

1 UNITED STATES OF AMERICA
2 FEDERAL TRADE COMMISSION
3 OFFICE OF ADMINISTRATIVE LAW JUDGES

4 In the Matter of)
5 Benco Dental Supply Co.,)
6 a corporation,)
7 HENRY SCHEIN, INC.,) Docket No. 9379
8 a corporation, and)
9 PATTERSON COMPANIES, INC.,)
10 a corporation,)
11 Respondents.)
12 -----)

13 February 8, 2019

14 9:47 a.m.

15 TRIAL VOLUME 18

16 PART 1, PUBLIC RECORD

17
18 BEFORE THE HONORABLE D. MICHAEL CHAPPELL

19 Chief Administrative Law Judge

20 Federal Trade Commission

21 600 Pennsylvania Avenue, N.W.

22 Washington, D.C.
23
24

25 Reported by: Josett F. Whalen, Court Reporter

Trial - Public Record

Benco Dental Supply, et al.

2/8/2019

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1 APPEARANCES: (continued)

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3 ON BEHALF OF RESPONDENT (PATTERSON COMPANIES, INC.):

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1 FEDERAL TRADE COMMISSION
 2 I N D E X
 3 IN THE MATTER OF BENCO DENTAL SUPPLY CO., et al.
 4 TRIAL VOLUME 18
 5 PART 1, PUBLIC RECORD
 6 FEBRUARY 8, 2019

7

8 WITNESS:	DIRECT	CROSS	REDIRECT	RECROSS	VOIR
9 WU		5094	5179	5188	
10 TITUS	5190				
11	5277	5287	5334		

12

13

14 EXHIBITS	FOR ID IN EVID	STRICKEN/REJECTED
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15 CX
 16 (none)

17

18 RX
 19 (none)

20

21 JX
 22 (none)

23
 24
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1 P R O C E E D I N G S

2 - - - - -

3 JUDGE CHAPPELL: Okay. We're back on the
4 record.

5 Continuing with your cross?

6 MR. GOODMAN: Yes, Your Honor.

7 JUDGE CHAPPELL: All right.

8 - - - - -

9 Whereupon --

10 LAWRENCE WU

11 a witness, called for examination, having been
12 previously duly sworn, was examined and testified
13 further as follows:

14 - - - - -

15 CROSS-EXAMINATION (continued)

16 BY MR. GOODMAN:

17 Q. Good morning, Dr. Wu.

18 A. Good morning.

19 Q. In section 5.2 of your expert report, you offer
20 the opinion that Patterson's discounting to independent
21 dentists, including to members of buying groups, is
22 consistent with unilateral competitive conduct; is that
23 right?

24 A. Yes.

25 Q. Now, you presented some quantitative analysis

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1 in this section of your report in Exhibits 5A, 5B and
2 5C; correct?

3 A. Yes.

4 May I just take a look at my report?

5 Q. Sure.

6 A. Okay.

7 Q. All of these exhibits involve the sale of one
8 product, Septocaine; correct?

9 MR. LAVERY: Objection, Your Honor. This is
10 beyond the scope of my direct. I was very focused, and
11 I didn't even touch this section.

12 MR. GOODMAN: Well, Your Honor, I understand
13 that these are sections of Dr. Wu's report that
14 counsel chose not to address in direct, but they're,
15 as far as we understand it, opinions that they still
16 may try to rely on that are expressed in his expert
17 report.

18 JUDGE CHAPPELL: Then you need to lay the
19 proper foundation that this is part of his report that
20 he submitted in this case and this is support for one
21 of his opinions.

22 Under rule 705, the proponent of an expert can
23 have an expert sit there and just give us conclusions
24 and opinions. On cross, the other side is entitled to
25 get into all the bases, everything that supports that

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1 opinion. If that's what you're doing, then overruled.

2 Is that what you're doing?

3 MR. GOODMAN: Yes, Your Honor.

4 JUDGE CHAPPELL: Go ahead.

5 BY MR. GOODMAN:

6 Q. Dr. Wu, I believe you testified that in
7 section 5.2 of your report you're offering the opinion
8 that Patterson's discounting to independent dentists,
9 including to members of buying groups, is consistent
10 with unilateral competitive conduct.

11 MR. LAVERY: Once again, objection. He did not
12 testify to that, and he did not address this report at
13 all, and as Your Honor has ruled in prior cases, the
14 rule that it has to be within the scope of direct
15 applies equally to experts. I would just like to renew
16 the objection.

17 JUDGE CHAPPELL: The question is, you're
18 offering this opinion. I'm allowing that. Overruled.

19 He didn't answer it yet. The question is
20 inquiring into whether he's offering this opinion.

21 Any opinion he's offering may be gone into on
22 cross. Let's understand that. You got it?

23 MR. LAVERY: Thank you, Your Honor.

24 JUDGE CHAPPELL: Do you want to have her read
25 the question?

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1 MR. GOODMAN: Yes. I'll read it again.

2 BY MR. GOODMAN:

3 Q. Dr. Wu, in section 5.2 of your report, you're
4 offering the opinion that Patterson's discounting to
5 independent dentists, including to members of buying
6 groups, is consistent with unilateral competitive
7 conduct; is that correct?

8 A. Yes.

9 Q. And are you still offering that opinion as part
10 of your testimony in this case?

11 A. This is an opinion in my expert report, and I
12 still stand by it.

13 Q. And in support of that opinion you presented
14 some quantitative analysis in this section of your
15 report in Exhibits 5A, 5B and 5C; correct?

16 JUDGE CHAPPELL: Hold on a second.

17 You need to clarify with the witness whether
18 it's in his report, which has been offered in evidence,
19 or the vagueness is the way you worded your question is
20 is he offering that as part of his testimony. There's
21 a difference there.

22 The opinion may be offered and he hasn't
23 testified about it, but because it's in evidence I'm
24 allowing you to inquire about it, so let's make that
25 clear, because his response to you was: It's in my

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1 report.

2 MR. GOODMAN: Yes, Your Honor.

3 JUDGE CHAPPELL: Do you understand my point?

4 MR. GOODMAN: Let me ask a question, and if I
5 don't, I will ask for guidance from the court.

6 JUDGE CHAPPELL: Well, if you get into is this
7 opinion part of your report submitted in this case, as
8 long as he's aware of the report that was submitted,
9 that's allowable. But when you start saying is this an
10 opinion you're offering as part of your testimony, that
11 could be vague to a witness. It could be, well, does
12 he mean yesterday, does he mean in a deposition months
13 ago. Just be clear.

14 MR. GOODMAN: I think I understand.

15 BY MR. GOODMAN:

16 Q. So, Dr. Wu, is it an opinion in your expert
17 report -- so are the quantitative analyses that you
18 presented in sections 5A, 5B and 5C of your expert
19 report in support of your opinion that Patterson's
20 discounting to independent dentists, including members
21 of buying groups, is consistent with unilateral
22 competitive conduct?

23 A. Just one clarification. You mean 5.1? I don't
24 have a 5A, 5B and 5C.

25 Q. Sorry. In Exhibits 5A, 5B and 5C of your

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1 report?

2 A. Oh. So I do have Exhibits 5A, 5B and 5C in my
3 expert report, and these would be the amended exhibits
4 that I submitted prior to my deposition.

5 JUDGE CHAPPELL: All right. That's not an
6 answer. Now you know what he's talking about. Now
7 answer his question.

8 THE WITNESS: Yes.

9 Oh. Would you repeat the question.

10 BY MR. GOODMAN:

11 Q. Dr. Wu, is it an opinion in your -- are the
12 quantitative analyses that you presented in
13 sections 5A, 5B and 5C of your expert report in
14 support of your opinion that Patterson's discounting to
15 independent dentists, including members of buying
16 groups, is consistent with unilateral competitive
17 conduct?

18 A. Yes.

19 Q. All of these exhibits involve the sale of one
20 product, Septocaine; is that correct?

21 A. Yes. Septocaine was the product that
22 Dr. Marshall used in his examples in his report.

23 Q. Just to clarify what you said there,
24 Dr. Marshall did a number of analyses that involve
25 products beyond Septocaine; correct?

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1 A. Yes. But the analysis that I was rebutting is
2 focused on the analysis he did with the product
3 Septocaine.

4 Q. Okay. And the Exhibits 5A, 5B and 5C just
5 involve the sale of one product, Septocaine; correct?

6 A. Yes.

7 Q. And those exhibits also just involve sales in
8 Washington state; correct?

9 A. Yes.

10 Q. Well, let's start with your Exhibit 5B.

11 Now, in your original expert report that you
12 served in this matter, you presented the results of a
13 particular study that you performed in Exhibit 5B;
14 correct?

15 A. Yes.

16 Are you referring to Exhibit 5B in my original
17 report or my amended Exhibit 5B?

18 Q. So just to clarify, you've revised or amended a
19 number of exhibits that were contained in your original
20 expert report; correct?

21 A. Yes, I have.

22 Q. So if I refer to your original expert report,
23 will you understand that to mean the original expert
24 report and original exhibits that you served along with
25 that report?

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1 A. Yes. But the amended exhibits are the ones
2 that I'm relying on.

3 JUDGE CHAPPELL: The witness raises a good
4 point. You have not said "original" or "amended."
5 You've just been saying "5B," so you clarify it when
6 you ask him a question.

7 MR. GOODMAN: Yes, Your Honor. We're going to
8 explore this original amended exhibit through this line
9 of inquiry.

10 BY MR. GOODMAN:

11 Q. In your original expert report that you served
12 in this matter, you presented the results of a
13 particular study that you performed in your original
14 Exhibit 5B; correct?

15 A. Yes.

16 Q. In your original Exhibit 5B, you purported to
17 compare prices that Smile Source members paid for
18 Septocaine in Washington state to Patterson versus
19 prices that Smile Source members paid to Schein;
20 correct?

21 A. Yes.

22 Q. And in your original Exhibit 5B, the time
23 period you studied was January 2009 to January 2012;
24 correct?

25 A. Yes.

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1 Q. Then the night before your scheduled deposition
2 in this case, at approximately 9:30 p.m., Patterson's
3 lawyers provided complaint counsel with a new or
4 amended Exhibit 5B that reported the results of a
5 different study; correct?

6 A. It was an amended exhibit. It's the same
7 methodology, but I looked at the time period in which
8 Patterson was in the -- was, according to the FTC, in
9 the alleged conspiracy.

10 So as I thought more about my original
11 Exhibit 5B, I realized that the time period studied in
12 my original Exhibit 5B was in the time period before
13 Patterson was in the alleged -- was, according to the
14 FTC, in the alleged conspiracy. I wanted to do an
15 analysis of Patterson's pricing in the period that the
16 FTC alleges was in the conspiracy because I --

17 JUDGE CHAPPELL: I'm going to need you to
18 listen to the question, sir. The question was --
19 didn't call for any explanation, didn't call for you to
20 tell us what it was and why. The question was, to the
21 extent you're aware, was it served on the prosecuting
22 attorneys in this case at 9:30 p.m. on the eve of the
23 deposition. That's the question that's pending, if
24 you're aware of that.

25 MR. GOODMAN: Thank you, Your Honor.

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1 THE WITNESS: I'm aware that it was sent to FTC
2 counsel sometime that evening.

3 BY MR. GOODMAN:

4 Q. Now, in this new study that was sent to FTC
5 counsel at some point that evening, you purported to
6 compare prices Smile Source members paid for
7 Septocaine in Washington state to Burkhart versus
8 prices Smile Source members paid to Patterson;
9 correct?

10 A. Yes.

11 Q. And in your revised Exhibit 5B, the time
12 period you studied was January 2010 to December 2016;
13 correct?

14 A. Yes.

15 Q. So you changed both the time period and the
16 distributor comparison in your analysis from the
17 original exhibit to the new revised Exhibit 5B;
18 correct?

19 A. I changed the time period studied to be in the
20 relevant period. As a result of that, I changed the
21 distributor studied because the Smile Source contracted
22 distributor changed in that time period.

23 MR. GOODMAN: Your Honor, I move to strike that
24 answer as nonresponsive.

25 MR. LAVERY: I object to that. He just

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1 explained his answer and did respond.

2 JUDGE CHAPPELL: He answered your question.
3 Overruled. Or if that's a motion, it's denied.

4 BY MR. GOODMAN:

5 Q. In your revised Exhibit 5B you also added a
6 visual distinction to indicate whether transactions
7 involving a dentist who is an active member -- let me
8 restart that question.

9 In your revised Exhibit 5B you also added a
10 visual distinction to indicate whether the transaction
11 involved a dentist who was an active member of
12 Smile Source at the time of the transaction depicted;
13 correct?

14 A. Yes.

15 Q. Your original Exhibit 5B didn't indicate any
16 distinction between active members of Smile Source and
17 dentists who were not active members of Smile Source at
18 the time of the transactions depicted; correct?

19 A. Yes.

20 Q. Let's pull up demonstrative CXD 16.

21 This demonstrative compares your original
22 Exhibit 5B with what you're calling the amended
23 version.

24 Does this demonstrative accurately summarize
25 the differences in your new study?

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1 A. Yes.

2 Q. And although you provided a revised Exhibit 5B,
3 you never provided any revised expert report in this
4 matter; correct?

5 A. I did not.

6 Q. Prior to the night before your deposition, you
7 did not provide any notice to complaint counsel that
8 you'd be revising any part of your expert report;
9 correct?

10 A. I don't believe so.

11 Q. Your expert report --

12 JUDGE CHAPPELL: Hold on a second.

13 Let's be clear. You're asking him questions
14 that would involve attorneys in this case. He as an
15 expert witness, he doesn't provide notice of anything.
16 He's not an attorney, so let's clarify the questions.

17 MR. GOODMAN: Very good, Your Honor. I'll
18 withdraw the last question.

19 BY MR. GOODMAN:

20 Q. You provided your expert report -- your expert
21 report in this matter was due on September 5, 2018;
22 correct?

23 A. Yes.

24 Q. And you submitted it on that date as far as
25 you're aware; correct?

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1 A. Yes.

2 Q. Now, Dr. Marshall submitted a rebuttal expert
3 report in response to your report in late September;
4 correct?

5 A. Yes.

6 Q. And you received and reviewed that rebuttal
7 report; correct?

8 A. Yes.

9 Q. Now, your revisions that you ultimately made to
10 your exhibits were in response to Dr. Marshall's
11 critiques of your work; correct?

12 A. Some of it, some of it not.

13 Q. Now, even after you had received Dr. Marshall's
14 rebuttal report, you still did not provide to
15 Patterson's counsel to provide to complaint counsel new
16 analysis until the very night before your deposition;
17 correct?

18 A. I did not --

19 MR. LAVERY: Objection, Your Honor. This is
20 getting argumentative and it's getting into what
21 counsel for Patterson provided to the FTC. I don't see
22 the relevance also.

23 MR. GOODMAN: Your Honor, I think I'm just
24 establishing the timing of the revisions of these
25 exhibits.

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1 MR. LAVERY: Which he already answered and now
2 you're just arguing with --

3 JUDGE CHAPPELL: You can ask about timing, but
4 the way you phrased it, even though, you still, that's
5 argumentative. Rephrase it. You can get to the facts
6 without the argument. Sustained.

7 BY MR. GOODMAN:

8 Q. It was not just Exhibit 5B that you revised
9 before your deposition; correct?

10 A. Yes, correct.

11 Q. You also revised your original Exhibit 4,
12 Exhibit 5A, Exhibit 5C, Exhibit 12B, Exhibit 13A and
13 Exhibit 13B; correct?

14 A. Yes. Because some of those were typos, some of
15 those were printing errors, and I just wanted to have a
16 complete set of exhibits.

17 MR. GOODMAN: Your Honor, at this time I believe
18 we need to go in camera to continue this examination.

19 JUDGE CHAPPELL: All right. You're going to
20 disappoint some people in the back of the room.

21 At this time I'm going into in camera session.
22 I'll need to ask those not subject to the protective
23 order to vacate the courtroom.

24 (Whereupon, the proceedings were held in
25 in camera session.)

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1 (The following proceedings were held in
2 in camera session.)
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(End of in camera session.)

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1 (The following proceedings continued in
2 public session.)

3 - - - - -

4 REDIRECT EXAMINATION

5 BY MR. LAVERY:

6 Q. Dr. Wu, hello again.

7 JUDGE CHAPPELL: Hold it, hold it. Wait for
8 the public to rush in.

9 (Pause in the proceedings.)

10 Go ahead.

11 BY MR. LAVERY:

12 Q. Dr. Wu, hello.

13 I just want to clarify a few things that
14 Mr. Goodman asked you today and yesterday.

15 So counsel for the FTC asked you to assume a
16 bunch of conclusions about various things in your
17 exhibits. Do you remember that?

18 A. Yes.

19 Q. Do you accept any of their conclusions as
20 true?

21 A. No, I do not.

22 Q. Do you -- did Dr. Marshall do any statistical
23 study that would suggest that any of their conclusions
24 are true?

25 A. I've not seen them.

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1 Q. As far as you know here today did they just
2 make those up?

3 A. I cannot verify that, verify what was done or
4 the numbers presented to me in the questions.

5 Q. Now, Dr. Wu, counsel showed you a document,
6 CX 4484. Do you remember that? It should be in one of
7 your binders I assume.

8 Kurt, if you have that, could you pull it up,
9 please, page 23 specifically.

10 A. Yes.

11 Q. And Dr. Wu, could you turn to the page that's
12 CX 4484-023.

13 I'm sorry. We don't have it on your screen
14 because it wasn't on their exhibit list, but could you
15 just turn to it in the binder?

16 A. Yes. I have it.

17 Q. So do you see on page 23 it's a slide that's
18 titled Kois Tribe Buyers Program?

19 A. Yes.

20 Q. Do you see that the bottom bullet says, "Case
21 studies show typical overall savings over 15 percent"
22 with an exclamation point?

23 A. Yes.

24 Q. Do you see down below, it says "What to expect
25 in pricing" and number 3, "The savings per line item

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1 will vary. You will see huge savings of 30 to
2 40 percent"?

3 A. Yes, I see that.

4 Q. Okay. So now can you turn to your amended
5 Exhibit C.

6 And Kurt, could we get that up on the screen,
7 please.

8 I'm sorry. Amended Exhibit 5C.

9 Sorry, Dr. Wu.

10 A. Okay.

11 Q. Now -- so you see the lines represented there.
12 You have the Patterson prices and the Burkhardt
13 prices?

14 A. Yes.

15 Q. Even accepting what complaint counsel asked you
16 to assume as true, to get rid of the various items from
17 the top line, does the difference between those two
18 lines look like 30 to 40 percent to you?

19 A. They do not.

20 Q. Does it even look like 15 percent?

21 A. They do not.

22 Q. And so if you could flip to paragraph 63 in
23 your report --

24 JUDGE CHAPPELL: Before you do that, we're
25 going to take a short break. Have your next witness

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1 standing by outside the courtroom.

2 MR. LAVERY: Yes, Your Honor.

3 JUDGE CHAPPELL: We'll reconvene at -- I think
4 I already said 12:15. And I'll be asking for time
5 estimates to finish this witness when we come back.

6 MR. LAVERY: Yes, sir.

7 JUDGE CHAPPELL: We're in recess.

8 (Recess)

9 JUDGE CHAPPELL: Okay. We're back on the
10 record.

11 Time estimate.

12 MR. LAVERY: Your Honor, I only have about five
13 more minutes with Dr. Wu.

14 JUDGE CHAPPELL: Do you anticipate any
15 recross?

16 MR. GOODMAN: Not at this time, Your Honor.

17 JUDGE CHAPPELL: All right. Will there be any
18 other questioning on this side?

19 MR. OLIVER: Not from Benco, Your Honor.

20 MR. McDONALD: Not from me, Your Honor.

21 JUDGE CHAPPELL: All right. Go ahead.

22 MR. LAVERY: Thank you, Your Honor.

23 BY MR. LAVERY:

24 Q. Kurt, could you actually pull up Exhibit 5C
25 again.

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1 Dr. Wu, by the way, where did you get the data
2 when you were looking at active versus nonactive for
3 all the information in your Exhibit 5C?

4 A. I believe I received the data from
5 Dr. Marshall's backup.

6 Q. Right.

7 So take a -- if you could take a look and down
8 at the bottom in the notes, why don't you read us the
9 second sentence there.

10 I know. We've had an issue. It's shaking and
11 blurry.

12 A. No. That's fine.

13 The second sentence reads, "Marshall Report's
14 Kois lookup is used to identify Kois members in
15 Burkhart and Patterson sales data."

16 That's just a -- that sentence refers to the
17 formula that Dr. Marshall uses to identify whether a
18 dentist is a member of Kois or not. I used
19 Dr. Marshall's methodology to identify an active Kois
20 member.

21 Q. And Dr. Marshall in his lookup, he didn't
22 specify when any member joined, did he?

23 A. He did not.

24 Q. Okay. So all these entities that
25 complaint counsel pointed out in their

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1 cross-examination, did you get all of those from
2 Dr. Marshall's own lookup?

3 A. No.

4 Q. I'm sorry?

5 A. What -- did I get any of these from
6 Dr. Marshall?

7 Q. I'll strike the question and ask it again.

8 The entities that complaint counsel mentioned,
9 were those from Dr. Marshall's lookup?

10 A. Yes. The Kois members that are in my analysis
11 would be Kois members identified by Dr. Marshall's
12 lookup methodology.

13 Q. Now, Dr. Wu, even accepting all of the
14 counterfactual assumptions that complaint counsel asked
15 you to make, does any of that change the conclusion
16 regarding Exhibit C?

17 A. No, it does not.

18 Q. And why don't we flip to paragraph 63 of your
19 report.

20 And so down at the bottom, the last sentence,
21 you say that (as read) "I see that the prices Patterson
22 was charging members of Kois were in the same range and
23 sometimes lower than the prices charged by the
24 contracting distributor."

25 Dr. Wu, is that statement still accurate?

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1 A. It is still accurate. And again, this is not a
2 conclusion driven by averages or any statistic like
3 that. Looking at the chart, it's plain that Patterson
4 was charging members of Kois pricing that's in the same
5 range as the contracted distributor.

6 Q. So that was your point with this paragraph?

7 A. Yes.

8 And overall, the point of the entire section is
9 to address competitive impact. And as a reminder,
10 Dr. Marshall basically claims that it is unreasonable
11 to believe that the distributors would not have
12 contracted with buying groups unless there was
13 communication. That is -- that's something we want to
14 look at. That's something that one would want to look
15 at. It's just not right to say it's unreasonable to
16 believe as the basis of a conclusion.

17 Q. And Dr. Wu, the conclusion that you just
18 mentioned by Dr. Marshall, was the main point of this
19 section to rebut that conclusion by Dr. Marshall?

20 A. Yes. Because Dr. Marshall does not put forward
21 any evidence of competitive effect.

22 Q. Okay. Now, Dr. Wu, if you could flip to
23 paragraph 152 of your report.

24 Now, Dr. Wu, even taking the counterfactual
25 assumptions that complaint counsel asked you to make as

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1 true, does any of that change your conclusion in this
2 paragraph?

3 A. No. My conclusion remains that dentists did
4 not have to join a buying group to get the kind of
5 pricing that Patterson was offering to buying group
6 members.

7 Q. And what about paragraph 153, the paragraph
8 that discusses 13B? Does -- do any of the assumptions,
9 even taken as true, that complaint counsel asked you to
10 make -- does that -- any of that change your conclusion
11 in paragraph 153?

12 A. It does not.

13 My conclusions are not about differences in
14 average pricing. I'm looking at the range of prices.
15 And again, the overall conclusion is that dentists did
16 not have to join a buying group to get the same prices
17 that Patterson was offering group members by the
18 contracted distributors.

19 Q. Okay. Now, Dr. Wu, several times today and
20 yesterday you were asked if you did a quantitative
21 analysis about this or that. Do you recall that, sir?

22 A. I do.

23 Q. Is a quantitative analysis the only type of
24 economic analysis in the -- in an economist's tool
25 chest?

For The Record, Inc.

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1 A. It is not. Good economics has a quantitative
2 component and is also rooted in reviewing the
3 documents and the testimony that would help one
4 understand the dynamics of competition in an industry.
5 It's common and I think it should be part of any
6 economist's analysis to review not just quantitative
7 data but the qualitative facts surrounding a question
8 at issue.

9 Q. Okay. And Dr. Wu, yesterday,
10 complaint counsel pointed to a list of groups that you
11 had in your report and asked if you did a
12 profitability analysis with respect to each of those.
13 Do you remember that?

14 A. I do.

15 Q. Did Dr. Marshall do a profitability analysis
16 with respect to each of those groups?

17 A. He did calculations of the profitability of
18 certain agreements.

19 Q. For how many groups did Dr. Marshall calculate
20 that for?

21 A. Dr. Marshall did calculations of five examples,
22 and it only involved two buying groups and three
23 distributors.

24 Q. So Dr. Marshall didn't do a profitability
25 analysis for every group that complaint counsel pointed

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1 out to you yesterday, did he, sir?

2 A. No.

3 Q. He just did the two, Kois and Smile Source;
4 right?

5 A. Just two buying groups.

6 Q. And is that what you told me yesterday was
7 economically unreliable?

8 A. It is economically unreliable to draw
9 inferences about what other distributors would have
10 done with buying groups generally based on those two,
11 especially when those two are different from each
12 other and they're different from buying groups
13 generally.

14 MR. LAVERY: Okay. Thank you, Dr. Wu. That's
15 all I have.

16 JUDGE CHAPPELL: Anything further?

17 MR. GOODMAN: I just have a couple questions to
18 clarify one point very briefly, Your Honor.

19 JUDGE CHAPPELL: Go ahead.

20 MR. GOODMAN: Thank you.

21 - - - - -

22 RE-CROSS-EXAMINATION

23 BY MR. GOODMAN:

24 Q. Dr. Wu, in response to Mr. Lavery's questions
25 just now, I believe you testified that you followed the

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1 active and nonactive Kois member distinction in your
2 revised Exhibit 5C that you got from Dr. Marshall. Is
3 that right?

4 A. Yes.

5 Q. And you had Dr. Marshall's rebuttal report
6 before you prepared your revised Exhibit 5C; correct?

7 A. I did.

8 Q. And in Dr. Marshall's rebuttal report, he
9 pointed out that he believed your Exhibit 5C
10 incorrectly included purchases that were not from
11 active members of Kois; correct?

12 A. Yes, he pointed that out.

13 Q. In fact, Dr. Marshall looked at your
14 Exhibit 5C and provided you with a detailed list of
15 specific dental practices, including some that we
16 discussed in the in camera session, that did not
17 appear to him to be active members of Kois yet were
18 included in your analysis in your Exhibit 5C; correct?

19 A. He may have. I don't remember specifically.

20 MR. GOODMAN: No further questions,

21 Your Honor.

22 JUDGE CHAPPELL: Anything further?

23 MR. LAVERY: Nothing further, Your Honor.

24 JUDGE CHAPPELL: Thank you, sir. You may
25 stand down.

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1 THE WITNESS: Thank you.
2 JUDGE CHAPPELL: Call your next witness.
3 (Pause in the proceedings.)
4 MS. FINCHER: Good morning, Your Honor.
5 JUDGE CHAPPELL: Good afternoon.
6 MS. FINCHER: Good afternoon, Your Honor.
7 JUDGE CHAPPELL: When you're ready.
8 MS. FINCHER: Your Honor, Henry Schein calls
9 Ms. Kathleen Titus.

10 - - - - -

11 Whereupon --

12 KATHLEEN TITUS
13 a witness, called for examination, having been first
14 duly sworn, was examined and testified as follows:

15 DIRECT EXAMINATION

16 BY MS. FINCHER:

17 Q. Good afternoon, Ms. Titus.

18 A. Good afternoon.

19 Q. Please state your full name for the record,
20 please.

21 A. Kathleen Titus.

22 Q. Mr. Titus, are you currently employed?

23 A. I am.

24 Q. Where are you employed?

25 A. I am employed as of January as a business

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1 consultant for Henry Schein.

2 Q. And how long have you worked for Henry Schein?

3 A. I worked as a full-time employee for
4 Henry Schein for 24 years and some months.

5 Q. And what divisions of Henry Schein did you work
6 in in your 24 years at the company?

7 A. I started in 1994 I believe as a field sales
8 consultant. I worked as a field sales consultant for
9 approximately two and a half years.

10 I was recruited to go to work for the
11 Special Markets Division. I worked there for
12 15 years.

13 And then approximately five years ago, I was
14 also recruited to be the director for our mid-market
15 emerging group sales.

16 Q. Ms. Titus, while you were at Henry Schein, did
17 you work with buying groups of independent dentists?

18 A. I did indeed. I worked with buying groups for
19 essentially my entire career up until the time I
20 retired.

21 Q. Which again was December of 2018?

22 A. That's correct.

23 Q. Now, Ms. Titus -- Kurt, if you could pull up
24 RXD 5, please.

25 Now, Ms. Titus, I'd like to show you RXD 5.

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1 This is the specific agreement that complaint counsel
2 alleges in this case. It says that "Benco, Schein and
3 Patterson agreed not to provide discounts to, or
4 otherwise contract with, buying groups of independent
5 dentists."

6 Do you see that?

7 A. I do.

8 Q. Ms. Titus, are you aware of any agreement
9 between Benco, Schein and Patterson not to provide
10 discounts to or otherwise contract with buying groups
11 of independent dentists?

12 A. Absolutely not, because no agreement existed,
13 and I know that because it was my job to work with
14 buying groups over the last twenty-plus years. In
15 fact, I find it personally diminishing because I spent
16 so much of my career at Henry Schein working with
17 buying groups.

18 Q. Now, Ms. Titus, who did you report to while you
19 were at Henry Schein?

20 A. I had several bosses while I was at
21 Henry Schein. Working backwards, Jake Meadows, VP of
22 multisite sales; Brian Brady, director of sales for
23 our mid-market group; Joe Cavaretta, who was the area
24 vice president and also mid-market sales; Randy Foley,
25 vice president of special markets; and Hal Muller,

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1 president of special markets.

2 Q. Ms. Titus, did any of those individuals you
3 just named ever instruct you not to do business with
4 buying groups when you were at Schein?

5 A. Absolutely not.

6 Q. What about Mr. Tim Sullivan? Did Mr. Sullivan
7 ever instruct you not to do business with buying groups
8 while you were at Schein?

9 A. Absolutely not.

10 Q. Have you ever heard of any instruction from
11 Mr. Sullivan not to do business with buying groups?

12 A. I have not.

13 Q. Ms. Titus, has anyone at Schein ever instructed
14 you not to do business with buying groups?

15 A. Absolutely not.

16 Q. Are you aware of any policy at Henry Schein,
17 either in Special Markets or Henry Schein Dental, not
18 to work with buying groups?

19 A. No, I have not because that policy did not
20 exist.

21 Q. Ms. Titus, during your 24 years at
22 Henry Schein, were there ever any kinds of customers
23 that Schein just categorically refused to do business
24 with?

25 A. Absolutely not.

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1 Q. Did Henry Schein Special Markets provide
2 discounts to buying groups while you were at Schein?

3 A. They did indeed.

4 Q. What about Henry Schein Dental? Did
5 Henry Schein Dental provide discounts to buying groups
6 while you were at Schein?

7 A. Yes, they did.

8 Q. Ms. Titus, are you aware that the FTC points to
9 the end of Schein's relationship with the Dental Co-Op
10 and Steadfast buying groups as evidence of an alleged
11 conspiracy?

12 A. I am aware.

13 Q. Were you personally involved in Schein's
14 decision to end its relationship with the
15 Dental Cooperative and Steadfast buying groups?

16 A. I was.

17 Q. Did Schein end its relationship with those two
18 buying groups as the result of some agreement between
19 Benco, Schein and Patterson not to do business with
20 buying groups?

21 A. Absolutely not. My job was to work on behalf
22 of Henry Schein and do what was good for our company
23 and our constituency, so absolutely not.

24 Q. And we'll get into more details about those
25 groups a little bit later, but just to be clear, did

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1 Schein's decision-making with respect to the
2 Dental Cooperative of Utah and the Steadfast Medical
3 buying groups have anything to do with Benco or
4 Patterson?

5 A. It did not.

6 Q. Have you ever had any communications
7 whatsoever with anyone from Patterson about GPOs or
8 buying groups?

9 A. No, I have not.

10 Q. Have you ever had any communications
11 whatsoever with anyone from Benco about GPOs or buying
12 groups?

13 A. No, I have not.

14 Q. Ms. Titus, have you ever had any
15 communications with anyone from Benco or Patterson
16 about any business?

17 A. No, I have not.

18 Q. And I believe you stated you first started at
19 Henry Schein 24 years ago.

20 Is that 1994?

21 A. It is.

22 Q. I believe you said you worked as a field sales
23 consultant?

24 A. I did.

25 Q. And how long did you work as a field sales

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1 consultant?

2 A. Approximately two and a half years.

3 Q. And I believe you stated that you then joined
4 Special Markets? Is that correct?

5 A. That's correct.

6 Q. And how long did you work in Special Markets?

7 A. 15 years.

8 Q. And what were your roles in the
9 Special Markets Division at Henry Schein?

10 A. Special Markets was created and designed to
11 work with nontraditional customers, including buying
12 groups. That consisted of buying groups with private
13 practice dentists, schools and institutions, community
14 health centers, government, Indian health, and DSOs.

15 Q. Can you give us a sense of your
16 responsibilities when you were in the
17 Special Markets Division.

18 A. I had a variety of responsibilities. I
19 covered a very large geography, so virtually
20 everything that was part of the Special Markets budget
21 fell into my area of responsibility, so I worked with
22 all of those varieties that I had just testified were
23 part of the Special Markets group.

24 Q. When you were in Special Markets, did you have
25 any direct involvement with buying groups of

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1 independent dentists?

2 A. I did.

3 Q. And who else in Special Markets worked with
4 buying groups of independent dentists?

5 A. My peer group. There was a woman that worked
6 for us named Rhonda Durante. Rick Heysquierdo.

7 That's what's coming to mind right now.

8 Q. Now, Ms. Titus, at some point you transitioned
9 over to Henry Schein Dental; is that correct?

10 A. That's correct.

11 Q. When did that occur?

12 A. That occurred approximately five years ago, so
13 2014.

14 Q. Now, why did you move over from Henry Schein
15 Special Markets to Henry Schein Dental?

16 A. I moved over to Henry Schein Dental to respond
17 to the changing landscape of dentistry. Essentially,
18 we saw -- and this was Henry Schein's habit, to stay on
19 the cutting edge of innovation and following market
20 trends -- and we saw a larger trend towards emerging
21 group practices and also buying groups.

22 Q. Now, Ms. Titus, what is the
23 Mid Market Division?

24 A. So the Mid Market Division was a group of
25 individuals that were hired to act as a resource to

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1 further develop emerging group practices, buying
2 groups, vocational and hygiene schools, as well as
3 community health centers.

4 Q. And when was the Mid Market Division formed?

5 A. 2014.

6 Q. And were you a part of the Mid Market Division?

7 A. I was. I was appointed as director of the
8 Western United States.

9 Q. What were your responsibilities as the
10 director for the Western United States in the
11 Mid Market Division?

12 A. My responsibilities were directly responsible
13 for the P&L, meaning directly responsible for
14 customers, directly responsible for a team of people
15 that we were adding to provide more resources and
16 access to our customers throughout my area of
17 responsibility, and responsible for essentially growing
18 Henry Schein business in that space.

19 Q. Now, at the time you transitioned to
20 Henry Schein Dental's Mid Market Division, did
21 Henry Schein Dental have relationships with buying
22 groups of independent dentists?

23 A. They did.

24 Q. And were you, Ms. Titus, personally involved in
25 engaging with those buying groups after you moved to

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1 Henry Schein Dental?

2 A. Indeed, I was.

3 Q. Ms. Titus, what are your personal views
4 regarding buying groups?

5 A. I think buying groups are a variety of
6 representations. Some are good and healthy business
7 partners for Henry Schein and some are not so good, and
8 it was my job to help to establish those that made
9 sense and those that perhaps did not.

10 Q. Now, do you believe that your views about
11 buying groups have changed over time?

12 A. I think I know more based on my tenure
13 certainly. And we have seen a market increase in the
14 number of entities that would like to create a buying
15 group, so start-ups I think you would call them, so
16 yes, I have a deeper understanding of them.

17 Q. And you testified a moment ago that part of
18 your responsibilities was figuring out sort of which
19 one of these groups were Schein and which ones maybe
20 are not a good fit.

21 Can you tell us some of the characteristics of
22 a buying group that would make it potentially a good
23 fit for Schein.

24 A. I can.

25 So buying groups are an extension of

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1 Henry Schein. In fact, we share their brand and they
2 share ours.

3 I would characterize a good buying group as one
4 that shares the same values and integrity that we have
5 at Henry Schein, the same reverence and respect for the
6 dentists who we're focused on, those that offer more
7 than just an opportunity to buy consumables at a
8 discount, someone who shares our vision for developing
9 the productivity and profitability of a dentist and
10 also offers some added value like business solutions as
11 well as education.

12 Ultimately, the goal was to work
13 collaboratively to help those dentists work more
14 efficiently, provide best-of-class solutions deep into
15 their environment, and ultimately assist them in
16 delivering better patient care.

17 Q. Can you think of any other specific
18 characteristics of a particular buying group that might
19 inform you that they could be potentially a good
20 business fit?

21 A. Could you repeat that question.

22 Q. Yeah. Sure.

23 You were just talking a moment ago about kind
24 of the value and alignment between a buying group and
25 Henry Schein.

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1 A. Uh-huh.

2 Q. Are there other things that you have looked at
3 in terms of a buying group to determine how might this
4 be a good fit for Schein?

5 A. Well, I think one of the things that we were
6 looking at is we were going to pour a lot of resources
7 into helping that buying group round out their
8 offering, be supportive to them, understand each
9 other's cultures and environment, so in order to
10 justify the amount of resources that we were pouring
11 into that relationship, we would look for an
12 opportunity to be exclusive with that buying group, so
13 we wouldn't want to have them invite our competitors to
14 share that same partnership.

15 And this is probably the most critical part.
16 We were looking for partners that could actually move
17 the needle, meaning that they could enforce a certain
18 amount of compliance and affect the -- and affect and
19 influence the behavior of those said customers to buy
20 from Henry Schein.

21 Q. And we've heard that term "compliance" a number
22 of times throughout this trial, but can you tell us
23 what you mean when you use that word?

24 A. I certainly can.

25 So exclusivity and compliance go hand in hand.

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1 And you can promise exclusivity. However, if you don't
2 have compliance, it's an empty promise, because we're
3 not getting any traction to grow sales. And that was
4 my job, to help those relationships be fostered so that
5 we were actually growing sales.

6 Q. Ms. Titus, in your experience at Henry Schein
7 and working with a number of buying groups, can all
8 buying groups drive compliance?

9 A. They cannot.

10 Q. Why not?

11 A. Driving compliance requires a significant
12 amount of credibility on the buying group parent
13 entity, meaning that they offer something more than
14 just a discount on consumables. That's why it was so
15 important that we looked at how they served that
16 dentist, were they looking to just build an additional
17 revenue stream on the back of that dentist or gain
18 access to Henry Schein's customer list or were they
19 truly trying to deliver solutions to that dentist to
20 make them better providers and better deliverers of
21 healthcare.

22 Q. Ms. Titus, the FTC alleges that when Schein
23 decides not to work with a buying group that it's
24 acting against its self-interest.

25 Do you agree with that?

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1 A. I do not agree with that. In fact, I think
2 it's quite the contrary when we have a buying group
3 that either does not keep its promises to stay
4 exclusive or does not deliver additional sales to
5 Henry Schein.

6 Q. Ms. Titus, have you observed any downsides to
7 working with certain buying groups?

8 A. I have observed downsides to working with
9 certain buying groups.

10 Q. Can you tell us about some of those.

11 A. We are sharing our information about customers
12 openly. We are exchanging information that would
13 otherwise be considered confidential between us and the
14 parent entity or the buying group.

15 When those said buying groups would invite our
16 competitors in and then take existing Henry Schein
17 business and divert it or diminish it by sending it to
18 a competitor, that was almost predatory in nature.

19 Q. Anything else you can think of sitting here
20 today in terms of some of the challenges that you
21 experienced working with buying groups?

22 A. So some of the challenges were, if they were
23 small, they didn't have enough infrastructure behind
24 them or a very solid business plan that we could help
25 boost them up and help them to deliver and gain

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1 access, yes, or if they lacked the influence with
2 those individual dentists to enforce a certain or
3 effect a certain amount of compliance from those
4 dentists.

5 So we were putting discounts in place that
6 were significant for those dentists that were members
7 of a buying group, and we wanted to be sure that our
8 return on investment was there.

9 Q. And despite all of these challenges,
10 Ms. Titus, did Henry Schein still work with buying
11 groups?

12 A. We did.

13 Q. Now, I'd like to talk a little bit about your
14 evaluation of buying groups once you moved over to
15 Henry Schein Dental, the Mid Market Division.

16 A. Okay.

17 Q. How would you describe Henry Schein Dental's
18 strategy related to buying groups at the time you
19 joined Mid Market?

20 A. I think our strategy was much more
21 regionalized at the time, and while the
22 Special Markets Division had ultimate responsibility
23 for many of the buying groups, there were buying
24 groups under the Henry Schein Dental umbrella, and
25 those buying groups were very much ad hoc. We would

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1 see them pop up. They were highly regionalized. They
2 might be tied to a study club or something that was
3 very regional in nature.

4 Q. Now, after you joined Henry Schein Dental's
5 Mid Market Division in 2014, were you involved in
6 helping to develop Schein's buying group strategy?

7 A. I was.

8 Q. And did you personally have a role in vetting
9 and evaluating buying groups in Henry Schein Dental?

10 A. I did.

11 Q. Can you give me some names of some of the
12 groups you evaluated or vetted?

13 A. Certainly.

14 Klear Impakt comes to mind.

15 Breakaway Dental.

16 Dental Gator.

17 Smile Source.

18 Those are just a few examples.

19 Q. Ms. Titus, can you give me a sense of what your
20 evaluation process looked like in the 2014 time frame
21 with respect to buying group opportunities.

22 A. Our intention was to grow the buying groups
23 but do it with a discerning evaluation before we
24 jumped into those relationships, meaning that we
25 needed to create a criteria that constituted value to

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1 all of the stakeholders, ourselves most importantly
2 because it was my job to grow business as director of
3 the Western United States, the buying group, and
4 ultimately that mutual customer that we were serving,
5 private practice dentists.

6 Q. And what were some of the factors that you
7 considered in evaluating whether to do business with
8 particular buying groups?

9 A. So the very first thing that we would look at
10 is the value alignment. I've worked for Henry Schein
11 for 24 years, and their uncompromising integrity was
12 the icon, the beam, that we always held to at
13 Henry Schein. It was part of our culture.

14 We take a lot of pride in the Henry Schein
15 brand and we take a lot of pride in what we represent
16 to the healthcare, the dental community specifically.

17 So it was very important that we first felt
18 that we were aligned with our values and our
19 integrity, that we were partnering with somebody that
20 we could mutually share in how we felt about our
21 dentists and how we treated them.

22 We would also look at their member group, what
23 was their member group like, what tied them together,
24 and most importantly we were looking for a partner that
25 was making an investment in those end users, the

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1 dentists.

2 If they were just looking for a way to create
3 a revenue stream on the back of those dentists, that
4 didn't fit our criteria for a healthy relationship.
5 We were looking for somebody that was willing and able
6 to invest in those dentists and would allow us to work
7 collaboratively with them to present our full portfolio
8 of products and services as that was our role. We were
9 a full-service dental dealer.

10 Q. Did you ever consider whether buying groups
11 would be able to drive new or additional business to
12 Henry Schein?

13 A. That was a lot of my consideration. Yes.

14 Q. And how would you evaluate or measure that?

15 A. Well, I mentioned earlier that exclusivity was
16 a big, very important factor. The last thing we
17 wanted to do was share our customer list with a buying
18 group who would then take it to one of our
19 competitors.

20 So we would look for exclusivity. But, as I
21 mentioned before, we were looking for somebody that
22 could effect influence with those dentists who buy
23 from Henry Schein, and those dentists had to have a
24 degree of credibility with their dentists. They had
25 to be offering something more than just an opportunity

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1 to get a discount in order to have that credibility,
2 so not just exclusivity, but exclusivity and
3 compliance go hand in hand. You can't separate them
4 from each other.

5 Q. Ms. Titus, in your view, did Henry Schein's
6 evaluation process related to buying groups change over
7 time?

8 A. I think our criteria was the same over the
9 twenty-plus years that I worked at Henry Schein. What
10 changed is that we were formalizing our strategy so
11 that we would use parity, essentially the same
12 yardstick to measure whether a customer or a buying
13 group entity was a good fit for Henry Schein or
14 whether we were risking our business to
15 cannibalization.

16 Q. Okay. Ms. Titus, I'd like to talk a little
17 more in detail about your role in evaluating buying
18 groups.

19 A. Okay.

20 Q. So, Kurt, if you could please pull up RX 2120.

21 And Ms. Titus, you're welcome to either pick up
22 the binder that's next to you or take a look at the
23 screen when --

24 A. I can see that pretty well. Thank you.

25 Q. Okay.

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1 Now, Ms. Titus, this is an April 24,
2 2014 e-mail from you to Dean Kyle about the
3 Colorado Community Health Network; correct?

4 A. That's correct.

5 Q. What is the Colorado Community Health Network?

6 A. The Colorado Community Health work -- Network
7 is an association that supports community health
8 centers throughout the state of Colorado.

9 Q. Would you characterize the Colorado Community
10 Health Network as a CHC GPO or buying group?

11 A. Definitely.

12 Q. Now, you mentioned here that "this GPO
13 (Colorado Community Health Network) is actually one of
14 the 'good' ones."

15 Do you see that?

16 A. I do.

17 Q. What were some of the characteristics of this
18 GPO that you viewed as good for Schein?

19 A. As I mentioned before, they're a member group,
20 and this particular -- as we called them CCHN to
21 shorten it up, this particular group had a membership
22 of every community health center throughout the state
23 of Colorado.

24 Q. And what other characteristics did you lay out
25 in your e-mail that you viewed as good or favorable to

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1 Schein?

2 A. What we were looking for was really kind of
3 the -- again, the genesis of our strategy, and so as I
4 evaluated them using that same yardstick, they were
5 willing to be exclusive with Henry Schein.

6 They were also willing to enhance our
7 engagement with our customers, so we had a full sales
8 team out calling on these health centers. They were
9 able to open doors for us that perhaps we didn't have
10 the business with.

11 We have an agenda to serve community health
12 centers. In very specific ways they promoted that
13 agenda. And they also gave us access to speak to the
14 entire group in their corporate office venue, so we
15 were able to reach members with our messaging more
16 effectively and efficiently.

17 Also our cost was very low for supporting this
18 group with marketing fees or admin fees, so that
19 allowed us to actually contribute to advocacy
20 activities within the organization.

21 Q. Now, Ms. Titus, in your view, do those
22 characteristics you laid out relating to exclusivity,
23 also engagement with end users, promotion of Schein's
24 agenda, and also access to the members -- are those
25 characteristics that you view as favorable both for CHC

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1 buying groups and also buying groups of independent
2 dentists?

3 A. I definitely do. In fact, I think that this is
4 a really good example because in my e-mail I refer to
5 it as a win/win/win, and that's what we were looking
6 for.

7 Q. You go on towards the bottom of your e-mail to
8 say, "I am not 100 percent against GPOs as long as they
9 work for us."

10 Do you see that?

11 A. I do.

12 Q. What did you mean by that?

13 A. That meant that we were beginning a strategy to
14 create a criteria for what made good business sense for
15 Henry Schein, those that helped us grow our business
16 and other things, and we were finding some that weren't
17 so good, frankly.

18 So when I say that -- that as long as they work
19 for us, that meant that we were starting to really
20 formulate that yardstick to measure by which we'd
21 create a really healthy relationship for all of the
22 stakeholders.

23 Q. Ms. Titus, did you believe at this point in
24 time when you wrote this e-mail in April of 2014 that
25 GPOs or buying groups could be beneficial for Schein?

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1 A. I did. And I had been working with them for
2 some time, so this statement was based on my
3 experience. There were some good ones and then some
4 not so good ones.

5 Q. Kurt, could you please pull up RX 2105,
6 please.

7 Ms. Titus, this is a May 12, 2014 e-mail
8 between you and Colan Rogers, copying others, regarding
9 Floss Dental.

10 Do you see that?

11 A. I do.

12 Q. Who is Colan Rogers?

13 A. Colan was a director for the Special Markets
14 Division.

15 Q. What is Floss Dental?

16 A. Floss Dental was a small group of fully owned
17 offices, but also they had members that were
18 individual or independent practices that were part of
19 their group. That part of their group was a buying
20 group.

21 Q. And you say in your e-mail here, "I just
22 finished a 30-minute conversation with Joe Cav" -- is
23 that Joe Cavaretta?

24 A. It is.

25 Q. -- "about GPOs and the impact to our business

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1 (not always healthy to us)."

2 Do you see that?

3 A. I do.

4 Q. Now, what did you discuss with Mr. Cavaretta
5 during your 30-minute conversation regarding GPOs?

6 A. Joe Cavaretta and I were working shoulder to
7 shoulder to really create a document that could be
8 distributed to our constituency that had been well
9 thought out, that it had multiple contributors, where
10 we could evaluate more efficiently and create more
11 parity on those relationships with buying groups that
12 made sense for us, made good business sense for us.

13 Q. Did Mr. Cavaretta ever tell you not to work
14 with buying groups?

15 A. He did not.

16 Q. Did Mr. Cavaretta ever ask you to shut down any
17 buying groups?

18 A. He did not.

19 Q. Did anyone at Henry Schein Dental ever ask you
20 to shut down any buying groups?

21 A. They did not.

22 Q. Did anyone at Henry Schein Dental ever ask you
23 to dismantle any buying groups?

24 A. Absolutely not.

25 Q. You then go on to say (as read): Andrea and

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1 I -- is that Andrea Hight?

2 A. It is.

3 Q. -- have agreed in writing when the
4 relationships make sense and when it does not.

5 Do you see that?

6 A. I do.

7 Q. What was Ms. Hight's role at this time?

8 A. Ms. Hight was my peer. She was also a
9 director, but she had a different region of the
10 country. She was the director for the
11 Central United States.

12 Q. What was the nature of your discussion with
13 Ms. Hight around this time about buying groups?

14 A. Ms. Hight and I had spent years to get --
15 working together essentially in the same role for the
16 Special Markets Division where we worked with a number
17 of buying groups, each of us. And we had the
18 experience of having more exposure to them, and
19 because we had more exposure to them, it was our job
20 as directors for the mid-market to start to develop a
21 strategy, a criteria, so to speak, to put together a
22 very cogent list so that our peer group who were
23 meeting with these buying groups would be measuring
24 these -- the opportunity with the same yardstick.

25 Q. And when did you believe that a relationship

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1 with a buying group would make sense for Henry Schein?

2 A. I'm sorry. Could you repeat the question.

3 Q. Sure.

4 When did you believe that a buying group
5 relationship would make sense for Henry Schein?

6 A. Well, we were in process of building a
7 strategy. And again, we were looking for a partner. I
8 think that is really the key word. We were looking for
9 alignment in values. We were looking for alignment in
10 integrity.

11 Again, pointing to who we were as a company, we
12 had an uncompromising integrity at Henry Schein.
13 Everyone practiced that, and it would not do for us to
14 partner with somebody that didn't share our values or
15 share that inherent integrity within their
16 organization. We were looking for a member group that
17 collectively could generate business through
18 Henry Schein.

19 Q. You go on to say, "Just some brainstorming so
20 we can develop our policy as we are not blindly
21 empowering entities that are bad for Schein."

22 Do you see that?

23 A. I do.

24 Q. What were you interested in developing based on
25 that statement?

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1 A. What I was interested in developing was again a
2 strategy that we could consistently point to and
3 establish parity across the United States so that we
4 were sharing this information with our peer groups,
5 with management groups. We were looking to have other
6 people contribute their good ideas.

7 A lot of collective brainstorming brought some
8 other good ideas of what was important to look at with
9 a healthy relationship with a buying group.

10 And then we wanted to actually formalize that
11 strategy so that it could be shared with others so that
12 we could continue to grow the buying group in a healthy
13 way.

14 Q. Now, as of the date of this e-mail, May 12,
15 2014, did Schein have an official policy related to
16 buying groups at that time?

17 A. I think "policy" is the wrong word. When I
18 used the word "policy," I think strategy would be much
19 more accurate. We were looking to develop a strategy.

20 Q. Kurt, you can take this document down.

21 Ms. Titus, are you familiar with a group called
22 Pacific Group Management Services or PGMS?

23 A. I am.

24 Q. What is PGMS?

25 A. Practice group -- Pacific Group Management was

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1 essentially a start-up buying group.

2 Q. And how did you become familiar with PGMS?

3 A. PGMS was brought to my attention by one of our
4 field salespeople, one of our equipment sales
5 specialists that was working with one of the
6 principals.

7 Q. And did you proceed to evaluate the opportunity
8 to work with PGMS?

9 A. I did.

10 Q. Kurt, could you please pull up CX 2809.

11 Ms. Titus, this is a June 12, 2014 e-mail chain
12 involving you and Joe Cavaretta and also, earlier in
13 the chain, PGMS.

14 A. Correct.

15 Q. Now, what was your first step in the evaluation
16 of PGMS?

17 A. I'm sorry. One more time.

18 Q. Yeah. Sure.

19 What was your first step in the evaluation of
20 PGMS?

21 A. Any good business practice requires discovery,
22 so that was my first process, was to collect
23 information about who PGMS was, what their mission,
24 their vision, and how they felt developing a buying
25 group relationship with Henry Schein would serve them

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1 and our stakeholders.

2 Q. And Kurt, if you could turn to page 5, please.

3 Ms. Titus, was -- were the questions listed on
4 page 5 of this exhibit the questions that you asked of
5 PGMS during this discovery phase?

6 A. It was indeed.

7 Q. And can you run through some of those questions
8 that you asked during your discovery of PGMS.

9 A. I can.

10 A brief profile and history of PGMS. Again,
11 this goes back to finding out more about who are we
12 working with, who is this company, what did they
13 represent.

14 A portfolio of their services, again going back
15 to are you just looking to create a consumable discount
16 or are you offering something more to our shared
17 audience.

18 How do they market to their candidates, are
19 they doing educational seminars, are they investing in
20 enhancing the skill set of the dentists.

21 How many members do they have. That was very
22 important because members mean volume.

23 Can PGMS effect compliance of its members.
24 This became a very important question in my engagement
25 with PGMS, so we wanted to know, could you move the

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1 needle, can you get people to buy from Schein.

2 Does PGMS have a stake in the practices. And
3 I think this was a question that would help us define
4 more if these were independent private practices or if
5 this was some form of a DSO. And it turns out that
6 they had no stake in the practices. They were selling
7 to -- or they were a group of members who were
8 independent dentists.

9 Q. Ms. Titus, is it fair to characterize these
10 questions that you asked of PGMS as due diligence on
11 the group?

12 A. Very much due diligence. That's a very
13 correct term because we again were starting to look at
14 our relationships with a more critical eye and assure
15 that if we were hearing something that didn't make
16 sense that we were exploring those questions or
17 concerns to find out if there was room for
18 negotiation.

19 Q. And Kurt, if you could turn to page 2, please.

20 Ms. Titus, in your June 12, 2014 e-mail to
21 Joe Cavaretta you ask him whether you should set up a
22 call with PGMS; right?

23 A. Correct.

24 Q. You also told Mr. Cavaretta that PGMS was a
25 potential hybrid GPO partner, but only with a carefully

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1 crafted deal that guarantees compliance, exclusivity
2 and the opportunity to market Schein business
3 solutions.

4 Do you see that?

5 A. I do.

6 Q. What were you conveying to Mr. Cavaretta
7 there?

8 A. In context of my e-mail to Mr. Cavaretta, we
9 had our heads together and our shoulders together
10 working to create, again, a strategy that we could work
11 more effectively. We could make a more discerning
12 decision about what constituted a healthy relationship
13 and what didn't.

14 When I wrote this e-mail, I was essentially
15 telling him that we were going to be applying these
16 questions or these strategies to evaluating whether we
17 should move forward with PGMS.

18 Q. Did Mr. Cavaretta give you the green light to
19 set up a call with PGMS?

20 A. He did.

21 Q. Now, Mr. Cavaretta says on the top of page 2,
22 "This is not going to stop and another reason why we
23 need to make sure we have our systems and offering down
24 cold and the team understanding how to present."

25 Do you see that?

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1 A. I do.

2 Q. Do you know what offering Mr. Cavaretta was
3 referring to?

4 A. I do. It -- it constituted many things.

5 Our offering would be -- it would start with
6 a -- we were working on developing sales plans. Those
7 sales plans were specifically created. They were
8 discount plans so that we were offering essentially
9 the same sorts of discounts across the board and we
10 weren't all over the map on discounts and we were being
11 fair with buying groups and fair with their member
12 groups.

13 So we wanted to make sure that our offerings
14 were in line on pricing, that we had a mission to sell
15 deeper into our client base. We wanted to be able to
16 gain access to those members to talk about our
17 nonclinical business services, equipment, technology
18 and education.

19 Q. So was Mr. Cavaretta telling you in
20 June 2014 that Schein needed to have a more formal
21 offering with respect to buying groups?

22 A. He was. He was asking me to build the
23 portfolio.

24 Q. Did you agree with that, that there was a need
25 to get this buying group offering down cold?

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1 A. 100 percent. In fact, I spent a whole lot of
2 my time doing just that.

3 Q. Now, Kurt, if you could turn to page 1,
4 please.

5 And Mr. Cavaretta responded to you and stated
6 that he thought your questions below should be standard
7 for all the group practice team.

8 Do you see that?

9 A. I do.

10 Q. Did you interpret him to be referring to your
11 discovery questions with respect to PGMS?

12 A. He was.

13 Q. Did you ultimately end up meeting with PGMS?

14 A. I did.

15 Q. And what was the result of that meeting?

16 A. I thought it was a good meeting. I thought it
17 was a good start to what could potentially be a
18 partnership. I liked them very much.

19 I did have some concerns throughout our
20 discussion, one of which is they only had a very small
21 number of members, the other of which is they were
22 very insecure about whether they could actually
23 influence their members to buy from Schein or gain
24 compliance.

25 Q. Kurt, if you could pull up CX 2250, please.

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1 Ms. Titus, this is a July 14, 2014 e-mail chain
2 between you, Brian Brady, Joe Cavaretta, Glenn Showgren
3 and Nicole Lena about PGMS.

4 Do you see that?

5 A. I do.

6 Q. Who is Brian Brady?

7 A. At the time, Brian Brady was the regional
8 manager for Northern California, San Francisco Bay
9 area.

10 Q. And who is Glenn Showgren?

11 A. And Glenn Showgren was the zone general
12 manager overseeing a large part of the
13 Western United States.

14 Q. What about Nicole Lena?

15 A. And Nicole Lena was a regional account manager
16 who reported directly to me and worked directly with
17 the mid-market.

18 Q. Ms. Titus, did anyone at Schein express
19 concerns to you about entering into the PGMS
20 relationship?

21 A. They did.

22 Q. And who was that?

23 A. Well, specifically Brian Brady, who sat in on
24 the meeting with the folks from PGMS, at which time he
25 heard things that were very concerning to him.

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1 Q. Now, if you look at his e-mail to you on the
2 bottom of the first page, he says that PGMS "told us a
3 few times during the meeting that they can only 'lead
4 the horses,' but 'not make them drink.'"

5 Do you see that?

6 A. I do.

7 Q. What did you interpret that to mean?

8 A. I interpreted that to mean that he had -- PGMS
9 had members, but they could not effect compliance of
10 thus members.

11 Q. Was that a concern for Schein?

12 A. That was a very big concern for Schein because
13 there was no return on investment and the resources
14 that we were pouring in to help them create their
15 organization.

16 Q. Ms. Titus, who is Dr. Luque?

17 A. Dr. Luque was a prosthodontist oral surgeon in
18 the San Francisco Bay area and also a member of PGMS.

19 Q. Did Dr. Luque have any leadership role with the
20 PGMS group?

21 A. He did. I would call him the key leader.

22 Q. Did Dr. Luque agree to do business with Schein
23 if Schein partnered with PGMS?

24 A. He did not.

25 Q. Did that cause you any concern?

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1 A. That was a definite red flag because we felt
2 that if the leader of the organization was unwilling
3 to vote with his dollars, how could he influence his
4 member group to do the very same.

5 Q. And Kurt, if you could pull up CX 2235,
6 please.

7 Ms. Titus, this is a July 17, 2014 e-mail from
8 you to Glenn Showgren, Kevin Upchurch, and the subject
9 line is PGMS Agreement.

10 Do you see that?

11 A. I do.

12 Q. Who is Kevin Upchurch?

13 A. Kevin Upchurch shares the same role as
14 Glenn Showgren. He's a zone general manager that
15 covered a different part of the United States.

16 Q. Did Schein ultimately enter into a relationship
17 with PGMS?

18 A. We did not.

19 Q. Why not?

20 A. Like any negotiation and you work with a
21 customer over a period of time, you learn more about
22 who they are and what they can do and what they can't
23 do.

24 We had two very serious red flags. One was
25 Dr. Luque, who was the leader of PGMS, was unwilling

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1 to vote with his own dollars. Number two was hand in
2 hand with that statement in that we didn't believe and
3 they didn't believe that they could effect compliance
4 with their member group.

5 Q. In this e-mail, CX 2235, you tell Mr. Showgren
6 and Mr. Upchurch that you "had a GPO prospect called
7 PGMS. Very intriguing, willing to be exclusive."

8 Do you see that?

9 A. I do.

10 Q. Why did Schein not enter into a relationship
11 with PGMS if they were willing to be exclusive?

12 A. As I mentioned earlier, exclusivity was
13 one-half of the -- actually, it was probably the
14 threshold for beginning negotiations. But exclusivity
15 and compliance are intrinsically linked to one another
16 in that you could promise exclusivity, but if you
17 couldn't deliver the sales, then it was an empty
18 promise and there was no return on investment.

19 Q. And so there is a difference then between
20 exclusivity and compliance.

21 A. Very much so.

22 Q. And what did you determine ultimately about
23 PGMS's ability to drive compliance?

24 A. I think I was evolving our criteria and our
25 strategy for engaging with these start-up buying

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1 groups. And what I understood during this period is
2 that we really needed to partner with a buying group
3 that could drive compliance in order for it to be
4 justified for us to put our resources into it.

5 Q. You go on to say, "It went to Tim and he shot
6 it down."

7 Do you see that?

8 A. I do.

9 Q. Was your "Tim" there referring to
10 Tim Sullivan?

11 A. It is.

12 Q. Did Tim Sullivan ever tell you that?

13 A. I never spoke to Tim. He did not tell me
14 that.

15 Q. Did you ever talk to Tim Sullivan about PGMS?

16 A. I did not.

17 Q. Did someone else tell you that Tim shot it
18 down?

19 A. I believe it would have been my boss who --
20 I -- I don't like the -- the -- the words I use,
21 "shot it down." I think Joe was more measured and said
22 that there were concerns, and it specifically revolved
23 around Dr. Luque buying from our competitors and the
24 fact that they were very sure that they couldn't drive
25 compliance.

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1 Q. Did Mr. Cavaretta tell you that Tim Sullivan
2 didn't want to work with PGMS?

3 A. He did not.

4 Q. Did Mr. Cavaretta tell you that Schein could
5 not work with PGMS?

6 A. No, he did not.

7 Q. Do you know who made the ultimate decision not
8 to partner with PGMS?

9 A. In my recollection, this was again part of our
10 evaluation that we -- there was a consensus amongst our
11 management and leadership group that this was probably
12 one we should pass on, and we did.

13 Q. And when you say "our management and
14 leadership group," who specifically are you referring
15 to?

16 A. The two general managers for each part of the
17 United States, Brian Brady and Joe Cavaretta --

18 Q. And yourself?

19 A. -- myself.

20 Q. Did Schein's decision not to move forward with
21 PGMS have anything to do with Patterson or Benco?

22 A. Nothing whatsoever. I was completely focused
23 on our business. It never entered into our thought
24 process.

25 Q. You go on in your e-mail to say, "I think the

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1 meta message is officially, GPOs are not good for
2 Schein."

3 Do you see that?

4 A. I do.

5 Q. What did you mean, Ms. Titus, when you wrote
6 that?

7 A. So, again, perhaps not a very thoughtful
8 choice of words, but I was specifically referring to a
9 group like this, a start-up that did not put their
10 money where their mouth is by buying from Henry Schein
11 and could not enforce compliance with their member
12 group.

13 Q. When you wrote this e-mail, Ms. Titus, were you
14 intending to convey that Schein would not work with
15 GPOs or buying groups?

16 A. I was not. In fact, that would be counter to
17 reality, which I was working with many GPOs.

18 Q. Did Tim Sullivan ever tell you that GPOs are
19 not good for Schein?

20 A. He did not.

21 Q. Did Joe Cavaretta ever tell you that GPOs are
22 not good for Schein?

23 A. He did not.

24 Q. Kurt, if you could pull up CX 2220, please.

25 Now, Ms. Titus, this is an

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1 August 29, 2014 e-mail chain you're on about
2 Denali Group.

3 Do you see that?

4 A. I do.

5 Q. And you refer to the -- Denali in this e-mail
6 as a consulting group; correct?

7 A. I did.

8 Q. Did you actually know at the time you wrote
9 this whether Denali was a consulting group?

10 A. I didn't know much about Denali. I assumed
11 they were a consulting group. I had no knowledge, no
12 real intimate knowledge of them.

13 Q. Did you know whether they were a buying group?

14 A. Yes, I did know that they were a buying group.

15 Q. When did you come to learn that?

16 A. I -- I don't remember exactly how I learned it,
17 but I think it was through making an inquiry and
18 learning that they were doing business with
19 Special Markets.

20 Q. And you say -- if you look down in your
21 e-mail -- and it's highlighted here -- you have a
22 sentence that says, "This model is prevalent, but very
23 unhealthy for distribution."

24 Do you see that?

25 A. I do.

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1 Q. Were you referring generally to the GPO or
2 buying group model?

3 A. I was not. I was referring to specifically
4 consultants that their agenda was to gain access to
5 Henry Schein's customer list so they could grow their
6 consulting business and essentially grow a revenue
7 stream on the back of their dentists by offering them a
8 discount on consumables through Henry Schein.

9 Q. Were you talking about all consulting groups
10 when you made that statement?

11 A. Not necessarily.

12 Q. Now, Ms. Titus, this e-mail is a few months
13 after you joined Henry Schein Dental's Mid Market
14 Division; correct?

15 A. That's correct.

16 Q. And a few months after you started working on
17 Schein's buying group strategy in Henry Schein Dental;
18 correct?

19 A. That's correct.

20 Q. And you say in your e-mail at the top to
21 Joe Cavaretta, "It doesn't help to have a GPO policy if
22 Special Markets" -- "SM" -- is that Special Markets?

23 A. It is.

24 Q. -- "is opening up these consulting firms."
25 Do you see that?

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1 A. I do.

2 Q. Did Schein have a GPO policy on the date you
3 wrote this e-mail?

4 A. No, they did not have a policy.

5 Q. So what did you mean then when you wrote, "It
6 doesn't help to have a GPO policy if Special Markets is
7 opening up these consulting firms"?

8 A. I was referring more to strategy because we
9 were building something that we hoped would set the
10 standard for evaluating buying groups throughout our
11 organization nationally and we -- we were looking at
12 making this as universal as possible, so I was really
13 referring to something that I didn't have enough
14 knowledge of, unfortunately.

15 Q. Was there ever a policy at Schein not to open
16 up GPOs or buying groups?

17 A. Never.

18 Q. Was Henry Schein Dental still determining its
19 strategy with respect to buying groups as of the date
20 of this e-mail?

21 A. It was.

22 Q. But was Schein still working with buying groups
23 at this time?

24 A. They absolutely were.

25 Q. Can you give me some examples?

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1 A. Sure.

2 OrthoSynetics.

3 Are you talking about in the
4 Special Markets Division?

5 Q. In any --

6 (Counsel and witness speaking at the same time
7 and cautioned by court reporter.)

8 BY MS. FINCHER:

9 Q. Let's talk about Henry Schein Dental first.

10 A. Okay.

11 Q. Was Henry Schein Dental working with other
12 buying groups as of the date of this e-mail,
13 August 2014?

14 A. They were.

15 Q. Can you give me some examples?

16 A. So I would say Dental Co-Op would be one.

17 That's the one that comes to the top of my head
18 right now.

19 Q. Have you heard of a group called Dental Gator?

20 A. Dental Gator, yes. Uh-huh.

21 Q. Have you heard of a group called Steadfast?

22 A. I have.

23 Q. Do you know whether Schein was working with
24 Dental Gator as of the date of this e-mail?

25 A. I believe they were.

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1 Q. In this e-mail chain you also -- if you go down
2 to the end of that middle paragraph, you tell
3 Ms. Edstrom, "If it makes you feel better, PDCO is not
4 on board for these type of GPO relationships either."

5 Do you see that?

6 A. I do.

7 Q. Is "PDCO" Patterson Dental?

8 A. It is.

9 Q. Did you know whether Patterson was on board for
10 GPO relationships as of the date of this e-mail?

11 A. I did not.

12 In fact, this statement was more of a market
13 observation just looking at the dental landscape, being
14 involved in the marketplace, being very focused on
15 developing buying groups myself. And frankly, my
16 comment was speaking to an FSC. In context, I was
17 trying to get her to refocus and keep doing what she
18 was doing.

19 Q. And just to be clear, did you ever have any
20 communications with anyone from Patterson about GPO
21 relationships?

22 A. Absolutely not.

23 Q. Did Mr. Cavaretta ever tell you anything about
24 Patterson's strategy as it related to buying groups or
25 GPOs?

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1 A. He did not.

2 Q. Did anyone at Henry Schein ever tell you
3 anything about Patterson's strategy as it related to
4 buying groups or GPOs?

5 A. They did not.

6 Q. Now -- and you can put that down, Kurt -- I'd
7 like to talk to you, Ms. Titus, about some of the other
8 buying groups you personally evaluated.

9 A. Okay.

10 Q. Are you familiar with the Dental Cooperative of
11 Utah?

12 A. I am.

13 Q. What is the Dental Cooperative of Utah?

14 A. The Dental Cooperative of Utah is a buying
15 group.

16 Q. When did you first become aware of the
17 Dental Co-Op of Utah?

18 A. I believe I was contacted by Jeff Harmon, who
19 was a regional manager for Utah.

20 Q. Did Schein have a business relationship with
21 the Dental Co-Op of Utah?

22 A. As I understood it, they had a relationship and
23 it was a long-term legacy relationship.

24 Q. What did you learn about the dental cooperative
25 buying group after being introduced by Mr. Harmon?

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1 A. My initial process was to, again, using the
2 same standards and strategies that we were developing,
3 was to contact the COO, Mr. Eberhardt, and to really
4 just ask a lot of questions about who they were, what
5 they do, what their audience is, those kinds of
6 things.

7 Q. Kurt, if you could pull up CX 2239, please.

8 Ms. Titus, this is a May 19, 2014 e-mail chain
9 involving some at Schein and then earlier in the chain
10 Colgate; is that right?

11 A. That's right.

12 Q. And this e-mail chain is about the
13 Dental Cooperative of Utah?

14 A. Correct.

15 Q. Kurt, if you could go to page 2, please.

16 Now, if you look at the bottom of the page,
17 Ms. Titus, you received an e-mail from Francis Keefe
18 regarding the dental co-op; correct?

19 A. I did.

20 Q. Who is Francis Keefe?

21 A. Francis Keefe is the national director for
22 Colgate-Palmolive's preventive division. They sell
23 toothbrushes, floss and other oral health products to
24 the dental community.

25 Q. Does Schein have a relationship with Colgate?

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1 A. We have a relationship that is exclusive with
2 Henry Schein.

3 Q. And can you tell us what that means, an
4 exclusive relationship?

5 A. Meaning that Colgate did not sell through any
6 of our competitive distributors.

7 Q. Do you know why Mr. Keefe sent you an e-mail
8 about the dental co-op?

9 A. I do.

10 Q. Why is that?

11 A. Like myself, Frank Keefe was responsible for
12 a -- the P&L for his -- he was national, so
13 nationally. There was a remarkable event that began
14 taking place that called his attention to it.

15 What was happening is established customers --
16 and they were Henry Schein customers because we were
17 exclusive -- started canceling their preventive
18 shipment plans and as he did a little more
19 investigation discovered from his field team that those
20 plans were being reengaged directly with
21 Procter & Gamble.

22 Q. And were those plans for customers of
23 Henry Schein that were also members of the
24 Dental Co-Op of Utah?

25 A. That's correct. He was able to identify them

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1 as dental co-op members.

2 Q. And what was the issue in learning that those
3 contracts had been canceled?

4 A. The issue is that preventive is one of our
5 most important categories with a dental office, as you
6 can imagine. It represented significant sales to
7 Henry Schein. When we noticed all of these dental
8 plans dropping off, there was a very significant,
9 45 percent drop-off in the sales of Colgate products
10 into these offices.

11 Q. And again, those offices that you're referring
12 to are the offices that were members of the
13 dental co-op buying group?

14 A. That's correct.

15 Q. You then forward that e-mail from Mr. Keefe to
16 Mr. Harmon, Joe Cavaretta and Kevin Upchurch; correct?

17 A. I did.

18 Q. And you reported to them that you had a call
19 with Mr. Eberhardt; correct?

20 A. That's right.

21 Q. And again, who was Mr. Eberhardt?

22 A. Mr. Eberhardt was the chief operating officer
23 for Dental Co-Op.

24 Q. And you go on to state that during your
25 conversation with Mr. Eberhardt you told him that the

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1 moment he signed on with P&G direct and Komet, it was
2 tantamount to throwing down the gauntlet with Schein
3 and acting as a competitor.

4 Do you see that?

5 A. I do.

6 Q. What did you mean by that?

7 A. Up until this point, when we became aware that
8 the dental co-op was working with direct sale
9 Procter & Gamble to cancel Henry Schein business and
10 redirect it to Procter & Gamble, the business -- the
11 relationship with Dental Co-Op was one based on a
12 handshake and based on trust, so there was a lot of I
13 guess hurt feelings, you know, a breach of trust that
14 had happened there.

15 We were surprised that Andy Eberhardt would do
16 something like that without alerting Henry Schein. We
17 considered it aggressive, and we were very concerned.

18 As I started talking with Andy Eberhardt, what
19 I discovered is that his intention was to begin to
20 fill his portfolio with Henry Schein direct
21 competitors.

22 Q. Did that cause you concern?

23 A. It caused me concern, especially understanding
24 that some of those competitors, like our preventive
25 business, were very high-return categories of business

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1 within Henry Schein.

2 Q. You go on to state in your e-mail that
3 Mr. Eberhardt told you that he had 400 members.

4 Do you see that?

5 A. I do.

6 Q. You also state that you told Mr. Eberhardt that
7 the collective volume, two million-plus, was concerning
8 and wondered if he felt he was able to drive
9 compliance.

10 Do you see that?

11 A. I do.

12 Q. Why was the volume of the dental cooperative
13 buying group concerning?

14 A. Based on the number of members that
15 Dental Co-Op had, 400, there would be an expectation
16 that number would be multiplied out by the average
17 spend for private practice dentists, which is
18 approximately industrywide about \$35,000 a year. When
19 you do the math on this, we come out to about \$5,000 a
20 year, so clearly we were very concerned about
21 compliance.

22 Q. And why is that? What did the \$5,000 figure
23 communicate to you?

24 A. It meant that we were getting a very small
25 portion of the business from the dental co-op

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1 members, that they were under -- significantly
2 underperforming.

3 Q. You go on to say, "I think we should meet live
4 when he is back from his motorcycle adventure and
5 discover if we can become an exclusive."

6 Do you see that?

7 A. I do.

8 Q. Were you referring to Mr. Eberhardt?

9 A. I was.

10 Q. Why did you want to discuss exclusivity with
11 Mr. Eberhardt?

12 A. I was tapped by Jeff Harmon and also endorsed
13 by Joe Cavaretta to turn the relationship around.
14 Based on my experience, the fact that I negotiated
15 with many customers, many large customers, they felt
16 confident that I had the skill set to sit down with
17 Andy Eberhardt and find a resolution to what was
18 happening, discover if there was a way that we could go
19 back to a healthy relationship.

20 Q. You then say, "If not, it might be wise to
21 start thinking about an exit strategy as Andy will
22 surely be looking to bring more of our competitors into
23 his portfolio."

24 Do you see that?

25 A. I do.

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1 Q. What was your concern there?

2 A. My concern was essentially to stop the
3 bleeding. We were losing significant business and we
4 needed to stop that, so in the out- -- outcome, if he
5 decided that he didn't want exclusivity, then we needed
6 a backup plan.

7 Q. And at this point, as of the date of this
8 e-mail in May of 2014, had Schein made a decision on
9 its future with the dental co-op?

10 A. We had not.

11 Q. Did you meet with Mr. Eberhardt of the
12 dental co-op after this e-mail?

13 A. I did.

14 Q. Do you remember approximately when that meeting
15 took place?

16 A. As I recall, Mr. Eberhardt was on a
17 cross-country motorcycle trip with a group of his
18 friends. I believe the meeting took place six to eight
19 weeks after the -- post this conversation.

20 Q. When you ultimately did meet --

21 JUDGE CHAPPELL: "Mr. Eastbound" was on a
22 motorcycle trip?

23 THE WITNESS: He was.

24 JUDGE CHAPPELL: What's his first name?

25 THE WITNESS: Andy.

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1 BY MS. FINCHER:

2 Q. Ms. Titus, when you ultimately did meet with
3 Mr. Eberhardt, what did you learn in that
4 conversation?

5 A. Well, unfortunately, it was more of the same.
6 I think Andy Eberhardt was looking to increase the
7 revenue that he was earning from a variety of vendors,
8 manufacturers that were selling into the dental
9 office. This was a way that he could build his revenue
10 stream, and he wasn't happy having an exclusive
11 relationship with Henry Schein. He wanted to bring
12 more competitors into his portfolio and offer those to
13 his members, our customers.

14 Q. And when you say, "He wanted to bring more
15 competitors into his portfolio," are you referring to
16 competitors of Henry Schein?

17 A. I am.

18 Q. Did you specifically ask Mr. Eberhardt in your
19 meeting whether the Dental Co-Op of Utah was willing to
20 be exclusive with Henry Schein?

21 A. I did. I asked him if he would consider
22 canceling the relationship that he had with the
23 competitors that he brought on board.

24 Q. What was his response?

25 A. A definitive no.

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1 Q. Did that create any issues for Schein?

2 A. It did. It did create issues for Schein.

3 Q. Now, after that meeting with Mr. Eberhardt,
4 did you ultimately make a recommendation as to the
5 future of the dental co-op's relationship with
6 Henry Schein?

7 A. I did.

8 Q. Who did you make that recommendation to?

9 A. I made the recommendation to the management
10 team, starting with my boss, Joe Cavaretta,
11 Kevin Upchurch, who was the zone general manager for
12 the area, and then Jeff Harmon, who was the regional
13 manager.

14 Q. And what was your recommendation with respect
15 to the Dental Co-Op of Utah?

16 A. My recommendation is that the relationship was
17 clearly not healthy for Henry Schein. It was
18 cannibalizing existing business and disrupting
19 relationships that we had long-term with our
20 customers.

21 My recommendation was that we leave the door
22 open, because again it was a long-term relationship,
23 and it was our desire to salvage it, but that it was
24 very risky and actually we could measure and manage
25 that and that it was one that we should decline doing

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1 business with.

2 Q. Did anyone at Schein ask you to end Schein's
3 relationship with the dental cooperative?

4 A. They did not.

5 Q. Kurt, if you could please pull up CX 2211.

6 Ms. Titus, this is a July 18, 2014 e-mail chain
7 relating to a call that you had with Kevin Upchurch and
8 Jeff Harmon at Schein regarding the dental co-op;
9 correct?

10 A. Correct.

11 Q. Did this internal call take place after you had
12 your meeting with Mr. Eberhardt of the Dental Co-Op of
13 Utah?

14 A. It did.

15 Q. Now, Kurt, if you could turn to page 3,
16 please.

17 Mr. Upchurch e-mails Joe Cavaretta, copying you
18 and Jeff Harmon, and says, "We had a good call today
19 with Jeff and KT about the Utah (soon to be multi
20 state) Co-Op."

21 Do you see that?

22 A. I do.

23 Q. Does "KT" refer to you?

24 A. It does.

25 Q. What did you, Mr. Harmon and Mr. Upchurch

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1 discuss on this call about the Dental Co-Op of Utah?

2 A. Essentially, I debriefed them on our live
3 meeting. Jeff Harmon was present at that meeting.

4 We discussed the fact that Andy was acting in a
5 predatory manner, cannibalizing existing business. We
6 discussed the fact that he was unwilling, in fact
7 committed to continuing to bring on competitors into
8 his portfolio as an offering to his 400 members.

9 Q. Mr. Upchurch goes on to say, "We will no longer
10 be a part of the Utah Co-Op."

11 Do you see that?

12 A. I do.

13 Q. Were you involved in the decision-making
14 process to end Schein's relationship with the co-op?

15 A. I was involved in providing a debrief and an
16 evaluation and a recommendation.

17 Q. Do you know who ultimately made the final
18 decision to no longer work with the dental co-op?

19 A. I believe it was Kevin Upchurch.

20 Q. And do you know why Mr. Upchurch ultimately
21 decided not to continue to work with the dental co-op?

22 A. I do.

23 Q. Why is that?

24 A. Kevin had -- as the zone general manager, like
25 myself, was responsible for the P&L and the sales and

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1 for growing those sales in that region, and this was
2 hurting our sales. This was cannibalizing existing
3 business. This was no longer a healthy relationship
4 and was in fact putting our business, our future
5 business, at significant risk.

6 Q. Even though Schein decided to no longer partner
7 with the dental co-op, did Schein continue to give
8 discounts to members of the co-op?

9 A. They did.

10 Q. Now, if we -- go to page 2, please.

11 And this is an e-mail further up the chain and
12 an e-mail from Mr. Kevin Upchurch.

13 He writes, "The Co-Op is turning into a GPO
14 (even if they don't think they are one now), from what
15 KT has observed in Texas, NM and from Tim S, HSD does
16 not want to enter the GPO world."

17 Do you see that?

18 A. I do.

19 Q. Do you believe that's an accurate statement?

20 A. I do not.

21 Q. Why not?

22 A. One, I think Kevin had just a very cursory
23 knowledge of what we were doing in the buying group or
24 GPO world. I think he doesn't have a good
25 understanding of what a GPO was because, in essence,

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1 Dental Co-Op was a GPO or a buying group.

2 Q. Was Henry Schein in the GPO world as of the
3 date of this e-mail, July 2014?

4 A. We definitely were.

5 Q. Did you ever tell Mr. Upchurch that
6 Henry Schein Dental did not want to enter the GPO
7 world?

8 A. I did not.

9 Q. Did Tim Sullivan ever tell you that
10 Henry Schein Dental did not want to enter the GPO
11 world?

12 A. He did not.

13 Q. Did Mr. Sullivan ever tell you not to work with
14 GPOs or buying groups?

15 A. He did not.

16 Q. Did Mr. Sullivan ever express to you any
17 negative views about GPOs or buying groups?

18 A. Absolutely not.

19 Q. Ms. Titus, did Schein's decision to end its
20 relationship with the dental co-op have anything to do
21 with the fact that it was a buying group or GPO?

22 A. None whatsoever.

23 Q. Did Schein's decision to end its relationship
24 with the Dental Co-Op of Utah have anything to do with
25 Patterson or Benco?

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1 A. None whatsoever.

2 Q. Now, Ms. Titus -- Kurt, you can take that
3 down -- I'd like to talk to you about some of the
4 buying groups that were transferred from
5 Special Markets to Henry Schein Dental with the
6 creation of the Mid Market Division.

7 A. Okay.

8 Q. Which buying group relationships did
9 Henry Schein Dental inherit from Special Markets at the
10 time Mid Market was created?

11 A. The two that come to mind immediately are
12 Breakaway Practice and Steadfast Medical.

13 Q. After these two buying groups transferred over
14 from Special Markets to Mid Market, did you engage in
15 any fact-finding regarding those groups?

16 A. I did.

17 Q. Why did you do that?

18 A. I was the director and a new director for our
19 Mid Market emerging group practice. These customers
20 were doing a significant amount of business with
21 Henry Schein. I didn't know anything about them, and
22 it was my job to develop a profile of that customer
23 that I could understand their needs more thoroughly and
24 I could engage the right resources to grow their
25 business.

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1 Q. Did anyone at Schein specifically instruct you
2 to look into the Steadfast Medical buying group
3 relationship?

4 A. Absolutely not.

5 Q. Did anyone from Schein specifically instruct
6 you to look into the Breakaway buying group
7 relationship?

8 A. Absolutely not.

9 Q. So let's talk a little bit more about
10 Steadfast Medical.

11 A. Okay.

12 Q. After looking into Steadfast Medical, what did
13 you learn?

14 A. Steadfast Medical was a buying group with a
15 procurement model.

16 Q. What do you mean by "a procurement model"?

17 A. Steadfast Medical was strictly looking to
18 enroll members to gain discounts on consumable
19 supplies.

20 Q. Were there any issues that you uncovered with
21 respect to Steadfast's procurement model that were of
22 concern to Henry Schein?

23 A. There were many. I would say one of the
24 biggest concerns is that when we looked at their member
25 list, which was my habit, to first look at the member

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1 list, and we took those very same members and looked at
2 them from the year before, and our business was down
3 nearly half with the same customers.

4 Q. In other words, you had looked at a group of
5 existing Schein customers prior to them joining
6 Steadfast in terms of the amount of sales and then
7 looked at the total sales once they had joined
8 Steadfast; is that right?

9 A. That's correct. We looked at the collective
10 business of those said members, those very same
11 members, the previous year and then looked at it at the
12 same time the following year, and our business was down
13 almost 50 percent.

14 Q. And what was your reaction to learning this
15 information regarding Steadfast, specifically the
16 decline in Schein's business?

17 A. I was very shocked and I was very concerned.

18 Q. What steps did you take next after learning
19 that information?

20 A. Again, I needed to find out why and I needed
21 to go to Steadfast as the source of that information.
22 What I learned following those inquiries further gave
23 me concern.

24 What I learned is that we had a group of
25 offices that were their members. They were taking

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1 orders from that group of offices and they were farming
2 it out to the lowest bidder with four or five of our
3 competitors.

4 Q. Kurt, if you could pull up RX 2207, please.

5 Ms. Titus, this is an April 24 -- I don't think
6 that's the right one. Maybe try CX.

7 There we go.

8 Ms. Titus, this is an April 24, 2014 e-mail
9 from you to Joe Cavaretta and Dean Kyle regarding
10 Steadfast Medical.

11 Do you see that?

12 A. I do.

13 Q. And in this e-mail you state, "Under their
14 current model, it is my recommendation that we cease
15 doing business with Steadfast."

16 Do you see that?

17 A. I do.

18 Q. What factors did you consider in making that
19 recommendation?

20 A. First and most concerning is that our business
21 was going the opposite direction. Instead of growing,
22 we were shrinking and we were shrinking significantly.

23 Secondly, what we learned is that they were
24 offering no added value to the customer whatsoever.

25 Third, they were standing between us and our

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1 customer. We knew that they took the order, and they
2 discouraged us from having any engagement directly
3 with the customer, which was not our model.

4 These were independent oral surgery and perio
5 offices. We have a full portfolio of services,
6 equipment, technology to sell to these groups, and we
7 were being asked not to engage directly with those
8 customers. That was part of the original strategy that
9 we wanted that access.

10 Also we discovered that one of these -- the
11 member offices would take an order that was earmarked
12 for Henry Schein, and Steadfast would take that very
13 same order and they would redistribute it to our
14 competitors. We would get a portion of it.

15 So let's say, for example, it was a
16 \$3,000 order. We might realize somewhere between
17 \$500 and \$1,000 instead of the larger order that the
18 customer had earmarked for Schein.

19 Q. Did Steadfast ask your permission to
20 redistribute the Schein customer order to your
21 competitors?

22 A. They did not.

23 Q. And I'm assuming by your testimony, Ms. Titus,
24 that Schein did not have any notice that that was how
25 Steadfast would be operating?

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1 A. That is correct. We had no notice and we were
2 very unhappy about it.

3 Q. Ms. Titus, is this e-mail that we're looking at
4 now on CX 2207 -- is this a listing of the factors you
5 considered in making your recommendation to end the
6 relationship with Steadfast Medical?

7 A. Essentially, it is. It's dual. I was
8 gathering information about the characteristics and the
9 business practices of Steadfast Medical and, by
10 contrast, demonstrating that these were -- putting a
11 discerning eye on it, these were the things that
12 constituted a very poor relationship for Henry Schein.

13 Q. Ms. Titus, anywhere in this e-mail or the
14 number of bulleted factors you list do you have any
15 references to Benco or Patterson?

16 A. I had no idea, and there are no references
17 whatsoever.

18 Q. Why not?

19 A. It wasn't a concern to me. I was there on
20 behalf of Henry Schein.

21 Q. Ms. Titus, what steps, if any, did you take
22 next with respect to Steadfast?

23 A. Again, my practice was that we had tremendous
24 reverence for our customers. All of our customers are
25 precious to us, and I took on that mantle that every

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1 relationship can be corrected with proper negotiation,
2 so that was my plan, was to seek out and engage with
3 their executive and start a process of dialogue sort of
4 coming to an agreement of a win-win for both
5 stakeholders.

6 Q. Kurt, can you pull up RX 2201, please.

7 Ms. Titus, this is an April 28, 2014 e-mail
8 chain regarding Steadfast Medical; correct?

9 A. Correct.

10 Q. And earlier in the chain you exchanged some
11 e-mails with Jon Staples regarding setting up a
12 meeting; is that right?

13 A. That's right.

14 Q. And who is Jon Staples?

15 A. Jon Staples is the CEO for Steadfast Medical.

16 Q. Now, you tell Mr. Staples in your e-mail here
17 on April 22, 2014 that you and Mr. Cavaretta -- was
18 that "Joe" Mr. Cavaretta?

19 A. That's Joe Cavaretta.

20 Q. -- that you and Mr. Cavaretta agree, "in order
21 to continue to support your growth, we [sic] need to
22 have a better understanding of how you allocate to the
23 distribution network and discover if there is [a] way
24 to create a better collaboration that provides
25 prosperity to all the stakeholders."

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1 Do you see that?

2 A. I do.

3 Q. What were you intending to communicate there?

4 A. What I wanted Mr. Staples to know is that we
5 were concerned about the business, number one. I had
6 expressed in another, I think another message that our
7 business was trending down, that we were very
8 concerned about that and we didn't have access to --
9 directly to the customers.

10 I wanted to let him know that we were willing
11 to have a discussion with him about their practices
12 and see if we could find a reciprocity or a mutuality
13 that would be a win-win for all of us so that we could
14 all prosper. At this point Henry Schein was the one
15 that was being significantly hurt.

16 Q. Kurt, if you could flip to an earlier page,
17 please.

18 Try page 2.

19 Actually, go to page 1, please, the bottom.

20 You go on to tell Mr. Staples in your e-mail
21 here, "Unfortunately, our reporting shows that under
22 Steadfast Medical, business for that same group of
23 customers is trending down."

24 Do you see that?

25 A. I do.

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1 Q. Are you referring there to the discovery you
2 made in looking at the group of Henry Schein customers
3 that you mentioned earlier --

4 MS. GOFF: Objection.

5 BY MS. FINCHER:

6 Q. -- it was business --

7 MS. GOFF: Sorry.

8 MS. FINCHER: If I could finish my question,
9 please.

10 BY MS. FINCHER:

11 Q. Ms. Titus, what are you referring to there in
12 terms of business for the same group of customers was
13 trending down?

14 A. We had Steadfast member lists because we had
15 opened all of those accounts on behalf of Steadfast's
16 request. We also had their information from the
17 previous year for the same group of customers.

18 We looked at the collective sales for that same
19 group of customers from the previous year and at the
20 same month we looked at those same customer sales, and
21 we were significantly down.

22 Q. By how much?

23 A. Somewhere closer to half.

24 Q. You then say, "My guess is that Steadfast is
25 reallocating that business to other suppliers."

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1 Do you see that?

2 A. I do.

3 Q. Did you ever confirm that Steadfast was
4 reallocating Schein's --

5 A. I did.

6 JUDGE CHAPPELL: You need to wait for her to
7 finish the question.

8 THE WITNESS: Yes. I'm sorry, Judge.

9 BY MS. FINCHER:

10 Q. Ms. Titus, if you could please read, very
11 slowly, the portion of your e-mail that begins "To be
12 clear."

13 A. (As read): To be clear, we are not against
14 having GPO partnerships. Quite the contrary, we have a
15 number of them which all parties are in a position to
16 win. I would like to think that it is possible with
17 Steadfast as well. I hope you -- your understanding --
18 you understanding our position, Jon, but in order to
19 continue we need to find a common ground that makes
20 financial and business sense for all of the
21 stakeholders.

22 Q. Ms. Titus, are you telling a buying group, in
23 the middle of the alleged conspiracy, that you have a
24 number of GPO partnerships in which all parties are in
25 a position to win?

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1 A. I am.

2 Q. Are you telling a buying group, in the middle
3 of the alleged conspiracy, that you would like to
4 think a win-win relationship is possible with them as
5 well?

6 A. I am.

7 Q. As the date of this e-mail, Ms. Titus, did you
8 want to continue to work with Steadfast?

9 A. Very much so.

10 Q. Ultimately, did a meeting between Mr. Staples
11 and Mr. Cavaretta ever occur?

12 A. Unfortunately not.

13 Q. Why not?

14 A. After multiple attempts to set up a time to
15 meet with Mr. Staples and we were willing to fly to his
16 location and also offering alternatives like conference
17 calls, Mr. Staples stopped responding.

18 Q. Did you ultimately recommend ending the
19 relationship with Steadfast Medical?

20 A. I did.

21 Q. Why?

22 A. I felt that we had a partner who was unwilling
23 to compromise or negotiate and was demonstrating that
24 by his lack of response.

25 Q. Kurt, if you could pull up RX 2208, please.

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1 Ms. Titus, this is a June 16, 2014 e-mail chain
2 with Mr. Staples.

3 Do you see that?

4 A. I do.

5 Q. Is this the e-mail in which you inform
6 Mr. Staples that Schein is no longer able to do
7 business with Steadfast?

8 A. That's correct.

9 Q. And if you could turn to page 2, please.

10 And I'd like to draw your attention to your
11 e-mail here, where you say, "After examination of your
12 GPO business model we have concluded that continuation
13 of our current relationship is counter to our business
14 practices."

15 Do you see that?

16 A. I do.

17 Q. What did you mean by "counter to our business
18 practices"?

19 A. Our business practices were intended to grow
20 business and to work collaboratively in a healthy
21 relationship with a buying group. What we were seeing
22 here is a buying group that -- that was in violation,
23 for lack of a better word, of two of our most critical
24 strategic components, exclusivity and growing the
25 business through compliance.

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1 Q. Was Steadfast's model counter to Schein's
2 business practices solely because it was a GPO or
3 buying group?

4 A. Absolutely not.

5 Q. Who ultimately made the decision to end the
6 relationship with Steadfast?

7 A. Ultimately the decision was made by Randy Foley
8 in Special Markets.

9 Q. And do you know why Mr. Foley ultimately made
10 the decision to end the relationship with Steadfast?

11 A. Because the customer Steadfast was -- had --
12 Randy Foley had oversight on that, that particular
13 buying group.

14 Q. You also tell Mr. Staples in the same e-mail,
15 "If at some future date you are interested in
16 exploring an exclusive relationship with Henry Schein,
17 we would welcome revisiting a mutually beneficial
18 partnership."

19 Do you see that?

20 A. I do.

21 Q. Why did you tell Steadfast that?

22 A. I told Steadfast that because I was
23 disappointed that we couldn't find a way to muscle
24 through the differences in the way we saw the world
25 and that we really wanted to redeem the relationship,

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1 but only in a way where we weren't -- Steadfast wasn't
2 cannibalizing our business and we weren't losing ground
3 so quickly.

4 Q. Kurt, if you could turn to page 1, please.

5 Ms. Titus, do you believe that you left things
6 on good terms with Steadfast Medical buying group?

7 A. I do. And I was very respectful of Steadfast
8 and their right to do business the way that they wanted
9 to, but I always felt that there was a hope that we
10 could revisit at a later date.

11 Q. And if you take a look at Mr. Staples' e-mail
12 to you, his response on June 16, 2014, he tells you,
13 "While we are disappointed that you have chosen to no
14 longer partner with us, I wanted to let you know that
15 your company was a very good partner"; is that right?

16 A. That's right.

17 Q. And do you recall Mr. Staples expressing that
18 sentiment to you?

19 A. I do.

20 Q. Did Mr. Staples ever reach out to you again
21 about a potential partnership between Schein and
22 Steadfast buying group?

23 A. Unfortunately, he did not.

24 Q. Did Schein nevertheless undertake efforts to
25 still retain the business of its Steadfast members?

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1 A. We did.

2 Q. You can take that down, Kurt. Thank you.

3 I'd like to talk now about Breakaway.

4 Are you familiar with a group called Breakaway,
5 Ms. Titus?

6 A. I am.

7 Q. What is Breakaway?

8 A. Breakaway is a buying group.

9 Q. Did Breakaway have a business relationship with
10 Henry Schein?

11 A. They did.

12 Q. Who formed the relationship with Breakaway
13 buying group?

14 A. The relationship initially was formed with
15 Special Markets.

16 Q. Did Breakaway get transferred to
17 Henry Schein Dental with the creation of the
18 Mid Market Division?

19 A. Correct.

20 Q. Prior to 2014, was Special Markets doing
21 business with Breakaway?

22 A. They were.

23 Q. Did Breakaway fall into your area of
24 responsibility once you moved over to
25 Henry Schein Dental?

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1 A. They did.

2 Q. What, if anything, happened with Breakaway
3 buying group after it was transferred to
4 Henry Schein Dental?

5 A. I needed to develop a relationship with
6 Breakaway. As I said, they were doing a significant
7 amount of business with Henry Schein, and I didn't know
8 very much about them and yet I was responsible for
9 growing sales with Breakaway and other customers, so my
10 first order of business was to collect information from
11 my internal peer group.

12 Q. Did Mr. Cavaretta ever ask you to look into or
13 evaluate Breakaway?

14 A. He did not.

15 Q. Did anyone else at Henry Schein ever ask you to
16 look into or evaluate Breakaway buying group?

17 A. They did not.

18 Q. Then why did you, Kathleen Titus, look into
19 Breakaway?

20 A. I have a very strong work ethic, and I believe
21 that we should deliver the best of class to our
22 customers. I didn't know very much about Breakaway,
23 other than they were a buying group. I wanted to know
24 more about them.

25 The reason I wanted to know more about them is

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1 it was my job to grow business with people like
2 Breakaway Dental, and I was seeking to understand who
3 they were, what their needs were and how we could work
4 together to introduce more Henry Schein products and
5 services into their environment.

6 Q. Did Henry Schein Dental continue to do
7 business with Breakaway buying group after it was
8 transferred from Special Markets with the creation of
9 Mid Market?

10 A. Yes, we did. Not only did we continue to do
11 business with them, but we continued to grow their
12 business and we still are doing business with them.

13 Q. Kurt, if you could please pull up RX 2718.
14 Ms. Titus, you sent this e-mail on
15 May 9, 2014 to a number of folks at Henry Schein
16 regarding Breakaway Dental.

17 Do you see that?

18 A. I do.

19 Q. And the subject is: Breakaway Dental -
20 URGENTLY SEEKING INFO ON THE CORPORATE RELATIONSHIP.

21 Do you see that?

22 A. I do.

23 Q. And why did you send this e-mail?

24 A. This goes back to my statement about seeking
25 to understand from my team members first on what they

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1 knew about Breakaway's business model, what they knew
2 about their footprint, their vision, their mission,
3 again, just collecting information so I could build a
4 profile.

5 Q. You say in your e-mail, "There is no question;
6 Breakaway's business model has a GPO component and we
7 are supporting it."

8 Do you see that?

9 A. I do.

10 Q. Did you determine, when you first looked into
11 Breakaway, that it was a buying group?

12 A. I did.

13 Q. You then go on to say, "This is causing a lot
14 of confusion and misinformation, especially as when a
15 new affiliate opens the local HSD team are not provided
16 background."

17 Do you see that?

18 A. I do.

19 Q. So what was the nature of the confusion
20 regarding Breakaway at this time?

21 A. So Breakaway had an extremely large national
22 footprint. They were doing business with private
23 practice dentists, and those dentists were building
24 practices throughout the United States.

25 When a new Breakaway Practice or a new

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1 Breakaway member was opening in a location that had a
2 distant geography from the home office in San Antonio,
3 Texas, there was no communication with the local team
4 that was required to engage with that practice and --
5 and help them with what they needed to get their office
6 opened.

7 Q. You then go on to say, "If we are going to
8 continue our relationship, I need to put a system of
9 communication in place so that we have cooperation from
10 our local teams."

11 Do you see that?

12 A. I do.

13 Q. What were you envisioning in terms of a system
14 of communication related to Breakaway?

15 A. What I was envisioning was sharing information
16 with the team holders in other geographies so that
17 they would know who Breakaway is. They would know what
18 offerings that we had in place for Breakaway Dental.
19 And frankly, I felt that Breakaway Dental and our local
20 people deserved to all be part of the same mission so
21 that we could take good care of their customers when
22 they opened.

23 Q. Did Schein in fact continue to do business with
24 Breakaway Dental buying group?

25 A. We did.

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1 Q. To your knowledge, did Schein ever enter into a
2 formal contract with Breakaway?

3 A. We did.

4 Q. Ms. Titus, are you aware that the FTC alleges
5 that Schein was involved in a conspiracy not to do
6 business with buying groups from 2011 to 2015?

7 A. I am.

8 Q. To your knowledge, did Schein continue to do
9 business with the Breakaway buying group throughout
10 that entire alleged conspiracy period?

11 A. Throughout the entire period.

12 Q. Kurt, you can take that down. Thank you.

13 JUDGE CHAPPELL: How much more time do you
14 think you need?

15 MS. FINCHER: Not long. Probably ten minutes.

16 JUDGE CHAPPELL: Go ahead.

17 BY MS. FINCHER:

18 Q. Are you familiar with a group called
19 Klear Impakt?

20 A. I am.

21 Q. And what is Klear Impakt?

22 A. Klear Impakt is a buying group.

23 Q. Okay. And Kurt, if you could pull up CX 2208.

24 Now, this is a January 22, 2015 e-mail chain
25 in which you forward an e-mail from Rich Johnson;

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1 correct?

2 A. Correct.

3 Q. Who is Rich Johnson?

4 A. Rich Johnson is one of the principals at
5 Klear Impakt buying group.

6 Q. And when did you initially engage in
7 discussions with the Klear Impakt buying group?

8 A. Again, using the strategy and the criteria
9 that we had developed, my first order of business was
10 to collect information on who they were, their scope
11 of membership, who those members were, what their
12 vision and their mission, whether they were aligned in
13 their values and their integrity that they would serve
14 our brand well and we would serve theirs well, whether
15 they could offer us exclusivity, whether they could
16 promote our business solutions portfolio which
17 included education and nonclinical business services,
18 and whether they could comply, their members would
19 comply, with an agreement with Henry Schein as a prime
20 vendor.

21 Q. And during what time do you recall originally
22 engaging in those discussions and negotiations with
23 Klear Impakt?

24 A. As I recall, it was Q4 of 2014.

25 Q. Okay. And Kurt, if you could turn to page 2,

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1 please.

2 And this is an e-mail that you sent to the
3 Klear Impakt buying group; correct?

4 A. That's correct.

5 Q. And if you look down in your e-mail, you say,
6 "Klearimpakt is a testimony that not all are created
7 equal... oh, and the cream just rises to the top!"

8 Do you see that?

9 A. I do.

10 Q. What were you expressing to Klear Impakt
11 there?

12 A. That I liked them very much and that they fit
13 our criteria extremely well.

14 Q. And then you also say that you feel "encouraged
15 that our Senior leadership will want to continue the
16 discussion."

17 Do you see that?

18 A. I do.

19 Q. How did you know that?

20 A. Again, I knew that they fit our criteria or
21 strategy for engaging with buying groups that would
22 present a healthy relationship for all the stakeholders
23 and would grow the Henry Schein business.

24 I also liked the fact that they had a lot of
25 infrastructure built into their model, that they were

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1 offering education and other supportive services to
2 support their dentists, making them better providers
3 and deliverers of healthcare.

4 Q. So did you think at this point in time that
5 Klear Impakt might be a good fit for Schein?

6 A. I thought it would be a very good fit for
7 Schein.

8 Q. During this evaluation process that I believe
9 you said began in late 2014 and then continued on into
10 early 2015, did anyone at Schein ever tell you not to
11 do business with the Klear Impakt buying group?

12 A. They did not.

13 Q. Did anybody at Henry Schein Dental ever ask
14 you to end negotiations with the Klear Impakt buying
15 group?

16 A. They did not.

17 Q. What did Schein ultimately decide to do with
18 Klear Impakt?

19 A. Ultimately we entered a contract, a prime
20 vendor agreement with Klear Impakt, which is still
21 current today.

22 Q. Kurt, you can take that down, please.

23 Ms. Titus, are you familiar with a group called
24 Dentistry Unchained?

25 A. I am.

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1 Q. What type of group is Dentistry Unchained?

2 A. It's a buying group.

3 Q. Is that another buying group that you vetted?

4 A. That's correct.

5 Q. And how was the group brought to your
6 attention?

7 A. The group was brought to my --
8 Dentistry Unchained was brought to my attention by the
9 regional manager for Colorado, Mr. Rudy Wolf.

10 Q. Did you enter into negotiations with the
11 Dentistry Unchained buying group?

12 A. I did.

13 Q. Approximately when did those negotiations
14 begin?

15 A. If recollection is correct, I believe it was
16 2015.

17 Q. And how long were you in negotiations with the
18 Dentistry Unchained buying group?

19 A. Oh, close to a year.

20 Q. And did Schein end up partnering with
21 Dentistry Unchained?

22 A. We did not.

23 Q. And why not?

24 A. There were a number of disturbing factors that
25 came up. As we were learning more about

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1 Dentistry Unchained and our negotiations moved along,
2 exclusivity and compliance were a very big part of what
3 the discussions were. They met that criteria.

4 Unfortunately, towards the end of the
5 negotiations, we made a discovery that was extremely
6 disturbing and we felt was a breach of trust.
7 Dentistry Unchained launched a website in which they
8 were featuring, prominently featuring, our competitor
9 for some technology and for also some business
10 solutions, two of our most important units of
11 business.

12 Q. Did Dentistry Unchained buying group ever tell
13 you during your negotiations that it had entered into a
14 competitive relationship with another distributor?

15 A. They did not.

16 Q. What did Schein decide to do with respect to
17 the Dentistry Unchained opportunity?

18 A. Again, the practice was to see if we could find
19 a compromise. That compromise would be to sever the
20 relationship and remove competitive information from
21 their website. They refused.

22 Q. Ms. Titus, in your opinion, did Schein's
23 decision-making with respect to Dentistry Unchained in
24 the 2015 to 2016 period differ in any way from prior
25 evaluations of buying groups?

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1 A. It did not.

2 JUDGE CHAPPELL: You need to --

3 THE WITNESS: We --

4 JUDGE CHAPPELL: Hold it.

5 You need to rephrase that. You're asking a
6 fact witness, a lay witness, for an opinion. Either
7 ask her a question or don't.

8 MS. FINCHER: Okay.

9 BY MS. FINCHER:

10 Q. Ms. Titus, as part of your experience in
11 evaluating buying groups at Henry Schein, was there
12 anything that stood out to you in terms of the
13 Dentistry Unchained evaluation that differed in any
14 way from any of your prior evaluations of buying
15 groups?

16 A. It did not. In fact, the standards were the
17 same. They were just more formula -- more form -- more
18 formal and better articulated.

19 Q. Now, Ms. Titus, I'd like you -- to bring to you
20 very quickly to the present.

21 What's the process like now when a buying group
22 approaches Schein?

23 A. Today we have a resource. We hired this
24 resource in and created a sub- -- subset of our
25 Mid Market business unit. We call it alternative

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1 purchasing. And we have resources allocated to engage
2 directly with new buying groups.

3 Q. Do you believe that your efforts in the
4 2014 time frame to formalize a buying group strategy at
5 Schein were successful?

6 A. Yes, I do. I believe that my work -- I poured
7 a lot of time and effort into this. I believe that I
8 helped to formalize it. I believe that I helped to
9 standardize it, and I believe that the work that I did
10 is very much a by-product of where we are today with a
11 dedicated division to help these groups.

12 Q. Ms. Titus, at any time during your employment
13 at Henry Schein, has Benco or Patterson's strategy
14 related to GPOs or buying groups impacted in any way
15 Schein's decision-making with respect to buying
16 groups?

17 A. It has not.

18 It has always been my goal to do what's right
19 for Henry Schein. It has always been my goal to work
20 on behalf of creating good relationships and to grow
21 sales for Henry Schein. My competitors were never part
22 of the discussion process.

23 MS. FINCHER: That's all I have, Your Honor.

24 JUDGE CHAPPELL: Will there be any cross?

25 MS. GOFF: There will be, yes, Your Honor.

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1 JUDGE CHAPPELL: How much time do you think you
2 need?

3 MS. GOFF: An hour and a half.

4 JUDGE CHAPPELL: All right. How much time do
5 you need for lunch today?

6 MR. McDONALD: Whatever you want, Your Honor,
7 we can do it. Half hour, 45 minutes, whatever you
8 want.

9 JUDGE CHAPPELL: 45 minutes okay with you?

10 MS. GOFF: Sure, Your Honor.

11 JUDGE CHAPPELL: We'll reconvene at 3:00 p.m.
12 That's 47 minutes.

13 (Whereupon, at 2:12 p.m., a lunch recess was
14 taken.)

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1 A F T E R N O O N S E S S I O N
2 (3:03 p.m.)

3 JUDGE CHAPPELL: Okay. We're back on the
4 record.

5 During the direct examination of this witness,
6 I pointed out the attorney was asking for an opinion
7 from a lay or fact witness. And apparently, the
8 witness did not hear me and answered, which I just
9 realized.

10 That question and that response will not be
11 considered and will not be cited for any proposition or
12 issue in this case. It's currently at 2:09 p.m.
13 line 23 through 2:09 p.m. line 1.

14 Proceed.

15 MR. GEORGE: Thank you, Your Honor.

16 - - - - -

17 DIRECT EXAMINATION

18 BY MR. GEORGE:

19 Q. Hello, Ms. Titus.

20 My name is Andrew George -- we haven't met
21 before. My name is Andrew George, and I represent
22 Patterson. It's nice to meet you.

23 A. Thank you.

24 Q. You said on direct I believe that you felt
25 personally diminished by the accusation that Schein

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1 conspired with Patterson and Benco not to work with
2 buying groups; is that right?

3 A. I did.

4 Q. Are you aware that the FTC has listed you in
5 sworn court documents as a person who has knowledge of
6 such an agreement?

7 A. I am not.

8 Q. Kurt, can you please pull up RX 2958.

9 MS. GOFF: Your Honor, I'm going to object.
10 The witness is not on this document, has no basis to
11 testify about this document. And in addition,
12 Ms. Titus is not on Patterson's witness list.

13 MR. GEORGE: Whether or not she's on our
14 witness list doesn't -- isn't particularly relevant.
15 She is named in the document, and that's the part that
16 I'm going to point her to.

17 MS. GOFF: Your Honor, this is a legal document
18 related to discovery in this matter, has no bearing on
19 Ms. Titus' testimony. She's here to provide facts that
20 she knows.

21 JUDGE CHAPPELL: Discovery in the case is
22 relevant. Discovery in the case may be inquired into
23 and upon when a witness is on the stand. Your
24 objection is overruled.

25 MS. GOFF: Okay. Thank you, Your Honor.

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1 BY MR. GEORGE:

2 Q. Kurt, can you please turn to page 10 -- 010 --
3 thank you -- and call out -- thank you.

4 Do you see, Ms. Titus, the line that begins,
5 "The following persons have knowledge of the facts
6 supporting the allegations in Paragraphs 7, 8 and
7 36 and the finding of the agreement alleged in the
8 Complaint"?

9 Do you see that, Ms. Titus?

10 A. I do.

11 Q. And then if you can turn to the top of the next
12 page.

13 Do you see your name listed there at the top,
14 Ms. Titus?

15 A. I do.

16 Q. Is that a true statement?

17 Do you have knowledge of the facts of this --
18 of a -- an agreement in this case?

19 A. I'm not sure I understand the question.
20 I'm sorry.

21 Q. Sure. I'm sorry.

22 Is this statement true about you?

23 A. That I have knowledge of the facts?

24 Q. Supporting the allegations in the FTC's
25 complaint is that the -- that there was a conspiracy in

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1 this case?

2 A. That is not true.

3 Q. Are you aware that the FTC has also named you
4 in sworn court documents as a person who either
5 referred to or enforced a conspiracy with Patterson and
6 Benco?

7 A. I was not aware of that.

8 Q. Kurt, could you please pull up RX 2957 and turn
9 to page 13.

10 Specifically, right in the middle, "Other
11 Schein executives," the middle of that page.

12 Do you see that paragraph there, Kurt?

13 Okay. And you see the part that he just
14 highlighted at the beginning of that sentence, "Other
15 Schein executives and employees also referred to and/or
16 enforced Schein's policy not to provide discounts to or
17 compete for the business of Buying Groups,
18 including" -- and your name is listed, Kathleen Titus.

19 Is that a true statement?

20 A. That is not a true statement.

21 Q. Have you ever referred to or enforced a
22 conspiracy involving Patterson?

23 A. No, I have not, and there was no conspiracy.

24 Q. Well, let's look back at CX 2220, which was
25 brought up during Ms. Fincher's questioning.

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1 Do you remember giving a deposition in this
2 case?

3 A. I do.

4 Q. And do you remember being asked about this
5 document during your deposition?

6 A. Not specifically, but there were a lot of
7 documents.

8 Q. Fair enough.

9 Would you ever testify that this document shows
10 Patterson participating in a conspiracy?

11 A. I would not.

12 Q. Kurt, can you please pull up RX 2958, and go to
13 page 10.

14 Now, I'm going to represent to you, Ms. Titus,
15 that this number at the end of paragraph 3,
16 Henry Schein 000003664, that's the document we just
17 looked at.

18 A. Okay.

19 Q. Now, Kurt, if you could turn to page 25 of
20 this.

21 This document is dated August 17, 2018.

22 Do you see that, Ms. Titus?

23 A. I do.

24 Q. You were deposed in this case back in June of
25 2018; is that right?

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1 A. That sounds right.

2 Q. Okay. So this, this document that we're
3 looking at here, this is from after your deposition.

4 A. Okay.

5 Q. Okay. And if you testified at your deposition
6 that that document doesn't show Patterson
7 participating in a conspiracy, would that have been a
8 lie?

9 A. It would not.

10 Q. Let's turn back to the document itself.

11 Can you please pull up again CX 2220.

12 And zoom in on the middle paragraph starting
13 with "Thanks, Kristi."

14 All right. So starting with the language that
15 begins, "They are a consulting group" and in particular
16 that "They also like to take an 'Admin' or 'Marketing'
17 fee on the collective volume of their clients" and that
18 they represent a layer between you and your customer,
19 is this the sort of thing you were talking about when
20 you told Ms. Fincher when she was asking you questions
21 that some GPOs are not so good?

22 A. That is correct.

23 Q. You said in this e-mail that -- that some GPOs
24 are just looking to create a revenue stream on the back
25 of your clients; right?

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1 A. That's right.

2 Q. Is this the sort of thing you meant by some
3 GPOs not being very good?

4 A. It is.

5 Q. That they're just looking to take their taste?

6 MS. GOFF: Objection. Leading.

7 THE WITNESS: I'm sorry. I didn't hear the
8 question.

9 BY MR. GEORGE:

10 Q. Is it a fair characterization --

11 JUDGE CHAPPELL: Hold it.

12 There was an objection. Unless you want to --

13 MR. GEORGE: I apologize, Your Honor.

14 JUDGE CHAPPELL: Do you want to rule on it?

15 MR. GEORGE: I can rephrase.

16 JUDGE CHAPPELL: All right. Rephrase.

17 When someone stands up or speaks, hold your
18 answer.

19 THE WITNESS: Okay.

20 BY MR. GEORGE:

21 Q. What do you mean when you say that they're just
22 looking to create a revenue stream on the back of your
23 clients?

24 A. My intention for this statement was to call out
25 that they offered nothing more than discounts off

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1 consumable supplies.

2 Q. You used the word "predatory" before.

3 Is that what you were talking about when you
4 used the word "predatory"?

5 A. It is.

6 Q. Now, you say at the end of this e-mail, "If it
7 makes feel better, PDCO is not on board for these
8 types [sic] of GPO relationships either"; right?

9 A. I do.

10 Q. Now, just to confirm, you have no knowledge of
11 what Patterson's policies are towards GPOs or buying
12 groups; right?

13 A. None whatsoever.

14 Q. And you're not aware of any communications
15 between anyone at Patterson and anyone at Schein
16 regarding buying groups?

17 A. None whatsoever.

18 Q. You said earlier to Ms. Fincher that when you
19 had said that PDO -- excuse me -- PDCO wasn't on board
20 for these types of GPO relationships that that was a
21 market observation. Do you remember saying that?

22 A. I do.

23 Q. What do you mean by that?

24 A. Meaning that my full-time job was to live, eat
25 and breathe our mid-market and my observations was I

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1 didn't run into Patterson in these situations, but
2 primarily the statement was to essentially ask our FSC
3 to -- to focus on what was at hand for her, which is
4 selling to her territory.

5 Q. So you were saying that you weren't personally
6 seeing Patterson in this space; is that fair?

7 A. Essentially.

8 Q. Had you asked or spoken with any GPOs about
9 whether Patterson was your competition?

10 A. Never.

11 Q. Now, not seeing Patterson in this space, was
12 that a contrast from other customer classes you dealt
13 with in your job at Schein?

14 A. Not necessarily, but to some degree.

15 Q. What were some customer classes where you did
16 see Patterson as a competitor?

17 A. Patterson was one of our largest competitors,
18 so essentially they had pretty good market penetration
19 with our dental trade.

20 Q. So, for instance, DSOs --

21 A. Yes.

22 Q. -- are you familiar -- when -- do you recall
23 any examples of Patterson competing with Henry Schein
24 over a DSO?

25 A. I do.

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1 Q. Would you mind naming a few.

2 A. American Dental Partners, Jefferson Dental
3 Care, are two that come to mind immediately.

4 Q. How about Mortenson? Does that ring a bell?

5 A. It does.

6 Q. Was that another company, another DSO that
7 Patterson competed with Schein over?

8 A. It is.

9 Q. And how about Heartland?

10 MS. GOFF: Objection. Leading.

11 MR. GEORGE: I can rephrase.

12 BY MR. GEORGE:

13 Q. Are there any others that you can recall?

14 A. Heartland Dental Group.

15 Q. And what was Heartland Dental Group?

16 Sorry. What -- it's my voice.

17 What was Heartland Dental Group?

18 A. Heartland Dental Group is a DSO.

19 Q. And what happened with Heartland Dental Group
20 with respect to Patterson?

21 A. Heartland Dental Group sent their business out
22 to bid. Henry Schein and Patterson Dental competed,
23 and we lost the bid.

24 Q. Is it fair to say that throughout your career
25 at Henry Schein that Patterson was consistently a

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1 vigorous competitor of Henry Schein?

2 A. It was a vigorous competitor, and I would look
3 at them as a nemesis. They were the largest and they
4 were the ones we worried about.

5 MR. GEORGE: Thank you very much.

6 JUDGE CHAPPELL: Anything else from this side?

7 MR. RACOWSKI: No questions from Benco.

8 JUDGE CHAPPELL: Cross?

9 MS. GOFF: Thank you, Your Honor.

10 - - - - -

11 CROSS-EXAMINATION

12 BY MS. GOFF:

13 Q. Good afternoon, Ms. Titus.

14 My name is --

15 A. Hello.

16 Q. -- Karen Goff. We met at your deposition.

17 Good to see you again.

18 A. Thank you.

19 Q. You spoke with Ms. Fincher about your work
20 history at Henry Schein, and I just wanted to confirm a
21 few things.

22 You worked in Special Markets for about
23 15 years; is that right?

24 A. That's right.

25 Q. And then in around March of 2014 you were

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1 transferred to Henry Schein Dental?

2 A. That's correct.

3 Q. And you were transferred to the mid-markets
4 group?

5 A. That's correct.

6 Q. And the mid-markets group was within
7 Henry Schein Dental.

8 A. It was.

9 Q. And when you transferred to the --
10 Henry Schein Dental, you reported to Mr. Joe Cavaretta;
11 is that right?

12 A. That's right.

13 Q. And you never reported directly to
14 Mr. Tim Sullivan, did you?

15 A. I did not.

16 Q. Okay. You spoke with Ms. Fincher about
17 customers of Special Markets and Henry Schein Dental,
18 and I'd like to look at a document. It's CX 0165.

19 And --

20 JUDGE CHAPPELL: Hold it, hold it. Wait for
21 people to find their place in the binders that were
22 just distributed.

23 MS. GOFF: Sure.

24 And Your Honor, may I approach the witness to
25 give her a binder?

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1 JUDGE CHAPPELL: Yes.

2 MS. GOFF: Thank you.

3 THE WITNESS: Would it be efficient to just
4 look at what's posted on the screen?

5 JUDGE CHAPPELL: It's your choice.

6 THE WITNESS: If you could make it a little
7 bigger -- somebody was making it bigger, and that
8 worked just fine. It's easier than flipping through
9 the pages.

10 BY MS. GOFF:

11 Q. Understood, Ms. Titus. We will attempt to
12 make the portions bigger as we review them, and then
13 you're welcome to look in the binder if you would
14 like.

15 A. Thank you.

16 Q. So let's start with the e-mail on CX 0165-002.
17 It's from Bret McCarroll to you and Tom McCulloch
18 regarding Business Intelligence Group.

19 Do you see that?

20 A. I do.

21 Q. And the e-mail is from February 1, 2011.

22 Do you see that?

23 A. I do.

24 Q. So at this point you worked in Special Markets;
25 right?

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1 A. That's correct.

2 Q. And Bret McCarroll is e-mailing you about
3 Business Intelligence Group, a group interested in
4 forming a buying group for dentists.

5 Do you see that?

6 A. I do.

7 Q. And then he asks, at page 003, "Do we have any
8 interest in opening up an account for a group like
9 this?" He mentions that they have 150 clients and they
10 plan on growing to 500 clients by year end.

11 Do you see that?

12 A. I do.

13 Q. Okay. And then you respond to Mr. McCarroll
14 and you informed him, at 002, "I can tell you" -- there
15 it is -- "I can tell you that with authority that is
16 not something SM would be interested in."

17 A. That's correct.

18 Q. And you had been in Special Markets for maybe
19 around ten years or so at the point that you wrote this
20 e-mail?

21 A. Yes.

22 Q. And then the next sentence, you wrote, "The
23 participants are Private Practice customers which rules
24 SM out."

25 Do you see that?

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1 A. I do.

2 Q. "SM" is Special Markets?

3 A. It is.

4 Q. Okay. So Special Markets did not work with
5 groups in which the participants were private practice
6 customers?

7 A. They did work with groups that were private
8 practice customers.

9 Q. You wrote here in your e-mail, "The
10 participants are Private Practice customers which rules
11 SM out."

12 A. That was only one aspect of this particular
13 group that was being presented to me.

14 Q. Okay. Thank you. We can take that one down.

15 You used some terms with Ms. Fincher. I just
16 wanted to make sure I have an understanding of what
17 they mean.

18 You use the terms "buying group" and "GPO"
19 interchangeably, don't you?

20 A. Yes.

21 Q. And you use the acronyms "MSO" and "DSO"
22 interchangeably.

23 A. No.

24 Q. Do you recall testifying at your deposition
25 that "MSO" and "DSO" are interchangeable words?

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1 A. I do recall that, and they are interchangeable.
2 Throughout the evolution of the space, "MSO" was an
3 acronym that was used, however, inaccurate.

4 Q. You also spoke with Ms. Fincher about community
5 health centers.

6 A. I did.

7 Q. For a period of time you had responsibility for
8 Schein's community health center group relationships;
9 is that correct?

10 A. That's correct.

11 Q. And a community health center is a safety net
12 clinic that's mission is to serve underserved
13 populations regardless of their ability to pay?

14 A. That's correct.

15 Q. And you define "private practice dentists" as
16 solo dental practitioners that do not receive any
17 state, local or government funds to help defray
18 operating costs?

19 A. That's incorrect.

20 Q. Let's take a look at your deposition on
21 page 45 line 10.

22 If you could please pull that up, Ms. Glover.

23 MS. FINCHER: Objection, Your Honor. I'm not
24 sure if counsel is trying to impeach the witness or not
25 with what she just said, and we can find no reference

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1 to her deposition at all in the question.

2 MS. GOFF: Your Honor, I asked this question at
3 the deposition and I --

4 JUDGE CHAPPELL: You haven't laid a foundation
5 to throw a deposition up. The objection is sustained.

6 BY MS. GOFF:

7 Q. Ms. Titus, do you recall that I asked you at
8 your deposition how you define the term "independent
9 private practice dentists"?

10 A. May I see the document?

11 Q. Your deposition?

12 A. Uh-huh.

13 JUDGE CHAPPELL: You should be able to answer,
14 ma'am, whether you recall it without looking at it.
15 Either you recall it or you do not.

16 THE WITNESS: I recall it was in the context to
17 comparing it to a community health center. The
18 reference to reimbursement from the government was in
19 regards to operating funds, meaning, paying their
20 staff, keeping their doors open. However, solo
21 providers do receive reimbursement through government
22 programs like Medi-Cal and Medicaid.

23 JUDGE CHAPPELL: Medi-Cal?

24 THE WITNESS: California. California
25 Medicaid.

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1 BY MS. GOFF:

2 Q. You define "independent private practice
3 dentists" as solo dental practitioners?

4 A. Generally.

5 Q. Okay. So using that definition, community
6 health center groups are not comprised of members who
7 are private practice dentists?

8 A. Incorrect.

9 Q. Is Washington a community health center that
10 you worked with?

11 A. No.

12 Q. What about Council Connection [sic]? Is that a
13 community health center that you are familiar with?

14 A. I'm familiar with Council Connections;
15 Council Connections is not a community health center.

16 Q. Is it a community health center buying group?

17 A. It is.

18 Q. Using your definition -- the definition that we
19 just established for "solo dental practitioners," the
20 Council Connection group is not comprised of solo
21 practitioners that you referred to; correct?

22 A. Council Connections serves the nonprofit
23 dental clinic populations, specifically federally
24 qualified healthcare centers; however, private
25 practice dentists are employed within those community

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1 health centers.

2 Q. Earlier you spoke with Ms. Fincher about the
3 Colorado Community Health Network, and I just wanted to
4 clarify that is a community health center group?

5 A. It's a community health center gatekeeper or
6 association.

7 Q. Okay. I'd like to take a look at RX 2385.

8 And I apologize. I'm not sure that this one is
9 in the binder, but I -- we will put it up on the
10 screen.

11 You spoke about some of the groups that are
12 listed on this e-mail chain with Ms. Fincher.

13 The e-mail is dated May 8, 2014, and it's from
14 you to Mr. Joe Cavaretta.

15 Do you see that?

16 A. I do.

17 Q. And Mr. Cavaretta was your boss at this time?

18 A. He was.

19 Q. And you were writing to him about a list of hot
20 topics for Monday, for the Monday meeting?

21 A. That's correct.

22 Q. And you wrote: Breakaway, Dental Co-Op,
23 Smile Source and Steadfast?

24 A. That's right.

25 Q. Fair to say that you wanted to talk about these

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1 hot topics with Mr. Cavaretta?

2 A. I did.

3 Q. And is it fair to say that these topics were
4 taking up a good chunk of your time at the time that
5 you wrote this e-mail?

6 A. Yes.

7 Q. Okay. And then going a little bit below that
8 if we could -- thank you, Ms. Glover -- you wrote, "We
9 need to develop our policy on these Dental Management
10 Companies that have a GPO component."

11 Do you see that?

12 A. I do.

13 Q. You wanted to -- you put these four companies
14 on your list to talk with Mr. Cavaretta because they
15 had a GPO component?

16 A. That's correct.

17 Q. Okay. And then let's talk about some of these
18 companies that you mentioned in your e-mail and that
19 you also talked with Ms. Fincher about.

20 So you spoke with Ms. Fincher about the
21 Steadfast group. I want to -- we'll start with that
22 one.

23 And Ms. Glover, you can take this document down.

24 So shortly after you were moved from
25 Special Markets to HSD you started doing some discovery

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1 on the Steadfast Dental group?

2 A. That's correct.

3 Q. And you were doing discovery on
4 Steadfast Dental as part of your job for
5 Henry Schein Dental?

6 A. That's correct.

7 Q. And then after you did some research, you
8 determined that there was no question that
9 Steadfast Dental was a buying group?

10 A. I knew they were before I started doing
11 research.

12 Q. And then eventually you sought permission from
13 your superiors to shut down Steadfast Dental?

14 A. That's correct.

15 Q. And you got permission from your superiors to
16 shut down Steadfast Dental?

17 A. I did not personally terminate the relationship
18 with Steadfast Dental; however, I did deliver the
19 message.

20 Q. You got permission from your superiors to shut
21 down Steadfast Dental?

22 MS. FINCHER: Objection. Asked and answered.

23 JUDGE CHAPPELL: No, it wasn't. Overruled.

24 BY MS. GOFF:

25 Q. I can --

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1 A. Please.

2 Q. -- state the question again.

3 You got permission from your superiors to shut
4 down Steadfast Dental?

5 A. I received permission from my superiors to
6 deliver the message to the CEO of Steadfast Dental that
7 we were terminating the relationship.

8 Q. And you testified earlier that the reason that
9 you shut down Steadfast was that business was down year
10 over year; is that right?

11 A. That's correct.

12 Q. After learning that the business was down year
13 over year, you followed up with Steadfast?

14 A. I did.

15 Q. And then at that point Steadfast informed you
16 that business was going to -- well, strike that.

17 Steadfast -- I just want to understand how the
18 relationship worked.

19 So Steadfast informed you that it would look at
20 an order and it would break up the order and send items
21 that were cheaper with company A or company B to those
22 companies, and then Henry Schein would be left with the
23 ones that Schein had the best price at.

24 Do I have that right?

25 A. Not quite.

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1 Q. What portion is inaccurate?

2 A. Steadfast was receiving a Henry Schein order.
3 These were generated by the actual member and sent to
4 Steadfast, who was acting as their procurement agent,
5 essentially taking that task off of the staff at the
6 individual member office. Then Steadfast would look at
7 the Henry Schein order and reallocate it to the lowest
8 bidder.

9 Q. I see.

10 So if a customer placed an order, Schein would
11 get the sales for the products on which it offered the
12 best price.

13 A. Could you repeat the question.

14 Q. Sure.

15 Under this relationship with Steadfast, when a
16 customer placed an order, Schein would get the sales
17 for the products on which it offered the best price.

18 A. The Schein order would be evaluated by
19 Steadfast, and then we would get the balance of the
20 order that we had the cheapest price on.

21 Q. Thank you.

22 Now, this relationship -- I think I understand
23 how the relationship worked.

24 That system was in place for the entirety of
25 Henry Schein's relationship with Steadfast; correct?

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1 A. That's correct.

2 Q. Even though Schein -- even though you
3 testified that Schein was not selling as much to
4 Steadfast as it did the year before, it was still
5 selling \$150,000 worth of supplies to Steadfast
6 members?

7 A. I don't know.

8 Q. You don't recall?

9 A. I don't recall.

10 Q. Okay. Let's take a look at a document. This
11 one is in the binder. I believe it's CX 0171.

12 This is an e-mail. The latest in time is from
13 you to Joe Cavaretta, and it's dated in March 2014.

14 Do you see that?

15 A. I do.

16 Q. Okay. And Mr. Cavaretta was your boss at the
17 time that you wrote this e-mail?

18 A. That's correct.

19 Q. And just for the record, Mr. McLemore was the
20 regional manager for Texas, where this particular
21 organization, Steadfast, was located; is that right?

22 A. I believe so.

23 Q. And you forwarded an e-mail from
24 Ms. Emily Kerr.

25 We could show you that.

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1 And you see that Emily Kerr's e-mail to you had
2 the subject line "Support." And then when you
3 forwarded the e-mail to Mr. Cavaretta and Mr. McLemore,
4 you changed it to "Buying group STEADFAST DENTAL, do we
5 shut this down?"

6 Do you see that?

7 A. I do.

8 Q. You specifically noted in the subject matter of
9 the e-mail that Steadfast Dental was a buying group.

10 A. Correct.

11 Q. And you specifically asked, "do we shut this
12 down?"

13 A. Those were the words I wrote.

14 Q. Okay. Then in your e-mail, you wrote, "I'm
15 still in discovery on their DNA (we think it's a DSO
16 called OMSP), but there is no question this is a buying
17 group."

18 Do you see that?

19 A. I do.

20 Q. You then write, "They did 150K last year."

21 You're referencing there in this e-mail
22 \$150,000 worth of business with Henry Schein?

23 A. I'm referencing -- yes. I'm referencing
24 \$150,000 in collective volume from our shared member
25 customer list.

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1 Q. You considered that to be a large client for
2 Henry Schein?

3 A. Yes. In perspective.

4 Q. You do not write in this e-mail to
5 Mr. Cavaretta that sales were down year over year.

6 Right?

7 A. I did not write that. And as you can see in
8 the e-mail, I'm still in discovery on who they are.

9 Q. Even though Schein was not selling as much to
10 Steadfast members that it did the year before, it was
11 still selling \$150,000 worth of supplies as of the time
12 that you wrote this e-mail?

13 A. That's right.

14 Q. And then after Schein stopped doing business
15 with Steadfast, it could have lost this -- all of
16 this -- the Steadfast customers altogether; correct?

17 A. Potential existed, yes.

18 Q. And that was a concern of yours at the time.

19 A. It was a concern.

20 Q. Okay. Let's look at CX 2216.

21 Okay. This is an e-mail. The latest in time
22 is from Joe Cavaretta to you and others, dated June 10,
23 2014, with the subject Steadfast Medical GPO.

24 Do you see that?

25 A. I do.

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1 Q. This is the same Steadfast that we've been
2 talking about?

3 A. It is.

4 Q. And Mr. Cavaretta wrote, "Thanks for leading
5 the charge on this KT."

6 "KT" is a reference to you?

7 A. That's right.

8 Q. "GPO's are popping up like crazy so it is nice
9 when we can shut one down and still keep the business
10 from the individual customers."

11 Do you see that?

12 A. I do.

13 Q. Mr. Cavaretta was praising you for your work on
14 Steadfast.

15 A. I'm sorry. I didn't hear the question.

16 Q. Mr. Cavaretta was praising you for your work on
17 Steadfast.

18 A. He was praising me for my collective work. The
19 use of the words "shut down," I don't think he was
20 praising me for shutting them down. He was -- he was
21 praising me for identifying the fact that we had no
22 field sales consultants on any of the accounts and we
23 were down 50 percent year over year.

24 Q. And just for the record, Mr. Cavaretta was your
25 boss at the time of this e-mail?

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1 A. Yes, he was.

2 Q. Okay. You also spoke about -- with Ms. Fincher
3 about the Dental Co-Op of Utah.

4 And in 2014, after you transferred to the
5 Mid Market group within Henry Schein Dental, you did
6 some discovery on the Dental Co-Op of Utah?

7 A. I did.

8 Q. And that was shortly after you were transferred
9 from Special Markets to HSD?

10 A. That's correct.

11 Q. And the Dental Co-Op of Utah was a buying
12 group.

13 A. They were.

14 Q. And then again, at some point you elevated the
15 issue of whether to shut down the dental co-op to your
16 superiors.

17 A. Yes, I did, because there was a very serious
18 issue.

19 Q. And then after that, at some point Schein
20 stopped doing business with the Dental Co-Op of Utah?

21 A. That is correct.

22 Q. The Dental Co-Op of Utah had been a customer of
23 Henry Schein since 2008; is that right?

24 A. I don't know what the original date. I knew it
25 was a long-term customer.

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1 Q. And Henry Schein was doing a million dollars
2 worth of business with the Dental Co-Op of Utah in this
3 2014 time period?

4 A. I think it was twice that.

5 Q. Okay. And then let's look at CX 2227.

6 So the top e-mail is dated February 10, 2014,
7 and it's from Mr. Muller to you and Mr. Foley. But
8 let's look at an earlier e-mail in the chain,
9 specifically at page 004.

10 There's an e-mail from you to Francis Keefe?

11 A. Yes. Correct.

12 Q. And then you write, "The decision" -- I'll wait
13 for it to pop up on the screen. Okay. There it is --
14 "The decision of HSD to treat them as a GPO is a
15 legacy decision that I do not believe, if presented
16 with the same circumstances today, HSD would have
17 embraced."

18 Do you see that?

19 A. That's correct.

20 Q. That's what you wrote to Ms. -- or Mr., rather,
21 Keefe of Colgate in 2014?

22 A. I did.

23 Q. You wrote that you didn't think HSD would have
24 embraced the dental co-op.

25 A. Not as it existed when I engaged with them.

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1 Q. And the decision to treat the dental co-op as a
2 GPO was a legacy decision.

3 A. The context of my statement was that that's how
4 they were set up in our system, as a GPO.

5 Q. And then you went on to say, "This is not good
6 news for us (Colgate and Schein) or the industry. As I
7 see it, this portends the empowerment of the GPO
8 infiltration in the dental space and as this scenario
9 illustrates, the dilution of the influence of
10 Distribution."

11 Do you see that?

12 A. Yes, I see I wrote that.

13 Q. And when you wrote "Distribution" here, you
14 meant the companies like Henry Schein?

15 A. Yes.

16 In context to what I was saying there, the
17 conversation I was having with our exclusive provider
18 from Colgate was in reference to customers that were
19 actively enrolled in Colgate plans that were getting
20 billed through Henry Schein and those Colgate plans
21 being canceled and Dental Co-Op switching them over to
22 a direct seller.

23 Q. Okay. And then you wrote, "This needs to get
24 on the radar of HSD leadership, (Joe Cavaretta and
25 Dave Steck) and Hal Muller ASAP."

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1 Do you see that?

2 A. I do.

3 Q. And then in the last sentence you wrote,
4 "Perhaps there is something we can do to derail this
5 gaining momentum."

6 Do you see that?

7 A. I do. And this is in direct reference to P&G,
8 who we also did business with, but were taking business
9 that Henry Schein had already established and
10 cannibalizing it.

11 Q. So you've testified that both Steadfast and
12 the dental co-op were shut down within the first few
13 months of you moving from Special Markets to HSD.

14 You did not seek to stop doing business with
15 any other group practices at any point when you were in
16 the group practice group at HSD.

17 A. Can you rephrase that or ask it again.

18 Q. You didn't seek to stop doing business with any
19 other groups at any point when you were group practice
20 director for HSD.

21 A. That's incorrect.

22 Q. Do you recall I asked you that question at your
23 deposition?

24 A. No, I don't, one way or the other.

25 Q. Do you recall giving a different answer?

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1 A. No. I'm sorry. I don't one way or the other.

2 Q. Okay. Let's look at your deposition at
3 page 69.

4 Line 13:

5 "Did you seek to stop doing business with any
6 other groups at any point when you were group practice
7 director for HSD?

8 "ANSWER: No."

9 That was your testimony.

10 A. That was my testimony. However, I believe I
11 misspoke.

12 Q. And then when you worked in Special Markets,
13 prior to moving over to HSD, you never terminated a
14 relationship with any groups, did you?

15 A. I did.

16 Q. Do you recall that I asked you that question at
17 your deposition?

18 A. Are you asking me the same question that you
19 just asked me prior?

20 Q. No. I can ask again. I'm asking when you were
21 in Special Markets.

22 A. Oh, when I was in Special Markets.

23 Yes.

24 Q. When you were in Special Markets, you never
25 terminated a relationship with any groups.

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1 A. I did.

2 Q. Okay. Do you recall that I asked you that
3 question at your deposition?

4 A. I'm sorry. I don't remember one way or the
5 other.

6 Q. Let's look at your deposition at page 80
7 line 9.

8 I asked, "Did you ever, prior to moving over to
9 Henry Schein Dental, when -- back when you're in
10 special markets, did you ever terminate a relationship
11 with any groups?

12 "ANSWER: No."

13 That was your testimony?

14 A. I see that that was my testimony. However,
15 again, in context to our conversation about group --
16 buying groups, I believe I misspoke.

17 Q. Steadfast was one of the higher-volume
18 customers that you were assigned when you transferred
19 to Mid Markets; right?

20 A. I'm not sure one way or the other.

21 Q. Do you recall testifying at your deposition
22 that you believe Steadfast was one of the higher-volume
23 customers?

24 A. I don't recall one way or the other, but to be
25 clear, if we're talking about buying groups being one

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1 of the higher rather than our collective customer base,
2 then yes.

3 Q. Okay. Now going -- okay. Let's turn to PGMS,
4 another group that you spoke about with Ms. Fincher.

5 A. Okay.

6 Q. You're familiar with a group called PGMS?

7 A. I am.

8 Q. And that was another group that you dealt with
9 within those first few months of being transferred
10 within Special Markets to HSD?

11 A. That's correct.

12 Q. And you negotiated with a Dr. Juan Luque
13 regarding working with PGMS?

14 A. That's correct.

15 Q. Let's look at CX 2235. This is an e-mail that
16 you looked at with Ms. Fincher.

17 This is an e-mail dated July 17, 2014. It's to
18 Glenn Showgren and Kevin Upchurch.

19 Do you see that?

20 A. I do.

21 Q. They were your colleagues at Henry Schein
22 Dental?

23 A. They were.

24 Q. And you wrote in this e-mail, "We had a GPO
25 prospect called PGMS. Very intriguing, willing to be

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1 exclusive."

2 And in this e-mail you referred to PGMS as a
3 GPO prospect; right?

4 A. I did.

5 Q. And in this e-mail you were informing
6 Mr. Showgren and Mr. Upchurch that PGMS was willing to
7 be exclusive.

8 A. That's correct.

9 Q. And you viewed exclusivity as positive, as a
10 positive for Schein.

11 A. I viewed -- yes. I viewed exclusivity as one
12 of the many requirements in order to establish a
13 healthy relationship. Yes.

14 Q. And you wrote, "I created this and sent to Joe
15 for review." And you attached an agreement.

16 And when you said "Joe," that's a reference to
17 Mr. Cavaretta?

18 A. That's right.

19 Q. Your boss?

20 A. Correct.

21 Q. And then in the next sentence you said, "It
22 went to Tim and he shot it down."

23 You see that.

24 A. I do.

25 Q. Just to be clear, that's a reference to

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1 Tim Sullivan.

2 A. It is.

3 Q. So you're saying in this e-mail that
4 Tim Sullivan shot down an agreement with PGMS.

5 A. As I testified earlier, I had no knowledge of
6 Tim personally shutting anything down. I think I was
7 getting some red flags or some concerns from my boss,
8 Joe Cavaretta, when it came to compliance and when it
9 came to the fact that the -- one of the principals
10 from PGMS was unwilling to actually adhere to a
11 primary supply agreement and was buying from our
12 competitor.

13 Q. Regarding the statement "It went to Tim and he
14 shot it down" that you put in this e-mail, you would
15 not have purposefully misled Mr. Showgren and
16 Mr. Upchurch regarding Tim Sullivan, would you?

17 A. I would never mislead anybody purposefully.
18 However, for the context of this conversation, I
19 didn't give them minute details on the process. I
20 essentially spoke to my boss about it, and there were a
21 couple of serious red flags which I completely agreed
22 made for a poor business relationship, a poor business
23 decision.

24 Q. As of the time that you wrote this e-mail, it
25 was your understanding that Tim Sullivan had shot down

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1 a PGMS agreement.

2 A. No.

3 Q. Do you recall that I asked you that question at
4 your deposition?

5 A. I don't one way or the other.

6 Q. Okay. Let's look at your deposition at
7 page 141 -- sorry -- 151. Thank you.

8 Line 1 through 4:

9 "QUESTION: So as of the time that you wrote
10 this e-mail, it was your understanding that
11 Tim Sullivan had shot down a PGMS agreement?

12 "ANSWER: Yes."

13 Do you see that?

14 A. I do.

15 Q. That was your testimony.

16 A. It was.

17 Q. And then turning back to the exhibit, CX 2235,
18 in the next sentence you wrote, "I think the meta msg
19 is officially, GPO's are not good for Schein."

20 "Msg," that refers to message?

21 A. It does.

22 Q. So on the date that you wrote this e-mail, you
23 felt that the message from above was that GPOs are not
24 good for Schein.

25 A. That's incorrect.

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1 Q. Do you recall that I asked you that same
2 question at your deposition?

3 A. I don't recall one way or the other.

4 Q. Okay. Let's look at your deposition at
5 page 149.

6 Line 22:

7 "On the date you wrote this e-mail, you felt
8 that the message from above was that GPOs are not good
9 for Schein?"

10 You responded, "Yes, and that statement was
11 not -- I did not have intimate knowledge, it was what I
12 was thinking it meant."

13 Do you see that?

14 A. I see that.

15 Q. So it was what you were thinking it meant.

16 A. Only in context to PGMS and the concerns that
17 my boss and others expressed about this not being a
18 healthy business relationship.

19 Q. You did not write in your e-mail that it was in
20 this context of -- that the meta message was in the
21 context of PGMS, did you?

22 A. I did not write that. However, in the context
23 of this discussion that we were having, that's
24 precisely what I meant.

25 Q. Okay. Let's look at CX 2219.

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1 So this is an e-mail from July 16, 2014, and
2 again here you're e-mailing Glenn Showgren and
3 Brian Brady, and you're cc'g Nicole Lena and
4 Joe Cavaretta.

5 You wrote, "I s/w Joe today about the
6 agreement."

7 You're referencing here the PGMS agreement?

8 A. Correct.

9 Q. And then you wrote -- when you wrote "s/w,"
10 that means spoke with?

11 A. It does.

12 Q. And then you wrote, "Tim was not in favor of
13 it."

14 Do you see that?

15 A. I do.

16 Q. And that's again a reference to Tim Sullivan?

17 A. It is.

18 Q. So this is another place where you're informing
19 your colleagues that Tim Sullivan was not in favor of
20 the PGMS agreement?

21 A. Yes. And I -- in context, he was not telling
22 us not to proceed but that he had concerns, and that
23 was information that was coming from my boss,
24 Joe Cavaretta, and frankly, I shared his concerns.

25 Q. You testified earlier that Mr. Sullivan never

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1 gave you direction regarding PGMS.

2 A. That's correct.

3 Q. You never spoke with Mr. Sullivan personally
4 about PGMS.

5 A. I did not.

6 Q. Okay. Let's go to the next page, CX 2219 at
7 002.

8 Actually, I'm sorry. Let's look at a different
9 document.

10 I'm sorry. Let's look at CX 2809. This is
11 another e-mail that you looked at with Ms. Fincher
12 earlier.

13 Let's go to CX 2809-002.

14 You looked -- we looked at this part earlier,
15 starting with "Sigh," yes. This is a portion of the
16 e-mail that I don't think you reviewed with
17 Ms. Fincher.

18 It says, "I sent them," you'll see in the
19 second sentence -- yes. Thank you -- "I sent them some
20 tough questions thinking it would scare them off, but
21 alas, they raised the stakes by moving to Dir of Ops."

22 Do you see that?

23 A. I do. But can I see who this is in reference
24 to?

25 Q. Sure.

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1 Can we -- it might be -- if you'd like to look
2 at it in your binder, it would be in the black binder.

3 A. That's okay. I can see enough of it now.

4 Q. Okay. So here you're referring to those --
5 those ten questions that you talked with Ms. Fincher
6 about earlier?

7 A. That's correct.

8 Q. And you sent them -- you wrote that you sent
9 them to PGMS thinking that it would scare them off;
10 right?

11 A. I wrote that. I can see that I wrote that.
12 However, it was a very poor choice of words.

13 Essentially what I was doing was crafting a
14 sort of evaluation that constituted our strategy for a
15 healthy relationship, of which that most people that
16 those questions would be sent to would tell us whether
17 or not we wanted to proceed.

18 Q. Okay. Thank you. We can take that one down.

19 Let's look at CX 2211. I believe this is
20 another one that you looked at with Ms. Fincher.

21 This e-mail is discussing the Dental Co-Op of
22 Utah.

23 Do you see that?

24 A. I do.

25 Q. Specifically, it's discussing the end of the

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1 relationship between Schein and the Dental Co-Op of
2 Utah.

3 And I'd like to look at the e-mail from
4 Mr. Kevin Upchurch at 002.

5 Mr. Upchurch was the zone general manager
6 within Henry Schein Dental at the time of this e-mail?

7 A. That's correct.

8 Q. Okay. And he wrote, "The Co-Op is turning into
9 a GPO (even if they don't think they are one now), from
10 what KT has observed in Texas, NM and from Tim S, HSD
11 does not want to enter the GPO world."

12 Do you see that?

13 A. I do.

14 Q. You disagreed with Mr. Upchurch's statement
15 that the co-op was turning into a GPO.

16 A. The co-op was a GPO, not turning into one.

17 Q. Okay. And "KT" is a reference again to you.

18 A. It is.

19 Q. And then in the last clause of the sentence he
20 wrote "from Tim S, HSD does not want to enter the GPO
21 world."

22 This statement from Mr. Kevin Upchurch, it's
23 consistent with your statement that the meta message
24 was that GPOs are not good for Schein.

25 A. I believe those two statements are completely

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1 unrelated and referring to two completely different
2 buying groups.

3 Q. Okay. Let's look at -- let's look at CX 0260.

4 Okay. This is an e-mail from Russ Baker.

5 Are you familiar with Mr. Russ Baker?

6 A. I am.

7 Q. What was his role at Schein?

8 A. I believe at this time Russ Baker was a
9 regional manager for one of the southeastern states.

10 Q. Okay. Thank you.

11 In 2014, you had a conversation with Mr. Baker
12 regarding the group Dental Gator?

13 Do you recall that?

14 We can -- we can look at a portion of the
15 document if that helps.

16 A. I don't think this document is referencing my
17 conversation.

18 Q. Okay. Let's look at CX 0260-002.

19 And then -- yeah, it starts, "Scott, let me
20 bring Kathleen, Andrea" -- thank you.

21 I think we're going to have to go back to an
22 earlier e-mail so that she can -- or blow it up, more
23 of the page, so that she can see this bottom e-mail,
24 the middle e-mail where it says "Dental Gator."

25 Okay. So here is an e-mail from Scott Janczak

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1 to Russ Baker, and they're talking about Dental Gator.

2 Do you see that?

3 A. I do.

4 MS. FINCHER: Objection, Your Honor. This
5 witness is not on the e-mail.

6 MS. GOFF: She's not on that e-mail. I'm
7 trying to orient her. She's on the next e-mail chain.

8 BY MS. GOFF:

9 Q. Ms. Titus, you're welcome to look at it in your
10 binder.

11 A. If you can just show it to me on the screen,
12 that would be great.

13 Q. Sure.

14 Ms. Glover, can we now look at the next e-mail
15 up, and I think it might be helpful if you show
16 Ms. Titus the whole screen. Yes. Perfect. Thank you.

17 Are you able to read that?

18 A. Yes, I am.

19 Q. Okay. Thank you.

20 It says, from Mr. Baker, "Scott, let me bring
21 Kathleen, Andrea and Jason into this conversation."

22 So Mr. Baker -- Mr. Baker is looping you in to
23 this conversation that he was having about
24 Dental Gator. He added you to the e-mail chain.

25 Do you see that?

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1 A. I do.

2 Q. Okay. And he wrote, "I recently had a
3 conversation with Kathleen regarding this group and
4 they are nothing more than a GPO."

5 Do you see that?

6 A. I do.

7 Q. You had a conversation with Mr. Baker regarding
8 Dental Gator.

9 A. I don't recall that one way or the other.

10 Q. Okay. And then Mr. Baker says that
11 Dental Gator is nothing more than a GPO.

12 He continues, "It is my understanding that
13 this violates our policy as we do not engage with
14 GPO's."

15 Do you see that?

16 A. I do.

17 Q. That's what Mr. Baker wrote in this e-mail to
18 you.

19 Do you see that?

20 A. I do.

21 Was this -- I'm sorry, Karen. Was this e-mail
22 actually written to me?

23 Q. Yes, it was.

24 MS. FINCHER: Objection, Your Honor. It's very
25 difficult to tell from this e-mail and you can see the

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1 one above from Ms. --

2 JUDGE CHAPPELL: She was offered to look at the
3 binder and she rejected that. The witness can choose
4 to look at the binder or the witness can stay in the
5 gray area.

6 MS. FINCHER: Yes, Your Honor.

7 JUDGE CHAPPELL: Let her know the page numbers
8 or exhibit numbers or tab numbers in the binder.

9 MS. GOFF: Sure.

10 BY MS. GOFF:

11 Q. If you'd like to look at it, it's CX 0260.

12 And just for the record, could you please
13 confirm that you are at this e-mail chain.

14 A. Karen, I'm sorry, but the document in the
15 binder is identical --

16 JUDGE CHAPPELL: Who is this Karen you're
17 talking about?

18 THE WITNESS: Karen, is that your name?

19 MS. GOFF: Yes.

20 JUDGE CHAPPELL: Okay. Let's refrain from this
21 first-name basis here.

22 THE WITNESS: Okay.

23 JUDGE CHAPPELL: And you're not supposed to be
24 asking questions.

25 THE WITNESS: Okay.

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1 JUDGE CHAPPELL: You need to figure out what's
2 going on with the witness or move on to another topic.

3 MS. GOFF: Thank you, Your Honor.

4 JUDGE CHAPPELL: We've wasted enough time on
5 this.

6 MS. GOFF: Thank you, Your Honor. I'll move
7 on.

8 BY MS. GOFF:

9 Q. Okay. Let's talk about a different group that
10 you spoke with Ms. Fincher about earlier, Klear Impakt,
11 and I'd like to look at a document, CX 2223.

12 This is an e-mail from you to Brian Brady with
13 a cc to Mr. Cavaretta.

14 Do you see that?

15 A. I do.

16 Q. It's from June of 2015.

17 Do you see that?

18 A. I do.

19 Q. And as of the date of this e-mail, you had
20 not -- you had not yet entered into any kind of
21 agreement with Klear Impakt; fair to say?

22 A. That's correct.

23 Q. And then you wrote, "If our policy is to shut
24 this down, I understand."

25 Do you see that?

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1 A. I do.

2 Q. So at this point you were not sure about
3 whether it was Schein's policy to shut down
4 Klear Impakt.

5 A. My comment was specific to the discussions I
6 was having with Klear Impakt and whether they met our
7 criteria, and a consensus from management agreed with
8 me.

9 Q. Schein first signed its agreement with
10 Klear Impakt in August of 2015; is that correct?

11 I could show you a document to refresh your
12 recollection if that helps.

13 A. Yes, it would help.

14 Q. Okay. Let's look at RX 2162.

15 I'm sorry. Yes, please don't put it up on the
16 screen because I'm just refreshing recollection.

17 So it is in your binder.

18 A. Okay.

19 Can you tell me the section it's in.

20 Q. Do you see RX 2162?

21 A. Yes. I see it now.

22 Q. And then after you've had a chance to look at
23 it, does that refresh your recollection that Schein
24 first signed its agreement with Klear Impakt in August
25 of 2015?

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1 A. That's correct.

2 Q. Thank you.

3 Okay. Now let's look at CX 2520. This one
4 will be on the screen for you.

5 A. Okay.

6 Q. And again, this is an e-mail chain between
7 Joe Cavaretta and Jake Meadows. You're not on this
8 chain, but you're referenced on it. I just want to ask
9 you a question about the reference.

10 Mr. Cavaretta wrote, "I just told KT we are
11 stopping this agreement until they can prove we can
12 control this."

13 Do you see this?

14 A. I do.

15 Q. Mr. Cavaretta told you to stop the agreement
16 with Klear Impakt?

17 A. I don't recall Joe Cavaretta telling me to
18 stop. However, I do recall he wanted to put more
19 scrutiny on the agreement.

20 Q. Okay. Now let's look at CX 2226.

21 And so this is an e-mail from April 2016. The
22 top e-mail is from you, and it's to Brian Brady with a
23 cc to Joe Cavaretta. The subject is about
24 Klear Impakt's generic flyer language.

25 And then the last sentence in the second

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1 paragraph, you wrote, "We hit the pause button in
2 January and they have been extremely patient with us
3 while we developed out" -- our -- "developed out BG
4 strategy."

5 Do you see that?

6 A. I do.

7 Q. And on January 2016 you hit the pause button
8 with Klear Impakt?

9 A. Correct.

10 Q. Let's talk about Breakaway.

11 A. Okay.

12 Q. Another group that you spoke with Ms. Fincher
13 about.

14 Let's look at a document, CX 0246.

15 A. Are you putting that on the screen?

16 Q. Yes. I'm sorry. It will be. Sorry.

17 Okay. So the top e-mail is a chain between
18 Joe Cavaretta and Tim Sullivan and others, and again
19 you're referenced in this e-mail, and that's what I
20 want to ask you about. It's dated July of 2015.

21 Mr. Cavaretta was your boss at that time?

22 A. Correct.

23 Q. Okay. And then Mr. Cavaretta, at page 002, he
24 writes to Mr. Sullivan, and then please pull down all
25 the way to -- keep going a little bit more. Thank you.

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1 And he writes -- you'll see that there's
2 number 1 Dental Gator and then number 2 Breakaway.

3 Do you see that?

4 A. I do.

5 Q. Okay. And Mr. Cavaretta is writing to
6 Tim Sullivan, and he says (as read): We did discuss
7 shutting it down but once KT visited their facility it
8 was not a small group -- small buying group at all...
9 more of a MSO.

10 Do you see that?

11 A. I do.

12 Q. And you did discuss shutting down Breakaway?

13 A. I don't recall that one way or the other.

14 Q. And you visited Breakaway's facility; correct?

15 A. That is correct.

16 Q. And once you visited, you determined it was
17 more of an MSO?

18 A. Yes. That's what I'm reading here. In
19 reference and context to this, managed service
20 organizations provide a platform with a suite of
21 nonclinical business services that they offer to
22 private practice dentists, dentists which actually fit
23 our profile for a healthy business relationship.

24 Q. Okay. And then let's look at another
25 document, CX 2133. This one will also come up on the

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1 screen.

2 And again, Brian Brady writes an e-mail. You
3 are not on it, but you're referenced. And he says, to
4 Hal Muller and Randy Foley, "According to Kathleen" --
5 sorry, Ms. Glover. It's on page 002.

6 Okay. "According to Kathleen, who spent an
7 hour last Friday telling me why this is NOT a GPO," do
8 you see that?

9 A. I do.

10 Q. And then it continues -- just for the purposes
11 of the record I'll read the whole thing -- "they're
12 building 30 denovos in next 12 months where they will
13 have a MSO presence and what I gathered to be ownership
14 equity in all locations."

15 Do you see that?

16 "Kathleen" is a reference to you?

17 A. That's correct.

18 Q. You told Mr. Brady that Breakaway was not a
19 GPO.

20 A. I don't recall saying that one way or the
21 other.

22 Q. Okay. And then Hal responds to this e-mail,
23 Hal Muller, that is. And he wrote, "Last I heard about
24 Breakaway, KT was going to close them down as a buying
25 group."

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1 Do you see that?

2 A. I do.

3 Q. You were going to close Breakaway down as a
4 buying group?

5 A. I don't recall saying that to Hal.

6 Q. Okay. And you were involved in the Breakaway
7 PVA; is that right?

8 A. That's correct.

9 Q. And let's look at RX 2347.

10 JUDGE CHAPPELL: How much more time do you
11 think you need?

12 MS. GOFF: I probably have five to ten
13 minutes.

14 JUDGE CHAPPELL: All right. Go ahead.

15 BY MS. GOFF:

16 Q. Okay. So in this document, this e-mail, you
17 are referred to as the master of ceremonies for the
18 Breakaway PVA.

19 Do you see that?

20 A. I can see that, yes.

21 Q. Does that sound right to you?

22 Does it sound right to you?

23 A. That I'm master of ceremonies or that somebody
24 called me that?

25 Q. Never mind. I'll withdraw my question.

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1 Okay. So let's look at the contract, which is
2 RX 2348.

3 MS. FINCHER: Objection, Your Honor. I think
4 this document might be an in camera document.

5 MS. GOFF: Oh, okay. Oh, it looks like we have
6 the public version. Could you take it down just real
7 quick, please, just to make sure.

8 May I just clarify with both counsel and the
9 person running our --

10 JUDGE CHAPPELL: Go ahead.

11 MS. GOFF: Okay. Thank you.

12 (Pause in the proceedings.)

13 Thanks. We've confirmed that everything is
14 okay.

15 BY MS. GOFF:

16 Q. So, Ms. Titus, let me just explain what's
17 happening here.

18 In your binder is a complete version of this
19 document that you're able to look at, and what is on
20 the screen is what we're able to put in public. And
21 because we want to keep as much public as possible,
22 that's why I'm using this redacted version on the
23 screen, but you can look at the complete version in
24 your binder if you'd like.

25 A. May I have that number again.

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1 Q. Yes. It is RX 2348.

2 A. Okay.

3 Q. And then I just wanted to reference you to a
4 specific portion of this agreement, and this is the
5 third paragraph down under number 1.

6 The agreement states, "This agreement may not
7 be used to grow any Group Purchasing Organization (GPO)
8 type relationship which is defined as a relationship
9 whose purpose is to generate revenue for the parent
10 company by allowing others to benefit without
11 commitment to the prime vendor relationship from the
12 terms of the prime vendor agreement."

13 Do you see that?

14 A. I do.

15 Q. This contract specifically states that the
16 agreement cannot be used to establish any group
17 purchasing organization; correct?

18 A. That's what it says. And that's the intention
19 of it. However, Breakaway Practice did have
20 individually owned practices where we had a pricing
21 agreement with them. We crafted a similar agreement
22 for their buying group, but a separate agreement.

23 Q. Thank you.

24 You spoke with Ms. Fincher about the group
25 Denali Group. Do you recall that?

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1 A. I do.

2 Q. You viewed Denali Group as a consulting group;
3 right?

4 A. I did. However, my understanding of them was
5 immature, and I didn't have a lot of intimate knowledge
6 of them.

7 Q. In the 2014-2015 time period you viewed them as
8 a consulting group.

9 A. Based only on my assumption but not on any
10 direct knowledge. Yes.

11 Q. And then at the time of your deposition in
12 2018, you viewed them as a consulting group.

13 A. I believe that when I wrote that e-mail that I
14 made an assumption. That assumption was consequently
15 incorrect.

16 Q. At the time -- never mind. Strike that. Okay.
17 Just a few more questions.

18 The Mid Market Division, that was formed in
19 2014; is that right?

20 A. Correct.

21 Q. It was formed to work with small DSOs?

22 A. There were a myriad -- yes. That was one part
23 of it.

24 Q. And it was formed to work with community health
25 centers?

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1 A. Yes.

2 Q. It was not formed to work with buying groups.

3 A. That's incorrect.

4 Q. Let's look at RX 2381.

5 Let's look at page 3.

6 You've seen this pyramid before?

7 A. I have. I don't know what the date is on the
8 creation or who the author was.

9 Q. But this pyramid is one that you recall seeing
10 before?

11 A. Yes.

12 Q. There are several customer segments listed.

13 Do you see that?

14 A. That's right.

15 Q. And within Mid-Market it says "DSO, CHC's,
16 Hygiene & Assist Schools."

17 Do you see that?

18 A. I do.

19 Q. It doesn't list buying groups or GPOs here,
20 does it?

21 A. It does not.

22 MS. GOFF: Your Honor, may I have a few seconds
23 to consult with co-counsel?

24 JUDGE CHAPPELL: Yes.

25 MS. GOFF: Thank you.

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1 (Pause in the proceedings.)

2 I don't have any other questions at this time.

3 JUDGE CHAPPELL: Anything further?

4 MS. FINCHER: Yes, Your Honor. I'll be quick.

5 JUDGE CHAPPELL: Go ahead.

6 - - - - -

7 REDIRECT EXAMINATION

8 BY MS. FINCHER:

9 Q. Ms. Titus, I'd like to follow up on a couple of
10 documents and questions that complaint counsel just
11 asked you about.

12 Kurt, could you bring up RX 2381, please.

13 Sorry, Kurt. It's RX 2381.

14 And this is, Ms. Titus, the document that
15 complaint counsel was just showing you. Okay?

16 A. Thank you.

17 Q. And if you could please go to page 3 where you
18 were just looking at that pyramid.

19 Ms. Titus, anywhere on this pyramid do you see
20 GPOs or buying groups?

21 A. I do not.

22 Q. But you would agree with me, Ms. Titus, that
23 GPOs and buying groups were in the dental market;
24 correct?

25 A. Absolutely.

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1 Q. And who had responsibility for working with
2 GPOs and buying groups after Mid Market was formed?

3 A. Both Special Markets and Mid Market.

4 Q. And did you personally work with GPOs and
5 buying groups after Mid Market was formed?

6 A. I absolutely did. It was a very important part
7 of my job.

8 Q. Kurt, if you could bring up CX 0165, please.

9 If you can go to page 2, please.

10 Ms. Titus, this is an e-mail you were asked
11 about a moment ago relating to the
12 Business Intelligence Group. And you were asked about
13 the line in your e-mail that states, "I can tell you
14 that with authority that this is not something SM
15 would be interested in."

16 Do you see that?

17 A. I do.

18 Q. Can you tell me why you wrote that with respect
19 to the Business Intelligence Group.

20 A. I can.

21 The nature of Bret McCarroll's inquiry was
22 bringing it over to Special Markets. However, the
23 characteristics of the customer described was more
24 focused on interface with our field sales consultants
25 and our regional managers, as well it was highly

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1 regionalized, so this would be a much better fit for
2 our HSD division where those things could be assured.

3 Q. And Ms. Titus, as of the date you wrote this
4 e-mail, February 1, 2011, which division within Schein
5 had primary responsibility for working with buying
6 groups?

7 A. Special Markets.

8 Q. Okay. Kurt, if you could please pull up
9 CX 2227.

10 And just to be clear, Ms. Titus, did
11 Special Markets work with buying groups of private
12 practice dentists?

13 A. They did.

14 Q. And if you could go to page 2, please, Kurt, on
15 CX 2227.

16 I'm sorry. Could you go back to the first
17 page, please, Kurt.

18 I'm sorry. It's actually page 4.

19 Now, Ms. Titus, you were read a line from this
20 e-mail about the dental co-op that stated, "The
21 decision of HSD to treat them as a GPO is a legacy
22 decision that I do not believe, if presented with the
23 same circumstances today, HSD would have embraced."

24 Do you see that?

25 A. I do see that.

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1 Q. Why did you write that at this time about the
2 Dental Cooperative of Utah?

3 A. Well, I don't have the precise particulars of
4 what Dental Co-Op looked like in 2008. From what I
5 have been given to understand from my peers and
6 colleagues, they were exclusive with Henry Schein.
7 They were supportive, and we had a very close working
8 relationship. In fact, we liked each other very much.
9 We worked very collaboratively with them.

10 When I was called in to try and bring the COO,
11 Andy Eberhardt, back from the direction that he was
12 quickly heading, they were a very different
13 organization. They had taken a different track. They
14 had a breach of trust with Henry Schein. They were
15 essentially acting like competitors cannibalizing
16 Henry Schein's existing business.

17 I don't think in retrospect that Henry Schein
18 would have done business with them under those
19 circumstances.

20 Q. Kurt, could you pull up CX 2226, please.

21 And this is an e-mail you were asked about a
22 moment ago regarding the Klear Impakt buying group. Do
23 you recall that?

24 A. I do.

25 Q. When you write, "We hit the pause button in

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1 January," what did you mean by that?

2 A. Meaning that there were still several points
3 of the agreement that we needed to work out. If I
4 recall specifically, they were education, how
5 Klear Impakt was going to deliver education or push
6 through Henry Schein business solutions education to
7 their member base.

8 Q. Was Henry Schein actually doing business with
9 Klear Impakt as of January of that year?

10 A. I don't recall. I don't recall one way or the
11 other. I think we didn't finalize the agreement until
12 somewhat later. However, the principals were doing
13 business with Henry Schein.

14 Q. Now, Kurt, if you could please pull up CX 2235,
15 please.

16 And you recall being asked about this document
17 a moment ago, Ms. Titus?

18 A. I do.

19 Q. And can you please read to me what the subject
20 line of this document is.

21 A. Pacific Group Management Services Henry Schein
22 agreement, and it has the date and the file name.

23 Q. Ms. Titus, were you talking about anything
24 other than PGMS in this document?

25 A. I was talking specifically about PGMS, the

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1 subject line of the e-mail.

2 Q. Kurt, if you could please pull up CX 0260,
3 please.

4 If you could go to page 2.

5 And Ms. Titus, you were read a sentence from an
6 e-mail authored by Mr. Russ Baker in which he wrote,
7 "It is my understanding that this violates our policy
8 as we do not engage with GPO's."

9 Do you see that?

10 A. I do.

11 Q. Is that an accurate statement?

12 A. It is not.

13 Q. Did Henry Schein in fact engage with GPOs?

14 A. In fact, we did. For the entire time that I
15 worked for Henry Schein.

16 Q. Was there any policy not to engage with GPOs?

17 A. There was not.

18 Q. Is Mr. Russ Baker just wrong?

19 A. Mr. Russ Baker was a regional manager. I don't
20 think he had knowledge or exposure to buying groups in
21 general.

22 Q. And Ms. Titus, this e-mail references the
23 Dental Gator buying group.

24 Did Schein actually continue to do business
25 with the Dental Gator buying group?

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1 A. We did.

2 Q. And Kurt, if you could please pull up
3 CX 2133.

4 If you can go to the second page, please.

5 And you were asked, Ms. Titus, about a sentence
6 in Mr. Brady's e-mail in which he said, "According to
7 Kathleen, who spent an hour last Friday telling me why
8 this is NOT a GPO (they're building 30 denovos in next
9 12 months where they will have a MSO presence and what
10 I gathered to be ownership equity in all locations)."

11 Do you see that?

12 A. I do.

13 Q. Did Breakaway actually have ownership equity in
14 all locations?

15 A. No, they did not.

16 Breakaway corporate had I think approximately
17 eight locations that they had either equity or fully
18 owned practices.

19 Q. And those practices were only owned by the
20 actual owner of Breakaway; right?

21 A. That's right. Dr. Scott Luene.

22 Q. And all the other members of Breakaway were not
23 owned offices; correct?

24 A. That is correct.

25 Q. So this statement in Mr. Brady's e-mail never

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1 came to be; correct?

2 A. That is right.

3 Q. To your knowledge, did Breakaway continue to
4 operate as a buying group?

5 A. They did.

6 Q. Did Breakaway -- did Henry Schein ever close
7 down doing business with Breakaway?

8 A. We did not.

9 MS. FINCHER: Thank you. No further
10 questions.

11 JUDGE CHAPPELL: Anything further?

12 MS. GOFF: Nothing. Thank you, Your Honor.

13 JUDGE CHAPPELL: Thank you, ma'am. You may
14 stand down.

15 We'll reconvene Wednesday at 0945.

16 We're in recess.

17 (Whereupon, the foregoing hearing was adjourned
18 at 4:33 p.m.)

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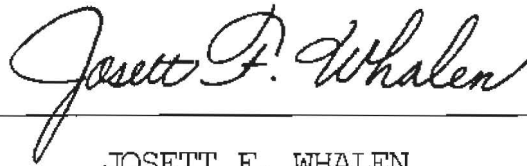
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