MR. RACOWSKI: Objection to form,
 19 foundation.
 20 THE WITNESS: My understanding is
 21 they have.
 22 BY MR. SOLOMON:
 23 Q. Which ones?
 24 ///
 25 ///

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1 TIM SULLIVAN
 2 explaining it.
 3 There's buying groups that are based
 4 on price-only and there's others that add more
 5 value so the members drive -- and they drive
 6 compliance within their members.
 7 Q. Okay. And where do you believe that
 8 Atlantic Dental Care falls on that spectrum?
 9 A. I don't --
 10 MR. McDONALD: Object to the form.
 11 THE WITNESS: Sorry.
 12 I don't know. I don't know them.
 13 BY MR. SOLOMON:
 14 Q. So you're not sure one way or the
 15 other whether Atlantic Dental Care is a buying
 16 group?
 17 MR. RACOWSKI: Objection,
 18 mischaracterizes testimony.
 19 THE WITNESS: I don't know which
 20 form of a buying group they are. I believe
 21 them to be a buying group. That's why I
 22 mentioned them before.
 23 BY MR. SOLOMON:
 24 Q. And what's your understanding based
 25 on?

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1 TIM SULLIVAN
2 A. A discussion I had with local
3 leadership at the time.
4 Q. When was that?
5 A. I don't have the time frame in front
6 of me.
7 Q. Have you ever done any research into
8 whether or not Atlantic Dental Care is, in
9 fact, a buying group?
10 A. Not specifically me, no.
11 Q. Are you aware of whether Patterson
12 has historically worked with buying groups?
13 MR. LONG: Objection, form,
14 foundation.
15 THE WITNESS: In some format I
16 believe they have.
17 BY MR. SOLOMON:
18 Q. How do you know that?
19 A. Again, we -- we compete against
20 Patterson and Benco and everyone at the
21 single-office space practitioner level, in the
22 kind of large group practice space, and in the
23 major DSO space.
24 So how they define buying groups, I
25 have no idea. How we define certain ones, I

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1 TIM SULLIVAN
2 believe we are bidding against all of our
3 competitors in these cases. Some we win; some
4 we lose. I believe some are Patterson, but I
5 can't specifically tell you which ones that may
6 be.
7 Q. Do you recall ever competing with
8 Patterson for any buying group business going
9 back to 2009?
10 MR. LONG: Objection, form.
11 THE WITNESS: Not me specifically.
12 The folks in our field I'm sure could tell
13 us some names, but I wouldn't know them, as
14 I sit here today.
15 BY MR. SOLOMON:
16 Q. Do you recall ever competing with
17 Benco for any buying group business going back
18 to 2009?
19 A. My answer is basically the same,
20 other than the one example I gave you with
21 Atlantic Dental Care. That one I'm directly
22 aware of.
23 Q. Do you recall ever coming across
24 Patterson or Benco in a competitive situation
25 as it relates to a buying group bid?

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1 TIM SULLIVAN
2 MR. McDONALD: Object to the form,
3 lack of foundation.
4 THE WITNESS: I wouldn't know.
5 BY MR. SOLOMON:
6 Q. Sitting here today, you can't think
7 of any specific examples, other than I think
8 you mentioned Atlantic Dental Care?
9 A. Well, that's different. You asked
10 Patterson and Benco at the time. I don't know
11 if Patterson was in that one or not. That one
12 specifically I know Benco was involved in. I
13 don't know if Patterson was also.
14 Q. Okay. Can you think of any other
15 examples as it relates to Patterson and Benco?
16 A. I wouldn't know if the team in the
17 field would know. Hal Muller in special
18 markets, he might know, but I wouldn't know.
19 Q. Have you ever heard that Benco does
20 not work with buying groups?
21 A. I wouldn't know that.
22 Q. Have you ever heard that Patterson
23 does not work with buying groups?
24 A. I wouldn't know that.
25 Q. So you never formed that impression

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1 TIM SULLIVAN
2 one way or the other?
3 A. I think I stated earlier I believe
4 that they do.
5 MR. SOLOMON: Okay. We've been
6 going for a little while, so I'd like to
7 take a break if that's okay with everyone.
8 Off the record, please.
9 MR. McDONALD: Well, no, you need to
10 get the agreement with everybody before you
11 take a break. It's not your decision.
12 MR. SOLOMON: I would disagree with
13 that. But I need to use the restroom, so
14 I'd like to go off the record.
15 MR. McDONALD: Okay. Then you
16 should tell me that, Ronnie.
17 THE VIDEOGRAPHER: The time is
18 10:05 a.m. We are off the record.
19 (Jasmine Rosner entered the
20 deposition telephonically.)
21 THE VIDEOGRAPHER: The time is
22 10:19 a.m. We are back on the record.
23 BY MR. SOLOMON:
24 Q. Welcome back, Mr. Sullivan.
25 Before the break, we talked about

<p style="text-align: right;">Page 90</p> <p>1 TIM SULLIVAN 2 different types of buying groups, and we 3 mentioned -- or you mentioned price-only buying 4 groups on the one hand and then buying groups 5 that offer other programs and services to their 6 members. 7 Do you recall that discussion? 8 A. I do. 9 Q. Okay. Schein never had a practice 10 of not working with price-only buying groups, 11 is that right? 12 MR. McDONALD: Object to the form. 13 And let me ask you, Ronnie, 14 you've -- you've been getting sloppy in 15 saying just Schein. And so I want the 16 record to be clear what you mean when you 17 say Schein. 18 Do you mean Henry Schein Dental, or 19 do you mean Henry Schein the entire 20 company? 21 MR. SOLOMON: Well, I know 22 Mr. Sullivan is responsible for HSD. 23 MR. McDONALD: Only. 24 BY MR. SOLOMON: 25 Q. So if you have knowledge beyond</p>	<p style="text-align: right;">Page 91</p> <p>1 TIM SULLIVAN 2 that, then I'd ask you to let us know. But if 3 you're just here to tell me about what you know 4 with HSD, then tell me that. 5 MR. McDONALD: Well, with all due 6 respect, Ronnie, that's not his 7 responsibility to clarify your question. 8 If you -- if we want to have the 9 understanding that when you say Schein, you 10 mean HSD, unless you say otherwise, then 11 that's fine, but I don't want to object to 12 every question. 13 MR. SOLOMON: Sure. I guess I just 14 want whatever he has personal knowledge of. 15 So if he was aware of a policy that Henry 16 Schein, the corporate entity, had with 17 respect to buying groups, that's what you 18 have personal knowledge of and I would 19 expect a response on that. 20 MR. McDONALD: Well, I would -- I'll 21 state on the record, he's only here -- he's 22 the president of Henry Schein Dental, and 23 he's not here to speak for special markets. 24 You've already deposed several people 25 within special markets. And so...</p>
<p style="text-align: right;">Page 92</p> <p>1 TIM SULLIVAN 2 MR. SOLOMON: Court reporter, can 3 you just read back my question one more 4 time. 5 (Court Reporter read the record as 6 requested as follows: 7 "Q Schein never had a practice of not 8 working with price-only buying groups, is 9 that right?") 10 THE WITNESS: We never had a -- 11 could you clarify the question for me, 12 please? We never had a practice of working 13 with buying groups? 14 BY MR. SOLOMON: 15 Q. Has Schein ever had a practice of 16 not working with price-only buying groups? 17 MR. McDONALD: Object to the form. 18 THE WITNESS: No, we -- there are 19 some that we have worked with. 20 BY MR. SOLOMON: 21 Q. You also talked about the difference 22 between a price-only buying group on the one 23 hand and then buying groups that offer 24 value-added services in other programs. 25 And one of the things you mentioned</p>	<p style="text-align: right;">Page 93</p> <p>1 TIM SULLIVAN 2 was that price-only buying groups cannot force 3 compliance among their members, is that right? 4 MR. McDONALD: Object to the form, 5 misstates his testimony. 6 THE WITNESS: And "force" might not 7 be the proper word. They had -- they 8 didn't have structure in place that would 9 drive compliance for their members to 10 follow the buying group formulary, if you 11 would. 12 BY MR. SOLOMON: 13 Q. So are you referring to like 14 contractual provisions that would require 15 forced compliance? 16 A. Well, again, I just the change the 17 word from "force" to "drive compliance," 18 whatever. But it -- some it could be 19 contractual or just other value-added services 20 that had the member wanting to do this within 21 the group for the benefit of the group. 22 If they didn't personally have any 23 other personal benefits for their practice, 24 then they themselves aren't -- wouldn't -- 25 would not always change their purchasing habits</p>

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1 TIM SULLIVAN
2 just for the group if it didn't benefit them
3 more directly.
4 Q. Couldn't a price-only buying group
5 agree to a contractual provision that required
6 compliance?
7 A. Could they? Yeah, I guess they
8 could.
9 Q. Is it your experience that that has
10 happened in the past?
11 MR. McDONALD: Object to the form,
12 lack of foundation.
13 THE WITNESS: Well, I gave you the
14 one example with Smile Source. I believe
15 today's members within Smile Source, part
16 of what they sign up for in that membership
17 is to move 80, 85 percent of their
18 purchases to within their sponsored
19 suppliers.
20 BY MR. SOLOMON:
21 Q. And are you referring to -- to Smile
22 Source now as a price-only buying group?
23 A. No.
24 Q. Okay. So I'm just focusing on
25 price-only for the moment, if that's okay.

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1 TIM SULLIVAN
2 A. Understood.
3 Q. So it's possible that price-only
4 buying groups could force compliance among
5 their members?
6 MR. McDONALD: Object to the form,
7 lack of foundation.
8 THE WITNESS: I -- I have to
9 understand more specifically which one
10 you're referring to. I'm not familiar with
11 those that force it. Again, I don't know
12 of many or any that have other services or
13 other value offering or structure in place
14 that would drive that compliance.
15 BY MR. SOLOMON:
16 Q. Is there something specific to the
17 structure of a price-only buying group that
18 would, in your mind, prevent it from being able
19 to drive compliance?
20 MR. McDONALD: Object to the form --
21 THE WITNESS: I hadn't --
22 MR. McDONALD: -- improper
23 hypothetical.
24 Go ahead.
25 THE WITNESS: Yeah, I hadn't thought

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1 TIM SULLIVAN
2 about it before. I don't know.
3 BY MR. SOLOMON:
4 Q. Okay. So your distinction of
5 price-only versus value-added or other program
6 buying groups, what do you see as the key
7 difference as it relates to being able to drive
8 compliance?
9 A. I don't know if there's any one key
10 difference. If there's other things, other
11 offerings that the members are going to get by
12 joining the group other than just, by the way,
13 we negotiated this price with XYZ, join, if
14 there's other things they can get, do they get
15 marketing for their practice, does it help
16 drive patient traffic, can they -- do they
17 group their lab services together, could it be,
18 by the way, we negotiated with AT&T, switch
19 your phone bills, the plowing service that we
20 provide for you in the winter in Wisconsin, who
21 knows, they -- there's no one key thing.
22 The question is, as a member, do you
23 see broader value than just price that you
24 would change your purchasing habits for your
25 practice?

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1 TIM SULLIVAN
2 Q. So you're saying that a member of a
3 value-added service buying group would change
4 their purchasing habits based on the
5 availability of other services?
6 MR. McDONALD: Object to the form.
7 THE WITNESS: Some will. Some will
8 some; some won't. We have found that the
9 more that they provide, the more that they
10 do, the greater compliance that they'll get
11 within that group.
12 BY MR. SOLOMON:
13 Q. And do you know why that's the case?
14 MR. McDONALD: Object to the form.
15 THE WITNESS: I think it's any --
16 like any one of us, you get points when you
17 go to a certain hotel. You go to Starbucks
18 and the more points you build, the greater
19 value.
20 It's that type of -- why do any of
21 us as consumers shift your business to a
22 certain airline or to a -- if there's more
23 value you get out of it, you'll potentially
24 do more with that group.
25 ///

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1 TIM SULLIVAN
 2 BY MR. SOLOMON:
 3 Q. How do you know that?
 4 MR. McDONALD: Object to the form.
 5 THE WITNESS: I think I just gave
 6 the examples. I mean, I try to stay at
 7 Marriotts. I fly Delta as much as I can
 8 because I get value out of that. I think
 9 it's common sense.
 10 BY MR. SOLOMON:
 11 Q. So are you saying that there's more
 12 loyalty to a value-added services buying group
 13 as compared to a price-only buying group?
 14 A. That's my opinion, yes.
 15 Q. So loyalty then would drive
 16 compliance among the buying group members; is
 17 that what you're saying?
 18 MR. McDONALD: Object to the form,
 19 misstates his testimony.
 20 THE WITNESS: It's an example I was
 21 using. It's not loyalty alone. That
 22 help -- helped drive compliance.
 23 BY MR. SOLOMON:
 24 Q. Couldn't members of a price-only
 25 buying group similarly be loyal to their buying

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1 TIM SULLIVAN
 2 group and comply with purchasing requirements?
 3 MR. McDONALD: Object to the form,
 4 hypothetical.
 5 THE WITNESS: Could they? Yes.
 6 BY MR. SOLOMON:
 7 Q. So why do you make a distinction as
 8 it relates to compliance between price-only and
 9 value-added service buying groups?
 10 MR. McDONALD: Asked and answered.
 11 THE WITNESS: We have seen the more
 12 they -- value that they bring to their
 13 members, the more the members act as one.
 14 The fewer the offering, the less compliance
 15 we've seen with the program.
 16 BY MR. SOLOMON:
 17 Q. Can you give me an example of where
 18 Schein has seen that to be the case?
 19 A. Alpha Omega is an example, as I
 20 mentioned earlier. It's one of the first ones
 21 that -- or an early one that we worked with.
 22 It's based on a relationship that others in the
 23 organization had. So we gave it a shot. We
 24 continue to work with them. But I can't say an
 25 Alpha Omega member on average buys anymore from

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1 TIM SULLIVAN
 2 us than a non-Alpha Omega member.
 3 Q. So is Alpha Omega a price-only
 4 buying group?
 5 A. In my opinion, that's the bucket I
 6 would put them in, yes.
 7 Q. Okay. And so is it your
 8 understanding that Alpha Omega cannot drive
 9 compliance among its members?
 10 A. That's the history that we have,
 11 yes.
 12 Q. Has that been problematic for
 13 Schein?
 14 MR. McDONALD: Object to the form.
 15 THE WITNESS: Not problematic. It's
 16 just -- it's just a fact.
 17 BY MR. SOLOMON:
 18 Q. And you have personal knowledge of
 19 the fact that Alpha Omega has not been able to
 20 drive compliance among its members?
 21 A. It's my --
 22 MR. McDONALD: Object to the form.
 23 Go ahead.
 24 THE WITNESS: It's my opinion.
 25 ///

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1 TIM SULLIVAN
 2 BY MR. SOLOMON:
 3 Q. Schein has continued to do business
 4 with Alpha Omega, is that right?
 5 MR. McDONALD: Object to the form,
 6 lack of foundation.
 7 THE WITNESS: That's correct.
 8 BY MR. SOLOMON:
 9 Q. When did Schein first start working
 10 with Alpha Omega, if you know?
 11 A. I don't know. I believe it was
 12 early 2000s.
 13 Q. Okay.
 14 A. It might have been somewhere in the
 15 '90s. I really don't know.
 16 Q. Okay. Has Alpha Omega's ability to
 17 drive compliance among its members changed over
 18 time?
 19 A. Not that I recall.
 20 Q. Okay. Have you ever looked at
 21 numbers relating to Alpha Omega and the amount
 22 of business they do with Schein?
 23 A. I have, but it's been a number of
 24 years.
 25 Q. When was the last time you looked?

<p style="text-align: right;">Page 102</p> <p>1 TIM SULLIVAN</p> <p>2 A. Probable back early before 2010.</p> <p>3 Q. And is Alpha Omega a customer of HSD</p> <p>4 or special markets?</p> <p>5 A. That's a good question. I believe</p> <p>6 it's in special markets. But we -- again, how</p> <p>7 we're structured, the agreement may be within</p> <p>8 special markets. But we work with every single</p> <p>9 customer, anyone in special markets, Henry</p> <p>10 Schein Dental Service.</p> <p>11 So it's the consumables that runs</p> <p>12 through the special markets' P&L, if you would.</p> <p>13 All the equipment, the service, all the other</p> <p>14 value-added services is what my team in HSD is</p> <p>15 responsible for.</p> <p>16 That is part of our -- what's been</p> <p>17 our historic inherent conflict, if Hal is going</p> <p>18 to make a deal with a group, but there's</p> <p>19 commitments on our behalf. Sometimes we're</p> <p>20 making commitments with groups that may or may</p> <p>21 not -- that doesn't impact Hal directly, but</p> <p>22 then there's a -- what size do they become?</p> <p>23 Should they become special markets? So we have</p> <p>24 had our own inherent internal challenges when</p> <p>25 it comes to this space.</p>	<p style="text-align: right;">Page 103</p> <p>1 TIM SULLIVAN</p> <p>2 Q. Has Schein benefitted from its</p> <p>3 relationship with Alpha Omega?</p> <p>4 MR. McDONALD: Object to the form,</p> <p>5 vague.</p> <p>6 THE WITNESS: It really is hard to</p> <p>7 say. I can't tell that most of those</p> <p>8 members we wouldn't be able to still earn</p> <p>9 their business on our own.</p> <p>10 BY MR. SOLOMON:</p> <p>11 Q. So you can't think of any reason why</p> <p>12 Schein would benefit from its relationship with</p> <p>13 Alpha Omega?</p> <p>14 MR. McDONALD: Object to the form,</p> <p>15 misstates his testimony.</p> <p>16 THE WITNESS: I'm saying I can't</p> <p>17 tell you if -- if we didn't have this</p> <p>18 agreement with Alpha Omega as structured</p> <p>19 earlier, then I don't -- their structure</p> <p>20 may have changed over time. I don't -- I</p> <p>21 really don't know. I haven't spent much</p> <p>22 time on it.</p> <p>23 But I can't tell you that we --</p> <p>24 these four people on this side were members</p> <p>25 of Alpha Omega and now Alpha Omega left to</p>
<p style="text-align: right;">Page 104</p> <p>1 TIM SULLIVAN</p> <p>2 join some other distributor, that we would</p> <p>3 still be able to retain their business.</p> <p>4 BY MR. SOLOMON:</p> <p>5 Q. Do you know whether Schein's</p> <p>6 relationship with Alpha Omega has brought new</p> <p>7 customers to Schein?</p> <p>8 MR. McDONALD: Object to the form --</p> <p>9 THE WITNESS: I think --</p> <p>10 MR. McDONALD: -- lack of</p> <p>11 foundation.</p> <p>12 THE WITNESS: I think as members</p> <p>13 have joined or left Alpha Omega, the ones</p> <p>14 that joined give us an opportunity as a</p> <p>15 part of the group, but we still have to go</p> <p>16 in and earn that business every single day.</p> <p>17 BY MR. SOLOMON:</p> <p>18 Q. On the whole, though, you're not</p> <p>19 sure -- strike that.</p> <p>20 On the whole, do you know whether</p> <p>21 Schein has gained new customers through its</p> <p>22 relationship with Alpha Omega?</p> <p>23 MR. McDONALD: Object to the form,</p> <p>24 lack of foundation.</p> <p>25 THE WITNESS: I can't speak</p>	<p style="text-align: right;">Page 105</p> <p>1 TIM SULLIVAN</p> <p>2 specifically to it, no.</p> <p>3 BY MR. SOLOMON:</p> <p>4 Q. Because you're -- you're just not</p> <p>5 aware one way or the other?</p> <p>6 A. Correct.</p> <p>7 Q. Okay. Do you believe that Schein</p> <p>8 working with buying groups can be beneficial to</p> <p>9 Schein's business?</p> <p>10 MR. McDONALD: Object to the form,</p> <p>11 vague, asked and answered.</p> <p>12 THE WITNESS: As I stated earlier,</p> <p>13 yes.</p> <p>14 BY MR. SOLOMON:</p> <p>15 Q. Can you tell me how?</p> <p>16 MR. McDONALD: Object to the form,</p> <p>17 asked and answered.</p> <p>18 THE WITNESS: As I stated earlier,</p> <p>19 if joining with a group, anywhere in that</p> <p>20 spectrum of how -- a buying group, how we</p> <p>21 define, gives us an opportunity to</p> <p>22 potentially have -- their members may be</p> <p>23 existing customers of ours that we might</p> <p>24 only be getting 30, 40, 50 percent of their</p> <p>25 business, might increase their purchases</p>

<p style="text-align: right;">Page 106</p> <p>1 TIM SULLIVAN 2 through us. 3 Members that join that don't buy 4 from us that now want to join or follow the 5 structure of the membership buying, it's 6 new opportunities for us. 7 BY MR. SOLOMON: 8 Q. So Schein can increase the amount of 9 business it does with existing customers and 10 gain new customers, right? 11 MR. McDONALD: Object to the form, 12 lack of foundation, vague, hypothetical. 13 THE WITNESS: Correct. 14 BY MR. SOLOMON: 15 Q. Okay. Schein worked with Smile 16 Source prior to 2012, is that right? 17 A. That is correct. 18 Q. And Smile Source originally fell 19 within special markets, is that right? 20 A. That's correct. 21 Q. And then Smile Source was later 22 transferred to HSD at some point in or around 23 2011, is that correct? 24 A. Sounds -- I can't speak to the date, 25 but at some point it did transfer to HSD, yes.</p>	<p style="text-align: right;">Page 107</p> <p>1 TIM SULLIVAN 2 Q. When Smile Source was a special 3 markets customer, it offered special discounts 4 based on special markets formulary pricing, is 5 that correct? 6 MR. McDONALD: Object to the form, 7 lack of foundation. 8 THE WITNESS: I don't know what 9 formulary they were on at the time. 10 BY MR. SOLOMON: 11 Q. Okay. Do you recall the level of 12 discounts that Smile Source members received 13 when Smile Source was in special markets? 14 A. I do not. 15 Q. Okay. Do you -- strike that. 16 Smile Source was a profitable 17 customer relationship for Schein prior to 2012, 18 is that right? 19 MR. McDONALD: Object to the form, 20 lack of foundation, vague as to "Schein." 21 THE WITNESS: I would assume so. 22 BY MR. SOLOMON: 23 Q. Do you -- 24 A. I don't know for a fact. 25 Q. Okay. Do you recall ever looking</p>
<p style="text-align: right;">Page 108</p> <p>1 TIM SULLIVAN 2 into whether Schein's relationship with Smile 3 Source was a beneficial one prior to 2012? 4 MR. McDONALD: Again, object to the 5 form. You should define what you mean by 6 "Schein." 7 Do you mean Henry Schein the entire 8 company, Henry Schein HSD, or Henry Schein 9 special markets? 10 THE WITNESS: I don't recall 11 specifically looking into it. 12 BY MR. SOLOMON: 13 Q. Okay. Do you know whether Smile 14 Source brought customers to Schein from 15 competing distributors? 16 MR. McDONALD: Object to the form. 17 THE WITNESS: So anytime? 18 We have business with them today. 19 They're close to 4 or 500 members. At the 20 time they only had 20 members, I believe, 21 or 40 members. 22 BY MR. SOLOMON: 23 Q. So I'm just referring prior to 2012. 24 So prior to 2012, do you recall 25 whether Smile Source brought new customers to</p>	<p style="text-align: right;">Page 109</p> <p>1 TIM SULLIVAN 2 Schein from competing distributors? 3 MR. McDONALD: Object to the form, 4 lack of foundation. 5 THE WITNESS: I believe there are 6 examples of members or customers who joined 7 the Smile Source group that then started 8 purchasing through the Smile Source 9 arrangement via Henry Schein in our special 10 markets group. 11 BY MR. SOLOMON: 12 Q. So they shifted their purchases from 13 other distributors to Henry Schein? 14 A. That's my understanding. 15 Q. Okay. And prior to 2012, Smile 16 Source caused existing customers to increase 17 their purchases through Schein, is that right? 18 MR. McDONALD: Object to the form, 19 lack of foundation. 20 THE WITNESS: I'd really have to 21 take a look at it again. Like I said, I 22 don't recall specifically what the details 23 back six years ago. 24 BY MR. SOLOMON: 25 Q. Do you recall whether Schein's</p>

<p style="text-align: right;">Page 110</p> <p>1 TIM SULLIVAN 2 pre-2012 relationship with Smile Source 3 involved volume commitments? 4 MR. McDONALD: Object to the form, 5 lack of foundation. 6 THE WITNESS: I don't recall. 7 (Exhibit CX2454 was marked for 8 identification.) 9 BY MR. SOLOMON: 10 Q. Mr. Sullivan, I'm handing you a 11 document that's been pre-marked as CX2454. 12 Please look this over and let me know when 13 you've had a chance to review it. 14 (Witness viewed said document.) 15 MR. McDONALD: I don't care if this 16 is on the record. Are you giving her a 17 copy, too? 18 MR. SOLOMON: I will give her a 19 copy. I thought I had, but -- 20 MS. FINCHER: Shouldn't she just 21 have -- 22 MR. McDONALD: Well, he's got a pen 23 in his hand. 24 THE WITNESS: I'm not -- 25 MR. McDONALD: That is why I'm</p>	<p style="text-align: right;">Page 111</p> <p>1 TIM SULLIVAN 2 asking. And so if that's going to be it, 3 great, but I'm going to take the pen out of 4 his hand so he doesn't write on it. 5 MR. SOLOMON: Yeah. 6 THE WITNESS: I don't write on it. 7 I use it to (indicating). But I can... 8 MR. SOLOMON: Well, I had made just 9 enough copies so that we have one for the 10 court reporter, so I might need to ask 11 someone to hand me a copy. 12 THE WITNESS: I won't use it. 13 MR. McDONALD: Just don't use it. 14 MR. SOLOMON: Okay. 15 THE WITNESS: Okay. I've read it. 16 BY MR. SOLOMON: 17 Q. You've had a chance to review this? 18 A. I have. 19 Q. Okay. What is CX2454? 20 A. I don't see that. Where is that? 21 Q. Oh, I'm sorry. If you look at the 22 bottom right-hand corner of this document, 23 there is a CX number. 24 Do you see that? 25 A. I do.</p>
<p style="text-align: right;">Page 112</p> <p>1 TIM SULLIVAN 2 Q. Okay. We're going to be referring 3 to documents today by CX and then a number just 4 for purposes of identifying documents in the 5 deposition. 6 A. Okay. 7 Q. And this one is CX2454, and then it 8 has a -001 through 006. 9 A. Okay. 10 Q. So what is CX2454? 11 A. I'm sorry. I thought you were 12 asking me what does that number mean. You're 13 asking what is the document? 14 Q. Right, I'm referring to the 15 document. I'm calling -- I'm calling the 16 document -- 17 A. I'm like I know it's your number. 18 Q. Right. What is CX2454? 19 A. This looks like a message from John 20 Chatham, who is our VP of sales at this time, 21 sent out to Jason Krause and Jeff Hand, because 22 I think they're responsible for the business 23 in -- one in Colorado and one in Alabama at the 24 time, informing them of new customers that have 25 just joined Smile Source and for them to follow</p>	<p style="text-align: right;">Page 113</p> <p>1 TIM SULLIVAN 2 up with these customers and make sure that we 3 show them what Henry Schein is all about. 4 Q. And your e-mail address is there in 5 the cc line, is that right? 6 A. That's correct. 7 Q. You received this e-mail? 8 A. Yes. 9 Q. And did you receive this as part of 10 your job at Schein? 11 A. I don't define it as part of my job. 12 Yes, I receive this as my responsibility at 13 Henry Schein. 14 Q. And do you have personal knowledge 15 of the contents of this e-mail? 16 MR. McDONALD: Object to the form, 17 calls for a legal conclusion. 18 THE WITNESS: I'm aware of the 19 details in here, yes. 20 BY MR. SOLOMON: 21 Q. And do you recall whether this 22 e-mail was written close in time to Smile 23 Source being transferred from special markets 24 to HSD? 25 A. It appears to be in that time frame.</p>

<p style="text-align: right;">Page 114</p> <p>1 TIM SULLIVAN</p> <p>2 Q. And do you believe this to be a true</p> <p>3 and accurate representation of the e-mail</p> <p>4 correspondence represented here?</p> <p>5 MR. McDONALD: Object to the form.</p> <p>6 THE WITNESS: Yes.</p> <p>7 BY MR. SOLOMON:</p> <p>8 Q. Okay. And Henry Schein keeps</p> <p>9 documents such as CX2454 in the ordinary course</p> <p>10 of its business, is that right?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. So I'd like to turn to the</p> <p>13 contents of this e-mail, Mr. Sullivan.</p> <p>14 Who's John Chatham?</p> <p>15 A. At this time, he was our vice</p> <p>16 president of either sales or sales development.</p> <p>17 Q. Does he still work for Schein?</p> <p>18 A. He does not. He retired last --</p> <p>19 last year.</p> <p>20 Q. Did you report to Mr. Chatham?</p> <p>21 A. John reported to me.</p> <p>22 Q. And this e-mail relates to Smile</p> <p>23 Source moving from special markets to HSD,</p> <p>24 right?</p> <p>25 A. That's not what this e-mail refers</p>	<p style="text-align: right;">Page 115</p> <p>1 TIM SULLIVAN</p> <p>2 to. This is -- he's talking about we just</p> <p>3 received two accounts, that they have moved</p> <p>4 into the Smile Source formulary. But this is</p> <p>5 not about Smile Source moving to us; it's about</p> <p>6 these two new customers.</p> <p>7 Q. So at this time in January of 2011,</p> <p>8 had Smile Source already been moved from</p> <p>9 special markets to HSD?</p> <p>10 MR. McDONALD: Object to the form,</p> <p>11 lack of foundation.</p> <p>12 THE WITNESS: I believe so based on</p> <p>13 other -- prior to that, John -- John would</p> <p>14 not have been sending out an e-mail on</p> <p>15 special markets' behalf.</p> <p>16 BY MR. SOLOMON:</p> <p>17 Q. Okay. I'd like to turn your</p> <p>18 attention to the sentence beginning at the end</p> <p>19 of the second line. It says --</p> <p>20 A. Can I -- I'm sorry.</p> <p>21 Q. Yeah.</p> <p>22 A. Can I clarify the last?</p> <p>23 Q. Certainly.</p> <p>24 A. Now I'm reading -- I'm just</p> <p>25 rereading this first line. So, "Guys, we have</p>
<p style="text-align: right;">Page 116</p> <p>1 TIM SULLIVAN</p> <p>2 just received a major account Smile Source from</p> <p>3 our special markets team."</p> <p>4 So I don't know if this is before it</p> <p>5 shifted over or not. There may have been a</p> <p>6 period of time that we were working with our</p> <p>7 special markets team. Even though it was still</p> <p>8 in special markets, it was still up to our</p> <p>9 local team to welcome those customers into the</p> <p>10 fold of Henry Schein.</p> <p>11 So I just want to clarify. I don't</p> <p>12 know if it's important or not whether it had</p> <p>13 shifted to us by this time or not.</p> <p>14 Q. Okay. Thank you for that</p> <p>15 clarification.</p> <p>16 So you're not sure one way or the</p> <p>17 other at this point in time in January of 2011</p> <p>18 where Smile Sources exactly fell?</p> <p>19 A. Correct.</p> <p>20 Q. Okay. So I'd just like to turn your</p> <p>21 attention to the end of the second line.</p> <p>22 Mr. Chatham writes, "They have special pricing</p> <p>23 based on the Special market formulary pricing.</p> <p>24 For all products not in the formulary they</p> <p>25 receive 18% off catalog price except film,</p>	<p style="text-align: right;">Page 117</p> <p>1 TIM SULLIVAN</p> <p>2 anesthetic and alloy which is 5% and small</p> <p>3 equipment which is 10%."</p> <p>4 Do you see that?</p> <p>5 A. I do.</p> <p>6 Q. So is it fair to say that at this</p> <p>7 point in time, Smile Source members were</p> <p>8 receiving pricing based on the special markets</p> <p>9 formulary?</p> <p>10 MR. McDONALD: Object to the form,</p> <p>11 lack of foundation.</p> <p>12 THE WITNESS: Sounds correct.</p> <p>13 BY MR. SOLOMON:</p> <p>14 Q. Okay. Do you know what discounts</p> <p>15 off catalog Smile Source members were receiving</p> <p>16 based on the special markets formulary?</p> <p>17 MR. McDONALD: Object to the form,</p> <p>18 lack of foundation.</p> <p>19 THE WITNESS: I'm not directly</p> <p>20 aware, no.</p> <p>21 BY MR. SOLOMON:</p> <p>22 Q. Do you have any understanding of</p> <p>23 what discounts are available under these</p> <p>24 special markets formulary at this point in time</p> <p>25 in January of 2011?</p>

1 TIM SULLIVAN
 2 A. I don't recall specifically at this
 3 time, no.
 4 Q. Okay. Is it fair to say that for
 5 all non-formulary products at this point in
 6 time, Smile Source members were receiving
 7 18 percent off catalog pricing from Schein?
 8 MR. McDONALD: Object to the form.
 9 You've mischaracterized the document. You
 10 didn't read the whole sentence, Ronnie.
 11 THE WITNESS: Can you repeat that?
 12 BY MR. SOLOMON:
 13 Q. Sure. Is it fair to say that at
 14 this point in time in January of 2011, Smile
 15 Source members were receiving 18 percent off
 16 catalog pricing except on film, anesthetic and
 17 alloy, as well as small equipment?
 18 A. That's how I read this, yes.
 19 Q. And Mr. Chatham goes on to say,
 20 "Although the accounts are not contractually
 21 bound to purchase from us virtually all smile
 22 Source accounts have transferred their
 23 business. These two accounts are currently
 24 PDCO accounts."
 25 Do you see that?

1 TIM SULLIVAN
 2 A. I do.
 3 Q. And PDCO there, that refers to
 4 Patterson?
 5 A. Correct.
 6 Q. Okay. So is it fair to say that
 7 Mr. Chatham is telling you that two accounts
 8 that were from Patterson had switched their
 9 purchases from Patterson to Henry Schein after
 10 joining Smile Source?
 11 MR. LONG: Objection, form,
 12 foundation.
 13 THE WITNESS: It appears that that's
 14 what John is stating here, yes.
 15 BY MR. SOLOMON:
 16 Q. Are you aware of any other instances
 17 in which customers from competing distributors
 18 came to Henry Schein as a result of Schein's
 19 relationship with Smile Source?
 20 MR. McDONALD: Object to the form,
 21 asked and answered, lack of foundation.
 22 THE WITNESS: I believe there were
 23 others, but I don't have specific
 24 knowledge. These two do, based on this
 25 document, refresh my recollection on that.

1 TIM SULLIVAN
 2 BY MR. SOLOMON:
 3 Q. Okay. And Mr. Chatham is also
 4 telling you that Smile Source members were not
 5 required to purchase their products through
 6 Schein, is that right?
 7 A. That is correct.
 8 Q. So there was no contractual
 9 provision requiring Smile Source members to
 10 purchase through Schein during the pre-2012
 11 relationship, is that right?
 12 MR. McDONALD: Object to the form.
 13 That's two different questions.
 14 Are you asking him if that's what
 15 the document says, or are you asking him if
 16 he has independent knowledge of that?
 17 THE WITNESS: Could you repeat the
 18 question, please?
 19 BY MR. SOLOMON:
 20 Q. Sure. So there was no contractual
 21 provision requiring Smile Source members to
 22 purchase through Schein during the pre-2012
 23 relationship with Smile Source, is that
 24 correct?
 25 MR. McDONALD: Object to the form,

1 TIM SULLIVAN
 2 lack of foundation.
 3 If you know what the terms of the
 4 contract were, and you're testifying under
 5 oath to tell the truth, then tell him. If
 6 you don't know, then you should tell him
 7 that.
 8 THE WITNESS: I don't know the
 9 specific details of the contract.
 10 BY MR. SOLOMON:
 11 Q. Your understanding, sitting here
 12 today and reading this e-mail, though, is that
 13 Smile Source members were not bound to purchase
 14 through Schein; am I correct in understanding
 15 that?
 16 MR. McDONALD: Object to the form.
 17 If you're asking him if that's what
 18 the document says, then I'll stipulate to
 19 that, that's what the document says and
 20 he's already said that.
 21 But, again, if you're asking him if
 22 that's -- if he has personal knowledge of
 23 the terms of the contract, then that's a
 24 different question.
 25 THE WITNESS: That is how I read

<p style="text-align: right;">Page 122</p> <p>1 TIM SULLIVAN 2 John's view of this relationship. 3 BY MR. SOLOMON: 4 Q. Do you have any reason to doubt that 5 Smile Source members were not required to 6 purchase through Henry Schein? 7 A. I'd have to see the details of the 8 contract. Based on John, I would believe that 9 that was the case because of what John is 10 writing here, but we'd have to -- I'd have to 11 confirm that. 12 Q. John is also telling you that even 13 though there are no contractual -- strike that. 14 John is telling you that even though 15 there are no contractual requirements that 16 Smile Source members have to purchase through 17 Schein, all of the Smile Source accounts have 18 transferred their business over to Schein, is 19 that right? 20 MR. McDONALD: Object to the form. 21 If you're -- are you asking him that's what 22 the document says, or are you asking him if 23 that's a true statement? 24 THE WITNESS: That's how I read 25 this, what John's opinion is here, yes.</p>	<p style="text-align: right;">Page 123</p> <p>1 TIM SULLIVAN 2 BY MR. SOLOMON: 3 Q. In the sentence before the last, 4 Mr. Chatham refers to a sales plan. He says, 5 "The sales plan is P18 + formulary." 6 Do you see that? 7 A. I do. 8 Q. Are you familiar with that sales 9 plan? 10 A. Generally speaking, yes. 11 Q. And what is your understanding of 12 what the P18 + formulary sales plan is? 13 A. It highlights the -- his earlier 14 description. So they're on a formulary. 15 Before any products that are not on that 16 formulary, they're getting 18 percent off. The 17 P18 refers to that 18 percent except for film, 18 anesthetic, alloy, and small equipment. 19 Q. Okay. On average, do you know 20 whether the formulary discounts are higher than 21 the 18 percent discount? 22 A. Again, I don't know what the special 23 markets contract was at the time. 24 Q. Is this plan, P18 + formulary, still 25 in existence, to your knowledge?</p>
<p style="text-align: right;">Page 124</p> <p>1 TIM SULLIVAN 2 A. I believe so, but I don't know 3 for -- I'd have to confirm. 4 Q. Okay. Do you know whether Smile 5 Source currently receives discounting in 6 accordance with the P18 + formulary plan? 7 MR. McDONALD: Object to the form. 8 THE WITNESS: I know they're on a 9 formulary plus something for items not on a 10 formulary, but I don't know specifically 11 what it is. 12 BY MR. SOLOMON: 13 Q. Do you know what discounts Smile 14 Source members currently receive from Schein 15 under the terms of the current agreement 16 between Schein and Smile Source? 17 MR. McDONALD: Object -- 18 THE WITNESS: So that's the one -- 19 MR. McDONALD: Object to the form. 20 Go ahead. 21 THE WITNESS: That's the one I 22 thought I just answered. I don't know what 23 the current one is. I believe it's a -- 24 there's a -- it's a very similar format. 25 There's a formulary plus discounts for</p>	<p style="text-align: right;">Page 125</p> <p>1 TIM SULLIVAN 2 things not on formulary. 3 BY MR. SOLOMON: 4 Q. Okay. So you just -- sitting here 5 today, you're not sure what those discounts 6 are? 7 A. Correct. 8 Q. You can put that document aside. 9 (Exhibit CX2113 was marked for 10 identification.) 11 BY MR. SOLOMON: 12 Q. Mr. Sullivan, I am handing you a 13 document that's been pre-marked CX2113. Please 14 look this over and let me know when you've had 15 a chance to review. 16 A. Okay. 17 (Witness viewed said document.) 18 THE WITNESS: Okay. 19 BY MR. SOLOMON: 20 Q. What is CX2113? 21 A. It is an e-mail that I sent to Jim 22 Breslawski, Hal Muller, with a copy to Lynne 23 and Chris regarding Smile Source. 24 Q. Did you write CX2113 as part of your 25 job?</p>

1 TIM SULLIVAN
 2 A. Yes.
 3 Q. And do you have personal knowledge
 4 of the contents of CX2113?
 5 A. I'm not sure what you -- I mean, I
 6 wrote it.
 7 Q. So you have personal knowledge of
 8 what you wrote here?
 9 MR. McDONALD: Object to the form.
 10 THE WITNESS: Yes.
 11 BY MR. SOLOMON:
 12 Q. Okay. And did you write this e-mail
 13 close in time to the meeting that you referred
 14 to with Hal Muller in this e-mail?
 15 A. Well, it says "I met this morning,"
 16 so yes.
 17 Q. And do you believe CX2113 to be a
 18 true and accurate copy of this e-mail
 19 correspondence?
 20 A. Yes.
 21 Q. Okay. And does Schein keep CX2113
 22 in the ordinary course of its business?
 23 A. Yes.
 24 Q. Okay. Mr. Sullivan, this CX2113
 25 relates to a meeting you had with Hal Muller

1 TIM SULLIVAN
 2 concerning Smile Source, right?
 3 A. Yes.
 4 Q. Do you recall this meeting?
 5 A. Not the meeting specifically, but it
 6 does refresh my memory on a meeting that he and
 7 I had about it, yes.
 8 Q. And what do you recall about the
 9 meeting?
 10 A. I summarized it here.
 11 Q. So I'd just like to direct your
 12 attention to the third paragraph down. You
 13 say, "neither of us support concept of buying
 14 groups."
 15 Do you see that?
 16 A. I do.
 17 Q. So in September of 2010, you did not
 18 support the concept of buying groups, is that
 19 correct?
 20 MR. McDONALD: Object to the form.
 21 THE WITNESS: So thank you now for
 22 getting specific to the phrases you were
 23 quoting me on earlier. Because now
 24 specifically as I'm referring to Smile
 25 Source and the concept of a price-only type

1 TIM SULLIVAN
 2 buying group without some of the additional
 3 benefits, that's what I'm referring to. So
 4 it's not clear in this document, but that
 5 is -- that is the intent when I write that.
 6 BY MR. SOLOMON:
 7 Q. So you're saying that you did not
 8 support the concept of price-only buying
 9 groups?
 10 A. The Smile Source one in particular
 11 at that time.
 12 Q. Okay. And what did you mean by
 13 that?
 14 A. Do you want me to repeat what I just
 15 said?
 16 Q. What did you mean that you didn't
 17 support the concept of buying groups?
 18 MR. McDONALD: Object to the form,
 19 asked and answered.
 20 THE WITNESS: The subject of Smile
 21 Source, I'm specifically talking about
 22 Smile Source, neither of us supports. Hal
 23 may have been more supportive. I was not
 24 supportive of the Smile Source model at
 25 that time.

1 TIM SULLIVAN
 2 BY MR. SOLOMON:
 3 Q. And so at this time, Smile Source
 4 was a price-only buying group, is that right?
 5 A. That was my opinion of it. As you
 6 can see down below, I'm inclined to allow this,
 7 although it's not up to me; it's not my
 8 decision to make. It's not just solely up to
 9 me, but that was my opinion of Smile Source at
 10 that time.
 11 Q. And Hal Muller felt the same way,
 12 based on your statement here, "neither of us
 13 support concept of buying groups"?
 14 MR. McDONALD: Object to the form.
 15 THE WITNESS: Yeah, I can't speak to
 16 exactly how Hal was feeling at that time
 17 about buying groups, but I believe we were
 18 both struggling with how Smile Source was
 19 structured at the time.
 20 BY MR. SOLOMON:
 21 Q. Did you also not support the concept
 22 of other price-only buying groups other than
 23 Smile Source at this time?
 24 MR. McDONALD: Object to the form.
 25 THE WITNESS: Well, I testified

<p style="text-align: right;">Page 130</p> <p>1 TIM SULLIVAN 2 earlier how I feel about those who 3 are -- we will work with some. Here's an 4 example how I viewed it. It's not solely 5 my decision. But if someone wants to give 6 it a shot to make a compelling argument to 7 do it, we'll do it. This is an example of 8 that. 9 BY MR. SOLOMON: 10 Q. But as far as you're concerned at 11 this point in time, you did not support that? 12 MR. McDONALD: Object to the form, 13 misstates his testimony, asked and 14 answered. 15 THE WITNESS: I don't know how 16 else to -- I don't know -- I don't know how 17 to answer it any differently, that it's not 18 something I would support. I would not -- 19 I would -- my opinion would be that I don't 20 think we should, but it doesn't mean we 21 won't. I'm not the be-all end-all 22 decision-maker on that. 23 BY MR. SOLOMON: 24 Q. You're providing your input here to 25 Mr. Muller at this point in time because you</p>	<p style="text-align: right;">Page 131</p> <p>1 TIM SULLIVAN 2 and Mr. Muller were determining how to move 3 forward with Smile Source, is that right? 4 MR. McDONALD: Object to the form, 5 mischaracterizes the document. 6 You might want to look at your 7 question. 8 THE WITNESS: Yeah, I don't see 9 anything in here talking about moving or 10 how to do anything with the account. 11 BY MR. SOLOMON: 12 Q. You and Mr. Muller reached an 13 agreement with respect to Smile Source, 14 correct? 15 You say in the second sentence, "I 16 think we agree on the following. Hal please 17 confirm." 18 A. Yeah, so -- yeah, I think that's 19 true. I think we agree on the following. 20 Q. Okay. 21 A. So I can't speak to everything 22 regarding Smile Source. 23 Q. Turning to the next sentence, you 24 write, "Whereas it may benefit SM to some 25 extent, the risk to overall HSI (due to having</p>
<p style="text-align: right;">Page 132</p> <p>1 TIM SULLIVAN 2 40 % share in the market) for margin erosion, 3 image, as well as...competitors then following 4 suit and huge price war breaks out." 5 Do you see that? 6 A. I do. 7 Q. So is it fair to say that you 8 believe that working with buying groups at this 9 time could lead to margin erosion for Schein? 10 MR. McDONALD: Object to the form, 11 mischaracterizes the document and his 12 testimony. 13 THE WITNESS: So thank you for 14 clarifying your earlier paraphrases of mine 15 because this now -- clearly I'm referring 16 to Smile Source in this case. 17 BY MR. SOLOMON: 18 Q. So you're saying that working with 19 Smile Source could lead to margin erosion for 20 Henry Schein? 21 A. It could. 22 Q. And you were concerned about that 23 specifically in this case here? 24 MR. McDONALD: Object to the form. 25 THE WITNESS: It could.</p>	<p style="text-align: right;">Page 133</p> <p>1 TIM SULLIVAN 2 BY MR. SOLOMON: 3 Q. When you say "it could," what do you 4 mean? 5 A. You asked if it could lead to margin 6 erosion. I'm saying it could. 7 Q. And you were concerned about that? 8 MR. McDONALD: Object to the form. 9 THE WITNESS: I didn't know if the 10 benefits of expanding -- like other 11 opportunities I talked about where buying 12 groups could bring to us, I don't know if 13 the benefits would outweigh it. 14 There's pros and cons to doing 15 business with any customer. This is on the 16 list of the cons. 17 BY MR. SOLOMON: 18 Q. Why did you think working with Smile 19 Source could lead to margin erosion? 20 A. Well, as I stated here, as a way of 21 having a 40 percent share in the market at the 22 time, at least that's a rough estimate in my 23 mind, it could have led to if we didn't get all 24 the other benefits. We talked about this 25 earlier. If we could grow existing business,</p>

<p style="text-align: right;">Page 134</p> <p>1 TIM SULLIVAN</p> <p>2 good. If we could get new accounts, good. But</p> <p>3 if the only thing it did was to provide a</p> <p>4 discounting on our existing business, that's</p> <p>5 the not so good.</p> <p>6 Q. Did you think that working with</p> <p>7 other price-only buying groups could also lead</p> <p>8 to margin erosion for Schein?</p> <p>9 A. I don't know how to answer it any</p> <p>10 differently than I just did. It could lead to</p> <p>11 opportunities; it could lead to margin erosion.</p> <p>12 Q. You also mention after margin</p> <p>13 erosion "image."</p> <p>14 Do you see that?</p> <p>15 A. I do.</p> <p>16 Q. You believe that buying groups</p> <p>17 working with Schein could hurt Schein's image,</p> <p>18 is that right?</p> <p>19 A. In this context in talking about</p> <p>20 Smile Source, and I believe our Henry Schein</p> <p>21 brand stands for overall value, price is a</p> <p>22 component of that. We have been, always have</p> <p>23 been and always will be competitively priced.</p> <p>24 That's a component of our overall value.</p> <p>25 We want the Henry Schein brand to</p>	<p style="text-align: right;">Page 135</p> <p>1 TIM SULLIVAN</p> <p>2 stand for more than just that, to fit with our</p> <p>3 mission statement to focus on practice care so</p> <p>4 our customers can focus on patient care.</p> <p>5 That's the image I want.</p> <p>6 And if there are groups out there</p> <p>7 that are known to be, the only thing they're</p> <p>8 doing is price and not bringing any other</p> <p>9 value, that's not necessarily I want our brand</p> <p>10 tied with that brand. That's what I mean</p> <p>11 relative to image.</p> <p>12 Q. You also refer to a price war. Did</p> <p>13 you see that? Do you see that?</p> <p>14 A. I do.</p> <p>15 Q. And you're referring to a price war</p> <p>16 between Schein and its competitors, correct?</p> <p>17 A. I see that.</p> <p>18 Q. Is it fair to say you believe that</p> <p>19 Schein working with Smile Source could lead to</p> <p>20 a price war between Schein and its competitors?</p> <p>21 MR. McDONALD: Object to the form.</p> <p>22 THE WITNESS: It's a poor choice of</p> <p>23 words, I would say in that case, but it</p> <p>24 was -- again, I think there's opportunities</p> <p>25 within working with these groups and there</p>
<p style="text-align: right;">Page 136</p> <p>1 TIM SULLIVAN</p> <p>2 also -- there's risk with it.</p> <p>3 As I said, in every segment, we are</p> <p>4 competing with our competitors in every</p> <p>5 segment of the business. In this instance,</p> <p>6 I'm talking about Smile Source in</p> <p>7 particular.</p> <p>8 BY MR. SOLOMON:</p> <p>9 Q. So you're saying that working with</p> <p>10 Smile Source in particular would have led to a</p> <p>11 price war between Schein and its competitors?</p> <p>12 MR. McDONALD: Object to the form,</p> <p>13 mischaracterizes the document and his</p> <p>14 testimony.</p> <p>15 THE WITNESS: That's not what I'm</p> <p>16 stating.</p> <p>17 BY MR. SOLOMON:</p> <p>18 Q. What are you stating?</p> <p>19 A. The risk to overall Henry Schein is</p> <p>20 possible margin erosion, image, and other</p> <p>21 competitors in -- competing more on price</p> <p>22 within that space.</p> <p>23 Q. So by price war, you're referring to</p> <p>24 competing on price?</p> <p>25 A. As a standalone. Again, I believe</p>	<p style="text-align: right;">Page 137</p> <p>1 TIM SULLIVAN</p> <p>2 our brand stands for more than just price, and</p> <p>3 I don't want to shift that brand and that image</p> <p>4 to being only price.</p> <p>5 Q. And you were concerned about</p> <p>6 competing on price with your competitors as it</p> <p>7 related to Smile Source, right?</p> <p>8 MR. McDONALD: Object to the form,</p> <p>9 mischaracterizes and misstates the</p> <p>10 testimony.</p> <p>11 THE WITNESS: We compete on price in</p> <p>12 every segment of the market. I was</p> <p>13 highlighting it in this particular case</p> <p>14 because it was a message to -- it was an</p> <p>15 e-mail to Jimmy about Smile Source.</p> <p>16 BY MR. SOLOMON:</p> <p>17 Q. Okay. Why were you concerned about</p> <p>18 a price war?</p> <p>19 MR. McDONALD: Object to the form,</p> <p>20 mischaracterizes the document and the</p> <p>21 testimony he just gave you.</p> <p>22 THE WITNESS: I wasn't concerned.</p> <p>23 It's on the list of potential cons.</p> <p>24 BY MR. SOLOMON:</p> <p>25 Q. Why was it on the list of potential</p>

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1 TIM SULLIVAN
 2 cons?
 3 A. I don't know how else to answer
 4 that, Ronnie.
 5 Q. I just want your opinion.
 6 MR. McDONALD: He just gave it to
 7 you about two minutes ago. I really would
 8 like you to actually listen to what he's
 9 telling you. Go ahead and tell him again.
 10 THE WITNESS: Could you read back
 11 what I stated last time?
 12 (The reporter read the record as requested
 13 as follows:
 14 "THE WITNESS: We compete on price in every
 15 segment of the market. I was highlighting
 16 it in this particular case because it was a
 17 message to -- it was an e-mail to Jimmy
 18 about Smile Source.
 19 "BY MR. SOLOMON: Q Okay. Why were you
 20 concerned about a price war?"
 21 "MR. McDONALD: Objection.
 22 "THE WITNESS: I wasn't concerned. It's on
 23 the list of potential cons.
 24 "BY MR. SOLOMON: Q Why was it on the
 25 list of potential cons?

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1 TIM SULLIVAN
 2 as it related to a price war by working with
 3 Smile Source?
 4 MR. McDONALD: Object to the form,
 5 asked and answered.
 6 THE WITNESS: As I said, poor choice
 7 of words. Shouldn't have referred to it as
 8 that.
 9 BY MR. SOLOMON:
 10 Q. Why not? What do you mean by that?
 11 A. Because I don't know how to define
 12 it. It was just poor choice of words.
 13 Q. You would use another -- strike
 14 that.
 15 You would have used another term?
 16 A. I don't know how else to answer you,
 17 Ronnie.
 18 Q. Okay. Have you used the term "price
 19 war" in other contexts?
 20 MR. McDONALD: Object to the form.
 21 THE WITNESS: Not that I recall.
 22 But if you want to show me something where
 23 else I referred to it, I'd be happy to talk
 24 about it.
 25 ///

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1 TIM SULLIVAN
 2 "A I don't know how else to answer that,
 3 Ronnie.")
 4 THE WITNESS: So I stand by that
 5 same response.
 6 BY MR. SOLOMON:
 7 Q. How would working with Smile Source
 8 lead to a price war?
 9 MR. McDONALD: Object to the form,
 10 mischaracterizes the document --
 11 THE WITNESS: I'm not saying --
 12 MR. McDONALD: -- and his testimony.
 13 THE WITNESS: I'm not saying that it
 14 would, in fact, lead to that. I'm just
 15 saying it was a concern of mine at the
 16 time, but it's not -- it's not a major
 17 concern. It was the last thing that was
 18 listed in the -- because I do believe -- as
 19 I said, I'm inclined to -- hey, let's go
 20 for it; there could be some real
 21 opportunity here, but you have to weigh
 22 pros and cons of any opportunity that
 23 presents itself.
 24 BY MR. SOLOMON:
 25 Q. So what was the concern specifically

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1 TIM SULLIVAN
 2 BY MR. SOLOMON:
 3 Q. I'm just asking you generally.
 4 A. If you have something that I can
 5 speak to or -- again, I used it in this
 6 particular context. I don't know that I've
 7 used it in any other context that I'd like
 8 to -- I don't recall. But if you can refresh
 9 my memory, that would be helpful.
 10 Q. Okay. Moving on to the next
 11 sentence, you write, "neither of us want to
 12 lose SS as an account. They are \$1 million and
 13 growing."
 14 "SS" there refers to Smile Source,
 15 correct?
 16 A. Correct.
 17 Q. So at this point in time, you did
 18 not want to lose Smile Source as an account of
 19 Schein, is that right?
 20 A. Correct.
 21 Q. And you wanted to keep the
 22 \$1 million in business that Smile Source was
 23 doing with Schein at this point in time, right?
 24 A. Correct.
 25 Q. And you also saw value in the fact

1 TIM SULLIVAN
2 that Smile Source was \$1 million and that it
3 was a growing account, correct?
4 A. Correct.
5 Q. Turning to the next paragraph, "Hal
6 is still" -- you write, "Hal is still gathering
7 details and having discussions with SS corp
8 about how to manage expectations and risks to
9 our core business."
10 What were you referring to by "risks
11 to our core business"?
12 A. So at the time, we were having
13 challenges in the field when -- again, which is
14 one of the reasons I didn't -- I wasn't a fan
15 of Smile Source's structure at the time -- they
16 were to go out to recruit new members to join,
17 customers of ours already saying they had
18 special pricing from Henry Schein through the
19 special markets, through this arrangement, and
20 it causes a challenge with our field source.
21 So that was the risk of, if the only
22 thing they did is provide price and so the
23 customer switched, but we didn't add any other
24 value in help grow the business beyond what
25 they were already doing, they would only lead

1 TIM SULLIVAN
2 Q. Why?
3 A. Because, as I talked about with the
4 opportunity with buying groups, if they're
5 going to continue to add new members and if
6 they were non-HSD customers, that would be a
7 good thing. If we could sign up existing
8 customers that we might only have 30 percent of
9 their business but now move it up to 80 percent
10 of their business, that would be a good thing.
11 So, yeah, if we can create that type
12 of win-win atmosphere, that would be a good
13 thing for both Smile Source and for Henry
14 Schein.
15 Q. Turning to the last paragraph, you
16 write, "I am inclined to 'allow' this account
17 to join (not that it's up to me/us) and see
18 what happens. Afterall, Scott and HSD (per
19 Hal) only get about 30% of this accounts
20 business today. So, if theory works we would
21 get 100% at lower margins, but all parties win
22 in overall GP \$'s."
23 Do you see that?
24 A. Yes.
25 Q. What does "GP \$'s" refer to?

1 TIM SULLIVAN
2 to the margin erosion aspect I was talking
3 about before.
4 Q. So you're referring to margin
5 erosion here?
6 MR. McDONALD: Object to the form,
7 mischaracterizes his testimony.
8 THE WITNESS: If the only thing they
9 did was transfer the existing volume on to
10 this format -- and, again, sometimes the
11 customer might have been on a better
12 pricing program than the individual field
13 sales consultant had him on. Not in all
14 cases was it a lower price.
15 BY MR. SOLOMON:
16 Q. You go on to say, "This is risky as
17 they want to push forward, but we need time
18 with them to create a win-win plan going
19 forward."
20 Did I read that right?
21 A. You did.
22 Q. So you were in favor of coming up
23 with a win-win plan to move forward with Smile
24 Source at this point in time?
25 A. Correct.

1 TIM SULLIVAN
2 A. Gross profit dollars.
3 Q. Okay. Does this paragraph here
4 refer to a specific customer account?
5 A. Yes, it does.
6 Q. A specific dentist?
7 A. I believe so, yes.
8 Q. Do you recall who the dentist was?
9 A. I do not.
10 So Scott is our field sales
11 consultant. He's the one who sent in an
12 example prior to this exchange that led to this
13 meeting about a customer that was contemplating
14 joining or not.
15 Q. Okay. So you're recognizing in this
16 paragraph that Schein was not getting all of
17 this account's business at this point in time,
18 correct?
19 A. Correct.
20 Q. And your theory was that working
21 with Smile Source could bring Schein more of
22 this account's business but at lower margins?
23 A. Correct.
24 Q. And you were in favor of that?
25 A. Correct.

1 TIM SULLIVAN
 2 Q. And you thought that would be a good
 3 arrangement for Schein?
 4 A. In this instant, yes.
 5 Q. And that would be because Schein
 6 would make up for lower margins by the
 7 incremental sales volume with respect to this
 8 account, is that right?
 9 MR. McDONALD: Object to the form.
 10 THE WITNESS: Well, as stated at the
 11 end, overall we'd have more GP dollars to
 12 work with.
 13 BY MR. SOLOMON:
 14 Q. So am I correct then what I just
 15 stated, that you're stating that the -- strike
 16 that.
 17 So you're saying that the overall
 18 gross profit dollars would be the same or
 19 higher?
 20 A. Higher.
 21 Q. And how would they end up being
 22 higher?
 23 A. Okay. So if we have 30 percent of
 24 their business today, let's say they buy
 25 \$50,000 in supplies, 30 percent of that is

1 TIM SULLIVAN
 2 \$15,000.
 3 So if we now got \$50,000 or \$40,000
 4 of their business, even if it was at a lower
 5 margin percentage because they could earn a
 6 discount, the GP dollars are going to be much
 7 greater. Win for the customer, win for Henry
 8 Schein, win for Smile Source.
 9 Does that make sense?
 10 Q. You could put that document aside.
 11 A. Okay.
 12 MR. SOLOMON: So we have -- I'm
 13 being told we have just a few minutes left.
 14 The videographer has to change the tape.
 15 So why don't we just go off the record and
 16 let him do that.
 17 THE VIDEOGRAPHER: This is the end
 18 of DVD No. 1. The time is 11:10 a.m. We
 19 are off the record.
 20 (Whereupon, a recess was had
 21 from 11:10 a.m. to 11:26 a.m.)
 22 THE VIDEOGRAPHER: This is the
 23 beginning of DVD No. 2. The time is
 24 11:26 a.m. We are back on the record.
 25 ///

1 TIM SULLIVAN
 2 BY MR. SOLOMON:
 3 Q. Welcome back, Mr. Sullivan.
 4 A. Thank you.
 5 (Exhibit CX2453 was marked for
 6 identification.)
 7 BY MR. SOLOMON:
 8 Q. I'd like to hand you another
 9 document. This is a document that's been
 10 pre-marked as 2453.
 11 Please take a look at it and let me
 12 know when you've had a chance to review.
 13 (Witness viewed said document.)
 14 THE WITNESS: Okay.
 15 BY MR. SOLOMON:
 16 Q. Mr. Sullivan, what is CX2453?
 17 A. It's an e-mail exchange between Hal,
 18 myself, Jimmy, and Lynne regarding Smile
 19 Source.
 20 Q. And you received this e-mail as part
 21 of your job at Henry Schein?
 22 A. Correct.
 23 Q. And you responded to portions of
 24 this e-mail as part of your job at Henry
 25 Schein?

1 TIM SULLIVAN
 2 A. Correct.
 3 Q. And do you have personal knowledge
 4 of what's written in this e-mail?
 5 MR. McDONALD: Object to the form.
 6 Are you talking about his e-mails or
 7 the whole thing?
 8 MR. SOLOMON: I'm referring to
 9 everything that's in this exhibit?
 10 MR. McDONALD: Okay. Do you
 11 understand his question, if you have
 12 personal knowledge of every single word or
 13 phrase of this document?
 14 THE WITNESS: Not of every single
 15 word or phrase in this document, no.
 16 BY MR. SOLOMON:
 17 Q. Do you have personal knowledge of
 18 what you wrote in the e-mail?
 19 A. Yes.
 20 Q. Okay. And did you draft this e-mail
 21 around the time that you were discussing Smile
 22 Source with Mr. Muller and Mr. Breslawski and
 23 Lynne McHugh in this e-mail?
 24 A. Yes.
 25 Q. Okay. And is this a true and

1 TIM SULLIVAN
 2 accurate representation of this e-mail
 3 correspondence, CX2453?
 4 MR. McDONALD: Object to the form.
 5 THE WITNESS: I believe so.
 6 BY MR. SOLOMON:
 7 Q. Okay. And did Schein keep documents
 8 such as CX 2453 in the ordinary course of its
 9 business?
 10 A. Yes.
 11 Q. I'd like to turn your attention,
 12 Mr. Sullivan, to the last page of this e-mail
 13 chain, and I'm referring to an e-mail from
 14 Mr. Muller to you on September 20th, 2010 at
 15 11:48 a.m.
 16 Do you see that?
 17 A. I do.
 18 Q. Mr. Muller writes, "Tim- We have
 19 decided to drop this group."
 20 So Mr. Muller is telling you in
 21 September of 2010 that special markets was
 22 planning to drop Smile Source as a customer, is
 23 that right?
 24 A. That's how I read this, yes.
 25 Q. Okay. And this is in response to

1 TIM SULLIVAN
 2 drop them, is there something else driving this
 3 decision other than the natural conflict, which
 4 we have been talking about or referred to
 5 earlier.
 6 I wasn't suggesting that we had to
 7 drop them. I was only suggesting how price
 8 fits into the whole value proposition.
 9 So, yeah, I have more questions than
 10 I have answers at this point.
 11 Q. So you're questioning Mr. Muller's
 12 decision to drop Smile Source?
 13 A. Correct.
 14 Q. Okay. Fair to say you were not on
 15 board with that decision at this point in time?
 16 A. I just had questions about it. It
 17 wasn't my decision to make, right? It was a
 18 special markets account.
 19 Q. Were you in favor of keeping Smile
 20 Source as a customer at this point in time?
 21 A. I thought I just answered that
 22 question saying I'm in favor of keeping any
 23 customer that we could provide mutual value
 24 for.
 25 Q. And my question is specific to Smile

1 TIM SULLIVAN
 2 some outstanding concerns about Smile Source
 3 that you and Mr. Muller were discussing around
 4 this time, is that right?
 5 MR. McDONALD: Object to the form.
 6 THE WITNESS: I'm not exactly sure
 7 why. My initial response to him was, Hal,
 8 why do you have to drop this group?
 9 BY MR. SOLOMON:
 10 Q. So you're telling Mr. Muller that
 11 you didn't want to drop Smile Source as an
 12 account, correct?
 13 A. I didn't understand why he was
 14 suggesting that.
 15 Q. Okay. Were you in favor of keeping
 16 Smile Source as a customer at this point in
 17 time?
 18 A. I'd be in favor of keeping any
 19 customer that we could provide mutual value
 20 for.
 21 Q. So you were not in agreement with
 22 Mr. Muller at this point in time that Schein
 23 should drop Smile Source?
 24 A. Well, I think if you read from my
 25 e-mail, I'm asking why we have to drop there --

1 TIM SULLIVAN
 2 Source.
 3 At this point in time, were you
 4 interested in keeping Smile Source as a
 5 customer of Schein?
 6 MR. McDONALD: Object to the form,
 7 asked and answered.
 8 THE WITNESS: Based on how -- again,
 9 I don't know -- remember exactly what I was
 10 thinking eight years ago at this time. But
 11 based on what I'm reading here, I'm
 12 questioning as to do we need to drop them
 13 or not or why do you want to drop them.
 14 BY MR. SOLOMON:
 15 Q. Okay.
 16 A. So I'd be in favor of keeping them
 17 if we could find the right way, or if we need
 18 to drop them, that's what we would do.
 19 MR. McDONALD: Tim, raise up your
 20 microphone a little bit.
 21 BY MR. SOLOMON:
 22 Q. So going back to Mr. Muller's
 23 original e-mail to you, he writes, and I'm
 24 referring to the second paragraph here, "I
 25 would not be surprised if they take this

1 TIM SULLIVAN
 2 business to Patterson or Benco and say 'we have
 3 \$1M worth of Schein business if you want it.'"
 4 Do you see that?
 5 A. I do.
 6 Q. So Mr. Muller is telling you that
 7 there's a risk that Smile Source could take its
 8 business to Patterson or Benco, correct?
 9 MR. McDONALD: Object to the form.
 10 The document speaks for itself.
 11 THE WITNESS: That's how I read it.
 12 BY MR. SOLOMON:
 13 Q. And he's telling you that Schein
 14 potentially could lose \$1 million worth of
 15 business if it dropped the Smile Source
 16 account, correct?
 17 A. That's how I --
 18 MR. McDONALD: Object. Object to
 19 the form.
 20 Go ahead.
 21 THE WITNESS: That's how I read it,
 22 yes.
 23 BY MR. SOLOMON:
 24 Q. Did you agree with him that Smile
 25 Source could go to Patterson or Benco at this

1 TIM SULLIVAN
 2 point in time if Schein had decided to drop
 3 Smile Source?
 4 MR. McDONALD: Object to the form,
 5 calls for speculation.
 6 THE WITNESS: They can go to any
 7 number of suppliers in the marketplace. He
 8 specifically said Patterson and Benco, but
 9 they could go to any number of them.
 10 BY MR. SOLOMON:
 11 Q. So it was a risk that Smile Source
 12 could take its business to Patterson or Benco?
 13 A. Or --
 14 MR. McDONALD: Object to the form,
 15 asked and answered.
 16 THE WITNESS: Or any other dealer as
 17 well, yes.
 18 BY MR. SOLOMON:
 19 Q. Were you concerned about that?
 20 A. Again, I'll go back to -- I was
 21 asking, why do you have to drop this group? Is
 22 there other things we need to consider? I
 23 mean, I -- I'm sorry. I don't -- I would
 24 answer that the same way I did your earlier
 25 question.

1 TIM SULLIVAN
 2 Q. So one of the factors you considered
 3 in determining whether to drop Smile Source was
 4 the risk they could take their business to
 5 Patterson and Benco?
 6 MR. McDONALD: Object to the form.
 7 I don't know where you get that is
 8 something he considered about dropping
 9 Smile Source. That's nowhere in here about
 10 some decision from Mr. Sullivan to drop
 11 Smile Source. You're mischaracterizing
 12 this document and his testimony.
 13 THE WITNESS: It would be irrelevant
 14 to me where it goes. I don't care where.
 15 If we don't have it, it's somewhere else.
 16 Doesn't matter to me where it's at at that
 17 point.
 18 BY MR. SOLOMON:
 19 Q. So you wouldn't care if Smile Source
 20 took its business to Patterson or Benco?
 21 MR. McDONALD: Object to the form,
 22 mischaracterizes his testimony.
 23 THE WITNESS: Not what I said,
 24 Ronnie. I said if we didn't have it, I
 25 wouldn't care where it was. It's somewhere

1 TIM SULLIVAN
 2 else. It's at a competitor. A competitor
 3 is a competitor.
 4 BY MR. SOLOMON:
 5 Q. Okay. So at this point in time
 6 then, you were concerned about losing Smile
 7 Source to Patterson or Benco if Schein ended
 8 the relationship, is that right?
 9 MR. McDONALD: Object to the form.
 10 THE WITNESS: I don't know how else
 11 to answer the question that you're trying
 12 to have me say something I'm not.
 13 He's suggesting to drop it. I'm
 14 asking why do we have to drop it. Where it
 15 went, I don't care. If we dropped it, I
 16 don't care where it went.
 17 BY MR. SOLOMON:
 18 Q. Would it be beneficial to Schein if
 19 Smile Source took its business to Patterson or
 20 Benco?
 21 A. No.
 22 Q. Would it hurt Schein's business if
 23 Smile Source took its business to Patterson or
 24 Benco?
 25 MR. LONG: Object to the form.

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1 TIM SULLIVAN
 2 THE WITNESS: I would answer it the
 3 same way I said before, if it's not with us
 4 and it's somewhere else, that would be
 5 \$1 million of business that we wouldn't
 6 have.
 7 BY MR. SOLOMON:
 8 Q. You could put that document aside.
 9 Mr. Sullivan, have you ever provided
 10 guidance to Schein personnel in the field about
 11 whether to do business with a buying group?
 12 A. Is there something specifically?
 13 Are we doing this again where -- do you have a
 14 document I can look at that you're referring to
 15 specifically?
 16 Q. No. I think you mentioned earlier
 17 that sometimes you would talk to people in the
 18 field about working with buying groups.
 19 And so I'm asking you, following up
 20 on that, did you ever provide guidance to
 21 Schein personnel in the field about working
 22 with buying groups?
 23 A. Yes, I would give my opinion on
 24 whether or not we should, depending where on
 25 the spectrum of a buying group a particular

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1 TIM SULLIVAN
 2 someone makes a compelling argument to go
 3 work with them, I'll let them make that
 4 call.
 5 BY MR. SOLOMON:
 6 Q. So people within the organization
 7 have an understanding that you're less
 8 supportive of price-only buying groups?
 9 MR. McDONALD: Object to the form.
 10 THE WITNESS: I wouldn't
 11 characterize it that way.
 12 BY MR. SOLOMON:
 13 Q. How would you characterize it?
 14 A. As I stated before, my belief is
 15 that there's less opportunity with those groups
 16 that are price-only and how that impacts or
 17 conflicts with our brand and our image of a
 18 full-service dealer.
 19 So if they want to make a compelling
 20 argument, to go for it; I'm open. And you'll
 21 see throughout this whole period of time,
 22 opportunity after opportunity were presenting
 23 themselves. Some came to me; some didn't. We
 24 signed some that I didn't even know. So
 25 depends where in the spectrum they fell.

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1 TIM SULLIVAN
 2 opportunity resided.
 3 Q. And what kind of guidance would you
 4 provide?
 5 MR. McDONALD: Object to the form,
 6 vague.
 7 THE WITNESS: Yeah, I don't know
 8 specifically how to answer that. I mean, I
 9 think -- I believe my feelings on buying
 10 groups is well known within the
 11 organization on the price-only versus those
 12 that have compelling stories to get
 13 compliance within their groups.
 14 BY MR. SOLOMON:
 15 Q. So you're saying that people within
 16 the organization know that you are not
 17 supportive of working with price-only buying
 18 groups?
 19 MR. McDONALD: Object to the form,
 20 mischaracterizes his testimony.
 21 THE WITNESS: I never said I'm not
 22 supportive of working with them. I said
 23 there's less -- I believe there's less
 24 opportunity, less compliance with those
 25 groups that are like that. But, again, if

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1 TIM SULLIVAN
 2 Q. How do people within the Schein
 3 organization know that's your position?
 4 MR. McDONALD: Object to the form.
 5 THE WITNESS: Various meetings.
 6 BY MR. SOLOMON:
 7 Q. What kind of meetings?
 8 A. It could be budget meetings for the
 9 future year, strategic planning meetings,
 10 meetings.
 11 Q. Who would be present at those
 12 meetings?
 13 MR. McDONALD: Object to the form,
 14 overly broad.
 15 THE WITNESS: It would vary in each
 16 one.
 17 BY MR. SOLOMON:
 18 Q. Is it generally salespeople who are
 19 in these meetings?
 20 MR. McDONALD: Object to the form,
 21 vague.
 22 THE WITNESS: Generally not, no.
 23 BY MR. SOLOMON:
 24 Q. Is it --
 25 A. Generally, the executive leadership

1 TIM SULLIVAN
 2 team or field leadership team for Henry Schein
 3 Dental. Sometimes special markets is in the
 4 room. Sometimes Jimmy is involved. So there's
 5 a number of meetings that we have.
 6 Q. How many times did you make your
 7 position clear on buying groups in one of these
 8 meetings?
 9 MR. McDONALD: Object to the form.
 10 THE WITNESS: No idea.
 11 BY MR. SOLOMON:
 12 Q. More than once?
 13 A. Yes.
 14 Q. More than five times?
 15 MR. McDONALD: Object to the form.
 16 THE WITNESS: Most likely.
 17 BY MR. SOLOMON:
 18 Q. More than ten times?
 19 MR. McDONALD: Object to the form.
 20 THE WITNESS: I don't know, Ronnie.
 21 BY MR. SOLOMON:
 22 Q. And what specifically would you say
 23 with respect to your position?
 24 MR. McDONALD: Object to the form.
 25 THE WITNESS: Generally speaking, as

1 TIM SULLIVAN
 2 I've talked about, the spectrum of buying
 3 groups from a price-only to the structure
 4 that they have that will drive compliance
 5 within the group. In generality, that's
 6 it.
 7 BY MR. SOLOMON:
 8 Q. So you would talk about a spectrum
 9 of buying groups?
 10 A. It's a spectrum of the offering of a
 11 buying group that would drive compliance with
 12 the groups.
 13 Q. And price-only buying groups would
 14 be on one end of the spectrum, correct?
 15 A. Correct.
 16 Q. And value-added service buying
 17 groups would be on the other end of the
 18 spectrum?
 19 A. Correct.
 20 Q. Did anyone ever ask you to clarify
 21 your position on buying groups in one of these
 22 meetings?
 23 A. I don't recall specifically. I
 24 would assume so, but I'd be speculating. I
 25 don't recall specifically.

1 TIM SULLIVAN
 2 Q. Okay. Was anyone ever confused
 3 about what your policy was with respect to
 4 buying groups?
 5 MR. McDONALD: Object to the form,
 6 calls for speculation.
 7 THE WITNESS: We didn't have a
 8 policy per se. There was a strategy in how
 9 to -- in general.
 10 There was definitely confusion
 11 again, and part of the confusion is our own
 12 internal. There's a special markets
 13 approach to it versus the HSD approach to
 14 it. There's a different impact on P&Ls.
 15 So there was definitely confusion
 16 within our organization as to should we,
 17 shouldn't we, do we have a strategy, don't
 18 we have a strategy, trying to clarify some
 19 of that, if you talk to Hal versus if you
 20 talk to me. So it really -- there was
 21 definite confusion within our organization.
 22 BY MR. SOLOMON:
 23 Q. What did you do to try to dispel
 24 that confusion?
 25 A. Apparently not enough and really

1 TIM SULLIVAN
 2 addressed the opportunities as they came up one
 3 by one, but do our best as much as possible. I
 4 think we have a great leadership team,
 5 phenomenal leadership team to allow them to
 6 make decisions as best they -- they felt best
 7 for the business.
 8 Q. So when you were made aware of
 9 confusion surrounding buying groups, what did
 10 you do specifically to dispel that confusion?
 11 MR. McDONALD: Object to the form,
 12 vague.
 13 THE WITNESS: Apparently not enough.
 14 BY MR. SOLOMON:
 15 Q. What do you mean by that?
 16 A. The fact that the confusion existed
 17 and continued to exist means I didn't do
 18 enough.
 19 Q. What could you have done?
 20 MR. McDONALD: Object to the form,
 21 calls for speculation.
 22 THE WITNESS: Yeah, I -- I don't
 23 know. Held more meetings, taken Hal to
 24 dinner. I don't know. There's -- cleared
 25 up -- you know, clean up the P&Ls.

<p style="text-align: right;">Page 166</p> <p>1 TIM SULLIVAN 2 We've done some things. We're 3 structured different today than we were 4 back in this period of time to help bring 5 alignment between the groups. So there's a 6 lot more we've done today to bring that 7 clarity that we didn't do then. 8 BY MR. SOLOMON: 9 Q. Were people in the field confused 10 about your position with respect to buying 11 groups? 12 MR. McDONALD: Object to the form, 13 calls for speculation. 14 THE WITNESS: I don't know if anyone 15 in the field was confused about my 16 particular perspective of it, but there was 17 confusion in the field as to what our, the 18 company's, strategy was around it. 19 BY MR. SOLOMON: 20 Q. Did you ever hear anyone say that 21 Schein does not work with any buying groups? 22 MR. McDONALD: Object to the form. 23 THE WITNESS: If they did, they 24 would be mistaken. 25 ///</p>	<p style="text-align: right;">Page 167</p> <p>1 TIM SULLIVAN 2 BY MR. SOLOMON: 3 Q. Do you recall any specific instances 4 where someone said Schein does not work with 5 any buying groups? 6 A. Not that I recall. But if you want 7 to show me something different, I can speak to 8 it. 9 Q. I'm just generally -- again asking 10 you generally, in your experience as president 11 of HSD, have you ever had a situation where a 12 person in the field has told you that Schein 13 does not work with buying groups or thought 14 that was Schein's position? 15 MR. McDONALD: Object to the form, 16 asked and answered. 17 THE WITNESS: Yeah, I don't recall 18 anyone specifically coming to me and 19 stating that to me. 20 BY MR. SOLOMON: 21 Q. What would be your response if you 22 heard that? 23 MR. McDONALD: Object to the form, 24 asked and answered. 25 THE WITNESS: I'd be speculating, to</p>
<p style="text-align: right;">Page 168</p> <p>1 TIM SULLIVAN 2 begin with, but I believe I would have 3 taken them through the spectrum of buying 4 groups. 5 BY MR. SOLOMON: 6 Q. And you would have made clear that 7 Schein does work with certain buying groups? 8 A. I believe it is clear because we 9 have a number of them already, and the team 10 knows we have a number of them already. So I 11 believe that part is already clear. 12 But how we work with them and how we 13 structure them going forward, which P&L does it 14 go in, it was internally confusing, not great. 15 Q. So going back to field salespeople 16 that came to you for guidance with respect to 17 working with buying groups, were there any 18 specific factors that you told those people to 19 consider in making a decision as to whether to 20 work with a buying group? 21 MR. McDONALD: Object to the form, 22 mischaracterizes his testimony. 23 He never said he had any 24 recollection of such a conversation 25 happening.</p>	<p style="text-align: right;">Page 169</p> <p>1 TIM SULLIVAN 2 THE WITNESS: Again, I don't recall 3 specific. There's no one -- when you say 4 "field salespeople," no one, other than the 5 one example we talked about earlier with 6 Scott who's a rep down in Florida -- and, 7 again, he didn't reach out to me; he's 8 reaching out to the Hal -- I don't recall 9 any specific discussions with anyone in the 10 field in that regard. 11 BY MR. SOLOMON: 12 Q. Did any of those discussions ever 13 happen while you were head of HSD? 14 MR. McDONALD: Object to the form. 15 He just told you he didn't recall any such 16 discussions. 17 THE WITNESS: I don't recall. 18 BY MR. SOLOMON: 19 Q. Okay. So field salespeople never 20 came to you concerning whether or not to do 21 business with a buying group? 22 MR. McDONALD: Object to the form, 23 asked and answered. 24 THE WITNESS: Not that I recall. 25 ///</p>

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1 TIM SULLIVAN
 2 BY MR. SOLOMON:
 3 Q. What about sales managers? Did they
 4 ever come to you with questions about whether
 5 to work with a buying group?
 6 A. Rarely, but from time to time, yes.
 7 Q. And what did they ask you?
 8 MR. McDONALD: Object to the form,
 9 overly broad.
 10 THE WITNESS: I'd really have to
 11 look at a specific. No one -- they didn't
 12 come to me saying, hey, in general, Tim,
 13 what are your thoughts on buying groups?
 14 It was a specific example, here's a
 15 potential opportunity.
 16 Maybe they couldn't reach Hal and
 17 they might not have been able to reach
 18 Dave. You know, Tim, we have this
 19 opportunity. It wasn't like part of the
 20 process was to come through me. For
 21 whatever reason, they might have felt more
 22 comfortable coming to me. But it didn't
 23 happen often, but occasionally.
 24 BY MR. SOLOMON:
 25 Q. They came to you seeking guidance?

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1 TIM SULLIVAN
 2 MR. McDONALD: Object to the form.
 3 THE WITNESS: Or an opinion, what --
 4 what do you think I should do, what would
 5 you do, that type of thing.
 6 BY MR. SOLOMON:
 7 Q. How would you approach those
 8 situations?
 9 MR. McDONALD: Object to the form,
 10 overly broad, vague.
 11 THE WITNESS: Generally, again, I
 12 don't recall specifically, but I'd take
 13 them through, try to understand more about
 14 this potential opportunity.
 15 BY MR. SOLOMON:
 16 Q. And how would you try and understand
 17 more about the potential opportunity? What
 18 sort of questions would you ask?
 19 MR. McDONALD: Object to the form,
 20 vague, overly broad.
 21 THE WITNESS: Tell me more about the
 22 group.
 23 BY MR. SOLOMON:
 24 Q. And what would you want to know?
 25 A. What is it they're looking for.

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1 TIM SULLIVAN
 2 What's the opportunity? How many customers?
 3 How many members do they have? What are their
 4 goals, relative number of members? What other
 5 services do they provide? What do you believe?
 6 Do you believe by doing this we'll help the
 7 member and their -- and the group grow, and
 8 will that benefit Henry Schein Dental as well?
 9 Q. Anything else? Any other questions
 10 you would ask?
 11 MR. McDONALD: Object to the form,
 12 overly broad, vague.
 13 THE WITNESS: Generally speaking,
 14 none that come to mind.
 15 BY MR. SOLOMON:
 16 Q. Did you have any hard and fast rules
 17 with respect to whether to do business with the
 18 buying group?
 19 A. No. It was generally, again,
 20 understanding the spectrum of their offering.
 21 And if my opinion was no and they came back
 22 with a compelling argument, we might have said
 23 go for it. So there's no hard and fast rules.
 24 Q. If you disagreed with that Schein
 25 employee, how would Schein proceed with that

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1 TIM SULLIVAN
 2 business?
 3 MR. McDONALD: Object to the form,
 4 asked and answered.
 5 THE WITNESS: It would depend on the
 6 situation. I'd have to -- if you have a
 7 specific to go through, let's talk about
 8 it.
 9 BY MR. SOLOMON:
 10 Q. Would you be able to prevent a sales
 11 manager or person in the field from working
 12 with a buying group if you were not in favor?
 13 MR. McDONALD: Object to the form,
 14 hypothetical.
 15 THE WITNESS: I could. I don't know
 16 that I would.
 17 BY MR. SOLOMON:
 18 Q. So a field salesperson or a manager
 19 could proceed working were a buying group even
 20 if you were not in favor of the relationship?
 21 A. Yes, there's -- yes.
 22 Q. And how often would that happen?
 23 MR. McDONALD: Object to the form.
 24 THE WITNESS: I don't know.
 25 ///

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1 TIM SULLIVAN
 2 BY MR. SOLOMON:
 3 Q. Were there any instances in which
 4 you had the final decision as to whether to
 5 work with a buying group?
 6 A. None that come to mind. I mean,
 7 really, I'd have to -- if you can show me
 8 something specific, I'd like to understand it
 9 better.
 10 Q. I'm just asking you, sitting here
 11 today as head of HSD, were there ever any
 12 instances in which you had the final decision
 13 regarding whether to do business with a buying
 14 group?
 15 A. I don't know that it -- I don't
 16 recall a situation where it came to me where
 17 others wanted to do it where I was sitting
 18 there saying no.
 19 Q. Were there any instances in which
 20 you had the final say as to whether to do
 21 business with a buying group where it was your
 22 decision and nobody else's?
 23 A. I don't believe so, no.
 24 Q. Can you name any buying groups that
 25 Schein worked with in the period from 2011

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1 TIM SULLIVAN
 2 and Schein stopped doing business in or around
 3 January 2012?
 4 MR. McDONALD: Object to the form,
 5 mischaracterizes the evidence.
 6 THE WITNESS: Can you repeat that?
 7 BY MR. SOLOMON:
 8 Q. Am I correct that Smile Source and
 9 Schein stopped doing business in or around
 10 January 2012?
 11 MR. McDONALD: Same objection.
 12 THE WITNESS: I believe that's
 13 around the time that they terminated us,
 14 yes.
 15 BY MR. SOLOMON:
 16 Q. You say Schein terminated you?
 17 A. No.
 18 MR. McDONALD: Object to the form.
 19 BY MR. SOLOMON:
 20 Q. Strike that.
 21 You say Smile Source terminated
 22 Schein?
 23 A. Correct.
 24 Q. Was it a mutual decision?
 25 MR. McDONALD: Object to the form.

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1 TIM SULLIVAN
 2 until 2015 that you're aware of?
 3 MR. McDONALD: Object to the form.
 4 THE WITNESS: Can I name
 5 specifically?
 6 BY MR. SOLOMON:
 7 Q. Correct.
 8 A. We've provided a list of them. I
 9 don't have them in front of me. I'd like to --
 10 I can review the list.
 11 Q. I'm just asking, again, sitting here
 12 today, groups that you have personal knowledge
 13 of as head of HSD.
 14 MR. McDONALD: Object to the form.
 15 This isn't some memory test. If you
 16 recall, then tell him. If you don't
 17 recall, then tell him you can't recall
 18 names.
 19 THE WITNESS: The two that come to
 20 mind are Smile Source and Atlantic Dental
 21 Care or whatever the name of it is.
 22 BY MR. SOLOMON:
 23 Q. Any others?
 24 A. Not that come to mind right now.
 25 Q. And am I correct that Smile Source

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1 TIM SULLIVAN
 2 He just told you.
 3 THE WITNESS: They terminated our
 4 relationship.
 5 BY MR. SOLOMON:
 6 Q. Was it a mutual decision?
 7 MR. McDONALD: Object to the form.
 8 THE WITNESS: They terminated our
 9 relationship.
 10 BY MR. SOLOMON:
 11 Q. What do you mean by that?
 12 MR. McDONALD: Object to the form.
 13 THE WITNESS: I don't know how
 14 clearer I can be, Ronnie. They terminated
 15 the relationship. I have e-mails from the
 16 president of Smile Source wishing that they
 17 didn't have to do that.
 18 BY MR. SOLOMON:
 19 Q. So you were not okay with that
 20 decision; is that what you're saying?
 21 MR. McDONALD: Object to the form.
 22 THE WITNESS: I'm saying we had an
 23 opportunity to work with them. There were
 24 conflicts. We worked through those -- we
 25 attempted to work through those conflicts.

1 TIM SULLIVAN
 2 Apparently they came to the conclusion that
 3 they could be serviced better by Burkhart.
 4 BY MR. SOLOMON:
 5 Q. And you were okay with that
 6 decision?
 7 MR. McDONALD: Object to the form.
 8 THE WITNESS: No, I can't say I was
 9 okay with it. We clearly kept in touch
 10 with them. We met with them to try to
 11 retain the business. They came to the
 12 decision not to do business.
 13 BY MR. SOLOMON:
 14 Q. And so the decision then was not a
 15 mutual one?
 16 MR. McDONALD: Object to the form.
 17 THE WITNESS: I don't know how else
 18 to tell you. No. They terminated the
 19 relationship. We did not terminate the
 20 relationship with Smile Source back then.
 21 (Exhibit CX2299 was marked for
 22 identification.)
 23 BY MR. SOLOMON:
 24 Q. Okay. I'd like to hand you another
 25 document. This has been pre-marked as CX2299.

1 TIM SULLIVAN
 2 A. That is correct.
 3 Q. And this exhibit, CX2299, is a true
 4 and accurate representation of this e-mail
 5 correspondence, correct?
 6 A. Correct.
 7 Q. And Schein keeps documents such as
 8 CX2299 in the ordinary course of its business,
 9 right?
 10 A. Yes.
 11 Q. So turning to the first part of this
 12 e-mail chain, the e-mail from Glenn Ellisor to
 13 you.
 14 Mr. Elisor was affiliated with a
 15 group called Vision Source, am I correct?
 16 MR. McDONALD: Object to the form.
 17 THE WITNESS: That's my
 18 understanding.
 19 BY MR. SOLOMON:
 20 Q. What is Vision Source?
 21 A. My understanding is, similar to
 22 Smile Source, Vision Source is on the
 23 ophthalmology side. So they work with
 24 ophthalmologists and optometrists in that
 25 market similar to what they're doing with Smile

1 TIM SULLIVAN
 2 Mr. Sullivan, let me know when you've had a
 3 chance to review it.
 4 (Witness viewed said document.)
 5 THE WITNESS: Okay.
 6 BY MR. SOLOMON:
 7 Q. Mr. Sullivan, what is CX2299?
 8 A. Copy of an e-mail exchange.
 9 Q. Who is the e-mail exchange between?
 10 A. Originated by Glenn Ellisor as the
 11 CEO of Smile Source at that time, and then I
 12 forwarded it on to others in the organization
 13 for a discussion.
 14 Q. You wrote part of this e-mail chain,
 15 correct?
 16 A. Yes.
 17 Q. And you did so as part of your job
 18 at Henry Schein?
 19 A. Yes.
 20 Q. And you have personal knowledge of
 21 what you wrote in this e-mail, correct?
 22 A. Yes.
 23 Q. And you wrote this e-mail close in
 24 time to receiving this message from
 25 Mr. Ellisor, is that right?

1 TIM SULLIVAN
 2 Source. That's where they started, and Smile
 3 Source became an offshoot of what they were
 4 doing in vision.
 5 Q. So Vision Source is a buying group
 6 for ophthalmologists, correct?
 7 MR. LONG: Objection to foundation.
 8 THE WITNESS: I'm not sure how -- I
 9 don't know if Vision Source -- how I would
 10 describe them.
 11 BY MR. SOLOMON:
 12 Q. Did you ever meet with Mr. Elisor?
 13 A. I met with a number of folks. I
 14 don't know if Glenn was ever in one of those
 15 meetings. I don't recall.
 16 Q. Why would you have met with
 17 Mr. Elisor if he represents Vision Source?
 18 MR. McDONALD: Object to the form.
 19 THE WITNESS: Well, again, I don't
 20 know if I did. If I did, it would have
 21 been in respect to what they're doing on
 22 the dental side. It had nothing to do with
 23 vision. We're not in vision.
 24 BY MR. SOLOMON:
 25 Q. Got it.

1 TIM SULLIVAN
 2 So Mr. Elisor tells you in his
 3 e-mail to you on Thursday, September 1st, 2011
 4 at 9:58 a.m., "...through research and
 5 intensive strategy sessions, we've fine tuned
 6 our model and value proposition for independent
 7 dentists."
 8 Do you see that?
 9 A. I do.
 10 Q. So he was telling you that Smile
 11 Source had fine tuned their model, correct?
 12 A. Correct.
 13 Q. And he's also telling you that
 14 they've brought on some new talent to help lead
 15 Smile Source at this point in time, right?
 16 A. Yes.
 17 Q. And he's also telling you that Smile
 18 Source was working on a national rollout for
 19 2012, correct?
 20 MR. McDONALD: Why don't you show
 21 him where that is.
 22 MR. SOLOMON: Sure.
 23 THE WITNESS: I see it now. Yes, I
 24 see it.
 25 ///

1 TIM SULLIVAN
 2 Q. What was the concern?
 3 A. They were positioning themselves as
 4 more than a price, but to date that's really
 5 all that they were offering, it's all that they
 6 were talking about. And so I was concerned
 7 that they could be perceived as more but only
 8 be providing the price side of it. And that
 9 model concerns me, as I've highlighted before.
 10 Q. But they were a Schein customer at
 11 this time, correct?
 12 A. Yes.
 13 Q. And Schein was getting business from
 14 their customers, correct?
 15 A. Correct.
 16 Q. And Schein was increasing the amount
 17 of business it was doing with existing
 18 customers, correct?
 19 MR. McDONALD: Object to the form.
 20 THE WITNESS: I don't know that for
 21 a fact --
 22 BY MR. SOLOMON:
 23 Q. Well --
 24 A. -- as I sit here today.
 25 Q. Do you have any reason to doubt that

1 TIM SULLIVAN
 2 BY MR. SOLOMON:
 3 Q. The third paragraph, last sentence?
 4 A. I see it, yeah.
 5 Q. Moving on to your response, you tell
 6 Mr. Muller, Mr. Chatham, and Mr. Breslawski,
 7 "Interesting..these guys certainly aren't going
 8 away, but their model does concern me."
 9 Do you see that?
 10 A. I do.
 11 Q. So at this point in time in
 12 September of 2011, Schein was working with
 13 Smile Source, right?
 14 A. I want to clarify that. I'm not
 15 sure when -- when was it that they terminated
 16 us?
 17 Q. You testified earlier it was
 18 January 2012.
 19 A. And so this is before then?
 20 Q. Correct.
 21 A. Okay. If those dates are accurate,
 22 that sounds right.
 23 Q. And you're saying that you were
 24 concerned about Smile Source's model, correct?
 25 A. Correct.

1 TIM SULLIVAN
 2 that's the case?
 3 MR. McDONALD: Object to the form,
 4 lack of foundation, asked and answered.
 5 THE WITNESS: I'd have to confirm
 6 that your statement is accurate. I don't
 7 know for a fact.
 8 BY MR. SOLOMON:
 9 Q. So why would you be concerned about
 10 a group that Schein is already doing business
 11 with and had decided to do business with?
 12 A. Back to if the only thing that was
 13 happening was adding clients, adding customers
 14 I already do business -- customers of ours at
 15 lower volume and was causing creation issues in
 16 the field, as I've explained before, then
 17 that -- it was causing conflicts; it was
 18 causing challenges. Part of it is our own
 19 internal. Some of it was how they were
 20 marketing their program to new clients.
 21 And so it sounds good, but we
 22 wanted -- you know, didn't know for sure or it
 23 wasn't clear to me that they were actually
 24 bringing in -- delivering the value to their
 25 members that they were claiming to bring.

1 TIM SULLIVAN
 2 Q. We looked at a document earlier
 3 today that showed that the Smile Source was
 4 \$1 million and growing.
 5 Do you recall that?
 6 A. I do.
 7 Q. So is it fair to say at this point
 8 Smile Source was a growing customer?
 9 MR. McDONALD: Object to the form,
 10 mischaracterizes the evidence.
 11 THE WITNESS: Can you repeat the
 12 question?
 13 BY MR. SOLOMON:
 14 Q. Sure. Is it fair to say that at
 15 this point in time, Smile Source was a growing
 16 customer?
 17 MR. McDONALD: Object to the form,
 18 mischaracterizes the evidence.
 19 THE WITNESS: Again, I'd like to
 20 understand that more clearly, this time
 21 frame versus the time frame of that e-mail
 22 that we talked about earlier.
 23 BY MR. SOLOMON:
 24 Q. So you're not sure whether Schein
 25 was still -- strike that.

1 TIM SULLIVAN
 2 You're not sure whether Smile Source
 3 was still a growing customer in September of
 4 2011; is that what you're saying?
 5 A. As I sit here right now, that's --
 6 that's right.
 7 Q. Okay. Do you have any reason to
 8 doubt that they were?
 9 A. No.
 10 Q. Okay. So when you refer to their
 11 model, what specific -- what model specifically
 12 are you referring? Are you referring to a
 13 price-only buying group model?
 14 A. That's correct.
 15 Q. So you were concerned about their
 16 price-only buying group model?
 17 MR. McDONALD: Object to the form.
 18 THE WITNESS: They were making
 19 claims to providing value for the members
 20 more than that. But at this time, the only
 21 thing that they were really marketing to
 22 new members and the value that we believe
 23 that they were really only driving was that
 24 on the price side.
 25 ///

1 TIM SULLIVAN
 2 BY MR. SOLOMON:
 3 Q. And that was problematic, in your
 4 opinion?
 5 A. It was a concern.
 6 Q. How did you deal with that concern?
 7 A. We would -- they would contact us if
 8 there was a problem with one of our reps saying
 9 something bad about them. We would contact
 10 them if we heard one of their salespeople
 11 presenting only on price. The people in the
 12 field would communicate the challenges, and we
 13 would communicate that with them primarily
 14 through John Chatham.
 15 Q. Did you ever tell -- strike that.
 16 Did Schein ever tell Smile Source
 17 that their price-only buying group model was a
 18 concern?
 19 A. Wouldn't say it in those words
 20 exactly. But, yeah, we expressed our concerns
 21 to them about that in some regard.
 22 Q. Who expressed those concerns?
 23 A. I know I had at one point. Where in
 24 the process of the entire relationship, I'm not
 25 sure. We had -- we did have face-to-face

1 TIM SULLIVAN
 2 meetings with them. I don't recall if it was
 3 before or after this, but I expressed that
 4 concern. I know John had when he was working
 5 with others within Smile Source.
 6 Q. Did you ever ask Smile Source to
 7 change its model?
 8 MR. McDONALD: Object to the form.
 9 THE WITNESS: No. It wouldn't be
 10 our place to do that. We would talk to
 11 them about our value proposition and how
 12 does that align with theirs. And the more
 13 we're aligned, the more opportunity for
 14 there to be a mutual win-win.
 15 BY MR. SOLOMON:
 16 Q. Did -- strike that.
 17 Have Schein representatives ever
 18 said bad things about Smile Source?
 19 MR. McDONALD: Object to the form,
 20 vague, lack of foundation.
 21 THE WITNESS: I don't know
 22 specifically, but I believe that to be the
 23 case, yes.
 24 BY MR. SOLOMON:
 25 Q. Who has said bad things about Smile

1 TIM SULLIVAN
 2 Source?
 3 A. I just said I don't know
 4 specifically, so I don't have the exact names.
 5 But the conflict we would hear about is -- we
 6 had the one example earlier with Scott Schenker
 7 down in Florida. Here's a customer who met
 8 with Smile Source who's trying to see should
 9 they join. Scott would say, you don't need to
 10 join them. They don't -- the only thing
 11 they're providing you is XYZ. Look at all that
 12 I do for you.
 13 It's no -- to a large extent, it's
 14 not much different than you do every single
 15 day; you try to show your value versus any
 16 competitor in the marketplace.
 17 And Smile Source was not a
 18 competitor. But from a rep's perspective, if
 19 they moved into special markets, they would get
 20 lower commission, which is another reason why
 21 we wanted to move it over to HSD to maybe it
 22 will help eliminate that conflict.
 23 Part of the issue is our own
 24 internal stuff. And so since it wasn't clear,
 25 yeah, sometimes our sales rep would say

1 TIM SULLIVAN
 2 in here, so that very well could be the case.
 3 Q. You can put that document aside.
 4 (Exhibit CX2456 was marked for
 5 identification.)
 6 BY MR. SOLOMON:
 7 Q. Mr. Sullivan, I'm handing you
 8 another document that's been pre-marked as
 9 CX2456. Please let me know when you've had a
 10 chance to review it.
 11 (Witness viewed said document.)
 12 THE WITNESS: Okay.
 13 BY MR. SOLOMON:
 14 Q. Mr. Sullivan, what is CX2456?
 15 A. It is an e-mail exchange started by
 16 someone outside of the organization and then
 17 ultimately including others of us within.
 18 Q. And you received this e-mail --
 19 A. I did.
 20 Q. -- correct?
 21 And you wrote part of this e-mail
 22 chain, correct?
 23 A. I did.
 24 Q. And did you do so as part of your
 25 job at HSD?

1 TIM SULLIVAN
 2 negative things about them that we would try
 3 clarifying. That was John's e-mail earlier to
 4 managers in the area, you know, kind of fluffed
 5 it up a little bit about, it's good, it's a
 6 good thing for them, so they can then help sell
 7 that to the sales team, but not all -- the
 8 entire sales team didn't truly always
 9 understand it.
 10 Q. Are you -- strike that.
 11 At this point in time, Smile Source
 12 was an HSD customer, not special markets,
 13 correct?
 14 MR. McDONALD: At the time of 2299?
 15 MR. SOLOMON: Correct.
 16 THE WITNESS: I -- I don't know
 17 specifically. I don't know.
 18 BY MR. SOLOMON:
 19 Q. You're not sure one way or the
 20 other?
 21 A. Correct.
 22 Q. Okay.
 23 A. I would say this: I believe so
 24 because the message is to myself and to John
 25 Chatham. There's no one from special markets

1 TIM SULLIVAN
 2 A. Yes.
 3 Q. Do you have personal knowledge of
 4 what you wrote in this e-mail?
 5 A. Yes.
 6 Q. And did you write this e-mail close
 7 in time to receiving these inquiries from
 8 Mr. Josh Naftolin?
 9 A. I'm sorry. Say it again.
 10 Q. Sure. Did you write this e-mail
 11 close in time to receiving these inquiries from
 12 Mr. Josh Naftolin, who is referenced in this
 13 e-mail?
 14 A. Well, the time frame we're talking
 15 about, but I never received an e-mail from
 16 Josh. It was Steve Kess that would have
 17 forwarded it on to me.
 18 Q. Got it.
 19 And then did you write this e-mail
 20 close in time to receiving those e-mails from
 21 Mr. Kess?
 22 A. Yes.
 23 Q. And do you believe CX2456 to be a
 24 true and accurate representation of this e-mail
 25 correspondence?

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1 TIM SULLIVAN
2 A. Yes.
3 Q. And is CX2456 something that Schein
4 kept in the ordinary course of its business?
5 A. Yes.
6 Q. I'd like to turn your attention to
7 the last page of this e-mail chain. You'll see
8 someone named Mr. Josh Naftolin, who appears to
9 be a regional sales manager in California,
10 drafted this part of the e-mail chain to
11 Mr. Kess, is that right?
12 A. I think you said California, but it
13 looks to me it says North Carolina.
14 Q. Right. I think I said North
15 Carolina.
16 A. I'm --
17 MR. McDONALD: You said -- you said
18 California.
19 MR. SOLOMON: My apologies.
20 BY MR. SOLOMON:
21 Q. So Mr. Naftolin is a regional sales
22 manager in North Carolina?
23 A. I believe for our medical business,
24 not in dental.
25 Q. So he worked on the medical side of

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1 TIM SULLIVAN
2 THE WITNESS: Appears to be.
3 BY MR. SOLOMON:
4 Q. And then Mr. Kess on December 7th,
5 2011 at 8:25 a.m. includes you on the e-mail by
6 copying yourself, Mr. Steck, and Mr. Hinsch.
7 Do you see that?
8 A. I do.
9 Q. You reply to Mr. Kess' e-mail, "I am
10 still of position that we do NOT want to lead
11 in getting this initiative started in dental.
12 I think that it is a very slippery slope."
13 Do you see that?
14 A. I do.
15 Q. So are you saying that you did not
16 want Schein to lead in getting GPOs started in
17 the dental industry?
18 A. So, again, e-mails are not always
19 clear. I tried to clarify it I think in the
20 next one, "At end of day, we provide package
21 discount," yadda, yadda, yadda. We work with
22 groups. We have worked with groups. We
23 continue to work with groups.
24 Again, didn't see a -- at this time,
25 wasn't a major part of our initiative, wasn't a

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1 TIM SULLIVAN
2 Schein's business?
3 A. I don't recognize the name. Just
4 based on this exchange, that's what it looks
5 like.
6 Q. Okay. Mr. Naftolin is raising the
7 idea of a dental group purchasing organization,
8 correct?
9 A. Correct.
10 Q. And he's saying that he has
11 continued interest in this idea and wants to
12 hammer out some ideas in details, right?
13 A. In generality, yes, I think that
14 summarizes it.
15 Q. And Mr. Naftolin seems interested in
16 wanting to bring business to Schein through a
17 potential dental GPO, correct?
18 MR. McDONALD: Object to the form.
19 The document speaks for itself.
20 THE WITNESS: That's -- that's how I
21 read it.
22 BY MR. SOLOMON:
23 Q. And this appears to be just an idea
24 of Mr. Naftolin's at this point in time?
25 MR. McDONALD: Object to the form.

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1 TIM SULLIVAN
2 major strategic priority of ours. Priorities
3 were focused elsewhere.
4 So, no, we were not looking to
5 necessarily proactively go out and expand it,
6 particularly those when it comes to the
7 price-only focus. Again, this is GPOs but
8 buying groups.
9 Q. Why did you not want to expand it?
10 A. I think I just stated, there's
11 opportunities within them; there's risks within
12 them.
13 Q. And you write "do NOT." You write
14 "NOT" in all caps. So you seem to be very
15 emphatic about not wanting to work with them,
16 correct?
17 MR. McDONALD: Object to the form.
18 THE WITNESS: I don't know how to
19 answer it differently than I just did.
20 BY MR. SOLOMON:
21 Q. Did you want to make sure that
22 Mr. Kess and the others copied on this e-mail
23 understood your position very clearly with
24 respect to buying groups?
25 MR. McDONALD: Object to the form.

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1 TIM SULLIVAN
 2 THE WITNESS: Throughout the clarity
 3 in the next paragraph, right? So, "At end
 4 of day, we provide package discount 'deals'
 5 to those" -- "At end of day, we provide
 6 package discount 'deals' to those that
 7 control buying. Simply being a 'member'
 8 has historically provided little value or
 9 incentive to drive change in purchasing."
 10 So I think it's -- if you take the
 11 entire exchange in total, I think my
 12 message is clear, because I don't think the
 13 first part of my message was very clear.
 14 BY MR. SOLOMON:
 15 Q. Do buying groups ever control
 16 buying?
 17 MR. McDONALD: Object to the form,
 18 lack of foundation.
 19 THE WITNESS: Again, "control" may
 20 have -- be a wrong -- you know, again,
 21 portray a word referring to compliance, so
 22 they can drive compliance within their
 23 members to actually do what they're signing
 24 up to do. That's what I meant by "control"
 25 there.

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1 TIM SULLIVAN
 2 BY MR. SOLOMON:
 3 Q. So you meant "compliance," but you
 4 wrote groups that control buying?
 5 A. Kind of like sometimes we call them
 6 GPOs and buying groups. Yeah, it would
 7 intertwine that word in this regard, yes.
 8 Q. Did Mr. Kess and the others copied
 9 on this e-mail understand that's what you meant
 10 here?
 11 MR. McDONALD: Object to the form.
 12 THE WITNESS: I would hope so. I
 13 don't know for a fact.
 14 BY MR. SOLOMON:
 15 Q. You also -- going back to the first
 16 paragraph, you state, "I think that it is a
 17 very slippery slope."
 18 Do you see that?
 19 A. I do.
 20 Q. So you're saying that working with
 21 buying groups was a slippery slope for Schein?
 22 MR. McDONALD: Object to the form,
 23 mischaracterizes the document.
 24 THE WITNESS: We work -- we already
 25 work with them. Maybe, again, back to poor

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1 TIM SULLIVAN
 2 choice of words, quick response in an
 3 e-mail. But I'm saying we work with buying
 4 groups. I've talked to you about the
 5 spectrum. The next paragraphs clarifies,
 6 so I think my message in totality is pretty
 7 clear.
 8 BY MR. SOLOMON:
 9 Q. Why would Schein call buying groups
 10 a slippery slope if they work with them?
 11 MR. McDONALD: Object to the form.
 12 This is a document from Mr. Sullivan, not
 13 Schein.
 14 MR. SOLOMON: Strike that.
 15 BY MR. SOLOMON:
 16 Q. Why would you call buying groups a
 17 slippery slope if Schein has always worked with
 18 buying groups?
 19 A. Poor word -- poor choice of words on
 20 my part.
 21 Q. How -- how would you have changed
 22 this sentence?
 23 MR. McDONALD: Object to the form.
 24 THE WITNESS: I don't know. I'd be
 25 speculating.

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1 TIM SULLIVAN
 2 BY MR. SOLOMON:
 3 Q. Well, I don't want you to speculate.
 4 I just want to know what you meant.
 5 A. Poor choice of words.
 6 Q. You can't think of any way you could
 7 have clarified this statement?
 8 A. I think I did in the next paragraph.
 9 Q. Where?
 10 A. I'll read it again, "At end of day,
 11 we provide package discount 'deals' to those
 12 that control buying." In other words, can
 13 drive compliance within their groups.
 14 "Simply being a 'member' has
 15 historically provided little value or incentive
 16 to drive change in purchasing loyalty at the
 17 local practice -- GP," meaning general
 18 practitioner -- "level." I think -- I think
 19 that clarifies my position.
 20 Q. How did it clarify your position?
 21 MR. McDONALD: Object to the form,
 22 asked and answered.
 23 THE WITNESS: I don't know how to
 24 answer that. I believe that clarifies it.
 25 ///

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1 TIM SULLIVAN
 2 BY MR. SOLOMON:
 3 Q. And you refer to in this paragraph,
 4 the second paragraph here, "being a 'member'
 5 has historically provided little value."
 6 So this was based on past experience
 7 with buying groups that Schein has had?
 8 A. Back to the Alpha Omega example I
 9 gave you.
 10 Q. And fair to say you did not want to
 11 replicate those experiences?
 12 MR. McDONALD: Object to the form --
 13 THE WITNESS: It would depend --
 14 MR. McDONALD: -- mischaracterizes --
 15 hang on, mischaracterizes his testimony.
 16 THE WITNESS: It would depend on the
 17 opportunity.
 18 BY MR. SOLOMON:
 19 Q. Did you ask any questions about this
 20 particular opportunity in terms of how Schein
 21 could possibly arrange for a win-win situation?
 22 A. I don't recall.
 23 Q. You didn't in this e-mail, though,
 24 correct?
 25 A. That's correct.

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1 TIM SULLIVAN
 2 Are you referring to price there?
 3 A. So, again, price is a value or the
 4 component of our overall proposition. We
 5 compete on overall value in every segment of
 6 the market, from private practitioner to small
 7 group, large groups, to majors. So, yes, price
 8 is a component of that.
 9 Q. Wouldn't that be a problem then with
 10 value-added buying groups?
 11 A. No, we compete on -- we compete in
 12 those cases for the business also.
 13 Q. Right. But you're stating here that
 14 working with price-only buying groups causes
 15 all sorts of issues for members and local area
 16 non-members who expect the same price.
 17 A. Right.
 18 Q. Correct?
 19 Isn't that the same -- isn't that
 20 problem also present with respect to value --
 21 value-added buying groups?
 22 MR. McDONALD: Object to the form,
 23 mischaracterizes the document.
 24 THE WITNESS: Yeah, not necessarily.
 25 Again, it depends on the group, which

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1 TIM SULLIVAN
 2 Q. Why not?
 3 A. I don't -- I don't know.
 4 Q. So, again, in the second
 5 paragraph you say, I think it is a very
 6 slippery slope.
 7 Have you used that phrase to refer
 8 to buying groups in any other context?
 9 MR. McDONALD: Object to the form.
 10 If you've got a document, show it to
 11 him.
 12 THE WITNESS: Not that I recall.
 13 BY MR. SOLOMON:
 14 Q. Okay. Have you ever heard anyone
 15 else within Schein refer to buying groups as a
 16 slippery slope?
 17 MR. McDONALD: Object to the form.
 18 THE WITNESS: Again, not that I
 19 recall. If you have something to show me,
 20 I'd be happy to speak to it.
 21 BY MR. SOLOMON:
 22 Q. Okay. In the second paragraph, you
 23 say, "...yet causes all sorts of issues for
 24 those members and local area non-members who
 25 then expect the same."

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1 TIM SULLIVAN
 2 groups do we want to put our brand with,
 3 our image. The ones that we sign up for,
 4 we're saying we're willing to take that --
 5 we believe that the value message in that
 6 relationship is consistent.
 7 BY MR. SOLOMON:
 8 Q. Did you know whether the prospect
 9 reference in this e-mail had a value-added
 10 component to it?
 11 A. I do not. I don't know if they did
 12 or not.
 13 Q. Did you ask about it in this e-mail?
 14 A. As I stated earlier, no.
 15 Q. Why not?
 16 A. As I stated earlier, I don't know.
 17 Q. That's something you would want to
 18 know, correct?
 19 A. If the opportunity --
 20 MR. McDONALD: Object to the form.
 21 THE WITNESS: Sorry.
 22 If -- if someone was going to push
 23 to release to get this going, then we would
 24 take that next step.
 25 ///

1 TIM SULLIVAN
 2 BY MR. SOLOMON:
 3 Q. When you say if someone was going to
 4 push to get it going, do you mean if people
 5 continued to send you e-mails about this group?
 6 MR. McDONALD: Object to the form.
 7 THE WITNESS: I don't know how they
 8 would approach me or anyone else. It could
 9 have been Hal. It could have been any
 10 number of us. Again, I'm not the sole
 11 decision-maker in these things.
 12 So if someone said, no, I really
 13 want to pursue this, and Steve Kess said,
 14 hey, let's really drive this, then we would
 15 dive deeper into it.
 16 BY MR. SOLOMON:
 17 Q. You can put that document aside.
 18 (Exhibit CX2457 was marked for
 19 identification.)
 20 BY MR. SOLOMON:
 21 Q. Mr. Sullivan, I'm handing you a
 22 document that's been pre-marked as CX2457.
 23 Please have a look at it and let me know when
 24 you've had a chance to review.
 25 (Witness viewed said document.)

1 TIM SULLIVAN
 2 this in the ordinary course of its business,
 3 correct?
 4 A. Correct.
 5 Q. Do you recall the meeting referenced
 6 in CX2547 with Mr. Cavaretta?
 7 A. I do not.
 8 Q. The subject here is "Vegas Buying
 9 Group."
 10 Do you see that?
 11 A. I do.
 12 Q. Do you recall what group is being
 13 referenced in the subject line?
 14 A. Until reading this e-mail, no.
 15 Q. Okay. This was on December 22nd,
 16 2011 at 10:46 a m., correct?
 17 A. Correct.
 18 (Exhibit CX2458 was marked for
 19 identification.)
 20 BY MR. SOLOMON:
 21 Q. Okay. I'd like to hand you another
 22 document that's been pre-marked as CX2458.
 23 Please take a look at this, Mr. Sullivan, and
 24 let me know when you've had a chance to review.
 25 (Witness viewed said document.)

1 TIM SULLIVAN
 2 THE WITNESS: Okay.
 3 BY MR. SOLOMON:
 4 Q. Mr. Sullivan, what is CX2457?
 5 A. An e-mail exchange between myself
 6 and other internal TSMs, team Schein members.
 7 Q. You received this e-mail as part of
 8 your job as H -- at HSD?
 9 A. Correct.
 10 Q. And you responded to it as part of
 11 your job at HSD?
 12 A. Correct.
 13 Q. And you have personal knowledge of
 14 the contents of which you wrote in this e-mail?
 15 A. Correct.
 16 Q. And you wrote this e-mail close in
 17 time to your meeting with Mr. Cavaretta
 18 referenced in this e-mail?
 19 A. It looks to be accurate, yes.
 20 Q. This is a true and correct
 21 representation of this e-mail exchange between
 22 you, Mr. Cavaretta, Mr. Steck, Mr. Chatham, and
 23 Ms. Pampel?
 24 A. Correct.
 25 Q. And Schein keeps documents such as

1 TIM SULLIVAN
 2 THE WITNESS: Okay.
 3 BY MR. SOLOMON:
 4 Q. Okay. Mr. Sullivan, what is
 5 CX2458?
 6 A. It's an e-mail from Joe Cavaretta to
 7 our local manager and a sales rep of ours in
 8 Las Vegas.
 9 Q. Okay. And Mr. Cavaretta is
 10 referring to a meeting that he had with Tim,
 11 Dave, and John about the Merit Dent group.
 12 Do you see that?
 13 A. I do.
 14 Q. Is he referring to a meeting that he
 15 had with you, Mr. Steck, and Mr. Chatham?
 16 A. Appears to be.
 17 Q. And do you understand that the
 18 meeting referenced in CX2458 corresponds to the
 19 meeting referenced in CX2457?
 20 A. It's a fair assumption, but I don't
 21 know. They're two different titles. I assume
 22 it's the same.
 23 Q. Yeah, they're both on the -- both
 24 e-mails are from the same day, correct?
 25 A. It appears to be the same, yeah.

1 TIM SULLIVAN
 2 Q. Okay. And you have no reason to
 3 doubt that this is the same meeting referenced
 4 in both documents?
 5 MR. McDONALD: Object to the form.
 6 THE WITNESS: I have no reason to
 7 doubt that.
 8 BY MR. SOLOMON:
 9 Q. Okay. So do you recall after
 10 reviewing CX2458 more about this particular
 11 meeting you had with Mr. Cavaretta?
 12 A. I do not.
 13 Q. Do you recall at all a group called
 14 Merit Dent?
 15 A. I do not.
 16 Q. So Mr. Cavaretta writes in his
 17 e-mail, "As you can imagine" -- and he's
 18 speaking about his meeting with you, Mr. Steck,
 19 and Mr. Chatham.
 20 He writes, "As you can imagine, they
 21 feel the same way as we do that we don't want
 22 to be the first company to open the floodgates
 23 to the dangerous world of GPOs," correct?
 24 MR. McDONALD: Object to the form.
 25 Are you asking him if that's what it

1 TIM SULLIVAN
 2 says?
 3 BY MR. SOLOMON:
 4 Q. That's what it says, correct?
 5 A. That is what it says.
 6 Q. Fair to say that you were concerned
 7 about Schein being the first distributor to
 8 work with GPOs based on what Mr. Cavaretta
 9 wrote here?
 10 MR. McDONALD: Object to the form.
 11 THE WITNESS: This is not my e-mail.
 12 BY MR. SOLOMON:
 13 Q. That's true. This is Mr. Cavaretta
 14 writing it. He's saying that -- he's talking
 15 about a conversation he had with you,
 16 Mr. Steck, and Mr. Chatham.
 17 MR. McDONALD: Object to the form.
 18 BY MR. SOLOMON:
 19 Q. Did you say that at the meeting you
 20 had with Mr. Cavaretta earlier that day?
 21 A. I don't think I've ever used the
 22 terms "open the floodgates to dangerous world
 23 to GPOs."
 24 Q. So Mr. Cavaretta is
 25 mischaracterizing what you said here?

1 TIM SULLIVAN
 2 MR. McDONALD: Object to the form.
 3 THE WITNESS: That's my
 4 understanding, yes.
 5 BY MR. SOLOMON:
 6 Q. What did you actually say?
 7 MR. McDONALD: Object to the form.
 8 THE WITNESS: I just told you, I
 9 don't recall even having the meeting. I
 10 don't recall how the meeting -- what was
 11 actually said in the meeting.
 12 My assumption would have been the
 13 same discussion we've had about buying
 14 groups only based on price.
 15 BY MR. SOLOMON:
 16 Q. So you don't recall the meeting at
 17 all?
 18 A. Correct.
 19 Q. And you don't recall what you said
 20 at the meeting?
 21 A. That's correct.
 22 Q. But you're also saying that you did
 23 not say what Mr. Cavaretta wrote on this page,
 24 right?
 25 A. Correct. I can tell you what I had

1 TIM SULLIVAN
 2 for dinner last Tuesday -- or I can't tell you
 3 what I had for dinner last Tuesday, but I can
 4 tell you it wasn't shrimp. I can tell you what
 5 I didn't -- I didn't say.
 6 Q. So this is not something you would
 7 say?
 8 A. Correct.
 9 Q. Do you know why Mr. Cavaretta would
 10 be mischaracterizing your statements?
 11 MR. McDONALD: Object to the form.
 12 THE WITNESS: I don't.
 13 BY MR. SOLOMON:
 14 Q. Has Mr. Cavaretta ever
 15 mischaracterized your statements in other
 16 e-mails?
 17 MR. McDONALD: Object to the form.
 18 THE WITNESS: If you have one I can
 19 look at, I can speak to that. Not that I
 20 recall.
 21 BY MR. SOLOMON:
 22 Q. Mr. Cavaretta is your direct report,
 23 correct?
 24 A. No.
 25 MR. McDONALD: Object to the form.

1 TIM SULLIVAN
 2 THE WITNESS: No, he's not.
 3 BY MR. SOLOMON:
 4 Q. Mr. Cavaretta reports to you --
 5 strike that.
 6 Mr. Cavaretta falls below you in
 7 the -- in the Henry Schein corporate chain, is
 8 that right?
 9 A. That's correct.
 10 Q. And he reports to Mr. Steck?
 11 A. That's correct.
 12 Q. And Mr. Steck reports to you?
 13 A. That's correct.
 14 Q. Are you concerned that someone who
 15 falls lower within the corporate Schein chain
 16 is mischaracterizing your statements as it
 17 relates to potential customers?
 18 MR. McDONALD: Object to the form.
 19 THE WITNESS: Again, as I've
 20 mentioned several times the confusion in
 21 this space during this period of time, both
 22 internal and external, our opinion.
 23 So in this case, in this particular
 24 example, he's -- I read this that he's
 25 speaking about how we view the buying group

1 TIM SULLIVAN
 2 A. I've already testified that I don't
 3 agree with that.
 4 Q. Okay. The next sentence,
 5 Mr. Cavaretta writes, "Based on the fact that
 6 they will not guarantee that all their business
 7 will come to Schein they will not fall into the
 8 CAG world either."
 9 Does CAG refer to corporate accounts
 10 group?
 11 A. Yes, it does.
 12 Q. And that's another acronym used to
 13 refer to special markets, correct?
 14 A. That's correct.
 15 Q. So he's saying that if a potential
 16 customer cannot guarantee that all of their
 17 business will be brought to Schein, Schein is
 18 not interested in working with that customer,
 19 is that correct?
 20 MR. McDONALD: Object to the form,
 21 mischaracterizes the testimony and the
 22 document.
 23 THE WITNESS: He's referring to this
 24 particular example. He's not stating
 25 that's our position across all potential

1 TIM SULLIVAN
 2 opportunity relative to those price-only
 3 versus on a spectrum. I don't know how
 4 else to respond to that.
 5 BY MR. SOLOMON:
 6 Q. Did Mr. Cavaretta tell you that he
 7 didn't want to be the first -- strike that.
 8 Did Mr. Cavaretta ever tell you that
 9 he did not want Schein to be the first
 10 distributor to work with GPOs or buying groups?
 11 MR. McDONALD: Object to the form.
 12 THE WITNESS: Again, we -- at this
 13 time we're already working with groups. So
 14 I just think it's a false statement in
 15 here.
 16 BY MR. SOLOMON:
 17 Q. So this is a false statement?
 18 A. It's poorly worded.
 19 Q. He also calls GPOs dangerous.
 20 Do you see that?
 21 A. I do.
 22 MR. McDONALD: Object to the form.
 23 BY MR. SOLOMON:
 24 Q. Would you agree with that --
 25 Mr. Cavaretta's characterization there?

1 TIM SULLIVAN
 2 opportunities.
 3 BY MR. SOLOMON:
 4 Q. And he's saying that if a potential
 5 customer cannot guarantee that all of their
 6 business will be brought to Schein, HSD is not
 7 interested in working with that customer, is
 8 that right?
 9 MR. McDONALD: Object to the form.
 10 THE WITNESS: Where does it say
 11 that?
 12 MR. McDONALD: It doesn't.
 13 BY MR. SOLOMON:
 14 Q. "Based on the fact that they will
 15 not guarantee all of their business will come
 16 to Schein they will not fall into the CAG world
 17 either."
 18 A. That they -- he's specifically
 19 talking now about this opportunity, not our
 20 strategy across the board on GPOs. We're
 21 obviously doing business with GPOs or buying
 22 groups at this point already.
 23 He's talking about this specific --
 24 when he says, "Based on the fact that they,"
 25 they, Merit Dental will not.

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1 TIM SULLIVAN
2 Q. So because they won't guarantee that
3 all of their business will go through Schein,
4 they will not fall into special markets,
5 correct?
6 MR. McDONALD: Object to the form.
7 THE WITNESS: That's what he's
8 stating here. Yes, that's what he's
9 stating.
10 BY MR. SOLOMON:
11 Q. Do you say anywhere in this e-mail
12 that Schein is already working with buying
13 groups or GPOs? Strike that.
14 Does Mr. Cavaretta state anywhere in
15 this e-mail that Schein is already working with
16 buying groups or GPOs?
17 A. I don't see that in this e-mail, no.
18 Q. Mr. Cavaretta goes on to write under
19 numeral 1, "I will explain to Dr. Balle that
20 the one price fits all strategy doesn't
21 translate well into our world."
22 Do you see that?
23 A. I do.
24 Q. Is he saying that Schein is not
25 willing to give a dentist of a buying group all

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1 TIM SULLIVAN
2 the same price?
3 MR. McDONALD: Object to the form,
4 calls for speculation.
5 THE WITNESS: I don't know what he's
6 referring to there.
7 BY MR. SOLOMON:
8 Q. You're not sure one way or the
9 other; you just have no knowledge of what
10 Mr. Cavaretta means here?
11 MR. McDONALD: Objection, asked and
12 answered. He just told you he doesn't know
13 what he meant.
14 THE WITNESS: I don't know what he
15 means. I'd be speculating.
16 BY MR. SOLOMON:
17 Q. Turning to the last paragraph of
18 this exhibit, Mr. Cavaretta writes, "If not we
19 will just have to take the docs that may leave
20 us for a different company on a case by case
21 basis."
22 Do you see that?
23 A. I do.
24 Q. So Mr. Cavaretta is saying that
25 there's a risk that by not working with this

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1 TIM SULLIVAN
2 group, they could leave Schein for another
3 distributor, correct?
4 MR. McDONALD: Object to the form.
5 THE WITNESS: That's how I read it.
6 BY MR. SOLOMON:
7 Q. And why would Schein be willing to
8 lose customers by refusing to work with this
9 group?
10 MR. McDONALD: Object to the form,
11 mischaracterizes the document.
12 THE WITNESS: That's not how I read
13 what he's saying.
14 BY MR. SOLOMON:
15 Q. How do you read what he's saying?
16 A. As we talked about earlier, if we
17 decide to work with a group, we would do it
18 because we believe we can get deeper
19 penetration into our existing business to
20 potentially add new ones if we believe that
21 they could actually get their members to comply
22 with the -- the arrangement.
23 If not and they decide to go
24 somewhere else, well, now they're going to be
25 kind of pitched that story via another

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1 TIM SULLIVAN
2 distributor. So we're going to make sure --
3 you know, their members, by the way, in all
4 these groups are our customers. They're not
5 customers of those groups; they're members.
6 Every single one of those members are customers
7 or potential customers of ours.
8 So whether they're in the group or
9 not, we're going to be meeting with them all
10 the time to show them our value. So if they
11 decide to work with someone else, okay. That
12 doesn't mean we just give up. There is a risk.
13 If it turns out to be that they do
14 more and they have some other hooks into their
15 members to switch, then it provides a risk.
16 But he's saying we'll go after that business to
17 make sure we don't lose it.
18 Q. He's saying we'll go after the
19 independent -- strike that.
20 He's saying we'll go after the
21 individual accounts, not the actual buying
22 group, right?
23 MR. McDONALD: Object to the form.
24 THE WITNESS: That's how I read it.
25 ///

1 TIM SULLIVAN
 2 BY MR. SOLOMON:
 3 Q. You can put that document aside.
 4 MR. McDONALD: So, Ronnie, it's
 5 12:30, and we've been going over an hour.
 6 How about lunch?
 7 MR. SOLOMON: Sure. This is a
 8 perfect point to break.
 9 MR. McDONALD: Okay.
 10 THE VIDEOGRAPHER: Time is
 11 12:30 p.m. We are off the record.
 12 (Whereupon, from 12:30 p.m. to
 13 1:19 p.m. a luncheon recess was taken.)
 14
 15
 16
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 24
 25

1 TIM SULLIVAN
 2 includes an attachment of a prime vendor
 3 agreement.
 4 Q. And this is in regards to a
 5 potential customer called Pacific Group
 6 Management Services, correct?
 7 A. Correct.
 8 Q. Are you familiar with that group?
 9 MR. McDONALD: Object to the form.
 10 THE WITNESS: I recall the name, but
 11 I'm not familiar with the group, no.
 12 BY MR. SOLOMON:
 13 Q. They were a buying group, right?
 14 MR. McDONALD: Object to the form.
 15 THE WITNESS: Again, I remember the
 16 name, but I don't recall the details of who
 17 they are.
 18 BY MR. SOLOMON:
 19 Q. Okay. So you're not sure whether --
 20 sitting here today, you're not sure if they
 21 were a buying group?
 22 MR. McDONALD: Objection, asked and
 23 answered.
 24 THE WITNESS: If there's more
 25 documents to review to refresh my memory.

1 TIM SULLIVAN
 2 AFTERNOON SESSION
 3 THE VIDEOGRAPHER: This is the
 4 beginning of DVD No. 3. The time is
 5 1:19 p.m. We are back on the record.
 6 TIM SULLIVAN,
 7 was called for examination, and having been
 8 previously duly sworn, was examined and
 9 testified further as follows:
 10 EXAMINATION (Resumed)
 11 BY MR. SOLOMON:
 12 Q. Welcome back, Mr. Sullivan, from
 13 lunch.
 14 (Exhibit CX2251 was marked for
 15 identification.)
 16 BY MR. SOLOMON:
 17 Q. I'd like to hand you a document
 18 that's been pre-marked as CX2251. Please let
 19 me know when you've had a chance to review it.
 20 (Witness viewed said document.)
 21 THE WITNESS: Okay.
 22 BY MR. SOLOMON:
 23 Q. Mr. Sullivan, what is CX2251?
 24 A. It's an e-mail from Kathleen Titus
 25 to two of our West Coast managers, and it

1 TIM SULLIVAN
 2 But as I sit here today, I don't recall who
 3 they are. I recognize the name.
 4 BY MR. SOLOMON:
 5 Q. Miss Titus, Kathleen Titus writes,
 6 "We had a GPO prospect called PGMS. Very
 7 intriguing, willing to be exclusive. I created
 8 this and sent to Joe for review. It went to
 9 Tim and he shot it down. I think the meta msg
 10 is officially, GPO's are not good for Schein."
 11 Did I read that correctly?
 12 A. You read it correctly.
 13 Q. Okay. "Tim," does that refer to
 14 you, Mr. Sullivan?
 15 A. I believe so, yes.
 16 Q. And "msg," she uses the phrase
 17 "msg," does that refer to message?
 18 A. I would assume so.
 19 Q. Do you recall rejecting this group,
 20 Pacific Group Management Services, as a
 21 customer prospect?
 22 A. I don't recall shooting it down, as
 23 she says in here, or rejecting it.
 24 Q. What do you recall?
 25 A. I'd like to review the document, so

1 TIM SULLIVAN
 2 there's more to it. I know there's an exchange
 3 on it, but I don't recall being the one that
 4 shot it down.
 5 Q. She also says, "I think the meta
 6 message is officially, GPO's are not good for
 7 Schein."
 8 Did you understand Ms. -- strike
 9 that.
 10 Do you understand Ms. Titus to be
 11 saying that her belief is that GPOs are not
 12 good for Schein?
 13 MR. McDONALD: Object to the form,
 14 calls for speculation --
 15 THE WITNESS: I'm not going to
 16 spec- --
 17 MR. McDONALD: -- misstates the
 18 record of what Ms. Titus said she meant.
 19 I think you there listening nicely
 20 to her testimony, Mr. Sullivan.
 21 THE WITNESS: I'm not going to
 22 speculate as to what she means behind that.
 23 BY MR. SOLOMON:
 24 Q. Okay. What do you -- sitting here
 25 today, what do you think of her statement, "I

1 TIM SULLIVAN
 2 think the meta message is officially, GPO's are
 3 not good for Schein"?
 4 MR. McDONALD: Object to the form.
 5 THE WITNESS: It misstates my
 6 position on it.
 7 BY MR. SOLOMON:
 8 Q. How so?
 9 A. As I've stated before and many times
 10 over, we work with many groups, historically
 11 worked with many groups. We've continued to
 12 work with groups. And there are examples of --
 13 these keep coming up as possible groups to work
 14 with because we don't have a policy against.
 15 We don't have a strategy against. If we did,
 16 these opportunities wouldn't keep coming up.
 17 So they keep coming up because we'll take a
 18 look at them individually and make a decision.
 19 Q. So Ms. Titus is saying that this
 20 customer prospect was sent to you for review,
 21 you shot it down, and that the meta message is
 22 officially GPOs are not good for Schein.
 23 Sitting here today, are you
 24 surprised to see this statement?
 25 MR. McDONALD: Object to the form,

1 TIM SULLIVAN
 2 mischaracterizes the evidence in the
 3 record.
 4 If you're testifying that that's
 5 what she said and meant, then that's fine.
 6 But you know darn well that she gave a
 7 deposition and said otherwise.
 8 THE WITNESS: That is not my -- it's
 9 not my feeling on it. That's not our
 10 strategy, company strategy.
 11 BY MR. SOLOMON:
 12 Q. So sitting here today reading this
 13 statement, are you surprised?
 14 MR. McDONALD: Object to the form.
 15 THE WITNESS: Yes.
 16 BY MR. SOLOMON:
 17 Q. And her statement here is
 18 inconsistent with the Schein's company
 19 strategy?
 20 A. Inconsistent with our history,
 21 inconsistent with our activity in the space.
 22 Yes, it's inconsistent.
 23 Q. Okay. You can put that document
 24 aside.
 25 ///

1 TIM SULLIVAN
 2 (Exhibit CX2225 was marked for
 3 identification.)
 4 (Witness viewed said document.)
 5 THE WITNESS: Okay.
 6 BY MR. SOLOMON:
 7 Q. I'm handing you another document
 8 that's been marked CX2225.
 9 Mr. Sullivan, do you recognize
 10 CX2225?
 11 A. I do.
 12 Q. And what is it?
 13 A. It's an e-mail exchange that I was
 14 copied on at the end by Joe Cavaretta to myself
 15 that includes a series of other e-mails.
 16 Q. And did you receive this e-mail in
 17 CX2225 as part of your job?
 18 A. Yes.
 19 Q. Do you have personal knowledge of
 20 anything written in this e-mail?
 21 A. I don't know how best to answer that
 22 other than I recognize the e-mail.
 23 Q. Okay.
 24 A. I have to say, there's one, the
 25 backside of this --

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<p>1 TIM SULLIVAN</p> <p>2 MR. McDONALD: Ronnie, are you</p> <p>3 representing that this is all part of the</p> <p>4 same thing? Because it looks to me like</p> <p>5 it's two completely separate e-mails.</p> <p>6 MR. SOLOMON: Yeah. Would you like</p> <p>7 to go off the record just for a second?</p> <p>8 MR. McDONALD: Sure.</p> <p>9 THE VIDEOGRAPHER: Time is 1:28 p.m.</p> <p>10 we're off the record.</p> <p>11 (Whereupon, a discussion was had off</p> <p>12 the record.)</p> <p>13 (Whereupon, the following was had</p> <p>14 off the video record:)</p> <p>15 MR. McDONALD: So we've had a</p> <p>16 discussion off the record about</p> <p>17 Exhibit CX2225. And counsel for the FTC</p> <p>18 and counsel for Schein have agreed that</p> <p>19 CX2225-002, which has a Bates number of</p> <p>20 Henry Schein-9045, is not part of this</p> <p>21 e-mail chain.</p> <p>22 And I guess you guys will produce a</p> <p>23 new document that just has that page whited</p> <p>24 out or something so that we don't have</p> <p>25 confusion at a later date.</p>	<p>1 TIM SULLIVAN</p> <p>2 MR. SOLOMON: Yeah, we can figure</p> <p>3 out how to handle that after today.</p> <p>4 MR. McDONALD: Okay.</p> <p>5 BY MR. SOLOMON:</p> <p>6 Q. So Mr. Sullivan --</p> <p>7 MR. McDONALD: You got to go back</p> <p>8 on.</p> <p>9 MR. SOLOMON: Oh.</p> <p>10 (Whereupon, the following was had on</p> <p>11 the video record:)</p> <p>12 THE VIDEOGRAPHER: Time is 1:31 p m.</p> <p>13 We are back on the record.</p> <p>14 BY MR. SOLOMON:</p> <p>15 Q. Mr. Sullivan, as I asked you about</p> <p>16 CX2225, we just agreed that Page 002 is not a</p> <p>17 part of this exhibit. So I'm just asking about</p> <p>18 all the other pages except that page, okay?</p> <p>19 A. Okay.</p> <p>20 Q. Okay. So you received this e-mail</p> <p>21 as part of your job at Henry Schein, correct?</p> <p>22 A. Correct.</p> <p>23 Q. And you have personal knowledge of</p> <p>24 the contents of this e-mail, correct?</p> <p>25 MR. McDONALD: Object to the form.</p>
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<p>1 TIM SULLIVAN</p> <p>2 THE WITNESS: I mean, I understand</p> <p>3 the contents of it, but I can't tell you I</p> <p>4 understand every single level of detail of</p> <p>5 it. I would not -- I didn't draft any of</p> <p>6 these.</p> <p>7 BY MR. SOLOMON:</p> <p>8 Q. Okay. Did you receive this e-mail</p> <p>9 around the time that you were involved in the</p> <p>10 PGMS prospect?</p> <p>11 A. Appears to be, yes.</p> <p>12 Q. Okay. And does this appear to be a</p> <p>13 true and accurate representation of this e-mail</p> <p>14 correspondence?</p> <p>15 A. It does.</p> <p>16 Q. And did Schein keep this e-mail in</p> <p>17 the ordinary course of its business?</p> <p>18 A. Yes.</p> <p>19 Q. I'd like to just refer you,</p> <p>20 Mr. Sullivan, to the first page of this e-mail.</p> <p>21 Ms. Titus is talking about rejecting PGMS as a</p> <p>22 buying group.</p> <p>23 Do I have that right?</p> <p>24 A. Where does she state that, rejecting</p> <p>25 them?</p>	<p>1 TIM SULLIVAN</p> <p>2 Q. She says, "Just delivered the news</p> <p>3 moments ago to Kathy Khalik. She was</p> <p>4 absolutely gracious, but clearly devastated."</p> <p>5 Do you see that?</p> <p>6 A. I do.</p> <p>7 Q. Do you understand Ms. Titus to be</p> <p>8 saying that she had rejected this group?</p> <p>9 A. Again, I don't know if I'd use the</p> <p>10 term "rejected," but for whatever reason</p> <p>11 decided not to work with them. That's how I</p> <p>12 read that, yes.</p> <p>13 Q. She says, "I explained if there was</p> <p>14 a time in the future they become an MSO that</p> <p>15 can demonstrate compliance, we would be pleased</p> <p>16 to revisit. I offered her the compromise Tim</p> <p>17 suggested to enroll the fully owned locations</p> <p>18 in a special markets program."</p> <p>19 Do you see that?</p> <p>20 A. I do.</p> <p>21 Q. So turning to the first sentence we</p> <p>22 just read, "I explained" -- beginning with "I</p> <p>23 explained," what is an MSO that Ms. Khalik is</p> <p>24 referring to there?</p> <p>25 A. The --</p>

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1 TIM SULLIVAN
2 MR. McDONALD: Object to the form.
3 You mean Ms. Titus?
4 MR. SOLOMON: Right. So strike
5 that.
6 BY MR. SOLOMON:
7 Q. What is an MSO that Ms. Titus is
8 referring to there?
9 A. Managed service organization.
10 Q. What is that?
11 A. So they're different than a DSO in
12 the respect of they provide management services
13 for organizations. So, again, they are all --
14 many structured differently. In many cases
15 they don't have any equity in their practice
16 that they're -- that they're helping to manage,
17 but those members pay this MSO for
18 management-type services.
19 Q. So MSO -- MSOs manage independent
20 dental practices?
21 MR. McDONALD: Object to the form,
22 vague.
23 THE WITNESS: I think it's a --
24 MR. McDONALD: Overly broad.
25 Go ahead.

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1 TIM SULLIVAN
2 THE WITNESS: It seems like a
3 general -- a good description of a general,
4 yes.
5 BY MR. SOLOMON:
6 Q. And they contract to provide
7 services with those independent dental
8 practices, is that right?
9 A. Yeah, I can't speak if they sign --
10 I would assume they sign contracts. I haven't
11 seen a contract that an MSO provides for the
12 members, but it sounds right.
13 Q. And you understand that there's a
14 fee associated with those -- with the provision
15 of those contracted services?
16 A. Usually that's the case, yes.
17 Q. Okay. What kind of management
18 services do MSOs provide to independent dental
19 practices?
20 MR. McDONALD: Object to the form,
21 lack of foundation.
22 THE WITNESS: Again, I don't work
23 this closely with any -- any one of them.
24 But some will offer to work in the practice
25 management software system to help book

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1 TIM SULLIVAN
2 patients. Some will help market their
3 practice to bring new patients into the
4 practice. They'll manage the books for
5 them, their receivables, their payables.
6 Some will -- they're just various
7 services that the dental practice otherwise
8 would not -- I'm sorry, would otherwise
9 have to manage on their own, that they
10 actually ask this MSO group to manage for
11 them, and they pay them a fee for that.
12 BY MR. SOLOMON:
13 Q. Can you give me an example of an
14 MSO?
15 A. I believe Breakaway Dental is an
16 example of an MSO.
17 Q. Any others?
18 A. That's the one top of mind that
19 comes out that I can confirm.
20 Q. So what's the difference between an
21 MSO and a DSO, which we talked about earlier
22 today?
23 MR. McDONALD: Object to the form,
24 lack of foundation.
25 THE WITNESS: Sometimes there is no

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1 TIM SULLIVAN
2 difference. It's how they refer to
3 themselves. Some want to be referred to as
4 an MSO. Some want to be referred to as a
5 DSO.
6 More likely in a DSO situation, the
7 DSO actually owns the practice and the
8 dentists are employees of the group. In an
9 MSO, that is typically not the case because
10 they just did what I just described to you.
11 So there definitely is some crossover in
12 both.
13 BY MR. SOLOMON:
14 Q. So in some instances, MSOs do not
15 have ownership in the locations that they
16 manage?
17 A. Correct.
18 Q. So turning back to Ms. Titus'
19 statement here, she's saying that if -- well,
20 strike that.
21 Do MSOs provide purchasing services
22 to their members?
23 MR. McDONALD: Object to the form,
24 overly broad, lack of foundation.
25 THE WITNESS: Again, I can give you

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1 TIM SULLIVAN
 2 an example of one. I don't know how they
 3 all operate. I'm not exactly sure even how
 4 Breakaway operates. So I don't know if
 5 they actually do the purchasing for them or
 6 if the local dentist does it. I think it
 7 really varies on whatever -- however
 8 they're structured.
 9 BY MR. SOLOMON:
 10 Q. So some MSOs provide centralized
 11 purchasing and some don't; is that what you're
 12 saying?
 13 MR. McDONALD: Object. Object to
 14 the form, overly broad, vague, lack of
 15 foundation.
 16 THE WITNESS: I don't know. I think
 17 it's more common in a DSO than it is in
 18 an -- I don't know if there's none that do
 19 it in an MSO or some do. I don't know.
 20 BY MR. SOLOMON:
 21 Q. Okay. So, again, turning to
 22 Ms. Titus' statement, she says -- she's telling
 23 Joe Cavaretta here that if they can become an
 24 MSO and demonstrate compliance, that Schein
 25 would be pleased to revisit, is that right?

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1 TIM SULLIVAN
 2 MR. McDONALD: Object to the form.
 3 THE WITNESS: That's how --
 4 MR. McDONALD: The document speaks
 5 for itself.
 6 THE WITNESS: That's how it reads,
 7 yes.
 8 BY MR. SOLOMON:
 9 Q. Did you tell Ms. Titus that you
 10 would be willing to work with PGMS if they
 11 became an MSO rather than a buying group?
 12 A. I don't recall ever talking to
 13 Kathleen Titus about this directly.
 14 Q. In the next sentence, she talks
 15 about offering a compromise that Tim suggested
 16 to enroll the fully owned locations in special
 17 markets.
 18 Do you see that?
 19 A. I do.
 20 Q. So you were only in favor of working
 21 with fully owned locations that were a part of
 22 this group, is that right?
 23 MR. McDONALD: Object to the form,
 24 mischaracterizes his testimony.
 25 THE WITNESS: So that's definitely

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1 TIM SULLIVAN
 2 not my position. In this particular case,
 3 I don't recall the situation or what the
 4 exact specifics were, but that's clearly
 5 not my position, as you know.
 6 BY MR. SOLOMON:
 7 Q. So she has it wrong here?
 8 A. Well, I don't see her --
 9 MR. McDONALD: Object to the form.
 10 THE WITNESS: I don't see her saying
 11 this is my position overall. She's talking
 12 about this specific example with PGMS.
 13 BY MR. SOLOMON:
 14 Q. And she's referring to a compromise
 15 that you suggested, right?
 16 MR. McDONALD: Object to the form.
 17 The document speaks for itself.
 18 If you're asking if that -- if he
 19 did that, then ask that. If you're asking
 20 him if that's what the document says, then
 21 please ask that, but let's be clear what
 22 you're asking him.
 23 THE WITNESS: Could you repeat the
 24 question?
 25 ///

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1 TIM SULLIVAN
 2 BY MR. SOLOMON:
 3 Q. Sure. Did you, in fact, offer the
 4 compromise that Ms. Titus talks about in this
 5 e-mail?
 6 A. Not directly to her. And I don't
 7 recall my discussion with Joe. I would have
 8 had a discussion with Joe. And I don't recall
 9 that being my suggestion, by any means.
 10 Q. What do you recall?
 11 A. Just that we talked about this
 12 opportunity and where do they fit in the
 13 spectrum of buying groups.
 14 Q. And do you recall where they fit in
 15 this -- strike that?
 16 Do you recall where this group fit
 17 on the spectrum?
 18 A. There was no additional -- I'd be
 19 speculating to the exact discussion. But based
 20 on this input and the fact that we declined, I
 21 can assume that it was over on the price-only
 22 side of it.
 23 Q. So your understanding is Schein
 24 declined this group because it was a price-only
 25 buying group?

1 TIM SULLIVAN
 2 MR. McDONALD: Object to the form.
 3 THE WITNESS: If you read this
 4 message in entirety again instead of
 5 picking it apart, but in entirety, you can
 6 see we're bringing some clarity to
 7 around -- to internal confusion on who's
 8 managing which groups.
 9 Joe even starts his message that,
 10 "Bringing KT," Kathleen Titus, "and Andrea
 11 back," meaning now part of the mid-market.
 12 It's been a benefit. We're bringing
 13 special markets and HSD more closely
 14 together than we were prior, so part of our
 15 own confusion. She herself was saying we
 16 had the opportunity to having Tim's input
 17 on something of this nature. It's the
 18 first time we have.
 19 So it's clearly I'm not involved in
 20 all the day-to-day in every one of these
 21 decisions. So we're bringing some clarity
 22 around it. But this is still landed in
 23 the -- the far left side of the spectrum,
 24 if you would, relative to the overall value
 25 that we felt this group was going to bring

1 TIM SULLIVAN
 2 BY MR. SOLOMON:
 3 Q. Why not?
 4 A. Again, if we sign with any group,
 5 decide to bring on any group, typically it's
 6 only with us. But if they have no services or
 7 values or other things that drive compliance,
 8 it doesn't matter that it's only with us.
 9 Q. So if a price-only buying group is
 10 willing to be exclusive, Schein is still not
 11 interested?
 12 MR. McDONALD: Object to the form,
 13 mischaracterizes his testimony.
 14 THE WITNESS: It really
 15 mischaracterizes my testimony, I mean, in a
 16 big way.
 17 BY MR. SOLOMON:
 18 Q. Okay.
 19 A. I've said it multiple times that is
 20 not our position; it's not my position. I
 21 don't why you keep phrasing it that way.
 22 Q. So if -- I'll try and rephrase.
 23 So if -- if a price-only buying
 24 group is willing to be exclusive, Schein still
 25 believes that it can't drive compliance?

1 TIM SULLIVAN
 2 to their members and therefore lack of
 3 compliance.
 4 It talks about if they were -- they
 5 become an MSO where they may be taking over
 6 some of the purchasing control or they can
 7 demonstrate compliance, we'd like to
 8 revisit. So clearly they were not
 9 demonstrating that they could -- they could
 10 drive compliance within their members.
 11 BY MR. SOLOMON:
 12 Q. Do you recall in the e-mail we
 13 looked at a few moments ago prior to this one,
 14 Ms. Titus says that this group PGMS was willing
 15 to be exclusive with Schein?
 16 A. I do.
 17 Q. Was that sufficient in order to --
 18 strike that.
 19 Did you think that the fact that
 20 PGMS was willing to be exclusive would have
 21 helped drive compliance among its members?
 22 MR. McDONALD: Object to the form.
 23 THE WITNESS: That alone wouldn't do
 24 it, no.
 25 ///

1 TIM SULLIVAN
 2 MR. McDONALD: Object to the form.
 3 THE WITNESS: I believe they can.
 4 If they're -- if they're exclusive,
 5 you're saying?
 6 BY MR. SOLOMON:
 7 Q. Correct.
 8 A. I believe they can, yeah.
 9 Q. So --
 10 A. It doesn't -- because they're
 11 exclusive doesn't mean they will.
 12 Q. What other factors might influence
 13 whether they can drive compliance other than a
 14 promise to be exclusive?
 15 A. I'll go back through the spectrum.
 16 Do they add other value? Is it part of
 17 contractual agreements that they have to follow
 18 or they no longer will be a member? Are there
 19 other values that the members receive that
 20 drives loyalty within their group?
 21 I mean, as I've said, it -- I've
 22 testified many times about what would -- what I
 23 believe would drive that.
 24 Q. So a promise to be exclusive would
 25 not be enough?

1 TIM SULLIVAN
 2 A. As a standalone, not necessarily.
 3 It could be. Again, someone locally, Kathleen,
 4 if she really pushed maybe could have pushed us
 5 over the edge and say, hey, let's go for it.
 6 She said, hey, I actually respect yours and
 7 Joe's input on this, I agree, let's pass.
 8 Q. Turning to Mr. Cavaretta's e-mail to
 9 you, he forwards Ms. Titus' e-mail to you,
 10 correct?
 11 A. Correct.
 12 Q. And he says that Ms. Titus and he
 13 also mentions Andrea were acting as GPO watch
 14 dogs.
 15 Do you see that?
 16 MR. McDONALD: Object to the form,
 17 mischaracterizes the document.
 18 BY MR. SOLOMON:
 19 Q. Joe says, "They know how to be the
 20 watch dogs and take it seriously!"
 21 A. He did state that, yes.
 22 Q. Do you know what Mr. Cavaretta means
 23 there?
 24 A. I do not.
 25 Q. Did you ever seek clarification from

1 TIM SULLIVAN
 2 Mr. Cavaretta as to what he meant about being a
 3 GPO watchdog?
 4 MR. McDONALD: Object to the form.
 5 It doesn't say GPO watchdog, Ronnie.
 6 You can wish and hope that it says that,
 7 but it doesn't say that. So why don't you
 8 accurately read the document and ask the
 9 question again.
 10 THE WITNESS: Could you repeat the
 11 question, please?
 12 MR. SOLOMON: Can you repeat the
 13 question?
 14 (The reporter read the record as
 15 requested.)
 16 MR. McDONALD: Again,
 17 mischaracterizes the document,
 18 mischaracterizes the testimony.
 19 THE WITNESS: I don't know how to
 20 answer that. That's not what the document
 21 says.
 22 BY MR. SOLOMON:
 23 Q. So Mr. Cavaretta says, "Bringing
 24 KT" -- I assume he's referring to Kathleen
 25 Titus?

1 TIM SULLIVAN
 2 A. Yes.
 3 Q. -- "and Andrea" -- I'm assuming he's
 4 referring to Andrea Hight?
 5 A. Correct.
 6 Q. -- "back has a benefit I didn't even
 7 think of as it pertains to the GPO world,"
 8 correct?
 9 A. Yes, it does say that.
 10 Q. And he says, "They know how to be
 11 the watch dogs and take it seriously!"
 12 They're saying that Ms. Titus --
 13 Ms. Titus and Ms. Hight are being watchdogs
 14 with respect to GPOs, correct?
 15 MR. McDONALD: Object to the form.
 16 THE WITNESS: You'd have to ask him
 17 what he meant by it.
 18 BY MR. SOLOMON:
 19 Q. So you have no understanding as to
 20 what Mr. Cavaretta meant here?
 21 MR. McDONALD: Object to the form,
 22 asked and answered.
 23 THE WITNESS: You'd have to ask Joe
 24 what he meant by that.
 25 ///

1 TIM SULLIVAN
 2 BY MR. SOLOMON:
 3 Q. You don't recall ever seeking
 4 clarification from Mr. Cavaretta about what he
 5 meant?
 6 A. I don't.
 7 Q. I'm handing you another document
 8 that's been pre-marked as CX1 -- CX0174.
 9 (Exhibit CX0174 was marked for
 10 identification.)
 11 (Witness viewed said document.)
 12 THE WITNESS: Okay.
 13 BY MR. SOLOMON:
 14 Q. Mr. Sullivan, what is CX0174?
 15 A. It's an e-mail exchange amongst some
 16 team members of ours.
 17 Q. Do you understand CX0174 to be about
 18 a buying group called the Dental Co-Op of Utah?
 19 A. That's my understanding, yes.
 20 Q. And the Dental Co-op of Utah is a
 21 buying group, correct?
 22 MR. McDONALD: Object to the form.
 23 THE WITNESS: Yeah, I'm not very
 24 familiar with them. It appears to be in
 25 this instance.

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1 TIM SULLIVAN
 2 BY MR. SOLOMON:
 3 Q. Do you recall ever learning about
 4 the Dental Co-op of Utah?
 5 A. Again, I'm familiar with the name,
 6 but I don't recall the details of who they are
 7 and how they operate.
 8 Q. So I'd like to focus your attention
 9 on the first page, Mr. Upchurch's e-mail to
 10 Mr. Cavaretta on July 18, 2014 at 10:22 a m.
 11 The last paragraph, "They are
 12 probably going to align with a Darby over a
 13 PDCO but Benco also might jump at the
 14 opportunity. The Co-Op is turning into a GPO
 15 (even if they don't think they are one now),
 16 from what KT has observed in Texas, New Mexico
 17 and from Tim S, HSD does not want to enter the
 18 GPO world."
 19 Do you see that?
 20 A. I see that.
 21 Q. Do you have any understanding as to
 22 why Mr. Upchurch would be saying that you do
 23 not want to enter the GPO world?
 24 MR. McDONALD: Object to the form,
 25 calls for speculation.

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1 TIM SULLIVAN
 2 A. It's an e-mail exchange between Joe
 3 and I primarily, but there's others copied that
 4 it was on at the beginning.
 5 Q. And what is it about?
 6 A. A manufacturer partner of ours,
 7 Oral-B, working with, it appears to be, the
 8 same dental co-op on the last exchange.
 9 Q. Did you -- you drafted part of this
 10 e-mail chain, correct?
 11 A. Yes.
 12 Q. And did you do so as part of your
 13 job at Schein?
 14 A. I did.
 15 Q. And did you have personal knowledge
 16 of what you wrote in CX2467?
 17 A. Yes.
 18 Q. And did you write this e-mail at or
 19 around the time you were having these
 20 discussions about the Dental Co-op of Utah?
 21 MR. McDONALD: Object to the form.
 22 THE WITNESS: Let me go back to the
 23 last document and see.
 24 (Witness viewed said document.)
 25 THE WITNESS: This looks to be about

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1 TIM SULLIVAN
 2 THE WITNESS: No. I'd be
 3 speculating.
 4 BY MR. SOLOMON:
 5 Q. Okay. Do you recall ever telling
 6 Mr. Upchurch that you did not want to enter the
 7 GPO world?
 8 A. No.
 9 Q. Sitting here today, you have no
 10 knowledge as to why Mr. Upchurch wrote this?
 11 A. Correct. It's inconsistent with our
 12 history and where we're at in the evolution of
 13 whole market space.
 14 Q. You can put that document aside.
 15 I'm handing you another document
 16 that's been pre-marked as CX2467.
 17 (Exhibit CX2467 was marked for
 18 identification.)
 19 (Witness viewed said document.)
 20 THE WITNESS: Okay.
 21 BY MR. SOLOMON:
 22 Q. Mr. Sullivan, do you recognize
 23 CX2467?
 24 A. I do.
 25 Q. What is it?

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1 TIM SULLIVAN
 2 a month before the last one we discussed.
 3 So I think you're going back -- you're
 4 working your way --
 5 BY MR. SOLOMON:
 6 Q. I'm actually just referring --
 7 A. You're working your way backwards.
 8 Q. -- just to the discussions you're
 9 having in this e-mail with Mr. Cavaretta and
 10 Mr. Straka.
 11 Did you draft this e-mail around the
 12 times you were having those discussions?
 13 MR. McDONALD: To be clear, Ronnie,
 14 are you suggesting that there were
 15 discussions beyond the e-mail? I think
 16 that's where he's getting confused.
 17 If you're asking if the e-mails
 18 occurred around the time that the e-mails
 19 were sent, I will stipulate to that.
 20 If you're asking him if they
 21 occurred at the same time of some
 22 discussion, like you and I are discussing
 23 outside of e-mail, then I think he's
 24 confused and I'm confused about what you're
 25 asking him.

1 TIM SULLIVAN
 2 BY MR. SOLOMON:
 3 Q. Yeah, I think I'm interested in
 4 knowing, did you write this e-mail around the
 5 same time as what you're describing happened?
 6 So you're referring to -- you talk
 7 about discussions with someone named Bob
 8 Straka.
 9 Did you write this e-mail around the
 10 time you were having those discussions?
 11 A. I would say it appears to be because
 12 in one of the messages I say "I'm on with Bob
 13 now" as we're having an e-mail.
 14 Q. Okay.
 15 A. So it appears to be, yes.
 16 Q. And does CX2467 appear to be a true
 17 and accurate representation of this e-mail
 18 chain?
 19 A. Yes.
 20 Q. Okay. And was this document,
 21 CX2467, kept in the ordinary course of Schein's
 22 business?
 23 A. Yes.
 24 Q. Okay. So turning to Mr. Cavaretta's
 25 e-mail, I'd like to focus on Cavaretta's e-mail

1 TIM SULLIVAN
 2 to Mr. Hinsch and someone named Marguerite
 3 Walsh on June 16th, 2014 at 9:59 a m.
 4 Do you see that?
 5 A. I do.
 6 Q. He writes -- he's talking about the
 7 dental co-op. And he says, "It is a long story
 8 but this Co-Op started out very small in Utah
 9 about 7 years ago and have wanted to expand to
 10 other regions. We have declined to do this as
 11 HSD."
 12 Do you see that?
 13 A. I do.
 14 Q. So Mr. Cavaretta is stating that the
 15 Dental Co-Op of Utah wanted to expand to other
 16 regions, is that right?
 17 MR. McDONALD: Object to the form.
 18 The document speaks for itself.
 19 THE WITNESS: That's what it states.
 20 BY MR. SOLOMON:
 21 Q. He says that HSD has declined to
 22 support this expansion, correct?
 23 MR. McDONALD: Object to the form.
 24 The document speaks for itself.
 25 THE WITNESS: That's what he's

1 TIM SULLIVAN
 2 stated.
 3 BY MR. SOLOMON:
 4 Q. Do you know whether the Dental Co-Op
 5 of Utah was a price-only buying group?
 6 MR. McDONALD: Object to the form,
 7 lack of foundation.
 8 THE WITNESS: I'm not familiar.
 9 BY MR. SOLOMON:
 10 Q. You don't know one way or the other?
 11 A. I'm not familiar.
 12 Q. Do you know why Mr. Cavaretta was
 13 saying that HSD had declined to support the
 14 Dental Co-Op of Utah's expansion?
 15 A. I don't recall the details at that
 16 time right now.
 17 Q. Okay. Mr. Hinsch in the next e-mail
 18 responds, "I think this is something that Tim
 19 should talk with Bob Straka about."
 20 Who is Bob Straka?
 21 A. He was the -- I don't know what his
 22 exact title was, maybe GM. He was responsible
 23 for the Oral-B relationship in the U.S. market.
 24 Q. And what is Oral-B?
 25 A. A supplier partner of ours.

1 TIM SULLIVAN
 2 Q. Does Oral-B sell products directly
 3 to customers?
 4 A. No, they sold through distributors.
 5 Well, what time frame is this?
 6 No, I believe at this time we were
 7 partners of theirs at one point. They did
 8 eliminate their dealer partners and sold direct
 9 for a short period of time, couple of years.
 10 And then they came back through the dealer
 11 market with a limited number of dealers, from
 12 my understanding.
 13 And I believe it's during this time,
 14 and that's why I was reaching out to him, I was
 15 wondering why they were going back to a direct
 16 approach in this case versus working through
 17 us.
 18 Q. So Oral-B was selling products to
 19 the Dental Co-Op of Utah, is that right?
 20 MR. McDONALD: Object to the form.
 21 THE WITNESS: That's -- that's my
 22 understanding, yes.
 23 BY MR. SOLOMON:
 24 Q. The Dental Co-Op of Utah was already
 25 partnered with Schein, correct?

<p style="text-align: right;">Page 258</p> <p>1 TIM SULLIVAN</p> <p>2 A. Correct, at this time, yes.</p> <p>3 Q. And you tell Mr. Hinsch and</p> <p>4 Mr. Cavaretta, "I'll send him a message and</p> <p>5 discuss with him."</p> <p>6 Do you see that?</p> <p>7 A. I do.</p> <p>8 Q. So you spoke with Mr. Straka about</p> <p>9 this?</p> <p>10 A. Correct.</p> <p>11 Q. And if you turn to the next page,</p> <p>12 the first page, you're talking to Mr. Cavaretta</p> <p>13 about what you're going to speak with</p> <p>14 Mr. Straka about.</p> <p>15 And you ask him, "Is it more than</p> <p>16 they are simply supporting a buying group?"</p> <p>17 Do you see that?</p> <p>18 A. I do.</p> <p>19 Q. So you contacted Mr. Straka to ask</p> <p>20 why Oral-B was supporting a buying group?</p> <p>21 MR. RACOWSKI: Object to the form.</p> <p>22 THE WITNESS: No. My discussion</p> <p>23 with Mr. Straka was they can support and</p> <p>24 decide -- whatever go-to market strategy</p> <p>25 they want, it's their decision to make.</p>	<p style="text-align: right;">Page 259</p> <p>1 TIM SULLIVAN</p> <p>2 They had decided to come back through</p> <p>3 dealers versus selling to the direct end</p> <p>4 user.</p> <p>5 So here's an example that now</p> <p>6 they're going to sell to the direct end</p> <p>7 user. They can do that if they choose to.</p> <p>8 They can do whatever they want.</p> <p>9 But for us to find out via a trade</p> <p>10 show that that's what they were doing, that</p> <p>11 was very poor communication.</p> <p>12 BY MR. SOLOMON:</p> <p>13 Q. But you're saying here that you want</p> <p>14 to know why they're supporting a buying group?</p> <p>15 A. I was asking Joe what the -- I</p> <p>16 wanted clarity on the issue before I spoke to</p> <p>17 Bob.</p> <p>18 Q. Why did it matter whether Oral-B was</p> <p>19 working with a buying group?</p> <p>20 MR. McDONALD: Object to the form,</p> <p>21 asked and answered.</p> <p>22 THE WITNESS: I just stated, if</p> <p>23 they're going to work through dealers, then</p> <p>24 work through dealers. Through us, we would</p> <p>25 get the -- we would work with them with</p>
<p style="text-align: right;">Page 260</p> <p>1 TIM SULLIVAN</p> <p>2 this -- with the Dental Co-Op of Utah.</p> <p>3 BY MR. SOLOMON:</p> <p>4 Q. You don't say that in this e-mail,</p> <p>5 though, right?</p> <p>6 MR. McDONALD: Object to the form.</p> <p>7 THE WITNESS: I'm asking for</p> <p>8 details. I didn't state anything about --</p> <p>9 I'm not making a statement. I'm asking</p> <p>10 questions.</p> <p>11 BY MR. SOLOMON:</p> <p>12 Q. And one of the questions is, "Is it</p> <p>13 more than they are simply supporting a buying</p> <p>14 group"?</p> <p>15 A. That is one of the questions, yes.</p> <p>16 Q. And Joe Cavaretta responds, "No,</p> <p>17 it's not"?</p> <p>18 A. That's how -- yes, that's his</p> <p>19 response.</p> <p>20 Q. So was it more than -- strike that.</p> <p>21 Was your conversation with</p> <p>22 Mr. Straka about more than it's -- that they</p> <p>23 were simply supporting a buying group?</p> <p>24 MR. McDONALD: Object to the form.</p> <p>25 THE WITNESS: I'll repeat what my</p>	<p style="text-align: right;">Page 261</p> <p>1 TIM SULLIVAN</p> <p>2 discussion with Mr. Straka was. They made</p> <p>3 a decision to come back through the dealer</p> <p>4 network. We supported that decision, of</p> <p>5 course. And so if so, then we'll work with</p> <p>6 them to get into as many customers as we</p> <p>7 possibly can.</p> <p>8 We also have an exclusive</p> <p>9 relationship with Colgate. We represent --</p> <p>10 you know, Butler is another toothbrush</p> <p>11 line.</p> <p>12 So we will -- but they were now</p> <p>13 working with one direct again. They can do</p> <p>14 that. We just wanted communication as to</p> <p>15 what their -- what is their strategy now</p> <p>16 with customers. Are they changing it?</p> <p>17 That's fine. We just need to understand</p> <p>18 what that is.</p> <p>19 BY MR. SOLOMON:</p> <p>20 Q. Did you ask Mr. Straka why he was</p> <p>21 selling to a buying group?</p> <p>22 A. Not --</p> <p>23 MR. McDONALD: Object to the form.</p> <p>24 THE WITNESS: Sorry.</p> <p>25 MR. McDONALD: Go ahead.</p>

1 TIM SULLIVAN
 2 THE WITNESS: Not why, but are, in
 3 fact, they changing their strategy going
 4 direct or they were going to work with
 5 dealers.
 6 BY MR. SOLOMON:
 7 Q. Couldn't Oral-B sell direct as well
 8 as through dealers?
 9 MR. McDONALD: Object to the form,
 10 asked and answered.
 11 THE WITNESS: Yes, they can.
 12 BY MR. SOLOMON:
 13 Q. But you're saying at this time they
 14 were not doing that?
 15 A. That's my understanding.
 16 Q. Okay. What did Mr. Straka tell you?
 17 A. To the best of my recollection, he
 18 apologized for the poor communication. That's
 19 not how we should have found out. But the fact
 20 that we had an exclusive with Colgate, they
 21 didn't -- they felt they didn't have an
 22 opportunity to get into this group in
 23 particular, so they decided to offer them a
 24 program directly.
 25 Q. And you thought that was

1 TIM SULLIVAN
 2 That was a very compelling part of their
 3 new structure.
 4 BY MR. SOLOMON:
 5 Q. So if a Smile Source member does not
 6 purchase a minimum quantity of products through
 7 Schein, their membership would be at risk; is
 8 that what you're saying?
 9 MR. McDONALD: Object to the form,
 10 mischaracterizes the evidence and his
 11 testimony.
 12 THE WITNESS: No, that's not what
 13 I'm saying. Because sponsors particular
 14 has -- we're one of three sponsors. So it
 15 didn't have to come through Schein. They
 16 could continue to work with Burkhart and
 17 they could continue to work with Darby.
 18 But if they didn't -- and it's up to Smile
 19 Source. I don't know exactly what they do
 20 if someone doesn't.
 21 In that document, they state that
 22 they would. It puts their membership at
 23 risk if they don't buy through their
 24 sponsored partners.
 25 ///

1 TIM SULLIVAN
 2 problematic?
 3 MR. McDONALD: Object to the form.
 4 THE WITNESS: No. As I told you,
 5 it's their decision to make.
 6 BY MR. SOLOMON:
 7 Q. Okay. You can put this document
 8 aside.
 9 Mr. Sullivan, we talked about Smile
 10 Source earlier today. And I think I asked you
 11 if Smile Source ever changed its model, and you
 12 said at some point in 2016.
 13 Do you recall that?
 14 A. I do.
 15 Q. How did Smile Source change its
 16 model in 2016?
 17 MR. McDONALD: Object to the form.
 18 THE WITNESS: Yeah, I don't have all
 19 the details, but one of them was -- to me
 20 one of the most compelling pieces was they
 21 stated that in the agreement that they have
 22 with their members, that they are required
 23 to purchase their dental supplies through
 24 their sponsor partners. And if they
 25 didn't, they put their membership at risk.

1 TIM SULLIVAN
 2 BY MR. SOLOMON:
 3 Q. The individual Smile Source member,
 4 their membership is at risk, is what you're
 5 stating?
 6 A. That's what I'm stating is my
 7 understanding of the new Smile Source
 8 agreement.
 9 Q. And that agreement has been in place
 10 since March of 2017?
 11 A. I believe it actually started prior
 12 to that, whenever -- around the time Trevor
 13 joined.
 14 Q. Okay. So how would a Smile Source
 15 member put their membership at risk? What do
 16 they need to do in order to stay as a member?
 17 How much do they need to purchase from Schein?
 18 MR. McDONALD: Object to the form,
 19 mischaracterizes his testimony.
 20 THE WITNESS: To clarify, it's not
 21 that they have to buy through Schein. We
 22 want them to, but they have two other
 23 partners -- my understanding is they have
 24 two other dealer partners also, Darby and
 25 Burkhart.

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1 TIM SULLIVAN
2 So my understanding, provided they
3 purchase 80 -- it's either 80 or 85 percent
4 of their supplies through the Smile
5 Source-approved dealers, their membership
6 is not at risk.
7 BY MR. SOLOMON:
8 Q. So the Smile Source-approved dealers
9 are Schein, Darby, and Burkhart, correct?
10 MR. McDONALD: Currently.
11 THE WITNESS: Currently, yes.
12 BY MR. SOLOMON:
13 Q. So your understanding is that
14 members have to purchase 80 to 85 percent of
15 their products through one of those three
16 distributors?
17 A. It doesn't have to be one of them.
18 It could be 30 percent from us, 30 percent from
19 Darby, 30 percent -- so it could -- as long as
20 combined, it's through their approved dealers.
21 Q. So a Smile Source member could
22 purchase 100 percent of their products through
23 Darby and nothing -- nothing through Schein, is
24 that correct?
25 A. That's correct.

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1 TIM SULLIVAN
2 Q. And they would not put their
3 membership at risk?
4 A. That's correct.
5 Q. And a Smile Source member could
6 purchase 50 percent of their products from
7 Burkhart and the other 50 from Darby, purchase
8 nothing from Schein and they still would not
9 put their membership at risk?
10 A. That's correct.
11 Q. A Smile Source member can purchase
12 nothing from Schein and not put their
13 membership at risk?
14 A. That's correct.
15 Q. So Smile Source members --
16 MR. McDONALD: Slow down, Ronnie.
17 BY MR. SOLOMON:
18 Q. Smile Source members do not make any
19 volume commitments to Schein specifically,
20 correct?
21 A. That is correct.
22 Q. When did you understand this change
23 specifically took place?
24 MR. McDONALD: Object to the form,
25 asked and answered.

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1 TIM SULLIVAN
2 THE WITNESS: Again, my belief is
3 around the time Trevor Mauer became either
4 president or CEO, whatever his actual title
5 is, within Smile Source.
6 BY MR. SOLOMON:
7 Q. So what would you call Smile Source
8 now? Would you still call it a buying group?
9 A. So they categorize themselves and so
10 even internally we refer to them as a franchise
11 DSO.
12 Q. They call themselves a franchise
13 DSO?
14 A. Correct.
15 Q. What does -- so Schein internally
16 also refers to them as a franchise DSO?
17 A. That's correct.
18 Q. Do you understand them to still be a
19 buying group?
20 A. By our definition, that would put
21 them to the far right, if you would, as far as
22 in the spectrum of buying groups. They do --
23 their members do comply with their membership
24 agreement.
25 So, yes, they provide enough value,

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1 TIM SULLIVAN
2 a lot of value, actually, to their members, and
3 therefore their members do, for the most part,
4 comply with their purchase agreement.
5 Q. So would you still call them a
6 buying group?
7 A. Again, we refer to them as a
8 franchise DSO, but you could intertwine them
9 with a full value buying group as well, yes.
10 Q. So the change that you're referring
11 to was just that Smile Source members commit to
12 purchasing 80 to 85 percent of their products
13 through one of the three distributors who Smile
14 Source has partnered with, right?
15 MR. McDONALD: Object to the form.
16 THE WITNESS: If you put "any" in
17 front of that, so "any one of the three,"
18 that would be an accurate statement, but
19 not -- they don't have to purchase through
20 one of the three.
21 BY MR. SOLOMON:
22 Q. Any other changes in Smile Source's
23 model that you're aware of?
24 MR. McDONALD: Object to the form,
25 lack of foundation.

1 TIM SULLIVAN
2 THE WITNESS: So my understanding is
3 they added more to their offering. They
4 have an agreement with certain labs.

5 Now, a member is not required to
6 move to the lab because that's a very
7 personal decision by dentists, but it's
8 actually a very good offering. My
9 understanding is many do actually switch to
10 the labs that they represent.

11 They have local forum meetings where
12 all the dentists in the Dallas area, as an
13 example, can get together once a month and
14 just talk amongst themselves and do some
15 best practices. So they bring other things
16 to the group that I don't believe existed
17 before.

18 BY MR. SOLOMON:

19 Q. Were -- strike that.
20 Was Smile Source offering
21 value-added services to its members before --
22 before it changed its model?

23 A. My understanding was the ones I just
24 described, no. And even prior, their website
25 looked pretty and the brochures looked nice,

1 TIM SULLIVAN
2 claimed to have a lot of these other things.
3 In reality, there was no meat on the bone, if
4 you would. They weren't -- it wasn't --
5 members weren't taking advantage of those
6 because there was no real value being created
7 in those.

8 Q. So there were some value-added
9 services, but you thought that there wasn't
10 meat on the bones of those value-added
11 services?

12 MR. McDONALD: Object to the form.

13 THE WITNESS: And Trevor himself,
14 that comes from them. They themselves
15 self-admitted that the rest of their story
16 was not understood by the members, and the
17 value that they were bringing or the rest
18 of the offering wasn't driving any
19 additional value.

20 BY MR. SOLOMON:

21 Q. Trevor -- do you know when Trevor
22 started working at Smile Source?

23 A. I believe it was sometime in 2016,
24 if I had to --

25 Q. So he wasn't working for Smile

1 TIM SULLIVAN
2 Source before then?

3 MR. McDONALD: Object to the form.

4 THE WITNESS: Again, if I have the
5 date right, that would be accurate.

6 BY MR. SOLOMON:

7 Q. Do you recall -- do you recall
8 meeting with Smile Source in or around
9 February of 2014?

10 A. Sounds accurate, yes.

11 Q. Where did you meet -- strike that.

12 Who did you meet with?

13 A. It would be easier --

14 MR. McDONALD: Hang on. Object to
15 the form.

16 Go ahead.

17 THE WITNESS: It would be easier if
18 you know the dates and the meetings. If I
19 can look at a document, I can -- it would
20 be easier to talk you through it to make
21 sure I don't misstate anything and have to
22 clarify it later.

23 The dates sound right, but it could
24 have been '13, could have been '15. It's
25 four years ago, three years ago.

1 TIM SULLIVAN

2 BY MR. SOLOMON:

3 Q. Okay.

4 A. I'd prefer to work off --

5 Q. Okay.

6 A. -- documents if you know
7 specifically who I met with.

8 Q. And when you met with them in
9 February 2014, that was before they had changed
10 their model, correct?

11 A. Assuming that is the date --

12 MR. McDONALD: Hang on. Object to
13 the form.

14 Go ahead.

15 THE WITNESS: Back to what I said
16 before, assuming we have the dates correct,
17 I believe that to be the case, yes.

18 BY MR. SOLOMON:

19 Q. Okay. So they were still a buying
20 group at that point?

21 MR. McDONALD: Object to the form.

22 THE WITNESS: Again, they were
23 claiming to be more than that.

24 BY MR. SOLOMON:

25 Q. Okay. Do you recall how many times

1 TIM SULLIVAN
 2 you met with Smile Source in that period of
 3 February 2014?
 4 A. In that one month?
 5 Q. Correct.
 6 A. No. I would assume one, but I
 7 don't -- was there -- was there two?
 8 Q. I don't know. I'm asking you.
 9 A. I don't know. I'd have to look at
 10 the documents that support that.
 11 Q. Okay.
 12 A. I don't remember two meetings in
 13 February 2014.
 14 Q. You only remember one?
 15 A. That's all I can recall without
 16 looking at anything more.
 17 Q. Okay. Do you recall that the
 18 February 2014 meeting was at the request of
 19 Smile Source?
 20 A. This would be so much easier if we
 21 just pull out the paperwork. I believe that to
 22 be true.
 23 Q. Okay. And do you recall that Smile
 24 Source asked Schein to prepare a presentation?
 25 MR. McDONALD: Object to the form.

1 TIM SULLIVAN
 2 Q. Did you see the meeting as a way to
 3 ask Smile Source questions about its model?
 4 MR. McDONALD: Object to the form.
 5 THE WITNESS: Remember, prior to
 6 this they terminated us. There's a
 7 possibility to do business again. So we
 8 were showing them how and why we would be
 9 good partners.
 10 BY MR. SOLOMON:
 11 Q. Were you meeting with Smile Source
 12 to learn more about whether they were still a
 13 buying group?
 14 MR. McDONALD: Object to the form.
 15 THE WITNESS: To learn more if our
 16 combined strategies could create alignment
 17 and mutual benefits for Smile Source, for
 18 their members, our customers and us.
 19 BY MR. SOLOMON:
 20 Q. Did you want to know whether Schein
 21 was still focused on providing discounts to its
 22 members?
 23 MR. McDONALD: Object to the form.
 24 MR. SOLOMON: Strike that.
 25 MR. McDONALD: Your question makes

1 TIM SULLIVAN
 2 THE WITNESS: I don't recall the
 3 order of things or where the request came
 4 in.
 5 BY MR. SOLOMON:
 6 Q. Do you recall making a presentation
 7 to Smile Source at a meeting with them?
 8 A. Yes.
 9 Q. What do you recall about the
 10 presentation?
 11 A. Do you have it? Can we look at it?
 12 Q. Well, I'd just like to make sure
 13 that we're talking about the same thing.
 14 A. You want to test me first and then
 15 show me the -- I don't -- I don't --
 16 MR. McDONALD: If you recall, Tim,
 17 tell him. He does have it, as you know he
 18 does, and he knows he does, but play his
 19 game if he wants to waste his time.
 20 THE WITNESS: I don't recall the
 21 specifics.
 22 BY MR. SOLOMON:
 23 Q. Why did you meet with Smile Source
 24 in February of 2014?
 25 A. I -- I don't recall.

1 TIM SULLIVAN
 2 no sense.
 3 BY MR. SOLOMON:
 4 Q. You wanted to know -- strike that.
 5 Did you want to know whether Smile
 6 Source was still focused on providing discounts
 7 to its members?
 8 MR. McDONALD: Object to the form.
 9 THE WITNESS: I wanted to understand
 10 their total value proposition. And where
 11 price was a component of that, yes, we
 12 needed to understand that detail, also.
 13 BY MR. SOLOMON:
 14 Q. You wanted to know whether they were
 15 still a price-only buying group as they were
 16 pre-2012?
 17 MR. McDONALD: Object to the form.
 18 THE WITNESS: I just stated what our
 19 goal was, which is to understand what their
 20 total value proposition was. And, yes,
 21 price is a component of value, and are we
 22 in alignment in all of that.
 23 BY MR. SOLOMON:
 24 Q. Okay. Mr. Sullivan, I'm handing you
 25 a document marked CX2122.

1 TIM SULLIVAN
 2 (Exhibit CX2122 was marked for
 3 identification.)
 4 (Witness viewed said document.)
 5 MR. McDONALD: So, Ronnie, while
 6 he's looking at this, his e-mail, which is
 7 the third one from the top, has
 8 highlighting in it, which I don't think is
 9 on the original document.
 10 It's highlighted. Anyone care to
 11 join me it's highlighted, at least on my
 12 copy? And it's not on the original
 13 document.
 14 MR. SOLOMON: Yeah, I did not add
 15 that. So I'm fine stipulating that as far
 16 as I know, that was not in the original --
 17 MR. McDONALD: Okay.
 18 MR. SOLOMON: -- e-mail.
 19 MR. McDONALD: Thank you.
 20 THE WITNESS: Okay.
 21 BY MR. SOLOMON:
 22 Q. Mr. Sullivan, what is CX2112 [sic]?
 23 A. It's an e-mail that started with
 24 Andy Goldsmith, who is the chief dental officer
 25 and VP of vendor relations for Smile Source, to

1 TIM SULLIVAN
 2 me and then a series of internal exchanges on
 3 it.
 4 Q. You drafted part of CX2112 [sic],
 5 correct?
 6 A. Correct.
 7 Q. And did you do so as part of your
 8 job at Schein?
 9 A. Yes.
 10 Q. Do you have -- did you have personal
 11 knowledge of what you wrote in CX2112 [sic]?
 12 A. Yes.
 13 Q. And did you draft CX2112 [sic]
 14 around the time you're having these discussions
 15 with Mr. Muller about meeting with Smile
 16 Source?
 17 A. Yes.
 18 Q. And does CX2122 appear to be a true
 19 and accurate representation of this e-mail
 20 correspondence?
 21 A. Yes.
 22 Q. And Schein kept it in the usual
 23 course -- ordinary course of its business,
 24 correct?
 25 A. Correct.

1 TIM SULLIVAN
 2 Q. So this e-mail starts with
 3 Mr. Goldsmith e-mailing you on October 28th,
 4 2013 at 4:55 p m. And he tells you that Smile
 5 Source has been growing, that Smile Source
 6 wants to renew its partnership, and that its
 7 current dealer cannot meet its expansion.
 8 Do you see that?
 9 A. I do.
 10 Q. And do you know whether
 11 Mr. Goldsmith is referring to Burkhart when he
 12 talks about its current dealer's range not
 13 being able to meet Smile Source's expansion?
 14 MR. McDONALD: Object to the form.
 15 THE WITNESS: I wouldn't know for
 16 sure. I would assume so, since Burkhart
 17 was their -- one of their two partners at
 18 that time.
 19 BY MR. SOLOMON:
 20 Q. Burkhart is a full-service
 21 distributor, correct?
 22 A. Yes.
 23 Q. Burkhart is a regional full-service
 24 distributor, correct?
 25 A. Correct.

1 TIM SULLIVAN
 2 Q. They do not have a national presence
 3 in the United States, right?
 4 A. That's right.
 5 Q. Where is -- where are Burkhart's
 6 operations mostly focused, if you know?
 7 A. The Pacific Northwest.
 8 Q. You respond on October 28th, 2013 at
 9 5:00 p.m. You write, "Oy...I think I need to
 10 take the meeting."
 11 Is it fair to say you were not
 12 excited to re-engage with Smile Source here?
 13 MR. McDONALD: Object to the form.
 14 THE WITNESS: It was a -- they
 15 terminated the agreement. When we had a
 16 partnership with them, there was conflict
 17 throughout.
 18 And so it was one of those, you
 19 know, should we take the meeting? Are we
 20 interested? So it wouldn't be my decision
 21 alone, but I think I need to take the
 22 meeting. What does everyone think?
 23 BY MR. SOLOMON:
 24 Q. Why were -- strike that.
 25 Were you hesitant?

<p style="text-align: right;">Page 282</p> <p>1 TIM SULLIVAN</p> <p>2 A. They terminated us. Yes, I was</p> <p>3 hesitant.</p> <p>4 Q. Why does the fact that they</p> <p>5 terminated Schein make you hesitant to meet</p> <p>6 with a customer prospect?</p> <p>7 A. I didn't know if anything changed.</p> <p>8 Q. In terms of what?</p> <p>9 A. Our -- whatever we had -- whatever</p> <p>10 conflicts we had prior, I didn't think at the</p> <p>11 time anything changed. That's why I'm saying,</p> <p>12 "I think I need to take the meeting." I'm</p> <p>13 saying I need to take the meeting. Hesitant,</p> <p>14 but I think I need to take it.</p> <p>15 Q. You were concerned that some of the</p> <p>16 conflicts that were present in the pre-2012</p> <p>17 relationship were still there?</p> <p>18 A. Both internally with us, which is</p> <p>19 ourselves and special markets, as well as I</p> <p>20 didn't know what would have changed within --</p> <p>21 it's the same people at Smile Source still.</p> <p>22 Q. Were you concerned that Smile Source</p> <p>23 was still a price-only buying group at this</p> <p>24 point?</p> <p>25 MR. McDONALD: Object to the form.</p>	<p style="text-align: right;">Page 283</p> <p>1 TIM SULLIVAN</p> <p>2 THE WITNESS: I didn't know. That's</p> <p>3 why I said I need to take the meeting.</p> <p>4 BY MR. SOLOMON:</p> <p>5 Q. Was that one of the things you</p> <p>6 wanted to find out?</p> <p>7 A. Yes.</p> <p>8 Q. Why?</p> <p>9 A. It's everything I've said to date on</p> <p>10 our position, my position on buying groups.</p> <p>11 Price is a component. That's what I said at</p> <p>12 the very top line. I said, again, look at this</p> <p>13 in entirety. I want to see if we can convert</p> <p>14 them from less of the focus on price to overall</p> <p>15 value proposition.</p> <p>16 Q. And you -- so focusing on that</p> <p>17 statement, the last-in-time e-mail, you write</p> <p>18 "Doubtful," right?</p> <p>19 A. I did.</p> <p>20 Q. So you weren't optimistic about</p> <p>21 that -- the prospect of converting them away</p> <p>22 from supply discounts, right?</p> <p>23 MR. McDONALD: Object to the form,</p> <p>24 mischaracterizes his testimony.</p> <p>25 THE WITNESS: I was -- didn't know</p>
<p style="text-align: right;">Page 284</p> <p>1 TIM SULLIVAN</p> <p>2 what would have changed. That's why I want</p> <p>3 to take the meeting, but didn't know,</p> <p>4 understand. I want to understand better.</p> <p>5 I was doubtful that anything changed</p> <p>6 relative to where they saw price as a</p> <p>7 component of value as compared to where we</p> <p>8 see price as a component of value.</p> <p>9 BY MR. SOLOMON:</p> <p>10 Q. Were you hoping that Smile Source</p> <p>11 would be less focused on discounts and price?</p> <p>12 MR. McDONALD: Object to the form.</p> <p>13 THE WITNESS: Can't say I was</p> <p>14 hoping. I wanted to understand it.</p> <p>15 BY MR. SOLOMON:</p> <p>16 Q. What other information were you</p> <p>17 hoping to learn from Smile Source by taking a</p> <p>18 meeting?</p> <p>19 A. As I just stated, what else -- is</p> <p>20 there going to be anything different at this</p> <p>21 stage of their development from when it was</p> <p>22 when they terminated us in 2012?</p> <p>23 MR. SOLOMON: We've again going for,</p> <p>24 I guess, like almost another hour. I would</p> <p>25 like to take a bathroom break.</p>	<p style="text-align: right;">Page 285</p> <p>1 TIM SULLIVAN</p> <p>2 Is that okay with everyone?</p> <p>3 MR. McDONALD: Absolutely.</p> <p>4 MR. SOLOMON: Okay.</p> <p>5 THE VIDEOGRAPHER: The time is 2:21</p> <p>6 p.m. We're off the record.</p> <p>7 (Whereupon, a recess was had</p> <p>8 from 2:21 p m. to 2:38 p m.)</p> <p>9 THE VIDEOGRAPHER: The time is</p> <p>10 2:38 p m. We are back on the record.</p> <p>11 BY MR. SOLOMON:</p> <p>12 Q. Mr. Sullivan, welcome back.</p> <p>13 Prior to the break, we were talking</p> <p>14 about the February 2014 meeting with Smile</p> <p>15 Source.</p> <p>16 Do you recall that?</p> <p>17 A. Yes.</p> <p>18 Q. And we discussed that you were</p> <p>19 trying to learn more information about Smile</p> <p>20 Source through this meeting, correct?</p> <p>21 A. That was --</p> <p>22 MR. McDONALD: Object to the form,</p> <p>23 mischaracterizes his testimony.</p> <p>24 THE WITNESS: That was one of the</p> <p>25 things we were looking to learn, yes.</p>

1 TIM SULLIVAN
 2 BY MR. SOLOMON:
 3 Q. Okay. After you met with Smile
 4 Source in February of 2014, what did you learn?
 5 A. Again, I think there's some
 6 documents that would support that because I
 7 think I sent a summary of what we learned of
 8 the meeting. It might help to look at that.
 9 But top of my head, it was a -- best
 10 recollection, it was a good meeting. They gave
 11 a good pitch with understanding what their
 12 total value proposition to their membership was
 13 and looked interesting again.
 14 Q. Smile Source did?
 15 A. Yes.
 16 Q. In what respect?
 17 A. Again, if you have it, I think you
 18 see a summary that I put -- I think there's a
 19 summary of the meeting somewhere that talked
 20 about it.
 21 I don't know specifically. It
 22 was -- he was impressed -- Andy Goldsmith was
 23 impressed when we met with them talking about
 24 their plans.
 25 Q. Did you think that Smile Source was

1 TIM SULLIVAN
 2 more within their group. But, in essence, yes,
 3 still -- still today in that buying group
 4 category but less of their emphasis on the
 5 total value around price and price only, but
 6 that they were offering more to their members.
 7 Q. So would you consider them to have
 8 still been a price-only buying group?
 9 MR. McDONALD: Object to the form.
 10 THE WITNESS: I -- I'd -- again,
 11 they -- they portrayed themselves as more
 12 than that. Their ability to actually
 13 execute that I still questioned.
 14 BY MR. SOLOMON:
 15 Q. Why?
 16 A. Because the players, for the most
 17 part, hadn't changed.
 18 Q. Sorry. What do you mean by that?
 19 A. I believe there was a gentleman
 20 named Todd Nickerson, who was involved early
 21 on. I believe he was still here at this time.
 22 I'm not sure exactly what Andy's role was early
 23 on. He was still leading it. Good guys, good
 24 intentions, poor on execution.
 25 Q. So at this point in time in

1 TIM SULLIVAN
 2 still a buying group?
 3 A. It didn't change my opinion, if I
 4 recall correctly at that time, about their
 5 ability to actually execute. Again, in the
 6 past they had a broader offering where they
 7 would actually execute it. And we were -- we
 8 were happy to be partners with them back then.
 9 There were some conflicts; it was mainly
 10 internal conflicts. So getting terminated by
 11 them was not good news for us.
 12 Didn't want to necessarily go
 13 through all the effort to re-engage, re-sign
 14 up, relaunch, re-communicate, explain to the
 15 team what's different now without truly knowing
 16 and believing that, okay, it actually is
 17 different.
 18 So I was impressed with the meeting,
 19 wanted to explore it further, if I recall
 20 correctly, before we went through all that
 21 effort.
 22 Q. And did you walk away from the
 23 meeting with an understanding that Smile Source
 24 was still a buying group?
 25 A. They were looking to expand to offer

1 TIM SULLIVAN
 2 February of 2014, Schein -- strike that.
 3 At this point in time in February of
 4 2014, Smile Source had not changed its model?
 5 MR. McDONALD: Object to the form.
 6 THE WITNESS: I think I stated
 7 before they portrayed to have changed and
 8 offered more value to their members. And
 9 clearly, in fact, they've gone from,
 10 whatever, 20 or 40 customers at that time
 11 to now having over 130 locations. It
 12 seemed to be more compelling. And if there
 13 are more members, they must be seeing more
 14 value but wanted to understand that better.
 15 BY MR. SOLOMON:
 16 Q. But you talked about Smile Source
 17 having changed its model at some point in 2016
 18 when Trevor Mauer took over, is that right?
 19 A. Right.
 20 Q. This was before then?
 21 A. Yes, 2014 is before 2016, yes.
 22 Q. Do you recall who you met with
 23 during the February 2014 meeting?
 24 A. I believe it was Andrew. I'm not
 25 sure who else joined him.

1 TIM SULLIVAN
 2 Q. Andrew Goldsmith?
 3 A. I believe so.
 4 Q. Do you have any recollection if
 5 there was anyone else from Smile Source there?
 6 A. I don't recall if Todd was there or
 7 not. I believe there was a dentist member in
 8 the meeting. I'm not sure if -- I had a couple
 9 of meetings with them. I don't know if that's
 10 when he was present.
 11 If you have a copy of the meeting,
 12 it might -- I don't know if there is or not.
 13 It might be in there.
 14 Q. Was anyone else from Smile Source --
 15 strike that.
 16 Was anyone else from Schein present?
 17 A. I believe John Chatham was with me
 18 for sure. I'm not sure who else.
 19 (Exhibit CX2470 was marked for
 20 identification.)
 21 BY MR. SOLOMON:
 22 Q. I'd like to hand you, Mr. Sullivan,
 23 a document that's been pre-marked as CX2470.
 24 Please take a look at this and let me know when
 25 you've had a chance to review it.

1 TIM SULLIVAN
 2 Q. And is CX2470 a document that Schein
 3 kept in the ordinary course of its business?
 4 A. Yes.
 5 Q. So, Mr. Sullivan, what is this
 6 e-mail exchange about?
 7 A. Well, it started out with an e-mail
 8 from Hal Muller forwarding on a note sent to
 9 doctors about the Kois group or Kois Center.
 10 And then from there it was an exchange between
 11 the three of us on the value of putting
 12 together a program for them.
 13 Q. For Kois?
 14 A. That's how it started. And then
 15 somewhere along the way Jimmy shifted to a
 16 question around -- or Hal started a question --
 17 someone started a question about -- or JB.
 18 Jimmy started a question about Smile Source.
 19 So it shifted about halfway through about Smile
 20 Source.
 21 Q. So I would like to start on
 22 CX2470-003.
 23 Your e-mail to Mr. Muller on
 24 September 8th, 2014 at 7:17 p.m., this part
 25 relates to Kois, am I right?

1 TIM SULLIVAN
 2 A. Put this one away?
 3 Q. Yes, please.
 4 (Witness viewed said document.)
 5 THE WITNESS: Okay.
 6 BY MR. SOLOMON:
 7 Q. Mr. Sullivan, what is CX2470?
 8 A. An e-mail exchange primarily
 9 between -- internally between Hal, Jimmy, and
 10 I.
 11 Q. And you drafted part of this e-mail
 12 chain, correct?
 13 A. Correct.
 14 Q. And did you do so as part of your
 15 job at Schein?
 16 A. Yes.
 17 Q. And you have personal knowledge of
 18 what you -- strike that.
 19 You had personal knowledge of what
 20 you wrote in CX2470?
 21 A. Yes.
 22 Q. And do you understand CX2470 to be a
 23 true and accurate representation of this e-mail
 24 correspondence?
 25 A. Yes.

1 TIM SULLIVAN
 2 A. Yes.
 3 Q. And Kois is a buying group?
 4 A. At the time I don't believe so. I
 5 think Kois is more of a study club of sorts.
 6 They offer consulting services. He would put
 7 on seminars in education around how to do
 8 dentistry a certain way.
 9 Q. Were -- strike that.
 10 Was Kois seeking discounts on
 11 supplies at this point?
 12 MR. McDONALD: Object to the form,
 13 lack of foundation.
 14 THE WITNESS: So John Kois himself
 15 refers to his group as a tribe. And it
 16 looks like he is starting to test the
 17 waters, I guess for better terminology --
 18 for lack of better terminology, on whether
 19 or not they could form, as part of their
 20 tribe, at a group discount of some sort,
 21 yes.
 22 BY MR. SOLOMON:
 23 Q. So Kois was seeking volume discounts
 24 on dental products?
 25 MR. McDONALD: Object to the form.

1 TIM SULLIVAN
 2 THE WITNESS: Well, again, this is
 3 not an e-mail to us. This is something he
 4 sent out to him members. Some of their
 5 members are to customers of ours. He sent
 6 it on to us as an FYI.
 7 So at this point I don't believe
 8 they've reached out to us. This is just --
 9 it looks like they're asking their members
 10 "what would you think if."
 11 BY MR. SOLOMON:
 12 Q. Do you understand that Kois today is
 13 a buying group?
 14 MR. McDONALD: Object to the form,
 15 lack of foundation.
 16 THE WITNESS: I don't know that they
 17 are.
 18 BY MR. SOLOMON:
 19 Q. Do you know whether Kois has
 20 contracted for volume discounts on dental
 21 products with a distributor?
 22 MR. McDONALD: Object to the form,
 23 lack of foundation.
 24 THE WITNESS: Not that I'm aware of.
 25 ///

1 TIM SULLIVAN
 2 discounts on dental products?
 3 MR. McDONALD: Object to the form.
 4 THE WITNESS: Again, based on what I
 5 read and what they forwarded on, there was
 6 nothing more that they were looking for.
 7 Again, they hadn't sent us anything. From
 8 my quick read was the only thing they'd be
 9 looking for was a volume discount.
 10 BY MR. SOLOMON:
 11 Q. So they were a price-only buying
 12 group?
 13 MR. McDONALD: Object to the form,
 14 lack of foundation.
 15 THE WITNESS: I'm saying they were
 16 not at this point, but it looked like they
 17 were exploring that option.
 18 BY MR. SOLOMON:
 19 Q. They were exploring the option to
 20 become a price-only buying group?
 21 MR. McDONALD: Object to the form,
 22 lack of foundation.
 23 THE WITNESS: Not with us. At this
 24 point, I'm not aware of any direct
 25 communication from Kois to us. This is a

1 TIM SULLIVAN
 2 BY MR. SOLOMON:
 3 Q. Have they ever done that?
 4 MR. McDONALD: Object to the form,
 5 lack of foundation.
 6 THE WITNESS: Not that I'm aware of.
 7 BY MR. SOLOMON:
 8 Q. What else do you know about Kois
 9 other than it's a study club?
 10 A. Nothing more than I just described
 11 earlier.
 12 Q. So, again, focusing on your e-mail
 13 to Mr. Muller at 7:17 p.m., you tell him, "I
 14 still believe this is slippery slope and have
 15 yet to see a successful one in dental and don't
 16 take -- don't plan to take the lead role.
 17 Watching closely."
 18 Do you see where I'm referring to?
 19 A. I do.
 20 Q. Are you referring to Kois as a
 21 slippery slope here?
 22 A. In this instance, I'm referring to
 23 Kois.
 24 Q. And that's because Kois was
 25 interested in starting a program for volume

1 TIM SULLIVAN
 2 copy of an e-mail that they sent out to
 3 their members, to their tribe.
 4 BY MR. SOLOMON:
 5 Q. And you're stating that you didn't
 6 want to take the lead role in working with a
 7 price-only buying group, is that right?
 8 MR. McDONALD: Object to the form,
 9 lack of foundation -- or, sorry, object to
 10 the form, mischaracterizes the document and
 11 his testimony.
 12 THE WITNESS: That is what I wrote.
 13 BY MR. SOLOMON:
 14 Q. Is that what you meant?
 15 A. Is what --
 16 Q. That you didn't want Schein to take
 17 the lead role in working with a price-only
 18 buying group?
 19 A. As I've said in the past, we have in
 20 some cases; we have not in others.
 21 In this case did not want to take
 22 the lead role in putting something together
 23 with Kois if it was going to be a price-only,
 24 but we don't -- we know nothing of them at this
 25 point.

1 TIM SULLIVAN
 2 Q. What did you mean by "take the lead
 3 role"?"
 4 A. We weren't going to proactively
 5 reach out to them.
 6 Q. Did you have any understanding that
 7 your competitors were not working with Kois at
 8 this point?
 9 MR. McDONALD: Object to the form.
 10 THE WITNESS: I had no idea if they
 11 were or not.
 12 BY MR. SOLOMON:
 13 Q. Okay. You also write, "Watching
 14 closely."
 15 Are you referring to watching the
 16 competition and whether they were willing to
 17 engage with Kois?
 18 A. No.
 19 Q. What were you referring to?
 20 A. Kois.
 21 Q. So you're just watching Kois
 22 closely?
 23 A. Correct.
 24 Q. Why?
 25 A. They had a large membership group

1 TIM SULLIVAN
 2 with their 5,000 members. Many of those we
 3 assumed would be customers -- customers of ours
 4 already.
 5 Q. So how would -- strike that.
 6 What did you hope to gain from
 7 watching them closely?
 8 A. To see if they would approach us for
 9 this opportunity.
 10 Q. As a price-only buying group?
 11 MR. McDONALD: Object to the form,
 12 mischaracterizes his testimony.
 13 THE WITNESS: I don't know how they
 14 would approach us.
 15 BY MR. SOLOMON:
 16 Q. Would Schein be interested in
 17 contracting with Kois if they had approached
 18 Schein at this point in time as a price-only
 19 buying group?
 20 MR. McDONALD: Object to the form,
 21 lack of foundation, calls for speculation.
 22 THE WITNESS: Yeah, I'd be
 23 speculating. I'd need to understand a lot
 24 more about them.
 25 ///

1 TIM SULLIVAN
 2 BY MR. SOLOMON:
 3 Q. Okay.
 4 A. But, yes, we would consider working
 5 with them.
 6 Q. Even though you a moment ago in this
 7 e-mail mentioned that Kois was a slippery slope
 8 and you didn't want to take the lead role?
 9 A. Meaning, again, as I defined much
 10 earlier, we were not going to proactively reach
 11 out to them.
 12 Q. But you also called them a slippery
 13 slope.
 14 Was that referring to proactively
 15 reaching out to them or something else?
 16 A. I'd put it in the same category,
 17 same bucket. Again, maybe a poor choice of
 18 words, but yes.
 19 Q. Okay. Turning to Page 2, it looks
 20 like the conversation shifts to Smile Source.
 21 And Mr. Breslawski asks you on September 9th,
 22 2014 at 3:24 p.m., "Tim.. how do you view Smile
 23 Source?" And you respond on September 9th,
 24 2014 at 6:34 p.m.
 25 Am I correct that this is following

1 TIM SULLIVAN
 2 the February 2014 meeting that you had with
 3 Smile Source?
 4 A. Yes.
 5 Q. This is approximately seven or so
 6 months after the February 2014 meeting, right?
 7 A. Yes.
 8 Q. And you tell Mr. Breslawski, "Yes,
 9 they would love to get back with us for 20% off
 10 catalog pricing to all their members with no
 11 commitments to purchase from us, plus a
 12 kickback to them. Not interested."
 13 Do you see where I'm reading?
 14 A. I do.
 15 Q. You're stating that you were not
 16 interested in working with Smile Source in this
 17 e-mail, correct?
 18 MR. McDONALD: Object to the form,
 19 it mischaracterizes the document.
 20 I mean, Ronnie, you skipped the
 21 sentence that said, we met with them
 22 earlier, we made a great proposal, and they
 23 turned us down.
 24 Do you want to just ignore that?
 25 It's outrageous.

1 TIM SULLIVAN
 2 THE WITNESS: So if you read the
 3 message in the entirety, I think it's a
 4 much better way to look at it. We had a
 5 great meeting with them. We think we made
 6 a great proposal. They turned us down.
 7 We went -- I went on to say what was
 8 included in our proposal. It wasn't just
 9 limited to that, but those are the things I
 10 highlighted. They wanted more than what we
 11 proposed.
 12 BY MR. SOLOMON:
 13 Q. But you say you're not interested?
 14 A. Correct.
 15 Q. Why did you say you're not
 16 interested if you had just met with them a few
 17 months earlier?
 18 MR. McDONALD: Object to the form.
 19 THE WITNESS: Well, again, they
 20 turned us down. We gave them the proposal.
 21 They turned it down. So apparently our
 22 proposal wasn't good enough.
 23 So not interested, if we had to go
 24 further than that, not interested, because
 25 part of it was they could not -- they have

1 TIM SULLIVAN
 2 MR. McDONALD: Object to the form.
 3 THE WITNESS: I think it's like --
 4 MR. McDONALD: You should show him
 5 the document if you've got it.
 6 THE WITNESS: I think it's like a
 7 ten-page PowerPoint presentation. I'll be
 8 happy to go through it with you.
 9 BY MR. SOLOMON:
 10 Q. Can you tell me what Schein's
 11 proposal was without a document in front of
 12 you?
 13 A. It would be really challenging
 14 because it's all encompassing. That's --
 15 again, we have a broad value proposition. So
 16 it went through each aspect of our value. I
 17 couldn't do it without -- it would be much
 18 easier with it in front of me.
 19 Q. So you're saying that when you say
 20 "not interested," you're not saying that you
 21 weren't interested in working with
 22 Smile Source; you're referring to something
 23 else?
 24 MR. McDONALD: Object to the form,
 25 mischaracterizes his testimony.

1 TIM SULLIVAN
 2 no commitments to purchases, plus they
 3 wanted a kickback to the group.
 4 BY MR. SOLOMON:
 5 Q. Is that something that Smile Source
 6 told you at the February 2014 meeting?
 7 A. Yes.
 8 Q. Do you recall who told you that?
 9 A. I would assume it was Andy.
 10 Q. And based on that, you were not
 11 interested in forming a relationship with Smile
 12 Source?
 13 A. It's not what I said. They turned
 14 us down. Let's start with this. We gave a
 15 proposal. They turned it down. Is that clear?
 16 Q. I'm just trying to figure out why
 17 you would say you're not interested in this
 18 e-mail.
 19 What are you not interested in?
 20 A. Going beyond the proposal that we
 21 gave them that would make sense for us and
 22 partially because it did not include
 23 commitments from their members.
 24 Q. What was Schein's proposal
 25 specifically?

1 TIM SULLIVAN
 2 THE WITNESS: I think I testified
 3 already we met with them, gave a great
 4 proposal; they turned it down.
 5 In our proposal, we were offering
 6 20 percent off catalog pricing to all their
 7 members but no -- no commitments to
 8 purchase from us, plus a kickback is what
 9 they were -- I'm sorry. That's what they
 10 were looking for. Our proposal did not get
 11 there. That's what they were looking for.
 12 At that level we were not interested at
 13 that time.
 14 BY MR. SOLOMON:
 15 Q. Why were you not interested in that?
 16 A. Like I stated several times, we
 17 weren't confident. We felt good about the
 18 meeting. We felt good about some of the
 19 changes that they were making, but we weren't
 20 confident that they could actually execute to
 21 that.
 22 You have to go through all the
 23 exercise of relaunching a relationship with
 24 someone that terminated us to now be back at
 25 the table. They were looking for more than we

1 TIM SULLIVAN
 2 were willing to give to re-engage, including a
 3 lack of commitment from their members, to then
 4 launch a program. It would take a lot of work,
 5 explanation to our team as to what's different,
 6 what's changed, why now versus then. Wasn't
 7 confident that what they were talking about as
 8 part of their new strategy they could actually
 9 execute.
 10 Q. Did Smile Source ever make a
 11 counterproposal to Schein?
 12 MR. McDONALD: Object to the form.
 13 THE WITNESS: Not that I recall.
 14 BY MR. SOLOMON:
 15 Q. Did --
 16 A. During this time, no, not that I
 17 recall.
 18 Q. Did Smile Source ever ask Schein to
 19 increase the discounts that Schein was
 20 proposing?
 21 A. I don't recall specifically what --
 22 to what level, but they did tell us ours was
 23 not enough.
 24 Q. And what was -- if you recall, what
 25 was Schein's response to that?

1 TIM SULLIVAN
 2 MR. McDONALD: Object to the form,
 3 assumes facts not in evidence.
 4 Why don't you show him the proposal.
 5 THE WITNESS: If you pull out the
 6 proposal, it will be covered in there. If
 7 you really want to know, let's pull it out.
 8 We'll go through it.
 9 BY MR. SOLOMON:
 10 Q. I'm -- I'm sorry. I'm looking at
 11 this e-mail right now.
 12 A. I understand that. So looking at
 13 this right now, I don't know what we proposed
 14 eight months prior to this four years ago from
 15 today.
 16 Q. Turning to the first page of CX2470,
 17 at 6:36 p.m. -- or at 8:16 p.m., Mr. Breslawski
 18 asked us -- he asked you if Smile Source is a
 19 buying group that's delivering for Burkhart.
 20 Do you see that?
 21 A. I do.
 22 Q. And then you respond, "Yes. I
 23 believe they are a successful group. I
 24 actually like these guys too. I can't speak
 25 for Burkhart, but I can't imagine the story to

1 TIM SULLIVAN
 2 A. Okay. Let's stay connected.
 3 Q. So Schein wasn't willing to go any
 4 higher or to give Smile Source what it was
 5 asking for?
 6 A. That's --
 7 MR. McDONALD: Object to the form --
 8 THE WITNESS: Sorry.
 9 MR. McDONALD: -- asked and
 10 answered.
 11 THE WITNESS: That's the "not
 12 interested" part, right.
 13 BY MR. SOLOMON:
 14 Q. And am I correct in understanding
 15 that when Smile Source worked with Schein prior
 16 to 2012, the members were getting 18 percent
 17 off of catalog, as we discussed earlier today?
 18 A. I believe what it was was a special
 19 markets formulary. I'm not sure where that
 20 formulary was priced. Anything not in that
 21 formulary, then they got 18 percent off those
 22 less, but in certain categories it wasn't all
 23 that.
 24 Q. Would Schein have been willing to
 25 offer Smile Source 18 percent off catalog?

1 TIM SULLIVAN
 2 their reps. We did work with them for a while
 3 and it just caused too many issues."
 4 Correct, you state that there?
 5 A. Yes, I do.
 6 Q. I don't want to be accused of not
 7 reading the whole passage, so I'm reading all
 8 of it.
 9 A. All right. Thank you.
 10 Q. Turning to the next --
 11 A. Thank you.
 12 Q. Turning to the next paragraph, you
 13 write, "I'm open to discussing this topic, but
 14 I don't think we want to be the first in this
 15 game."
 16 Do you see that?
 17 A. I do.
 18 Q. So you're telling Mr. Breslawski,
 19 following the February 2014 meeting, that you
 20 did not want Schein to be the first distributor
 21 to work with Smile Source?
 22 MR. McDONALD: Object to the form.
 23 THE WITNESS: No. The first
 24 paragraph I'm responding specifically
 25 around Smile Source. He asked me a

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1 TIM SULLIVAN
2 question around Smile Source and how it's
3 delivering for Burkhart. And based on the
4 meeting that we had with a number of
5 members, you see my response there.
6 I shift back to my earlier comment
7 here about KoIs, what I said. I'm
8 repeating about KoIs again. I'm open to
9 discussing this topic, which is in the
10 subject line still around KoIs, but
11 everything we discussed earlier, again,
12 about the e-mail, so repeating what I said
13 about KoIs at that point.
14 BY MR. SOLOMON:
15 Q. So the second paragraph refers to
16 KoIs?
17 A. That's my recollection, yes.
18 Q. How do you know that?
19 A. As I'm reading it, that's what
20 I'm -- I believe it was about.
21 Q. Mr. Breslawski had just asked you
22 about Smile Source, though, correct?
23 A. He did.
24 Q. You were no longer talking about
25 KoIs at this point?

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1 TIM SULLIVAN
2 A. As I said, the first paragraph is
3 around Smile Source. The second paragraph, I
4 shifted back to the original intent of the
5 e-mail around KoIs.
6 Q. Okay. So you're saying that KoIs is
7 a potential major trend and threat in the
8 second sentence?
9 A. Potentially, if we decide to not
10 work with them for whatever reason, and if
11 1,000 of their -- 5,000 member -- I don't know
12 how many members of theirs would be customers
13 of ours, and they shifted their business, that
14 would be a threat. I don't know if they would.
15 Again, I don't believe -- if they were going to
16 be a price-only -- I don't know what their
17 model was. Again, they didn't send us an RFP
18 at this point. I don't know.
19 Q. Okay. Do you recall having any
20 other discussions with Mr. Breslawski as a
21 follow-up to this e-mail?
22 A. I don't recall one specifically to
23 this e-mail, unless you have something to show
24 me, but not that I recall right now.
25 Q. Why was it important with respect to

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1 TIM SULLIVAN
2 MR. McDONALD: Object to the form.
3 THE WITNESS: We were at the
4 beginning and shifted partway through. I
5 responded now back to the beginning and I
6 shifted partway through.
7 BY MR. SOLOMON:
8 Q. You don't actually mention KoIs in
9 this second paragraph, right?
10 A. Correct, I do not.
11 Q. So how do you know that's what
12 you're referring to? Is that just based on
13 your recollection, sitting here today?
14 MR. McDONALD: Object to the form.
15 You asked him what it referred to,
16 and he told you what he thinks it refers
17 to. Now you're just arguing with him.
18 THE WITNESS: I answered that
19 already. Yes.
20 BY MR. SOLOMON:
21 Q. You go on to say, "We can always be
22 second to the party the win in the long run if
23 this truly becomes a major trend and threat."
24 Are you referring to Smile Source
25 there?

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1 TIM SULLIVAN
2 you -- say KoIs in the second paragraph.
3 Why was it important that Schein
4 would be second to working with that group as
5 opposed to the first?
6 A. So let's say --
7 MR. McDONALD: Hang on. I object to
8 the form, mischaracterizes the document.
9 Go ahead.
10 THE WITNESS: So, again, earlier, if
11 I describe that we decide not to work with
12 them for whatever reason and it turns out
13 that their members do comply with the
14 program, then we're not too shy or
15 embarrassed to go back to the group and
16 say, hey, we -- for whatever reason, we
17 actually want to be in the game. So we'd
18 be second in at that point.
19 They may say, sorry, the ship has
20 sailed. They may say, great, love to have
21 you, provide a quote, then be second in.
22 BY MR. SOLOMON:
23 Q. Why was timing important? Why was
24 it important to be second and not first?
25 MR. McDONALD: Object to the form.

1 TIM SULLIVAN
2 THE WITNESS: I didn't say it was
3 important. I just said we can always be
4 second to the party. I didn't say it's
5 important that we're second to the party.
6 I said we can be.

7 BY MR. SOLOMON:

8 Q. Okay. You can put this document
9 aside.

10 Mr. Sullivan, do you recall a buying
11 group called Dental Gator?

12 A. I do.

13 Q. And what do you recall about Dental
14 Gator?

15 A. They were, for lack of a better
16 term, an offshoot, if you would, of a large DSO
17 customer of special markets called MB2. And
18 they were attempting to use the pricing that
19 they got for their DSO in creating separately a
20 buying group, if you would, based on Henry
21 Schein prices.

22 Q. Do you know whether Dental Gator
23 offered other services to its members?

24 A. Not that I'm aware of.

25 Q. So you believe Dental Gator was a

1 TIM SULLIVAN
2 price-only buying group that didn't offer
3 value-added services to its members?

4 A. That's my understanding at that
5 time.

6 Q. Were you concerned about Dental
7 Gator?

8 A. At the time, only in the spirit of
9 they were adding single-office space
10 practitioner members, getting pricing that was
11 passed on to this larger DSO.

12 Contractually, this larger DSO, MB2,
13 had a -- they were allowed to be in the
14 contract with them to offer anything -- that
15 pricing to anyone outside of their DSO members.

16 Q. And why was that a concern for you?

17 A. My understanding is it was just
18 against the prime vendor agreement that our
19 special markets team had with them.

20 Q. Were you concerned about the fact
21 that Dental Gator was a buying group?

22 A. I was concerned that that pricing
23 that was set up for one particular customer, it
24 wasn't in that customer's or that group's
25 ability to pass that pricing on to people

1 TIM SULLIVAN
2 outside of their group.
3 If we wanted to contract directly
4 with Dental Gator, we'd be happy to and have a
5 separate agreement with them, but not based on
6 how the DSO was structured.

7 Q. So if HSD had formed a contract
8 directly with Dental Gator, you would have been
9 fine working with Dental Gator?

10 A. Possibly.

11 Q. Why do you say "possibly"?

12 A. It goes back to I need to understand
13 more about who they are, how they're
14 structured, compliance of their members,
15 everything else that goes into the
16 consideration that we've been talking about all
17 day.

18 Q. Do you recall having discussions
19 with Mr. Muller about Dental Gator?

20 A. I do.

21 Q. Do you recall having disagreements
22 with Mr. Muller about Dental Gator?

23 A. I do.

24 Q. And what was the nature of the
25 disagreement?

1 TIM SULLIVAN
2 A. It would be easier to read the
3 documents and go through it to understand it
4 specifically, but -- it would be very helpful.

5 Q. Okay. Do you recall -- okay.

6 I'm handing you a document that's
7 been pre-marked as CX2143. Please let me know
8 when you've had a chance to review.

9 (Exhibit CX2143 was marked for
10 identification.)

11 (Witness viewed said document.)

12 THE WITNESS: Okay.

13 BY MR. SOLOMON:

14 Q. Mr. Sullivan, do you recognize
15 CX2143?

16 A. I do.

17 Q. And is this an e-mail that you
18 received?

19 A. It is.

20 Q. And you drafted part of this e-mail
21 chain as well?

22 A. Yes.

23 Q. You did so as part of your job at
24 Henry Schein?

25 A. Yes.

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1 TIM SULLIVAN
2 Q. And you had personal knowledge of
3 what you wrote in this e-mail?
4 A. Yes.
5 Q. And you wrote this e-mail close in
6 time to the disagreements you were having with
7 Mr. Muller surrounding Dental Gator, correct?
8 A. Around the time we were having
9 discussions about Dental Gator, yes.
10 Q. Okay. And do you believe CX2143 is
11 a true and accurate representation of this
12 e-mail correspondence?
13 A. Yes.
14 Q. And does Henry Schein keep CX2143 in
15 the ordinary course of its business?
16 A. Yes.
17 Q. Okay. So does this refresh your
18 recollection, Mr. Sullivan, about the nature of
19 the discussions you were having with Mr. Muller
20 about Dental Gator in the January 2015 time
21 frame?
22 A. It does.
23 Q. Okay. What was the nature of those
24 discussions?
25 A. Well, I think it highlights what I

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1 TIM SULLIVAN
2 mentioned before. And I think in totality,
3 this is a great example of how we've had some
4 internal conflict on how we're structured.
5 Certain parts of it is volume, the special
6 markets P&L; part is on HSD P&L.
7 But as you can see, we resolved it
8 in a good way for the customer, something that
9 they would like to see for how Dental Gator is
10 going to work. So for their existing customers
11 that we already had, we said, fine,
12 grandfathered in. But going forward, they
13 couldn't offer the MB2 pricing to additional
14 clients.
15 So that was an excellent exchange, a
16 resolution that Hal and I were able to work
17 out, and it worked out well for the customer.
18 Q. So going forward after this point,
19 Dental Gator could no longer offer the same
20 discounts to new members of its buying group?
21 MR. McDONALD: Object to the form.
22 THE WITNESS: If I recall, we set up
23 a separate one for them, so a separate
24 different pricing arrangement for those
25 that would join, but not the same as what

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1 TIM SULLIVAN
2 MB2 was getting, correct.
3 BY MR. SOLOMON:
4 Q. Do you recall what that pricing
5 arrangement that you set up was?
6 A. Based on what I'm reading here, I
7 don't know for sure if this is what was
8 actually implemented. My understanding is that
9 they accepted this. It was a -- a G-10, which
10 is a 10 percent off.
11 Q. And what is the G-10 plan?
12 A. 10 percent off.
13 Q. Who is that plan available to?
14 MR. McDONALD: Object to the form,
15 vague.
16 THE WITNESS: In this case, it was
17 being offered to Dental Gator.
18 BY MR. SOLOMON:
19 Q. Is it offered to any other customers
20 in the ordinary course of your business?
21 MR. McDONALD: Object to the form.
22 THE WITNESS: My understanding is
23 that it is. It says the discount will be a
24 G-10, which is one of the MM -- mid-market
25 plans that we have used in the past.

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1 TIM SULLIVAN
2 BY MR. SOLOMON:
3 Q. So this means 10 percent off catalog
4 price?
5 MR. McDONALD: Object to the form.
6 If you know, tell him, but don't
7 guess.
8 THE WITNESS: I believe so.
9 BY MR. SOLOMON:
10 Q. Can an independent private practice
11 dentist qualify for this G-10 plan?
12 MR. McDONALD: Object to the form.
13 THE WITNESS: We have multiple
14 pricing programs for customers. We call
15 them VPAs, volume purchase agreements. So
16 it depends on the size of the customer,
17 number of locations.
18 There's other ways to get to this
19 type of pricing where it's not necessarily
20 called the G-10. So there's a multitude of
21 ways that we work with our customers on
22 discount. Very, very few of our customers
23 pay a catalog price.
24 BY MR. SOLOMON:
25 Q. How many of your customers would you

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1 TIM SULLIVAN
 2 say pay 10 percent off of catalog?
 3 MR. McDONALD: Object to the form,
 4 calls for speculation.
 5 THE WITNESS: I would be guessing.
 6 BY MR. SOLOMON:
 7 Q. So you're not sure; you don't know
 8 one way or the other, sitting here today?
 9 A. Correct.
 10 Q. Do you know whether Dental Gator was
 11 happy about Schein cutting the discounts it was
 12 able to offer?
 13 MR. McDONALD: Object to the form.
 14 THE WITNESS: I've never -- I never
 15 met with Dental Gator. I don't know.
 16 BY MR. SOLOMON:
 17 Q. Did Schein restrict Dental Gator's
 18 ability to advertise itself as a buying group?
 19 MR. McDONALD: Object to the form.
 20 THE WITNESS: Never, no.
 21 BY MR. SOLOMON:
 22 Q. You're not aware of that ever
 23 happening?
 24 A. To advertise themselves as a buying
 25 group? No. They can advertise however they'd

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 2 like outside of -- we do restrict how some
 3 large groups are able to use our brand in their
 4 advertising. But how they want to represent
 5 themselves to add members -- how to use our
 6 brand we want to control. But outside of that,
 7 it's up to them.
 8 Q. So Schein would never tell Dental
 9 Gator that it had to advertise itself as not
 10 being a buying group?
 11 MR. McDONALD: Object to the form.
 12 You mean Henry Schein Dental or
 13 Henry Schein special markets? Or it's your
 14 intention on being vague?
 15 BY MR. SOLOMON:
 16 Q. Schein would never tell a customer
 17 that it can't advertise itself as a buying
 18 group, is that right?
 19 MR. McDONALD: Object to the form,
 20 overly broad, vague, calls for speculation.
 21 THE WITNESS: I can't imagine a
 22 scenario that we would tell a customer how
 23 to advertise themselves. We -- how we --
 24 they want to use our brand we want to
 25 restrict. But outside of that, I'm not

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1 TIM SULLIVAN
 2 aware of any scenarios that we've done
 3 that.
 4 BY MR. SOLOMON:
 5 Q. Turning to the first page of this
 6 exhibit, you write on January 28th at
 7 7:37 a.m., "I think we are basically there with
 8 Hal's last proposal and yes Hal the SAM can
 9 offer it if meeting today. Not sure how this
 10 is not a Buying Group, though. They all offer
 11 multiple services to their members including
 12 savings on Supplies."
 13 Do you see where I'm referring to?
 14 A. I do.
 15 Q. Does this refresh your recollection
 16 that Dental Gator was a buying group that was
 17 offering multiple services to its members, one
 18 of which was savings on supplies?
 19 A. Yes, meaning -- and, again, I don't
 20 know how effective the other ones are, the
 21 other services. But from what we understood is
 22 primarily people were joining Dental Gator
 23 based on the pricing model.
 24 Q. But your understanding is that they
 25 were a value-added services buying group?

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1 TIM SULLIVAN
 2 MR. McDONALD: Object to the form.
 3 THE WITNESS: No, it's not -- that's
 4 not my belief.
 5 BY MR. SOLOMON:
 6 Q. What is your belief?
 7 A. Well, again, at the time, that they
 8 were an offshoot of a large customer of ours in
 9 MB2, that the only thing that they were
 10 offering was getting that pricing that we were
 11 offering MB2. That was my understanding.
 12 Q. But you're saying here that Dental
 13 Gator offers multiple services to its members,
 14 including savings on supplies, right?
 15 A. Correct.
 16 Q. So it is -- was your understanding
 17 that Dental Gator offered more than just
 18 savings on supplies?
 19 A. Well, I know they stated it. I
 20 don't know how they -- how good they were in
 21 executing it.
 22 Q. Did you ever look into that?
 23 A. Not that I recall.
 24 Q. So what was your basis for doubting
 25 whether or not they actually offered -- whether

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2 or not they actually executed other value-added
3 services?
4 A. Based on --
5 MR. McDONALD: Object to the form.
6 THE WITNESS: Just based on
7 discussions with Hal and those that -- or
8 the complaints that were coming in from the
9 field.
10 BY MR. SOLOMON:
11 Q. So is it fair to say that Dental
12 Gator was not a price-only buying group?
13 MR. McDONALD: Object to the form,
14 lack of foundation.
15 THE WITNESS: My view is they
16 portrayed themselves as more than that, but
17 in effectiveness, that's all they were.
18 BY MR. SOLOMON:
19 Q. I'm also -- I also just want to ask
20 you, you define buying group as an entity that
21 offers multiple services including savings on
22 supplies.
23 Do you see that?
24 A. Uh-huh. Yes.
25 Q. So you're using the term "buying

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1 TIM SULLIVAN
2 group" to refer to an entity that offers lots
3 of services, including savings on supplies,
4 correct?
5 MR. McDONALD: Object to the form.
6 THE WITNESS: Correct.
7 BY MR. SOLOMON:
8 Q. Do you normally use the term "buying
9 group" to refer to entities that offer multiple
10 services, including savings?
11 A. You've seen multiple ways of how
12 I've referred to them. I've told you multiple
13 ways that I've referred to them. So I don't
14 always use that terminology in every exchange,
15 no.
16 Q. I'm just trying to understand why
17 you said here a buying group is an entity that
18 offers multiple services, including savings.
19 A. I wasn't very clear. Many -- some
20 do. Some claim to, but don't actually execute.
21 Some claim to and execute. Some don't claim
22 to.
23 Q. So you just weren't being very clear
24 here?
25 MR. McDONALD: Object to the form.

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2 THE WITNESS: Apparently not.
3 BY MR. SOLOMON:
4 Q. You can put that document aside.
5 Mr. Sullivan, I'm handing you
6 CX246-001. Please let me know when you've had
7 a chance to review.
8 MR. LONG: Has this been
9 (undiscernible)?
10 MR. McDONALD: No.
11 MR. SOLOMON: Yeah, that's what I'm
12 trying to figure out.
13 MR. McDONALD: I don't think it is,
14 Ronnie, because clearly it says, "Thanks,
15 Joe, good info."
16 MR. SOLOMON: I don't know. I'm not
17 sure. This does not appear to be --
18 MS. KAHN: Do you want to come back
19 to this?
20 MR. SOLOMON: Yeah. Maybe we can
21 put this aside and we can come back to
22 this. I'm not sure why this is that one
23 page.
24 MR. McDONALD: Okay.
25 THE WITNESS: Back to you or --

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2 MR. McDONALD: Just put it to the
3 side.
4 MR. SOLOMON: Put it aside.
5 Yeah, can we take a -- just a
6 five-minute break?
7 THE VIDEOGRAPHER: This is the end
8 of DVD No. 3. The time is 3:23 p.m. We
9 are off the record.
10 (Whereupon, a recess was had
11 from 3:23 p.m. to 3:41 p.m.)
12 THE VIDEOGRAPHER: This is the
13 beginning of DVD No. 4. The time is
14 3:41 p.m. We are back on the record.
15 (Exhibit CX2440 was marked for
16 identification.)
17 BY MR. SOLOMON:
18 Q. Mr. Sullivan, welcome back.
19 I'm handing you a document that's
20 been pre-marked as CX2440. Please let me know
21 when you've had a chance to review.
22 (Witness viewed said document.)
23 MR. McDONALD: You don't want to use
24 the same numbers that's on this?
25 MR. SOLOMON: We're going with CX

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 2 numbers for everything in this.
 3 MR. McDONALD: I know, but the 246
 4 that's not on the page --
 5 MR. SOLOMON: I did. I see what you
 6 mean. So it's -- it's got this little
 7 exhibit sticker on it. Just in case we get
 8 confused, I just used a new one.
 9 MR. McDONALD: Okay. For the
 10 record, I think that exhibit sticker is
 11 from Joe Cavaretta's investigational
 12 hearing.
 13 BY MR. SOLOMON:
 14 Q. Mr. Sullivan, you've a chance to
 15 adequately review CX2440?
 16 A. I'm actually in the middle.
 17 Q. Okay.
 18 (Witness viewed said document.)
 19 THE WITNESS: Okay.
 20 BY MR. SOLOMON:
 21 Q. Mr. Sullivan, what is CX2440?
 22 A. An e-mail exchange started with Hal
 23 sending a message to me and then I circulated
 24 it amongst the HSD team.
 25 Q. And you drafted part of this e-mail

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 2 to see if we could get Hal to shut it down, but
 3 knew that could be a challenge due to the
 4 parent company being an EDSO of ours in SM."
 5 Do you see that?
 6 A. I do.
 7 Q. EDSO refers to Elite Dental Service
 8 Association?
 9 A. Correct.
 10 Q. And SM refers to special markets,
 11 correct?
 12 A. Correct.
 13 Q. So in this statement here, you're
 14 saying that you tried to get Hal Muller to shut
 15 down Dental Gator at an offsite meeting?
 16 MR. McDONALD: Object to the form,
 17 mischaracterizes the document.
 18 THE WITNESS: That's not what I'm
 19 stating, no.
 20 BY MR. SOLOMON:
 21 Q. What are you stating?
 22 A. What we just went through in the
 23 prior discussion around Dental Gator, it was to
 24 shut down the pricing that they were receiving.
 25 We actually ended up in a very good

1 TIM SULLIVAN
 2 as part of your job at Henry Schein?
 3 A. Yes.
 4 Q. You have personal knowledge of the
 5 contents of this e-mail?
 6 A. Specifically the pieces that I
 7 drafted, yes.
 8 Q. And did you draft this e-mail close
 9 in time to the items that are being discussed
 10 in CX2440?
 11 A. Yes.
 12 Q. And is CX2440 a true and accurate
 13 representation of this e-mail exchange?
 14 A. Yes.
 15 Q. And does Henry Schein keep CX2440 in
 16 the ordinary course of its business?
 17 A. Yes.
 18 Q. Okay. I'd like to direct your
 19 attention to -- on the first page of this
 20 exhibit, there's an e-mail from you to
 21 Mr. Cavaretta, Mr. Meadows, Mr. Steck,
 22 Mr. Chatham, and Mr. Rozin at 9:44 a.m.
 23 Specifically, the discussion around
 24 Dental Gator and your statement, "The
 25 December 'offsite' last year I left with a goal

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 2 solution, if you recall. They were not -- the
 3 parent company, MB2, did not have the
 4 contractual rate. They were breaking the
 5 contract, in essence, by passing that pricing
 6 on to others not in their group. So we needed
 7 to shut that down, but we did it in a way that
 8 came to a very good resolution for our customer
 9 with a different pricing plan.
 10 So we're clearly not against buying
 11 groups per se, as we would have just shut it
 12 down otherwise if that were the case. We
 13 created something uniquely for Dental Gator as
 14 an offshoot of that.
 15 Q. How do you know you're referring to
 16 pricing here?
 17 A. Because I drafted it.
 18 Q. So based on your recollection, you
 19 recall that you were referring to pricing in
 20 this e-mail?
 21 A. Well, it aligns with the previous
 22 discussion that we had regarding Dental Gator
 23 and the resolution that we came to with Hal,
 24 which this is now five months later. If you go
 25 back to the last discussion we had, it was

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 2 around that time of what we did following that
 3 meeting relative to Dental Gator.
 4 And we were able to shift from --
 5 take that customer, MB2, who is basically
 6 violating the contract that they had with us.
 7 We were able to change the format to allow them
 8 different pricing but kept Dental Gator itself
 9 as a buying group alive.
 10 Q. So you recall this conversation that
 11 you had with Mr. Muller at an offsite meeting?
 12 MR. McDONALD: Object to the form.
 13 THE WITNESS: It was the discussion
 14 that we just had prior to this one on the
 15 e-mail exchange following that thing
 16 between Jimmy and I and Hal, Hal and I, if
 17 you recall, on Dental Gator, and how we
 18 adjusted the pricing. Yeah, this is
 19 what -- this is what -- this is referring
 20 to that.
 21 BY MR. SOLOMON:
 22 Q. So this is referring to a
 23 December offsite meeting, right? Am I right?
 24 A. Yes.
 25 Q. But the e-mail we just looked at a

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 2 moment ago is from January 2015, right?
 3 A. Correct.
 4 Q. Okay. So is that -- the e-mail from
 5 January 2015, does that also refer to a meeting
 6 at December offsite?
 7 A. Not that I recall.
 8 Q. So I'm asking you specifically about
 9 this December offsite meeting where you talked
 10 to Mr. Muller about Dental Gator.
 11 What exactly did you tell him at
 12 this meeting?
 13 A. No. I'm saying -- so at the
 14 December last offsite meeting, Dental Gator
 15 first was raised by members of my team and the
 16 conflict that it was creating. I said I'll
 17 work with Hal to figure it out, to understand
 18 more about it.
 19 It took us a while, but January is
 20 when Hal and I were having this exchange about
 21 it. And we resolved it at that time to the
 22 mutual benefit of the customer, MB2 primarily,
 23 that's the parent company, the offshoot they
 24 created in Dental Gator, for our suppliers that
 25 were impacted by these agreements as well, and

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 2 for us and its members.
 3 So it took a while from the
 4 December offsite. There's holidays involved,
 5 year-end close. By January, we got to the
 6 topic and we resolved it. That's what I'm
 7 referring to here.
 8 Q. Okay. So you're not talking about a
 9 meeting you had with Mr. Muller at a
 10 December offsite?
 11 A. Correct.
 12 Q. Okay.
 13 A. We left that meeting with a goal to
 14 see if I could -- if we could get Hal -- so Hal
 15 wasn't -- I don't think Hal was there. But
 16 based on reading this, if we could get Hal to
 17 shut that down. And we were able to do that to
 18 the mutual benefit of our customer.
 19 Q. Were you aware of others within
 20 Henry Schein Dental saying that Dental Gator
 21 was a buying group that needed to be shut down?
 22 MR. McDONALD: Object to the form.
 23 THE WITNESS: I don't recall that
 24 direct language, meaning not shutting down
 25 Dental Gator per se, but shutting down the

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 2 pricing that they did not have a
 3 contractual right to. So that's my
 4 recollection of it.
 5 BY MR. SOLOMON:
 6 Q. Do you recall others within Henry
 7 Schein Dental raising concerns about Dental
 8 Gator because it was acting as a buying group?
 9 A. Well, as I just stated, it came up
 10 in our December offsite meeting. So yes, it
 11 was raised as a concern.
 12 Q. Specifically that it was a buying
 13 group?
 14 A. Again, one that was set up on
 15 pricing that they didn't have -- they weren't
 16 supposed to have access to and one that was
 17 acting as -- without the broader array of
 18 services that other groups that we work with
 19 offer.
 20 Q. They did offer value-added services,
 21 though, as we talked about earlier, right?
 22 A. And we also talked about the fact
 23 that I wasn't confident that they were
 24 executing that plan either.
 25 Q. And you can't recall any specific

1 TIM SULLIVAN
 2 part of those value-added services that were
 3 concerning to you, right?
 4 MR. McDONALD: Object to the form,
 5 misstates his testimony.
 6 THE WITNESS: Yeah, I'm saying I
 7 don't know -- I don't know what additional
 8 value-added services that they claim to
 9 provide. I don't know what they were.
 10 But whatever they were claiming it
 11 to be, I don't believe that they were
 12 actually executing on that piece. They
 13 were primarily marketing themselves with a
 14 "join us, you get better supplies -- deal
 15 on supplies."
 16 BY MR. SOLOMON:
 17 Q. And you're understanding of that was
 18 based on conversations you had with others
 19 within Henry Schein Dental, is that right?
 20 A. That is correct.
 21 Q. Okay. So you didn't know that
 22 information on your own; you learned it from
 23 others?
 24 A. Yeah, I trust my team to bring me
 25 the appropriate information.

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 2 A. Yes.
 3 Q. And through in-person meetings?
 4 A. Yes.
 5 Q. Do you value your relationship with
 6 Mr. Cohen?
 7 MR. McDONALD: Object to the form,
 8 vague.
 9 THE WITNESS: So let me take a
 10 moment and explain my relationship with
 11 Chuck Cohen.
 12 So he's a competitor of ours,
 13 competitor of mine. We're fierce
 14 competitors. But just as we talked
 15 earlier, we're cordial with each other.
 16 He's potentially -- Benco has been a
 17 company that potentially we'd be interested
 18 in merging our operations with.
 19 So I definitely want to treat Chuck
 20 with respect if some day he potentially
 21 would be working for me. I want to make
 22 sure that he understands who I am.
 23 But it's -- to be really clear, I do
 24 not, have not talked with Chuck Cohen or
 25 anyone else at Benco regarding our views on

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 2 Q. Do you remember who told you that?
 3 A. I don't specifically, no. I know
 4 Joe was involved.
 5 Q. Okay. You can put that document
 6 aside.
 7 Mr. Sullivan, you're familiar with
 8 Chuck Cohen?
 9 A. I am.
 10 Q. Who is Chuck Cohen?
 11 A. I believe he's the president of
 12 Benco Dental.
 13 Q. And you have a relationship with
 14 Mr. Cohen?
 15 MR. McDONALD: Object to the form,
 16 vague.
 17 THE WITNESS: We know each other.
 18 BY MR. SOLOMON:
 19 Q. And you've interacted with Mr. Cohen
 20 on several occasions?
 21 A. Correct.
 22 Q. And you've spoken with Mr. Cohen
 23 over the phone?
 24 A. I have.
 25 Q. And by text message?

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 2 strategic initiatives such as buying
 3 groups.
 4 BY MR. SOLOMON:
 5 Q. Never?
 6 A. Never.
 7 Q. I believe you testified in your
 8 investigational hearing that you had talked
 9 with Mr. Cohen about Atlantic Dental Care.
 10 Do you recall that?
 11 A. I do.
 12 Q. Was that one instance in which you
 13 had a communication with Mr. Cohen about buying
 14 groups?
 15 MR. McDONALD: Object to the form.
 16 THE WITNESS: I did not have a
 17 discussion with Chuck Cohen in that
 18 exchange about buying groups, about Benco's
 19 strategy with him or Henry Schein's
 20 strategy with him.
 21 He contacted me about this group.
 22 As soon as he started going down a road
 23 that I felt uncomfortable with, I
 24 immediately told him, Chuck, we should not
 25 be having this discussion, and we changed

1 TIM SULLIVAN
 2 the topic of the discussion.
 3 BY MR. SOLOMON:
 4 Q. Other than that conversation, you've
 5 never talked to Mr. Cohen about buying groups?
 6 A. I've never talked -- not other than
 7 that conversation. I've never talked to Chuck
 8 Cohen about our strategy or Benco's strategy
 9 around buying groups.
 10 Q. Has Mr. Cohen ever reached out to
 11 you on any other occasion regarding buying
 12 groups?
 13 MR. McDONALD: Object to the form,
 14 misstates his testimony.
 15 THE WITNESS: I can tell you I've
 16 never had a discussion with Chuck Cohen
 17 about Henry Schein's strategy or Benco's
 18 strategy on buying groups.
 19 BY MR. SOLOMON:
 20 Q. Has he ever reached out to you
 21 trying to have a discussion with you concerning
 22 buying groups, other than the ADC example we
 23 just discussed a moment ago?
 24 MR. McDONALD: Object to the form.
 25 MR. RACOWSKI: Objection, asked and

1 TIM SULLIVAN
 2 answered.
 3 THE WITNESS: No.
 4 BY MR. SOLOMON:
 5 Q. So there's been no other occasion on
 6 which Mr. Cohen has reached out to you trying
 7 to talk about buying groups, other than as it
 8 relates to ADC?
 9 MR. McDONALD: Objection to form --
 10 MR. RACOWSKI: Same objection.
 11 MR. McDONALD: -- misstates his
 12 testimony.
 13 MR. RACOWSKI: Same objection.
 14 MR. McDONALD: We have an agreement
 15 that an objection by one is good for all,
 16 right, so we both don't have to object to
 17 this stuff?
 18 MR. SOLOMON: I think that's right.
 19 THE WITNESS: Can you restate the
 20 question?
 21 MR. SOLOMON: Would you mind just
 22 reading it back.
 23 (The reporter read the record as
 24 requested.)
 25 MR. McDONALD: Same objection.

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 2 THE WITNESS: I want to clarify
 3 because you say "other than" as if that was
 4 a discussion about buying groups. That was
 5 not a discussion about buying groups.
 6 I have not had a discussion about --
 7 with Chuck Cohen or anyone at Benco about
 8 their strategy on buying groups or ours or
 9 any attempt to come to any sort of
 10 agreement about how to treat buying groups.
 11 BY MR. SOLOMON:
 12 Q. And just to be clear, my question
 13 was a little different. It was has Chuck
 14 Cohen -- strike that.
 15 On how many occasions has Chuck
 16 Cohen reached out to you to try and talk about
 17 buying groups?
 18 MR. McDONALD: Object to the form.
 19 THE WITNESS: I -- never, to my
 20 knowledge, did he call me to talk about
 21 buying groups in general and the strategy
 22 therein.
 23 He reached out to me about
 24 American -- or Atlantic Dental Group for --
 25 I don't know why he did. But for whatever

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 2 reason, he did on that occasion. But it
 3 was not to talk about an overall strategy.
 4 He mentioned something about this
 5 group. I didn't know anything about them,
 6 never heard of them before. He started to
 7 go on about them. I said, Chuck, thanks,
 8 but no thanks. We should not be having
 9 this discussion.
 10 We shifted the discussion to joking
 11 around a little bit about him recruiting me
 12 and me to go to work for him and ha, ha,
 13 ha, and then end of the discussion.
 14 BY MR. SOLOMON:
 15 Q. So in that instance, he was
 16 contacting you about Atlantic Dental Care,
 17 which you understand is a buying group?
 18 MR. McDONALD: Object to the form.
 19 THE WITNESS: At the time, I did
 20 not. I didn't know who they were.
 21 BY MR. SOLOMON:
 22 Q. Okay. Has Mr. Cohen ever told you
 23 that Benco had a no buying group policy?
 24 A. Not that I recall.
 25 Q. Has Mr. Cohen ever told you that

<p style="text-align: right;">Page 346</p> <p>1 TIM SULLIVAN</p> <p>2 Benco doesn't work with buying groups?</p> <p>3 A. Not that I recall.</p> <p>4 Q. Has Mr. Cohen ever told you anything</p> <p>5 else about his position with respect to buying</p> <p>6 groups?</p> <p>7 A. I'll repeat what I said before.</p> <p>8 I've never had a discussion with Chuck Cohen</p> <p>9 about buying groups. He called me about a</p> <p>10 specific Atlantic Dental co-op, but we never</p> <p>11 had a discussion about buying groups.</p> <p>12 Q. At some point you came to understand</p> <p>13 that ADC was a buying group, correct?</p> <p>14 A. Correct.</p> <p>15 Q. When did that happen?</p> <p>16 A. Around the same time frame through</p> <p>17 our local leadership team.</p> <p>18 Q. How did you learn that ADC was a</p> <p>19 buying group?</p> <p>20 A. I believe our manager in the area --</p> <p>21 Bob Anderson is the local manager, but he was</p> <p>22 working with Michael Porro, who was our zone</p> <p>23 manager at the time.</p> <p>24 Michael reached out to me. I</p> <p>25 believe it started with because he could not</p>	<p style="text-align: right;">Page 347</p> <p>1 TIM SULLIVAN</p> <p>2 get a hold of Dave Steck. And so it sounded</p> <p>3 like something that was happening pretty</p> <p>4 urgently, and he reached out to me to get my</p> <p>5 thoughts on it.</p> <p>6 Q. And he told you it was a buying</p> <p>7 group?</p> <p>8 MR. McDONALD: Object to the form.</p> <p>9 THE WITNESS: A form of a buying</p> <p>10 group, yes.</p> <p>11 BY MR. SOLOMON:</p> <p>12 Q. What do you mean by "a form of a</p> <p>13 buying group"?</p> <p>14 A. Really? Okay.</p> <p>15 So there's buying groups that are on</p> <p>16 price-only. There's buying group that have</p> <p>17 added values. I mean, it's everything I've</p> <p>18 been talking about buying groups. That's what</p> <p>19 I mean.</p> <p>20 Q. So where does Atlantic Dental Care</p> <p>21 fall on the spectrum you're talking about?</p> <p>22 A. I --</p> <p>23 MR. McDONALD: Object to the form,</p> <p>24 lack of foundation.</p> <p>25 THE WITNESS: Sorry. I don't know.</p>
<p style="text-align: right;">Page 348</p> <p>1 TIM SULLIVAN</p> <p>2 BY MR. SOLOMON:</p> <p>3 Q. Do you still understand ADC to be a</p> <p>4 buying group, sitting here today?</p> <p>5 MR. McDONALD: Object to the form,</p> <p>6 lack of foundation.</p> <p>7 THE WITNESS: I still know very</p> <p>8 little about them at this point, but that's</p> <p>9 how I would categorize them, yes.</p> <p>10 BY MR. SOLOMON:</p> <p>11 Q. Do you believe that Mr. Cohen is</p> <p>12 someone who has provided you with accurate</p> <p>13 information in the past?</p> <p>14 MR. McDONALD: Object to the form,</p> <p>15 lack of foundation.</p> <p>16 THE WITNESS: I don't know what you</p> <p>17 mean by that.</p> <p>18 BY MR. SOLOMON:</p> <p>19 Q. Have you and Mr. Cohen ever</p> <p>20 exchanged information about common concerns</p> <p>21 relating to your respective businesses?</p> <p>22 MR. McDONALD: Object to the form.</p> <p>23 THE WITNESS: I don't know what</p> <p>24 you're referring to. If you can get</p> <p>25 specific, I'd be happy to answer any</p>	<p style="text-align: right;">Page 349</p> <p>1 TIM SULLIVAN</p> <p>2 questions. I know there's plenty of copies</p> <p>3 on exchanges that we've had.</p> <p>4 BY MR. SOLOMON:</p> <p>5 Q. Sure. Have you ever communicated</p> <p>6 with Mr. Cohen about manufacturers selling</p> <p>7 their products directly to customers?</p> <p>8 A. I believe he sent me a message in</p> <p>9 regard to that happening on one occasion.</p> <p>10 Q. Do you recall when that was?</p> <p>11 A. No, but I'm sure we'll go through it</p> <p>12 in detail. I don't. I don't have it in front</p> <p>13 me, so I don't recall when that was.</p> <p>14 Q. What do you recall about that text</p> <p>15 message with Mr. Cohen?</p> <p>16 MR. McDONALD: Object to the form.</p> <p>17 THE WITNESS: I recall that it</p> <p>18 happened, but I don't recall the details,</p> <p>19 as I sit here today.</p> <p>20 BY MR. SOLOMON:</p> <p>21 Q. But you recall that it relates --</p> <p>22 related to a manufacturer selling its products</p> <p>23 directly to customers, right?</p> <p>24 MR. McDONALD: Object to the form,</p> <p>25 misstates his testimony.</p>

<p style="text-align: right;">Page 350</p> <p>1 TIM SULLIVAN 2 THE WITNESS: I need to 3 understand -- I'd like to review the 4 documents with you so I can answer that 5 more accurately. 6 BY MR. SOLOMON: 7 Q. Mr. Sullivan, I'm handing you a 8 document that's been pre-marked as CX2452. 9 (Exhibit CX2452 was marked for 10 identification.) 11 (Witness viewed said document.) 12 THE WITNESS: Okay. 13 BY MR. SOLOMON: 14 Q. Mr. Sullivan, what is CX2452? 15 A. It's an e-mail exchange. It starts 16 with one from myself to our supplier partner at 17 KaVo, at Danaher at the time, and more internal 18 exchanges. 19 Q. Danaher is a dental products 20 manufacturer? 21 A. Correct. 22 Q. At the time -- so -- I'm sorry. 23 Is it called Danaher now and it used 24 to be called KaVo? 25 A. So Danaher is the parent company.</p>	<p style="text-align: right;">Page 351</p> <p>1 TIM SULLIVAN 2 And they've acquired multiple brands throughout 3 the years. At this time, they still were 4 referred to as Danaher, but today they go by 5 the KaVo-Kerr group. 6 Q. So CX2452, did you receive this 7 e-mail as part of your job at Schein? 8 A. Yes. 9 Q. And you drafted portions of this 10 e-mail as part of your job? 11 A. Correct. 12 Q. And you have personal knowledge of 13 what you wrote in these e-mails? 14 A. Yes. 15 Q. And CX2452, you wrote it around the 16 time that you were speaking with Mr. Cohen 17 about KaVo-Kerr, correct? 18 MR. McDONALD: Object to the form. 19 There's nothing in here about speaking. 20 It's says text messages. 21 THE WITNESS: I never spoke -- well, 22 I shouldn't say that. 23 Chuck called me the morning of 24 the -- looks to be the 16th and then 25 there's later a text from him.</p>
<p style="text-align: right;">Page 352</p> <p>1 TIM SULLIVAN 2 BY MR. SOLOMON: 3 Q. Okay. And you wrote this e-mail on 4 that same day? 5 A. Correct. 6 Q. And CX2452 is a true and accurate 7 representation of this e-mail correspondence, 8 correct? 9 A. Yes. 10 Q. And Schein keeps CX2452 in the 11 ordinary course of its business? 12 A. Yes. 13 Q. So turning your attention to the 14 first-in-time e-mail in this exhibit, 15 March 16th, 9:32, it looks like, a.m. The 16 subject is "April 1 KaVo Website." 17 You're concerned about this 18 manufacturer allowing customers to order direct 19 from their website, is that correct? 20 A. Yes. 21 Q. Okay. And turning to the 22 next-in-time e-mail, you refer to Chuck Cohen 23 calling you that morning to tell you about that 24 same issue, is that right? 25 A. Correct.</p>	<p style="text-align: right;">Page 353</p> <p>1 TIM SULLIVAN 2 Q. Did Chuck Cohen first bring this 3 issue to your attention by phone on that 4 morning? 5 A. So this is at 9:30. 6 As the best that I recall it, yes. 7 Q. Do you recall what he told you? 8 A. Something to the effect that KaVo is 9 launching a new program that customers can 10 order directly on their website. 11 Q. Fair to say you and Mr. Cohen were 12 both concerned about this? 13 MR. McDONALD: Object to the form. 14 THE WITNESS: Yes. 15 BY MR. SOLOMON: 16 Q. Why? 17 A. Because KaVo is a company that Henry 18 Schein, we represent. They do not sell direct. 19 They don't -- they never have. So this is a 20 shift in their strategy. That's their call to 21 make. We need to understand what their 22 go-to-market strategy is. 23 Q. So they are a supplier that Schein 24 works with? 25 A. Yes.</p>

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1 TIM SULLIVAN
2 Q. And they're also a supplier that
3 Benco works with?
4 A. Yes.
5 Q. And so this was a concern for both
6 you and Mr. Cohen, correct?
7 MR. McDONALD: Object to the form,
8 asked and answered.
9 THE WITNESS: I can't speak for
10 Chuck. I mean, from my perspective, yes.
11 I assumed he called me because it was a
12 concern of his also.
13 BY MR. SOLOMON:
14 Q. And so you and Mr. Cohen
15 communicated about it?
16 MR. McDONALD: Object to the form.
17 THE WITNESS: Chuck called me about
18 it. I received his phone call.
19 BY MR. SOLOMON:
20 Q. Did you provide any information to
21 him on the call?
22 A. Just that I was unaware and thanks
23 for the information.
24 Q. Did you tell him you're also
25 concerned?

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1 TIM SULLIVAN
2 Mr. Cohen about other concerns relating to
3 manufacturers, other than this one, a set of
4 communications?
5 A. I believe there was another one.
6 Again, I'd like to -- I'm sure you have it, so
7 let's go through it.
8 Q. I'm not sure that I do.
9 A. Oh.
10 Q. Can you tell me what you're
11 referring to?
12 A. I -- it was another manufacturer
13 that changed certain pricing on, I think,
14 freight or something on how they shipped
15 something out.
16 Q. Do you recall who the manufacturer
17 was?
18 A. I believe it was P&G, but I -- I --
19 we should confirm that.
20 Done here?
21 Q. Yes, for the moment.
22 Mr. Sullivan, I'm handing you a
23 document that's been pre-marked as CX2422.
24 (Exhibit CX2422 was marked for
25 identification.)

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1 TIM SULLIVAN
2 MR. McDONALD: Object to the form.
3 THE WITNESS: I don't recall what I
4 said to him other than thanks for the
5 information. I was not aware.
6 BY MR. SOLOMON:
7 Q. And then turning to the first page
8 of this exhibit, you refer to a "Text message
9 from Chuck C." And -- do you see that?
10 A. I do.
11 Q. Are you copying and pasting the text
12 message that you got from Mr. Cohen into this
13 e-mail?
14 A. I don't believe so. I think I'm
15 just retyping it in.
16 Q. Okay. And Mr. Cohen writes, "FYI:
17 Heard from KaVo that they're changing their
18 plan re selling HPs direct on the web, will
19 rescind plan. Good news. Enjoy Hawaii, see
20 you Saturday. Thanks. Cfc."
21 Is that Mr. Cohen's -- does that
22 represent Mr. Cohen's text message to you about
23 this issue?
24 A. Yes.
25 Q. Do you recall communicating with

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1 TIM SULLIVAN
2 THE WITNESS: Okay.
3 BY MR. SOLOMON:
4 Q. Mr. Sullivan, what is CX2422?
5 A. It's an e-mail that I received from
6 Chuck Cohen regarding P&G, and I forwarded it
7 on to Paul Hinsch, who is our VP of marketing
8 and merchandising.
9 Q. You received this e-mail as part of
10 your job at Schein?
11 MR. McDONALD: I'll object to the
12 form.
13 THE WITNESS: I received this
14 e-mail, and I am employed at Schein, yes.
15 BY MR. SOLOMON:
16 Q. And you drafted part of this e-mail
17 as part of your job at Schein, correct?
18 A. Correct.
19 Q. And you had personal knowledge of
20 what you wrote in this e-mail?
21 A. Yes.
22 Q. And you drafted this e-mail to
23 Mr. Hinsch close in time to your communications
24 with Mr. Cohen, correct?
25 MR. McDONALD: Object to the form.

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1 TIM SULLIVAN
2 THE WITNESS: I forwarded it on to
3 Paul Hinsch on the receipt of the e-mail I
4 got from Chuck Cohen, yes.
5 BY MR. SOLOMON:
6 Q. CX2422 is a true and accurate
7 representation of this e-mail correspondence,
8 correct?
9 A. Yes.
10 Q. And Henry Schein has kept CX2422 in
11 the ordinary course of its business, correct?
12 A. Correct.
13 Q. So, Mr. Sullivan, what is this
14 e-mail about?
15 A. Well, I have to go through all the
16 details again, but it's a change in how P&G is
17 treating shipping on boxes.
18 Q. And what was the change?
19 A. Well, I wasn't aware of it, so I
20 forwarded it on to Paul Hinsch for his thoughts
21 because I wasn't -- I'm not sure what it was
22 prior. There was a change.
23 Q. What was -- what was -- do you know
24 why Mr. Cohen was reaching out to you about
25 this?

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1 TIM SULLIVAN
2 BY MR. SOLOMON:
3 Q. What's Mr. Cohen telling you here?
4 What is he explaining is the change?
5 A. I don't know. That's why I passed
6 it on to Paul.
7 Q. Okay. Did you think this was
8 something that was potentially concerning for
9 Schein?
10 A. I didn't know. That's why I passed
11 it on to Paul.
12 Q. Okay. And is this an example of
13 Mr. Cohen reaching out to you to discuss
14 something that potentially could be a common
15 concern for Schein and Benco?
16 MR. McDONALD: Object to the form.
17 THE WITNESS: I don't know if I'd
18 categorize it that way. I don't know why
19 Chuck sent it to me, to be...
20 BY MR. SOLOMON:
21 Q. And you passed this on to Mr. Hinsch
22 because you wanted to find out more information
23 about it?
24 A. Correct, I wanted to get his
25 thoughts.

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1 TIM SULLIVAN
2 A. No.
3 Q. Was this something that was
4 potentially harmful to Schein?
5 MR. McDONALD: Object to the form,
6 lack of foundation.
7 THE WITNESS: I don't know. That's
8 why I passed it on to Paul Hinsch for
9 thoughts.
10 BY MR. SOLOMON:
11 Q. And can you point me specifically --
12 specifically to what the change was that was
13 occurring with respect to P&G in this e-mail?
14 MR. McDONALD: Object to the form,
15 lack of foundation.
16 If you're asking him what Mr. Cohen
17 told him, that's fine. If you're asking
18 him if P&G actually made a change and he
19 has personal knowledge of that, then lack
20 of foundation.
21 THE WITNESS: That's what I said
22 before, I don't know what the -- I don't
23 know what -- prior, I don't know what the change
24 was.
25 ///

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1 TIM SULLIVAN
2 Q. And what did you learn?
3 A. I don't recall. I don't remember
4 what the end result was.
5 Q. Okay. Did you ever have any
6 follow-up conversations with Mr. Cohen about
7 this e-mail?
8 A. I don't believe so.
9 Q. This relates to changes with respect
10 to a supplier that works with both Schein and
11 Benco, correct?
12 A. And others, but yes.
13 Q. Have you communicated with Mr. Cohen
14 about other manufacturers other than the two
15 examples we've just looked at?
16 A. These were the only two examples
17 that came to mind for me.
18 Q. Is it possible that you've
19 communicated to Mr. Cohen on other occasions
20 about issues relating to dental product
21 manufacturers?
22 MR. McDONALD: Object to the form.
23 THE WITNESS: To be clear, when you
24 say communi- -- when I communicated with,
25 Chuck is, for whatever reason, sending me

1 TIM SULLIVAN
 2 the communication; it's not me starting the
 3 communication with him. So why he's doing
 4 that, you'd have to ask him. But these are
 5 the only two that come to mind.
 6 BY MR. SOLOMON:
 7 Q. In this example, it looks like, in
 8 CX2422, Mr. Cohen is reaching out to you,
 9 correct?
 10 A. Correct.
 11 Q. In the document we looked at
 12 previously, you had had a phone conversation
 13 with Mr. Cohen, correct?
 14 A. I received a phone call from
 15 Mr. Cohen, yes.
 16 Q. Have you ever...
 17 (Exhibit CX2459 was marked for
 18 identification.)
 19 BY MR. SOLOMON:
 20 Q. Mr. Sullivan, I've handed you
 21 CX2459. Let me know when you've had a chance
 22 to review it.
 23 (Witness viewed said document.)
 24 THE WITNESS: Okay.
 25 ///

1 TIM SULLIVAN
 2 Q. And Dentsply is a manufacturer that
 3 works with both Schein and Benco, correct?
 4 A. And many others, but yes.
 5 Q. It's one of the largest dental
 6 product manufacturers in the nation, correct?
 7 A. Correct.
 8 Q. And specifically he's talking about
 9 a poison pill clause in some of the agreements
 10 with Dentsply.
 11 Do you see that?
 12 A. I do.
 13 Q. Do you have an understanding as to
 14 what he's referring to here?
 15 A. I don't.
 16 Q. Okay. He goes on to tell you that
 17 Benco is concerned about sharing data with
 18 Dentsply if Dentsply begins to sell products
 19 direct.
 20 Do you see that?
 21 MR. McDONALD: Object to the form.
 22 THE WITNESS: Where? Which -- which
 23 line are you referring to?
 24 BY MR. SOLOMON:
 25 Q. I'm talking about the second

1 TIM SULLIVAN
 2 BY MR. SOLOMON:
 3 Q. Mr. Sullivan, what is CX2459?
 4 A. It's a copy of an e-mail of Chuck
 5 sending me a message.
 6 Q. And you received this e-mail,
 7 correct?
 8 A. I did.
 9 Q. And you forwarded it on after you
 10 received it?
 11 A. I did.
 12 Q. And it looks like the subsequent
 13 conversations are internal to Schein, right?
 14 A. Correct.
 15 Q. And they've all been redacted for
 16 attorney-client privilege?
 17 A. That's my understanding.
 18 Q. So focusing on Mr. Cohen's e-mail to
 19 you on June 12th, 2013 at 5:20 p.m., what is
 20 Mr. Cohen's e-mail about?
 21 A. Suppliers that we -- that he
 22 provides customer level data to.
 23 Q. And Mr. Cohen is telling you about
 24 Dentsply specifically, correct?
 25 A. He is.

1 TIM SULLIVAN
 2 paragraph of this e-mail starting with "Our
 3 concern."
 4 (Witness viewed said document.)
 5 THE WITNESS: Okay. Repeat the
 6 question again. I'm sorry.
 7 BY MR. SOLOMON:
 8 Q. Sure. He goes on to tell you that
 9 Benco is concerned about sharing data with
 10 Dentsply if Dentsply sells product directly to
 11 customers.
 12 A. Yes, I see that now, yes.
 13 Q. Is this something that -- so in this
 14 instance, Mr. Cohen is talking about Dentsply
 15 selling products directly to customers?
 16 MR. McDONALD: Object to the form,
 17 mischaracterizes the document.
 18 THE WITNESS: Yeah, that's not how I
 19 read it.
 20 BY MR. SOLOMON:
 21 Q. How do you read it?
 22 A. Well, I don't want to interpret
 23 Chuck's e-mail, that I immediately forwarded it
 24 on to our -- including legal counsel because I
 25 did not want to have that discussion.

1 TIM SULLIVAN
 2 Q. Why not?
 3 MR. McDONALD: Object to the form.
 4 THE WITNESS: I don't think it would
 5 be appropriate for Chuck and I to have that
 6 discussion.
 7 BY MR. SOLOMON:
 8 Q. Specifically why?
 9 A. Based on discussions that I've had
 10 with legal counsel.
 11 Q. Prior to this e-mail you had --
 12 A. In -- in the training that I get
 13 on -- on -- why am I coming up with the wrong
 14 acronym?
 15 The training that we receive as it
 16 relates to this topic.
 17 Q. So you thought it would be
 18 inappropriate to respond to Mr. Cohen in this
 19 instance?
 20 MR. McDONALD: Object to the form.
 21 THE WITNESS: It's why I forwarded
 22 it on to legal counsel, to get advice on
 23 how -- on how to handle this.
 24 BY MR. SOLOMON:
 25 Q. So you were concerned that Mr. Cohen

1 TIM SULLIVAN
 2 was reaching out to you about this specific
 3 topic?
 4 MR. McDONALD: Object to the form.
 5 Don't reveal communications you've
 6 had with counsel.
 7 THE WITNESS: Right.
 8 Yeah, I don't know how else to
 9 answer that than I already have.
 10 BY MR. SOLOMON:
 11 Q. Did you ever get back to Mr. Cohen
 12 about this e-mail?
 13 A. I don't believe so.
 14 Q. So you never followed up with
 15 Mr. Cohen at all about the issues he raises in
 16 CX2459?
 17 A. I don't believe so.
 18 Q. Is this the first time you forwarded
 19 something from Mr. Cohen on to Schein's legal
 20 department?
 21 MR. McDONALD: Object to the form.
 22 THE WITNESS: I don't -- I don't
 23 believe it's the first time, no.
 24 BY MR. SOLOMON:
 25 Q. Have you forwarded other e-mails

1 TIM SULLIVAN
 2 from Mr. Cohen on to Schein's legal department?
 3 A. Prior to this date?
 4 Q. Correct.
 5 A. I believe so, yes.
 6 Q. Do you recall what instances you
 7 forwarded an e-mail from Mr. Cohen on to
 8 Schein's legal department prior to this date?
 9 A. So we had an agreement with Benco at
 10 one point as it related to how we -- hiring of
 11 each other's employees. During that period,
 12 there was definitely exchanges that included
 13 attorney-client privilege, discussions with
 14 attorneys. So I would assume, I believe during
 15 that period there was also other e-mails that I
 16 would have gotten that I forwarded on to legal
 17 counsel.
 18 Q. Did you ever tell Mr. Cohen that you
 19 should not be communicating about the topic in
 20 this e-mail here?
 21 A. I don't recall.
 22 Q. You just don't recall one way or the
 23 other, sitting here today?
 24 A. Well, I believe I'd be -- there were
 25 discussions I had with legal counsel on how to

1 TIM SULLIVAN
 2 respond to this. I don't want to reveal that
 3 discussion.
 4 Q. I'm not -- I'm not asking for your
 5 discussions with legal counsel. I'm asking for
 6 what you told Mr. Cohen.
 7 MR. McDONALD: Object to the form.
 8 THE WITNESS: I'm saying I don't
 9 recall if I ended up sending anything
 10 directly back to Chuck on this or not.
 11 BY MR. SOLOMON:
 12 Q. Okay. So other than the hiring
 13 agreement that you just mentioned a moment ago,
 14 has Mr. Cohen ever reached out to you about a
 15 topic that you found to be troubling or
 16 concerning --
 17 MR. McDONALD: Object to the form.
 18 BY MR. SOLOMON:
 19 Q. -- other than what's represented in
 20 this e-mail?
 21 MR. McDONALD: Object to the form.
 22 THE WITNESS: We spoke earlier about
 23 that Atlantic Dental Group where I verbally
 24 told him we shouldn't be talking about
 25 this. Outside of that, nothing comes to

<p style="text-align: right;">Page 370</p> <p>1 TIM SULLIVAN</p> <p>2 mind.</p> <p>3 BY MR. SOLOMON:</p> <p>4 Q. Have you ever talked to Mr. Cohen</p> <p>5 about a company called Buy Now Direct?</p> <p>6 A. I don't know if we spoke or if it</p> <p>7 was in text.</p> <p>8 Q. And what was the nature of your</p> <p>9 communications with Mr. Cohen about Buy Now</p> <p>10 Direct?</p> <p>11 A. He brought to my attention some</p> <p>12 publicly available information about Henry</p> <p>13 Schein product being available on either Amazon</p> <p>14 or Buy Now Direct through Amazon, that Henry</p> <p>15 Schein brand product was listed on there. I</p> <p>16 was not aware of that. Publicly available</p> <p>17 information, but it wasn't -- I didn't -- I was</p> <p>18 not aware of that.</p> <p>19 Q. So he brought it to your attention?</p> <p>20 A. He did.</p> <p>21 Q. Were you appreciative of that?</p> <p>22 A. It was information that was good to</p> <p>23 know.</p> <p>24 Q. Were you concerned about what was</p> <p>25 going on with Schein products being available</p>	<p style="text-align: right;">Page 371</p> <p>1 TIM SULLIVAN</p> <p>2 through Amazon or Buy Now Direct?</p> <p>3 A. Yes, because we have -- it would</p> <p>4 violate our contracts with our suppliers. We</p> <p>5 sell to end users. Our end users are not</p> <p>6 allowed to then take our product and sell it --</p> <p>7 to resell it. It was concerning.</p> <p>8 Q. And you say you don't recall whether</p> <p>9 you had a phone call or if it was a text</p> <p>10 message with Mr. Cohen surrounding Buy Now</p> <p>11 Direct?</p> <p>12 A. Correct. I know there's paperwork</p> <p>13 that supports those text messages and possibly</p> <p>14 a phone call around the same time. I believe</p> <p>15 we can look at that, if you'd like. But I know</p> <p>16 there was text messages for sure.</p> <p>17 Q. On what other occasions has</p> <p>18 Mr. Cohen reached out to you about business</p> <p>19 concerns?</p> <p>20 MR. McDONALD: Object to the form,</p> <p>21 vague.</p> <p>22 THE WITNESS: I can't speak to how</p> <p>23 you would define business concerns.</p> <p>24 BY MR. SOLOMON:</p> <p>25 Q. Something that was concerning to</p>
<p style="text-align: right;">Page 372</p> <p>1 TIM SULLIVAN</p> <p>2 Schein about its business.</p> <p>3 A. Do you have something --</p> <p>4 MR. McDONALD: Object -- object to</p> <p>5 the form.</p> <p>6 Go ahead.</p> <p>7 THE WITNESS: Do you have something</p> <p>8 specific that I can --</p> <p>9 BY MR. SOLOMON:</p> <p>10 Q. No.</p> <p>11 A. -- respond to?</p> <p>12 Q. We --</p> <p>13 A. You have nothing specific that I can</p> <p>14 respond to?</p> <p>15 Q. I don't. We've looked at a few</p> <p>16 different e-mails, Buy Now Direct, the issue</p> <p>17 with KaVo-Kerr, the manufacturer, the issue</p> <p>18 with Dentsply.</p> <p>19 And I'd like to know if there are</p> <p>20 any other communications that you had with</p> <p>21 Mr. Cohen that are in -- similar in vein and</p> <p>22 relate to business concerns.</p> <p>23 A. We talked about --</p> <p>24 MR. McDONALD: Object to the form.</p> <p>25 I'm sorry.</p>	<p style="text-align: right;">Page 373</p> <p>1 TIM SULLIVAN</p> <p>2 THE WITNESS: I'm sorry.</p> <p>3 MR. McDONALD: Go ahead.</p> <p>4 THE WITNESS: We talked about</p> <p>5 employment agreements, also. We talked</p> <p>6 about -- Atlantic Dental Care was one</p> <p>7 example. That's all that comes to mind</p> <p>8 right now.</p> <p>9 BY MR. SOLOMON:</p> <p>10 Q. Have you ever talked to Mr. Cohen</p> <p>11 about trends in the dental industry?</p> <p>12 A. Not that I recall.</p> <p>13 Q. Have you ever talked to Mr. Cohen</p> <p>14 about the growth of DSOs in corporate</p> <p>15 dentistry?</p> <p>16 A. Not that I recall.</p> <p>17 Q. Have you ever talked to Mr. Cohen</p> <p>18 about merger opportunities?</p> <p>19 A. Yes.</p> <p>20 Q. On how many occasions did you speak</p> <p>21 with Mr. Cohen about merger opportunities?</p> <p>22 A. I believe there were two</p> <p>23 specifically face-to-face meetings and probably</p> <p>24 a phone call or two along the way.</p> <p>25 Q. How long would you say those</p>

1 TIM SULLIVAN
2 face-to-face meetings lasted for?
3 A. Well, one was a breakfast in -- at
4 the Greater New York meeting. And another
5 was -- we actually went to an opera together in
6 New York.
7 Q. And you discussed merger
8 opportunities while you guys were attending the
9 opera or after? When did that conversation
10 take place?
11 A. It wasn't during the opera, although
12 it would have been more exciting. But yes,
13 there's a dinner before -- or, sorry, there's
14 cocktails before, there's dinner, and in the
15 middle there's a break. So somewhere along
16 that line it was -- the intent of doing this
17 together was to build a relationship to
18 possibly merge our organizations together.
19 Q. Do you recall when those meetings
20 took place?
21 A. I believe -- I know there's some
22 documents on it. I think it's around in this
23 '13 to '15 type time frame.
24 Q. Okay. So you mentioned two specific
25 face-to-face meetings, and there were some

1 TIM SULLIVAN
2 a period of time then I had to step off the
3 board. By the time I came back on the board,
4 he had already transitioned off to the DTA
5 Foundation board.
6 Q. When did you overlap?
7 A. I believe it was around 2010, so it
8 was a year or two before or a year or two
9 after, somewhere in that time frame, I believe.
10 Q. So beginning around 2010 is what
11 you're saying?
12 A. Sounds right.
13 Q. How often would you meet with
14 Mr. Cohen surrounding DTA-related business?
15 A. I don't recall any one-on-one
16 meetings with Chuck during that time. We had
17 the board meeting. Sometimes after the board
18 meetings, whether it was at the annual meeting
19 that a lot of members came to or Chicago
20 Midwinter was one of the big board meetings
21 we've had of the year, a little group would go
22 into the bar afterwards and have a cocktail.
23 But I don't recall any specific,
24 just one-on-one, sit-down arranged --
25 prearranged meetings with Chuck at those

1 TIM SULLIVAN
2 other phone calls or text messages?
3 A. Yeah, there were times when we spoke
4 on the phone about opportunities. We created a
5 family foundation. The family foundation
6 started a fund through Dental -- the DTA
7 Foundation. Chuck was involved. He was on the
8 board of the DTA Foundation. Would the Cohen
9 family want to create a similar thing?
10 So we had questions about how we'd
11 form that, you know, how we formed the goal,
12 the intent behind it. They could do something
13 different.
14 We had conversations that followed
15 up on -- from our meeting in New York, I think,
16 just a few weeks later. It might have been
17 early January we had a discussion as a
18 follow-up to that relative to do we want to
19 take this to the next step, anything further.
20 Q. You served on the DTA board of
21 directors with Mr. Cohen, correct?
22 A. For -- yes. Yes.
23 Q. For how long?
24 A. I believe it was around two to three
25 years that we overlapped on the board. There's

1 TIM SULLIVAN
2 meetings.
3 Q. How many times would you say you
4 were a part of a meeting with Mr. Cohen as it
5 related to DTA-related business?
6 A. During that period of time, probably
7 twice a year, maybe three times depending on --
8 not everyone showed up at every board meeting.
9 Q. Where did these -- where did these
10 board meetings take place?
11 A. The two major ones were the
12 Wednesday before the Chicago Midwinter, which
13 is in February, and then at the annual meeting
14 for all members, which is usually in the fall.
15 Q. You and Mr. Cohen are a part of an
16 organization called the Young Presidents
17 Organization?
18 A. Yes.
19 Q. What is that?
20 A. Well, I'm now a YPO gold member, but
21 it's for when you're under 50 years old and a
22 president, the Young Presidents Organization.
23 It's a large international group. I'm part of
24 the Wisconsin chapter. He's part of the
25 Pennsylvania chapter.

1 TIM SULLIVAN
 2 And there are other members within
 3 the DTA that are also presidents of their
 4 organizations and the Young. So I think
 5 there's about five or six DTA and other dental
 6 industry people that are in the YPO.
 7 Q. How big is this organization?
 8 A. It's on -- there's a website. It's
 9 got to be, I don't know, 5, 6,000 members.
 10 We're 100 members in the State of Wisconsin,
 11 but it's an international group.
 12 Q. Have you and Mr. Cohen ever attended
 13 YPO meetings together?
 14 A. No. There was -- someone at the DTA
 15 was looking to put together a meeting at one of
 16 the conventions about, hey, Fellow YPOers,
 17 let's all meet. I don't know that it ever took
 18 place or not. But I never like attended a trip
 19 to a YPO event that YPO was putting on that
 20 Chuck was at.
 21 Q. So you've never been at a YPO
 22 meeting at the same time as Mr. Cohen?
 23 A. That's correct.
 24 Q. Have you ever had communications
 25 with Mr. Cohen about YPO?

1 TIM SULLIVAN
 2 BY MR. SOLOMON:
 3 Q. How many times would you say you've
 4 exchanged text messages with Mr. Cohen?
 5 MR. McDONALD: Object to the form.
 6 THE WITNESS: I would answer it the
 7 same. I don't know exactly.
 8 BY MR. SOLOMON:
 9 Q. And how many times would you say
 10 you've met with Mr. Cohen total in person?
 11 MR. McDONALD: Object to the form,
 12 vague.
 13 THE WITNESS: Well, do you mean met
 14 with him one on one or met with him we were
 15 in the same room, met with him in a board
 16 meeting, met with him -- how would you
 17 define "met with him"?
 18 BY MR. SOLOMON:
 19 Q. Any encounter with Mr. Cohen in
 20 person.
 21 A. Any encounter, several.
 22 Q. Can you give me a number?
 23 MR. McDONALD: Object to the form.
 24 THE WITNESS: I'd be speculating,
 25 but it's several.

1 TIM SULLIVAN
 2 A. Just to understand maybe who else
 3 was a member within the dental trade. And I
 4 think -- I forget the gentleman's name. I can
 5 picture him. He kind of took the lead on
 6 trying to put meetings together at a cocktail
 7 hour or something for any YPO members that were
 8 part of the DTA.
 9 Q. How many times would you say you
 10 spoke to Mr. Cohen on the telephone?
 11 MR. McDONALD: Object to the form.
 12 THE WITNESS: Several, ten-plus
 13 probably. I know you have the record, so
 14 you could probably tell me, but I -- that
 15 would be my estimate.
 16 BY MR. SOLOMON:
 17 Q. So more than ten times?
 18 A. I believe so.
 19 Q. Are we talking 20 times? 50 times?
 20 100 times?
 21 MR. McDONALD: Object to the form.
 22 THE WITNESS: Again, you have all
 23 the records. You could probably tell me
 24 exactly what it is. I don't know.
 25 ///

1 TIM SULLIVAN
 2 BY MR. SOLOMON:
 3 Q. More than 20?
 4 A. Yes.
 5 Q. More than 30?
 6 A. Probab- --
 7 MR. McDONALD: Object to the form.
 8 THE WITNESS: I'm speculating at
 9 this point. Probably. I don't know. It
 10 could be at the Chicago Midwinter meeting,
 11 we could both be there. We're both
 12 present, as you've defined. We might not
 13 even see each other, but we're both
 14 present.
 15 There's conventions, five, six,
 16 seven -- there's 60-plus conventions a
 17 year. I go to three, four a year. I don't
 18 know which one's he's at and which one's
 19 he's not.
 20 BY MR. SOLOMON:
 21 Q. So you've met with Mr. Cohen at the
 22 Chicago Midwinter meeting?
 23 MR. McDONALD: Object to the form.
 24 THE WITNESS: Again, through the DTA
 25 board meeting that happened to be in

1 TIM SULLIVAN
 2 Chicago prior to the Chicago Midwinter. We
 3 didn't -- we never traveled to Chicago with
 4 the intent of solely the two of us meeting.
 5 BY MR. SOLOMON:
 6 Q. But you've met with him at a Chicago
 7 Midwinter meeting?
 8 MR. McDONALD: Object to the form,
 9 asked and answered.
 10 THE WITNESS: I have.
 11 BY MR. SOLOMON:
 12 Q. How many times have you met with him
 13 at one of the Chicago Midwinter meetings?
 14 MR. McDONALD: Object to the form,
 15 asked and answered, vague.
 16 THE WITNESS: Met with him or was he
 17 present at the meeting? I can't tell you
 18 if he was present at the meeting.
 19 Between -- I would say the three
 20 times for sure that we overlapped -- or the
 21 two or three times that we overlapped as
 22 being members of the board.
 23 There are times the foundation board
 24 would come in and give a presentation to
 25 the DTA board, I don't know, five, six,

1 TIM SULLIVAN
 2 seven times at the Chicago Midwinter
 3 meeting. I'm speculating, but probably in
 4 that range.
 5 BY MR. SOLOMON:
 6 Q. And the Chicago Midwinter meeting is
 7 a trade show, is that right?
 8 A. It is.
 9 Q. What other trade shows have you met
 10 Mr. Cohen at?
 11 MR. McDONALD: Object to the form,
 12 vague.
 13 THE WITNESS: Seen him at or met him
 14 at?
 15 BY MR. SOLOMON:
 16 Q. I'm just talking -- well, what's the
 17 distinction you're making between seeing and
 18 meeting? I'm just referring to where you've
 19 actually had an encounter with Mr. Cohen.
 20 MR. McDONALD: Object to the form.
 21 You mean just like hello?
 22 MR. SOLOMON: Any interaction.
 23 MR. McDONALD: Or do you mean a
 24 substantive encounter?
 25 THE WITNESS: I define meeting as

1 TIM SULLIVAN
 2 meeting. I don't, hey, wave from a
 3 distance is a meeting.
 4 An encounter, if we're both present,
 5 I would say on average it was two, three
 6 times a year at various conventions,
 7 whether it was Chicago, it could have been
 8 California, Hinman, Yankee, CDA.
 9 BY MR. SOLOMON:
 10 Q. What about the ADA meetings?
 11 A. ADA.
 12 Q. What about the Greater New York
 13 meetings?
 14 A. Greater New York.
 15 Q. And when you meet with Mr. Cohen at
 16 these meetings, is it a one-on-one situation?
 17 Are there other people present?
 18 MR. McDONALD: Object to the form,
 19 mischaracterizes his testimony.
 20 He said encounter. He specifically
 21 pushed back to you on meeting and he said
 22 he's counting encounters, not meetings one
 23 on one.
 24 Listen to his testimony, please, and
 25 don't misstate it.

1 TIM SULLIVAN
 2 THE WITNESS: Are you asking me
 3 about meetings with him or encounters with
 4 him?
 5 BY MR. SOLOMON:
 6 Q. So just to be clear, I'd like to
 7 understand what distinction you're making
 8 because I wasn't there meeting with Mr. Cohen.
 9 So you said "hi" to him on some
 10 occasions, correct, and no further
 11 conversations happened, is that right?
 12 A. Correct.
 13 Q. And on other occasions you've had
 14 more substantive conversations with him?
 15 MR. McDONALD: Object to the form.
 16 THE WITNESS: Correct.
 17 BY MR. SOLOMON:
 18 Q. Okay. So would you call those --
 19 where you've had more substantive conversations
 20 with Mr. Cohen, would you refer to those as
 21 meetings?
 22 A. I would, yes.
 23 Q. And when you're just saying hello to
 24 him and nothing more, you would not call that a
 25 meeting?

1 TIM SULLIVAN
 2 A. Correct.
 3 Q. Okay. So using that definition,
 4 would you still say you've met with Mr. Cohen
 5 two to three times a year at various trade
 6 shows?
 7 A. No.
 8 Q. What would the number be then?
 9 A. Far less.
 10 Q. How many?
 11 A. The only time I would actually meet
 12 with Chuck was during the period that we had
 13 this employment agreement about hiring of each
 14 other, and that was the only substantive
 15 business issue that he and I would discuss
 16 while meeting at a trade show.
 17 Q. So every time you've met with
 18 Mr. Cohen at a trade show -- or strike that.
 19 You've met with Mr. Cohen at trade
 20 shows to only discuss the hiring agreement
 21 between Benco and Schein?
 22 A. To the best of my recollection,
 23 that's right.
 24 Q. And the hiring agreement between
 25 Benco and Schein was in place from 2009 until

1 TIM SULLIVAN
 2 So especially coming out of a
 3 foundation meeting that they just presented to
 4 the DTA, we're talking about what the Sullivan
 5 Foundation had done. So he had asked me
 6 questions about -- and his father asked
 7 questions about that.
 8 So there were other things we talked
 9 about, but the only substantive business thing
 10 we spoke about was related to the employment
 11 agreement.
 12 Q. I'd like to hand you a document
 13 that's been pre-marked as CX4088.
 14 (Exhibit CX4088 was marked for
 15 identification.)
 16 THE WITNESS: Okay.
 17 BY MR. SOLOMON:
 18 Q. Mr. Sullivan, do you know what this
 19 document is?
 20 A. Looks like phone records.
 21 Q. And I'd like you to turn to Page 45
 22 of this exhibit. If you look on the bottom,
 23 there are page numbers on the right-hand side.
 24 A. Oh, I'm sorry. Okay. Got it.
 25 Q. And I'd like to point you to item

1 TIM SULLIVAN
 2 2016, is that correct?
 3 MR. McDONALD: Object to the form.
 4 THE WITNESS: Yeah, I don't have the
 5 exact dates.
 6 BY MR. SOLOMON:
 7 Q. Does that sound right to you?
 8 A. It's possible. I really don't --
 9 I'd be speculating on the exact dates.
 10 Q. Okay. So while the hiring agreement
 11 was in place, you're stating that every time
 12 you met with Mr. Cohen at a trade show it was
 13 to discuss the hiring agreement?
 14 A. To the best of my recollection, yes.
 15 Q. And you never discussed anything
 16 else other than the hiring agreement during
 17 those meetings?
 18 A. To the best of my recollection,
 19 that's right.
 20 Q. Okay.
 21 A. I'm sorry. Strike that.
 22 As I mentioned before, there were
 23 times we talked about his foundation, if it
 24 would founda- -- you know, could there be
 25 something more?

1 TIM SULLIVAN
 2 1679.
 3 Do you see where I'm pointing you
 4 to --
 5 A. I do.
 6 Q. -- on the left-hand side?
 7 A. Yes.
 8 Q. Okay. And under "Originating
 9 Number," there's a number 570-407-1340.
 10 Do you recognize that number?
 11 A. I do not.
 12 Q. You don't recognize that as
 13 Mr. Cohen's phone number?
 14 A. No, I wouldn't know his --
 15 Q. Okay.
 16 A. -- phone number.
 17 Q. I will represent to you that that is
 18 Mr. Cohen's cell phone number as identified by
 19 Benco's counsel.
 20 A. Okay.
 21 Q. And in the "Terminating Number"
 22 column, there's a phone number 414-975-8377.
 23 Do you see that?
 24 A. I do.
 25 Q. Is that your phone number?

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1 TIM SULLIVAN
 2 A. That is.
 3 Q. Okay. And that's your cell phone
 4 number?
 5 A. It is.
 6 Q. And are you the only person that
 7 uses that cell phone?
 8 A. I believe so.
 9 Q. No one else uses that cell phone?
 10 A. Correct.
 11 Q. And your office number, is it
 12 414-290-2508?
 13 A. Yes, it is.
 14 Q. Also, for that phone number, are you
 15 the only person that uses that phone?
 16 MR. McDONALD: Object to the form.
 17 THE WITNESS: My admin will answer
 18 the phone for me occasionally, but she has
 19 her own line for making her own phone
 20 calls.
 21 BY MR. SOLOMON:
 22 Q. Okay.
 23 A. So I'm the only one. That's my
 24 direct line.
 25 Q. Okay. You can put that document

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1 TIM SULLIVAN
 2 counsel has identified for Mr. Chuck Cohen as
 3 his cell phone.
 4 And under "Elapsed Time," do you see
 5 it says 11 minutes and 34 seconds?
 6 A. Yes.
 7 Q. Okay. Do you understand this to be
 8 a call you had with Mr. Cohen on January 13th,
 9 2012?
 10 A. It appears to be, yes.
 11 Q. Do you recall this phone call?
 12 A. Not specifically, no.
 13 Q. So do you recall what you might have
 14 discussed with Mr. Cohen on this phone call on
 15 January 13th, 2012?
 16 MR. McDONALD: Object to the form.
 17 THE WITNESS: I could speculate what
 18 it was about, the employment agreements, as
 19 I mentioned to you before, the charity, the
 20 potential merger discussions.
 21 BY MR. SOLOMON:
 22 Q. You have no specific recollection of
 23 what you discussed on this call, though? You'd
 24 be speculating if you told me?
 25 A. Correct. I can tell you what it was

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1 TIM SULLIVAN
 2 aside for a second.
 3 MR. SOLOMON: We're just going to
 4 take a quick break, if that's okay.
 5 MR. McDONALD: Yes.
 6 THE VIDEOGRAPHER: The time is
 7 4:41 p.m. We are off the record.
 8 (Whereupon, a recess was had
 9 from 4:41 p.m. to 5:00 p.m.)
 10 THE VIDEOGRAPHER: The time is
 11 5:00 p.m. We are back on the record.
 12 BY MR. SOLOMON:
 13 Q. Mr. Sullivan, you have CX4088 in
 14 front of you?
 15 A. Yes.
 16 Q. Okay. And, again, I'd like to
 17 direct your attention to item 1679.
 18 Do you see where I'm pointing you
 19 to?
 20 A. I do.
 21 Q. And, again, you identified
 22 414-975-8377 as your phone number, correct?
 23 A. Correct.
 24 Q. And I represented to you that
 25 570-407-1340 is the phone number that Benco's

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1 TIM SULLIVAN
 2 not about. It goes back to what I was stating
 3 earlier. It was not about any confidential
 4 strategic plans for Henry Schein or Benco
 5 relative to buying groups or any of the sort,
 6 but I can't tell you what specifically it was
 7 about.
 8 Q. Have you ever heard of a group
 9 called Unified Smiles?
 10 A. Only through a message I got from
 11 Chuck.
 12 Q. When did you get a message from
 13 Chuck about Unified Smiles?
 14 A. It was -- was it the day before --
 15 was it the day before this or something? I
 16 think there was a text message about it.
 17 Q. And Mr. Cohen texted you about
 18 Unified Smiles?
 19 MR. McDONALD: Object to the form.
 20 THE WITNESS: If I'm --
 21 MR. McDONALD: If you have a -- if
 22 you have a clear recollection, then tell
 23 him, but don't guess.
 24 THE WITNESS: Yeah, I'm -- I'm
 25 attempting to recall the process -- the

1 TIM SULLIVAN
 2 order of things here. So I'm right now
 3 speculating, so I don't know exactly where
 4 I heard it from.
 5 BY MR. SOLOMON:
 6 Q. But you recall Mr. Cohen texting you
 7 about Unified Smiles?
 8 MR. McDONALD: Object to the form.
 9 He just said he didn't recall that.
 10 THE WITNESS: I don't recall
 11 specifically.
 12 BY MR. SOLOMON:
 13 Q. But you just said a moment ago that
 14 Mr. Cohen texted you about Unified Smiles the
 15 day before.
 16 A. I believe --
 17 MR. McDONALD: Object to the form.
 18 THE WITNESS: I believe there's
 19 paperwork that speaks to Unified Smiles. I
 20 don't know. I was in my mind thinking it
 21 was from Chuck. It might not have been
 22 from Chuck. I don't recall now. I think I
 23 misspoke.
 24 BY MR. SOLOMON:
 25 Q. You haven't spoke to Mr. Cohen about

1 TIM SULLIVAN
 2 Unified Smiles?
 3 A. No.
 4 Q. So why did you just say a moment ago
 5 that you received a text message from Mr. Cohen
 6 about Unified Smiles?
 7 A. I think I misspoke.
 8 Q. Why did you misspeak?
 9 MR. McDONALD: Object to the form.
 10 What do you mean --
 11 THE WITNESS: I don't know.
 12 MR. McDONALD: -- why did he
 13 misspeak?
 14 BY MR. SOLOMON:
 15 Q. So you don't know why you just said
 16 that?
 17 A. In preparation for this, there was
 18 something about -- you had asked me if I heard
 19 about it. I never had and then forgot all
 20 about them until preparation for this, which
 21 would have been confidential discussions with
 22 attorneys.
 23 Q. How did you hear about Unified
 24 Smiles in preparation for today?
 25 MR. McDONALD: Object to the form.

1 TIM SULLIVAN
 2 Do not reveal your communications
 3 you've had with counsel.
 4 THE WITNESS: I'd be revealing
 5 confidential information with counsel.
 6 BY MR. SOLOMON:
 7 Q. Is there any nonconfidential
 8 information that you can tell me about Unified
 9 Smiles with respect to how you prepared
 10 today -- for today?
 11 A. No.
 12 Q. Have you ever had a discussion with
 13 Mr. Cohen about Unified Smiles?
 14 A. I don't believe so, no.
 15 Q. Do you understand Unified Smiles to
 16 be a buying group?
 17 A. I don't know who they are.
 18 Q. Did you look at any documents with
 19 counsel that refreshed your recollection as to
 20 what Unified Smiles was at any point in
 21 preparation for today?
 22 THE WITNESS: Would that be
 23 revealing confidential information?
 24 MR. McDONALD: Listen to his
 25 question.

1 TIM SULLIVAN
 2 BY MR. SOLOMON:
 3 Q. Did you look at any documents with
 4 counsel that refreshed your recollection
 5 regarding Unified Smiles in preparation for
 6 your deposition today?
 7 MR. McDONALD: Object to the form.
 8 THE WITNESS: Yes.
 9 BY MR. SOLOMON:
 10 Q. How many documents did you look at?
 11 A. I believe just one.
 12 Q. Okay. Which documents did you look
 13 at?
 14 A. That's what I'm saying, I don't
 15 recall. That's why I'm saying I think I
 16 misspoke. I thought it might have been
 17 something from Chuck, but it might have been
 18 something internally. I just don't recall.
 19 Q. Okay. Going back to this phone call
 20 with Mr. Cohen, you don't recall one way or the
 21 other what you discussed with him on that day,
 22 correct?
 23 MR. McDONALD: Object to the form,
 24 asked and answered.
 25 THE WITNESS: Back to what I said

1 TIM SULLIVAN
 2 before, I don't recall specifically what it
 3 was about, but I know what it was not
 4 about.
 5 BY MR. SOLOMON:
 6 Q. It was not about?
 7 A. Buying groups, what I just stated
 8 before.
 9 Q. Okay. Okay. You can put that
 10 aside.
 11 Mr. Sullivan, we talked earlier
 12 about a conversation -- strike that.
 13 We talked earlier about a phone call
 14 you received from Mr. Cohen in March of 2013
 15 relating to Atlantic Dental Care.
 16 Do you recall that?
 17 A. Yes.
 18 Q. And you previously testified about
 19 this call during your investigational hearing
 20 in May of 2017, correct?
 21 A. Correct.
 22 Q. And during that phone call,
 23 Mr. Cohen told you that Benco did not plan to
 24 bid for ADC's business?
 25 MR. McDONALD: Object to the form,

1 TIM SULLIVAN
 2 misstates his testimony, misstates the
 3 record.
 4 THE WITNESS: What I recall about
 5 that discussion was him asking me if I knew
 6 who they were. I did not. He started to
 7 say who they were, and I stopped him, as I
 8 testified earlier, saying this is not
 9 something we should be talking about,
 10 Chuck.
 11 BY MR. SOLOMON:
 12 Q. Okay. So he never told you that
 13 Benco did not plan to bid?
 14 A. Not in that discussion, no.
 15 Q. You didn't testify about that in
 16 your investigational hearing last year?
 17 A. To what? Testify what? That he --
 18 Q. That Mr. Cohen told you that Benco
 19 did not plan to bid on ADC's business before
 20 you stopped him.
 21 A. In that phone discussion, I don't
 22 believe so. I mean, I don't believe -- that's
 23 why -- I don't -- my recollection, as I sit
 24 here today, is that he did not state that in
 25 that discussion.

1 TIM SULLIVAN
 2 He asked me if I knew who they were.
 3 I did not know who they were. He started to
 4 explain from his perspective who they were, and
 5 I stopped him saying, Chuck, this is not a
 6 discussion we should be having. And that's
 7 what I testified earlier, that we changed the
 8 discussion to have to do with him recruiting me
 9 and me coming to work for him, joking around
 10 and other relatively small insignificant
 11 discussions.
 12 Q. So are you -- why did you stop him
 13 when he started telling you what ADC was?
 14 A. It was -- it was a discussion that I
 15 didn't think he and I should be having.
 16 Because, as I stated to you before, I would
 17 not, will not talk to Chuck or anyone at Benco
 18 about their strategies when it comes to
 19 buying -- relates to buying groups.
 20 Q. Okay. You thought that Mr. Cohen's
 21 call to you in March of 2013 was a crazy call,
 22 correct?
 23 MR. McDONALD: Object to the form.
 24 Why don't you show him his testimony
 25 where he said that.

1 TIM SULLIVAN
 2 THE WITNESS: Did I state that in
 3 the last testimony?
 4 BY MR. SOLOMON:
 5 Q. I believe you did.
 6 A. If I can confirm that, if you're
 7 saying it's in there, I'd like to confirm it.
 8 Q. Okay. We could do that.
 9 Were you surprised by Mr. Cohen's
 10 call to you on March 25th of 2013 regarding
 11 Atlantic Dental Care?
 12 A. Once I learned of the topic, I was
 13 surprised at why he was calling me, yes.
 14 Q. And why were you surprised?
 15 A. Because I know it's a topic I would
 16 not reach out to him to talk about.
 17 Q. Why is that?
 18 A. Never have. Because I know better.
 19 I know not to talk to my competitors about
 20 strategies when it comes to buying groups. I
 21 wouldn't do it.
 22 Q. So you would never make the same
 23 call to Mr. Cohen based on your antitrust
 24 training?
 25 A. That's correct.

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1 TIM SULLIVAN
2 Q. How else would you describe the call
3 from Mr. Cohen?
4 A. Cordial.
5 Q. Were you shocked by the call?
6 A. Again, once I learned what the
7 intent and the purpose of his call was, yes.
8 Q. And you believe that Mr. Cohen
9 should not have been discussing Atlantic Dental
10 Care with you on March 25th, 2013?
11 A. That is correct.
12 Q. Okay. And you don't recall
13 Mr. Cohen discussing either a customer or
14 buying groups with you on any other occasion,
15 is that right?
16 A. That's correct.
17 Q. This was the first time?
18 A. That's correct.
19 Q. And you were concerned that this
20 could be a potential antitrust violation?
21 MR. McDONALD: Object to the form.
22 THE WITNESS: Not on my behalf. I
23 received the phone call. Once I learned
24 the topic, I shut it down.
25 ///

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1 TIM SULLIVAN
2 BY MR. SOLOMON:
3 Q. So just to be clear, you shot down
4 the conversation at what point?
5 A. Oh, I don't know how far into the
6 call. It always starts with small talk,
7 probably something about how much better the
8 Packers are than the Eagles, other than this
9 one exceptional rare year, so other than small
10 talk.
11 And then at some point he shifted to
12 asking me if I knew who they were. I didn't.
13 He started to say something else about it, and
14 that's when I shut it down. We shifted to a
15 different topic, joked around a little bit.
16 Q. So what caused alarm bells to go off
17 in your head? Just that he had mentioned
18 something called Atlantic Dental Care or
19 something else?
20 A. That he was starting to talk to me
21 about a customer. In particular, it sounded
22 like it was a group of some sort. I didn't
23 know anything about it at that time. And
24 that's when I said, Chuck, you know you and I
25 should not be talking about this.

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1 TIM SULLIVAN
2 Q. Did you ever -- strike that.
3 You never reported the call to
4 anyone at Schein after it happened, right after
5 it happened, did you?
6 MR. McDONALD: Object to the form.
7 THE WITNESS: Not that I recall.
8 BY MR. SOLOMON:
9 Q. You never reported the call to
10 Schein's legal department, did you?
11 A. Not that I recall.
12 Q. And you didn't take any other steps
13 to document the call or what Mr. Cohen told you
14 during that phone call?
15 A. No. I felt I took appropriate
16 action.
17 Q. What was the appropriate action that
18 you took?
19 A. Shutting down the discussion.
20 Q. And there's no written record of you
21 telling Mr. Cohen that you did not want to
22 discuss Atlantic Dental Care, correct?
23 A. Not that I'm aware of.
24 Q. And other than Mr. Cohen, there are
25 no other witnesses knowledgeable about what you

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1 TIM SULLIVAN
2 discussed on the March -- on the March 25th,
3 2013 phone call?
4 A. There was no one on my line.
5 Q. And you're familiar with Schein's
6 antitrust training and compliance guidelines,
7 generally speaking, correct?
8 A. Correct.
9 Q. And you understand that Schein's
10 antitrust training and compliance guidelines
11 would have required you to report this call?
12 MR. McDONALD: Object to the form.
13 THE WITNESS: I don't know that it
14 would require me to report that call.
15 BY MR. SOLOMON:
16 Q. So you don't think that you were
17 required to report that call with Mr. Cohen?
18 MR. McDONALD: Object to the form.
19 THE WITNESS: I believe I did
20 everything that was appropriate.
21 BY MR. SOLOMON:
22 Q. You took no actions or precautions
23 in accordance with Schein's antitrust -- strike
24 that.
25 You took no actions or precautions

1 TIM SULLIVAN
 2 in accordance with Schein's antitrust
 3 compliance trainings that you received, right?
 4 MR. McDONALD: Object to the form.
 5 THE WITNESS: How can you possibly
 6 say -- I just said I took actions for sure.
 7 BY MR. SOLOMON:
 8 Q. You didn't let anyone else know?
 9 A. I did not.
 10 Q. And you did nothing to document the
 11 call?
 12 A. That's correct.
 13 Q. And you continued to communicate
 14 with Mr. Cohen following that call?
 15 MR. McDONALD: Object to the form.
 16 THE WITNESS: Not about Atlantic
 17 Dental Care, if that's -- I did not
 18 communicate with him.
 19 BY MR. SOLOMON:
 20 Q. Let's take a look at some more
 21 documents.
 22 So I'm handing you a document that's
 23 been pre-marked as CX0197, and I'm also handing
 24 you a document that's been pre-marked as
 25 CX0196.

1 TIM SULLIVAN
 2 of all the practices. So it's not a buying
 3 group, it's a big group. We're going to bid.
 4 Thanks."
 5 Do you see that?
 6 A. I do.
 7 Q. I'd like you to turn to the other
 8 document you have in front of you, and to
 9 CX0197-002.
 10 Do you see that?
 11 A. I do.
 12 Q. Okay. And I'd like to point you to
 13 item 3089.
 14 Do you see that?
 15 A. I do.
 16 Q. And this appears to be an entry from
 17 March 27th, 2013. And the originating number,
 18 it appears to be your phone number, is that
 19 correct?
 20 A. That's correct.
 21 Q. And the terminating number appears
 22 to be Mr. Cohen's telephone number, is that
 23 correct?
 24 A. Yes, it appears to be correct.
 25 Q. And the elapsed time indicates six

1 TIM SULLIVAN
 2 (Exhibits CX0196 and CX0197 were
 3 marked for identification.)
 4 (Witness viewed said document.)
 5 THE WITNESS: Okay.
 6 BY MR. SOLOMON:
 7 Q. Mr. Sullivan, do you recognize
 8 CX0196 as your text message communications with
 9 Mr. Cohen in 2013?
 10 A. I do.
 11 Q. And these text message
 12 communications were around the time of the
 13 March 25th, 2013 phone call that we've been
 14 talking about, correct?
 15 A. Correct.
 16 Q. And I'd like to direct your
 17 attention to CX0196-10. And it's a text
 18 message from Mr. Cohen to you on March 27th,
 19 2013.
 20 A. Okay.
 21 Q. Do you see that?
 22 A. I do.
 23 Q. And Mr. Cohen says, "Tim: Did some
 24 additional research on the Atlantic Care deal,
 25 seems like that have actually merged ownership

1 TIM SULLIVAN
 2 seconds, correct?
 3 A. Yes.
 4 Q. So this is an attempt by you to
 5 contact Mr. Cohen just a couple of days after
 6 the March 25th call you had with him, correct?
 7 A. Correct, and the same day, I
 8 believe, of his message on Atlantic Dental
 9 Care, is that right?
 10 Q. It appears to be so.
 11 A. Yes.
 12 Q. And then, again, I'd like to point
 13 you to 3091. Again, this is an entry from
 14 March 27th, 2013. And this appears to be from
 15 your cell phone number to Mr. Cohen's cell
 16 phone number, and the elapsed time is 20
 17 seconds.
 18 Do you see that?
 19 A. I do.
 20 Q. This is another phone call from you
 21 to Mr. Cohen on March 27th, 2013, correct?
 22 A. Correct.
 23 Q. So why did you try and call
 24 Mr. Cohen twice after receiving his text
 25 message about Atlantic Dental Care and the fact

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1 TIM SULLIVAN
 2 that Benco was going to bid?
 3 MR. McDONALD: Object to the form.
 4 THE WITNESS: To the best of my
 5 recollection, it was, again, to remind him,
 6 Chuck, when you brought this up to me the
 7 first time, I had said we should not be
 8 talking about this.
 9 The fact that he sent me a text on
 10 this again, I wanted to call and clarify to
 11 him, Chuck, stop sending me this
 12 information; it's not what we should be
 13 talking about.
 14 BY MR. SOLOMON:
 15 Q. So your intent was to call him to
 16 let him know that you did not want him to
 17 continue contacting you about Atlantic Dental
 18 Care?
 19 A. Correct. Remember, I want to keep
 20 things cordial with Chuck. We still wanted to
 21 acquire his company. If that wasn't the case,
 22 I probably would have acted and been a little
 23 more direct with him and done a few things
 24 differently.
 25 I was really clear with him in my

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1 TIM SULLIVAN
 2 verbal communications any time in these two
 3 communications, the first phone call and my
 4 attempt here after getting this text, to
 5 cordially tell him, but very directly tell him,
 6 Chuck, stop sending me this type of
 7 communication.
 8 Q. So you're reaching -- you're
 9 affirmatively reaching out to him again?
 10 A. Yes.
 11 Q. Did you think that that was required
 12 of you?
 13 A. I felt I needed to send him a
 14 message to stop communicating with me about the
 15 customer issue.
 16 Q. You previously testified that you
 17 weren't sure why you called Mr. Cohen about --
 18 why you called Mr. Cohen on March 27, 2013, is
 19 that correct?
 20 A. That's correct.
 21 Q. Why did you not remember during your
 22 investigational hearing last year why you tried
 23 to call Mr. Cohen?
 24 MR. McDONALD: Object to the form.
 25 THE WITNESS: I can't tell you why I

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1 TIM SULLIVAN
 2 didn't recall it then. Thought about it
 3 more since, reviewed my testimony,
 4 and myself asking why would I be calling
 5 him. I'm saying, to the best of my
 6 recollection, it would have been about
 7 that.
 8 BY MR. SOLOMON:
 9 Q. So what refreshed your recollection
 10 as to why you were calling Mr. Cohen since your
 11 investigational hearing in May of 2017?
 12 MR. McDONALD: Object to the form.
 13 He just told you there's no way he
 14 could recall.
 15 THE WITNESS: My review of my
 16 testimony.
 17 BY MR. SOLOMON:
 18 Q. So you're changing your testimony
 19 from May of 2017 in which you said that you
 20 don't recall why you were reaching out to
 21 Mr. Sullivan [sic] on March 27th, 2013, is that
 22 right?
 23 MR. McDONALD: Object to the form.
 24 THE WITNESS: I'm clarifying it by
 25 saying to the best of my recollection. I

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1 TIM SULLIVAN
 2 can't say, in fact, I know exactly that's
 3 for sure. To the best of my recollection,
 4 I believe that's why I was calling him. It
 5 was so quickly after his text message.
 6 And, again, to keep things
 7 cordial -- I could have sent a text reply
 8 saying Chuck, stop -- I wanted to pick up
 9 the phone and say, Chuck, stop.
 10 BY MR. SOLOMON:
 11 Q. How many times total did you reach
 12 out to Mr. Cohen asking him to stop contacting
 13 you about ADC?
 14 MR. McDONALD: Object to the form.
 15 You have the records.
 16 Don't guess.
 17 THE WITNESS: These two here for
 18 sure I attempted.
 19 BY MR. SOLOMON:
 20 Q. Any other attempts?
 21 MR. McDONALD: Object to the form.
 22 THE WITNESS: Let's go through the
 23 records.
 24 BY MR. SOLOMON:
 25 Q. Did you ever actually have a

1 TIM SULLIVAN
 2 conversation with Mr. Cohen in which you said,
 3 please don't contact me anymore about ADC?
 4 A. To the best of my recollection, we
 5 did.
 6 Q. When did that conversation occur?
 7 A. We should go through the records. I
 8 believe it was about a week later.
 9 Q. Okay. Are you referring to your
 10 call with Mr. Cohen on April 3rd of 2013?
 11 A. Where do you see that?
 12 Q. So I'm looking at items 3120 and
 13 3122.
 14 (Witness viewed said document.)
 15 THE WITNESS: Okay. I see that now,
 16 yes.
 17 BY MR. SOLOMON:
 18 Q. So it looks like you tried to reach
 19 Mr. Cohen on March 3rd, 2013 in item 3120 and
 20 then again in item 3122.
 21 And in item 3120, the phone call
 22 lasted for 37 seconds; and in item 3122, it
 23 appears to be a five-minute-and-thirty-six-
 24 second phone call, is that right?
 25 A. That's correct.

1 TIM SULLIVAN
 2 wanted you to know our -- what I decided to do
 3 on it, and then we shifted the topics.
 4 Q. How long in total did you talk to
 5 Mr. Cohen about ADC on April 3rd, 2013?
 6 A. It couldn't have been 30 seconds.
 7 Q. What did you shift the topic to
 8 after that?
 9 A. I don't recall. I -- I don't know.
 10 I'd be speculating. Again, it goes down -- it
 11 might have been something about should we
 12 continue to discuss the merger organizations or
 13 some other topic. It might have been the
 14 Packers, the Eagles, for all I know.
 15 Q. So you recall discussing ADC but not
 16 what else you discussed on that call with
 17 Mr. Cohen?
 18 A. That's correct.
 19 Q. And you recall what his reaction
 20 was, but not anything else you discussed on
 21 that call?
 22 A. To be clear, we've had a lot of
 23 discussions about meaningless things that can
 24 happen on multiple occasions.
 25 The only time I talked about

1 TIM SULLIVAN
 2 Q. When did you -- is this when you
 3 told Mr. Sullivan in item 3122 -- strike that.
 4 Is this when you told Mr. Cohen in
 5 item 3122 to stop contacting you about ADC?
 6 A. To the best of my recollection,
 7 that's when it happened, yes.
 8 Q. What did you say?
 9 A. I don't recall the exact words.
 10 Something to the effect of -- if you recall,
 11 we're going back and forth with some text in
 12 between here, too. I noticed you rang. I was
 13 just trying to connect. We finally did
 14 connect.
 15 Was to say, Chuck, as I told you
 16 when you first sent this to me, it's not the
 17 type of topic we should be discussing and
 18 please don't send me any more information as it
 19 relates to customers and how you approach
 20 customers, something to that effect. I don't
 21 know if those were the exact words, but I was
 22 clear to him not to communicate with that.
 23 Q. What did he say in response?
 24 A. I don't recall. Something -- I
 25 understand -- I just thought you -- I just

1 TIM SULLIVAN
 2 anything business substantive with Chuck Cohen
 3 or anyone at Benco was on our employment
 4 agreement issues.
 5 It could have been, by the way, is
 6 there something going on with -- I don't know;
 7 let's shift to that topic. I don't know. It
 8 could have been back to football or something
 9 silly. I don't know.
 10 But I know I did not talk about -- I
 11 did not talk to him about our strategy on
 12 buying groups or asking him any questions about
 13 Benco's strategy on buying groups. Did not
 14 happen.
 15 Q. So you just told him to stop
 16 contacting you about ADC?
 17 A. Correct.
 18 Q. Did you tell him why you wanted him
 19 to stop contacting you?
 20 A. Just the fact that it's a discussion
 21 you and I should not be having.
 22 Q. And he didn't ask any questions
 23 about why you were saying that?
 24 A. I think I just testified. He
 25 something to the effect of "I understand."

1 TIM SULLIVAN

2 Q. Anything else?

3 A. Not that I recall.

4 Q. How is it that you recall your
5 conversation with Mr. Cohen on this day about
6 ADC but not what you discussed after?

7 MR. McDONALD: Object to the form,
8 asked and answered.

9 THE WITNESS: I don't know how I
10 remembered last Tuesday I had pizza. I
11 don't know.

12 For some reason I remember that
13 because it was a topic I know very clearly
14 what we should and shouldn't -- what we can
15 and what we shouldn't be talking about.
16 The list of what we can are the things I
17 just mentioned. I don't know what we
18 shifted to at that time.

19 BY MR. SOLOMON:

20 Q. But you have a very vivid
21 recollection of that conversation with
22 Mr. Cohen on April 3rd of 2013 about ADC?

23 A. What I'm saying is I know I had two
24 discussions with him about it. I think when I
25 originally testified, I didn't know if it was

1 TIM SULLIVAN

2 on the second one. I know I -- on the first
3 one. It could have been just on the first
4 call.

5 As I'm thinking through the process
6 and I see the timeline of text messages that
7 came back to me, now I know I talked to him a
8 second time about it; that's why I'm calling
9 him.

10 Q. You're not guessing; you have a very
11 specific recollection of this phone call, is
12 that right?

13 A. What I'm saying is to the best of my
14 recollection.

15 Q. So Mr. Cohen would testify that you
16 told him that, right?

17 MR. McDONALD: Object to the form.

18 THE WITNESS: I don't know what -- I
19 would assume so. I don't -- I don't know
20 his testimony.

21 BY MR. SOLOMON:

22 Q. What does that mean? What do you
23 mean by to the best of your recollection?

24 A. Not the worst. To the best of my
25 recollection.

1 TIM SULLIVAN

2 Q. So you have a very specific memory
3 about this conversation?

4 A. Well, you're changing the words to
5 "very specific." I'm saying, as I think
6 through the process and, again, reviewing my
7 testimony and then the order of how things
8 happened and the text messages, it did come
9 back to me.

10 Q. When did you first recall this?

11 A. Last week or earlier this week, as I
12 was reviewing the documents.

13 Q. And what were you looking at
14 specifically that refreshed your recollection
15 about this call?

16 A. Both my testimony and these similar
17 papers.

18 Q. Was it during a meeting with your
19 counsel?

20 MR. McDONALD: Object to the form.

21 Don't -- don't reveal communications
22 you've had with counsel.

23 THE WITNESS: When I first came
24 back, no. It was as I was reviewing the
25 documents by myself prior.

1 TIM SULLIVAN

2 BY MR. SOLOMON:

3 Q. So you were reviewing them alone
4 without -- strike that.

5 You were reviewing the documents
6 alone, not in a meeting with your counsel when
7 you first recalled this phone call with
8 Mr. Cohen that you're speaking about today?

9 A. That's correct.

10 Q. And do you recall what day that was?

11 A. Some of it was over the weekend,
12 this past weekend. Some of it was on Monday,
13 so between Sunday and Monday this past week.

14 Q. Okay. When you reviewed your
15 transcript last year and when you provided
16 corrections for the errata sheet, you didn't
17 recall this new conversation with Mr. Cohen,
18 correct?

19 MR. McDONALD: Object to the form.

20 THE WITNESS: I don't know if I'd
21 call it a new conversation because we spoke
22 about the conversation in that. I just
23 didn't -- I wasn't thinking. I didn't
24 review it in that light.

25 ///

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1 TIM SULLIVAN
 2 BY MR. SOLOMON:
 3 Q. So you reviewed your IH transcript,
 4 your investigational hearing transcript, last
 5 year after you gave your testimony, and you
 6 didn't recall this second conversation with
 7 Mr. Cohen about ADC, correct?
 8 A. I didn't take --
 9 MR. McDONALD: Object to the form.
 10 THE WITNESS: Sorry. I did not take
 11 the time to think through the process at
 12 that time.
 13 BY MR. SOLOMON:
 14 Q. What document did you look at
 15 specifically that refreshed your recollection
 16 about this phone call?
 17 A. These similar documents of text
 18 exchanges.
 19 Q. So the text exchanges represented in
 20 CX0196?
 21 A. I -- assuming that I know what
 22 the -- I mean, yes. I mean, if that's -- I
 23 don't know what they were labeled then, but
 24 yes.
 25 Q. So the text message exchanges you

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1 TIM SULLIVAN
 2 looking at on March 27, 2013.
 3 Do you see that?
 4 A. I do.
 5 Q. And this is a phone call from your
 6 cell phone to 978-761-3064 that lasted for
 7 4 minutes and 44 seconds.
 8 Do you see that?
 9 A. I do.
 10 Q. And this is just a couple of minutes
 11 after you tried reaching Mr. Cohen in item 3091
 12 on March 27, 2013, correct?
 13 A. Yes.
 14 Q. Do you know whose phone number that
 15 is under "Terminating Number," 978-761-3064?
 16 A. I do not.
 17 Q. I will represent to you that that is
 18 Mr. Michael Porro's phone number, as has been
 19 identified by your counsel in discovery
 20 responses.
 21 A. Okay.
 22 Q. So you called Mr. Porro just a
 23 couple of minutes after trying to reach
 24 Mr. Cohen on March 27th, 2013, is that right?
 25 A. It appears so, yes.

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1 TIM SULLIVAN
 2 had with Mr. Cohen which involved ADC, is that
 3 what you're talking about?
 4 A. Correct.
 5 Q. And what specifically in these text
 6 message exchanges refreshed your recollection?
 7 A. Well, I had time to pause and think
 8 through from the first message that he sent,
 9 the conversation that we had then where I did
 10 tell him don't communicate with me anymore.
 11 And there's a series of text messages that
 12 followed, including we're trying to connect.
 13 It took us a while to actually connect.
 14 And then I saw when we did connect
 15 again, it was in response to a text message
 16 about, I saw you rang, should we try
 17 connecting. It was during that process.
 18 Q. Was this the -- was this the last
 19 time you spoke with Atlantic Dental Care with
 20 Mr. Cohen?
 21 MR. McDONALD: Object to the form.
 22 THE WITNESS: Yes.
 23 BY MR. SOLOMON:
 24 Q. Mr. Sullivan, I'd like to point you
 25 to item 3092 in the phone records that we're

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1 TIM SULLIVAN
 2 Q. Why would you call Mr. Porro right
 3 after you said you called Chuck Cohen to tell
 4 him to stop talking to you about ADC?
 5 A. I don't recall.
 6 Q. Sitting here today, you have no
 7 recollection?
 8 A. No. I -- there was communication
 9 from Michael to me. I don't know if I was
 10 responding to a message from him. I don't
 11 know. There's -- I know there's additional
 12 paperwork on that as well, on e-mail exchanges
 13 that Michael and I had on this topic.
 14 Q. So do you or don't you recall why
 15 you tried reaching out to Mr. Porro immediately
 16 after reaching out to Mr. Cohen?
 17 A. I don't know what immediately after
 18 calling Mr. Cohen has to do with it, but no.
 19 During this time, I was talking to Michael
 20 Porro about Atlantic Dental Care. He had sent
 21 me an e-mail about it. I don't know what the
 22 chronological order of it is. We should be
 23 good to through that to better understand that.
 24 Q. Did you tell him about your
 25 conversations with Mr. Cohen?

1 TIM SULLIVAN
 2 A. No.
 3 Q. How do you know?
 4 A. That's not -- it's a discussion
 5 Chuck and I, as I told Chuck, we shouldn't be
 6 having. I'm not going to pass that on to any
 7 of my team members.
 8 Q. But you don't recall specifically
 9 what you discussed with Mr. Porro, correct?
 10 MR. McDONALD: Object to the form.
 11 He just told you he knows he didn't
 12 talk about that, and Mr. Porro told you the
 13 same thing. Now you're calling him a liar.
 14 Great.
 15 BY MR. SOLOMON:
 16 Q. You can answer.
 17 A. Ask it again.
 18 Q. But you don't recall specifically
 19 what you talked to Mr. Porro about?
 20 MR. McDONALD: Object to the form,
 21 asked and answered.
 22 THE WITNESS: It was not about a
 23 discussion with Chuck Cohen. I believe it
 24 was about Atlanta Dental Care because
 25 Michael and I were having an exchange about

1 TIM SULLIVAN
 2 it during this -- during the same time
 3 frame.
 4 BY MR. SOLOMON:
 5 Q. Are you guessing, or do you know
 6 that for a fact?
 7 MR. McDONALD: Object to the form.
 8 THE WITNESS: I -- I am guessing
 9 that that was -- it was about that.
 10 BY MR. SOLOMON:
 11 Q. Okay. I don't --
 12 A. Because of the time, because of the
 13 time frame, because of the topic, I was
 14 exchanging e-mails with Michael Porro on this
 15 topic.
 16 Q. I don't want you to guess. If you
 17 have a specific recollection, tell me. But if
 18 you're guessing --
 19 A. I don't have a specific
 20 recollection.
 21 MR. McDONALD: To be clear, he told
 22 you what he did not talk about.
 23 THE WITNESS: Right.
 24 BY MR. SOLOMON:
 25 Q. Okay. You can put this set of phone

1 TIM SULLIVAN
 2 records aside for a moment.
 3 I'd like to go back one second to
 4 the text messages you exchanged with Mr. Cohen
 5 about Atlantic Dental Care.
 6 And specifically, I'd like to point
 7 you to CX0196-004, starting with, "Hi Chuck.
 8 Thanks for the call."
 9 Do you see that?
 10 A. I do.
 11 Q. This is on March 25th, 2013 right
 12 after you had just spoken with Mr. Cohen about
 13 ADC, correct?
 14 A. Well, again, I did not talk to
 15 Mr. Cohen about ADC. He called me to talk
 16 about it. I shut that discussion down.
 17 Q. And then this is a follow-up text
 18 message communication, correct?
 19 A. That is correct.
 20 Q. And you say, "Hi Chuck. Thanks for
 21 the call"?
 22 A. Yes.
 23 Q. So you're thanking Mr. Cohen for
 24 calling you in regards to Atlantic Dental Care?
 25 A. I'm going to say it again.

1 TIM SULLIVAN
 2 MR. McDONALD: Object. Object to
 3 the form.
 4 THE WITNESS: I wanted to keep
 5 things cordial between Chuck and I. We
 6 were seriously interested in acquiring his
 7 company, merging the company. And so, yes,
 8 I was being cordial, softer than I would
 9 have been otherwise.
 10 But, again, I can tell you what
 11 we've never talked about, which is the
 12 picture you're trying to paint. That
 13 picture does not exist.
 14 BY MR. SOLOMON:
 15 Q. I'm just trying to understand why
 16 you would be thanking him for a call after you
 17 just testified that you were shocked and
 18 concerned about him calling you, and you were
 19 doing everything you can to shut the
 20 conversation down and telling him not to
 21 contact you anymore, and then you text him and
 22 say thank you for call. I'm just trying to
 23 understand why --
 24 A. Because we --
 25 MR. McDONALD: Hang on. Hang on.

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<p>1 TIM SULLIVAN</p> <p>2 Object to the form, asked and</p> <p>3 answered. He just told you.</p> <p>4 THE WITNESS: The conversation was</p> <p>5 very short about ADC. I was clear with him</p> <p>6 on that. We went on about other stuff, so</p> <p>7 yes. And I said, hey, thanks for the call.</p> <p>8 We were joking about me going to work for</p> <p>9 him.</p> <p>10 I went on to say, "Yes, I am good</p> <p>11 with the terms we discussed and I look</p> <p>12 forward to joining Team Benco."</p> <p>13 Hey, by the way, put my face on your</p> <p>14 logo. I'm being facetious, keeping things</p> <p>15 light between us because I just basically</p> <p>16 told him firmly we shouldn't be talking</p> <p>17 about this, you know, Chuck, but let's keep</p> <p>18 things light, keep -- stay cordial.</p> <p>19 BY MR. SOLOMON:</p> <p>20 Q. If you turn to CX0196-007, again,</p> <p>21 this is a text message to you -- from you to</p> <p>22 Mr. Cohen.</p> <p>23 You say, "Thanks for the follow up</p> <p>24 on that article. Unusual."</p> <p>25 Do you see that?</p>	<p>1 TIM SULLIVAN</p> <p>2 MR. McDONALD: I don't. Where are</p> <p>3 you?</p> <p>4 MR. SOLOMON: CX0196-007.</p> <p>5 THE WITNESS: Oh, is that --</p> <p>6 MR. McDONALD: I'm sorry. I'm just</p> <p>7 lost, Ronnie. My 007 says, "Ouch..Didn't</p> <p>8 think that response from Stan!!"</p> <p>9 MR. SOLOMON: The next line.</p> <p>10 MR. McDONALD: Okay. Sorry. Got</p> <p>11 you. It's late.</p> <p>12 BY MR. SOLOMON:</p> <p>13 Q. You write, "Thanks for the follow up</p> <p>14 on that article. Unusual."</p> <p>15 Do you see that?</p> <p>16 A. Well, what I write in total is,</p> <p>17 "Ouch..Didn't think about that response from</p> <p>18 Stan!!" Because he had jokingly said to me,</p> <p>19 "Problem with this joke is if Stan says</p> <p>20 'Great,'" ha, ha, ha. "Maybe Scott would hire</p> <p>21 me," Scott Anderson over at Patterson. "Thanks</p> <p>22 for the follow up on that article. Unusual."</p> <p>23 Q. What did -- and the follow-up on the</p> <p>24 article, you're referring to Atlantic Dental</p> <p>25 Care?</p>
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<p>1 TIM SULLIVAN</p> <p>2 A. So he sent me, "Here's the link to</p> <p>3 the press release." So he had called me about</p> <p>4 Atlantic Dental Care. There was a press</p> <p>5 release out about it; did I see it. I said,</p> <p>6 no, I don't know who they are. So he forwarded</p> <p>7 me that press release, thanks.</p> <p>8 Q. So you're thanking him for doing</p> <p>9 that?</p> <p>10 A. Again, to be professionally cordial,</p> <p>11 yeah.</p> <p>12 Q. And, again, you -- or strike that.</p> <p>13 You refer to it as unusual. What</p> <p>14 did you mean by that?</p> <p>15 A. I don't -- I don't know what I meant</p> <p>16 by that.</p> <p>17 Q. You have no recollection what you</p> <p>18 meant, sitting here today?</p> <p>19 A. No.</p> <p>20 Q. Is there anything you could look at</p> <p>21 that could refresh your recollection as to what</p> <p>22 you meant when you said "unusual" with respect</p> <p>23 to that article?</p> <p>24 A. Nothing came to mind as I reviewed</p> <p>25 this, no.</p>	<p>1 TIM SULLIVAN</p> <p>2 Q. Turning to CX0196-005, Mr. Sullivan</p> <p>3 [sic] e-mails you a link to the press release.</p> <p>4 And this is the press release that</p> <p>5 relates to Atlantic Dental Care, correct?</p> <p>6 MR. McDONALD: Object to the form.</p> <p>7 You misstated, Ronnie.</p> <p>8 MR. SOLOMON: Sorry.</p> <p>9 THE COURT REPORTER: You've got to</p> <p>10 redo it. Sorry. It's getting late. I'm</p> <p>11 tired. Redo the question, please.</p> <p>12 MR. SOLOMON: Oh, sure.</p> <p>13 BY MR. SOLOMON:</p> <p>14 Q. So CX0196-005, this is Mr. Cohen</p> <p>15 e-mailing you a link to the press release</p> <p>16 surrounding Atlantic Dental Care, correct?</p> <p>17 MR. McDONALD: Well, it's texting,</p> <p>18 not e-mailing.</p> <p>19 MR. SOLOMON: Got it.</p> <p>20 MR. McDONALD: Do you want to try a</p> <p>21 third time to get the name right?</p> <p>22 THE WITNESS: It is late.</p> <p>23 MR. SOLOMON: Okay. I'll try this a</p> <p>24 third time.</p> <p>25 ///</p>

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1 TIM SULLIVAN
 2 BY MR. SOLOMON:
 3 Q. So CX0196-005, this is Mr. Cohen
 4 texting you a link to the press release
 5 surrounding Atlantic Dental Care, correct?
 6 A. Correct.
 7 Q. And this is another instance of
 8 Mr. Cohen contacting you as it relates to
 9 Atlantic Dental Care, correct?
 10 A. Correct.
 11 Q. Why didn't you try calling Mr. Cohen
 12 then to tell him to stop contacting you about
 13 ADC?
 14 A. He just sent me a link to the
 15 article that he referred to. I told him we
 16 shouldn't be talking about it. Why he sent a
 17 text, I don't know.
 18 Q. You waited two more days to call him
 19 to tell him to stop contacting you about ADC,
 20 right?
 21 MR. McDONALD: Object to the form.
 22 THE WITNESS: It's not that I
 23 waited. I just didn't -- he's forwarded me
 24 a link to an article. Didn't think much of
 25 it. Then he sent me a text actually

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 2 telling me how they plan to approach it.
 3 Him forwarding me a public link,
 4 it's public information. Why send it, I
 5 don't know. It doesn't make sense to me.
 6 I wouldn't do it. I would not send him
 7 anything on that. He send it to me. It's
 8 public information.
 9 Then he sends me a message that's
 10 not public information. I'm calling him to
 11 say, Chuck, knock it off.
 12 BY MR. SOLOMON:
 13 Q. What was the link that he -- what
 14 was the text that he sent you that was not
 15 public information?
 16 A. The one about that we were just
 17 talking about, did some additional research on
 18 Atlantic Dental Care. It seems like they have
 19 actually merged. So it's not a buying group.
 20 It's a group we're going to bid.
 21 MR. McDONALD: You need to slow
 22 down. You're getting tired. She's tired.
 23 THE WITNESS: Sorry.
 24 MR. McDONALD: Just slow down.
 25 MR. SOLOMON: I think we can take a

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 2 quick break. And then I think we have just
 3 20 or so minutes left. So let's go off the
 4 record.
 5 THE VIDEOGRAPHER: The time is
 6 5:42 p.m. We're off the record.
 7 (Whereupon, a recess was had
 8 from 5:42 p.m. to 5:59 p.m.)
 9 THE VIDEOGRAPHER: This is the
 10 beginning of DVD No. 5. The time is
 11 5:59 p.m. We are back on the record.
 12 BY MR. SOLOMON:
 13 Q. Mr. Sullivan, the first phone call
 14 you had with Mr. Cohen on March 25th, 2013 that
 15 we've been discussing, did Chuck Cohen ever
 16 basically say to you that Benco did not plan to
 17 bid on the Atlantic Dental Care group during
 18 that conversation?
 19 MR. McDONALD: Object to the form.
 20 THE WITNESS: The only thing I
 21 recall from the conversation was him
 22 mentioning -- asking me if I knew who they
 23 were. There was an article on it or
 24 something. He started to go down the road.
 25 I don't know what it was. I just said,

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 2 Chuck, we should not -- I don't recall that
 3 being anything he stated.
 4 BY MR. SOLOMON:
 5 Q. So he did not say that?
 6 MR. McDONALD: Object to the form.
 7 THE WITNESS: I don't believe so.
 8 BY MR. SOLOMON:
 9 Q. Okay. Earlier today I asked you
 10 some questions about your investigational
 11 hearing testimony from May of 2017.
 12 Do you recall that?
 13 A. I do.
 14 Q. And I asked you earlier today if
 15 anything in your testimony from your
 16 investigational hearing transcript was
 17 inaccurate.
 18 Do you recall that?
 19 A. I do.
 20 Q. And you said no, correct?
 21 A. Correct.
 22 Q. This afternoon you have now told us
 23 that there were inaccuracies in your
 24 investigational hearing transcript as it
 25 relates to what conversations you had with

1 TIM SULLIVAN
 2 Mr. Chuck Cohen, correct?
 3 MR. McDONALD: Object to the form.
 4 THE WITNESS: I'm saying now that
 5 in recollect- -- in reviewing the forms,
 6 that I recall what the conversation was
 7 about.
 8 BY MR. SOLOMON:
 9 Q. But I asked you earlier this morning
 10 if there were any inaccuracies in your
 11 investigational hearing transcript and you told
 12 me no.
 13 MR. McDONALD: Object to the form.
 14 THE WITNESS: That may be something
 15 we need to clear up.
 16 BY MR. SOLOMON:
 17 Q. Why did you say that this morning if
 18 you knew that there were some inaccuracies, as
 19 you say, in your investigational hearing
 20 testimony?
 21 MR. McDONALD: Object to the form.
 22 THE WITNESS: The thought didn't
 23 cross my mind when you asked me this
 24 morning.
 25 ///

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 2 paint here. In reviewing the documents, it
 3 didn't make -- I was trying to clarify in
 4 my mind that the order of things happened.
 5 He texted me. We spoke. I told him -- so
 6 I just went through that timeline.
 7 I didn't think while I was doing it,
 8 oh, by the way, that now makes my last
 9 testimony inaccurate, didn't think about
 10 it. I was thinking the mindset of, what
 11 was that? Oh, you know what? I'm going to
 12 be asked on that again. I can clean it up
 13 or clarify it here.
 14 BY MR. SOLOMON:
 15 Q. And just so the record is clear or
 16 very clear, you first realized that your
 17 investigational hearing testimony was
 18 inaccurate last week, is that right?
 19 MR. McDONALD: Object to the form,
 20 misstates what he just said.
 21 THE WITNESS: I'll repeat. The
 22 thought didn't cross my mind that as I read
 23 it, that now makes that part of the
 24 testimony inaccurate. At the time, that's
 25 what I said. It was accurate. That's what

1 TIM SULLIVAN
 2 BY MR. SOLOMON:
 3 Q. And you testified earlier that you
 4 first realized that there were inaccuracies in
 5 your investigational hearing testimony about a
 6 week ago, is that right?
 7 MR. McDONALD: Object to the form.
 8 THE WITNESS: I didn't view it as
 9 inaccuracies in it. As I was reading it, I
 10 wanted to -- I went through the timeline.
 11 Didn't think about it being inaccurate in
 12 the -- in the documents, which is why I
 13 didn't think about it when you said it this
 14 morning. It just reminded me of the time
 15 frame and I wanted to clean it up in this
 16 discussion.
 17 BY MR. SOLOMON:
 18 Q. So you just -- sorry. Go ahead. I
 19 didn't mean to cut you off.
 20 A. I think that covers it.
 21 Q. So are you saying that you first
 22 realized the inaccuracy today?
 23 MR. McDONALD: Object to the form.
 24 THE WITNESS: What I'm saying -- I
 25 know the picture, again, you're trying to

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 2 I said.
 3 In thinking about it further, it
 4 changed my recollection as to what that was
 5 about. Didn't think that I had to go back
 6 and change my testimony there, knowing this
 7 testimony would be happening here.
 8 BY MR. SOLOMON:
 9 Q. So when did you realize that your
 10 testimony in the investigational hearing was
 11 inaccurate?
 12 MR. McDONALD: Object to the form.
 13 THE WITNESS: Until you just said it
 14 right now.
 15 BY MR. SOLOMON:
 16 Q. You just realized today that your
 17 testimony in your investigational hearing was
 18 inaccurate?
 19 MR. McDONALD: Object to the form.
 20 THE WITNESS: I know what you're
 21 attempting to do.
 22 No, I'm saying as I was reviewing
 23 it -- I'll repeat myself again -- as I was
 24 reviewing it, I was reviewing in my mind
 25 the timeline. And it clarified for me, to

1 TIM SULLIVAN
 2 the best of my recollection, the series of
 3 events and why it occurred the way that it
 4 happened.
 5 And I had -- it didn't think to
 6 me that -- I didn't think that I had made
 7 my testimony inaccurate. Back then it's
 8 still accurate. I didn't recall then.
 9 That's accurate. I recall now. This is
 10 accurate.
 11 BY MR. SOLOMON:
 12 Q. When did you first recall that you
 13 had had these additional conversations with
 14 Mr. Cohen?
 15 MR. McDONALD: Object to the form.
 16 He's not testifying about any
 17 additional conversations, Counsel. He's
 18 clarifying what the conversation was about.
 19 THE WITNESS: I was just about to
 20 say the same thing. I'm not changing the
 21 fact that we had the con- -- that we had
 22 the discussion back then. What I meant a
 23 year ago, I didn't recall what it was
 24 about. That is accurate. That is still
 25 true at that time.

1 TIM SULLIVAN
 2 it again?
 3 BY MR. SOLOMON:
 4 Q. Today you talked about conversations
 5 you had with Mr. Cohen on March 27th and
 6 April 3rd. You didn't testify about those
 7 conversations in your investigational hearing
 8 last year.
 9 When did you first recollect those
 10 phone calls and conversations with Mr. Cohen
 11 about ADC?
 12 MR. McDONALD: Same objections.
 13 THE WITNESS: I did --
 14 MR. McDONALD: Misstating his
 15 testimony.
 16 THE WITNESS: Yeah, and I did
 17 testify about those last year. I just
 18 didn't recall what they were about. That
 19 was my -- that was my testimony then.
 20 BY MR. SOLOMON:
 21 Q. Turning -- if you can pull up your
 22 phone records again, Mr. Sullivan.
 23 MR. McDONALD: Which one? He's got
 24 two.
 25 MR. SOLOMON: This is CX0197.

1 TIM SULLIVAN
 2 BY MR. SOLOMON:
 3 Q. Today you talked about conversations
 4 you had with Mr. Cohen on March 27th and
 5 April 3rd, for example. You didn't testify
 6 about that in your investigational hearing last
 7 year.
 8 When did you first recollect those
 9 phone calls and conversations that you had with
 10 Mr. Cohen?
 11 MR. McDONALD: If you're going -- if
 12 you're going to tell him that his testimony
 13 was inaccurate, then you need to show him
 14 his testimony and show him what he said.
 15 And I'm going to object to you
 16 telling him that something was inaccurate
 17 without putting in front him, giving him an
 18 opportunity to read it, and telling you if
 19 he's changing what he said.
 20 It's late in the day. He's been
 21 testifying for nearly six and a half hours.
 22 You're throwing around dates of stuff that
 23 happened years ago. It's not fair to the
 24 witness.
 25 THE WITNESS: Could you please ask

1 TIM SULLIVAN
 2 MR. McDONALD: Okay.
 3 BY MR. SOLOMON:
 4 Q. And, again, if you can look at items
 5 3120 and 3122.
 6 Do you see where I'm looking at?
 7 A. I do.
 8 Q. Okay. When you spoke to Mr. Cohen
 9 on April 3rd, did you mention ADC?
 10 A. I just want to clarify. Is this the
 11 call I already testified about?
 12 Q. Yes.
 13 A. This is the second -- after we
 14 played a little phone tag, a couple of text
 15 messages about, yeah, I saw you called, is this
 16 that phone call?
 17 Q. I mean, this is a phone call on
 18 April 3rd, 2013 that we've been talking about
 19 today. One is 37 seconds, and one is 5 minutes
 20 and 36 seconds.
 21 A. I'd like to review the entire series
 22 of events. I just want to confirm that that's
 23 the call I'm talking about.
 24 Q. Okay. Do you want to pull up the
 25 text messages; is that what you're saying?

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1 TIM SULLIVAN
 2 A. Yes. Yes, please.
 3 Q. You should have those somewhere in
 4 front of you as well.
 5 (Witness viewed said document.)
 6 THE WITNESS: Okay. Yes.
 7 BY MR. SOLOMON:
 8 Q. So item 3120 on April 3rd, 2013,
 9 this is you trying to reach Mr. Cohen. And the
 10 call lasted for 37 seconds, correct?
 11 A. I don't know if we actually
 12 connected. I don't know if 37 seconds is it
 13 ringing or if I left a message. I don't
 14 recall.
 15 Q. You don't recall speaking with
 16 Mr. Cohen on that first phone call on item
 17 3120?
 18 A. Correct. I think he called me back
 19 later in the day.
 20 Q. And then item 3122 on April 3rd,
 21 2013, it looks like Mr. Cohen calls you, and
 22 you spoke for 5 minutes and 36 seconds,
 23 correct?
 24 A. Correct.
 25 Q. And when you spoke to Mr. Cohen

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1 TIM SULLIVAN
 2 A. It's an internal e-mail exchange
 3 with a copy of a draft proposal for our meeting
 4 with Smile Source.
 5 Q. You drafted part of this e-mail,
 6 correct?
 7 A. I did.
 8 Q. And you did so as part of your job
 9 at Schein?
 10 A. Yes.
 11 Q. And you had personal knowledge of
 12 what you wrote in this e-mail?
 13 A. Yes.
 14 Q. And you wrote this e-mail around the
 15 time that you were meeting with Smile Source in
 16 February of 2014, correct?
 17 A. That is correct.
 18 Q. And this CX2462 is a true and
 19 accurate representation of this e-mail
 20 correspondence and its attachment, correct?
 21 A. Correct.
 22 Q. And Schein has kept CX2462 in the
 23 ordinary course of its business?
 24 A. Correct.
 25 Q. Okay. Mr. Sullivan, is the

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1 TIM SULLIVAN
 2 during that phone call, did you mention ADC?
 3 A. What -- what I mentioned to him had
 4 to do with the text he sent me, which, again,
 5 after telling him on the first call that he
 6 should not -- that we should not be having this
 7 discussion, going back and forth on some other
 8 things, then he went on to tell me that they're
 9 going to bid.
 10 That day I attempted to call him.
 11 We didn't connect. It took a while to get back
 12 and forth, and we did finally connect on this
 13 day. And that's when I said, Chuck, as I
 14 spoke -- said to you the first time, we should
 15 not be talking about this stuff. He sent me
 16 another text. Don't send me text messages like
 17 that.
 18 Q. Mr. Sullivan, I'm handing you an
 19 exhibit that's been pre-marked CX2462.
 20 (Exhibit CX2462 was marked for
 21 identification.)
 22 (Witness viewed said document.)
 23 THE WITNESS: Okay.
 24 BY MR. SOLOMON:
 25 Q. Mr. Sullivan, what is CX2462?

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 2 attachment to -- the attachment in CX2462 the
 3 proposal that Schein made to Smile Source in
 4 February of 2014?
 5 MR. McDONALD: Object to the form.
 6 THE WITNESS: The e-mail says it's a
 7 proposal draft, so I cannot confirm that
 8 was the final, but it is a draft of what we
 9 were going to propose.
 10 BY MR. SOLOMON:
 11 Q. Does this look like what you ended
 12 up proposing to Smile Source in February 2014?
 13 A. I don't know what else would have
 14 changed. But this is, again, a draft. Nothing
 15 might have changed. It could have been a
 16 period, a comma. It could have been a number.
 17 I don't know.
 18 Q. If you turn to CX2462-012.
 19 Do you see where I'm at?
 20 A. I do.
 21 Q. Does this slide represent the
 22 discounts that Schein offered to Smile Source
 23 in February 2014?
 24 MR. McDONALD: Object to the form,
 25 asked and answered.

<p style="text-align: right;">Page 450</p> <p>1 TIM SULLIVAN</p> <p>2 THE WITNESS: Again, this is a</p> <p>3 draft. I don't know if this was the final</p> <p>4 version.</p> <p>5 BY MR. SOLOMON:</p> <p>6 Q. Sitting here today, do you have any</p> <p>7 reason to doubt that this was the proposal that</p> <p>8 Schein offered to Smile Source in</p> <p>9 February 2014?</p> <p>10 MR. McDONALD: Object to the form.</p> <p>11 THE WITNESS: I would like to go</p> <p>12 back and confirm and get the actual</p> <p>13 draft -- or the actual presentation.</p> <p>14 BY MR. SOLOMON:</p> <p>15 Q. So you're not sure one way or the</p> <p>16 other, sitting here today, if these were the</p> <p>17 discounts that were proposed to Smile Source in</p> <p>18 2014?</p> <p>19 A. I cannot confirm that for a fact.</p> <p>20 Q. Do you recall ever meeting with</p> <p>21 Smile Source in -- strike that.</p> <p>22 Do you recall meeting with anyone</p> <p>23 from Smile Source at the Chicago Midwinter</p> <p>24 meeting in February of 2014?</p> <p>25 A. I met with -- what's his name</p>	<p style="text-align: right;">Page 451</p> <p>1 TIM SULLIVAN</p> <p>2 again -- whoever was initially sending me</p> <p>3 messages. I met him first at the ADA, and we</p> <p>4 had some e-mail exchanges, which is in the</p> <p>5 fall. And then I believe we had a follow-up</p> <p>6 meeting at our booth, not like a sit-down</p> <p>7 meeting, scheduled meeting. It was a meeting</p> <p>8 at the booth at 10 o'clock. I'm not saying it</p> <p>9 was 10 o'clock. It was a meeting at our booth.</p> <p>10 Q. At the Chicago Midwinter meeting?</p> <p>11 A. I believe that's right, yes.</p> <p>12 Q. Okay.</p> <p>13 A. Is it Andrew? Was that name from</p> <p>14 earlier? Is he the CEO guy that we were --</p> <p>15 Q. We were looking at e-mails with Andy</p> <p>16 Goldsmith earlier today.</p> <p>17 Is that who you're referring to?</p> <p>18 A. That -- that's who I'm thinking of,</p> <p>19 yes.</p> <p>20 Q. Okay. So you talked to Andy</p> <p>21 Goldsmith at the Chicago Midwinter meeting in</p> <p>22 February 2014?</p> <p>23 A. I believe he was the one there, yes.</p> <p>24 Q. Do you recall what you talked about?</p> <p>25 A. I believe it was post the meeting</p>
<p style="text-align: right;">Page 452</p> <p>1 TIM SULLIVAN</p> <p>2 that we had with them. I'm not -- do you have</p> <p>3 the meeting date when we actually met with them</p> <p>4 and proposed this?</p> <p>5 Q. I don't.</p> <p>6 A. Yeah, I'm not -- I'm not -- I don't</p> <p>7 recall if it was -- if it was after our meeting</p> <p>8 or before. I believe it was after the meeting,</p> <p>9 and they had already said no. It was just a --</p> <p>10 they were at the Chicago Midwinter meeting</p> <p>11 following up.</p> <p>12 Q. Did Smile Source tell you what</p> <p>13 pricing they were already getting from their</p> <p>14 current supplier, Burkhart, in February of</p> <p>15 2014?</p> <p>16 A. No.</p> <p>17 Q. Do you recall, sitting here today,</p> <p>18 what pricing or discounts you ultimately</p> <p>19 proposed to Smile Source when you met with them</p> <p>20 in February of 2014?</p> <p>21 A. Well, I think I just answered that,</p> <p>22 that I don't know that this was the final. And</p> <p>23 I'd have to take a look at what that actually</p> <p>24 was.</p> <p>25 Q. Okay. So you don't recall?</p>	<p style="text-align: right;">Page 453</p> <p>1 TIM SULLIVAN</p> <p>2 A. That's correct.</p> <p>3 Q. Do you recall whether Smile Source</p> <p>4 was meeting with any other distributors in the</p> <p>5 February 2014 time frame?</p> <p>6 MR. McDONALD: Object to the form.</p> <p>7 THE WITNESS: I don't recall them</p> <p>8 telling me that they were.</p> <p>9 BY MR. SOLOMON:</p> <p>10 Q. Did you know that they were meeting</p> <p>11 with any other distributors in the</p> <p>12 February 2014 time frame?</p> <p>13 A. No, I do not.</p> <p>14 MR. SOLOMON: We can go off the</p> <p>15 record.</p> <p>16 THE VIDEOGRAPHER: The time is</p> <p>17 6:17 p.m. We are off the record.</p> <p>18 (Whereupon, a recess was had</p> <p>19 from 6:17 p.m. to 6:21 p.m.)</p> <p>20 THE VIDEOGRAPHER: The time is</p> <p>21 6:21 p.m. We are back on the record.</p> <p>22 MR. SOLOMON: I have no further</p> <p>23 questions.</p> <p>24 ///</p> <p>25 ///</p>

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1 TIM SULLIVAN
 2 THE VIDEOGRAPHER: The time is
 3 6:21 p.m. We are off the record.
 4 (Whereupon, at 6:21 p.m. the
 5 deposition was adjourned to July 20, 2018
 6 at 9:00 a.m.)
 7
 8 _____
 9 TIM SULLIVAN
 10
 11 SUBSCRIBED AND SWORN BEFORE ME
 12 THIS ____ DAY OF _____, 2018.
 13
 14 _____
 15 (Notary Public) MY COMMISSION EXPIRES: _____
 16
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 25

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1 TIM SULLIVAN
 2 C E R T I F I C A T E
 3 S T A T E O F I L L I N O I S)
 4) s s . :
 5 C O U N T Y O F C O O K)
 6 I, JANET L. ROBBINS, a Notary Public
 7 within and for the State of Illinois, do
 8 hereby certify:
 9 That TIM SULLIVAN, the witness whose
 10 deposition is hereinbefore set forth, was
 11 duly sworn by me and that such deposition
 12 is a true record of the testimony given by
 13 such witness.
 14 I further certify that I am not
 15 related to any of the parties to this
 16 action by blood or marriage; and that I am
 17 in no way interested in the outcome of this
 18 matter.
 19 IN WITNESS WHEREOF, I have hereunto
 20 set my hand this 24th day of July, 2018.
 21
 22 _____
 23 JANET L. ROBBINS, CSR, RPR
 24
 25

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1 TIM SULLIVAN
 2 NAME OF CASE:
 3 NAME OF WITNESS:
 4 Reason Codes:
 5 1. To clarify the record.
 6 2. To conform to the facts.
 7 3. To correct transcription errors.
 8 Page _____ Line _____ Reason _____
 9 From _____ to _____
 10 Page _____ Line _____ Reason _____
 11 From _____ to _____
 12 Page _____ Line _____ Reason _____
 13 From _____ to _____
 14 Page _____ Line _____ Reason _____
 15 From _____ to _____
 16 Page _____ Line _____ Reason _____
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 18 Page _____ Line _____ Reason _____
 19 From _____ to _____
 20 Page _____ Line _____ Reason _____
 21 From _____ to _____
 22 Page _____ Line _____ Reason _____
 23 From _____ to _____
 24
 25 _____

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ERRATA SHEET

DEPOSITION OF: Tim Sullivan

DATE DEPOSITION: July 19-20, 2018

CASE NAME: In the Matter of Benco Dental, Inc., et al., Docket No. D09379

The following are the corrections which I have made to my transcript:

PAGE	LINE #	CORRECTION	REASON FOR CORRECTION
15	12	Change "No." to "Yes, see pages 409:23-423:17, 437:14-447:17, and 478:14-479:17.	Clarification/misspoke
22	16	Change "the health side" to "the animal health side"	Typographical error/clarification
32	19	Change "behind actually to make sure" to "behind them to make sure"	Typographical error/clarification
51	11	Change "ix" to "is"	Typographical error
53	5	Change "narrowly" to "narrowed"	Typographical error
93	22	Delete "personally"	Typographical error
93	24	Change "they" to "the members"	Clarification
102	10	Delete "Service"	Typographical error
102	23	Change "become" to "be in"	Typographical error
123	15	Change "Before" to "For"	Typographical error
142	20	Change "field source" to "field sales"	Typographical error
164	12	Change "own internal" to "own internal conflicts"	Clarification
171	12-13	Change "take them through" to "talk them through"	Typographical error
185	15	Delete "creation"	Typographical error
197	7	Change "but" to "not"	Typographical error
205	23	Change "to release to get" to "to really get"	Typographical error
235	3	Change "general – a good description of a general" to "a good description of it generally"	Typographical error/clarification
243	10	Change "within their members" to "with their members"	Typographical error

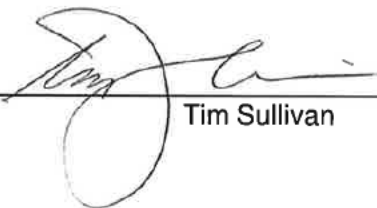
244	21	Change “don’t why” to “don’t know why”	Typographical error
264	13	Change “sponsor” to “Smile Source”	Typographical error
264	21	Change “In that document” to “In some document”	Typographical error/clarification
307	22	Change “less” to “items”	Typographical error/clarification
315	13-14	Change “they were allowed to be in the contract with them to offer anything” to “they were not allowed in the contract to offer anything”	Clarification
326	17	Change “in effectiveness” to “effectively”	Typographical error/clarification
333	4	Change “rate” to “right”	Typographical error
333	13	Change “uniquely” to “unique”	Typographical error
335	13-14	Change “so at the December last offsite meeting” to “so at the last December offsite meeting”	Typographical error/clarification
341	19	Change “him” to “Mr. Cohen”	Clarification
341	20	Change “him” to “Mr. Cohen”	Clarification
369	23	Change “Atlantic Dental Group” to “Atlantic Dental Care group”	Clarification
373	23	Delete “specifically”	Typographical error
375	10-11	Change “ we had questions about how we’d form that” to “he had questions about how we formed that”	Typographical error/clarification
386	14	Change “of each other” to “of each other’s sales reps”	Clarification
388	10-11	Change “the employment agreement.” to “the employment agreement and a potential merger.”	Clarification
415	22	Change “not to communicate with that” to “not to communicate about that with me.”	Typographical error/clarification
435	7	Change “send” to “sent”	Typographical error
442	5	Change “think” to “occur”	Clarification
442	6-7	Change “I didn’t think that I had made my testimony inaccurate.” to “I didn’t think my testimony was	Clarification

		inaccurate.”	
486	2	Change “sees” to “states”	Typographical error
504	24	Change “we believe and approve of the lives we touch” to we “believe in improving the lives we touch”	Typographical error
510	21	Delete “floor”	Typographical error/clarification
throughout		Change “special markets” to “Special Markets”	Typographical error

I, Tim Sullivan, declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

EXECUTED this 21st day of August, 2018.

at West Allis, WI
(City) (State)



Tim Sullivan

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CX8029

1 CONFIDENTIAL -- RICHARD K. JOHNSON, M.D.
2 UNITED STATES OF AMERICA
3 BEFORE THE FEDERAL TRADE COMMISSION

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7 In the Matter of
8 Benco Dental, Inc., et al,

9 Docket No. D09379

10 _____/
11 Pages 1 to 156, inclusive.

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13
14 *** CONFIDENTIAL ***

15
16 DEPOSITION OF RICHARD K. JOHNSON, M.D.

17 _____
18 Thursday, July 26, 2018
19 Reno, Nevada

20
21
22
23 Job No: 143123

24 REPORTED BY: CHRISTINA AMUNDSON
25 CCR #641 (Nevada)
CSR #11883 (California)

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INDEX

Deposition of RICHARD K. JOHNSON M.D.

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EXHIBITS

Table with 3 columns: EXH. NO., DESCRIPTION, and PAGE. Rows include Exhibit 1 (130), Exhibit 2 (132), Exhibit 3 (136), and Exhibit 4 (138).

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BE IT REMEMBERED that on Thursday, July 26, 2018, commencing at 8:42 a m. of said day, at Maupin, Cox & LeGoy, 4785 Caughlin Parkway, Reno, Nevada, before me, CHRISTINA M. AMUNDSON, a Certified Shorthand Reporter, personally appeared RICHARD K. JOHNSON, M.D.

RICHARD K. JOHNSON, M.D.,

called as a witness in the matter herein, who, having been first duly sworn, was examined and testified as follows:

EXAMINATION

BY MS. CASALE:

Q My name's Mary Casale. I'm an attorney at the FTC.

Can you please state your full name for the record.

A Richard Johnson.

Q And have you been deposed before?

A No.

Q Okay. With whom are you employed?

A Self.

Q Self. Are you employed by KlearImpakt?

A Self.

Q What's your relationship with KlearImpakt?

1 A I'm part owner of the company.
 2 Q Do you understand you're here testifying as
 3 a corporate representative on behalf of KlearImpakt?
 4 A Yes.
 5 Q Great.
 6 MS. CASALE: And if counsel wants to
 7 introduce themselves for the record.
 8 MR. SCHAERER: Yes. This is Enrique
 9 Schaerer with Maupin Cox & LeGoy. I represent the
 10 deponent, Dr. Johnson.
 11 MR. FONTECILLA: Adrian Fontecilla,
 12 Proskauer Rose, on behalf of Henry Schein, Inc.
 13 MS. CASALE: And then anyone else on the
 14 phone?
 15 MR. SCHLOSSER: Jay Schlosser from Briggs &
 16 Morgan on behalf of Patterson Companies.
 17 MR. YOON: Eric Yoon on behalf of Benco
 18 Dental.
 19 MS. ROSNER: Jasmine Rosner on behalf of
 20 complaint counsel.
 21 BY MS. CASALE:
 22 Q Okay, Mr. Johnson. So since you've never
 23 been deposed before, I'm just going to go through a
 24 few guidelines and instructions so today goes
 25 smoothly.

1 not be able to testify fully and accurately today?
 2 A No.
 3 Q Did you do anything to prepare for this
 4 deposition?
 5 A Organized emails and printed out the
 6 contract just to review it.
 7 Q Okay. And what emails did you organize?
 8 A I believe I had -- I can't remember who I
 9 had an organize it for, but I had to send all the
 10 emails to, I think Henry Schein, so all the emails
 11 ever written or any kind of correspondence.
 12 Q Okay. And that was part of the document
 13 production --
 14 A Correct.
 15 Q -- that the FTC requested?
 16 A Yes.
 17 Q I understand. Did you meet with anyone to
 18 prepare for this deposition today?
 19 A I met with my attorney.
 20 Q And for how long did you meet?
 21 A Half hour.
 22 Q Did you meet with any respondents'
 23 attorneys?
 24 A Meaning Henry Schein? No.
 25 Q Henry Schein -- okay.

1 I'm going to ask you questions and you'll
 2 answer the questions completely and to the best of
 3 your knowledge. Your attorney or respondents'
 4 attorneys may object to some of my questions. The
 5 court reporter will note the objections but you're
 6 still required to answer the question unless you
 7 receive instruction not to answer based on
 8 privileged information and you choose to follow that
 9 instruction.
 10 The court reporter is recording everything
 11 we say, so to make her job easier, please answer all
 12 my questions audibly and verbally. Don't shake your
 13 head or say "uh-huh" or "uh-uh." If you don't
 14 understand a question, please let me know and I'll
 15 do my best to rephrase it. Otherwise, if you
 16 respond to my question, I'll assume you understood
 17 it.
 18 We'll take periodic breaks throughout the
 19 day, so if you need a break, please let me know.
 20 And if there's a pending question I ask that you
 21 answer it before we take a break.
 22 Do you understand all of these rules and
 23 guidelines?
 24 A Yes, I do.
 25 Q Great. Is there any reason why you would

1 Have you spoken with counsel from Henry
 2 Schein about today's deposition?
 3 A I don't believe so.
 4 Q Okay. Is Henry Schein paying your
 5 attorney's fees for this matter?
 6 A Yes.
 7 Q And you're aware that you are on Henry
 8 Schein's witness list?
 9 A Yes.
 10 Q And do you have plans to testify in DC this
 11 fall?
 12 A Hope not.
 13 Q Okay. So can you just generally tell me
 14 what KlearImpakt is?
 15 A KlearImpakt is a networking collaborative
 16 buying group. We have a -- kind of a three-pronged
 17 approach to dentists to get them to grow their
 18 practice.
 19 We have a collaborative approach that
 20 networks dentists together with like-minded other
 21 dentists so they can go through the same trials and
 22 issues so they understand that somebody's in the
 23 same boat they're in.
 24 We have the discounts for everything from
 25 merchandise to equipment to credit card processing

Page 10	Page 11
<p>1 machines to a business coach. And then we have a 2 full-service marketing agency that works with them 3 as well for websites, SEO, and then we teach classes 4 as well. 5 Q What kind of classes? 6 A Front-office training, books, business 7 math, streamlining efficiency. And I know there's 8 more but ... 9 Q Okay. So you said you are a part owner of 10 KlearImpakt. How long have you been a part owner? 11 A Since the beginning. I believe that's 12 three, four -- four years, five years. 13 Q So 2014? 14 A I would have to look it up but I believe 15 so, yeah. 16 Q Okay. Do you remember when you 17 incorporated or you registered -- 18 A The EIN? 19 Q -- KlearImpakt as a business? 20 A I think 2014 sounds about right. 21 Q And what is your current role at 22 KlearImpakt? 23 A Mainly as a consultant to the dentists for 24 business-related questions. I have another 25 full-time job so I don't do a ton with it, except</p>	<p>1 for strategic vision and consults with the dentists 2 if they have questions about running a practice. 3 Q So you've said you give business-related 4 advice. Can you give me a little more detail on 5 that? 6 A If they want an exit strategy, we go over 7 that with them. If they're trying to find another 8 dentist to join their practice, we discuss that. If 9 they're trying to expand, we discuss how much they 10 should expand. If they're having front-office 11 trouble, we'll discuss that or send out somebody to 12 do a training for them -- 13 Q Okay. 14 A -- so it really depends on their question 15 how much ... 16 Q So I just want to make sure I understand. 17 When you say you're -- you act as a consultant with 18 business-related questions, are you acting as a 19 consultant towards KlearImpakt or KlearImpakt's 20 members? 21 A I don't understand that question. 22 Q So are you consulting with the owners of 23 KlearImpakt about the KlearImpakt business or are 24 you consulting about the dentistry business? 25 A Are you talking about to the dentists or</p>
<p>Page 12</p> <p>1 with each other within KlearImpakt? 2 Q Within KlearImpakt -- 3 A Yeah. 4 Q -- are you consulting on the business 5 strategy for KlearImpakt? 6 A Correct. 7 Q Okay. 8 A Yeah. 9 Q I just want to make sure. 10 So you said you consult with the dentists 11 if they want to expand the business. 12 What does that entail? 13 A So if they have two operatories and they 14 want to go to what they think is the next level for 15 them personally, then we discuss how many more 16 operatories they would need and look at their office 17 space, if they have an expansion room or not. If 18 not, we help them look at buildings or what size of 19 buildings they should go into. 20 Because a lot of them went to school to 21 become a dentist but they don't understand how they 22 can grow their practice and how many more 23 operatories they should have so they're not 24 constantly fighting the battle of expansion. 25 Q Do you have any role in the strategic</p>	<p>Page 13</p> <p>1 decisions or expansion of KlearImpakt as a business? 2 A I'm one of five owners -- six owners so I 3 have a position in it, yes, one of -- one opinion of 4 six. 5 Q So you're part of the discussion when 6 KlearImpakt is deciding how to expand its 7 membership? 8 A Correct. 9 Q And what does that usually entail? 10 A That discussion entail? 11 MR. FONTECILLA: Objection. 12 BY MS. CASALE: 13 Q If KlearImpakt wanted to expand its 14 membership, what does that process look like in 15 deciding? 16 MR. SCHAERER: That's a vague question. 17 MR. FONTECILLA: Objection, calls for 18 speculation. 19 MR. SCHAERER: Can you clarify that? 20 MS. CASALE: Yes. Let me think about how 21 to phrase that. 22 BY MS. CASALE: 23 Q Are you involved in the strategic -- I'm 24 trying to think how to phrase this. 25 Are you involved in making decisions to</p>

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1 expand membership for KlearImpakt?
 2 A Expand membership, our partners, our
 3 services? I don't know what you're --
 4 Q Membership.
 5 A Like more doctors?
 6 Q Yes.
 7 A Yes.
 8 Q Okay. And what does your role look like in
 9 that?
 10 A I'm just part of a discussion, equal to the
 11 same -- to Dr. Jason and Todd Sala and Ryan Lewis
 12 and Deb Zener.
 13 Q Okay. So you said this is kind of your
 14 part-time job. You have a full-time job outside of
 15 this.
 16 A Correct.
 17 Q What do you do other than --
 18 A Doctor of audiology. And then I own a very
 19 similar type of group in the medical industry for
 20 ear doctors, otologists, and audiologists.
 21 Q And what's the name of that group?
 22 A AudConnex, A-u-d-C-o-n-n-e-x.
 23 Q Okay. Get back to that.
 24 So does KlearImpakt have any employees?
 25 A Employee non-owners?

Page 16

1 well as the dentists' branding, business cards,
 2 printing, logos so ...
 3 Q Okay. Okay. So you said that you think
 4 you registered KlearImpakt as a business in 2014.
 5 Is that correct?
 6 A "I think" is correct.
 7 Q Around that time. Okay.
 8 So when did KlearImpakt start enrolling
 9 members?
 10 A So that question for me is hard to answer
 11 because Jason and Todd were members before anyone
 12 else was even allowed to become a member --
 13 Q Okay.
 14 A -- because we wanted to not roll it out
 15 until we were more organized. But they started
 16 doing some of our processes and training so I
 17 believe 2015 is when we had the first non-owner
 18 dentist.
 19 Q And when in 2015 was that?
 20 A Fall of 2015.
 21 Q Okay. So would you say August, September,
 22 October?
 23 A I'd probably say October.
 24 Q Okay.
 25 A Can I add something?

Page 15

1 Q Yes.
 2 A No.
 3 Q So how many does -- how many owners does
 4 KlearImpakt have?
 5 A Six.
 6 Q Okay. And who are they?
 7 A Deb Zener, Jason Sala, Todd Sala, Ryan
 8 Lewis and myself. Is that five or six?
 9 MR. SCHAERER: Five.
 10 THE WITNESS: Five. So we have five.
 11 BY MS. CASALE:
 12 Q Okay. And what are each of their -- let's
 13 start with Deb Zener. What's her role?
 14 A Deb is a business coach.
 15 Q Okay.
 16 A And she provides, not only us guidance, but
 17 the dentists that need her services.
 18 Q Okay. And then Jason Sala, what's his
 19 role?
 20 A He's a dentist. Just vision as well. Todd
 21 is the same as Jason, dentist, overall vision of the
 22 company too.
 23 Q And then Ryan?
 24 A Ryan Lewis owns a marketing and ad agency
 25 in Colorado so he does websites for our company as

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1 Q Sure.
 2 A I know I probably shouldn't.
 3 But there's the EIN number. We may have
 4 delayed because there was no reason to get one until
 5 we were actually having income produced, so I think
 6 we maybe delayed it until 2015.
 7 Q Okay.
 8 A So I think we might have -- even though we
 9 were getting organized, I don't think we actually
 10 applied for it until later.
 11 BY MS. CASALE:
 12 Q Okay. Thanks for clarifying.
 13 So who were the founders of KlearImpakt?
 14 A Jason Sala, Todd Sala, Ryan Lewis, and
 15 myself.
 16 Q Okay. And so when did Deb Zener join?
 17 A It's a complete guess. 2015.
 18 Q Fall?
 19 A Right. I think right around then.
 20 Q Okay.
 21 A I don't -- I really don't remember.
 22 Q Okay.
 23 A I'm sure we have a document that shows when
 24 she got added but I don't remember the date.
 25 Q So likely late 2015?

Page 18	Page 19
<p>1 A Yeah.</p> <p>2 Q Okay. What prompted you, Jason, Todd, and</p> <p>3 Ryan to start KlearImpakt?</p> <p>4 A Jason and Todd knew about it from our</p> <p>5 medical company that we own, the AudConnex. And</p> <p>6 Ryan's a partner of mine in AudConnex, so Jason and</p> <p>7 Tod approached us and asked if we could do it in</p> <p>8 dental, and that was the prompt.</p> <p>9 Q Okay. So why did you think a similar -- or</p> <p>10 KlearImpakt would be successful from your previous</p> <p>11 experience?</p> <p>12 A Because all of us that go to education and</p> <p>13 healthcare don't have any idea of how to run a</p> <p>14 business. We just know how to treat patients.</p> <p>15 Q So can you tell me a little bit about</p> <p>16 AudConnex. What exactly is it?</p> <p>17 A It is a buying group support system and</p> <p>18 networking group for ear doctors.</p> <p>19 Q Okay. And what services does it provide?</p> <p>20 A We have 29 vendors that are partners,</p> <p>21 everything from pricing discounts to coaching to</p> <p>22 patient financing.</p> <p>23 Q And you said it's a buying group?</p> <p>24 A Yes.</p> <p>25 Q Okay. When did you start AudConnex?</p>	<p>1 A 2011, I believe. July.</p> <p>2 Q And what's your role in that group?</p> <p>3 A CEO and vision. I don't know how to word</p> <p>4 it.</p> <p>5 Q Okay. Did you ever negotiate discounts</p> <p>6 with manufacturers?</p> <p>7 A In AudConnex?</p> <p>8 Q Uh-huh.</p> <p>9 A Yes.</p> <p>10 Q And which manufacturers?</p> <p>11 A Starkey, Phonak, Siemens, Widex, Oticon,</p> <p>12 Wells Fargo, Heartland, Hearing News Network.</p> <p>13 Q And did any of these discounts apply to</p> <p>14 medical products?</p> <p>15 MR. FONTECILLA: I'll object to this line</p> <p>16 of questions. I'll give you leeway but he's here to</p> <p>17 testify about KlearImpakt.</p> <p>18 MS. CASALE: So we want to know about his</p> <p>19 previous experience to KlearImpakt.</p> <p>20 MR. SCHAERER: I'll add to that objection</p> <p>21 too.</p> <p>22 BY MS. CASALE:</p> <p>23 Q Where were we?</p> <p>24 Did any of these manufacturers or</p> <p>25 distributors supply discounts on medical products?</p>
<p>Page 20</p> <p>1 MR. SCHAERER: Same objection.</p> <p>2 MR. FONTECILLA: I'll put a standing</p> <p>3 objection on the record to the extent you're asking</p> <p>4 beyond his role in KlearImpakt.</p> <p>5 MS. CASALE: That's fine.</p> <p>6 BY MS. CASALE:</p> <p>7 Q You can answer.</p> <p>8 A Is the question, Do they have --</p> <p>9 Q So you listed a bunch of --</p> <p>10 A Yeah. The first four or five all sell</p> <p>11 devices.</p> <p>12 Q Okay. And so what did those agreements</p> <p>13 look like generally?</p> <p>14 MR. FONTECILLA: Objection.</p> <p>15 BY MS. CASALE:</p> <p>16 Q You can answer.</p> <p>17 A Okay. A percentage off of MSRP.</p> <p>18 Q Okay. And what was the range of discounts?</p> <p>19 A 20 to 60 percent.</p> <p>20 Q Okay. How would you describe AudConnex</p> <p>21 members?</p> <p>22 A A close-knit group of like-minded</p> <p>23 individuals.</p> <p>24 Q Are they all independent practitioners?</p> <p>25 A Yes.</p>	<p>Page 21</p> <p>1 Q Okay. So how many members does AudConnex</p> <p>2 have today?</p> <p>3 A I think 475 owners but they represent close</p> <p>4 to 800 clinics.</p> <p>5 Q So some of the members have multiple</p> <p>6 clinics?</p> <p>7 A Correct.</p> <p>8 Q Can you just tell me generally what your</p> <p>9 experience was starting that group.</p> <p>10 MR. SCHAERER: When you say "that group,"</p> <p>11 are you referring to AudConnex?</p> <p>12 MS. CASALE: AudConnex. Sorry.</p> <p>13 MR. SCHAERER: I'll have the same standing</p> <p>14 objection.</p> <p>15 THE WITNESS: So that's the field I'm in.</p> <p>16 That's what I went to college for for my degree. So</p> <p>17 we -- in medical, from what I understand, versus</p> <p>18 dental, there's a lot more buying groups.</p> <p>19 And I was approached constantly by buying</p> <p>20 groups in our field and I didn't like what their</p> <p>21 value proposition was. But I know we needed help</p> <p>22 and we needed discounts and support between each</p> <p>23 other, so we created our own.</p> <p>24 BY MS. CASALE:</p> <p>25 Q Okay. And what was -- what is AudConnex's</p>

Page 22

1 value proposition?
 2 A Collaborative, supportive, and competitive.
 3 So we work with each other to get to the next goal.
 4 We support them in everything from website to office
 5 training and competitively with pricing.
 6 Q And is the pricing of -- or the
 7 discounts -- I'm sorry -- that you've negotiated
 8 important to your members?
 9 A Yes.
 10 MR. FONTECILLA: Objection, speculation.
 11 BY MS. CASALE:
 12 Q So would you consider AudConnex a
 13 successful buying group?
 14 A Yes.
 15 Q Okay. And based on your experience with
 16 AudConnex, what characteristics in the auditory
 17 field allowed AudConnex to be successful?
 18 MR. FONTECILLA: Objection.
 19 BY MS. CASALE:
 20 Q You can answer.
 21 A Just seems so broad. I don't know how to
 22 answer that.
 23 Q Are there any characteristics about
 24 audiologists that lead you to believe that a buying
 25 group would be successful in that field?

Page 24

1 THE WITNESS: I think it goes back to my
 2 opinion earlier, that we all went to school to treat
 3 patients and we weren't trained on how to run a
 4 office. So, yes, I do see the benefit in running a
 5 buying group if they offer those services.
 6 BY MS. CASALE:
 7 Q So based on your experience, are those
 8 characteristics -- let me rephrase.
 9 Based on your experience, did you see those
 10 characteristics in the dental industry as well?
 11 MR. FONTECILLA: Objection, vague.
 12 MR. SCHAERER: Same objection. Which
 13 characteristics are you referring to?
 14 BY MS. CASALE:
 15 Q That you all went to school and didn't
 16 learn about business.
 17 A Yes. I do think that's true for the
 18 majority of doctors.
 19 Q Okay. What services does KlearImpakt
 20 provide?
 21 A They provide coaching, front-office
 22 training, credit card processing, discounts, patient
 23 financing, supply discounts, and marketing support.
 24 Q So you said "supply discounts."
 25 What supply discounts?

Page 23

1 MR. FONTECILLA: Counsel, you're going way
 2 afield of this case. He's here to talk about
 3 KlearImpakt.
 4 MS. CASALE: This is about buying groups
 5 too.
 6 MR. FONTECILLA: I'm going to give you
 7 leeway but I'll have a standing objection.
 8 MS. CASALE: Your objection is noted.
 9 MR. SCHAERER: I'll object as well that the
 10 question's vague. You may answer, Dr. Johnson, to
 11 the extent you understand it or ask for
 12 clarification.
 13 THE WITNESS: So I'm supposed to
 14 internalize my members' -- like what they feel about
 15 us?
 16 BY MS. CASALE:
 17 Q You said that you're an audiologist,
 18 correct?
 19 A Correct.
 20 Q So are there certain characteristics about
 21 your job and the way that audiologists practice
 22 their practice that would make a buying group
 23 beneficial to an independent audiologist?
 24 MR. FONTECILLA: Vague as to "buying
 25 group."

Page 25

1 A So currently our only partner for supplies
 2 is Henry Schein.
 3 Q Okay. And these supplies include?
 4 A Over, I believe, 50,000 items.
 5 Q Do you know what type of items the
 6 discounts are on?
 7 A Everyday office supplies for a dentist --
 8 gauze, films.
 9 Q And how do members receive the discount?
 10 A To the best of my knowledge, it's in a
 11 computer system that they're linked to a certain
 12 account number so their account number will have a
 13 discount associated with it.
 14 Q Okay. So do members order from
 15 KlearImpakt?
 16 A From Henry Schein.
 17 Q Okay. Do members order through Henry
 18 Schein field service consultants?
 19 A I believe they could do it that way or
 20 through a computer.
 21 Q So you mentioned earlier that KlearImpakt
 22 is a buying group.
 23 A Uh-huh.
 24 Q What is your definition of "buying group"?
 25 A A group that supplies discounts to members

1 for products or services.

2 Q And you consider KlearImpakt to be a buying
3 group?

4 A In one aspect of it, yes.

5 Q Okay. What are the other aspects?

6 A The coaching and training and marketing?

7 Q So what is KlearImpakt's value proposition
8 to members?

9 A Haven't we done that?

10 Q I think I asked about AudConnex.

11 A Okay. It's the same as AudConnex, just a
12 three-pronged approach of getting dentists to
13 network with each other so they don't feel like
14 they're on an island by themselves, um, getting
15 competitive pricing and discounts for many services
16 in their offices and marketing support and ...

17 Q So how does KlearImpakt get competitive
18 discounts?

19 A We negotiate with manufacturers, our
20 suppliers. I don't know what they're called in this
21 industry, necessarily.

22 Q How many members does KlearImpakt have
23 today?

24 A Around 175 dentists. I know around -- over
25 200 offices. Likewise, again -- oh, that's actually

1 with the Henry Schein. So we have members that have
2 the Henry Schein discount and some members don't
3 have the Henry Schein discount because they choose
4 -- it's their choice if they want their discount or
5 not, so we probably have closer to, like, 400
6 dentists.

7 Q Okay. So there's about 200 dentists that
8 don't have Henry Schein discount?

9 A They have a good buying relationship with
10 another supplier and they've chosen not to use our
11 Henry Schein discount.

12 Q And all your members are dentists?

13 A Or orthodontists.

14 Q Are they all independent dentists or
15 orthodontists?

16 A To our knowledge, yes.

17 Q And what's your understanding of what an
18 independent dentist is?

19 A Not backed by a hedge fund company or
20 supply company or a franchise.

21 Q Does KlearImpakt have any members that are
22 dental service organizations?

23 A I would have no idea. I don't know.

24 Q Okay.

25 MR. SCHAERER: Do you understand what she

1 means by that?

2 THE WITNESS: I think so, yeah. I just
3 don't --

4 BY MS. CASALE:

5 Q Not aware that you have any?

6 A No.

7 Q Okay.

8 A Yeah.

9 Q Does KlearImpakt have any members that are
10 corporate dentistry chains?

11 A No.

12 Q Okay.

13 A Once again, not to my knowledge so ...

14 Q Okay. Does KlearImpakt have any members
15 that are community health centers?

16 A Not to my knowledge.

17 Q Okay. Were some of KlearImpakt's members
18 already Henry Schein customers at the time they
19 joined KlearImpakt?

20 MR. FONTECILLA: Objection.

21 THE WITNESS: What was the question?

22 BY MS. CASALE:

23 Q Were some of KlearImpakt's members already
24 Henry Schein members -- customers at the time they
25 joined KlearImpakt?

1 MR. SCHAERER: Objection, to the extent it
2 calls for speculation.

3 MR. FONTECILLA: Same objection.

4 THE WITNESS: Do I answer that?

5 BY MS. CASALE:

6 Q You can answer, if you know.

7 MR. FONTECILLA: We're just putting
8 objections on for the record.

9 THE WITNESS: Yes. I believe they do
10 have -- some of them had a relationship already with
11 Henry Schein.

12 BY MS. CASALE:

13 Q And do you know what percentage of your
14 customers were already Henry Schein customers when
15 they joined?

16 A So this is me, my opinion. I believe most
17 people have an account with Henry Schein in some
18 capacity since they're one of the biggest suppliers.
19 Whether or not they use that account number, I have
20 no idea, but I would guess almost the majority of
21 them at least would have an account number.

22 Q So where are KlearImpakt's members located
23 geographically?

24 A I don't remember if we have every state but
25 East Coast to West Coast.

Page 30

1 Q Okay. So nationwide?
 2 A Yes.
 3 Q When KlearImpakt began enrolling members --
 4 I think you said in fall 2015 -- was there a focus
 5 in a certain area or region?
 6 A No.
 7 Q And what strategies did you use when you --
 8 I'm sorry. When you KlearImpakt began enrolling
 9 members, what strategies did KlearImpakt use to
 10 attract members?
 11 A Discounts and services.
 12 Q And what kind of discounts?
 13 A Supplies and business discounts for credit
 14 card processing and patient financing, and there's,
 15 like, a waiting room TV program too.
 16 Q And the supplies discount you're referring
 17 to is the discount from Henry Schein?
 18 A Correct.
 19 Q Okay. Have you talked with any members
 20 about why they joined KlearImpakt?
 21 A Recently, no. Have I ever? I'm sure I
 22 have. I don't recall. I'd be shocked if I hadn't.
 23 Q Okay. Do you recall any members ever
 24 telling you that they joined because of Henry
 25 Schein's discount?

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1 A Yes.
 2 Q Has KlearImpakt ever emphasized the Henry
 3 Schein discount in advertising?
 4 A As one part of our services, yes.
 5 Q Has KlearImpakt ever represented that its
 6 philosophy was power in numbers?
 7 A KlearImpakt, yes.
 8 Q Okay. And so what does the phrase "power
 9 in numbers" refer to?
 10 A Just the more people that we have in our
 11 group, the more likely we can go get them better
 12 services and discounts for their office.
 13 Q And what's the value of having dentists
 14 join forces to request better pricing?
 15 A Because then you're a group. It's stronger
 16 than an individual.
 17 Q Is it your experience that KlearImpakt is
 18 able to negotiate lower pricing for dentists than
 19 they can on their own?
 20 MR. FONTECILLA: Objection, vague.
 21 BY MS. CASALE:
 22 Q You can answer, if you understand.
 23 A I do understand. It's a more open-ended
 24 question than yes or no.
 25 So if you're a solo dentist, I believe so.

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1 A I don't think -- I don't know why they
 2 signed up. I mean, like, I don't think they
 3 specified it's just because of this or that. I
 4 think it's a package deal.
 5 So I didn't -- I never asked them, like,
 6 What was your No. 1 reason for joining? Was it our
 7 coaching? Teaching? Our supply discount? I don't
 8 know which one tipped them over the edge.
 9 Q Okay. So how do -- does KlearImpakt
 10 typically advertise to prospective members?
 11 A Mainly through Internet, whether it's
 12 emails or banner ads.
 13 Q And what's the content of these emails or
 14 banner ads?
 15 A Currently the program is that we've been
 16 proven to grow their office by 20 percent.
 17 Q So you said "currently."
 18 Was it different before?
 19 A I'm -- I know we've had different campaigns
 20 so I don't remember all of them.
 21 Q Do you remember any specific ones?
 22 A I don't.
 23 Q Does Henry Schein have to approve any
 24 advertisements that KlearImpakt uses that refer to
 25 Henry Schein?

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1 If they call them mid-markets, that's a little bit
 2 different, so mid-market I think in their terms is
 3 anyone that owns multiple offices. Even if they're
 4 small they get a better discount because they have
 5 more locations. It's not necessarily driven off of
 6 volume of what you're producing.
 7 So if you have one location with 20
 8 dentists, then you're producing \$20 million, or if
 9 you have 20 locations all producing \$1 million, for
 10 some reason, from what we've seen, they'll provide a
 11 nicer discount to the group discount, even though
 12 they're spread out over 20 locations.
 13 Q Okay. I'm going to hand you a document
 14 marked CX 4109-001. It appears to be an email from
 15 Ryan Lewis to Rich Johnson on October 3rd, 2016.
 16 It looks like it has an attachment that has some
 17 marketing messages attached to it.
 18 Do you recognize this document?
 19 A Yes.
 20 MR. FONTECILLA: Counsel, you may want to
 21 read the Bates number for the folks on the phone.
 22 MS. CASALE: Sure.
 23 It's CX 4109-001, FTC-KI-00001255.
 24 You can take a minute to review it.
 25 (Witness reviewing document.)

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1 THE WITNESS: I think I'm ready.
 2 BY MS. CASALE:
 3 Q Okay. So on page two of CX 4109-002, it
 4 appears to be some kind of marketing letter.
 5 Is that correct?
 6 A Correct.
 7 MR. FONTECILLA: Objection.
 8 BY MS. CASALE:
 9 Q Is this letter a document that KlearImpakt
 10 has used to advertise and attract members?
 11 A In the past, yes.
 12 Q And can you just read for me the first
 13 paragraph.
 14 A "Todd and I have created, with some expert
 15 guidance from some friends, a new network to obtain
 16 more competitive pricing for our dental offices.
 17 We're calling it 'KlearImpakt' and it has a simple
 18 philosophy of power in numbers with a goal to obtain
 19 better pricing for repeated supply purchases.
 20 "Basically the corporate offices receive
 21 the best pricing discounts from the supplier and we
 22 wanted to reap those benefits for the noncorporate
 23 owner as well. After talking with these experts, it
 24 was clear to us that we could accomplish this
 25 discount and we expect that the impact will be

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1 significant for what we purchase."
 2 Q So is power in numbers -- sorry.
 3 Is "power in numbers" referring solely to
 4 KlearImpakt's ability to negotiate discounts with
 5 suppliers?
 6 A No. Because there's other discounts that
 7 we get besides just suppliers. We get Wells Fargo
 8 patient financing, Heartland credit card processing
 9 machines, and the bigger we are and the more volume
 10 we do, the more discounts we typically receive.
 11 Q But the paragraph you just read said --
 12 A That was when we first started the company.
 13 Q Okay. Can you read the first sentence of
 14 the second paragraph.
 15 A "KlearImpakt exists solely to negotiate
 16 better pricing without a contract or a membership
 17 fee."
 18 Q Is that still true?
 19 A No.
 20 Q But it was true when you started
 21 KlearImpakt?
 22 A Correct. We didn't do the business classes
 23 or the coaching to the capacity we do now.
 24 Q Okay. So when you started KlearImpakt, it
 25 was really just to negotiate better pricing for

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1 suppliers.
 2 A And marketing support. So it wasn't just
 3 pricing.
 4 Q Okay. So it was pricing and marketing?
 5 MR. FONTECILLA: Objection.
 6 MR. SCHAERER: Same objection.
 7 BY MS. CASALE:
 8 Q You can answer.
 9 A Yeah. I'm trying to think of just at the
 10 time. It's a couple years ago. I mean, we knew the
 11 whole time we would get more into the coaching. I
 12 just don't remember exactly when this was made
 13 versus when we knew we would go live with coaching
 14 so -- but we were copying AudConnex so we already
 15 knew exactly where we were going. It just goes out
 16 in phases.
 17 Q Okay. Did KlearImpakt find this type of
 18 advertising worked at the time that it used it?
 19 A So this was a letter, from my knowledge,
 20 from my memory, to Jason and Todd's personal friends
 21 and contacts they had. It wasn't a mass email
 22 letter to people we didn't know. It was people who
 23 they were connected to.
 24 Q Did Henry Schein approve this
 25 advertisement?

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1 A I don't really think this is an
 2 advertisement. It's a letter.
 3 Q Okay. Put that to the side.
 4 Does Henry Schein agree with the type of
 5 message that was contained in the letter attached to
 6 CX 4109-001?
 7 MR. FONTECILLA: Objection. You're asking
 8 what Henry Schein thinks or agrees with.
 9 MR. SCHAERER: Same objection.
 10 BY MS. CASALE:
 11 Q What is your understanding of how Henry
 12 Schein -- what is your understanding of what Henry
 13 Schein thinks about the type of message in the
 14 attachment?
 15 MR. FONTECILLA: Object, foundation, calls
 16 for speculation.
 17 MR. SCHAERER: Objection to the extent it
 18 calls for speculation.
 19 BY MS. CASALE:
 20 Q I'm going to hand you another document.
 21 A Do you want this one back?
 22 Q You can keep it.
 23 A I have it.
 24 Q I'm handing you a document marked CX
 25 4111-001, Bates-stamped FTC KI 000000348.

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<p>1 You can take a minute to review. 2 (Witness reviewing document.) 3 THE WITNESS: Okay. 4 BY MS. CASALE: 5 Q You reviewed the document? 6 A Yes. 7 Q Okay. Do you recognize this document? 8 A Yep. Yes, I do. 9 Q What is it? 10 A It is a letter from Darci to me about a way 11 we've messaged the community. 12 Q And you regularly communicate with Darci 13 through email to conduct business? 14 MR. FONTECILLA: Vague as to "business" and 15 the time period. 16 MR. SCHAERER: Same objection. 17 THE WITNESS: Phone and email. 18 BY MS. CASALE: 19 Q Okay. So this email looks like it was sent 20 on April 26th, 2017, correct? 21 A Correct. 22 Q And it appears -- can you read what the 23 message on the back says, CX 4111-002. 24 A Yeah. "My name is Rebecca and I am the 25 director of member acquisition for KlearImpakt. We</p>	<p>1 have partnered with Henry Schein to offer a greater 2 formulary discount onto supplies you already 3 purchase. Once you sign up, we'll do a cost 4 analysis to find your savings. Many of our members 5 save over 20 percent a month with our formulated 6 discount. If you have any questions, please feel to 7 email me." 8 Q Okay. And then it looks like the email on 9 CX 4111-001 is a response to this message, correct? 10 A Correct. 11 MR. FONTECILLA: Objection. 12 BY MS. CASALE: 13 Q So can you read for me that second 14 paragraph in -- 15 A "This type of marketing message related to 16 our partnership is" -- 17 THE REPORTER: Slow down. 18 THE WITNESS: -- "discerning. Henry Schein 19 aligned with KI because we believed in your 20 vision/mission and your educational programs. We 21 felt KI offered programs of great value to best 22 support private-practice dentists. We did not 23 create a partnership based off discounts. The 24 formulary was the icing on the cake. This kind of 25 message completely undermines Henry Schein's culture</p>
Page 40	Page 41
<p>1 and the value of our FSCs." 2 BY MS. CASALE: 3 Q What is your understanding of FSC? 4 A Field service consultant. 5 Q So were you -- was KlearImpakt surprised to 6 receive this email from Henry Schein? 7 MR. FONTECILLA: Objection, you're asking 8 him what all the owners of KlearImpakt -- 9 BY MS. CASALE: 10 Q Were you surprised? 11 A I actually don't remember my feelings when 12 I got that. 13 Q How did you react? 14 MR. FONTECILLA: Objection. 15 THE WITNESS: I don't remember my feelings 16 when I got it. Even now I'm not too concerned. 17 BY MS. CASALE: 18 Q Did KlearImpakt stop using Henry Schein 19 discounts to attract prospective members after you 20 received this email? 21 MR. FONTECILLA: Objection. 22 BY MS. CASALE: 23 Q You can answer. 24 A I don't know. 25 Q Okay. Did Henry Schein approve the message</p>	<p>1 on CX 41110-002? 2 A My assumption is they did not. 3 MS. CASALE: This would be a good time to 4 take a quick break. Can we go off the record. 5 (Recess taken.) 6 BY MS. CASALE: 7 Q Mr. Johnson, can you please turn back to CX 8 4111-001. 9 A Okay. 10 Q When we go to the back page ending in 002, 11 so we've read this message earlier. 12 What's your understanding of this message? 13 MR. SCHAERER: Objection, vague. 14 MR. FONTECILLA: Objection. 15 THE WITNESS: That we're offering a 16 discount. 17 BY MS. CASALE: 18 Q Okay. And why are you offering the 19 discount? 20 A To help with their bottom line, the 21 dentists. 22 Q And how does the discount help with their 23 bottom line? 24 A Because they would be paying less for 25 product.</p>

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<p>1 Q And why is -- how is this beneficial to 2 members? 3 A They have more money to spend on other 4 things. 5 Q Does it help them compete better with other 6 dentists? 7 A No. But it helps their office. 8 Q And then turning back to the email from 9 Ms. Wingard -- and I think you've read the second 10 paragraph earlier. 11 A Correct. 12 Q So what's your understanding of what Darci 13 is saying in this message? 14 MR. FONTECILLA: Objection, calls for 15 speculation. 16 MR. SCHAERER: Same objection. 17 THE WITNESS: That she would not like us to 18 lead with pricing. 19 BY MS. CASALE: 20 Q And was it your understanding that she was 21 unhappy with the message she attached to this email? 22 A It looks that way. 23 MR. SCHAERER: Same objection. 24 MR. FONTECILLA: Objection. 25 BY MS. CASALE:</p>	<p>1 Q And she was -- was it your understanding 2 that she was unhappy about KlearImpakt advertising 3 discounts with Henry Schein? 4 MR. FONTECILLA: Depose Ms. Wingard and ask 5 her. 6 BY MS. CASALE: 7 Q You can answer. 8 A Was she -- yes, I don't think she liked the 9 way we did that. 10 Q Okay. And I think you said earlier that 11 you didn't recall what your reaction to this email 12 was, correct? 13 A Correct. 14 Q Do you recall anyone else's reaction to 15 this email? 16 A I don't. I just know we were running our 17 company and she's running hers -- or being a part of 18 running their company. Sometimes our visions aren't 19 100 percent in line but ... 20 Q Do you recall any internal discussion 21 within KlearImpakt about advertising as a result of 22 this email? 23 A No. But I'm sure we took their advice and 24 haven't done it since out of respect to the 25 partnership.</p>
<p>1 Q So did KlearImpakt stop advertising Henry 2 Schein discounts after you received this email? 3 A I don't think we've stopped advertising 4 Henry Schein discounts, but I think we've stopped 5 being as bold as saying "20 percent." 6 Q And when did you stop advertising as 7 boldly, as you say, with "20 percent?" 8 A I don't know. Likely after this email. 9 Q You still advertise the Henry Schein 10 partnership? 11 A Yes. 12 Q And you still advertise the Henry Schein 13 discount. 14 A Without a number attached, yes. 15 Q Okay. Do you recall any discussions within 16 KlearImpakt about changing the marketing message to 17 not be as bold as the one on CX 411-002? 18 A I do not. 19 Q And can we quickly turn back to CX 20 4109-001. So this looks like it's an email from 21 Ryan Lewis to you, Rich Johnson, October 3rd, 22 2016, correct? 23 A Correct. 24 Q And Ryan Lewis works for KlearImpakt? 25 A He's an owner.</p>	<p>1 Q Okay. And he wrote this email in the 2 ordinary course of business? 3 A Is that a question? 4 Q Yes. 5 A Yes. 6 Q And at the time KlearImpakt was trying to 7 enroll new members, did he write this email? 8 A We're always trying to enroll new members, 9 so yes. 10 Q Okay. And Ryan Lewis had personal 11 knowledge of the vision and plan to obtain new 12 members? 13 MR. SCHAERER: Objection. 14 MR. FONTECILLA: You're asking him what 15 this other person knows. 16 MR. SCHAERER: Same objection. 17 MR. FONTECILLA: Objection. 18 BY MS. CASALE: 19 Q You can answer? 20 A Yes. Ryan is the one that usually gets 21 approval because he's our marketing arm. 22 Q Okay. And these emails and messages are 23 maintained in the ordinary course of business? 24 MR. FONTECILLA: Objection. 25 THE WITNESS: Yes.</p>

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1 BY MS. CASALE:
 2 Q And this is a true and accurate depiction
 3 of the document, for the record?
 4 A Are you looking just at that one or all of
 5 them together?
 6 Q The email and the attachments.
 7 A Yes.
 8 Q Okay. Going back quickly to CX 4109-002,
 9 the letter we referred to earlier, you said that
 10 this was just a letter that Jason and Todd Salas
 11 sent to their friends.
 12 A Friends or people they -- it was not, to my
 13 knowledge, something that was sent out to the
 14 masses. It was sent out to people that they had on
 15 emails or connections to.
 16 Q Okay. Did KlearImpakt receive any new
 17 members as a result of this letter?
 18 A I don't know.
 19 Q Was there any discussion with Jason or Todd
 20 Sala about any responses they received from this
 21 letter?
 22 A Not that I remember.
 23 Q Okay. You can put that to the side. So
 24 once someone or a dentist wants to join KlearImpakt,
 25 how do members go about doing that?

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1 Q Okay. Do they have to attend a certain
 2 number of seminars?
 3 A No.
 4 Q Do they have to purchase a certain volume
 5 through KlearImpakt partners?
 6 A No.
 7 Q Are there any products that they have to
 8 purchase from KlearImpakt?
 9 A No.
 10 Q Is there a membership fee?
 11 A No.
 12 Q Do members have to make any payments
 13 whatsoever to KlearImpakt?
 14 A No.
 15 Q Can members join other buying groups in
 16 addition to KlearImpakt?
 17 A I would -- we have no problem with it. I
 18 just don't know. So they can but they can't have,
 19 from my knowledge, two discounts with the same --
 20 like, you can't use us for Heartland and somebody
 21 else for Heartland, because how would that work --
 22 or us for Henry Schein and somebody else for Henry
 23 Schein. It wouldn't make sense.
 24 But we wouldn't care in they used Henry
 25 Schein or Heartland for somebody else, but I'm

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1 A Typically there's an online registration
 2 form or sign-up form. And they can choose what
 3 vendors or manufacturers, suppliers they want to
 4 associate their membership with.
 5 Q And so when they sign up they choose who
 6 they want to associate with?
 7 What does that look like?
 8 A So it'll say their name, address, email,
 9 phone and that they agree that they're signing up
 10 for KlearImpakt so we have knowledge that it's them
 11 personally instead of some kind of a checkmark with
 12 their initials, just probably for legal reasons.
 13 And then they will say they want to sign up
 14 for Lewis Agency, Rush Imprint, Henry Schein,
 15 Heartland, so they choose which ones. They don't
 16 have to sign up for everything.
 17 Q Okay. So they could sign up and not sign
 18 up for the Henry Schein discount.
 19 A Correct.
 20 Q So you mentioned they needed to -- when
 21 people go to sign up, they need to put their name,
 22 their initials and things like that.
 23 What else is required of members to -- in
 24 order to sign up?
 25 A That's it.

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1 assuming that they can have only one group that
 2 they're in with for each discount.
 3 Q So there's no requirement that members be
 4 exclusive with KlearImpakt versus any other buying
 5 groups?
 6 A No.
 7 Q Okay. So you said members can register
 8 online. Where online do they register?
 9 A KlearImpakt dot-com.
 10 Q Okay. And do they have to fill out a form?
 11 A Correct.
 12 Q Okay. And on this form do they have to
 13 indicate whether they're a Henry Schein customer
 14 already?
 15 A Only if they sign up for it.
 16 Q And so after they fill out the form, what
 17 happens next?
 18 A We will notify the vendors or suppliers of
 19 their membership, if they chose to participate.
 20 Q So who receives the form after it's filled
 21 out?
 22 A All of us. Everybody at KlearImpakt.
 23 Q So KlearImpakt receives the form?
 24 A Yeah.
 25 Q And then is there anything else you do with

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1 that form before you notify the vendors that they
 2 chose on the form?
 3 A No.
 4 Q Okay. Do you do anything to vet the
 5 members who are signing up before you send out a
 6 notification to the vendors that they've chosen?
 7 A We've talked to them before they've signed
 8 up. We've never gotten a sign-up that we didn't
 9 know, if that's what you're asking.
 10 Q And when you talk to members before they
 11 actually sign up and fill out the form, what are
 12 those discussions entailing?
 13 MR. FONTECILLA: Objection, you're asking
 14 about every single possible conversation he's had?
 15 THE WITNESS: Yeah. It really depends on
 16 the doctor or the dentist, so it depends on what
 17 they're looking for in their office.
 18 BY MS. CASALE:
 19 Q Okay. So typically what -- how long are
 20 these discussions --
 21 MR. FONTECILLA: Objection.
 22 BY MS. CASALE:
 23 Q -- before they --
 24 A So there's five partners. I can answer for
 25 me. Anywhere between 5 minutes or an hour. Several

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1 A They put it in their computer system and,
 2 for lack of a better word, tag it with that
 3 discount. So they probably have the price schedule
 4 attached to each doctor and they'll tag it with our
 5 discount.
 6 Q Okay. So to your understanding there's
 7 nothing else that Henry Schein does to vet these
 8 prospective members.
 9 A I don't think so.
 10 Q Okay. So who at Henry --
 11 A Oh, yeah. Sorry. There is. If they're
 12 multi-office discounts, they can't participate in
 13 KlearImpakt.
 14 Q And what do you mean by "multi-office
 15 discounts?"
 16 A Like we said earlier, if they have multiple
 17 locations we're not allowed to have them sign up for
 18 -- they already have some special discount already
 19 with Henry Schein.
 20 Q Okay. So dentists with multiple offices
 21 can't receive the KlearImpakt Henry Schein discount?
 22 A Correct.
 23 Q And you said you send the prospective
 24 members and sign-up sheet to Darci Wingard at Henry
 25 Schein.

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1 times sometimes. It's not just one conversation.
 2 Q And during these conversations have any
 3 prospective members brought up the Henry Schein
 4 discount?
 5 A I'm sure they have. I don't know.
 6 Q And do you recall any instances where they
 7 did?
 8 A During the phone calls?
 9 Q Uh-huh.
 10 A No.
 11 Q Okay.
 12 A I mean, they know it's part of what we
 13 offer, but that's the same as Rush Imprint, Liberty
 14 Mutual, Ryan Lewis Agency so ...
 15 Q Okay. So if a member indicates that they
 16 want to have the Henry Schein discount, what is the
 17 process for notifying Henry Schein?
 18 A They will put on their application or
 19 form -- I believe they call it their "JDE number" --
 20 and they'll put that on there and I'll forward that
 21 to Darci -- and I forgot the other email I send it
 22 to but ...
 23 Q Okay. And what's your understanding of
 24 what Henry Schein does with that information once
 25 they receive it?

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1 A Over the years it's changed. Currently
 2 it's Darci.
 3 Q And who did you send it to before?
 4 A Kathleen -- my gosh. What was the name?
 5 Some -- Nick, and I don't remember Nick last's name,
 6 and there was one other guy that I sent it to. I
 7 can't remember his name.
 8 Q Okay. And so you said that the dentists
 9 with multiple offices can't receive this discount
 10 from Henry Schein through KlearImpakt.
 11 What's your understanding of why this is?
 12 A Just because they have some special pricing
 13 associated with those accounts already.
 14 Q Is it your understanding that the special
 15 pricing is better than the KlearImpakt discount?
 16 A I would hope so.
 17 MR. FONTECILLA: Objection, calls for
 18 speculation.
 19 BY MS. CASALE:
 20 Q What was your answer?
 21 A "I hope so."
 22 Q Okay. Has KlearImpakt ever rejected a
 23 prospective member that filled out a form online?
 24 A No, because we've had -- I don't think
 25 we've had a blind member sign up yet where we didn't

<p style="text-align: right;">Page 54</p> <p>1 know who they were in some capacity. So by the time 2 they get to a sign-up form, we've already gone 3 through the process with them, like either we know 4 them or somebody knows them so ... 5 Q Has there ever been discussions about what 6 KlearImpakt should do if you were to receive a 7 sign-up form from someone you hadn't previously 8 talked to? 9 A I don't know if we've had a discussion, but 10 I'm positive we've called them and discussed their 11 office and what they're looking for. 12 Q Okay. Has Henry Schein ever rejected a 13 prospective member that filled out one of the 14 KlearImpakt's sign-up forms and indicated they 15 wanted the Henry Schein discount? 16 A Yes. 17 Q And why is this? 18 A Group practice. 19 Q And that's the multi-office discount you 20 referred to earlier? 21 A Correct. 22 Q Is that the only reason? 23 A To my knowledge, yes. 24 Q Okay. Did KlearImpakt initiate contact 25 with Henry Schein about a partnership?</p>	<p style="text-align: right;">Page 55</p> <p>1 A Yes. 2 Q And who from KlearImpakt contacted Henry 3 Schein? 4 A I did. 5 Q Who at Henry Schein did you contact? 6 A Um, Katie, who lives in Reno, because Henry 7 Schein has a distribution center here. 8 Q Uh-huh. 9 A And our families are friends, so I 10 contacted her to ask her who I should go to to 11 discuss this type of possibility. 12 Q And who did she tell you to go to? 13 A It was a tree of people after that. I 14 really don't remember. And then finally I got 15 Kathleen. 16 Q Okay. So when did you first contact Katie? 17 A I don't remember. 18 Q Was it early 2015? 19 A I'd say 2014. 20 Q Okay. Late 2014? 21 A Yeah, probably late. 22 Q And then you said you finally got in touch 23 with Kathleen. 24 A Correct. 25 Q When did you get in touch with Kathleen?</p>
<p style="text-align: right;">Page 56</p> <p>1 A Late fall of 2014, I would guess. I don't 2 remember the date. 3 Q Was Henry Schein the first dental supply 4 distributor that KlearImpakt contacted? 5 A We contacted -- so we weren't familiar with 6 this industry. Jason and Todd were, because I was 7 in a totally different field. First we were 8 contacting individual companies like Colgate and 3M. 9 And then I had a discussion with Jason and 10 Todd about, Isn't there a simpler way to do this, 11 and I explained our field. And then Jason and Todd 12 says, Oh, we have those too. They're called 'Henry 13 Schein, Patterson, Darby, Benco,' and so then we 14 chose to contact Henry Schein first. 15 Q You said you were contacting 3M. 16 And these are manufacturers? 17 A They have Colgate, like smaller companies 18 that are we'd have to have a lot more services 19 instead of just having one supplier. So it just 20 seemed like it was gonna not be the smartest move 21 for a company to have 50 contacts instead of just 22 one. 23 Q So why was it simpler to go from dealing 24 with the manufacturers, or Colgate, 3M, for example, 25 to dealing with Henry Schein?</p>	<p style="text-align: right;">Page 57</p> <p>1 MR. FONTECILLA: Objection. 2 THE WITNESS: Because they would have to 3 call each supplier individually for a product they 4 wanted versus just calling one person for all the 5 stuff they wanted. 6 BY MS. CASALE: 7 Q Are there any other benefits to just 8 dealing with Henry Schein instead of the ones you 9 mentioned before? 10 A Henry Schein versus Benco and Patterson? 11 Is that what you're referring to? 12 Q No. The manufacturers you mentioned 13 before, 3M or Colgate. 14 A Well, that was the benefit, is you only had 15 to talk to Henry Schein. 16 Q Were there any other benefits? 17 A No. 18 Q So Henry Schein was the first distributor 19 that KlearImpakt contacted, though, correct? 20 A Correct. 21 Q Okay. And why was Henry Schein the first 22 one you contacted? 23 A Dr. Jason and Todd Sala, we were discussing 24 the big three or four suppliers. It was the company 25 they used the most so it seemed to have a more</p>

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1 natural fit to begin our conversations.
 2 Q Were there any other reasons?
 3 A That's it.
 4 Q Did KlearImpakt contact any other dental
 5 distributors?
 6 A Patterson and -- all my dates are so mixed
 7 up at this point but it was probably about a year
 8 ago.
 9 Q Anyone else?
 10 A Not yet.
 11 Q Was there something unique about Henry
 12 Schein that that's the reason you contacted them
 13 first?
 14 A Just Jason and Todd having a relationship
 15 and they were one of the biggest suppliers.
 16 Q Okay. Was it important that they were one
 17 of the biggest suppliers?
 18 A Yes. It makes it easier on our members.
 19 Q How does it make it easier?
 20 A More products, more services.
 21 Q And that's beneficial to members?
 22 A I would hope.
 23 MR. SCHAEERER: Objection.
 24 THE WITNESS: Yes.
 25 BY MS. CASALE:

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1 MR. SCHAEERER: Same objection.
 2 BY MS. CASALE:
 3 Q You can answer.
 4 A I don't know.
 5 Q Is it your understanding that field service
 6 consultants are important to some of your members?
 7 MR. FONTECILLA: Objection, leading, calls
 8 for speculation.
 9 THE WITNESS: The word "some," I would say
 10 yes.
 11 BY MS. CASALE:
 12 Q Would you say they're important to more
 13 than half of your members?
 14 MR. FONTECILLA: Same objection.
 15 THE WITNESS: I don't know.
 16 BY MS. CASALE:
 17 Q Okay. Do you know why they're important to
 18 some of your members?
 19 A Relationships.
 20 Q Are there any other reasons?
 21 A Not that I could think of.
 22 Q And why are relationships important?
 23 A Trust, knowledge, experience.
 24 Q And when you say "knowledge," knowledge of
 25 what?

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1 Q Why?
 2 A They're not calling 30 offices to get
 3 products or services.
 4 Q Are there any special services that Henry
 5 Schein offered that other dental distributors
 6 didn't?
 7 A OSHA training. I don't know if the -- see,
 8 we haven't really gone down the road with other
 9 suppliers, but things that we liked were the OSHA
 10 training, the build-out of the exam rooms, the
 11 procedure rooms so ...
 12 Q Did you contact any online distributors?
 13 A I don't even know what an online
 14 distributor is, I don't think. I don't know if
 15 Jason or Todd or somebody else had, but I don't
 16 remember doing that.
 17 Q Were there any other aspects of Henry
 18 Schein's business that KlearImpakt thought would be
 19 important to members?
 20 A I really don't know what you mean.
 21 Q Are field service consultants important to
 22 members?
 23 MR. FONTECILLA: Objection, calls for
 24 speculation. You're asking him what every field --
 25 what every member of KlearImpakt thinks?

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1 A They can look at items they're ordering and
 2 hopefully tell them a better way to order or
 3 process.
 4 Q And when you say "experience," what do you
 5 mean by that?
 6 A Just they can walk in their offices and
 7 maybe tell them what they see in other offices and
 8 give them ideas.
 9 Q Did KlearImpakt ever contact Burkhart
 10 Dental?
 11 A Not that I'm aware of.
 12 Q Nashville dental?
 13 A No.
 14 Q Atlanta Dental?
 15 A No. I don't even know what those are.
 16 Q Did you contact -- did KlearImpakt contact
 17 any other regional dental distributors?
 18 A No.
 19 Q Is there a reason why you didn't?
 20 A We were only doing Henry Schein.
 21 Q And why did you only want to do Henry
 22 Schein?
 23 MR. FONTECILLA: Objection, asked and
 24 answered multiple times.
 25 THE WITNESS: We wanted to prove we could

<p style="text-align: right;">Page 62</p> <p>1 grow the dentists in our group and it doesn't make 2 sense to partner with a hundred people. 3 BY MS. CASALE: 4 Q So did it make sense to put together some 5 kind of patchwork of distributors? 6 A I wouldn't partner with us if we had 20 7 distributors. 8 Q Why not? 9 A It thins everything out and doesn't make 10 sense. What's the value for us at that point? 11 Q How does that take away from the value? 12 A Taking from one hand and giving to the 13 other doesn't seem like it would be logical. I 14 wouldn't let a company work with me at that point. 15 Q Was nationwide coverage important to 16 KlearImpakt? 17 A Yes. 18 Q And why? 19 A Symmetrical, so everybody's using the same 20 services and platform. 21 Q And why is that important? 22 A Ease of use and ... 23 Q Was nationwide coverage important in 24 attracting members? 25 A No. I don't think our members necessarily</p>	<p style="text-align: right;">Page 63</p> <p>1 care where we're at. 2 Q But if you partnered with a regional 3 distributor that couldn't reach some of your 4 members, would that be a problem? 5 MR. FONTECILLA: Objection. 6 MR. SCHAERER: Same objection. 7 THE WITNESS: Yeah. We already said that's 8 why we went with Henry Schein. 9 BY MS. CASALE: 10 Q Okay. So you said earlier that dentists 11 can join KlearImpakt for free and receive discounts 12 from Henry Schein, correct? 13 A Correct. 14 Q Does KlearImpakt generate revenue? 15 A Yes. 16 Q How? 17 A A percentage off of the back end of the 18 supplies. Through Wells Fargo we have an annual 19 membership -- or annual fee they give us. Heartland 20 credit card processing gives us a percent as well. 21 And then our business coach can go out there too and 22 she earns income for us too. 23 Q But the business coach is an added fee to 24 members? 25 MR. FONTECILLA: Objection.</p>
<p style="text-align: right;">Page 64</p> <p>1 THE WITNESS: Depending on what she's 2 doing, correct. 3 BY MS. CASALE: 4 Q So what services does she offer? 5 A We've taught her our -- some of the 6 services we do in our field and she has some stuff 7 she learned in her own education. So she does 8 everything from human resources to front-office 9 training, patient experience, streamlining 10 efficiency, cash flow management. 11 Q And are all these services due -- do 12 members have to pay for all those services? 13 A Depends on the relationship and the 14 dentist. 15 Q So she'll offer some services that are 16 free? 17 A Correct. 18 Q What type of services are those? 19 A It's really between her and the dentist at 20 that point. 21 Q Okay. So you said you get a percent off on 22 the back end -- a percent of the back end of the 23 supplies, correct? 24 A Correct. 25 Q And that's a percentage from Henry Schein?</p>	<p style="text-align: right;">Page 65</p> <p>1 A If we're talking about supplies, yes. 2 Q So Henry Schein pays KlearImpakt to give 3 its members a discount. 4 A I guess you can word it like that. 5 Q Can you answer the question yes or no? 6 MR. FONTECILLA: Objection. It's leading. 7 THE WITNESS: I wouldn't word it like that. 8 BY MS. CASALE: 9 Q How would you word it? 10 A That we get an administration fee for 11 growing their offices and growing the network. I 12 don't think they're paying us to give a discount. 13 Q So you said that they're paying you to grow 14 the network and grow offices. 15 How does Henry Schein know if you're 16 successful in doing this? 17 A They have records of the offices. 18 Q What kind of records? 19 A Monthly sales. 20 Q And how do they measure success? 21 MR. FONTECILLA: Objection. Rephrase that. 22 You're asking him how Henry Schein measures 23 something. 24 BY MS. CASALE: 25 Q What's your understanding of how Schein</p>

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1 measures your success?
 2 A Month to month from clinic to clinic. So
 3 they look at one clinic, what they did last month
 4 versus next month and one year versus the next year.
 5 Q And does Henry Schein report back to
 6 KlearImpakt on how its members are doing?
 7 A Yes.
 8 Q Do you receive these reports?
 9 A Yes.
 10 Q What do these reports look like?
 11 A Every office is going down the left side of
 12 the page, months and then years on the top part of
 13 the page, and it shows their sales and growth.
 14 Q Is there growth in every office -- every
 15 member office?
 16 MR. FONTECILLA: Objection.
 17 Extraordinarily broad question.
 18 THE WITNESS: I don't know if it's every
 19 office but the overall group is definitely growth.
 20 BY MS. CASALE:
 21 Q And what's the percentage growth?
 22 MR. FONTECILLA: Objection, vague.
 23 THE WITNESS: I haven't calculated it.
 24 BY MS. CASALE:
 25 Q Does Henry Schein calculate it?

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1 A That's correct.
 2 Q Okay. Does Henry Schein report to
 3 KlearImpakt the growth of Henry Schein purchases
 4 from your members?
 5 A They send us the reports but not a
 6 percentage.
 7 Q Okay.
 8 A It's all through numbers, like, dollars.
 9 I'm sure the math would be easy. I just haven't
 10 done it.
 11 Q Okay. Do you know what the growth has been
 12 over the past year in Henry Schein sales from your
 13 customers?
 14 MR. FONTECILLA: Objection, vague.
 15 THE WITNESS: No.
 16 MR. SCHAERER: Also objection, it's been
 17 asked and answered.
 18 THE WITNESS: You've asked it several times
 19 and I keep saying we've had growth. I don't know
 20 the percentage.
 21 BY MS. CASALE:
 22 Q Do you know the number --
 23 A No. But I can look at it.
 24 Q -- the dollar amount? Okay.
 25 Does Henry Schein require a certain

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1 A I don't know what they do.
 2 MR. FONTECILLA: Objection, calls for
 3 speculation.
 4 MR. SCHAERER: Same objection.
 5 BY MS. CASALE:
 6 Q Has Henry Schein ever sent you the
 7 calculation of how much KlearImpakt's members have
 8 grown?
 9 A We've seen the numbers. We just don't do
 10 the percentage of the -- we do it on our -- we do
 11 the clinics from our side on an overall bottom line
 12 of the office.
 13 You're asking Henry Schein what they do
 14 with their numbers and we get a report. And we know
 15 there's growth because we see the numbers but I've
 16 never calculated the percentage of growth directly
 17 from Henry Schein.
 18 Q Okay.
 19 A We look at it when we use our 27 percent --
 20 you're going back to that? We do it off of their
 21 overall numbers of it being a dental office.
 22 Q Okay. So when you're calculating it, it's
 23 the overall number, not --
 24 A It's from --
 25 Q -- purchases from Henry Schein?

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1 percentage of member purchases from Henry Schein?
 2 MR. FONTECILLA: Objection.
 3 THE WITNESS: No.
 4 BY MS. CASALE:
 5 Q Has anyone at Henry Schein ever discussed
 6 with KlearImpakt a requirement that its members meet
 7 a purchase requirement?
 8 A Not to my knowledge.
 9 Q Does KlearImpakt plan to grow membership?
 10 A Yes.
 11 Q And how does KlearImpakt plan to do that?
 12 A Organically and marketing.
 13 Q And what do you mean by "organically"?
 14 A Referring members.
 15 Q And how do you plan to market?
 16 A That would be Ryan's vision for marketing.
 17 Q And what's that vision?
 18 A I don't know.
 19 Q So let's go back to when we were talking
 20 about when you first contacted Henry Schein. You
 21 said the first person that you got in contact with
 22 was Katie at Henry Schein and then she referred you
 23 to someone else and you eventually got to Kathleen
 24 and she was your first -- I don't want to say real
 25 contact, but official contact.

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1 A She was the first one that knew what we
 2 wanted to do and actually could address the
 3 situation, correct.
 4 Q Okay. And what was that initial
 5 conversation?
 6 A We had several phone calls about who and
 7 what we are and what we're trying to do. And then
 8 when it got more serious, we had face-to-face
 9 meetings with them.
 10 Q Okay. And what was their reaction to those
 11 first discussions about who KlearImpakt is and what
 12 it's trying to do?
 13 MR. FONTECILLA: Objection. Whose reaction
 14 are you referring to?
 15 BY MS. CASALE:
 16 Q What was Kathleen's reaction?
 17 A Are you talking phone calls or the
 18 face-to-face meetings?
 19 Q The first discussions, so maybe the phone
 20 calls, if those were the first.
 21 MR. FONTECILLA: Objection.
 22 THE WITNESS: Obviously, she was interested
 23 enough to continue the conversation.
 24 BY MS. CASALE:
 25 Q Okay. Did anyone at Henry Schein when you

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1 emails sent between you and Kathleen Titus?
 2 MR. FONTECILLA: Objection.
 3 THE WITNESS: Yes.
 4 BY MS. CASALE:
 5 Q Okay. And you wrote these emails in the
 6 ordinary course of business?
 7 A Correct.
 8 Q And this was at or around the time that
 9 KlearImpakt was trying to partner with Henry Schein?
 10 MR. FONTECILLA: Objection. He's testified
 11 late 2014.
 12 BY MS. CASALE:
 13 Q You can answer.
 14 A Yes.
 15 I was waiting for that.
 16 Q And you had personal knowledge of the plan
 17 to partner with Henry Schein?
 18 A Yes.
 19 Q And these emails are maintained in the
 20 ordinary course of business?
 21 A Yes.
 22 Q And this document is a true and accurate
 23 representation of those records?
 24 A I believe so.
 25 Q Okay. Thanks. So if you just go to that

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1 first began talking to them tell you that Henry
 2 Schein doesn't deal with buying groups?
 3 A No.
 4 Q Were you aware of any other buying groups
 5 that were doing business with Henry Schein at the
 6 time?
 7 A No.
 8 Q Did anyone at Henry Schein express a
 9 negative view about buying groups?
 10 A Not that I'm aware.
 11 Q I'll hand you a document marked CX
 12 4106-001, Bates-stamped FTC KI-000000606.
 13 Can you take a minute to review the
 14 document.
 15 (Witness reviewing document.)
 16 THE WITNESS: Okay.
 17 BY MS. CASALE:
 18 Q So it appears to be a chain of emails, the
 19 last one from Kathleen Titus at Henry Schein on
 20 April 1st, 2015, to Rich Johnson and cc'd to
 21 Nicole Lena. The subject is "KlearImpakt."
 22 And then the second email looks like it's
 23 from Richard Johnson, you, on March 18th, 2015, to
 24 Kathleen Titus.
 25 Was this email sent -- was this chain of

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1 third email down from Kathleen Titus on March 17th,
 2 2015, at 1:59 p.m., to you, Richard Johnson. So she
 3 writes an email and then that third paragraph, can
 4 you just read that first sentence.
 5 A Starts with "Buying groups"?
 6 Q Yes.
 7 A Okay. "Buying groups generally don't have
 8 the best reputation with the distribution network.
 9 I think we have a chance to do this right and create
 10 a truly wonderful program."
 11 Q So what's your understanding of what
 12 Kathleen meant by "buying groups don't necessarily
 13 have the best reputation with the distribution
 14 network"?
 15 A I don't know anything about dental buying
 16 groups.
 17 Q Did you ever follow up with her on what she
 18 meant by that?
 19 A No. I just trust us.
 20 Q Did you have any discussions with anyone
 21 else at KlearImpakt about what she meant by that?
 22 A Not that I recall.
 23 Q Was it your understanding that buying
 24 groups didn't have the best reputation in the dental
 25 distribution networks?

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1 MR. FONTECILLA: Objection, asked and
 2 answered.
 3 BY MS. CASALE:
 4 Q Did you have this experience -- did you
 5 ever hear this -- hear a negative view about buying
 6 groups in the auditory industry when you were
 7 starting AudConnex?
 8 MR. FONTECILLA: Objection.
 9 THE WITNESS: I'm sure I had but there's
 10 also -- I'm way more familiar with that industry and
 11 then there, to my knowledge, well over 20 buying
 12 groups that have totally different value
 13 propositions, so I'm sure there were some with
 14 negative reviews.
 15 BY MS. CASALE:
 16 Q I want to circle back to AudConnex quickly.
 17 You've said that you wanted to create your own
 18 buying group in that field because you didn't think
 19 the other buying groups offered the value
 20 proposition that you could.
 21 A Correct.
 22 Q And what was the difference between the
 23 other buying groups and what you thought you could
 24 offer?
 25 A Similar way to just price driven, that's

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1 A Yeah.
 2 Q Okay. So there's also -- so on CX 4106-001
 3 there's also a Nicole Lena cc'd on this email.
 4 Were you in contact with her about
 5 partnering with Henry Schein as well?
 6 A She was always accompanied with Kathleen so
 7 almost every correspondence was with her and
 8 Kathleen or just Kathleen.
 9 Q Okay. Was there anyone else at Henry
 10 Schein who you were in contact with at this time?
 11 A I don't believe so.
 12 Q So your only two contacts at Henry Schein
 13 was Kathleen Titus and Nicole Lena?
 14 A In April of 2015, I believe so.
 15 Q Okay. And you mentioned that after some
 16 initial discussions you met in person with
 17 representatives of Henry Schein, correct?
 18 A Uh-huh.
 19 Q Correct?
 20 A Correct.
 21 Q How many times did you meet with
 22 representatives from Henry Schein?
 23 MR. SCHAEERER: Are you asking him in
 24 person?
 25 MS. CASALE: Yes, in person.

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1 it, only with the discount and nobody really in the
 2 industry knowing how to do the job. So we actually
 3 had doctors that owned their own clinics that were
 4 part of our group that actually understood the daily
 5 struggles of owning your own office.
 6 And then we wanted to offer training and
 7 support for people who actually owned their own
 8 offices, not just what they were taught.
 9 Q So you wanted to offer more than just
 10 discounts?
 11 A Correct.
 12 Q But discounts were still very important to
 13 members?
 14 A Yes.
 15 Q Okay. So you said formal communications
 16 really started with Kathleen Titus, correct?
 17 A Yes.
 18 Q And this was early 2014 or late 2014?
 19 A This email is from 2015 of April 1st.
 20 Q Okay.
 21 A But I know we discussed stuff before then.
 22 Q Okay. So would you say that you started
 23 discussions with Kathleen Titus in early 2015?
 24 A I'd still probably say late 2014.
 25 Q Late 2014?

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1 MR. FONTECILLA: What time period?
 2 THE WITNESS: I recall at least three but
 3 there likely could be more.
 4 BY MS. CASALE:
 5 Q So did you meet with Henry Schein or do you
 6 recall meeting with Henry Schein three times in
 7 person before you came to some kind of partnership
 8 agreement?
 9 A Correct.
 10 Q So when was the first meeting?
 11 A I don't remember.
 12 Q Do you remember where it was?
 13 A Sparks at the distribution center, Sparks,
 14 Nevada.
 15 Q Okay. And who was there?
 16 A Kathleen Titus, Nicole Lena, Jason Sala,
 17 Todd Sala, Ryan Lewis, myself, and I believe that's
 18 it.
 19 Q Okay. What was discussed at the first
 20 meeting?
 21 A Who we are and what we are, our
 22 backgrounds, why we want to do what we want to do,
 23 what we're expecting out of them and what they're
 24 expecting out of us.
 25 Q And what were they expecting out of you?

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1 MR. FONTECILLA: Objection.
 2 THE WITNESS: Growth, I'd hope.
 3 BY MS. CASALE:
 4 Q And what do you mean by "growth"?
 5 A Um, it wouldn't make much to have a
 6 partnership if we weren't helping them grow their
 7 network.
 8 Q And how did they expect you to help grow
 9 their network?
 10 MR. FONTECILLA: Speculation.
 11 MR. SCHAERER: Same.
 12 THE WITNESS: I don't know.
 13 BY MS. CASALE:
 14 Q What's your understanding of how they
 15 thought you could help -- KlearImpakt could help
 16 them?
 17 A My own opinion was growing the numbers. I
 18 don't know what their opinion was.
 19 Q And how did you plan to grow their numbers?
 20 A By showing them how to increase their
 21 patient flow.
 22 Q When you say "them" --
 23 A The dentists, the members, yeah.
 24 Trainings.
 25 Q Okay.

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1 on Henry Schein's side what was gained or gathered
 2 by that.
 3 Q So the second meeting was really just set
 4 up to meet Joe Cavaretta.
 5 A Correct.
 6 Q And you said there was a third meeting.
 7 When was that?
 8 A That was at Jason and Todd's office, to
 9 show them the training center they have upstairs in
 10 their office.
 11 Q And who was at that meeting?
 12 A Nicole Lena, Kathleen Titus, Jason and Todd
 13 Sala and myself.
 14 Q Okay. And what was discussed at that
 15 meeting?
 16 A I don't remember.
 17 Q Did anything result from that meeting?
 18 A Hopefully, just more trust. I don't know.
 19 Q So during these meetings and phone calls
 20 that you mentioned earlier, it seemed like initial
 21 communications between KlearImpakt and Henry Schein
 22 before any agreement was made, what questions did
 23 Henry Schein ask KlearImpakt about its business
 24 model?
 25 A They wanted to make sure we had an

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1 A Discussions with Jason and Todd, who do
 2 dentistry.
 3 Q When was the second meeting?
 4 A I believe it was in San Francisco at the
 5 California Dental Academy and that was Joe
 6 Cavaretta -- is that how you say it? -- Jason Sala,
 7 Todd Sala, and myself.
 8 Q Okay. And what was discussed during that
 9 meeting?
 10 A I really don't remember.
 11 Q Were there discussions about a partnership?
 12 A I'm sure there was. I really don't
 13 remember what they were.
 14 Q Okay. Is there anything that would help
 15 you remember what -- help you recall what you
 16 discussed?
 17 A No.
 18 Q So did anything come out of that second
 19 meeting? Were there any conclusions drawn or did
 20 you -- I'm sorry. Let me ask a question.
 21 Did anything result from that second
 22 meeting?
 23 A To my knowledge I believe it was to have a
 24 face-to-face so Joe knew who we were instead of just
 25 Kathleen telling him who we were. And I don't know

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1 educational component and, I guess, truly understand
 2 how we're going to market with it.
 3 Q And what's your understanding of why
 4 KlearImpakt wanted to make sure -- or why Henry
 5 Schein wanted to make sure that KlearImpakt had an
 6 educational component?
 7 A From my understanding would be they can
 8 give anybody a discount, if they wanted to, so why
 9 partner with somebody if you're just giving them a
 10 discount?
 11 And I agree with that fully. If we don't
 12 have anything to bring to the table, why just give a
 13 discount to give a discount? So I think they wanted
 14 to make sure we offered more than just a way to get
 15 somebody a discount.
 16 Q And what were their questions surrounding
 17 the educational component that KlearImpakt would
 18 offer?
 19 A I don't recall the questions.
 20 Q And then you said they asked questions
 21 about how KlearImpakt would go to market.
 22 What do you mean by that?
 23 A Like, how would we present ourselves to the
 24 public, to the dental public.
 25 Q And what questions surrounding

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1 KlearImpakt's presentation to the public did Henry
 2 Schein ask?
 3 MR. FONTECILLA: Objection.
 4 THE WITNESS: I believe they just didn't
 5 want us to lead with pricing, from my recollection.
 6 BY MS. CASALE:
 7 Q And that was before Henry Schein and
 8 KlearImpakt came to any partnership agreement?
 9 A Correct.
 10 Q Did KlearImpakt represent to Henry Schein
 11 that it wouldn't lead with pricing?
 12 A I think we --
 13 MR. FONTECILLA: Objection, vague as to
 14 time.
 15 THE WITNESS: I think we have two different
 16 philosophies with different dentists. Some dentists
 17 need practice management to be led with and some
 18 need pricing to be led with, so I think we try to
 19 balance that as good as we can.
 20 BY MS. CASALE:
 21 Q And why do you -- so you said some dentists
 22 can be led to KlearImpakt through the discounts and
 23 some are led to KlearImpakt through -- what was the
 24 second thing you said? I'm sorry.
 25 MR. FONTECILLA: Objection.

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1 MR. FONTECILLA: Objection.
 2 BY MS. CASALE:
 3 Q So you've never done any market surveys?
 4 A No. Because we try to go at both angles
 5 and we don't -- we've never -- we just know they're
 6 both important. Because I don't think there is one
 7 that's significantly superior to the other, as far
 8 as membership growth.
 9 Q But both pricing and practice management
 10 are important?
 11 A To dentists?
 12 MR. FONTECILLA: Vague.
 13 BY MS. CASALE:
 14 Q To advertising to prospective members.
 15 A To what our belief is, correct.
 16 Q Do you know who Tim Sullivan is?
 17 A Tim Sullivan. Oh, I do think I know the
 18 name but I don't think I've ever met him.
 19 Q Okay. So you've never met Tim Sullivan?
 20 A Not that I recall.
 21 Q Did you ever speak to Tim Sullivan?
 22 A Not that I recall.
 23 Q Did you ever communicate with Tim Sullivan
 24 via email?
 25 A Same thing, I don't recall.

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1 Mischaracterizes his testimony.
 2 MS. CASALE: Can you read that.
 3 THE REPORTER: "A. I think we have two
 4 different philosophies with different dentists.
 5 Some dentists need practice management to be led
 6 with and some need pricing to be led with, so I
 7 think we try to balance that as good as we can."
 8 BY MS. CASALE:
 9 Q So you said there's two different
 10 philosophies members can be led to KlearImpakt
 11 through pricing or through practice management.
 12 Why is there a difference in philosophies?
 13 A I'm sure some people think they run their
 14 business perfectly, even though they don't know what
 15 they don't know. And then they're lured to us
 16 because we have discounts, not only with Henry
 17 Schein, but other discounts, so we bring them in
 18 that way. But, hopefully, we teach them down the
 19 road that we can help them grow even though they
 20 thought they knew everything.
 21 Q And in your experience what percentage of
 22 KlearImpakt members are drawn to KlearImpakt through
 23 the discounts or through pricing?
 24 A I truly have no idea. We've never
 25 surveyed.

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1 Q Did you ever see Tim Sullivan copied on an
 2 email?
 3 A No.
 4 Q Did anyone from Henry Schein ever mention
 5 speaking with Tim Sullivan about KlearImpakt?
 6 A I believe so. And I think it was Kathleen
 7 but I'm not positive.
 8 Q And when was this?
 9 A I have no idea.
 10 Q Is there anything that would help you
 11 remember?
 12 A No. I guess a copy of the email.
 13 Q Do you have a general time frame of when
 14 she might have -- when she mentioned Tim Sullivan's
 15 name?
 16 A I would go between May of -- or fall of
 17 2014 to May of 2016.
 18 Q And why would you think that?
 19 A Because it was before we were partners.
 20 Q So she mentioned Tim Sullivan's name prior
 21 to the KlearImpakt and Henry Schein partnership?
 22 A I believe so.
 23 Q So when did KlearImpakt reach an agreement
 24 with Henry Schein?
 25 A There was multiple times where we thought

<p style="text-align: right;">Page 86</p> <p>1 we were in agreement. I think the most formal one 2 that I can recall is May of 2016, but I think we had 3 some before then. 4 Q Okay. So what was the first agreement 5 that-- 6 A It was 5 percent on supplies. 7 Q I'm sorry. When was the first agreement? 8 A I think late fall of 2015. October would 9 be my guess but I don't recall. 10 Q So from start to finish when you first 11 contacted Henry Schein and got in contact with 12 Kathleen Titus to when you came to what might have 13 been the first agreement in late 2015, it was about 14 -- would you say it was about a year? 15 MR. FONTECILLA: Counsel, why don't you 16 show him the contract you said you would introduce 17 so that it refreshes his recollection rather than 18 lead him down the road. 19 MS. CASALE: I'm taking my time. I'm going 20 to do it in a second. Thank you. 21 BY MS. CASALE: 22 Q So it was a about year process? 23 A It felt longer, but I'm sure. 24 Q Okay. I'm going to hand you a document 25 marked CX 2272-005. It's Bates-numbered Henry</p>	<p style="text-align: right;">Page 87</p> <p>1 Schein 000038287. Just take a minute to review it. 2 (Witness reviewing document.) 3 THE WITNESS: Okay. 4 BY MS. CASALE: 5 Q Do you recognize this document? 6 A Yes. 7 Q What is it? 8 A It is a supply agreement or vendor 9 agreement. 10 Q Okay. And is this your signature on page 11 CX 2272-012? 12 A Yes. 13 Q So was this the first agreement between 14 KlearImpakt and Henry Schein? 15 A Yes. 16 Q And what was the term of this agreement? 17 A What was the term? 18 Q How long was the agreement? 19 A 36 months. 20 Q Okay. 21 MR. SCHAERER: Are you just asking him what 22 the document says? 23 MS. CASALE: Mostly. 24 MR. SCHAERER: Okay. 25 BY MS. CASALE:</p>
<p style="text-align: right;">Page 88</p> <p>1 Q So can you kind of describe the discount 2 schedule that's in No. 2. It appears on the page 3 ending in 005, the first page. 4 What's your understanding of what those 5 discounts were? 6 A Those are discounts out of catalog that are 7 not on the formulary. 8 Q And what does that mean? 9 A Exactly. I don't know. It's hard to 10 describe the formulary. I don't even get it still 11 to this day. 12 Q What's your understanding of what the 13 formulary is? 14 A It's the top 20,000 items, I believe, that 15 are ordered by dentists on a daily basis or a weekly 16 basis. 17 Q And what's the percentage discount on those 18 top 20,000 items? 19 A It ranges up to 22 or 23 percent, I 20 believe. 21 Q So you said "ranges up to 23 percent." 22 A Just there's so many variables. It depends 23 on if you're talking about gloves or gauze or latex 24 stuff. 25 Q What's the low end of the discount? What's</p>	<p style="text-align: right;">Page 89</p> <p>1 the lowest discount in there? 2 A I don't know. I'd be guessing. I have no 3 idea. 4 Q Okay. But the maximum was 23 percent. 5 MR. FONTECILLA: Objection. 6 THE WITNESS: I believe so. 7 BY MS. CASALE: 8 Q And then what was KlearImpakt's 9 administrative fee in this contract? 10 A 5 percent. 11 Q Did you understand this agreement to be 12 exclusive? 13 A Somewhat, yes. 14 Q So did you understand that KlearImpakt 15 could not promote any other dental distributor? 16 A Yeah, I'm hemming and hawing with my answer 17 because I also -- we don't have a group practice 18 discount. So anything they can provide a discount 19 to, I think we're going to honor that partnership. 20 But if they're not partners in that discount, we 21 might have to look for somebody that does offer that 22 discount. 23 Q When you're saying "their" who are you 24 referring to? 25 A Henry Schein.</p>

<p style="text-align: right;">Page 90</p> <p>1 Q Okay.</p> <p>2 A And that's why we reached out to Patterson,</p> <p>3 because we have this huge group of multi-practice</p> <p>4 discounts that we need somebody to help us with.</p> <p>5 Q But it was your understanding from this</p> <p>6 agreement that it was not exclusive.</p> <p>7 A I think it was exclusive to the ones that</p> <p>8 are being helped by this discount, but we have a</p> <p>9 huge carve-out of members that are not allowed to</p> <p>10 participate in this (indicating).</p> <p>11 Q So it was exclusive to independent</p> <p>12 dentists?</p> <p>13 A I believe so.</p> <p>14 Q How many members did KlearImpakt have at</p> <p>15 the time of this agreement?</p> <p>16 A No idea. A guess would be around a</p> <p>17 hundred, a hundred-fifty.</p> <p>18 Q So in August 2015 KlearImpakt had about a</p> <p>19 hundred members?</p> <p>20 A I would be totally guessing. I have no</p> <p>21 idea, but yes. I really don't know.</p> <p>22 Q So I think you testified earlier that you</p> <p>23 KlearImpakt started enrolling members in late 2015,</p> <p>24 correct?</p> <p>25 A I believe so.</p>	<p style="text-align: right;">Page 91</p> <p>1 Q So between that time and August 2015, you</p> <p>2 obtained a hundred members?</p> <p>3 A We had people wanting to sign up for a</p> <p>4 vendor discount that did not exist.</p> <p>5 Q So was there some kind of waiting list?</p> <p>6 A We just -- wouldn't call it a "waiting</p> <p>7 list," just people we had in our system that were</p> <p>8 waiting for us to partner with a vendor.</p> <p>9 Q So were they already members?</p> <p>10 A Yes.</p> <p>11 Q Okay.</p> <p>12 MR. SCHAERER: I'll also note for the</p> <p>13 record he was not sure about the hundred. He said</p> <p>14 he would be guessing. He's really not sure.</p> <p>15 MS. CASALE: That's fine.</p> <p>16 BY MS. CASALE:</p> <p>17 Q When KlearImpakt was negotiating this</p> <p>18 agreement, CX 2272, did you discuss with Henry</p> <p>19 Schein the number of members that KlearImpakt had?</p> <p>20 A KlearImpakt as a whole, yes, I believe so.</p> <p>21 Q And what was Henry Schein's reaction?</p> <p>22 A I don't recall.</p> <p>23 Q Were there internal discussions within</p> <p>24 KlearImpakt about the number of members?</p> <p>25 A That -- for Henry Schein's purposes or for</p>
<p style="text-align: right;">Page 92</p> <p>1 our purposes? Because they're two different things.</p> <p>2 Q In relation to negotiating with Henry</p> <p>3 Schein.</p> <p>4 MR. FONTECILLA: Objection.</p> <p>5 THE WITNESS: I don't remember that either.</p> <p>6 I mean, we have access to another huge group of</p> <p>7 dentists that has nothing to do with Henry Schein.</p> <p>8 Jason and Todd teach for a guy that has,</p> <p>9 like, 30,000 dentists that we haven't opened the</p> <p>10 doors to.</p> <p>11 BY MS. CASALE:</p> <p>12 Q Was that part of the discussion when you</p> <p>13 were discussing a partnership with Henry Schein?</p> <p>14 A I'm sure it was brought up, because it's a</p> <p>15 small industry and everybody seems to know</p> <p>16 everybody's business.</p> <p>17 Q Did KlearImpakt provide any projections of</p> <p>18 membership growth to Henry Schein when you were</p> <p>19 negotiating this agreement?</p> <p>20 A No, not that I'm aware of.</p> <p>21 Q Did Henry Schein ask for any projections?</p> <p>22 A Not that I recall.</p> <p>23 Q So you mentioned that you had another</p> <p>24 agreement with Henry Schein which you thought was in</p> <p>25 May 2016, correct?</p>	<p style="text-align: right;">Page 93</p> <p>1 A Correct.</p> <p>2 Q Okay. So, I guess, first, you said that</p> <p>3 this agreement, the first one, CX 2272, had a term</p> <p>4 of 36 months --</p> <p>5 A Uh-huh.</p> <p>6 Q -- and that was in August 2015. And then</p> <p>7 it looks like about less than a year later you made</p> <p>8 another agreement with Henry Schein.</p> <p>9 A Right.</p> <p>10 Q What precipitated the need for another</p> <p>11 agreement?</p> <p>12 A Henry Schein.</p> <p>13 Q And why?</p> <p>14 A I have no idea.</p> <p>15 Q What did they tell you?</p> <p>16 A That they needed to change it. I really</p> <p>17 don't know why. But we were going to honor our</p> <p>18 loyalty so we just dealt with it. And we weren't</p> <p>19 too concerned because we were happy with most things</p> <p>20 so we just felt we'll honor our side and keep moving</p> <p>21 forward.</p> <p>22 Q Did you ever ask Henry Schein why?</p> <p>23 A I'm sure we did. I don't remember what</p> <p>24 their response was. There was something at one</p> <p>25 point in time about the Sunset Act, but I don't</p>

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<p>1 think it has anything to pertain to discounts, but 2 it could. I don't know. 3 Q Were there any internal discussions in -- 4 within KlearImpakt about Henry Schein's insistence 5 on a new contract or new agreement? 6 A Was there what? 7 Q Any internal discussion about Henry 8 Schein's insistence on the new agreement. 9 A Oh, I'm sure. I don't remember what the 10 conversations were but I'd be shocked if we didn't 11 talk about it when we were getting a new contract. 12 Q Were those discussions positive? 13 MR. FONTECILLA: Objection. 14 THE WITNESS: I don't even remember the 15 discussions. We weren't going to move from our 16 partnership. We wanted to be loyal for the years we 17 said we would do it and prove to them that we would 18 do what we said we would do. 19 So while we lost income because they 20 reduced our percentage, we were still going to prove 21 ourselves and then go from there. 22 BY MS. CASALE: 23 Q Okay. I'm going to hand you a document 24 marked CX 4107. It's Bates-stamped FTC-KI-00000804. 25 You can take a minute to review it.</p>	<p>1 (Witness reviews document.) 2 THE WITNESS: Okay. 3 BY MS. CASALE: 4 Q Do you recognize this document? 5 A I do. 6 Q What is it? 7 A The updated agreement. 8 Q And if we turn to CX 4107-006, is that your 9 signature on the back? 10 A Yes. 11 Q And whose signature is to the left of 12 yours? 13 A Joe Cavaretta. 14 MR. SCHAEERER: I'll just clarify. Did you 15 see Joe sign the document or -- 16 THE WITNESS: No. 17 MR. SCHAEERER: That's just your 18 understanding? 19 THE WITNESS: Correct. 20 MR. SCHAEERER: Okay. 21 (Witness reviewing document.). 22 BY MS. CASALE: 23 Q So did you sign this document on or about 24 the date that it was sent to you? 25 A I don't remember what day I signed -- or</p>
<p>1 the date it was sent to me, but I signed it probably 2 close to the date it was sent to me. 3 Q Okay. And this agreement was kept in the 4 regular course of business? 5 A Correct. 6 Q And is this an accurate representation of 7 the record that KlearImpakt kept? 8 A What do you mean by that? 9 MR. SCHAEERER: What record? 10 BY MS. CASALE: 11 Q Of a business record. 12 A Like, do we have a copy of this agreement? 13 Q Yes. 14 A Yes. 15 Q Okay. If you turn to CX 4107-005, there 16 appears to be a blank page. Not sure if it was a 17 problem with production or maybe you're missing the 18 page in your files. 19 But is that supposed to be blank? 20 A No. 21 Q Okay. So there's a page missing? 22 A Well, if you look at the bottom of the 23 primary vendor agreement, which is 807, it's labeled 24 "Page 1." And then it goes to page 3, and so I'm 25 assuming there's a missing page.</p>	<p>1 Q Okay. I'm going to hand you another 2 document marked CX 2428-005 and it's Bates-stamped 3 Henry Schein 001868041. 4 Take a moment to review this document. 5 (Witness reviewing document.) 6 THE WITNESS: Okay. 7 BY MS. CASALE: 8 Q Do you recognize this document? 9 A I do. 10 Q Can you turn to III page, CX 2428-007. 11 Is that your signature on the right? 12 A Correct. 13 Q Is that the same signature that's on CX 14 2428 -- sorry. That was the wrong one. 15 A Yes. 16 Q That was on the last -- 17 Is that the same signature that is on CX 18 4107-006? 19 A Yes. 20 Q So this is the same primary vendor 21 agreement as the last one I handed you, CX 4107? 22 A It looks to be that way. 23 Q Just want to doublecheck. 24 So what was the administrative fee in this 25 agreement?</p>

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<p>1 A The new one was 3 percent.</p> <p>2 Q Okay. And the first one was 5 percent?</p> <p>3 A Correct.</p> <p>4 Q What was your understanding of why Henry</p> <p>5 Schein lowered the administrative fee?</p> <p>6 A Like I said earlier, the only thing I can</p> <p>7 remember is something about the Sunset Act,</p> <p>8 something -- but I don't -- when we looked it up, I</p> <p>9 don't recall anything in there being limited to a</p> <p>10 certain amount of percentage. While we were not</p> <p>11 happy with it, we still knew we were growing our</p> <p>12 business and we weren't too concerned.</p> <p>13 Q Did KlearImpakt express any concern to</p> <p>14 Henry Schein?</p> <p>15 A I don't recall.</p> <p>16 Q And then if you look at CX 2428-005, No. 3</p> <p>17 towards the bottom of that page, the first page of</p> <p>18 the document, it describes a formulary.</p> <p>19 What was the formulary in the second</p> <p>20 agreement?</p> <p>21 A I don't know. I just laugh because it's</p> <p>22 hard for even Henry Schein to describe it for me at</p> <p>23 times. It's a certain amount of items. I don't</p> <p>24 remember the exact amount of items. Everything else</p> <p>25 would go under a different percentage.</p>	<p>1 Q And what is the range of discounts in the</p> <p>2 formulary?</p> <p>3 MR. FONTECILLA: Objection.</p> <p>4 THE WITNESS: I still believe it's up to</p> <p>5 23 percent on the formulary items and then the</p> <p>6 non-formulary items are catalog items that aren't in</p> <p>7 the formulary start out at 12 percent for the first</p> <p>8 year.</p> <p>9 BY MS. CASALE:</p> <p>10 Q And the non-formulary products, were these</p> <p>11 discounts less than the initial agreement, CX 4107--</p> <p>12 MR. FONTECILLA: Objection.</p> <p>13 MR. SCHAERER: Which page are you referring</p> <p>14 to?</p> <p>15 BY MS. CASALE:</p> <p>16 Q -- compared to the first agreement CX</p> <p>17 2272-005. I think that's No. 2 on the first page.</p> <p>18 A For the first year, no.</p> <p>19 Q And then the second year, are the years</p> <p>20 following the first year?</p> <p>21 MR. FONTECILLA: Objection, vague,</p> <p>22 mischaracterizes the document.</p> <p>23 BY MS. CASALE:</p> <p>24 Q The years following the first year.</p> <p>25 A It depends on what level they're at.</p>
<p>Page 100</p> <p>1 Q Okay. And what are these levels referred</p> <p>2 to on CX2428-005?</p> <p>3 A The amount of business the office is doing</p> <p>4 with Henry Schein.</p> <p>5 Q Okay. And what level do KlearImpakt</p> <p>6 members fall into?</p> <p>7 A Every. It's all three levels.</p> <p>8 Q Okay. What percentage of KlearImpakt</p> <p>9 members fall into Level 1?</p> <p>10 MR. FONTECILLA: Objection, vague as to</p> <p>11 time period.</p> <p>12 THE WITNESS: I have no idea.</p> <p>13 BY MS. CASALE:</p> <p>14 Q Today do you have a sense of what level the</p> <p>15 majority of KlearImpakt members fall into?</p> <p>16 A I do not. We have in our reporting. I</p> <p>17 just haven't looked it up like that.</p> <p>18 Q Do you understand this agreement, the</p> <p>19 second one, CX 2428-005, to be exclusive?</p> <p>20 MR. FONTECILLA: Objection, vague.</p> <p>21 THE WITNESS: I would answer that the way I</p> <p>22 answered it before, exclusive for anyone that can</p> <p>23 participate in this program.</p> <p>24 BY MS. CASALE:</p> <p>25 Q You can put that to the side.</p>	<p>Page 101</p> <p>1 So earlier you mentioned that your</p> <p>2 KlearImpakt had contacted Patterson Dental about a</p> <p>3 partnership, correct?</p> <p>4 A Correct.</p> <p>5 Q Okay. Has KlearImpakt contacted any other</p> <p>6 dental supply distributors about a partnership?</p> <p>7 A No.</p> <p>8 Q So when did KlearImpakt contact Patterson</p> <p>9 Dental?</p> <p>10 A Sometime, I believe, fall of 2016 -- wait.</p> <p>11 Might have been 2017. I don't remember the date.</p> <p>12 Q Okay. And who did you speak with at</p> <p>13 Patterson?</p> <p>14 A Oh, gosh. Wesley, and I don't remember</p> <p>15 Wesley's last name. There was three individuals in</p> <p>16 the room with us as well in Minneapolis and I don't</p> <p>17 remember the other two's name either right now, but</p> <p>18 we've pretty much handed off to Wesley.</p> <p>19 Q So you mentioned you met with Patterson --</p> <p>20 individuals from Patterson in Minneapolis?</p> <p>21 A Correct.</p> <p>22 Q And you think this was late 2016 or 2017?</p> <p>23 A Correct.</p> <p>24 Q Okay. What was the discussion at that</p> <p>25 meeting in Minneapolis?</p>

<p style="text-align: right;">Page 102</p> <p>1 A Seeing if they could help us with discounts 2 for our members that don't have discounts. 3 Q And when you say "members that don't have 4 discounts" -- 5 A Either that won't use Henry Schein for some 6 reason or group practices. 7 Q So Patterson was open to a partnership that 8 would offer discounts to KlearImpakt members that 9 weren't group -- 10 A We had no agreement with them. 11 MR. SCHLOSSER: Objection, speculation. 12 BY MS. CASALE: 13 Q Was Patterson positive about a partnership 14 with KlearImpakt? 15 MR. SCHLOSSER: Same objection. 16 THE WITNESS: I don't know. We still 17 haven't gotten anywhere, so I have no idea. 18 BY MS. CASALE: 19 Q Is KlearImpakt currently in discussion with 20 Patterson Dental to form some sort of partnership? 21 A We're trying. 22 Q When you say "trying," what do you mean? 23 A We're emailing and texting but ... 24 Q Are you getting responses from Patterson? 25 A No.</p>	<p style="text-align: right;">Page 103</p> <p>1 Q So how many emails and text messages -- 2 let's start with emails -- have you sent to 3 Patterson since the Minneapolis meeting? 4 A I've probably sent no emails. Deb Zener 5 might have sent an email or two but I personally 6 have not sent an email. 7 Q Okay. Has KlearImpakt received a response 8 to -- 9 A No. 10 Q -- any of those emails? 11 A Well, I didn't send the email, so I have no 12 idea. 13 Q Okay. Were there any further discussions 14 with Patterson after the Minneapolis meeting? 15 A Text messages, and I know Deb Zener talked 16 to Wes a couple times. 17 Q Do you know when she talked to Wes? 18 A She's talked to him a couple times. I have 19 no idea when the dates were. 20 Q Did Patterson Dental ever indicate that 21 they were not interested in a partnership with 22 KlearImpakt? 23 A No. 24 Q Okay. 25 MS. CASALE: Can we go off the record real</p>
<p style="text-align: right;">Page 104</p> <p>1 quick. 2 (Recess taken.) 3 BY MS. CASALE: 4 Q So if we could just go back to the 2015 5 agreement with Henry Schein, CX 2272-005, was it 6 your understanding that there was no member purchase 7 volume requirement in that agreement? 8 A Correct. 9 MR. FONTECILLA: Objection, 10 mischaracterizes the document. 11 BY MS. CASALE: 12 Q Can you read for me that last sentence in 13 the second paragraph on the first page of CX 14 2272-005. 15 A I'm on a blank page. 16 MR. SCHAEERER: You want to be looking at 17 this one. Just to clarify, you're asking about CX 18 2428-005. 19 MS. CASALE: 2272-005, so the 2015 20 agreement. 21 MR. SCHAEERER: Yeah. It's the one that 22 says "Henry Schein Special Markets" on the top. 23 THE WITNESS: I'm there. 24 BY MS. CASALE: 25 Q Okay. So let me ask again, then.</p>	<p style="text-align: right;">Page 105</p> <p>1 Was it your understanding that Henry Schein 2 didn't require any volume purchases from KlearImpakt 3 members in this agreement? 4 A To become a member of KlearImpakt with 5 Henry Schein discount? 6 Q Yes. 7 A They did not. Still don't. It's their 8 choice to do product or not. 9 Q Okay. So does this agreement require 10 KlearImpakt members who sign up for the Henry Schein 11 discount to purchase a certain volume from Henry 12 Schein? 13 A No. 14 Q Okay. Can you read for me the second 15 sentence in that second -- or the last sentence in 16 the second paragraph on CX 2272-005. 17 A So the one that says "Primary dental supply 18 distributor"? 19 Q That paragraph but the last sentence that 20 says "Members" -- 21 A "Members agree to purchase a minimum of 22 70 percent of their supplies from Henry Schein." 23 Q Did Henry Schein ever enforce this 24 provision of the agreement? 25 A No.</p>

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1 Q Why not?
 2 MR. SCHAEERER: Objection, speculation.
 3 MR. FONTECILLA: Same objection.
 4 THE WITNESS: I don't know.
 5 BY MS. CASALE:
 6 Q What's your understanding of why they
 7 didn't?
 8 A I don't have an understanding.
 9 Q Did they ever -- did Henry Schein ever
 10 bring this to KlearImpakt's attention?
 11 A No.
 12 Q Okay. Then let's go back to the 2016
 13 agreement, so that's CX 2428-005.
 14 Did you find that one?
 15 A This one (indicating)?
 16 Q Yes.
 17 A Yes.
 18 Q Okay. So in this 2016 agreement was it
 19 your understanding that there was any volume
 20 commitment from KlearImpakt members to buy from
 21 Henry Schein?
 22 MR. FONTECILLA: Objection.
 23 THE WITNESS: No, because it's still their
 24 choice whether or not they want to do it.
 25 BY MS. CASALE:

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1 speculation.
 2 MR. SCHAEERER: Same objection.
 3 BY MS. CASALE:
 4 Q You can answer.
 5 A How is Henry Schein different?
 6 MR. FONTECILLA: Same objection.
 7 BY MS. CASALE:
 8 Q How are the big suppliers -- you mentioned
 9 Henry Schein, Patterson and Darby -- different from
 10 any other suppliers in the dental industry?
 11 A I don't know the other suppliers.
 12 MR. FONTECILLA: Objection to form.
 13 MR. SCHAEERER: Objection.
 14 BY MS. CASALE:
 15 Q So earlier I asked you some questions about
 16 the growth of membership at KlearImpakt.
 17 Can you just walk me through the growth
 18 projectory from the beginning when KlearImpakt just
 19 started to today.
 20 A Are you talking about Henry Schein members
 21 in KlearImpakt or KlearImpakt as a general group?
 22 Q KlearImpakt members.
 23 A Okay. I don't remember how many we started
 24 with because it was Jason and Todd's colleagues and
 25 classmates, and I don't know what number of dentists

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1 Q Okay. So there were no purchase
 2 requirements in this contract?
 3 MR. FONTECILLA: Objection.
 4 THE WITNESS: I don't know.
 5 MR. SCHAEERER: And I'll add to that
 6 objection that the document speaks for itself.
 7 BY MS. CASALE:
 8 Q So earlier when we were discussing why
 9 KlearImpakt chose to partner with Henry Schein, you
 10 mentioned that there were three or four big
 11 suppliers in the dental industry.
 12 Do you know who those are?
 13 A I thought -- and I might be wrong -- it was
 14 Henry Schein, Patterson, and Darby. But I believe
 15 since Benco's on the call, they're pretty big too.
 16 Q So why did you think that these three --
 17 Henry Schein, Darby and Patterson -- were the big
 18 three?
 19 MR. FONTECILLA: Objection.
 20 THE WITNESS: Because those were the three
 21 I was told about by dentists.
 22 BY MS. CASALE:
 23 Q And how are they different from any other
 24 suppliers that you know of in the dental industry?
 25 MR. FONTECILLA: Foundation, calls for

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1 that was. And then there was a few people they
 2 taught classes to that joined. This is before we
 3 even marketed to anybody.
 4 And we still haven't really marketed too
 5 much -- or we have but we haven't done a ton. So I
 6 don't know. Maybe we get two members a month, three
 7 members a month. And since probably February of
 8 this year, March of this year, we really haven't
 9 done much because we're doing stuff internally that
 10 we're changing, so we have not put anything into
 11 marketing since February or March.
 12 Q Okay. Have there been any spikes in
 13 membership since starting KlearImpakt?
 14 MR. FONTECILLA: Objection.
 15 THE WITNESS: Spikes in membership --
 16 MR. SCHAEERER: Same objection, vague.
 17 THE WITNESS: -- I don't understand that.
 18 BY MS. CASALE:
 19 Q So have there been any periods of time
 20 where membership grew rapidly compared to --
 21 A Certain months? Yes.
 22 Q Yeah, okay.
 23 When was that?
 24 A Either when Jason and Todd were teaching
 25 the class or we attended a dental academy meeting in

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1 Boston.

2 Q Are there any periods of time where --

3 well, let me rephrase the question.

4 Has KlearImpakt ever lost members?

5 A Not to my knowledge. You're talking about

6 KlearImpakt, not a member that had a Henry Schein

7 discount, correct? Because they're two different

8 things to me.

9 Q KlearImpakt members.

10 A Yes, we've not lost KlearImpakt members,

11 no.

12 Q Okay. So let's go back to the growth

13 projectory again and let's talk about KlearImpakt

14 members that get the Henry Schein discount.

15 A Uh-huh.

16 Q Can you walk me through the growth of that

17 membership.

18 MR. FONTECILLA: Objection.

19 THE WITNESS: I'd have to look it up. I

20 have no idea.

21 BY MS. CASALE:

22 Q Are there any spikes in that membership?

23 MR. FONTECILLA: Same objection.

24 THE WITNESS: Probably pretty parallel to

25 the overall group but I don't know. I would have to

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1 Q So if KlearImpakt rejects one of the

2 sign-up forms that indicates they want the Henry

3 Schein discount, you'll still take them as a

4 KlearImpakt member.

5 A If Henry Schein, you mean, said no?

6 Q Yes.

7 A Yes. We would still take them as a member,

8 yes.

9 Q So there haven't been any instances where

10 someone signed up thinking they were going to get

11 the Henry Schein discount and didn't get the

12 discount and decided not to join KlearImpakt at all?

13 A No.

14 Q Okay. When you signed the May 2016

15 agreement with Henry Schein, did you get any

16 feedback from members?

17 A They don't know about the contracts.

18 Q Did members see a change in discounts?

19 MR. FONTECILLA: I don't know.

20 THE WITNESS: I don't know. Because most

21 of it is off the formulary so I don't know if they

22 did. If they did, they didn't say anything to us.

23 BY MS. CASALE:

24 Q And then earlier you mentioned that you

25 heard Kathleen Titus mention Tim Sullivan's name

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1 look it up.

2 BY MS. CASALE:

3 Q Has KlearImpakt ever lost a Henry Schein

4 member?

5 MR. FONTECILLA: Objection, vague.

6 THE WITNESS: I don't know if the word is

7 "lost" but we weren't allowed to sign some people

8 up. So they weren't -- I don't think once they've

9 been -- oh, we have lost one somewhere in Kentucky

10 that was a member of that who is now direct with

11 Henry Schein, yes.

12 BY MS. CASALE:

13 Q And why did they --

14 A Their --

15 Q -- leave KlearImpakt?

16 A -- field service rep gave them a better

17 agreement direct. But they still have us for other

18 discounts. They're just not a Henry Schein member.

19 Q Okay. Has there ever been a prospective

20 member who signed up for the Henry Schein discount

21 in which Henry Schein rejected them so they just

22 didn't become a KlearImpakt member at all?

23 MR. FONTECILLA: Objection, vague.

24 THE WITNESS: No.

25 BY MS. CASALE:

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1 sometime before the 2016 agreement, correct?

2 A I believe so.

3 Q Okay. Do you remember what context she

4 mentioned his name?

5 A I just know I heard it. That's it.

6 Q Was it in an email?

7 A I don't know.

8 MR. FONTECILLA: Objection, asked and

9 answered.

10 BY MS. CASALE:

11 Q In a phone call?

12 A I don't know.

13 MR. SCHAEERER: Asked and answered.

14 BY MS. CASALE:

15 Q Do you remember any of the conversations

16 surrounding the name?

17 A You want me to guess? I think a phone

18 call. I don't know.

19 MR. FONTECILLA: Objection. You're asking

20 the witness to speculate.

21 BY MS. CASALE:

22 Q Does Henry Schein know that not all

23 KlearImpakt members purchase from Henry Schein?

24 MR. FONTECILLA: Objection, form.

25 THE WITNESS: Yes.

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1 BY MS. CASALE:
 2 Q What was their reaction to that?
 3 MR. FONTECILLA: Objection.
 4 THE WITNESS: I don't think they were
 5 surprised.
 6 BY MS. CASALE:
 7 Q Has KlearImpakt ever considered requiring
 8 members to purchase supplies from partner suppliers?
 9 A No.
 10 Q Why not?
 11 A Because we're trying to help them. And if
 12 they don't need us for supplies, then we don't want
 13 to hinder them.
 14 Q Is it important to members to choose their
 15 own suppliers?
 16 MR. FONTECILLA: Calls for speculation.
 17 THE WITNESS: Depends on the member.
 18 MR. SCHAERER: Same objection.
 19 BY MS. CASALE:
 20 Q So some members, it's important for them to
 21 be able to choose their supplier.
 22 MR. SCHAERER: Same objection.
 23 MR. FONTECILLA: Objection.
 24 THE WITNESS: I believe so -- or just
 25 third-party endorsement. So if there's trust with

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1 BY MS. CASALE:
 2 Q Okay. And why also include the discount to
 3 suppliers and other services?
 4 A To save them money.
 5 Q What would happen if KlearImpakt didn't
 6 offer any discounts to suppliers?
 7 MR. SCHAERER: Speculation.
 8 MR. FONTECILLA: Speculation.
 9 THE WITNESS: I don't know how to answer
 10 that.
 11 BY MS. CASALE:
 12 Q Do you think you would lose members?
 13 MR. SCHAERER: Same objection.
 14 MR. FONTECILLA: Objection.
 15 THE WITNESS: Still wouldn't know.
 16 BY MS. CASALE:
 17 Q Do you think it would hamper KlearImpakt's
 18 ability to grow membership?
 19 MR. SCHAERER: Same objection.
 20 MR. FONTECILLA: Same objection.
 21 THE WITNESS: No.
 22 BY MS. CASALE:
 23 Q Why not?
 24 A Because there's a couple business coaches
 25 out there in the U.S. that have 10,000, 20,000,

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1 us and if they see us promoting the company, it
 2 makes them feel more at ease with using that
 3 company.
 4 BY MS. CASALE:
 5 Q Okay. So going back to founding
 6 KlearImpakt, how did you know that there would be
 7 demand for the KlearImpakt model?
 8 A Because, like I said earlier, I think
 9 there's demand in every health field.
 10 Q And you said you didn't conduct any surveys
 11 to figure this out?
 12 A No. I grew up with Jason and Todd since
 13 third grade. And they knew what I was doing in the
 14 medical industry and then they asked if it would
 15 work, and I truly do believe it would work in any
 16 healthcare field.
 17 Q Why do you believe it would work in any
 18 healthcare field?
 19 A Same answer as before, we're not educated
 20 on running a business.
 21 Q Okay. So you thought that practice
 22 management was something that would be successful in
 23 the dental industry.
 24 MR. FONTECILLA: Objection.
 25 THE WITNESS: Yes.

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1 30,000 dentists and they don't offer a discount.
 2 Q So why does KlearImpakt want to grow
 3 membership?
 4 A To help independent practitioners.
 5 Q How.
 6 A Bottom line, growth.
 7 Q Growth in?
 8 A Adding another dentist. A lot of them only
 9 have single practitioners, which is probably the
 10 worst thing they can do, which is our belief. They
 11 get hurt and nobody can produce and the staff can't
 12 get paid.
 13 Q And discounts are important to these
 14 practitioners?
 15 A Help hire another associate, yes.
 16 Q Would more members help KlearImpakt achieve
 17 better discounts?
 18 A We believe so.
 19 Q And why do you think that?
 20 A Back to the original question, power in
 21 numbers.
 22 Q By "power in numbers" you mean KlearImpakt
 23 can leverage its large membership to negotiate
 24 better prices with suppliers?
 25 A Correct.

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1 MS. CASALE: That's all the questions I
 2 have. Thanks. Do you want to take a break?
 3 MR. FONTECILLA: No. I can just jump in.
 4 EXAMINATION
 5 BY MR. FONTECILLA:
 6 Q Mr. Johnson, I'm Adrian Fontecilla. I
 7 represent Henry Schein. Same rules apply. Just
 8 wait for any objections to be on the record before
 9 you answer. I won't talk over your answers. Just
 10 let me finish my questions, even if you know what
 11 I'm about to say. Also, audible answers, no nods of
 12 the head for the court reporter to type everything
 13 down. Does that make sense?
 14 A Yes.
 15 Q All right. Earlier you recall your
 16 testimony about field sales consultants visiting
 17 dental practices?
 18 A Yes.
 19 Q Okay. Are you aware of what type of
 20 services field sales consultants of Henry Schein
 21 offer to dentists?
 22 MS. CASALE: Objection.
 23 THE WITNESS: The full range, no.
 24 BY MR. FONTECILLA:
 25 Q What's your general understanding of the

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1 types of services?
 2 MS. CASALE: Objection.
 3 THE WITNESS: They could promote Henry
 4 Schein's other services and discounts, which I know
 5 there's a catalog full of them so ...
 6 BY MR. FONTECILLA:
 7 Q Do you know if field sales consultants for
 8 Henry Schein when they visit dentists offer any
 9 advice related to the business aspect of running a
 10 dental practice?
 11 MS. CASALE: Objection.
 12 THE WITNESS: I believe they would.
 13 BY MR. FONTECILLA:
 14 Q And what's the -- why do you say that?
 15 A Just my belief. I don't know.
 16 Q Okay. You remember you talked about power
 17 in numbers a couple times today?
 18 A Correct.
 19 Q And you talked about how power in numbers
 20 allows you to get discounts for a variety of
 21 services and products.
 22 A Uh-huh.
 23 Q Are there aspects of the agreement that
 24 KlearImpakt has with Henry Schein that you think
 25 allow KlearImpakt to get discounts from Henry Schein

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1 beyond just the number of members it has?
 2 MS. CASALE: Objection.
 3 THE WITNESS: I don't know if I understand
 4 the question.
 5 BY MR. FONTECILLA:
 6 Q Sure. Does agreeing to a set formulary of
 7 products in your opinion allow KlearImpakt to get
 8 bigger discounts from Henry Schein on those
 9 particular products?
 10 A Yes.
 11 Q And does promoting Henry Schein to
 12 KlearImpakt members to be their primary supplier,
 13 whether or not they buy a minimum amount of
 14 purchases, in your belief allow you to get bigger
 15 discounts for your members of KlearImpakt?
 16 A Long-term, yes.
 17 Q Do the other services that Henry Schein has
 18 agreed to provide under the contracts that it has
 19 with KlearImpakt allow you to get additional
 20 discounts from Henry Schein as a result of them
 21 offering those services to dentists?
 22 MS. CASALE: Objection.
 23 THE WITNESS: I just want to make sure I
 24 understand. Equipment and supplies or repairs and
 25 those things, yes.

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1 BY MR. FONTECILLA:
 2 Q Yeah, all of the additional benefits and
 3 services in the contract.
 4 A Yes.
 5 Q And you're aware that there's a variety of
 6 benefits and services that Henry Schein offers to
 7 KlearImpakt members as part of the primary vendor
 8 agreement they enter into.
 9 A Correct.
 10 Q Would you agree that a lot of those
 11 services and perks that Henry Schein offered under
 12 the agreement entered in 2016 were not offered
 13 previously in the agreement in 2015?
 14 MS. CASALE: Objection.
 15 THE WITNESS: Yes.
 16 BY MR. FONTECILLA:
 17 Q At any time in the interactions you had
 18 with Henry Schein leading up to the 2015 agreement,
 19 did anyone at Henry Schein ever tell you that Henry
 20 Schein was unwilling to offer certain discounts to
 21 KlearImpakt members because KlearImpakt was a buying
 22 group?
 23 A No.
 24 Q Okay. Throughout the negotiations between
 25 late 2014 and August 2015 when the 2015 agreement

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1 was signed, did Kathleen Titus and Darci Wingard
 2 express excitement about the prospect of entering
 3 into the agreement with KlearImpakt?
 4 MS. CASALE: Objection.
 5 THE WITNESS: Yes. But I think it was
 6 Nicole Lena and Kathleen. I don't think Darci was
 7 there.
 8 BY MR. FONTECILLA:
 9 Q So would you agree that Henry Schein -- was
 10 it your understanding in the negotiations leading up
 11 to the agreement entered into in August 2015 that
 12 Henry Schein was excited about entering into this
 13 agreement with KlearImpakt?
 14 MS. CASALE: Objection.
 15 THE WITNESS: Yes.
 16 BY MR. FONTECILLA:
 17 Q We've talked a lot about how dentists can
 18 become a member of KlearImpakt but doesn't
 19 necessarily need to buy from Henry Schein.
 20 Is that correct?
 21 A That's correct.
 22 Q And a member that signs up for the Henry
 23 Schein discount -- the KlearImpakt member that signs
 24 up for the Henry Schein discount also doesn't
 25 necessarily need to buy all its products from Henry

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1 A Yes.
 2 MS. CASALE: Objection, leading.
 3 BY MR. FONTECILLA:
 4 Q Why do you say that?
 5 A More volume, more supplies. So if they see
 6 more patients, they will order more products.
 7 Q Will you agree the services and benefits
 8 offered under the primary vendor agreement entered
 9 into 2016 between Schein and KlearImpakt allow
 10 KlearImpakt to help its members grow their practice?
 11 MS. CASALE: Objection.
 12 THE WITNESS: I'm not sure I understand
 13 that.
 14 BY MR. FONTECILLA:
 15 Q Sure. Let's refer you to -- if you could
 16 pull out in front of you the 2016 agreement, CX
 17 2428. So if you flip to the second page, do you see
 18 No. 9? Do you see where it says "Practice
 19 Analytics"?
 20 A Yes.
 21 Q Is it your understanding that the practice
 22 analytics section of this contract describes the
 23 benefit that Henry Schein will provide to
 24 KlearImpakt members who sign up for the Henry Schein
 25 discount?

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1 Schein. Is that correct?
 2 MS. CASALE: Objection.
 3 THE WITNESS: Correct.
 4 BY MR. FONTECILLA:
 5 Q Would you agree that dentists that take
 6 advantage of the Henry Schein discount through the
 7 KlearImpakt primary vendor agreement also purchases
 8 products from other distributors?
 9 MS. CASALE: Objection.
 10 THE WITNESS: Yes.
 11 BY MR. FONTECILLA:
 12 Q Will you agree that the dentist members of
 13 KlearImpakt that purchase through the Henry Schein
 14 discount program of KlearImpakt are able to
 15 sometimes get better pricing from other distributors
 16 or from Henry Schein outside of the KlearImpakt
 17 agreement?
 18 MS. CASALE: Objection.
 19 THE WITNESS: Yes.
 20 BY MR. FONTECILLA:
 21 Q We've talked about how KlearImpakt helps
 22 its members grow their practice.
 23 Do you agree that it's a benefit to Henry
 24 Schein if KlearImpakt's members are able to grow
 25 their practice and see more patients?

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1 A Yes.
 2 Q And is it your understanding that members
 3 who avail themselves of these practice analytics
 4 services would help them grow their practice?
 5 MS. CASALE: Objection.
 6 THE WITNESS: Or save them money. Both,
 7 correct.
 8 BY MR. FONTECILLA:
 9 Q And then in the page 009 of this agreement
 10 in the Exhibit A, do you see a section called "Small
 11 equipment repair" and then a section that says
 12 "Large equipment repair"?
 13 A Yes.
 14 Q Does this agreement provide for certain
 15 equipment repair services by Henry Schein to
 16 KlearImpakt members who participate in the Henry
 17 Schein discount program?
 18 A Yes.
 19 Q And is it your understanding that Henry
 20 Schein's offering of these services to KlearImpakt
 21 members allows them to grow their practice?
 22 MS. CASALE: Objection.
 23 THE WITNESS: Or continue working, correct.
 24 BY MR. FONTECILLA:
 25 Q Do you see a section on the same page,

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1 "Group obligations" that's bolded?
 2 A Yes.
 3 Q And right under it it says, "Substantially
 4 similar products." It says, "In the event that a
 5 buyer purchases products or products substantially
 6 similar to products from a source other than Henry
 7 Schein, Inc, group shall notify Henry Schein, Inc.
 8 in writing and work with Henry Schein, Inc. in good
 9 faith to determine how Henry Schein, Inc. Can, to
 10 the extent possible, replace such alternate source
 11 and act as the supplier to such buyer for such
 12 products." Do you see that?
 13 A Yes.
 14 Q And is it your understanding that this term
 15 suggests that dentist members of KlearImpakt who
 16 take advantage of the Schein discount program are
 17 entitled to buy their products from other
 18 distributors of dental supplies?
 19 MS. CASALE: Objection.
 20 THE WITNESS: Yes.
 21 BY MR. FONTECILLA:
 22 Q If you flip to page 6 of the agreement,
 23 which is Bates stamp CX 2428-010, do you see a
 24 section near the top called "Compliance with laws"?
 25 A Yes.

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1 Q And under there do you see two paragraphs,
 2 one titled "Group purchasing organizations" and one
 3 entitled "Sunshine Act"?
 4 A Yes.
 5 Q Is this the Sunshine Act what you were
 6 referring to earlier when you testified about one of
 7 the reasons that Schein discussed a need for a new
 8 agreement?
 9 A Yes.
 10 Q And this provision was not included in the
 11 2015 agreement, right?
 12 A I don't know.
 13 Q Can you describe what sets KlearImpakt
 14 apart from other buying group models that you're
 15 aware of?
 16 A I don't know any buying groups in the
 17 dental industry.
 18 Q And can you describe the difference
 19 compared to buying the products outside of the
 20 dental industry?
 21 MS. CASALE: Objection.
 22 THE WITNESS: Yeah. Our ownership group
 23 actually has dentists or doctors that do this for a
 24 living as part of the framework of the group. We
 25 believe in expanding and growth internally in the

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1 office and we believe in networking with like-minded
 2 doctors to move forward and having a strong image
 3 and marketing presence in your community.
 4 So we offer the marketing support to become
 5 a pillar in your community and we offer the doctors
 6 to network with each other so they don't feel like
 7 they're alone and then the pricing and the coaching.
 8 BY MR. FONTECILLA:
 9 Q Has Henry Schein helped KlearImpakt in any
 10 other ways beyond the services and the discounts
 11 offered in the agreements?
 12 A For example --
 13 MS. CASALE: Objection.
 14 BY MR. FONTECILLA:
 15 Q Given you informal advice on attending
 16 association meetings or putting on certain
 17 trainings, anything like that?
 18 A Yes.
 19 MS. CASALE: Objection.
 20 BY MR. FONTECILLA:
 21 Q Can you explain a little bit about some of
 22 those services and benefits that Henry Schein has
 23 provided outside of the agreement.
 24 A They've educated us on which academy
 25 meetings they think would be beneficial for our

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1 group to attend and gave us a list of four or five
 2 that they think would be beneficial to our network.
 3 They helped sponsor a meeting that we ended
 4 up having to cancel but they were willing to sponsor
 5 it.
 6 Q Anything else?
 7 A No.
 8 Q Earlier you testified a little bit about
 9 some of the data and reports that Henry Schein gives
 10 back to KlearImpakt on a regular basis.
 11 Do you recall that?
 12 A Yes.
 13 Q Do those reports and data that Schein
 14 provides to KlearImpakt offer any value to
 15 KlearImpakt in terms of business in terms of
 16 managing its business?
 17 A Yes.
 18 Q I'm going to hand you -- pass you an
 19 exhibit that will be marked Johnson Deposition
 20 Exhibit 1.
 21 (Exhibit 1 marked.)
 22 BY MS. CASALE:
 23 Q So the top is redacted, but starting at the
 24 bottom of the first page and going on to the second
 25 page is an email. Do you see that email?

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1 A Yes.
 2 Q And let me know once you've had a chance to
 3 review the email.
 4 (Witness reviewing document.)
 5 THE WITNESS: I'm ready.
 6 BY MR. FONTECILLA:
 7 Q Okay. Do you recognize the email?
 8 A Yes.
 9 Q Do you remember receiving it?
 10 A Yes.
 11 Q It was sent to you by Kathleen Titus on or
 12 about January 22nd, 2015. Is that right?
 13 A Correct.
 14 Q Okay. The email starts and says, "Please
 15 allow me to extend a gracious thank you for making
 16 the effort to meet yesterday." Do you see that?
 17 A Yes.
 18 Q Does this refresh your memory about when
 19 you had a meeting with Kathleen Titus and it was
 20 actually on January 21st, 2015?
 21 A Yes.
 22 Q And she said it was -- do you remember if
 23 this was the meeting that you had in Reno?
 24 A Yes.
 25 Q And was this the first meeting that you had

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1 with Henry Schein in person?
 2 A In person, correct.
 3 Q So will you agree that the three phone call
 4 communications -- or about three that you testified
 5 about earlier -- happened before January 21st,
 6 2015?
 7 A Yes.
 8 Q Do you see at the end of the second
 9 paragraph of the email the one that starts with
 10 "It's an understatement"?
 11 Do you see that paragraph?
 12 A I'm looking in the wrong spot.
 13 Q The second indented paragraph.
 14 A Oh, yes.
 15 Q The last sentence of that says, "We'll put
 16 the incredible resources of Henry Schein to work for
 17 you and your members." Do you see that?
 18 A Yes.
 19 Q Was it your understanding that Henry Schein
 20 at this time was interested in putting all the
 21 resources of Henry Schein to work for KlearImpakt
 22 and its members?
 23 A Yes.
 24 MS. CASALE: Objection.
 25 BY MR. FONTECILLA:

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1 Q And what did you understand Ms. Titus to be
 2 saying when she said that?
 3 A Full access to the services and products
 4 that Henry Schein offers.
 5 Q And was it your understanding that it also
 6 meant discounts on certain products to its members?
 7 MS. CASALE: Objection.
 8 THE WITNESS: Yes.
 9 MR. FONTECILLA: This is Exhibit 2.
 10 (Exhibit 2 marked.)
 11 MR. SCHLOSSER: What is the Bates?
 12 MR. FONTECILLA: Sure. It's
 13 FTC-KlearImpakt-00000490.
 14 BY MR. FONTECILLA:
 15 Q Let me know once you've had a chance to
 16 review that document.
 17 (Witness reviewing document.)
 18 THE WITNESS: Okay.
 19 BY MR. FONTECILLA:
 20 Q Do you recognize this document?
 21 A Yes.
 22 Q And do you recall receiving this email from
 23 Darci Wingard on or about July 15th, 2016?
 24 A Yes.
 25 Q And you believe it's a fair and accurate

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1 representation of the email as you received it at
 2 the time?
 3 A Yes.
 4 Q Do you know who Chris -- Dr. Hoskins -- Dr.
 5 Chris Hoskins is?
 6 A Yes.
 7 Q And who is that?
 8 A He's a dentist.
 9 Q Is he a member of KlearImpakt?
 10 A Yes.
 11 Q And had he become a member in or about July
 12 of 2016?
 13 A Yes.
 14 Q And is Ms. Wingard in the email to
 15 Dr. Hoskins explaining the benefits that Henry
 16 Schein can offer him and his practice as a member of
 17 KlearImpakt?
 18 A Yes.
 19 Q Okay. Do you see the attachment?
 20 A I do.
 21 Q Do you recognize it?
 22 A Yes.
 23 Q Do you see on the second page of the
 24 attachment at the top there's a picture of a person
 25 and then there's a signature and it says "Tim

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1 Sullivan" under the signature?
 2 A Correct.
 3 Q Does this refresh your recollection as to
 4 when or where you recognize Mr. Sullivan's name
 5 from?
 6 A I still don't know where I remember him
 7 from.
 8 Q Do you understand that this is -- this
 9 attachment titled "Customer Connection Program" is a
 10 welcome packet that Henry Schein and KlearImpakt
 11 sent to KlearImpakt members?
 12 MS. CASALE: Objection.
 13 BY MR. FONTECILLA:
 14 Q I'll start again.
 15 Do you recognize this attachment to be the
 16 Customer Connection Program and welcome packet that
 17 Henry Schein and KlearImpakt send to new KlearImpakt
 18 members?
 19 MS. CASALE: Objection.
 20 THE WITNESS: Yeah. We have, I think, two
 21 followup emails when they sign up. I think this one
 22 is sent by Henry Schein and then Ryan Lewis sends
 23 one from KlearImpakt.
 24 BY MR. FONTECILLA:
 25 Q And is it your understanding that this

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1 document describes the various benefits that Henry
 2 Schein offers KlearImpakt members that sign up for
 3 the Schein discount program?
 4 MS. CASALE: Objection.
 5 THE WITNESS: Yes.
 6 BY MR. FONTECILLA:
 7 Q On the cover email on the first page of the
 8 exhibit do you see where Ms. Wingard in the top
 9 email says "The custom offerings we have developed
 10 in tandem with KlearImpakt are designed to
 11 compliment your practice's professional systems and
 12 provide you additional resources for your success
 13 and the achievement of your business goals"?
 14 A Yes.
 15 Q So your understanding that Schein at the
 16 time that this email was sent by Ms. Wingard was
 17 interested in complimenting the dental practices
 18 with the additional services that both Schein and
 19 KlearImpakt offered dentists?
 20 A Yes.
 21 MS. CASALE: Objection.
 22 BY MR. FONTECILLA:
 23 Q And did you understand Henry Schein was
 24 willing to do that, in part, to help the dentists
 25 succeed and achieve their business goals?

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1 A Yes.
 2 MS. CASALE: Objection.
 3 BY MR. FONTECILLA:
 4 Q I'm handing you Johnson Exhibit 3.
 5 (Exhibit 3 marked.)
 6 MR. FONTECILLA: Jay, this is Henry
 7 Schein-000087510.
 8 BY MR. FONTECILLA:
 9 Q Dr. Johnson, do you recognize this
 10 document?
 11 A Yes.
 12 Q What is this document?
 13 A It is an enrollment form, if it was done in
 14 person, not on the computer.
 15 Q And this is an enrollment form for
 16 membership by a dentist that is a member of
 17 KlearImpakt to become a member in the Henry Schein
 18 discount program?
 19 A If it was done in person, correct.
 20 Q And does this form -- is this a true and
 21 accurate representation of the form as it existed
 22 when you would send it out to members?
 23 A We don't send this one out.
 24 Q Oh, how do dentists receive this?
 25 A So if we're at a meeting or a coaching

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1 class and they're a member of other services part of
 2 KlearImpakt or just not a member at all, if they
 3 decide they want to have a Henry Schein discount
 4 with KlearImpakt, then we hand it to them, but it's
 5 not emailed.
 6 Q Dr. Johnson, do you recall any members at
 7 any of -- or any non-members dentists at any of
 8 those meetings ever submitting this form?
 9 A Yes.
 10 Q Okay. And after you received those forms,
 11 would you submit it to Henry Schein?
 12 A Correct.
 13 Q And do you see in the document below the
 14 member's signature it says, "The above-named member
 15 agrees to purchase a minimum of 70 percent of their
 16 supplies in a fiscal year from Henry Schein Dental"?
 17 A Yes.
 18 Q And do you understand that the members or
 19 non-members that filled out this form were
 20 committing to purchase 70 percent of their supplies
 21 from Henry Schein for any fiscal year?
 22 MS. CASALE: Objection.
 23 THE WITNESS: Yes.
 24 MR. FONTECILLA: I'm handing you Deposition
 25 Exhibit 4.

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1 (Exhibit 4 marked.)
 2 (Witness reviewing document.)
 3 BY MR. FONTECILLA:
 4 Q This is Henry Schein 000087512.
 5 Dr. Johnson, do you recognize this
 6 document?
 7 A I believe so.
 8 Q Okay. And what do you understand it to be?
 9 A We don't use this one anymore so I think
 10 it's from the past, but I believe it was a benefits
 11 summary to our members.
 12 Q And do you recall about approximately what
 13 years or about which years you used this document?
 14 A I mean, long ago that I know it's not
 15 current.
 16 Q Okay. Does this document accurately
 17 reflect the benefits provided to KlearImpakt members
 18 under the original Henry Schein program entered into
 19 in 2015?
 20 A I believe so.
 21 Q And was this document, to your knowledge,
 22 ever sent to KlearImpakt members?
 23 A Yes.
 24 Q And do you understand this document to be a
 25 true and accurate representation of this document as

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1 Q Do you understand the section to be
 2 describing benefits in the form of field sales
 3 consultant visits and consultation that Henry Schein
 4 was offering KlearImpakt members that signed up for
 5 the program?
 6 A Yes.
 7 Q And is it your understanding that such
 8 services were complimentary of the services and
 9 training that KlearImpakt itself offered to its
 10 members?
 11 MS. CASALE: Objection.
 12 THE WITNESS: Something complimentary?
 13 BY MR. FONTECILLA:
 14 Q Yes. Do they compliment -- let me
 15 rephrase. Are the services here, do they assist
 16 KlearImpakt members as they attempt to grow their
 17 business?
 18 A Yes.
 19 Q And do these field sales consultants
 20 services described in paragraph 6 of this document
 21 compliment the training and education courses that
 22 KlearImpakt offers separate and apart from field
 23 sales consultants visits?
 24 MS. CASALE: Objection.
 25 THE WITNESS: I don't know what they're

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1 it existed and was used by KlearImpakt when it --
 2 back in 2015?
 3 A Yes.
 4 Q Is it your understanding that the benefits
 5 offered to KlearImpakt members described in Exhibit
 6 4 were benefits that allowed dental practices to
 7 grow their business?
 8 MS. CASALE: Objection.
 9 THE WITNESS: Yes.
 10 BY MR. FONTECILLA:
 11 Q Were these benefits offered to KlearImpakt
 12 members, Deposition Exhibit 4, a reason that
 13 KlearImpakt was able to grow its membership, in
 14 part?
 15 A Yes.
 16 Q Is it correct there's no cost or fee to any
 17 KlearImpakt member to apply to or to get the
 18 discounts offered through the Henry Schein discount
 19 program?
 20 A Yes.
 21 Q If you could turn to the 2015 agreement,
 22 which is CX 2272. And if you could turn to the
 23 second page. Under Paragraph No. 6 do you see it's
 24 titled "Sales coverage"?
 25 A Yes.

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1 saying when they go there, so I would assume so.
 2 BY MR. FONTECILLA:
 3 Q On page 008 and 009 and 010 of this
 4 document, do you see a Section 3 "Repair services"?
 5 A Yes.
 6 Q Is it your understanding that these three
 7 pages of this section describe various repair
 8 services that Henry Schein was offering KlearImpakt
 9 members that signed up for the discount program?
 10 A Yes.
 11 Q And these services assisted those dentists
 12 in growing their practice?
 13 MS. CASALE: Objection.
 14 THE WITNESS: Yes.
 15 BY MR. FONTECILLA:
 16 Q In negotiating these two agreements, would
 17 you agree KlearImpakt was negotiating the discounts
 18 for its members on behalf of its members that signed
 19 up?
 20 MS. CASALE: Objection.
 21 THE WITNESS: Correct.
 22 BY MR. FONTECILLA:
 23 Q So would you agree KlearImpakt negotiated
 24 prices on behalf of its members to some extent?
 25 MS. CASALE: Objection.

1 THE WITNESS: Yes.
 2 BY MR. FONTECILLA:
 3 Q Does KlearImpakt have any competitors in
 4 the dental in the --
 5 A Not that I'm aware of.
 6 MR. FONTECILLA: I have no further
 7 questions, Dr. Johnson. Thank you very much for
 8 your time. We really appreciate it.
 9 MS. CASALE: I need a break.
 10 MR. FONTECILLA: Sure. But I think
 11 Patterson or Benco need to ask questions.
 12 MR. SCHLOSSER: I do have questions. If
 13 you want to take a break first --
 14 MS. CASALE: You can ask your questions.
 15 MR. SCHAERER: The witness is ready.
 16 EXAMINATION
 17 BY MR. SCHLOSSER:
 18 Q Dr. Johnson, this is Jay Schlosser. I
 19 represent Patterson Companies. I just have a few
 20 questions for you. Can you hear me okay?
 21 A Yes.
 22 Q I think you've testified before that little
 23 over half of your members have elected not to use
 24 the Henry Schein discount. Is that correct?
 25 A Yes. I don't understand the exact

1 percentage but there's a large sum of them that
 2 don't have it, correct.
 3 Q And is it your understanding that one of
 4 the reasons that those members elect not to select
 5 the Henry Schein discount is because those members
 6 can either get a better price or value from another
 7 distributor, such as Patterson, Benco, or some other
 8 dental distributor?
 9 MS. CASALE: Objection.
 10 THE WITNESS: Yes. Between that and if
 11 they're a group practice. Those two reasons.
 12 BY MR. SCHLOSSER:
 13 Q Are you aware of situations where a
 14 KlearImpakt member would actually use the Henry
 15 Schein discount to then go to Patterson or some
 16 other distributor to try and get a better or more
 17 competitive price?
 18 MS. CASALE: Objection.
 19 THE WITNESS: I have no idea.
 20 BY MR. SCHLOSSER:
 21 Q Would it surprise you that that has
 22 happened?
 23 MS. CASALE: Objection.
 24 THE WITNESS: No.
 25 BY MR. SCHLOSSER:

1 Q I think you've testified -- and Henry
 2 Schein's counsel showed you an email in January of
 3 2015 regarding your first meeting with Henry Schein.
 4 Is that correct?
 5 A Yes.
 6 Q And I believe you had some phone calls
 7 before that, so probably started in late 2014 when
 8 you first reached out to Henry Schein.
 9 A Likely, yes.
 10 Q And the first agreement you entered into
 11 with Schein was in August of 2015. Is that correct?
 12 (Witness reviewing document.)
 13 THE WITNESS: Yes.
 14 MS. CASALE: Note for the record what
 15 document the witness looked at.
 16 MR. SCHAERER: Sure. I'll note for the
 17 record that I showed my client a copy of that first
 18 agreement that was referenced by counsel, which is
 19 Bates-numbered CX 2272-012.
 20 BY MR. SCHLOSSER:
 21 Q Thank you.
 22 Prior to entering into that agreement with
 23 Schein in August of 2015, did KlearImpakt reach out
 24 to Patterson about becoming a partner with
 25 KlearImpakt?

1 A Not that I recall.
 2 Q And so at that time Patterson was not given
 3 the opportunity by KlearImpakt to compete with Henry
 4 Schein to become a supplier or partner of
 5 KlearImpakt. Is that correct?
 6 MS. CASALE: Objection.
 7 THE WITNESS: I believe so.
 8 BY MR. SCHLOSSER:
 9 Q And then the second agreement you entered
 10 into was in May of 2016 with Henry Schein, correct?
 11 A Correct.
 12 Q And prior to entering into that agreement,
 13 did KlearImpakt reach out to Patterson about
 14 becoming a partner with KlearImpakt?
 15 A No.
 16 Q So at that time, again, Patterson was not
 17 given the opportunity by KlearImpakt to compete with
 18 Henry Schein to become a supplier or partner for
 19 KlearImpakt.
 20 MS. CASALE: Objection.
 21 THE WITNESS: I believe that's correct.
 22 BY MR. SCHLOSSER:
 23 Q And I believe you had testified the first
 24 time you actually reached out to Patterson was in
 25 2017. Is that correct?

1 A That I know of. I believe that's correct.
 2 Q And am I correct you've only had one
 3 in-person meeting with Patterson?
 4 A Yes.
 5 Q And I'm looking at an email -- and I'm not
 6 there so I can't show it to you -- but it's dated
 7 December 11th, 2017. It's from Lewis to Wesley
 8 Fields and you're copied on it. It references a
 9 meeting that took place on December 10th, 2017,
 10 with Patterson.
 11 Does that refresh your recollection as to
 12 when that meeting -- only meeting you had with
 13 Patterson took place?
 14 A Yes.
 15 MS. CASALE: Can you tell us the Bates
 16 number that you're referring to.
 17 MR. SCHLOSSER: Sure. The Bates number is
 18 FTC-AI-00001167.
 19 MS. CASALE: Okay.
 20 BY MR. SCHLOSSER:
 21 Q I believe you testified that you've not
 22 been involved in any of the followup emails, texts,
 23 or telephone calls with Patterson following the
 24 December 2017 meeting. Is that correct?
 25 A No. I have emailed Wesley personally --

1 complaint filed by the FTC in this case in which
 2 they made several allegations against Patterson,
 3 Benco, and Schein, and I just want to ask you a
 4 couple of questions to see if you have any knowledge
 5 regarding some of these allegations.
 6 So the first one is, Do you have any direct
 7 knowledge that would support the allegation that
 8 Benco, Schein, and Patterson conspired to refuse to
 9 offer discounted prices or otherwise negotiate with
 10 dental buying groups?
 11 MS. CASALE: Objection, calls for a legal
 12 conclusion.
 13 THE WITNESS: No.
 14 BY MR. SCHLOSSER:
 15 Q The second one is, Do you have any direct
 16 knowledge supporting the allegation that Benco,
 17 Schein, and Patterson executives agreed not to
 18 provide discounts to or otherwise contract with
 19 buying groups composed of independent dentists?
 20 MS. CASALE: Objection.
 21 THE WITNESS: No.
 22 MR. SCHLOSSER: That's all the questions I
 23 have at this time.
 24 MR. YOON: Eric Yoon on behalf of Benco. I
 25 don't have any questions for this witness.

1 I'm sorry. I texted him personally. I just haven't
 2 emailed him.
 3 Q And did you receive a response back from
 4 Mr. Fields?
 5 A I believe so.
 6 Q And I also believe you indicated there were
 7 emails and texts and calls between Deb -- is it
 8 Zener -- and Patterson?
 9 A That's correct.
 10 Q And you don't have any personal knowledge
 11 of those discussions or communications between
 12 Patterson and Ms. Zener.
 13 MS. CASALE: Objection.
 14 THE WITNESS: I know a little bit, that she
 15 wanted to know if we were able to move forward with
 16 this or not, and I still don't think we have a clear
 17 answer.
 18 BY MR. SCHLOSSER:
 19 Q And so to date, at least as of right now,
 20 Patterson has not indicated one way or the other if
 21 it's interested in doing business with KlearImpakt.
 22 MS. CASALE: Objection.
 23 THE WITNESS: That's correct.
 24 BY MR. SCHLOSSER:
 25 Q As you probably are aware, there's been a

1 MS. CASALE: Can we take a 10-minute break
 2 and then I can finish up if I have anything else.
 3 MR. FONTECILLA: Okay.
 4 (Recess taken.)
 5 EXAMINATION (Continued)
 6 BY MS. CASALE:
 7 Q We're going back on the record.
 8 Dr. Johnson, if you take a look at the
 9 membership enrollment form that Schein's counsel
 10 handed you earlier -- Johnson Exhibit 3, I think it
 11 was -- you mentioned earlier that this is a form
 12 that you just give to clients that are at trainings
 13 that Jason and Todd do. Is that correct?
 14 A Or at, like, academy meetings.
 15 Q Okay. Is there any other places or events
 16 that you'll hand out this form?
 17 A No. And it's only handed out when they've
 18 said they want to sign up.
 19 Q Okay. And does this enrollment form mirror
 20 the online enrollment?
 21 A Not 100 percent.
 22 Q What's the difference?
 23 A Online has all the services.
 24 Q Okay. And so when members sign up on this
 25 form, they're specifically signing up for the Henry

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1 Schein discount.
 2 A The others ones don't have a JDE number.
 3 So if they're signing up for Lewis Agency, or one of
 4 those, we don't need their initials, their JDE
 5 number. So we can just say, Okay, we'll sign you
 6 up, and we can do it personally for them when we get
 7 home. But we need them to sign that for the
 8 initial.
 9 Q So these members are specifically agreeing
 10 to purchase a minimum of 70 percent of their
 11 supplies in a fiscal year from Henry Schein Dental.
 12 A Yes.
 13 Q Okay. Do members who sign up online see
 14 this same agreement?
 15 A That same -- yes. For the Henry Schein
 16 part, correct.
 17 Q Okay. So if they check Henry Schein
 18 online, they have to agree to the same provision?
 19 A Looks the same.
 20 Q Okay. But not all KlearImpakt members
 21 agree to this?
 22 A Correct.
 23 Q Are there some KlearImpakt members who are
 24 Henry Schein customers that don't sign up for the
 25 Henry Schein discount through KlearImpakt?

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1 A Yeah. We would have no way to prove that.
 2 Q Does Henry Schein know?
 3 MR. FONTECILLA: Objection.
 4 THE WITNESS: I don't know.
 5 BY MS. CASALE:
 6 Q Okay. So earlier the counsel for Patterson
 7 was asking you about reasons that some of your
 8 members don't use the Henry Schein discount. I
 9 think you responded usually they can get a better
 10 deal from a different distributor on their own,
 11 correct?
 12 MR. FONTECILLA: Objection.
 13 THE WITNESS: He said that, but I said that
 14 could be correct.
 15 BY MS. CASALE:
 16 Q Are there other reasons that someone may
 17 not opt into the Henry Schein discount?
 18 A Group practice.
 19 Q Are there reasons other than group
 20 practice?
 21 MR. FONTECILLA: Objection. He testified
 22 about others.
 23 THE WITNESS: They don't like a certain
 24 manufacturer, vendor because of their own personal
 25 beliefs.

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1 A Yes.
 2 MR. FONTECILLA: Objection, foundation.
 3 BY MS. CASALE:
 4 Q So I think when we were talking about the
 5 2015 agreement earlier that I handed you, we talked
 6 about the volume commitment that's mentioned in
 7 there, the 70 percent, just like this membership
 8 enrollment form.
 9 And it was your understanding then that
 10 that provision wasn't enforced, correct?
 11 MR. FONTECILLA: Objection.
 12 THE WITNESS: Correct.
 13 BY MS. CASALE:
 14 Q Okay.
 15 A But that's, once again, my guess. I've
 16 never heard anything about it.
 17 Q So you don't know whether your members who
 18 are also part of the Henry Schein discount are in
 19 compliance with this?
 20 A I have no idea. We don't know what they're
 21 purchasing from Benco, Patterson, Darby.
 22 Q So who would know?
 23 A The account. The doctor.
 24 Q Each individual account knows whether
 25 they're purchasing 70 percent or more?

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1 BY MS. CASALE:
 2 Q So they're particular about a certain
 3 vendor?
 4 A Correct.
 5 MS. CASALE: I think that's all the
 6 questions I have. Thank you.
 7 MR. FONTECILLA: I have no redirect.
 8 MR. SCHLOSSER: Nothing further.
 9 Thank you, Dr. Johnson.
 10 MS. CASALE: Thanks.
 11 (Whereupon, proceedings were concluded at
 12 12:38 p.m.)
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1 STATE OF NEVADA)
 2) ss.
 3 COUNTY OF WASHOE)

4 I, CHRISTINA AMUNDSON, a duly commissioned and
 5 licensed court reporter, Washoe County, State of
 6 Nevada, do hereby certify:
 7 That I reported the taking of the deposition of
 8 RICHARD K. JOHNSON, M.D., commencing on Thursday,
 9 July 26, 2018, at 8:42 a m.
 10 That prior to being examined, the witness was
 11 duly sworn to testify to the truth. That I
 12 thereafter transcribed my said shorthand notes into
 13 typewriting and that the typewritten transcript of
 14 said deposition is a complete, true, and accurate
 15 transcription of said shorthand notes.
 16 I further certify that I am not a relative or
 17 employee of an attorney or counsel of any of the
 18 parties, nor a relative or employee of an attorney
 19 or counsel involved in said action, nor a person
 20 financially interested in the action.
 21
 22 DATED: At Reno, Nevada, this 27th of July 2018.
 23
 24 _____
 25 CHRISTINA AMUNDSON CCR #641

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1 ERRATA SHEET
 2 I declare under penalty of perjury that I have read
 3 the foregoing _____ pages of my testimony, taken on
 4 _____(date) at _____(city), _____(state),
 5 and that the same is a true record of the testimony
 6 given by me at the time and place herein above set
 7 forth, with the following exceptions:
 8
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1 ERRATA SHEET
 2 Page Line Should read: Reason for change:
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UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES

In the Matter of
Benco Dental Inc., et al.
Docket No. D09379

-----/

DEPOSITION OF BENTON MASON, DMD
ALBUQUERQUE, NEW MEXICO
MONDAY, JULY 23, 2018

REPORTED BY:
DANA SREBRENICK, CRR, NM-CCR
ASSIGNMENT NO. 144831

1
 2 DEPOSITION OF BENTON MASON, DMD,
 3 taken on behalf of the U.S. Federal Trade
 4 Commission, at Regus, 500 Marquette
 5 Avenue, NW, Suite 1200, Albuquerque, New
 6 Mexico, commencing at 9:30 a m., Monday,
 7 July 23, 2018, before Dana Srebrenick,
 8 Certified Shorthand Reporter No. 518, a
 9 Certified Realtime Reporter.
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1 APPEARANCES:
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 6 FEDERAL TRADE COMMISSION
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 11 ON BEHALF OF HENRY SCHEIN, INC.:
 12 LOCKE LORD
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 14 Dallas, Texas 75201
 15 BY: JOHN McDONALD, ESQ.
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 24 (Telephonic appearance)
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20 Question Marked

21 Page Line

22 none

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1

2 BENTON MASON, DMD,

3 after having been first duly sworn under

4 oath, was questioned and testified as

5 follows:

6 EXAMINATION BY MR. LONG:

7 Q. Good morning, Dr. Mason. We met

8 earlier. My name is Jim Long. I

9 represent Patterson in this matter,

10 brought on behalf of the FTC.

11 I want to start out by

12 apologizing that we're starting late. It

13 is not the result of anything that any of

14 us in the room did.

15 A. Sure.

16 Q. But again, I value your time and

17 we'll try to be as expeditious here as we

18 can.

19 Would you state your name and

20 address for the record, please?

21 A. Benton, B-E-N-T-O-N, Mason,

22 M-A-S-O-N, 8401 Desert Sunrise Road, NE,

23 Albuquerque, New Mexico 87122.

24 Q. Have you had your deposition

25 taken before?

1 B. Mason

2 A. Yes.

3 Q. More than once?

4 A. Yes.

5 Q. All right. Then I guess you

6 know the basics. I'll just say a couple

7 of things. It's important that you hear

8 the entire question that I ask you, so

9 please wait until I'm finished asking the

10 question before you start answering. It's

11 also important that I hear your complete

12 answer, so I will do my best to not ask

13 you another question until you finished

14 your answer. Does that make sense?

15 A. Yes.

16 Q. As you know, you'll have to give

17 me audible responses, yes or no or a

18 statement as opposed to a gesture or an

19 uh-huh or something like that.

20 A. Correct.

21 Q. If you do not understand a

22 question that I ask you, please let me

23 know and I'll try to rephrase it.

24 If my voice trails off and you

25 didn't hear something or you didn't

1 B. Mason
 2 understand a word that I said, please let
 3 me know and I'll restate it. I'll speak
 4 up. Again, it's important that you and I
 5 be on the same page.
 6 A. Correct.
 7 Q. If you need a break at any point
 8 in time, just let me know. So long as
 9 there isn't a question pending, we'll take
 10 a break. I want you to be comfortable
 11 while we're doing this, all right?
 12 A. Yes.
 13 Q. Do you have any questions for me
 14 about the process?
 15 A. Not at this time.
 16 Q. Did you do anything to prepare
 17 for this deposition?
 18 A. I visualized some e-mails that I
 19 had written yesterday.
 20 Q. And when you say you visualized,
 21 you saw them?
 22 A. Yes.
 23 Q. And were those shown to you by
 24 Mr. Gold?
 25 A. Yes, they were.

1 B. Mason
 2 Q. How long did you meet with
 3 Mr. Gold yesterday?
 4 A. Hour and a half to two hours.
 5 Q. How many e-mails did you look
 6 at?
 7 A. Maybe 12.
 8 Q. Have you met with anyone on
 9 behalf of the FTC or complaint counsel
 10 prior to meeting with Mr. Gold yesterday?
 11 A. Not in person.
 12 Q. You had had telephone
 13 conversations with attorneys from the FTC?
 14 A. They contacted me in the past.
 15 Q. Can you recall when those were?
 16 A. I would say one was about six
 17 months ago and there was a second one and
 18 it was either the beginning of this year,
 19 early end of last year, and it seems like
 20 there was another one several years back
 21 that we actually had conversations. They
 22 have contacted me each time before those
 23 meetings to set up the meeting.
 24 Q. But as far as substantive
 25 conversation --

1 B. Mason
 2 A. I believe it was just three.
 3 Q. All right. So let's start with
 4 the one several years ago. Do you recall
 5 who you spoke with?
 6 A. I have no clue.
 7 Q. Was it with Lin Kahn?
 8 A. I really don't know.
 9 Q. Okay. And how long did that
 10 conversation last?
 11 A. Seems like they all take about
 12 an hour.
 13 Q. All right. Do you recall what
 14 you discussed?
 15 A. I do not.
 16 Q. Do you recall generally what was
 17 discussed in that first one several years
 18 ago?
 19 A. If I was involved in setting up
 20 a co-op in the State of New Mexico.
 21 Q. Do you recall anything else?
 22 A. No.
 23 Q. The call six months ago, do you
 24 recall who from the FTC was on that?
 25 A. I believe there were multiple

1 B. Mason
 2 people.
 3 Q. Can you give me the names of
 4 any?
 5 A. The only person that I'm aware
 6 of her last name is Noble.
 7 Q. Danica Noble?
 8 A. I have to be honest, I don't
 9 know. I know she was out of Seattle.
 10 Q. Do you recall what was discussed
 11 then?
 12 A. Again, they asked questions
 13 about the co-op.
 14 Q. No more detail than that in your
 15 mind?
 16 A. No.
 17 Q. All right.
 18 A. I don't recall what the
 19 substance of the conversation was, the
 20 details of it.
 21 Q. In either of those first two
 22 conversations, had counsel sent you any
 23 documents?
 24 A. No.
 25 Q. Did you have documents yourself

1 B. Mason
 2 that related to setting up a co-op that
 3 you looked at?
 4 A. Not that I've looked at. I'm
 5 sure they were buried in my e-mails
 6 somewhere, but I have not reviewed any.
 7 Q. And then the most recent call,
 8 do you know who was on the phone for that?
 9 A. There were multiples.
 10 Q. Yes.
 11 A. And the only one I really know
 12 is Noble.
 13 Q. All right. Do you recall any of
 14 the substance of that call?
 15 A. I do not.
 16 Q. You and I have never spoken or
 17 communicated?
 18 A. That's correct.
 19 Q. And to your knowledge, no one
 20 from Patterson either an attorney or
 21 businessperson has talked to you about
 22 this matter?
 23 A. That's correct.
 24 Q. Have you communicated with
 25 anyone from Henry Schein, an attorney or

1 B. Mason
 2 businessperson, about this matter?
 3 A. No, sir.
 4 Q. Have you communicated with
 5 anyone from Benco, an attorney or a
 6 businessperson, about this matter?
 7 A. No, sir.
 8 Q. You're not being compensated for
 9 your time here; are you?
 10 A. No, I'm not.
 11 Q. Are you aware that you're on the
 12 most recent witness list presented by
 13 complaint counsel?
 14 A. I was made aware of that
 15 recently.
 16 Q. Do you plan to go to Washington
 17 D.C. to testify?
 18 A. If I'm required to.
 19 Q. Have you been asked to by
 20 complaint counsel?
 21 A. Recently.
 22 Q. Yesterday?
 23 A. No.
 24 Q. Oh.
 25 A. I want to say within the last

1 B. Mason
 2 short period of time. I don't know the --
 3 how many weeks.
 4 Q. That's fine. And was that
 5 Ms. Noble?
 6 A. Correct.
 7 Q. What specifically did she ask
 8 you about to testify?
 9 A. The -- I don't remember the
 10 specifics. Generally speaking, my
 11 testimony would be needed in Washington
 12 D.C. -- or actually, I rephrase that.
 13 Originally, I was told Seattle.
 14 Q. Did Ms. Noble indicate to you
 15 what she -- what subjects she expected you
 16 would be needed to testify on?
 17 A. No.
 18 Q. Do you have an understanding as
 19 to what the subject or subjects of your
 20 testimony at trial would be if you so
 21 testified?
 22 A. Not yet.
 23 Q. Okay. And what was your
 24 response to Ms. Noble when she told you
 25 that the complaint counsel would like you

1 B. Mason
 2 to testify in Washington?
 3 A. If I'm required to.
 4 Q. So I think, as you know, the
 5 reason I'm hear asking you questions is
 6 because you've been listed on complaint
 7 counsel's witness list.
 8 Earlier before we went on the
 9 record to save time, I showed you the
 10 Protective Order governing confidential
 11 material in this case dated February 13,
 12 2018. I believe you had the opportunity
 13 to read that, correct?
 14 A. I did.
 15 Q. And I just want to direct your
 16 attention to paragraph 7 and 8. Paragraph
 17 7 relates to who may be showed material
 18 that's been marked confidential under this
 19 Protective Order and under 7-E, any
 20 witness or deponent who may have authored
 21 or received the information in question.
 22 I am going to show you some
 23 documents today that had been marked
 24 confidential in this matter, but would
 25 show on their face that you either were

1 B. Mason
2 the author and/or a recipient of those.
3 I showed you the Protective Order so that
4 you would understand you've got an
5 obligation to keep that information
6 confidential and only use it for the
7 purposes of responding to my questions
8 today.

9 Does that make sense and do you
10 agree to abide by that?

11 A. Yes.

12 Q. All right. And just so you
13 understand, I'm going to show you some
14 documents that will have some material
15 blacked out or, as lawyers like to call
16 it, redacted and the reason for that is
17 that I don't think you've seen that part
18 of the document in the way that it was
19 produced.

20 A. Okay.

21 Q. Acceptable?

22 Real briefly, could you give me
23 your educational chronology?

24 A. I went to high school in
25 Turlock, California. I graduated there in

1 B. Mason
2 1990. I went to California State
3 University at Stanis Laus; graduated
4 there, I believe it was 1996 and attended
5 Temple University School of Dentistry in
6 Philadelphia and graduated there in 2000.

7 Q. Any additional degrees since
8 then?

9 A. No, sir.

10 Q. Do you have any specialization
11 at Temple or is it just a general degree
12 in dentistry?

13 A. Just general dentistry.

14 Q. Have you worked as a dentist
15 since your graduation in 2000?

16 A. I have. I went part-time in
17 2014.

18 Q. If you can give me a brief
19 chronology of your dental employment or
20 practice since graduating in 2000?

21 A. 2000, I worked for the U.S. Army
22 as a contract civilian at Fort Bliss. In
23 2000 or 2001, I worked for Denver
24 Community Health Hospital in Denver,
25 Colorado. In 2001 to 2002, I worked for

1 B. Mason
2 Thomas Meade and I do not recall the name
3 of his practice. 2001 and 2002, I worked
4 for Absolute Dental.

5 Q. Did you do that the same time
6 than with Thomas Meade?

7 A. I was with Thomas Meade for 90
8 days.

9 Q. And I'm sorry, the entity after
10 Thomas Meade was?

11 A. 2001/2002 was Absolute Dental.

12 Q. Thank you.

13 A. 2002, I believe it was 2002, I
14 worked for Tierra Amarilla Community
15 Health, I believe is the name. It is a
16 public health practice; medical, dental
17 psychiatry, vision, various needs out of
18 Chama or Tierra Amarillo, New Mexico.

19 In 2002, I also opened my first
20 practice.

21 Q. And where was that?

22 A. On the corner of Wyoming and San
23 Antonio.

24 Q. In Albuquerque?

25 A. Yes.

1 B. Mason

2 Q. Okay.

3 A. In 2006 we separated the
4 practice into two. I owned one and my
5 partner at the time moved his practice
6 across the hall.

7 Q. Was that Dr. Chapman?

8 A. Dr. Tilson.

9 In 2007, '8, '9, I'm not sure
10 what year it was, I opened River Point
11 Family Dental with Dr. Chapman. In the
12 same years, I also opened Chamisa Hills
13 Family Dental with Dr. Chapman. In those
14 same years, I also signed a contract to
15 take back over Cherry Hills Family --
16 Cherry Hills Family Dental. That was
17 Dr. Tilson's practice.

18 And by the year 2014, we had
19 sold all of the practices and I worked as
20 an employee for the lady who purchased
21 Bear Canyon Family Dental.

22 Q. Which practice was Bear Canyon
23 Family Dental?

24 A. Bear Canyon, Chapman and Mason,
25 which was the practice on the corner of

1 B. Mason
 2 Wyoming and San Antonio. The name was
 3 changed to Bear Canyon Family Dental
 4 either prior to her purchase or shortly
 5 after her purchase. I worked two days a
 6 week for her for two years and left that
 7 to do locum work.
 8 Q. To do local? I'm sorry.
 9 A. Locum work, locum.
 10 Q. I'm sorry. I'm not familiar --
 11 A. So the doctor gets hurt and
 12 needs somebody to work for them for six
 13 weeks, two weeks, a short period of time.
 14 I worked for the University of New Mexico
 15 doing locum work in their public health
 16 sector throughout New Mexico, and I also
 17 worked in two private practices assisting
 18 doctors who needed services.
 19 In 2016 I also went to work for
 20 Pacific Dental. I worked three days a
 21 week for Pacific Dental. For -- until
 22 last week I went to work for a company
 23 called Valencia Family Dental.
 24 Q. Pacific Dental is a DSO?
 25 A. Yes. There were periods of time

1 B. Mason
 2 when I was working for Pacific Dental when
 3 one of the doctors would be on maternity
 4 leave. I worked four days a week.
 5 Q. Valencia Family Dental?
 6 A. Correct.
 7 Q. What type of practice is that?
 8 A. General dentistry in Valencia.
 9 It is in Los Lunas, New Mexico.
 10 Q. Would you characterize it as an
 11 individual practice or more a corporate
 12 dentistry?
 13 A. I would characterize it as
 14 neither. It's not a private practice with
 15 one practice and it's not a large DSMO --
 16 DSO. It is a gentleman out of Arizona who
 17 owns, I believe, 11 practices.
 18 Q. From roughly 2007/2008 until
 19 2014 when you sold all the practices, were
 20 you partners with Dr. Chapman in two and
 21 the owner of one yourself?
 22 A. I was partners with Dr. Chapman
 23 in three and we had -- Dr. Mason's DMD,
 24 Inc. was the name of our company. Dr.
 25 Mason DMD, Inc., had a contract with

1 B. Mason
 2 Cherry Hills Dental Center.
 3 Q. Which was Dr. Tilson's?
 4 A. Correct.
 5 Q. You used the term, I believe,
 6 earlier in the deposition of dental
 7 cooperative?
 8 A. Correct.
 9 Q. What in your mind is a dental
 10 cooperative?
 11 A. A collection of private practice
 12 dentists working together to move forward
 13 in better competition.
 14 Q. In your mind does a dental
 15 cooperative work through a written
 16 agreement that the participating dentists
 17 are a party to?
 18 A. A written agreement?
 19 Q. Yes.
 20 A. I don't think you necessarily
 21 think you have to have a written
 22 agreement, but I do believe you have to
 23 have a set of rules and understandings and
 24 you also have to -- each individual member
 25 has to contribute financially to the

1 B. Mason
 2 co-op.
 3 Q. So the set of rules and
 4 understandings could be either written or
 5 verbal?
 6 A. I think it could, but it's
 7 probably clearer to have a set of bylaws
 8 when you set up the co-op.
 9 Q. And then the monetary -- did you
 10 say monetary contribution by each of the
 11 dentists?
 12 A. Yes.
 13 Q. In what form would that take?
 14 A. Monthly, monthly payment.
 15 Q. Based on what?
 16 A. Based upon the expenses of the
 17 co-op to further the business of the
 18 dental community.
 19 Q. Have you ever been a member of a
 20 dental cooperative?
 21 A. Yes.
 22 Q. Which one or ones?
 23 A. The New Mexico Dental
 24 Cooperative Chapter out of Utah.
 25 Q. For what period of time were you

1 B. Mason
 2 a member?
 3 A. One year.
 4 Q. Can you give me the start and
 5 the end dates?
 6 A. From the date it started until
 7 my first term on the board was over.
 8 Q. Can you approximate for me when
 9 the date was it started?
 10 A. I want to say it was 2014 and my
 11 term was up in 2015.
 12 Q. So you were on the board of the
 13 New Mexico Dental Cooperative for some
 14 period after you sold your practices?
 15 A. I believe that is true. They
 16 called it -- it wasn't the board. They
 17 called it the advisory council or
 18 something of that nature. There were five
 19 of us. And it could have been the years
 20 2013/2014. I'm not a hundred percent
 21 sure.
 22 Q. I guess what I'm trying to get
 23 straight in my mind is when you were on
 24 the advisory council for the New Mexico
 25 Dental Cooperative Chapter out of Utah,

1 B. Mason
 2 were you practicing in private practice?
 3 A. Yes, I was.
 4 Q. Did your term end when you sold
 5 your practices in 2014?
 6 A. I don't believe it did.
 7 Q. You think it continued on?
 8 A. I do believe because we
 9 continued at Bear Canyon participating in
 10 the co-op, but I don't recall when my term
 11 was set and ended. And the advisory
 12 council was for the State of New Mexico.
 13 It was just part of the Utah council. I
 14 was not affiliated with the advisory
 15 council of Utah.
 16 Q. Were there a written set of
 17 rules and understandings of the New Mexico
 18 Dental Cooperative Chapter?
 19 A. Yes, there were.
 20 Q. Has complaint counsel asked for
 21 those from you?
 22 A. I don't have them and, no, they
 23 have not asked.
 24 Q. Tell me what the Utah -- is it
 25 the Utah Dental Cooperative?

1 B. Mason
 2 A. Yes.
 3 Q. Tell me what that is.
 4 A. It -- the dentists in Utah
 5 started the dental cooperative -- and I'm
 6 guessing -- 15 to 20 years ago. Since
 7 then, multiple states have joined. Last I
 8 heard New Mexico, Nevada and Idaho were
 9 part of that organization and I heard Ohio
 10 was trying to become a member.
 11 Q. Since you left the New Mexico
 12 Chapter of the Utah Dental Cooperative
 13 somewhere in 2015, have you kept
 14 up-to-date with what's going on with the
 15 Utah Dental Cooperative?
 16 MR. GOLDM going to object
 17 just because I think he later
 18 testified that it might have been 2014
 19 that he had left.
 20 MR. LONG'll rephrase.
 21 BY MR. LONG:
 22 Q. Since you left the advisory
 23 council of the New Mexico Chapter of the
 24 Utah Dental Cooperative, have you kept
 25 up-to-date on what's been occurring at the

1 B. Mason
 2 Utah Dental Cooperative?
 3 A. I have not.
 4 Q. So your knowledge would just go
 5 up -- your knowledge of the Utah Dental
 6 Cooperative would just go up to the point
 7 that you ceased being a member of the New
 8 Mexico Advisory Council?
 9 A. Correct.
 10 Q. All right. In the witness
 11 disclosure by complaint counsel, one of
 12 the topics that has been identified for
 13 you is your attempt to establish a buying
 14 group.
 15 Could you give me a general
 16 description of what your attempt to
 17 establish a buying group entailed?
 18 A. We attempted to put together a
 19 group of individually-owned offices to
 20 increase our buying power.
 21 Q. And did you start that -- and
 22 when you say "we," who are the we?
 23 A. Jason Chapman, Frank Montoya and
 24 myself.
 25 Q. And Dr. Montoya is a dentist as

1 B. Mason
 2 well?
 3 A. Correct.
 4 Q. Did Dr. Montoya have any
 5 ownership interest in the Mason/Chapman
 6 practices?
 7 A. No, he did not.
 8 Q. Where did he practice,
 9 Dr. Montoya?
 10 A. Dr. Montoya practiced on
 11 Montgomery and I don't recall the name of
 12 his practice.
 13 Q. But that would be in Albuquerque
 14 again?
 15 A. Yes.
 16 Q. All right. Did that group
 17 eventually become the New Mexico Chapter
 18 of the Utah Dental Cooperative?
 19 A. Yes.
 20 Q. And when did that occur?
 21 A. I don't recall the exact date.
 22 Q. Okay. How far after you started
 23 your efforts to establish this cooperative
 24 did you become a member of the Utah Dental
 25 Cooperative?

1 B. Mason
 2 ended up rejecting the offer from
 3 Heartland?
 4 A. Yes.
 5 Q. And for the record, Heartland is
 6 a large DSO?
 7 A. Yes.
 8 Q. Why did you reject the offer?
 9 A. The contract, we weren't
 10 comfortable with.
 11 Q. Anything in particular?
 12 A. It said we would not generate,
 13 produce, create a biohazard or store it.
 14 And that was a violation of the contract,
 15 but yet in dentistry, every day we produce
 16 blood. We attempted to explain that to
 17 them, but according to the paralegal we
 18 were working with, the executive counsel
 19 did not agree. So we had
 20 100-some-odd-pages of contract that we
 21 weren't overly comfortable with.
 22 Q. Did you ever establish a fee
 23 structure for the New Mexico Dental
 24 Cooperative?
 25 A. Me personally, no. The -- Utah,

1 B. Mason
 2 A. To the best of my recollection,
 3 I want to say it was within 12 months.
 4 Q. When did you, Mr. Chapman --
 5 you, Dr. Chapman and Dr. Montoya first
 6 discuss establishing a dental cooperative?
 7 A. I don't recall the exact date.
 8 Q. Was there a time in the fall of
 9 2012 that you and Dr. Chapman were looking
 10 to sell your practices to a larger
 11 corporate group?
 12 A. We did have an offer from
 13 Heartland Dental to sell our three
 14 practices plus the additional practice we
 15 had under contract. I don't recall the
 16 timeframe in which that occurred, but we
 17 did have an offer.
 18 Q. Did that offer pre-date your
 19 discussions of Dr. Chapman, yourself and
 20 Dr. Montoya of creating a buying group, a
 21 dental cooperative?
 22 A. I don't recall. At that point
 23 in time, Dr. Chapman and I were exploring
 24 a lot of different options.
 25 Q. I take it you were not -- you

1 B. Mason
 2 where the main office is, they have
 3 individuals that take care of that for the
 4 dentists.
 5 Q. So there was a fee structure
 6 first beginning at the point that you
 7 became associated with the Utah Dental
 8 Cooperative?
 9 A. No, the fee structure -- and
 10 maybe I'm not understanding your
 11 question -- the fee structure that they
 12 generate is each individual office sends
 13 in their fees to the Utah -- the company
 14 headquarters or corporate or whatever they
 15 call it. And they then generate a --
 16 averages based off every -- all the
 17 members. Those are then used to negotiate
 18 with insurance companies; used to -- and
 19 that's done by the cooperative. It's used
 20 to also give us information as to what the
 21 averages are.
 22 Q. But there was never a fee
 23 structure for the New Mexico Dental
 24 Cooperative prior to affiliation with
 25 Utah?

1 B. Mason

2 A. No. There was no New Mexico
3 Dental Co-Op prior to Utah.

4 Q. If you could, give me a
5 chronology of what are the key events in
6 your mind concerning your efforts to
7 establish the New Mexico Dental
8 Cooperative from the point that you,
9 Dr. Chapman and Dr. Montoya first began
10 discussing the concept to the point in
11 time that it became affiliated with the
12 Utah Dental Cooperative?

13 A. The original discussion started
14 when Dr. Montoya sent us a letter
15 requesting to purchase our practice. And
16 that was a bulk general letter he sent
17 out, I believe, to all if not all dentists
18 in the city because he was in the -- at
19 that time, he was in the acquisition mode.

20 Jason and I were in the
21 exploration and our meetings brought us to
22 the conversation on setting up a
23 cooperative. Frank was in charge of doing
24 certain things and getting information.
25 Jason was in charge of doing other stuff

1 B. Mason

2 and getting information and I was in
3 charge of different stuff and getting
4 information.

5 We continued the dialogue over
6 time and we elected to try to set it up.
7 We then found the Utah Group after a
8 period of time, had meetings with them and
9 it seemed a lot easier to join their group
10 than recreate the wheel.

11 Q. As I understand your testimony,
12 each of the three of you had separate
13 areas of responsibility in the process of
14 attempting to set up this dental co-op.
15 Do I have that right?

16 A. Some of the areas did overlap
17 because we had different relationships,
18 but we all had separate areas that we
19 would gather our information.

20 Q. So what areas was Dr. Montoya
21 responsible for?

22 A. Dr. Montoya was responsible for
23 chatting with Benco. He also was
24 responsible for -- he was also the one
25 that found the Utah Group and did all of

1 B. Mason

2 our earlier communications with Utah.

3 Q. What was Dr. Chapman responsible
4 for?

5 A. I don't recall.

6 Q. What were you responsible for?

7 A. I worked on a lot of pricing
8 issues, seeing if we could get purchasing
9 power, group -- like a group buying power.
10 I worked on some -- seeing if we could get
11 better pricing on our credit card
12 machines. So most of the things I worked
13 on were -- had to do with purchasing.

14 Q. Also in the witness disclosure
15 concerning yourself submitted by complaint
16 counsel is the topic quote,
17 "Communications with distributors about
18 buying groups."

19 Did you yourself have
20 communications with Benco?

21 A. No.

22 Q. That was Dr. Montoya?

23 A. Correct.

24 Q. Do you have knowledge of those
25 communications?

1 B. Mason

2 A. He gave us the information
3 that -- when he got it. I don't recall
4 any of that information.

5 Q. Did you have communications with
6 Schein?

7 A. I spoke with the sales rep, Rick
8 Dolk. And I spoke with him on it very
9 briefly.

10 Q. And did you have communications
11 with Patterson?

12 A. Yes.

13 Q. Would you outline in a
14 chronology, if you can for me and then
15 I'll go back and ask some more questions,
16 those communications to Patterson?

17 A. I would not be able to outline
18 in a chronology. Those are too many years
19 ago.

20 Q. Okay. With whom did you speak
21 from Patterson?

22 A. I spoke with Jeff Katt was my
23 rep. Scott -- and I don't recall his last
24 name -- Belcher.

25 Q. Could it have been Scott

1 B. Mason
2 Belcheff?
3 A. Belcheff, the manager, and we
4 had one meeting with Reinhardt.
5 Q. That would be Dan Reinhardt?
6 A. Tall bald-headed guy and I
7 believe his first name is Dan.
8 Q. And he was the region manager?
9 A. I don't know his position, but
10 he was above everybody in our state.
11 Q. Had you spoken with
12 Mr. Reinhardt other than in that one
13 meeting?
14 A. I had met him in the past.
15 Q. Had you spoken with him
16 concerning anything relating to setting up
17 a dental cooperative other than that one
18 meeting?
19 A. No.
20 Q. You said Mr. Katt was quote "our
21 rep." Does that indicate that you and
22 Dr. Chapman purchased dental supplies and
23 equipment from Patterson?
24 A. Correct.
25 Q. For what period of time did you

1 B. Mason
2 do that?
3 A. I believe it was the entire time
4 we were open. There were times we were
5 ordered some stuff from Schein, but we've
6 always had a Patterson account and we
7 always had a Schein account.
8 In the very beginning, I ordered
9 exclusively from Patterson, very little
10 from Schein, maybe 90/10. Then there was
11 a change and we went to Schein and that
12 might have lasted two-ish years, maybe
13 three, one, some period of time. We were
14 90 percent Schein, 10 percent Patterson.
15 And then we went back to Patterson for the
16 bulk of our career, we were 90/95 percent
17 Patterson.
18 Q. Why did you start out 90/10 with
19 Patterson?
20 A. Some things Patterson just
21 doesn't sell.
22 Q. Let me ask it a different way.
23 Why did you start out
24 predominantly with Patterson?
25 A. I like their equipment better.

1 B. Mason
2 They're the distributors for A-DEC and
3 they are the distributors for W&H Hand
4 Pieces.
5 Q. And hand pieces are the various
6 things that you and dentists work with
7 inside a patient's mouth?
8 A. Yeah. They're the drills.
9 Q. Why then did your practice
10 switch to 90/10 Schein?
11 A. Because the representative we
12 had from Patterson Dental, we had a
13 program on the computer for both Patterson
14 Dental ordering and Henry Schein ordering.
15 The Henry Schein version was called Aruba.
16 I don't recall the version for Patterson.
17 Our staff would go onto those
18 programs, place the orders, submit it and
19 the product would show up. The Patterson
20 Dental rep deleted the Henry Schein
21 program Aruba.
22 Q. Who was that rep?
23 A. Caroline, and I don't remember
24 her last name.
25 Q. And I take it Caroline was

1 B. Mason
2 replaced by Mr. Katt?
3 A. Caroline was replaced by John
4 Fiddler, but the entire Patterson group
5 was asked to leave our office at that
6 point.
7 Q. And then why did you go back to
8 Patterson?
9 A. Because we were in expansion
10 mode and we needed equipment.
11 MR. LONG: I'm going to mark
12 maybe four to six documents so we're
13 going to number these Mason 1, Mason
14 2, Mason 3.
15 (Exhibit Mason 1, Document Bates
16 numbered 00108816 through 00108817,
17 marked for identification.)
18 BY MR. LONG:
19 Q. I'm handing you what we marked
20 as Mason Exhibit 1. It is a redacted
21 version of the document Bates stamped PDCO
22 108816 to -17 and I ask that you take a
23 moment to read this and when you've read
24 it and are ready for me to ask questions,
25 let me know.

1 B. Mason

2 A. Okay.

3 Q. Is Exhibit 1 an e-mail that you
4 sent to Jeff Katt along with Dr. Chapman,
5 Dr. Montoya, and Robert Lehm?

6 A. Yes.

7 Q. And Robert Lehm is an equipment
8 specialist with Patterson?

9 A. Correct.

10 Q. This December 15, 2012 e-mail
11 states, quote, "We are in the process of
12 affiliating our two corporations together
13 for the benefit of everyone."

14 Do you see that in the third
15 line?

16 A. Yes, I do.

17 Q. And at this point, December 15,
18 2012, were you and Dr. Chapman in the
19 process of affiliating your practices with
20 that of Dr. Montoya?

21 A. We were in a single corporation.
22 We were in that process in those
23 discussions of setting up a single entity
24 with five offices.

25 Q. In Exhibit 1, are you telling

1 B. Mason

2 Mr. Katt that once you combine those five
3 offices that you will be seeking certain
4 discounts based upon the fact that there
5 are five practices buying?

6 A. We were already receiving
7 discounts for Dr. Chapman and I. However,
8 once we were a single entity, we wanted to
9 make sure that Frank's practice was also
10 receiving the same benefits. The club
11 pricing plan we were already under.

12 Q. So as of December 15, 2012, you
13 were not yet discussing a dental
14 cooperative with Patterson?

15 A. Not in this e-mail.

16 Q. Had you discussed a dental
17 cooperative with anyone at Patterson prior
18 to this e-mail?

19 A. I don't recall the dates we
20 started discussing or had those
21 discussions.

22 Q. Does this e-mail help you place
23 a time that those discussions didn't occur
24 until after this date?

25 A. No, it does not.

1 B. Mason

2 Q. So you don't know one way or the
3 other?

4 A. I have absolutely zero clue the
5 dates of the discussions. This e-mail was
6 based on our personal businesses. In this
7 e-mail we actually did not merge the two
8 offices. Frank Montoya instead ended up
9 purchasing one of our offices.

10 Q. Which one was that?

11 A. Chamisa Hills in Rio Rancho,
12 New Mexico.

13 Q. And he purchased that on what
14 date?

15 A. I don't recall the date.

16 Q. Was it 2013?

17 A. I don't recall.

18 Q. All right. Exhibit 1 doesn't
19 have anything to do with your efforts to
20 establish a dental cooperative?

21 A. No. This is personal --
22 personal business.

23 Q. Can you tell me how many
24 meetings you had with Jeff Katt concerning
25 a dental cooperative?

1 B. Mason

2 A. I have no clue. He was one of
3 two reps that were allowed to come in my
4 office freely and he was in our office
5 minimum once a week.

6 Q. Who was the other rep?

7 A. 3M rep.

8 Q. And why was he allowed to come
9 in -- why was Mr. Katt allowed to come in
10 to your office freely?

11 A. We purchased a couple hundred
12 thousand dollars. And I believe we were
13 the largest private practice purchasers in
14 the State of New Mexico for Patterson
15 Dental.

16 Q. Did you ever have any meeting
17 with Mr. Katt specific to the topic of
18 establishing a dental cooperative?

19 A. No, I don't believe I did. Most
20 of my meetings with Jeff Katt were based
21 on -- he showed up passing in the hall
22 discussing information.

23 Q. And the information he would
24 discuss would relate to your purchases in
25 various products that Patterson had?

1 B. Mason

2 A. We would discuss our purchases.
3 We would discuss purchases of other
4 offices. We would discuss briefly if he
5 had a deal, if there was a manufacture
6 that was running a special. If whatever
7 he felt was pertinent, he would let me
8 know. It was always between patients. I
9 didn't have a set time so those meetings
10 were kind of, as you can say, fly by your
11 seat.

12 Q. But the discussions that you're
13 referring to related to Patterson selling
14 equipment and supplies to your practice
15 and your purchase of those?

16 A. It would -- those discussions
17 would have been co-op. Those discussions
18 would have been private. Those
19 discussions would have been the other
20 offices we own or manage.

21 Q. Okay. On these discussions in
22 between patients, what, if anything, can
23 you tell me of discussions that related to
24 co-op?

25 A. I don't recall any of those

1 B. Mason

2 conversations.

3 Q. So you don't recall any of your
4 conversation -- you don't recall the
5 substance of any of your conversations
6 with Mr. Katt about establishing a dental
7 co-op?

8 A. I don't recall any of those
9 conversations. It's been way too many
10 years and I had way too many
11 responsibilities at that point.

12 Q. Did you have any meeting with
13 Mr. Belcheff that was specific to
14 establishing a dental co-op?

15 A. Scott Belcheff and I never had a
16 sit-down formal meeting. I do believe at
17 some point we would have talked via phone
18 or via e-mail, but the only formal meeting
19 I had on the co-op was with Jeff Katt,
20 Scott and Mr. Reinhardt at an Outback
21 restaurant.

22 Q. And we'll get to that. But
23 before we get to it, with respect to
24 discussions with Mr. Belcheff, do you
25 recall the substance of any discussions

1 B. Mason

2 you had with him concerning a dental
3 cooperative?

4 A. Not any on the phone or
5 in-person chats, I do not.

6 Q. So excepting out the dinner at
7 the Outback, you don't have recollections
8 as you sit here today of the substance of
9 any discussions with Mr. Belcheff about a
10 dental cooperative?

11 A. I do not. The only thing that I
12 recall is the e-mails that I've seen.

13 (Exhibit Mason 2, Document Bates
14 numbered PDCO 00108808 00108809,
15 marked for identification.)

16 BY MR. LONG:

17 Q. Dr. Mason, I'm handing you what
18 I've marked as Exhibit 2. It is a
19 two-page document Bates numbered PDCO
20 108808-09.

21 Please take a minute to review
22 it and then let me know when you're ready.

23 A. Okay.

24 Q. Can you identify Exhibit 2 for
25 me?

1 B. Mason

2 A. An e-mail I sent on Monday,
3 February 4, 2013 at 2:18 p.m.

4 Q. Can you generally describe to me
5 who the people are that you sent this?

6 A. Majority of them look to be
7 manufacturers of dental products and
8 supplies.

9 Q. And would these be
10 representatives, the manufacturers'
11 representatives?

12 A. Correct. I do believe that is
13 the reps, the representatives we had at
14 the time.

15 Q. In Exhibit 2 you say quote, "We
16 are inviting all dental manufacturers and
17 representatives to a {sic} our vendors'
18 meeting March 13, 2013, 6:00 p.m. The
19 location is Patterson Dental Branch in
20 Albuquerque, New Mexico."

21 Do you see that?

22 A. Yes, I do.

23 Q. Patterson wasn't aware that you
24 were sending out this e-mail inviting a
25 number of manufacturer reps to a meeting

1 B. Mason
2 at their branch on March 13th; were they?

3 A. I believe they were.

4 Q. Why do you say that?

5 A. Because I wrote in a date and
6 time.

7 Q. Other than that you wrote in a
8 date and time, do you have any other
9 reason for that?

10 A. I don't have any recollections
11 of the conversations, but we would not
12 have written a date and time.

13 Q. But as you sit here today and I
14 realize that it's a number of years past
15 February 2013, you don't have any
16 substantive recollection of having
17 informed Patterson of this meeting?

18 A. I don't have any recollection of
19 any single conversation.

20 Q. Nor do you have any recollection
21 of a group of conversations in which you
22 notified them?

23 A. I don't recall any
24 conversations.

25 Q. Do you have any recollection as

1 B. Mason
2 you sit here today of what the basis --
3 strike that.

4 Do you have any recollection as
5 you sit here today of conversations with
6 anyone at Patterson that would provide the
7 bases for the statement in the first
8 paragraph, quote, "We have partnered with
9 Patterson Dental to provide the individual
10 office the same opportunities as the
11 larger corporations"?

12 A. I don't recall any specific
13 conversations.

14 Our feeling was that we were
15 well on our way to working out a general
16 agreement with Patterson Dental.

17 Q. But as you sit here today, you
18 don't recall any conversation -- the
19 substance of any conversations with either
20 Mr. Katt or Mr. Belcheff that would lead
21 you to that?

22 A. Yeah, I do not recall the exact
23 conversations we had. The only
24 conversation that I have a vague memory of
25 was the meeting at the Outback Steakhouse.

1 B. Mason
2 Q. All right.
3 A. But prior to the meeting at
4 Outback Steakhouse, we were under the
5 understanding that we were well on our way
6 to partnering with Patterson.

7 Q. Okay. But you can't point me to
8 anything that you recall that lead to that
9 understanding?

10 A. That's correct.

11 (Exhibit Mason 3, Document Bates
12 numbered PDCO 00164676 through
13 00164678, marked for identification.)

14 BY MR. LONG:

15 Q. Handing you what's been marked
16 as Exhibit 3, this is a redacted version
17 of PDCO 164676-78.

18 Please take a moment to look at
19 this and let me know when you're ready to
20 answer questions.

21 A. Okay.

22 Q. Is Exhibit 3 an e-mail string
23 between yourself and Mr. Belcheff on
24 February 5, 2013?

25 A. Yes, it is. The last e-mail

1 B. Mason
2 does not have a date.

3 Q. Not that it matters much, but if
4 you look at the bottom of page 2, isn't
5 the last e-mail referring -- doesn't that
6 start with a February 5th e-mail?

7 A. It does. I don't know if that
8 goes to that, but yes.

9 Q. All right. If you'd look at
10 page 2 and the top half on page 2 of
11 Exhibit 3, do you see an e-mail from
12 Mr. Belcheff to yourself?

13 A. Yes.

14 Q. And in the fourth paragraph,
15 Mr. Belcheff writes, "I also want to
16 confirm our dinner for Monday night with
17 Dan." Do you see that?

18 A. Yes.

19 Q. Is this, to the best of your
20 knowledge, referring to the meeting with
21 Mr. Reinhardt that you told me that you
22 have a vague recollection of?

23 A. Yes.

24 Q. So as of February 5th, a meeting
25 had been set up with Mr. Reinhardt?

1 B. Mason
 2 A. Correct.
 3 Q. Do you recall how far in advance
 4 of February 5th that was set up?
 5 A. I do not.
 6 Q. Had it been set up some days
 7 before that?
 8 A. I don't recall if it was a week
 9 or two weeks, a day, I don't recall.
 10 Q. Who attended the meeting with
 11 Mr. Reinhardt?
 12 A. To the best of my recollection,
 13 it was Frank Montoya, Jason Chapman,
 14 myself, Scott, Reinhardt and Jeff Katt.
 15 Q. Was the meeting just a general
 16 meet the region manager type of thing?
 17 A. No, we met him in the past.
 18 The meeting was to establish
 19 a -- we felt it was to establish a method
 20 of moving forward with the co-op.
 21 Q. What do you recall occurring at
 22 this meeting?
 23 A. Walking out of there saying
 24 that's not what we expected because we're
 25 not doing business with Patterson and

1 B. Mason
 2 Q. Do you recall statements by
 3 anyone else from Patterson at that
 4 meeting?
 5 A. I don't recall any statements by
 6 anyone else in the meeting. And the only
 7 thing that I do recall was Mr. Reinhardt
 8 giving a reason they couldn't do it, but I
 9 couldn't tell you what those reasons were
 10 now.
 11 Q. And you looked at some documents
 12 yesterday with Mr. Gold and those didn't
 13 refresh your recollection as to what
 14 specifically Mr. Reinhardt said other than
 15 what you've testified to here?
 16 A. Yeah. The only documents I've
 17 seen are the ones you're handing me are my
 18 own e-mails.
 19 Q. Did you have any other
 20 conversations with anyone at Patterson
 21 concerning the New Mexico Dental
 22 Cooperative other than what you've
 23 testified to?
 24 A. I am sure we had conversations
 25 after that meeting because we were an

1 B. Mason
 2 moving forward with the co-op.
 3 Q. And what was that based upon?
 4 A. The contents of the meeting,
 5 which I don't recall the general
 6 discussion in the meeting. The only
 7 recollection I have of the vague
 8 recollection I have of the meeting is when
 9 we walked out of there, Jason and I
 10 stopped and we both said, Well, that
 11 didn't go the way we thought it was.
 12 Q. As you sit here today, do you
 13 recall anything that Mr. Reinhardt said in
 14 the meeting?
 15 A. That Patterson Dental and -- let
 16 me rephrase that.
 17 I don't recall the exact
 18 wording. Vaguely, that Patterson Dental
 19 wasn't going to participate in the co-op.
 20 Q. Do you recall anything -- any
 21 other details what Mr. Reinhardt said?
 22 A. I do not.
 23 Q. So you don't recall any reasons
 24 that Mr. Reinhardt gave?
 25 A. I do not.

1 B. Mason
 2 extremely large private practice buyer. I
 3 don't recall any of those conversations,
 4 but I know I saw an e-mail yesterday that
 5 I've sent as a followup to that meeting
 6 and I'm sure that Jeff Katt may have had a
 7 conversation. And I'm probably -- Scott
 8 would have reached out to us, but I don't
 9 recall any of those.
 10 Q. You believe you had
 11 conversations with Mr. Belcheff and
 12 Mr. Katt following the meeting with
 13 Mr. Reinhardt concerning a dental
 14 cooperative, but you don't have a
 15 recollection of what occurred?
 16 A. Correct.
 17 Q. Do you recall reaching out to
 18 Henry Schein seeking their participation
 19 in this dental cooperative by the end of
 20 February 2013?
 21 A. I spoke with a Rick Dolk, but I
 22 don't know the dates and I don't know any
 23 of the conversations, recalling any of the
 24 conversations that I had.
 25 (Exhibit Mason 4, Document Bates

1 B. Mason
 2 numbered HS-00269214 through
 3 HS-00269215, marked for
 4 identification.)
 5 BY MR. LONG:
 6 Q. I'm handing you what's been
 7 marked as Mason Exhibit 4. This is a
 8 redacted version of a two-page document
 9 produced by Henry Schein marked Henry
 10 Schein 516026-27. Let me know when you've
 11 had an opportunity to review that.
 12 A. Okay.
 13 Q. Can you identify this as an
 14 e-mail that you sent to Roderick Dolk,
 15 copying Mr. -- Dr. Chapman and Dr. Montoya
 16 on February 20, 2013?
 17 A. Yes, it is. And I'm not sure on
 18 that e-mail from Frank. I think that's
 19 his e-mail, but it has his name in front
 20 of it.
 21 Q. At this point were you inviting
 22 Henry Schein to participate in
 23 establishing a dental cooperative?
 24 A. Yes.
 25 Q. And Henry Schein gave you

1 B. Mason
 2 positive response to that?
 3 A. No. Henry Schein said no.
 4 Q. Do you not recall Henry Schein
 5 agreeing to have a meeting in the summer
 6 of 2013 at its offices in Albuquerque?
 7 A. I do not recall that.
 8 Q. Okay. We'll get to that
 9 shortly.
 10 In the second paragraph of
 11 Exhibit 4, two-thirds of the way down, you
 12 have -- you write quote, "My e-mail that
 13 caused a stir." Do you see that?
 14 A. Yes.
 15 Q. Is the e-mail that you're
 16 referring to your February 4, 2013 e-mail
 17 that we've marked as Exhibit 2?
 18 A. I believe that is the case.
 19 Q. And you write, quote, "My e-mail
 20 that caused a stir, was because our
 21 concept of a bid was not view in the same
 22 e-mail, the same as Jason, Frank and I
 23 view what we have been doing in the past."
 24 Do you see that?
 25 A. Correct.

1 B. Mason
 2 Q. Do you have a recollection as to
 3 what you were trying to say there?
 4 A. Well, Jason and I have always
 5 put our supplies out for bid. Even though
 6 we worked with Patterson Dental, we would
 7 contact the manufacturers directly and let
 8 the manufacturers know I'm about to
 9 purchase 5,000 burs or 10,000 burs or
 10 purchase a large quantity of something, and
 11 what is their best price? And oftentimes,
 12 their best price would be in terms of free
 13 goods. So if I bought 5,000 burs, they
 14 would give me X number of burs at no
 15 charge. I would buy the 5,000 through
 16 Patterson and the manufacturer would mail
 17 it to me directly. So we considered what
 18 we were doing all along as putting our
 19 supplies out to bid.
 20 Q. Did your dental distributor
 21 assist you in that, what you called bid
 22 process, or did you just do that on your
 23 own?
 24 A. They assisted us. The
 25 individual rep would assist and that would

1 B. Mason
 2 have been more so John, not Jeff.
 3 Q. John Fiddler?
 4 A. John Fiddler.
 5 Q. When you write, quote, "Was
 6 because our concept of a bid was not view
 7 in the e-mail as the same as Jason, Frank
 8 and I view what we have been doing in the
 9 past," do you recall what you meant by
 10 that?
 11 A. I do not.
 12 (Exhibit Mason 5, Document Bates
 13 numbered Henry Schein-001402796,
 14 marked for identification.)
 15 BY MR. LONG:
 16 Q. I'm handing you what I've marked
 17 as Mason Exhibit 5. This is a redacted
 18 version of Henry Schein-1402796. Let me
 19 know when you've had an opportunity to
 20 read that.
 21 A. Okay.
 22 Q. Can you identify this as an
 23 e-mail you sent to Roderick Dolk on July
 24 30, 2013?
 25 A. Yes, it is.

1 B. Mason

2 Q. You write, "Rick, the co-op
3 meeting is going to be held 8/22/13, 6:00
4 p.m. at the branch conference room." Do
5 you see that?

6 A. Correct.

7 Q. Does this refresh your
8 recollection that Schein was going to host
9 a co-op meeting at their branch?

10 A. This is a different co-op. This
11 is after we had already joined up with the
12 Utah Group and Henry Schein was doing
13 business with the Utah Group.

14 Q. So Exhibit 5 indicates that
15 Henry Schein was going to host a meeting
16 of the New Mexico Chapter of the Utah
17 Dental Cooperative?

18 A. Correct.

19 Q. Tell me what occurred from the
20 end of February 2013 to the date of this
21 e-mail dated July 30, 2013 in which your
22 effort lead to discussions with the Utah
23 Dental Cooperative?

24 A. The Dental Utah -- repeat the
25 question for me, please.

1 B. Mason

2 Q. Describe for me what occurred
3 between the end of February 2013 and the
4 date of this e-mail, Exhibit 5, of July
5 30, 2013, concerning your group
6 affiliating with the Utah Dental
7 Cooperative?

8 A. Okay. I can give you the
9 general concept, but I don't know the
10 exact dates and I don't know the
11 timeframes.

12 Q. All right. Tell me what you
13 recall and then I may ask you some
14 followups.

15 A. We, being Jason Chapman, Frank
16 Montoya and myself reached out to start
17 looking at how to set up and set up a
18 dental co-op. When we walked out of the
19 Patterson meeting, we knew we didn't have
20 a supplier -- we didn't have a distributor
21 with Patterson.

22 Rick Dolk had told us that, in
23 verbal, that they weren't working with a
24 dental co-op. And I don't know what
25 happened with Benco because I never spoke

1 B. Mason

2 with him, but after the fact, sometime ago
3 -- sometime after the fact, once we said,
4 okay, let's not recreate the wheel,
5 they're already doing it. It's not
6 exactly what we wanted in Utah, but it's
7 already a format so let's join that group.

8 As soon as we joined that group,
9 Schein came back to us, Rick Dolk came
10 back to us and said, We've worked with
11 those guys. We'll participate with you.

12 Q. And did you come to find out
13 what Mr. Dolk said concerning Schein
14 working with the Utah Dental Cooperative
15 was correct?

16 A. Yes.

17 Q. You say in Exhibit 5 in your
18 e-mail to Mr. Dolk, "The special markets
19 division is working with the Utah co-op in
20 three states in about 300 offices."

21 Do you see that?

22 A. Correct.

23 Q. When you say "the special
24 markets division," you were referring to
25 the special markets division of Schein?

1 B. Mason

2 A. Correct.

3 Q. And this statement that the
4 special markets division of Schein is
5 working with the Utah co-op in three
6 states in about 300 offices, that was
7 correct?

8 A. To the best of my knowledge. I
9 believe we were state -- New Mexico was
10 State No. 4.

11 Q. And at some point in time in
12 either 2013 or 2014, the New Mexico
13 Chapter of the Utah Dental Cooperative was
14 established?

15 A. Yes.

16 Q. And how many members in New
17 Mexico were there of that chapter while
18 you were on the advisory council?

19 A. I don't recall. I do not
20 recall. It was over 50 and it was getting
21 to the point where they were looking at
22 hiring a second rep for our state.

23 Q. Did the Utah Dental Cooperative
24 New Mexico Chapter provide cooperative
25 purchasing benefits?

1 B. Mason

2 A. Please rephrase the question.

3 Q. What benefits did the New Mexico
4 Chapter of the Utah Dental Cooperative
5 provide its members?

6 A. They had a bank, a credit union
7 available that we could work with. They
8 had a reduced-fee service plan. They had
9 an HSA plan. They had negotiated with
10 insurance companies for fees. They had
11 negotiated with vendors for purchasing
12 dental supplies and equipment. They had a
13 program where if you paid an additional
14 fee and then you were disabled or
15 dismembered or killed, then your practice
16 would be taken on by the co-op. Those
17 were the generality. There may be more.
18 I just don't recall the rest.

19 Q. One of the vendors that they had
20 negotiated with was Henry Schein?

21 A. Yes, it was.

22 Q. And had they negotiated with
23 other vendors?

24 A. Yes, there were.

25 Q. Can you recall who those were?

1 B. Mason

2 A. I want to say it's Ultradent.

3 Q. Ultradent?

4 A. I believe it was Ultradent and I
5 believe it was Brasseler. I believe there
6 was three -- and I want to say, to the
7 best of my recollection, there might have
8 been a half a dozen.

9 Q. What is Brasseler?

10 A. It's a company that sells burs.

11 Q. In Exhibit 5 that's dated July
12 30, 2013, you write, "We have joined up
13 with the Utah Group to open a New Mexico
14 Chapter." Do you see that?

15 A. Yes.

16 Q. How far in advance of July 30th
17 had you joined up with the Utah Group?

18 A. I don't recall.

19 Q. But within a four-month period
20 from February to July, your group had
21 joined with Utah?

22 A. I don't recall the dates.

23 Q. Did members of the New Mexico
24 Chapter of the Utah Dental Cooperative
25 have to purchase through -- their supplies

1 B. Mason

2 through the Utah Dental Cooperative?

3 A. No, they did not.

4 Q. Did Dr. Chapman continue to
5 purchase supplies through Patterson while
6 the practice was part of the Utah buying
7 group New Mexico Chapter?

8 A. I'm sure there were some things.
9 We had switched most of our supplies to
10 Darby Dental.

11 Q. Did Darby Dental sell through
12 the Utah buying group?

13 A. I do not recall. We were buying
14 through Darby through a company called --
15 or a buying group called Synergy out of
16 the Carolinas I believe is where they were
17 from.

18 Q. So although your practices were
19 members of the New Mexico Chapter of Utah
20 Dental Cooperative, you purchased supplies
21 through Darby through a different buying
22 group?

23 A. Correct.

24 Q. Again, give me the name of that
25 buying group.

1 B. Mason

2 A. Synergy. We also purchased
3 through some Patterson and I'm sure we
4 purchased through some Schein and we
5 purchased some through Ultradent.

6 Q. And what is Ultradent?

7 A. It's another manufacturer that
8 sells directly.

9 Q. What products does Ultradent
10 manufacture?

11 A. They manufacture -- they are big
12 into preventatives. So we're talking
13 fluoride paste. We're talking prophylaxis
14 angles, hygiene supplies. They also are
15 big in bonding. So we do prefer some of
16 their stuff.

17 Q. Dr. Mason, you don't have any
18 direct knowledge supporting an allegation
19 that Benco, Schein and Patterson conspired
20 to refuse to offer discounted prices or
21 otherwise negotiate with buying groups; do
22 you?

23 A. No, I do not.

24 Q. You don't have any direct
25 knowledge that would support the

1 B. Mason
2 allegation that Benco, Schein and
3 Patterson executives agreed not to provide
4 discounts to or otherwise contract with
5 buying groups?

6 A. I do not.

7 Q. You don't have any direct
8 knowledge to support an allegation that
9 Benco, Schein and Patterson entered into
10 an agreement to refuse to provide
11 discounts to or compete for the business
12 of buying groups?

13 A. I do not.

14 MR. LONG: Let's go off the
15 record and take a quick break. I
16 think I'm done subject to following up
17 on what Mr. Gold might ask you, but
18 let me just take a quick look.

19 A. Okay.

20 (Whereupon, a brief recess is
21 taken from 10:50 a.m. to 11:00 a.m.)

22 MR. LONG: Pass the witness
23 subject to any followup of Mr. Gold's
24 questions when he asks those.

25 MR. GOLD: Does anybody from --

1 B. Mason
2 representing Schein or Benco have
3 anything at this point?

4 MR. McDONALD: Yeah, this is
5 John McDonald. I have a few
6 questions.

7 MR. GOLD: Okay. Can we proceed
8 with those?

9 MR. McDONALD: Sure.

10 EXAMINATION BY MR. McDONALD

11 Q. Dr. Mason, my name is John
12 McDonald and I represent Henry Schein.
13 Can you hear me okay?

14 A. Yes, I can.

15 Q. I have just a couple of
16 questions for you.

17 What, if anything, do you recall
18 about your conversation with Rick Dolk
19 regarding the New Mexico Dental Co-Op?

20 A. The New Mexico Dental Co-Op pre
21 or post joining Utah?

22 Q. Pre.

23 A. We -- I don't recall the exact
24 dialogue of the conversation we had, but
25 we did reach out to them to see if they

1 B. Mason
2 would -- if they were willing to
3 participate. And generally speaking, it
4 was a very quick no. That just wasn't
5 something they do.

6 Q. And do you recall anything more
7 about that conversation you had with
8 Mr. Dolk?

9 A. No. I don't recall the
10 specifics of the conversation just the
11 generality.

12 Q. Right. And that's -- you know,
13 I realize it's years ago and I can only
14 ask you what I recall, but I just want to
15 be sure that you don't recall any
16 specifics about the conversation other
17 than Mr. Dolk told you that wasn't
18 something that he was interested in,
19 correct?

20 A. That's correct.

21 Q. Did you speak with anyone else
22 at Henry Schein about doing business with
23 the New Mexico Dental Co-Op?

24 A. To the best of my recall, I do
25 not recall speaking with anyone else.

1 B. Mason
2 Q. Okay.

3 A. It seems like --

4 Q. Now I want to -- I'm sorry. Go
5 ahead.

6 A. It seems like Rick was the
7 only individual that I really had a
8 relationship there with.

9 Q. Okay. Now I want to switch to
10 after New Mexico became part of the Utah
11 Dental Co-Op, do you recall any
12 conversations you had with Mr. Dolk about
13 the Dental Co-Op of Utah?

14 A. No, I do not.

15 Q. What about anyone else at Henry
16 Schein, do you recall conversations with
17 anyone else at Henry Schein about the
18 Dental Co-Op of Utah?

19 A. I do not recall any
20 conversations with him.

21 Q. Okay.

22 A. Once we joined up with the Utah
23 Group, I took a back seat to a lot of
24 things because it was already done through
25 the Utah Chapter.

1 B. Mason
 2 Q. Okay.
 3 MR. McDONALD Okay. That's all
 4 the questions I have at this time.
 5 Thank you.
 6 MR. MANNING This is Thomas
 7 Manning. I have no questions on
 8 behalf of Benco.
 9 EXAMINATION BY MR. GOLD:
 10 Q. Okay. Well, this is Matthew
 11 Gold on behalf of the FTC and I do have a
 12 few questions. I just want to just follow
 13 up and clarify one of the questions that
 14 Mr. McDonald just asked.
 15 Dr. Mason, you testified, I
 16 believe, that you reached out to Schein at
 17 some point about the Utah Group that you
 18 were looking to -- I mean, excuse me,
 19 about the New Mexico Group that you were
 20 looking to form and he got back to you
 21 with a response. Now, I think at one
 22 point you said that -- I just want to -- I
 23 just want to clarify what it is about the
 24 response that you recall.
 25 Do you recall him saying that he

1 B. Mason
 2 wasn't interested in pursuing it or that
 3 Schein was not interested in pursuing it
 4 or it's not the type of thing that we do?
 5 I kind of think we heard a couple of those
 6 things and if you can clarify as much as
 7 you can about what Mr. Dolk's response
 8 was.
 9 MR. LONG Objection, form,
 10 leading.
 11 When I make an objection, you
 12 can still go ahead and answer.
 13 A. So --
 14 MR. LONG That was Mr. McDonald
 15 and what he was saying is that we have
 16 agreement that one objection is good
 17 for all. So if you hear an objection
 18 on the phone, you don't need to guess
 19 whether it's Mr. McDonald or
 20 Mr. Manning.
 21 A. Can you repeat the question?
 22 BY MR. GOLD:
 23 Q. Generally, what I'm interested
 24 in is just as much detail as you can about
 25 the conversation with Mr. Dolk. I

1 B. Mason
 2 realized you said you don't remember much,
 3 but I think we might have heard two
 4 separate statements and I just want to
 5 make sure we heard it from you what it is
 6 that you remember him telling you about
 7 his reaction to your request that Schein
 8 participated in the Utah -- in the New
 9 Mexico Dental Cooperative?
 10 A. So pre --
 11 MR. McDONALD Object to the
 12 form.
 13 A. When Jason, Frank and I started
 14 discussions to set up our own cooperative
 15 here in the State of New Mexico, we were
 16 not familiar that there was another co-op
 17 already up and running. So during the
 18 very early phases of it when we reached
 19 out to the Patterson, the Benco and the
 20 Schein, I did have a discussion with Rick
 21 Dolk. Rick Dolk -- and I don't recall
 22 the -- any of the details of the
 23 discussion. However, Rick Dolk did come
 24 back to us and say that Schein was not
 25 participating. Now, I don't remember any

1 B. Mason
 2 of the discussions of that.
 3 Once we left the meeting at
 4 Outback, we knew that there was nothing
 5 for us in terms of a distributor. That
 6 was kind of what we had been lead to
 7 believe that we were going to do. So we
 8 ended up going to -- we found the Utah
 9 Group and the Utah -- once we joined that,
 10 they had already established relationships
 11 with Schein. So at that point I reached
 12 back out to Rick Dolk to reestablish that
 13 connection.
 14 Q. Okay. Thank you for that.
 15 You also testified earlier in
 16 response to one of Mr. Long's questions
 17 that, I believe in the early days of
 18 trying to form the New Mexico Dental
 19 Co-Op, that Dr. Chapman had certain tasks,
 20 Dr. Montoya had certain tasks and you had
 21 certain tasks. Do you recall that?
 22 A. Yes.
 23 Q. And I think you said that one of
 24 Dr. Montoya's tasks was communicating with
 25 Benco because he had a connection with

1 B. Mason

2 Benco?

3 A. Correct.

4 Q. And what was your understanding
5 of Dr. Montoya's tasks with regard to
6 reaching out to Benco?

7 A. His tasks and my tasks were the
8 same. We were trying to find a
9 distributor to see if any of them would
10 participate with the New Mexico Dental
11 Co-Op.

12 Q. And I believe when Mr. Long
13 asked you what the result of Dr. Montoya's
14 communications with Benco were, you
15 testified that you don't recall the
16 substance of that conversation. Do you
17 recall saying that?

18 A. Yes, I do.

19 Q. Do you recall the -- do you
20 recall whether it was a positive or
21 negative reaction from Benco as to his
22 overture?

23 MR. LONG: Objection,
24 foundation.

25 A. The -- it was not favorable for

1 B. Mason

2 the co-op because we never set up another
3 meeting after that. So he had a
4 discussion with Benco and we never had a
5 meeting with the cooperative, so it was a
6 negative.

7 Q. But beyond knowing that it was a
8 negative reaction from Benco, you don't
9 recall any specifics?

10 A. I don't recall any of those
11 dialogues.

12 THE RESPONDENT: Objection,
13 form.

14 Q. I want to draw your attention
15 back to Mason 2 and Mason 3 that were
16 identified this morning and you might want
17 to set the others aside just for
18 convenience.

19 And you'll notice that the
20 e-mail that's been marked as Mason 2 was
21 the general -- the e-mail that you sent to
22 a number of manufacturers and others on
23 February 4th announcing the upcoming
24 meeting at Patterson; is that right?

25 A. Correct.

1 B. Mason

2 Q. And Mason 3 is dated the next
3 day and it includes what you testified
4 earlier on page 2 about the upcoming
5 dinner at Outback Steakhouse at the end --
6 on the middle of page 2. Do you see that?

7 A. Yes.

8 Q. And do you recall testifying
9 about that?

10 A. Yes.

11 Q. I would like to hand you what
12 has been marked as CX 4090.

13 (Exhibit CX 4090.001, Document
14 Bates numbered PDCO 00151225 through
15 PDCO 00151227, marked for
16 identification.)

17 MR. GOLD: It is a three-page
18 document.

19 A. I have --

20 MR. LONG: Thank you.

21 BY MR. GOLD:

22 Q. It is a three-page document
23 previously --

24 A. I don't have a document.

25 MR. LONG: You gave them both

1 B. Mason

2 back.

3 A. You took both of them just now.
4 BY MR. GOLD:

5 Q. All right. We're together here.
6 This is a three-page document previously
7 Bates stamped PDCO 00151225 through -27
8 and I'd like you to look this over and let
9 me know when you have done so.

10 A. Okay.

11 Q. Do you recognize this e-mail
12 string?

13 A. I do.

14 Q. And do you recognize that this
15 is a -- a back and forth between yourself
16 and Scott Belcheff of Patterson?

17 A. It is.

18 Q. And the way things work is from
19 the bottom to the top, so the earliest
20 e-mail is at the end of this string. Do
21 you see an e-mail that starts on the
22 bottom of page 1, Thursday, February 7th
23 at 2:01 from Scott Belcheff to you?

24 A. Yes.

25 Q. And then a little further up,

1 B. Mason
 2 there is a reply from you to Scott
 3 Belcheff at 2:19?
 4 A. Yes.
 5 Q. And then further up there's a
 6 reply from Mr. Belcheff at 2:44 to you?
 7 A. Yes.
 8 Q. And at the very top, there is a
 9 final reply in this string from you back
 10 to Mr. Belcheff at 3:50.
 11 A. Yes.
 12 Q. And these are all on the same
 13 day, February 7th, correct?
 14 A. Correct.
 15 Q. So this is two days after the
 16 e-mail that was previously -- the string
 17 that was previously marked as Mason 3. Do
 18 you see that?
 19 A. Okay.
 20 Q. And so the -- when the -- do
 21 you -- turning back to Mason 3, the dinner
 22 at Outback was the upcoming Monday,
 23 correct?
 24 A. Correct.
 25 Q. And this was dated February

1 B. Mason
 2 5th -- the -- excuse me, in Mason 3, CX
 3 4090 is dated February 7th, which is a
 4 Thursday. So it's a few days before the
 5 upcoming Outback Steakhouse meeting?
 6 A. You lost me right there.
 7 Q. Okay. Sorry about that.
 8 A. The Exhibit 3 e-mail is a couple
 9 days before Exhibit CX 409 {sic}, which is
 10 a couple of days before the meeting at
 11 Outback Steakhouse.
 12 Q. That's all I'm trying to get at.
 13 A. Okay.
 14 Q. Is that --
 15 A. Yes.
 16 Q. Does that make sense?
 17 A. Correct.
 18 Q. Okay. Now, you testified
 19 earlier that you couldn't recall the
 20 substance of any conversations with Katt
 21 or Belcheff about the New Mexico buying
 22 Utah -- excuse me -- the New Mexico Dental
 23 Cooperative. Do you recall that?
 24 A. Yes, I do.
 25 Q. Do you recall the general tenor

1 B. Mason
 2 of the meeting? Do you recall that there
 3 were some conversations between you and
 4 either Mr. Katt or Mr. Belcheff about the
 5 Utah Dental Cooperative prior to the
 6 Outback Steakhouse meeting?
 7 MR. LON@bjection,
 8 foundation.
 9 A. Yes, there were conversations.
 10 Q. And how do you know that there
 11 were conversations?
 12 A. We were working on this. Jason,
 13 myself and Frank Montoya, we were working
 14 on this pretty extensively. In fact, in
 15 one of the e-mails that I read here today,
 16 I opened my office and myself up to any
 17 manufacturer rep that wanted to come in
 18 working on the co-op.
 19 Q. Okay. And how about details
 20 with -- how about whether there had been
 21 conversations between you and either
 22 Dr. -- either Mr. Belcheff or Mr. Katt of
 23 Patterson about the cooperative?
 24 MR. LON@bjection, form,
 25 foundation.

1 B. Mason
 2 BY MR. GOLD:
 3 Q. Do you recall that there had
 4 been some conversations between --
 5 A. Yeah, there had been
 6 conversations between all of us. I don't
 7 recall the details of the conversations.
 8 Q. And who's "all of us" just so
 9 we're clear?
 10 A. Myself, Jason Chapman because we
 11 sat side by side in the same office
 12 together. We had e-mails and discussions
 13 with Frank, with Jeff Katt and, to some
 14 degree, Scott.
 15 Q. If I could draw your attention
 16 to -- well, actually, what do you
 17 recognize about, if anything, about the
 18 e-mail in CX 4090 now? You can put the
 19 others aside.
 20 A. Okay.
 21 Q. The long e-mail from Scott
 22 Belcheff to you dated February 7th at 2:01
 23 starts at the bottom of page 1 and goes
 24 towards the bottom of page 2.
 25 A. And what's the question?

1 B. Mason

2 Q. I'd like to know what -- what do
3 you understand Mr. Belcheff telling you in
4 that e-mail?

5 MR. LONG: Objection,
6 foundation.

7 A. We had an understanding. I sent
8 out an e-mail and I don't recall what
9 exhibit it was. This is a response to
10 that e-mail and it's walking back the
11 meeting that was going to take place at
12 Patterson Dental.

13 In the last paragraph, he does
14 talk about, It could be a huge
15 opportunity, but we need to get guidelines
16 in place.

17 Q. Okay. When you -- drawing your
18 attention to that last paragraph, where he
19 says, "This has the opportunity to be
20 huge."

21 A. Uh-huh.

22 Q. What do you understand that to
23 mean? What do you understand this to mean
24 in that sentence?

25 MR. LONG: Objection,

1 B. Mason

2 foundation.

3 A. I -- from my standpoint for
4 looking -- if I were in his shoes, he may
5 be getting a lot more customers.

6 Q. If what happens?

7 MR. LONG: Same objection.

8 A. If Patterson Dental were to take
9 on the co-op. So there's multiple
10 dentists who don't work with Patterson
11 that work with Benco or work with Schein.
12 And if we were able to get a pricing deal,
13 they would get more business.

14 Q. Did you have any expectations
15 going into the Outback Steakhouse meeting
16 as to what was going to take place at the
17 Outback Steakhouse meeting?

18 A. We did.

19 Q. And what were those
20 expectations?

21 A. We expected to work out the --
22 the guidelines on how we were proceeding.

23 Q. And with the -- proceeding with
24 what?

25 A. With Patterson Dental being the

1 B. Mason

2 distributor for the co-op, the preferred
3 vendor for the co-op.

4 Q. And what were those expectations
5 based on?

6 A. Based on the previous
7 conversations and communications.

8 Q. Between?

9 A. Myself and Patterson Dental
10 employees, including this e-mail which has
11 helped set up the guidelines.

12 Q. Can you point out to where that
13 is?

14 A. Last paragraph I believe of the
15 e-mail, "Our dinner on Monday will help"
16 us -- "will help with this and also help
17 get the guidelines in place."

18 MR. GOLD: Thank you. I have no
19 more questions.

20 MR. LONG: Dr. Mason, I have a
21 few.

22 EXAMINATION BY MR. LONG:

23 Q. First off, I want to make sure
24 that nowhere in your responses to
25 Mr. Gold's questions were you changing any

1 B. Mason

2 of the testimony that you gave in response
3 to my questions this morning, correct?

4 A. No, I was not changing.

5 Q. You don't recall any substance
6 of any conversation with Patterson, with
7 Mr. Katt or Mr. Belcheff now as opposed to
8 what you recalled when I asked you?

9 MR. GOLD: Objection. I think
10 that does a little bit mistake his
11 testimony.

12 MR. LONG: He can answer it one
13 way or the other.

14 A. I don't recall the details of
15 all the conversations I had six years ago.
16 BY MR. LONG:

17 Q. And you were not basing your
18 answers to Mr. Gold's questions on
19 anything other than what you recalled when
20 you answered my questions?

21 A. Some of his questions I was
22 basing it off the response of Scott.

23 Q. So some of the questions -- your
24 answers you were basing off what was
25 written in CX 4090?

1 B. Mason
 2 A. Correct.
 3 Q. Did Mr. Gold show you this
 4 yesterday?
 5 A. I did.
 6 Q. So you had had an opportunity
 7 yesterday to see that and have your
 8 recollection refreshed?
 9 A. Correct.
 10 Q. And having had that opportunity
 11 yesterday, you gave me the answers you
 12 gave me this morning about what you did or
 13 did not recall about conversations with
 14 Patterson, correct?
 15 A. Repeat the question?
 16 MR. GOLD:eah, I'd have to
 17 object to that.
 18 BY MR. LONG:
 19 Q. After -- so you met with
 20 Mr. Gold yesterday?
 21 A. Correct.
 22 Q. And he showed you what's now
 23 been marked as CX 4090, which in bulk is
 24 the February 7, 2013 e-mail from
 25 Mr. Belcheff?

1 B. Mason
 2 Q. As you sit here today, you don't
 3 recall the substance of any of those prior
 4 conversations with either Mr. Katt or
 5 Mr. Belcheff concerning the New Mexico
 6 Dental Cooperative?
 7 MR. GOLD:think I'm going to
 8 have to object to that. It slightly
 9 misstates his testimony.
 10 MR. LONG:He can answer it yes
 11 or no. You can object to form and
 12 nothing else.
 13 THE WITNESS:Repeat the
 14 question.
 15 MR. LONG:Would you read that
 16 one back, please?
 17 (Whereupon, the question is read
 18 back by the reporter.)
 19 A. I don't recall the details of
 20 any of the discussions. The premise that
 21 we were working on is we were going to the
 22 meeting to work out the details to get a
 23 deal, and that was supported by the e-mail
 24 right here.
 25 BY MR. LONG:

1 B. Mason
 2 A. Correct.
 3 Q. And having reviewed that
 4 yesterday, you then answered my questions
 5 this morning concerning what, if anything,
 6 you recalled substantively about
 7 conversations with Mr. Belcheff and
 8 Mr. Katt concerning the New Mexico Dental
 9 Cooperative, correct?
 10 A. Correct, with preference.
 11 Because with some -- I mean, with
 12 generality, not specifically.
 13 Q. But you answered my questions
 14 accurately this morning, correct?
 15 A. The best as I recall.
 16 Q. Okay. And so Mr. Gold then
 17 asked you a couple of minutes ago what
 18 your expectation was going into the
 19 February 11th meeting. Do you recall
 20 that?
 21 A. I do.
 22 Q. And I believe that you testified
 23 that your expectation was based upon prior
 24 conversations. Do you recall that?
 25 A. Yes, I do.

1 B. Mason
 2 Q. Well, you pointed again to
 3 CX 4090, the February 7th e-mail from
 4 Mr. Belcheff, correct?
 5 A. Correct.
 6 Q. So you're relying on what's
 7 written on this exhibit for the answer you
 8 just gave, correct?
 9 A. Correct, to some degree.
 10 Q. And so I will -- other than
 11 what's just written here, which you saw
 12 yesterday, do you recall the substance of
 13 any conversation with Mr. Katt or
 14 Mr. Belcheff prior to February 7th
 15 concerning the New Mexico Dental
 16 Cooperative?
 17 A. I don't recall any of the
 18 conversations I had with him specifically.
 19 Q. All right. And you also can't
 20 give me a chronology of when you had
 21 discussions with either Mr. Katt or
 22 Mr. Belcheff about the New Mexico Dental
 23 Cooperative, correct?
 24 A. Correct. I have no clue on the
 25 dates.

1 B. Mason

2 Q. If you would look at CX 4090,
3 the February 7, 2013 e-mail of
4 Mr. Belcheff, at the bottom of the first
5 page, do you see where he writes quote, "I
6 wanted to take some time to think about
7 this meeting before I reached out to you."

8 Do you see that?

9 A. Yes.

10 Q. Does this indicate to you that
11 Mr. Belcheff was thinking about what he
12 would say to you about the meeting for a
13 period of time prior to writing
14 Exhibit CX 4090?

15 MR. GOLD objection,
16 foundation.

17 A. Repeat that.

18 Q. Let me ask it a different way.

19 You had copied Mr. Belcheff on
20 the invitation for the March 13, 2013
21 meeting at the Patterson Dental branch,
22 Exhibit 2, which went out at 1:18 p.m. on
23 February 4th.

24 A. 2:18, but, yes, that's correct.

25 Q. And at the bottom of CX 4090,

1 B. Mason

2 Mr. Belcheff is saying that after
3 receiving that e-mail on the 4th, he
4 wanted to take some time to think about
5 the meeting before he reached out to you?

6 A. Correct.

7 Q. And then if you go to the
8 paragraph that begins, "First." Do you
9 see that?

10 A. Yep.

11 Q. He writes, "The e-mail you sent
12 out has greatly confused the dental
13 community and actually Patterson's role in
14 the dental business community as well.
15 Dan Reinhardt, my regional manager and
16 myself have been getting calls with
17 questions because manufacturers are
18 confused as to the purpose of the meeting
19 you called."

20 Do you have any reason to
21 dispute that statement?

22 A. No.

23 MR. LONG Those are all the
24 questions I have in follow up to
25 Mr. Gold.

1 B. Mason

2 MR. GOLD And I may have one
3 follow-up question.

4 I have two follow-up questions.

5 EXAMINATION BY MR. GOLD:

6 Q. Looking back at Mason 2, which
7 is the e-mail dated February 4th, do you
8 notice you copy -- in addition to many
9 manufacturers, you copied on this or,
10 excuse me, you sent it to Jeff Katt and
11 Larry Belcheff and Robert Lehm, all of
12 Patterson?

13 A. Correct.

14 Q. To the best of your
15 recollection, was this e-mail the first
16 time that these gentlemen were hearing
17 about your plans to form a dental
18 cooperative in New Mexico?

19 MR. LONG objection,
20 foundation, asked and answered.

21 A. No, it was not.

22 BY MR. GOLD:

23 Q. Mr. Long asked you whether your
24 testimony this morning in response to his
25 questions was still accurate in light of

1 B. Mason

2 my questions to you. Do you recall that?

3 A. I do.

4 Q. Same question in reverse.

5 Is -- are -- do you stand by all
6 of your answers to my questions in light
7 of Mr. Long's follow-up questions that he
8 just asked you?

9 A. I --

10 MR. GOLD object to the form.

11 A. I do.

12 Q. I have no more questions.

13 MR. McDONALD have a couple
14 of questions for you.

15 EXAMINATION BY MR. McDONALD:

16 Q. Dr. Mason, can you get out
17 Exhibit 4 for me, please?

18 A. Okay.

19 Q. This is the e-mail that you sent
20 to Rick Dolk on February 20, 2013; is that
21 right?

22 A. Correct.

23 Q. And is this the first time you
24 reached out to someone at Henry Schein
25 about the New Mexico Dental Co-Op?

1 B. Mason

2 A. I do not recall.

3 Q. Is the concept of the New Mexico
4 Dental Co-Op that's outlined in your
5 e-mail to Mr. Dolk accurate as of this
6 date, that is February 20, 2013?

7 A. Repeat that, please?

8 Q. Sure.

9 Is the concept of what you were
10 trying to do with New Mexico Dental Co-Op
11 accurately outlined in your e-mail to
12 Mr. Dolk?

13 A. The New Mexico Dental Co-Op at
14 this phase was -- there was no accuracy to
15 it. We were trying to find the path so we
16 were in an exploration phase at this
17 point.

18 Q. Well, you -- go ahead.

19 A. We -- we were trying to put
20 together members and we were trying to put
21 together offices and we were trying to put
22 together a whole lot of different stuff to
23 even make a co-op. So there -- there was
24 a kind of a guidance that we had, but
25 there wasn't specific details nailed down

1 B. Mason

2 yet. So it was still fluid, moving.

3 Q. So is the guidance as or the
4 status or whatever you want to call it as
5 it existed as of February 20th outlined in
6 this e-mail to Mr. Dolk?

7 A. I think there's some aspects of
8 it that were outlined here.

9 Q. Right. And my point being, what
10 you outlined to him here was accurate at
11 least as of that date?

12 A. Yeah.

13 Q. Or what was your current
14 thinking, correct?

15 A. Correct, that's correct.

16 Q. And did anything in this e-mail
17 change before Mr. Dolk got back to you and
18 told you that Henry Schein was not
19 interested?

20 A. Oh, I have no idea.

21 Q. You don't recall one way or the
22 other?

23 A. I mean, there's a bunch of
24 things outlined here. I have no idea what
25 did or didn't change between the

1 B. Mason

2 conversation that happened, what, five
3 years ago.

4 Q. How soon after this e-mail did
5 Mr. Dolk tell you that Henry Schein was
6 not interested? I'll just restate it.

7 How soon after this February 20,
8 2013 e-mail did Mr. Dolk get back to you
9 and tell you that Henry Schein was not
10 interested?

11 MR. GOLDM going to have to
12 object that that was not his
13 testimony.

14 A. I don't --

15 MR. McDONALDHe can tell me.

16 A. I don't know. I don't have -- I
17 never kept a log of conversations; no
18 clue.

19 Q. All right. It was after you
20 sent this e-mail though, correct?

21 A. I'm assuming. I really don't
22 know.

23 Q. Well, he didn't tell you no
24 before you sent the e-mail; did he?

25 A. That's why I said I'm assuming.

1 B. Mason

2 I don't know the --

3 Q. You would agree with me that it
4 would be logical that he told you after he
5 sent this e-mail that Henry Schein was not
6 interested, correct?

7 A. That, I agree with.

8 Q. All right. In the last sentence
9 of this e-mail you say, "Thus, we have
10 clarified the language to ensure it is
11 understood, we are not moving dentists
12 from one distributor to another or trying
13 to set the price to a distributor." Do
14 you see that?

15 A. Yes, I do.

16 Q. Did that concept ever change?

17 A. That concept never even came to
18 fruition because we never opened the
19 New Mexico Dental Co-Op. We joined
20 another state.

21 Q. All right.

22 A. In the end --

23 Q. That concept of New Mexico --
24 that concept was in the New Mexico Dental
25 Co-Op never changed; is that fair?

1 B. Mason

2 A. No, I don't think that's fair
3 because the -- this is an e-mail that was
4 talking pre-joining Utah. The pre-joining
5 Utah e-mails never came to fruition
6 because the New Mexico Dental Co-Op ended
7 up joining Utah, which was already
8 established, so we used their bylaws and
9 their vendors and their everything. So
10 any concept --

11 Q. Well, Mr. --

12 A. -- any concept prior to joining
13 Utah, for the most part, went in the
14 trash.

15 Q. So the concept that Henry Schein
16 told you it wasn't interested in went in
17 the trash?

18 A. No. Henry Schein said they
19 weren't interested and then when we joined
20 Utah, Henry Schein already had a -- a
21 working relationship with the Utah
22 organization so we jumped onboard with
23 that as-needed. The doctors had were
24 available to jump onboard with that
25 relationship, but the work that we were

1 B. Mason

2 putting forward and the work we were
3 trying to establish we negated because
4 Utah already had it done.

5 Q. What I'm trying to understand,
6 Dr. Mason and I want to be sure it's clear
7 is that the concept that Henry Schein told
8 you it was not interested in was the New
9 Mexico Dental Co-Op concept before it
10 joined the Dental Co-Op of Utah; is that
11 correct?

12 A. That is correct. Henry Schein
13 informed us that it was not interested
14 before we joined the New Mexico Dental
15 Co-Op -- I'm sorry, before we joined the
16 Utah Dental Co-Op Group.

17 MR. McDONALD: Great. That's
18 all I have. Thank you.

19 MR. MANNING: Hi, this is Mr.
20 Manning. I just have a few questions.

21 EXAMINATION BY MR. MANNING:

22 Q. You had testified earlier that
23 Dr. Montoya had contacted Benco and that
24 you had not contacted them yourself; is
25 that correct?

1 B. Mason

2 A. That is correct.

3 Q. Okay. You testified in response
4 to Mr. Long's question that you don't
5 recall any of the information regarding
6 Dr. Montoya's conversations with Benco --

7 A. I testified --

8 Q. -- is that correct?

9 A. I'm testifying that I don't
10 recall any of the specific details of
11 those conversations.

12 Q. Okay. When Mr. Long asked you
13 that earlier, you had testified that you
14 don't recall any of the information. Are
15 you changing your testimony now?

16 A. No, my testimony is not change
17 being. I don't recall the conversations.
18 I only recall the general outcome.

19 Q. Okay, but you don't know what
20 information Dr. Montoya conveyed to Benco
21 in those conversations?

22 A. I do not have --

23 Q. Is that correct?

24 A. I do not know what information
25 was conveyed.

1 B. Mason

2 Q. And you do not know what
3 information was conveyed by Benco to
4 Dr. Montoya; is that correct?

5 A. That is correct.

6 MR. MANNING: Those are all the
7 questions I have.

8 MR. GOLD: Just have one
9 follow-up to that.

10 EXAMINATION BY MR. GOLD:

11 Q. Do you recall when I asked you
12 about the Montoya conversations with
13 Benco?

14 A. Yes.

15 Q. Do you stand by your testimony
16 that you gave me in response to that or
17 are you changing it based on what
18 Mr. Manning just said?

19 A. I stand by my testimony. I
20 don't know the specific details of the
21 conversation. The general outcome was
22 negative. I don't know what was said
23 either way. I just don't recall any of
24 that after five years.

25 MR. GOLD: That's all I have.

1 B. Mason
 2 Thank you, Dr. Mason.
 3 MR. LONG:Yeah, thank you again
 4 for your time, Dr. Mason.
 5 MR. McDONALD:Thank you for
 6 your time.
 7 THE WITNESS:Thank you.
 8 THE COURT REPORTER:Can you
 9 state your transcript orders?
 10 MR. McDONALD:Whatever my
 11 standing order is with them which I
 12 have no idea.
 13 MR. GOLDI think all the
 14 parties have standing orders.
 15 MR. MANNING:Yes, I think so
 16 too.
 17 (Time noted:11:41 a.m.)
 18
 19
 20
 21
 22 _____
 23 Benton Mason, DMD
 24
 25

1
 2 CERTIFICATION
 3
 4
 5 I, DANA N. SREBRENICK, a Certified
 6 Court Reporter for and within the State of
 7 New Mexico, do hereby certify:
 8 That the witness whose testimony as
 9 herein set forth, was duly sworn by me;
 10 and that the within transcript is a true
 11 record of the testimony given by said
 12 witness.
 13 I further certify that I am not
 14 related to any of the parties to this
 15 action by blood or marriage, and that I am
 16 in no way interested in the outcome of
 17 this matter.
 18 IN WITNESS WHEREOF, I have hereunto
 19 set my hand this 26th day of July 2018.
 20
 21 _____
 22 DANA N. SREBRENICK, CLR, CRR
 23
 24 * *
 25

1 ERRATA SHEET
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 3 Deposition Date:
 4 Deponent:
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 22 Signature of Deponent
 23 SUBSCRIBED AND SWORN BEFORE ME
 24 THIS ____ DAY OF _____, 2018.
 25 _____
 (Notary Public) MY COMMISSION EXPIRES: _____

ERRATA SHEET

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Case Name:

Deposition Date:

Deponent:

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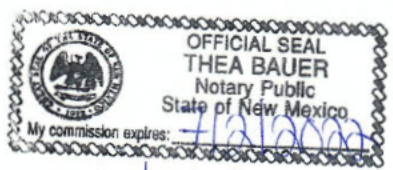
Signature of Deponent

SUBSCRIBED AND SWORN BEFORE ME
THIS 24th DAY OF August, 2018.

[Handwritten Signature]

(Notary Public)

MY COMMISSION EXPIRES: 7/12/2022



1 B. Mason

2 Thank you, Dr. Mason.

3 MR. LONG: Yeah, thank you again
4 for your time, Dr. Mason.

5 MR. McDONALD: Thank you for
6 your time.

7 THE WITNESS: Thank you.

8 THE COURT REPORTER: Can you
9 state your transcript orders?

10 MR. McDONALD: Whatever my
11 standing order is with them which I
12 have no idea.

13 MR. GOLD: I think all the
14 parties have standing orders.

15 MR. MANNING: Yes, I think so
16 too.

17 (Time noted: 11:41 a.m.)

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22 Benton Mason, DMD

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October 10, 2018

By: /s/ Lin W. Kahn
Attorney

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