

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 15, 2019

14 9:46 a.m.

15 TRIAL VOLUME 20

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.

2/15/2019

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 2 I N D E X  
 3 IN THE MATTER OF BENCO DENTAL SUPPLY CO., et al.  
 4 TRIAL VOLUME 20  
 5 PART 1, PUBLIC RECORD  
 6 FEBRUARY 15, 2019

7					
8	WITNESS:	DIRECT	CROSS	REDIRECT	RECROSS VOIR
9	JOHNSON	5478			
10		5506	5510	5517	
11	CAVARETTA	5525			
12		5620	5627	5650	

13					
14					
15	EXHIBITS	FOR ID IN EVID			STRICKEN/REJECTED
16	CX				
17	(none)				
18					
19	RX				
20	(none)				
21					
22	JX				
23	(none)				
24					
25					

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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 Next witness.

6 MR. MUNKITTRICK: Good morning, Your Honor.

7 Henry Schein calls Dr. Richard Johnson.

8 - - - - -

9 Whereupon --

10 RICHARD JOHNSON

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

13 DIRECT EXAMINATION

14 BY MR. MUNKITTRICK:

15 Q. Good morning, Dr. Johnson.

16 A. Good morning.

17 Q. Could you please state and spell your name for  
18 the record.19 A. Richard Johnson, R-I-C-H-A-R-D, last name  
20 Johnson, J-O-H-N-S-O-N.21 Q. Now, are you familiar with an entity called  
22 Klear Impakt?

23 A. Yes.

24 Q. And what is your relationship with  
25 Klear Impakt?

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1 A. Founding partner.

2 Q. Founding partner?

3 A. Correct.

4 Q. What is Klear Impakt?

5 A. Klear Impakt is a buying and networking group  
6 with the sole purpose to keep private practice dentists  
7 strong and independent.

8 Q. So Klear Impakt is a buying group?

9 A. Correct.

10 Q. And who are Klear Impakt's members?

11 A. Independent dentists that are not associated  
12 with a franchise or some other conglomerate.

13 Q. Now, does Klear Impakt have a partnership with  
14 a dental supplies distributor?

15 A. Yes, we do.

16 Q. Which one?

17 A. Henry Schein.

18 Q. Henry Schein?

19 A. Correct.

20 Q. And when did that partnership start?

21 A. August 2015.

22 Q. And when did discussions with Henry Schein  
23 about that partnership start?

24 A. I believe sometime in 2014. I don't know the  
25 exact date.

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1 Q. Okay. Now, let's talk -- take a step back and  
2 talk a bit about your background.

3 What is your profession?

4 A. Audiology, hearing imbalance doctor.

5 Q. So you're not a dentist?

6 A. Correct.

7 Q. Have you ever worked as a dentist?

8 A. No.

9 Q. Does Klear Impakt serve medical doctors or  
10 audiology doctors like yourself?

11 A. No.

12 Q. So how did you as a medical doctor get involved  
13 with Klear Impakt?

14 A. So we created a group in our field, in the  
15 hearing imbalance and ENT world, called AudConnex,  
16 which was designed to help our industry to keep ENTs'  
17 and audiologists' practices strong and relevant.

18 My friends are dentists, and they coach and  
19 teach people in their field, in the dental field, and  
20 they asked if we could do the same thing in dental.  
21 And they probably asked around 2013 or 2014, and it  
22 took a while to get us organized, and then we decided  
23 to move forward with the process.

24 Q. Can you tell me a little bit more about  
25 AudConnex, why did you start AudConnex.

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1           A. So we went to school to treat patients, but  
2 none of us were taught how to run a private practice,  
3 so a group of us that were independent owners of our  
4 own field would talk and share ideas, and then we  
5 realized there was a lot we didn't know, so as we went  
6 down that road we just kept on adding services and  
7 discounts, so now we have everything from front office  
8 training to leadership training to acquisition,  
9 mergers, expansion, marketing, so we -- as we -- we  
10 just realized a lot that we didn't know that we weren't  
11 taught before.

12           Q. How does that relate to Klear Impakt and the  
13 dentistry world?

14           A. So we just made a lateral move with my friends  
15 that are dentists.

16                   So my friends are dentists, and they just asked  
17 if we can do the same type of process over in the  
18 dental field, about teaching people how to run their  
19 practices and marketing and discounts.

20           Q. So as -- I think you said you're a founding and  
21 part-owner of Klear Impakt; is that right?

22           A. That's correct.

23           Q. What is your role as a part-owner?

24           A. I help with teaching classes as well as  
25 negotiate discounts and pricing.

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1 Q. So we've heard from a number of witnesses in  
2 this case that not all buying groups are created  
3 equal.

4 What are the defining features of Klear Impakt  
5 as a buying group?

6 A. So Klear Impakt, we try to be, as much as  
7 possible, everything to everybody, if they want our  
8 services, so we can do everything from the minute the  
9 patient walks in, that experience, so we teach a  
10 patient experience class, a phone training class,  
11 leadership training, financial training, marketing,  
12 discounts, acquisition, merger, expansion.

13 We try to provide everything as we've -- as we  
14 grow, we keep on adding more services because we find  
15 out what our industry needs.

16 Q. So it sounds like Klear Impakt provides a lot  
17 more than just discounts; is that right?

18 A. That is correct.

19 JUDGE CHAPPELL: So you talked about  
20 acquisition, merger and expansion.

21 THE WITNESS: Correct.

22 JUDGE CHAPPELL: Are you providing legal  
23 referrals for acquisitions, mergers or expansions? Do  
24 you get that involved or are you just doing an  
25 overview?

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1           THE WITNESS: We get involved on the financial  
2 side to tell them what we believe it's worth from our  
3 experience. We would obviously hand that off over  
4 to -- we have attorneys that we've worked with in the  
5 past, yes, but we don't personally act as attorneys.

6           JUDGE CHAPPELL: Does your group provide  
7 financing?

8           THE WITNESS: Directly from us, no, but we use  
9 a financial company, Wells Fargo, for that.

10          JUDGE CHAPPELL: Do you get a commission when  
11 you refer those?

12          THE WITNESS: No.

13          BY MR. MUNKITTRICK:

14          Q. So why did you set up Klear Impakt this way --  
15 well, let me take a step back.

16                 Has Klear Impakt offered all these different  
17 services and benefits, trainings, financial referrals  
18 and services from the beginning?

19          A. Yes.

20          Q. And why did you set up Klear Impakt that way  
21 with all these extra services and benefits?

22          A. The main reason why is just we truly didn't --  
23 as private practice clinicians in any health field, we  
24 go to school to learn how to treat a patient, but none  
25 of us are taught how to run an office. That's the main

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1 reason why.

2 JUDGE CHAPPELL: Sounds like law school.

3 THE WITNESS: Yeah.

4 BY MR. MUNKITTRICK:

5 Q. It does.

6 And were these -- offering these services and  
7 trainings, was that important to the success of  
8 Klear Impakt as a buying group?

9 A. Yes.

10 Q. So let's take a look at a document. This is  
11 CX 4109, and we'll look at page 4 of this.

12 So, Dr. Johnson, we'll be putting the  
13 documents up on the screen for you to look at. If you  
14 prefer, there are hard copies in that binder that I  
15 gave you on the table next to you.

16 Do you recognize this document?

17 A. Yes, I do.

18 Q. What is it?

19 A. It is a marketing piece designed by one of our  
20 other partners, The Lewis Agency, to educate private  
21 practice dentists on some services we offer.

22 Q. So this is a marketing piece that goes out to  
23 whom?

24 A. I believe this was done online with -- through  
25 targeting and SEO, so -- I'm not the marketing person,

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1 so...

2 Q. Is this for potential members of Klear Impakt?

3 A. Correct.

4 Q. Okay. Now, the first thing --

5 JUDGE CHAPPELL: Is that you (indicating)?

6 THE WITNESS: No. I'm not a dentist. I don't  
7 know if he is either, so...

8 BY MR. MUNKITTRICK:

9 Q. So the first thing on this document is you list  
10 a Klear Impakt solutions summary.

11 Do you see that?

12 A. Sorry. Oh, yes, I do see that. Yes.

13 Q. And are those some of the things that we've  
14 been talking about, the trainings and benefits in  
15 addition to discounts?

16 A. Correct.

17 Q. I think we've talked about most of these.  
18 Well, let me just talk about a few in more detail.

19 What is a business/practice efficiency?

20 A. So we have a streamlining and efficiency class  
21 that would teach people the process of a patient  
22 walking through an office from beginning to end, so  
23 it's all the handoffs from the welcome to the exit  
24 after the day they're billed and then how to speed up  
25 that process to see more patients in a day.

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1 Q. And how about front office training? What does  
2 that refer to?

3 A. There's a phone training class. It's a  
4 one-day class. And then there's a patient experience  
5 class that's also a one-day class. It was designed  
6 sort of after the Ritz-Carlton training, how to treat  
7 patients.

8 Q. What is the Ritz-Carlton training?

9 A. It's basically giving your team members or your  
10 staff the ability to make decisions without having  
11 micromanagement and making the patient number one in  
12 your office.

13 Q. And financing, I think you mentioned that.

14 What is the financing?

15 A. So we have patient financing where if a patient  
16 needs a procedure they can do an application to get it  
17 done through the credit card which is only for  
18 healthcare. We use Wells Fargo for that.

19 And then there's also financing for expansion  
20 or mergers or acquisition.

21 Q. And human resources, what does that refer to?

22 A. We use a system called Kolbe, which is a  
23 personality assessment, where if you're hiring  
24 somebody for your office, whether it's front office or  
25 billing or marketing, they would take the Kolbe test

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1 and then it would be matched to your employees' Kolbe  
2 tests to see how they would interact with each other  
3 and make sure it's the right fit for your office.

4 And then we have a business coach that -- she  
5 would interview them as well independently, so it's  
6 not -- once again, we didn't go to school to interview  
7 employees and understand how to do that effectively,  
8 so we have a business coach that does that for people.

9 Q. And marketing, what is that?

10 A. Marketing is everything from your logo to your  
11 website to your billboard outside.

12 Q. And this is something offered to members?

13 A. Correct.

14 Q. Okay. So when you said "your," you're talking  
15 about the dentists --

16 A. "Your" being the --

17 (Counsel and witness speaking at the same time  
18 and cautioned by court reporter.)

19 BY MR. MUNKITTRICK:

20 Q. When you said "your," who were you referring  
21 to?

22 A. The independent practice.

23 Q. Got it.

24 Business management, what is that referring  
25 to?

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1           A. Mostly to do with the financial members of  
2 your office to understand -- we call it your single  
3 focus, how many patients you need in a single month to  
4 make ends meet, training them how to run those  
5 numbers.

6           Q. And then how about education and professional  
7 development? What is that referring to?

8           A. Leadership training and coaching. And then we  
9 actually partner with Henry Schein on a few of those.  
10 Henry Schein offers the OSHA training and other  
11 business classes that we support.

12          Q. Tell me about that partnership. How does that  
13 partnership with Henry Schein work on the trainings?

14          A. So when a member asks for a certain service, we  
15 would -- if we don't offer it -- Henry Schein offers a  
16 huge booklet of services -- we would make sure to see  
17 if they offer that service and we'd lead them in that  
18 direction.

19          Q. When you say "lead them in that direction,"  
20 what do you mean?

21          A. Suggest that they reach out to Henry Schein for  
22 that expertise.

23          Q. I see.

24                 Now, do members have to pay to be a member of  
25 Klear Impakt?



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1 A. No.

2 Q. Now, at the bottom of this page it says "Other  
3 Discounts from the following partners."

4 Do you see that?

5 A. Yes.

6 Q. And Henry Schein is at the top there?

7 A. Correct.

8 Q. And I also see there's something called  
9 Klear Impakt Channel.

10 What is that?

11 A. That is a waiting room TV program.

12 Another class that we teach our dentists is  
13 not to have things that will sabotage their office, so  
14 you don't want to have People magazine or CNN or those  
15 things on, because the patient might see that, and if  
16 they see in the magazine that, you know, somebody is  
17 getting divorced, they might realize, you know, Oh  
18 gosh, I'm getting divorced, I can't afford to do the  
19 procedure today. It's just negative influences in  
20 their office.

21 So that channel is promoted to highlight staff  
22 members, different offerings the clinic does and  
23 charity work that they do.

24 Q. Got it.

25 So let's talk a bit more about the partnership

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1 with Schein. We can take this document down.

2 Q. How did you first get in contact with Schein?

3 A. A friend of mine in Reno runs the warehouse  
4 distributing center or she's the manager of it. Her  
5 name is Katie McCann.

6 Q. And you reached out to her?

7 A. Correct.

8 Q. When was that?

9 A. I believe -- it had to be sometime in 2014, but  
10 I don't know when.

11 Q. And what did you tell Ms. McCann when you  
12 reached out to her?

13 A. That we wanted to create a group of dental  
14 practitioners and have a partner for discounts on  
15 supplies, and I knew she worked at Henry Schein, so I  
16 asked her if she knew somebody I could get in touch  
17 with.

18 Q. And did you tell her you were starting a buying  
19 group?

20 A. Correct.

21 Q. Did she respond, Sorry, Schein does not do  
22 business with buying groups?

23 A. No.

24 MS. CHANG: Your Honor, I have to object. I've  
25 been giving counsel a little leeway, but these are

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1 leading questions.

2 MR. MUNKITTRICK: I don't think they're  
3 leading, Your Honor. They're just yes-or-no questions  
4 and he can say no.

5 JUDGE CHAPPELL: He's correct, it did not  
6 suggest an answer, so overruled.

7 MS. CHANG: Thank you, Your Honor.

8 JUDGE CHAPPELL: But she's correct in that  
9 watch the leading.

10 MR. MUNKITTRICK: Watch myself. I will.  
11 Thank you.

12 BY MR. MUNKITTRICK:

13 Q. Has anyone at Schein ever told you that Schein  
14 does not do business with buying groups?

15 A. No.

16 Q. So let's look at some of these conversations  
17 with Schein. CX 2208 is the first we'll look at.

18 And this is on page 3 and 4 of this document I  
19 believe. I'm sorry. Page 1 and 2.

20 So this is an e-mail from Kathleen Titus to you  
21 and some other people; right?

22 A. Correct.

23 Q. Who are the other people in the "To" line on  
24 this e-mail?

25 A. They're founding partners of Klear Impakt.

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1 Q. Of what?

2 A. Of Klear Impakt.

3 Q. Okay. And the date is January 22, 2015?

4 Do you see that?

5 A. Yes.

6 Q. So how did you move from speaking with  
7 Ms. McCann to e-mailing with Ms. Titus?

8 A. Several phone calls and dead ends. I don't  
9 know if they really knew where to send us. They would  
10 give us a name. We would call. It would be a dead  
11 end. And finally, somebody mentioned Kathleen, and  
12 then we reached out to Kathleen.

13 Q. Now, I notice in her first line of her e-mail  
14 she extends a gracious thank you for making the effort  
15 to meet yesterday.

16 Do you see that?

17 A. Yes.

18 Q. What is she referring to?

19 A. A meeting that we had in person.

20 Q. And that would have --

21 A. Go ahead.

22 Q. So that would have been January 21, 2015 --

23 A. Correct.

24 Q. -- the meeting?

25 So about how much time passed between your

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1 first reach-out to Ms. McCann and this meeting in  
2 January of 2015?

3 A. I'd be guessing, but I believe at least six  
4 months if not longer.

5 Q. Okay. So tell me about this in-person meeting.  
6 How did that come about?

7 A. Several phone calls with Kathleen and I on the  
8 phone, I think just trying to understand each other,  
9 where we're coming from, and see if it's even worth our  
10 time to move forward. And then we thought it would be  
11 finally good to meet in person with our group and her  
12 group, meaning Klear Impakt and Henry Schein.

13 Q. And where was the meeting?

14 A. It was in Reno, Nevada. At the Henry Schein  
15 distributing center.

16 Q. I see.

17 Do you remember about how long the meeting  
18 was?

19 A. I'd say three or four hours.

20 Q. And what did you talk about for three or four  
21 hours?

22 A. Who we were each individually and then what we  
23 are as a group, as far as Klear Impakt, what our value  
24 proposition and what we're offering.

25 Q. And did Henry Schein ask any questions during

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1 the meeting?

2 A. Yes.

3 Q. What kinds of questions?

4 A. Who our target audience is. What our services  
5 are going to be.

6 Yeah, I mean, a lot of it had to do with  
7 services and offerings and value proposition. I don't  
8 remember the exact questions.

9 Q. So value proposition, is that -- well, what's  
10 the value proposition of Klear Impakt?

11 A. All the services we discussed earlier with  
12 business skills and marketing.

13 Q. And was your value proposition important to you  
14 to present to Schein?

15 A. Yes.

16 Q. Why is that?

17 A. So they knew we weren't the same as what I read  
18 somewhere else in her e-mail was the same as every  
19 other buying group, that we weren't just a discount  
20 company.

21 Q. Got it.

22 All right. So a little bit further down in the  
23 e-mail, Ms. Titus writes, "Klearimpakt is a testimony  
24 that not all of created equal... oh, and cream just  
25 rises to the top!"

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1 Do you see that?

2 A. Yes.

3 Q. What did you understand Ms. Titus to be telling  
4 you there?

5 A. I think she enjoyed our meeting and what we had  
6 to offer.

7 Q. And at this point, after your phone  
8 conversations, your in-person meeting and this e-mail  
9 from Ms. Titus, what was your -- were your feelings  
10 towards the partnership with Schein?

11 A. I felt like it was very positive and the  
12 likelihood of us moving forward was really high.

13 Q. Let's look at the last paragraph of this  
14 e-mail.

15 What does Ms. Titus say she's going to do  
16 next?

17 A. She says she is going to move this up the line,  
18 she's going to be attending a senior management meeting  
19 next week.

20 Q. What did you take that to mean?

21 A. She's going to explain to her superiors and  
22 bosses about who and what we are and hopefully promote  
23 our company.

24 Q. Okay. So let's look at -- the next document is  
25 RX 2062.

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1                   And we'll look at Ms. Titus' e-mail.

2                   This is now February 7, 2015, so a few weeks  
3 after the e-mail we were just looking at?

4           A.    Yes.

5           Q.    And you'll see that Ms. Titus -- so she's  
6 writing to you, and she writes, "I did get to review  
7 Klearimpakt with our senior management yesterday."

8                   And she writes, "I gave a very strong  
9 recommendation that we move forward."

10                   Do you see that?

11          A.    Yes.

12          Q.    So what is your feeling at this point about the  
13 prospects of a partnership between you, Klear Impakt,  
14 and Henry Schein?

15          A.    I believe it just reconfirms what we thought a  
16 few weeks prior, that everything still looks very  
17 positive as far as creating a partnership.

18          Q.    I see.

19                   And then she mentions, "The executive committee  
20 meets in two weeks."

21                   Do you see that?

22          A.    Yes.

23          Q.    So what did you understand was going to happen  
24 next in the process towards a partnership with  
25 Henry Schein?



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1           A. That she's going to continue running it up the  
2 ladder and try to get support for the program.

3           Q. Okay. Now, let's look at your response.

4           You wrote back a few days later, February 10,  
5 2015. And you wrote "we have no problem waiting a few  
6 more weeks for your response."

7           Do you see that?

8           A. Correct.

9           Q. Why were you okay with waiting for Ms. Titus to  
10 run this by the executive committee?

11          A. So our -- my friends Jason and Todd Sala that  
12 are founding partners own an office in Reno are --  
13 their main supplier is Henry Schein. And when we  
14 discussed partners, they requested that we reach out to  
15 Henry Schein first, so it made sense that we use a  
16 supplier that our founding partners used.

17          Q. And from your standpoint, was it reasonable to  
18 you that Henry Schein would take some time to run this  
19 up the ladder to the executive committee?

20          A. Yes.

21          Q. Why?

22          A. In a big corporation I -- we understand that  
23 does not take days, that sometimes it will take months,  
24 to get things approved.

25          Q. All right. So after February 2015, did you

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1 have any additional contact or communications with  
2 Henry Schein?

3 A. You said after that?

4 Q. After February 2015.

5 A. Yes.

6 Q. So let's take -- did you have any in-person  
7 meetings after this?

8 A. We did.

9 Q. What were those?

10 A. They came out to Reno again to look at Jason  
11 and Todd's expansion and discuss our businesses,  
12 services again, in more detail.

13 Q. So tell me about that. What was Jason and  
14 Todd's expansion?

15 A. They went from a six or seven thousand square  
16 foot dental office to a twenty thousand square foot  
17 dental office, and they added I think 15 operatories.

18 Q. So who is Jason and Todd again?

19 A. Founding partners of Klear Impakt.

20 Q. Are they dentists?

21 A. Yes.

22 Q. And then you said to discuss your business.  
23 Tell me about that.

24 A. Henry Schein offers a lot of business classes  
25 and support and so does Klear Impakt, so I believe

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1 we're just trying not to step on each other's toes and  
2 contradict each other or offer stuff that we should not  
3 both offer simultaneously.

4 Q. Any other meetings that you had with  
5 Henry Schein on this February date?

6 A. Yes. At the California Dental Academy we met  
7 with Kathleen, Nicole Lena and Joe Cavaretta.

8 Q. What was the nature of that meeting?

9 A. An introduction to Joe.

10 Q. Was that an important thing, an introduction to  
11 Joe?

12 A. Yes. Nicole and Kathleen wanted us to just  
13 meet personally just to have more value of their  
14 partnership and relationship.

15 Q. And what was Mr. Cavaretta's reaction to  
16 Klear Impakt?

17 A. In my personal opinion, he seemed very  
18 positive, just like Kathleen has.

19 Q. So is there anything in these meetings, these  
20 e-mail exchanges we looked at, that indicated to you  
21 that Schein had a policy at this time in early 2015 not  
22 to do business with buying groups?

23 A. No. Nothing stuck out to us that they were not  
24 going to work with us; otherwise, they would have been  
25 wasting their time or our time.

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1 Q. So you ultimately did enter into a partnership  
2 with Henry Schein.

3 A. Correct.

4 MR. MUNKITTRICK: So, Your Honor, I just --  
5 the next document is in camera and I have a few  
6 questions on that, and that's the only in camera  
7 piece.

8 JUDGE CHAPPELL: A few questions?

9 MR. MUNKITTRICK: Right.

10 JUDGE CHAPPELL: And then you're going to go  
11 back to public session and you have more questions?

12 MR. MUNKITTRICK: Correct.

13 JUDGE CHAPPELL: All right. At this time  
14 we'll go into in camera session. I'll need to ask  
15 those not subject to the protective order to leave the  
16 courtroom.

17 (Whereupon, the proceedings were held in  
18 in camera session.)

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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           BY MR. MUNKITTRICK:

4           Q. Okay. Let's pull up --

5           JUDGE CHAPPELL: Hold it, hold it.

6           MR. MUNKITTRICK: Oh, I'm sorry.

7           JUDGE CHAPPELL: Wait for the settling.

8           Go ahead.

9           MR. MUNKITTRICK: Thank you.

10          BY MR. MUNKITTRICK:

11          Q. Let's pull up RX 2222.

12                 What is this document, Dr. Johnson?

13          A. That is our enrollment form for somebody that  
14 is going to participate in the Klear Impakt  
15 Henry Schein discount.

16          Q. So who fills out this enrollment form?

17          A. The dentists.

18          Q. Your members?

19          A. Correct.

20                 If they want -- so everybody is not obligated  
21 to participate in that discount. That's just one of  
22 our offerings.

23          Q. I see.

24                 So when would a Klear Impakt member and dentist  
25 be filling out this form?

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1           A. When they've decided to move forward with that  
2 discount.

3           Q. And I see at the bottom it says, "The above  
4 named Member agrees to purchase a minimum of 70 percent  
5 of their supplies in a FISCAL Year from Henry Schein  
6 Dental."

7                   Do you see that?

8           A. Yes.

9           Q. What does that mean?

10          A. That the dentist that signs that contract  
11 understands that they should purchase at least  
12 70 percent of their supplies from Henry Schein.

13          Q. So each member who signs up for the  
14 Henry Schein discount signs one of these?

15          A. Yes.

16                   JUDGE CHAPPELL: Do you know how that was  
17 monitored or enforced?

18                   THE WITNESS: The 70 percent?

19                   JUDGE CHAPPELL: Yes.

20                   THE WITNESS: So we don't get in their books.  
21 I'm sure --

22                   JUDGE CHAPPELL: So the answer is no, you don't  
23 know.

24                   THE WITNESS: Well, from my side. I don't know  
25 from the Henry Schein side.



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1 JUDGE CHAPPELL: All right. That's good.

2 THE WITNESS: Yeah.

3 JUDGE CHAPPELL: Do you know if it is  
4 enforced?

5 THE WITNESS: I don't know.

6 JUDGE CHAPPELL: All right.

7 BY MR. MUNKITTRICK:

8 Q. All right. So the first agreement with  
9 Henry Schein was August of 2015; right?

10 A. Correct.

11 Q. From August 2015 until today, has Henry Schein  
12 ever stopped doing business with Klear Impakt?

13 A. No.

14 Q. Has it ever stopped offering discounts to  
15 Klear Impakt members?

16 A. No.

17 Q. Okay. Now, before we conclude, let's step back  
18 and talk about why we're here. To do that, let's pull  
19 up RXD 5.

20 This is the agreement that the FTC alleges.  
21 They allege that Benco, Schein and Patterson agreed not  
22 to provide discounts to, or otherwise contract with,  
23 buying groups of independent dentists.

24 Do you see that?

25 A. Yes.

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1 Q. Do you know anything about such an alleged  
2 agreement?

3 A. I don't know anything about that agreement.

4 Q. Have you heard of any agreement like this?

5 A. No, I have not.

6 Q. Did it -- from your communications with Schein  
7 from 2014 until today, has anyone ever said anything  
8 that could remotely sound like this alleged agreement?

9 A. No.

10 Q. In your interactions with Schein from  
11 2014 until today, has Schein ever behaved in a way  
12 towards you that would indicate it was a member of any  
13 such alleged agreement?

14 A. No.

15 MR. MUNKITTRICK: That's all the questions I  
16 have at the moment. I can pass the witness.

17 JUDGE CHAPPELL: Anybody else on the right  
18 side?

19 MS. JONES: I have a few questions,  
20 Your Honor.

21 JUDGE CHAPPELL: Go ahead.

22 - - - - -

23 DIRECT EXAMINATION

24 BY MS. JONES:

25 Q. Dr. Johnson, my name is Caroline Jones, and I

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1 represent Patterson.

2 Do Klear Impakt members always use the  
3 Henry Schein discount that is available to them?

4 A. No.

5 Q. And why is that?

6 A. I'm -- I can't really get in the heads of the  
7 dentists that choose not to. I think some people just  
8 have a better relationship with another manufacturer  
9 or are comfortable with what they're already  
10 purchasing.

11 Q. So sometimes Klear Impakt members can get a  
12 better price or value from another distributor, like my  
13 client Patterson?

14 A. I have no idea if they can get a better price.

15 Q. Would it surprise you if that happened?

16 A. It would.

17 Q. And I just want to make the record clear.

18 Do you have any firsthand personal knowledge  
19 regarding my client Patterson entering into an  
20 agreement with either Benco or Schein to refuse to deal  
21 with buying groups?

22 A. No.

23 Q. And do you have any firsthand knowledge of  
24 Patterson entering into an agreement not to discount to  
25 buying groups?

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1 A. No.

2 Q. Have you ever been a part of any conversations  
3 or communications between Patterson and either Benco or  
4 Schein?

5 A. Between the three of you?

6 Q. Yes.

7 A. No.

8 Q. Earlier today you testified that you first  
9 reached out to Henry Schein and had some phone calls  
10 with them in 2014; is that right?

11 A. Correct.

12 Q. And you first met with Henry Schein in 2015; is  
13 that right?

14 A. In person, correct.

15 Q. And you first entered into an agreement with  
16 Henry Schein in August of 2015; is that right?

17 A. Correct.

18 Q. Prior to entering into that agreement in  
19 August 2015, did Klear Impakt ever reach out to  
20 Patterson about partnering with Klear Impakt?

21 A. Before our agreement with Henry Schein, no.

22 Q. Did Klear Impakt reach out to Patterson at some  
23 point in 2017?

24 A. I don't remember what year it was, but yes, we  
25 reached out to Patterson.

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1 Q. Was it after 2015?

2 A. It was after 2015, correct.

3 Q. And at that point, that was the first time that  
4 Klear Impakt reached out to Patterson?

5 A. Correct.

6 Q. So was it your understanding that Klear Impakt  
7 had no contact with Patterson between February 2013 and  
8 December 2015?

9 A. I believe so. Correct.

10 Q. Are you aware that in response to written  
11 questions from my client Patterson, the FTC listed  
12 Klear Impakt as a buying group that Patterson would  
13 have sold dental equipment and/or supplies to from  
14 February 2013 to December 2015 but for the alleged  
15 conspiracy?

16 A. I don't know what you're talking about.

17 Q. But if the FTC wrote that, that statement would  
18 be false; right?

19 A. Correct.

20 MS. JONES: No further questions. Pass the  
21 witness.

22 MR. RACOWSKI: No questions from Benco at this  
23 time, Your Honor.

24 JUDGE CHAPPELL: Cross?

25 MS. CHANG: Yes, Your Honor.

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1 (Pause in the proceedings.)

2 Good morning, Your Honor.

3 Diana Chang on behalf of complaint counsel.

4 JUDGE CHAPPELL: Proceed when ready.

5 - - - - -

6 CROSS-EXAMINATION

7 BY MS. CHANG:

8 Q. Good morning, Dr. Johnson. We haven't met  
9 before. It's nice to meet you in person.

10 A. Likewise.

11 Q. Dr. Johnson, Schein is paying your attorney's  
12 fees in this matter; is this correct?

13 A. Correct.

14 Q. Did you meet with any of Schein's counsel in  
15 person prior to today's testimony?

16 A. Yes.

17 Q. When was that?

18 A. Yesterday.

19 Q. And who did you meet with?

20 A. I'm going to butcher his last name,  
21 David Munkittrick -- is that right -- and Colin Kass.

22 Q. Anyone else?

23 A. No.

24 Q. You testified in response to some questions  
25 from Schein's counsel just a moment ago that

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1 Klear Impakt's partnership with Schein started in  
2 August 2015.

3 Do I have that right?

4 A. Yes.

5 Q. And you're referring to the first agreement  
6 that Klear Impakt signed with Schein in August of 2015;  
7 correct?

8 A. Yes.

9 Q. And that was the first agreement between  
10 Klear Impakt and Schein?

11 A. Correct.

12 Q. And Klear Impakt was founded in 2014.

13 Does that sound right?

14 A. I don't -- what do you mean by "founded"?

15 Q. Created?

16 A. Because we were in discussions way prior to  
17 that. We probably created our LLC then, but at that  
18 point we'd been talking for a couple years. We just  
19 didn't have the time. Between Jason and Todd with  
20 their dental practice and me with my private practice  
21 and my other buying group, we just didn't have the time  
22 really to put the energy forward in it.

23 Q. And just so the record is clear, when you say  
24 "we were talking," you're referring to --

25 (Counsel and witness speaking at the same time

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1 and cautioned by court reporter.)

2 BY MS. CHANG:

3 Q. I'll just re-ask my question.

4 So just so the record is clear, when you say  
5 "talking," you're referring to discussions among you,  
6 Dr. Sala, Todd Sala, and Dr. Jason Sala; is that  
7 right?

8 A. Yes. And the other founders of Klear Impakt as  
9 well.

10 Q. An internal discussion among the part-owners  
11 and founders of Klear Impakt; correct?

12 A. Correct.

13 Q. Okay. So Klear Impakt wasn't in existence in  
14 2011; right?

15 A. Correct.

16 Q. So fair to say Klear Impakt didn't have an  
17 agreement in effect with Schein in 2011; right?

18 A. Correct.

19 Q. Not in 2012?

20 A. Correct.

21 Q. Not in 2013?

22 A. Correct.

23 Q. And I know that you've talked a little bit  
24 about your discussions with Schein in late 2014, but  
25 there was no agreement in effect with Schein at any



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1 point in 2014; correct?

2 A. Correct.

3 Q. So it really wasn't until August of 2014 --  
4 15 -- excuse me -- that Klear Impakt had a partnership  
5 or an agreement with Schein; right?

6 JUDGE CHAPPELL: 2015?

7 MS. CHANG: Thank you, Your Honor. 2015.

8 THE WITNESS: Correct.

9 BY MS. CHANG:

10 Q. You talked a little bit about the  
11 2015 agreement in response to a couple questions from  
12 Schein's counsel. We did that in camera because it  
13 contains some confidential information.

14 I want to ask you a couple questions generally  
15 so we don't get into any of the specifics, so I would  
16 caution you not to give me specific numbers. If you  
17 feel like you need to, just let me know.

18 Does that make sense?

19 A. Yes.

20 Q. Is it your testimony today that you understood  
21 that there was a volume commitment in the  
22 2015 agreement?

23 A. I would say no.

24 Q. And in fact, that volume commitment was not  
25 enforced; correct?

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1 A. Correct.

2 JUDGE CHAPPELL: I want to make sure the  
3 record is clear, Ms. Chang.

4 This is an agreement not between his company  
5 and Schein. Are you talking about the agreement we  
6 saw on the screen between Schein and the dentist?

7 I want to make sure the record is clear what  
8 you're referring to.

9 MS. CHANG: Sure. I'm referring to the  
10 2015 agreement between Klear Impakt and Schein, not the  
11 enrollment form, Your Honor.

12 JUDGE CHAPPELL: Okay. An agreement his  
13 company is a part of.

14 MS. CHANG: Correct, Your Honor.

15 JUDGE CHAPPELL: Make sure he understands  
16 that.

17 BY MS. CHANG:

18 Q. Dr. Johnson, when I asked you just a moment ago  
19 about the 2015 agreement, did you understand I was  
20 referring to the 2015 agreement between Klear Impakt  
21 and Schein?

22 A. Yes.

23 Q. And just so the record is clear, it was your  
24 testimony that there is no volume commitment in that  
25 2015 agreement between Klear Impakt and Schein;

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1 correct?

2 A. The volume agreement would be between dental  
3 practices and Henry Schein, not so much Klear Impakt  
4 and Henry Schein.

5 JUDGE CHAPPELL: I might have missed this, but  
6 is there an evergreen clause or is that agreement still  
7 in effect today?

8 THE WITNESS: That -- that one? I think there  
9 is a second contract that's more current.

10 JUDGE CHAPPELL: So you have, as you sit here  
11 today, a current agreement with Schein?

12 THE WITNESS: A current agreement, correct.

13 JUDGE CHAPPELL: Similar to the one signed in  
14 2015?

15 THE WITNESS: Pretty similar, yes.

16 JUDGE CHAPPELL: All right.

17 BY MS. CHANG:

18 Q. You just mentioned a current agreement with  
19 Schein.

20 There's no volume commitment in that agreement;  
21 correct?

22 A. I would have to review it. Once again, if  
23 there is a volume commitment, it's not necessarily  
24 between -- we don't sell product personally at  
25 Klear Impakt, the dentists do, so it would be more so

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1 between the dentists and Henry Schein.

2 JUDGE CHAPPELL: Is there an exhibit number for  
3 that current agreement so that he doesn't have to  
4 guess?

5 MS. CHANG: Yes, Your Honor. We'd have to go  
6 in camera or I could just show him without putting it  
7 up on the screen.

8 JUDGE CHAPPELL: I'm not sure we have to go  
9 in camera for you to show him the exhibit and ask the  
10 question you just asked that he said he needed to look  
11 at the agreement for.

12 MS. CHANG: Yes, Your Honor.

13 JUDGE CHAPPELL: Let's try to do that first.

14 MS. CHANG: Thank you, Your Honor.

15 May I approach the witness?

16 JUDGE CHAPPELL: Yes.

17 BY MS. CHANG:

18 Q. So, Dr. Johnson, if I can have you turn to  
19 what's marked in your binder as RX 0602. And let me  
20 know when you've had a chance to look at it.

21 A. Okay.

22 (Document review.)

23 Q. And based on your review of the document, I'll  
24 ask you my question again.

25 There's no volume commitment in this agreement

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1 with Schein; correct?

2 A. Correct.

3 I'm still confused on your question on volume  
4 commitment because there is a volume commitment between  
5 the member and Henry Schein, right, to at least do the  
6 70 percent, but there is not one between Klear Impakt  
7 and Henry Schein.

8 Q. That was my question.

9 A. Yeah.

10 MS. CHANG: If I may have just a moment to  
11 confer with co-counsel, Your Honor?

12 JUDGE CHAPPELL: Yes. Go ahead.

13 (Pause in the proceedings.)

14 MS. CHANG: Thank you, Dr. Johnson.

15 No further questions, Your Honor.

16 JUDGE CHAPPELL: Anything else?

17 MR. MUNKITTRICK: Yep. Just a few redirect.

18 JUDGE CHAPPELL: While he's doing that, make  
19 sure the next witness is standing by.

20 - - - - -

21 REDIRECT EXAMINATION

22 BY MR. MUNKITTRICK:

23 Q. Dr. Johnson, you talked about volume  
24 commitments with complaint counsel. And when you and I  
25 were speaking, we looked at the language in your member

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1 enrollment forms about 70 percent. Do you remember  
2 that?

3 A. Yes. Yes, I do.

4 Q. Was that 70 percent a commitment Klear Impakt  
5 makes or Klear Impakt's members make?

6 A. The member makes that commitment.

7 Q. And what is that commitment?

8 A. That commitment is 70 percent, if they sign  
9 that form, to Henry Schein.

10 Q. Now, is that commitment -- is that a benefit to  
11 Klear Impakt or to Schein?

12 A. Likely to both, but --

13 Q. How is that a benefit to Schein?

14 A. Hopefully, we increase their overall business,  
15 supply purchasing.

16 Q. And has Klear Impakt been successful in doing  
17 that, helping Schein increase its business?

18 A. Yes.

19 Q. How do you know that?

20 A. We get monthly reports from Henry Schein with  
21 accounts that are connected to that discount.

22 JUDGE CHAPPELL: Hold on a second.

23 You said -- when he said is it a benefit to  
24 Klear Impakt or Schein, you said both.

25 How does it impact Klear Impakt?

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1 THE WITNESS: Well --

2 JUDGE CHAPPELL: How is it a benefit to  
3 Klear Impakt?

4 THE WITNESS: Yeah. In a partnership you want  
5 it to be a win-win, not one-sided, and we have a -- an  
6 admin fee is what I believe they call it, so we get  
7 paid off of production as well.

8 JUDGE CHAPPELL: So you get a cut.

9 THE WITNESS: Correct.

10 JUDGE CHAPPELL: All right.

11 BY MR. MUNKITTRICK:

12 Q. Now, you also talked with complaint counsel  
13 about the most recent 2016 agreement between Schein and  
14 Klear Impakt. I want to take a look at that, so to do  
15 that, we'll have to go in camera.

16 JUDGE CHAPPELL: We do or we do not?

17 MR. MUNKITTRICK: We do.

18 JUDGE CHAPPELL: All right. At this time we  
19 need to go into in camera session. I'll need to ask  
20 those not subject to the protective order in this case  
21 to leave the courtroom.

22 (Whereupon, the proceedings were held in  
23 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 JUDGE CHAPPELL: Anything further?

4 MS. JONES: No, Your Honor.

5 JUDGE CHAPPELL: Thank you, sir. You may stand  
6 down.

7 Call your next witness.

8 (Pause in the proceedings.)

9 MR. McDONALD: Your Honor, Henry Schein calls  
10 Joe Cavaretta.

11 - - - - -

12 Whereupon --

13 JOE CAVARETTA

14 a witness, called for examination, having been first  
15 duly sworn, was examined and testified as follows:

16 DIRECT EXAMINATION

17 BY MR. McDONALD:

18 Q. Good morning, Mr. Cavaretta.

19 Would you please state your full name for the  
20 record.

21 A. My name is Joe Cavaretta.

22 Q. And where are you currently employed,  
23 Mr. Cavaretta?

24 A. I'm currently employed by Dental Whale.

25 Q. What is your title at Dental Whale?

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1 A. I'm the president of Dental Whale Services.

2 Q. And when did you join Dental Whale?

3 A. I joined Dental Whale February of 2019.

4 Q. Just a few weeks ago?

5 A. Just a few weeks ago.

6 Q. What is Dental Whale?

7 A. Dental Whale is a company made up of three  
8 components. One component is we own offices. The  
9 second component is we have an education curriculum.  
10 And then the third component is made up of dental  
11 services that we provide to the dental community.

12 Q. Does the services component of Dental Whale  
13 have a buying group component?

14 A. Yes, we do.

15 Q. What is the buying group component of  
16 Dental Whale Services called?

17 A. It is called the Dental Whale Savings Network.

18 JUDGE CHAPPELL: Did you mean to say  
19 February 2019?

20 THE WITNESS: Yes, sir.

21 JUDGE CHAPPELL: What day?

22 THE WITNESS: February 4, 2019.

23 JUDGE CHAPPELL: About 11 days ago?

24 THE WITNESS: About 11 days ago. Sorry.

25 JUDGE CHAPPELL: All right.

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1 BY MR. McDONALD:

2 Q. As president, what are your responsibilities  
3 related to the Dental Whale Savings Network?

4 A. I'm responsible for the strategy, the  
5 go-to-market strategy around growing the revenue, the  
6 relationships with the vendors, and overall leading my  
7 team on how to grow the Dental Whale Savings Network.

8 Q. Where did you work prior to becoming president  
9 of Dental Whale Services?

10 A. I worked for Henry Schein Dental.

11 Q. And when did you join Henry Schein?

12 A. I joined Henry Schein in 2001.

13 Q. 18 years ago?

14 A. Roughly 18 years ago.

15 Q. So after almost 18 years, why did you decide to  
16 leave Henry Schein and join Dental Whale Services as  
17 president?

18 A. Yeah.

19 So going back to May-June of 2018, the first  
20 one is -- so my mother was battling Alzheimer's for  
21 about ten years. And between May and June she,  
22 unfortunately, had cancer, and so she was in hospice at  
23 that point, so there's a three-week period where we  
24 were dealing with her health. And at that point, I'm  
25 45 years old, and you just start realizing things and

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1 time has gone by and missed opportunities, so you start  
2 reflecting on your life, so when she passed, more of  
3 that started coming out.

4 The second thing is, for the year prior to  
5 that, I'd had been talking to the Dental Whale team and  
6 really good people. The opportunity that they were  
7 offering to the community was really exciting, so that  
8 was of interest to me.

9 And then the third thing, I was just -- after  
10 working for Henry Schein for 18 years, being in a  
11 public company for 13 years, actually in the corporate  
12 office, and quarter-to-quarter results, it -- it was  
13 just wearing on me a little bit, so I figured if I was  
14 going to take a risk and go to another opportunity, now  
15 is the time.

16 Q. I want to pull up RXD 5, please.

17 So, Mr. Cavaretta, you have the pleasure of  
18 being our last witness in this trial. And I want to  
19 find out -- maybe you know something about this  
20 agreement that's been alleged by the FTC.

21 They allege that Benco, Schein and Patterson  
22 agreed not to provide discounts to, or otherwise  
23 contract with, buying groups of independent dentists.

24 Do you see that?

25 A. I do.



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1 Q. Do you know anything about such an alleged  
2 agreement?

3 A. I do not.

4 Q. Did you ever come to such an agreement with  
5 Chuck Cohen at Benco?

6 A. No, I did not.

7 Q. Did you ever come to such an agreement with  
8 anyone at Benco?

9 A. No.

10 Q. Did you ever come to such an alleged agreement  
11 with Paul Guggenheim at Patterson?

12 A. No.

13 Q. Did you ever come to such an alleged agreement  
14 with anyone at Patterson?

15 A. No.

16 Q. Are you aware of any agreement between Benco,  
17 Schein and Patterson not to do business with buying  
18 groups?

19 A. I'm not.

20 Q. Are you aware of any understanding with those  
21 companies to not do business --

22 A. No, I'm not.

23 Q. -- with buying groups?

24 Are you aware of any agreement or understanding  
25 of any way between Benco, Schein and Patterson not to

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1 offer discounts to buying groups?

2 A. No, I'm not.

3 Q. Do you know what Benco or Patterson's strategy  
4 is regarding buying groups?

5 A. No, I don't.

6 Q. So are you aware that the FTC alleges that  
7 Schein was involved in this agreement, this conspiracy,  
8 between the years 2011 and 2015?

9 A. Through the course of this case I've been made  
10 aware of that.

11 Q. Did you work closely with Tim Sullivan in the  
12 years 2011 through 2015?

13 A. I did.

14 Q. Did you notice any change in Mr. Sullivan's  
15 behavior regarding buying groups during that time  
16 period?

17 A. No.

18 Q. Did you receive any change in direction from  
19 Mr. Sullivan, during that time period, regarding buying  
20 groups?

21 A. Yes.

22 Q. Yes, you did?

23 A. Yeah.

24 Q. Well, what kind of change in direction did you  
25 receive from Mr. Sullivan during the alleged conspiracy

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1 time period?

2 A. Well, one of my main responsibilities in the  
3 position I was in with Henry Schein was growing the  
4 business in markets that where we were really growing  
5 in the industry. And during this time, we were putting  
6 strategy together for the mid-market space and also the  
7 buying group space.

8 So as we noticed in the industry, we were  
9 learning things from the mid-market that the buying  
10 group component, there was opportunities there. We  
11 were getting inquiries. It was just more and more  
12 frequent. And we didn't really have a strategy. There  
13 was a little bit of confusion, so Tim asked me to put  
14 together a strategy for both mid-markets and, of  
15 course, part of that would be buying groups.

16 Q. So during the alleged conspiracy, Mr. Sullivan  
17 directed you to come up with a strategy to work with  
18 buying groups? Did I get that right?

19 A. You got that right, yes.

20 Q. Mr. Cavaretta, did you consider yourself -- I  
21 have to change from "do" to "did" since you just  
22 moved -- did you consider yourself to be an executive  
23 at Henry Schein?

24 A. Yes.

25 Q. Kurt, can you pull up Exhibit CX 6009.

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1           This is the complaint in this case.

2           You've seen this before; right?

3           A. I have.

4           Q. And I want to look at paragraph 34.

5           And the -- this is the allegation from the FTC,  
6 and they state, "Sullivan and other top Schein  
7 executives began instructing its sales force to avoid  
8 selling to Buying Groups. As a result, Schein refused  
9 to provide discounts to or compete for the business of  
10 new Buying Groups."

11           Do you see that?

12           A. I do.

13           Q. Do you believe that statement is true or  
14 false?

15           A. False.

16           Q. Why?

17           A. Well, because we did business with buying  
18 groups and we were also putting a strategy together for  
19 buying groups so we could grow with them.

20           Q. Well, you said you were one of the top Schein  
21 executives; is that right?

22           A. That's correct.

23           Q. Did you ever instruct the sales force to avoid  
24 selling to buying groups?

25           A. I did not.

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1 Q. Never during your 18 years at Henry Schein?

2 A. No.

3 Q. Are you aware of any other executives at  
4 Henry Schein giving such an instruction?

5 A. No.

6 Q. Did anyone ever give you such an instruction?

7 A. No.

8 Q. During your time at Henry Schein did you ever  
9 instruct anyone at Henry Schein to not offer discounts  
10 to or compete for the business of new buying groups?

11 A. No.

12 Q. Are you aware of other executives at  
13 Henry Schein giving an instruction to not provide  
14 discounts to or compete for the business of new buying  
15 groups?

16 A. No.

17 Q. Did anyone ever give that instruction to you,  
18 that is, don't provide discounts or compete for the  
19 business of new buying groups?

20 A. No.

21 Q. I want to show you RXD 34. This is a slide  
22 from complaint counsel's opening statement in this  
23 case. It seems like years ago, but it was a few months  
24 ago.

25 And the title of this slide is Schein

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1 Instructed Its Sales Force to Reject Buying Groups.

2 Do you see that?

3 A. I do.

4 Q. And there's a picture of you there?

5 A. Uh-huh.

6 Q. And there's a little slide with Jake Meadows.

7 Do you see that?

8 A. That's not Jake Meadows.

9 Q. That's not Jake Meadows.

10 Do you know who that is?

11 A. No.

12 Q. No idea.

13 A. No clue.

14 Q. Okay.

15 That's you, though. You look happy.

16 A. I'm a generally happy guy.

17 Q. To be clear, did you instruct the sales force  
18 at Henry Schein to reject buying groups?

19 A. I did not.

20 Q. Are you aware of Mr. Meadows ever instructing  
21 the sales force to reject buying groups?

22 A. No.

23 Q. So is this statement, "Schein instructed its  
24 sales force to reject buying groups," is that true or  
25 false?

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1           A.  It's false.

2                   And honestly, you mentioned my smile.  I see  
3  everything going on here and it's -- it's frustrating  
4  and disappointing when I see it because during that  
5  time frame I spent a lot of days and hours and, quite  
6  frankly, years putting a structure together to -- for  
7  the mid-market space -- and part of it was the buying  
8  group space -- with people and resources, and the  
9  amount of time and energy that went into putting this  
10 together is -- is not represented here.

11                   And the fact that my face is on this and in the  
12 dental industry, you know, reputation is everything,  
13 and I feel proud and I want to look back and say that I  
14 was the leader of creating the mid-market space, I was  
15 the leader of creating the buying group space, and to  
16 me, this takes it all away.  And that's not okay.

17           Q.  Are you aware of any policy at Henry Schein not  
18 to do business with buying groups?

19           A.  No.

20           Q.  Does Henry Schein currently work with buying  
21 groups?

22           A.  We do.

23           Q.  Was Henry Schein working with buying groups  
24 when you joined in 2001?

25           A.  Yes.

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1 Q. During your tenure at Henry Schein Dental for  
2 18 years, did it ever stop working with buying groups?

3 A. No.

4 Q. I want to back up and talk a little bit about  
5 your employment history.

6 Where did you work prior to joining Schein in  
7 2001?

8 A. I worked for Patterson Dental.

9 Q. And when did you start working for  
10 Patterson Dental?

11 A. 1997.

12 Q. What did you do while you were at  
13 Patterson Dental?

14 A. I started out as an operations manager with  
15 Patterson Dental and I moved to an equipment sales  
16 specialist.

17 Q. While you were at Patterson Dental did you  
18 compete against Henry Schein?

19 A. Yes.

20 Q. Was that ever not the case?

21 A. No.

22 Q. When you joined Henry Schein Dental, did you  
23 compete against Patterson?

24 A. Every day.

25 Q. How would you describe the relationship between



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1 Patterson and Henry Schein?

2 A. The industry is small, so it's cordial, but it  
3 was -- it was fierce competition every day.

4 Q. Can you give examples of what you mean by  
5 that?

6 A. Sure.

7 Recruiting each other's reps. Schein,  
8 fortunately, was more successful at that point than  
9 Patterson, so we were recruiting the reps on a regular  
10 basis.

11 Every day walking into an office, if an office  
12 was owned and it was usually based by merchandise of  
13 who owned that office or not, and you're constantly  
14 trying to win the business over and take the business  
15 from Patterson.

16 Putting in other programs specifically to take  
17 the business.

18 Equipment, technology, software.

19 Every day we were competing against Patterson.

20 Q. I just -- I want to be clear. We can see what  
21 you say because the court reporter is writing it down.

22 Did you mean to say Schein unfortunately was  
23 more successful?

24 A. No. Fortunately. Sorry. I apologize.

25 Q. I just want to be sure we got it right.

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1 A. That's a good thing.

2 Q. Why did you leave Patterson to go to  
3 Henry Schein?

4 A. A number of different reasons.

5 One, at this time, Patterson -- or Schein was  
6 recruiting me. And I had made the move from an  
7 equipment sales specialist -- or from an operation  
8 manager, so as a leader, into equipment sales  
9 specialist role. And during that two to three-year  
10 period, many of the team members continued to come to  
11 me with challenges that they had with their current  
12 leader, so I was almost acting as a pseudo leader, yet  
13 I was still trying to be an equipment sales specialist,  
14 so I was frustrated.

15 The second component is, Schein had just  
16 started and they were completing the acquisitions that  
17 they had made, whether it was Meer Dental, the merger  
18 with Sullivan and Schein, and there was a lot of  
19 interesting dynamics going on there, so one of the  
20 manufacturer reps that I trusted, I let him know that  
21 Schein was recruiting me. And he said, You know, Joe,  
22 Schein is a big locomotive, and once they find the  
23 right track, watch out, they're going to do some  
24 amazing things.

25 I was also 26 years old and I didn't have any

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1 responsibility and the opportunity was in Arizona and  
2 Las Vegas, so that was attractive.

3 And then Dean Kyle had said to me, You know,  
4 Joe, I know you're not sure if you want to do this, but  
5 if you could, just fly into Wisconsin and meet with  
6 Tim Sullivan, who was running the team at the time  
7 because his father had just passed, and if you could  
8 just have an interview with him, I'd appreciate it.

9 So I flew into Wisconsin. And we met at  
10 the -- it was the Midwest Express club, which is no  
11 longer there, and an hour interview turned into three  
12 hours. And during the course of the interview, it was  
13 just a very different experience and a very different  
14 culture in that three short hours of where I was coming  
15 from to where I could possibly be.

16 So I ultimately left for all those reasons, but  
17 the main reason is I wanted to work for Tim.

18 Q. When you left Patterson to go to Henry Schein,  
19 who was the larger company?

20 A. Patterson.

21 Q. And when you left Schein a few weeks ago, who's  
22 the larger company?

23 A. Schein.

24 Q. So during your tenure at Schein, the two  
25 companies flipped as to who was the largest.

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1 A. Absolutely.

2 Q. Do you believe you played a role in that flip?

3 A. I would like to think so.

4 Q. When you joined Henry Schein, did you also  
5 compete against Benco?

6 A. I did.

7 Q. And how would you describe the relationship  
8 between Schein and Benco?

9 A. Similar, a cordial industry, but it was  
10 competition every single day.

11 Q. What were your job titles during the conspiracy  
12 time period, that is, 2011 through 2015?

13 A. First, I was the western zone manager.

14 After the western zone manager position, I  
15 became the area director, and I was responsible for the  
16 West as the area director.

17 They changed the area director position to the  
18 area vice president, so I was the area vice president  
19 for the West.

20 Then I became the vice president of sales for  
21 the West.

22 And then last year I was the vice president of  
23 sales for the East.

24 Q. During that time period when you had those  
25 jobs, who did you report to?

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1 A. Dave Steck.

2 Q. What were your responsibilities in these  
3 various jobs during that time period?

4 A. Mainly to grow and drive revenue, increase  
5 profitability, you know, the P&L responsibility and  
6 being diligent to the P&L. It was also to -- talent  
7 management, bring the right people on board. And then  
8 a lot of time was focused on leadership, hiring  
9 leaders, developing leaders and growing leaders.

10 Q. You testified that you worked for Patterson for  
11 about four years?

12 A. I did.

13 Q. And then went to Henry Schein Dental for about  
14 18 years?

15 A. Correct.

16 Q. Do you believe Henry Schein is the best  
17 full-service distributor?

18 A. I do.

19 Q. Why?

20 A. So there's several different reasons.

21 First of all, the overall offering of what is  
22 provided by Henry Schein to the dental community. Not  
23 only do you have the merchandise and the equipment and  
24 the practice software and the technical service, but  
25 you also have the business solutions, so we spent a lot

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1 of time during that 18 years focusing and educating our  
2 team members on the business end of dentistry so we  
3 could help our dentists grow their business rather than  
4 just selling them a product that could maybe help them  
5 grow their business.

6 A second thing is I would say that Schein is  
7 interesting because it is a big company, but it's --  
8 it's almost a collection of smaller businesses.

9 So it was a big company, but they had -- they  
10 were running the individual businesses as small units,  
11 so it was very innovative and one recognizing that  
12 when you acquired a company or grew a company, you  
13 gave the individual in charge empowerment to run the  
14 business, but at the same time, what I really loved  
15 about Schein, too, is that they would see where the  
16 industry was going and adapt to that prior to anybody  
17 else and usually a couple of years before anybody else  
18 would.

19 Q. And when you say they'd adapt prior to anybody  
20 else and a couple years before anybody else, do you  
21 mean your competitors?

22 A. I do.

23 Q. Do you think Henry Schein is more innovative  
24 than its competitors?

25 A. I do.

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1 Q. Kurt, if you'll pull up RXD 24, please.

2 We've heard some testimony about the  
3 Henry Schein Dental wheel.

4 Do you recognize this?

5 A. Yes, I do.

6 Q. What is the Henry Schein Dental wheel?

7 A. It's our value proposition to our customer. It  
8 was used, one, to help internally our sales team  
9 understand what we do as Henry Schein.

10 Secondly, it was an outwardly-facing document  
11 to help our customers understand who Henry Schein is.

12 And then if you look at the wheel in the  
13 middle, it really talks about the practice care for a  
14 doctor, so we would talk to our customers about we're  
15 going to help you on your practice care so you can  
16 focus on your patient care.

17 And around the wheel, around the inside of the  
18 wheel, you have the different segments of supplies and  
19 equipment and practice management, digital technology,  
20 integrating digital technology, technical service,  
21 which is interesting. People don't really look at  
22 dental as a complex industry, but it is because there's  
23 a lot that can go wrong in an office, so technical  
24 service is really important.

25 And then really what I think separated us from

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1 everyone else was the business solutions part of the  
2 wheel, where we were taking in additional services that  
3 doctors needed and packaging it to them so it would  
4 help them run their businesses better.

5 Q. Is this wheel unique to Henry Schein?

6 A. Yes.

7 Q. Do you believe Henry Schein is unique among all  
8 the full-service distributors in terms of the business  
9 solutions aspect?

10 A. As robust as they are, yes.

11 Q. Based upon your experience over the last  
12 23 years in the dental industry, do you believe a  
13 dentist can maximize his or her profits by saving on  
14 supplies alone?

15 A. No.

16 Q. Why not?

17 A. Well, when you look at the -- a P&L of a  
18 dentist and you look at the supply line, we say the  
19 national average is 6 percent. And if a doctor who the  
20 national --

21 THE REPORTER: I'm sorry. Can you say that  
22 again. I didn't understand what you said.

23 THE WITNESS: So if you're a doctor and you  
24 look at your P&L, there is an expense line for  
25 merchandise, for products purchased, and historically,



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1 that represents about 6 percent of the overall overhead  
2 in a dental office. And that's the national average.  
3 That's what they say.

4 So you take that 6 percent and then you also  
5 look at what a dentist purchases on an average basis a  
6 year, which is about \$40,000.

7 So the \$40,000, if you're coming out and you're  
8 saving on price alone and it's a discount of  
9 20 percent, you're maxing out at \$8,000 savings in  
10 dollars.

11 So when you drive it to the bottom line, it's  
12 nice, but you're really only taking that overall  
13 6 percent line on the P&L and maybe dropping it to  
14 5.6-5.7, so it's not a big savings.

15 So we were focusing on really the production  
16 and the top-line growth of a practice during this time.

17 BY MR. McDONALD:

18 Q. So what did you do at Henry Schein to focus on  
19 profitability or production and top-line growth?

20 A. So we did several things, but the main one was  
21 what is called the Henry Schein Practice Analysis  
22 tool.

23 Q. What is the Henry Schein Practice Analysis  
24 tool?

25 A. So it is a report that we would put together

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1 with a dental office.

2 And what we would educate and train our team to  
3 do is they would go into the dental practice. They'd  
4 get permission from the office to extract data from  
5 their software.

6 When the data was extracted, a report was  
7 created. And the report focused on several things.

8 It reported -- it focused on exams, that if  
9 the doctor is doing the exams that they need to be  
10 doing.

11 It focused on films, whether they were taking  
12 the intraoral films, whether they were taking the pan  
13 films.

14 It focused on the codes that they were doing in  
15 a dental office, were their fees set properly and were  
16 they also coding the procedures that they were doing in  
17 the practice properly.

18 It also looked at sales mix, because in a  
19 dental practice a general practitioner typically  
20 focused on drilling and filling teeth and doing crowns  
21 and they would refer out endo and ortho and oral  
22 surgery, so we would also point out the opportunities  
23 that a general practitioner had in doing simple endo or  
24 simple ortho or simple oral surgery, and we called that  
25 sales mix, so we showed them a way that they could

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1 increase their sales mix in their office in order to  
2 help grow their overall production, which in turn would  
3 reduce their overall overhead, which is really the key  
4 thing that they're focused on.

5 Q. So when Henry Schein did this practice analysis  
6 that you just described, is there a typical amount of  
7 savings that a dentist would see?

8 A. I'm sorry. When we did the Henry Schein  
9 Practice Analysis --

10 Q. Yes.

11 A. -- typical amount of --

12 Q. Yeah.

13 A. -- production?

14 Q. Typical amount of growth. I'm sorry.

15 A. Absolutely.

16 So I would -- I use or I quote as we can find a  
17 minimum of a hundred thousand dollars in production  
18 when we do the HSPA tool. I have yet to see any report  
19 that's less than that. And in fact, I downplay when I  
20 say a hundred thousand dollars because you usually --  
21 you could find two, three, four, five hundred thousand  
22 and the number almost doesn't sound real, so I'd bring  
23 it down to a hundred thousand dollars.

24 Q. So refresh us. How does that compare to the  
25 amount of savings if a dentist got 20 percent savings

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1 on supplies?

2 A. Well, you're comparing an \$8,000 savings to the  
3 merchandise line only compared to growing your business  
4 a hundred thousand dollars, and out of that, you're  
5 taking anywhere from 50,000 to \$60,000 and dropping  
6 that to the bottom line, so it's a significant -- it  
7 has a much more significant impact on the overall  
8 overhead of a dental practice.

9 Q. Is Henry Schein the cheapest dental distributor  
10 in the United States?

11 A. Henry Schein does not market themselves as the  
12 cheapest dental distributor. We really market  
13 ourselves as a value proposition but --

14 Q. So how do you compete?

15 A. We're very competitively priced. And the way  
16 we compete is that our sales reps in the field that  
17 are -- we have over 800 -- and that are knocking on  
18 doors every day and going into dental offices every  
19 day, they have the ability to -- they have the pricing  
20 flexibility when they're in an office, so if they're in  
21 a competitive situation and at the point of sale, they  
22 have the ability to adjust pricing on the spot.

23 Q. So I want to talk about that for a second.

24 How -- well, first, how many field sales  
25 representatives or field sales consultants reported up

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1 to you while you were at Henry Schein?

2 A. Reported up to me, anywhere between 400 and  
3 450, whatever position I was in.

4 Q. Okay. And so how -- do you know how sales  
5 representatives can change prices?

6 A. I do.

7 Q. So why don't you tell us, how does that -- how  
8 does that work? How does a Henry Schein sales  
9 representative change a price? Walk us through --  
10 imagine you're the Henry Schein rep and you're walking  
11 into the dental office and some dentist wants a  
12 different price. How does that work?

13 A. Sure.

14 So our Henry Schein representatives have a  
15 number of different ways they can place orders.  
16 Typically, most use it on their iPhone app or they  
17 bring in their iPad and they have an Aruba -- they have  
18 Aruba on their iPad, so I'm going towards the iPad just  
19 to --

20 Q. What's Aruba?

21 A. Aruba is the Henry Schein ordering system --

22 Q. Okay.

23 A. -- where they place orders.

24 So if you had your iPad, you walk into the  
25 office, and if you're in Dr. Cavaretta's office, you

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1 find "Dr. Cavaretta" and you click on "Dr. Cavaretta."  
2 And what it would bring up is all of the products that  
3 Dr. Cavaretta has ordered in the history.

4 So let's use gloves.

5 So I would then click on "gloves" because  
6 that's what I'm going to order for Dr. Cavaretta, and  
7 then it would bring it over and on the screen it would  
8 show the pricing for a box of gloves -- and let's just  
9 say it's \$13.00 -- and it's in the middle of the  
10 screen.

11 Q. Well, what if Dr. Cavaretta wants a cheaper  
12 price?

13 A. So on that screen is also -- at the bottom is  
14 a -- is a red, yellow, green bar, so green would  
15 historically represent the furthest in the spectrum,  
16 the catalog price.

17 Then if you go all the way to red, at the end  
18 of the red part of the spectrum would almost represent  
19 what the cost of that product would be.

20 So you have green, yellow, red.

21 So if you're in a price-competitive situation  
22 and you walk in and the doctor said, Hey, I -- I'm  
23 getting this offer from Patterson and it's \$10.00 a box  
24 and I need you to match it, what do you do. There's  
25 two ways you can do it.

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1           One is you type in "\$10.00" in the box, and on  
2 the bottom of that red/green/yellow bar it would show  
3 where that pricing falls from a margin standpoint if  
4 you sold it at \$10.00.

5           Q. Why does the FSC care about that?

6           A. Well, it's important to the FSC because they  
7 get paid a commission, so the lower the price goes,  
8 the less margin is in that sale, so, of course, that  
9 can impact income. It can impact commissions to the  
10 FSC.

11          Q. Okay.

12          A. So there's a measurement there.

13                 The second thing you can do is you can  
14 actually take the bar and there's, you know, a little  
15 circle on it, and you can move the circle from green,  
16 yellow to red. And as you're moving it, the price can  
17 change.

18                 So if it was in the green and I move it to  
19 yellow, that \$13.00 price would also change to 10, so  
20 the FSC knows where the -- what the margin is or where  
21 it falls on the spectrum if they were to change a price  
22 on that product.

23          Q. Well, let's say it goes to red.

24                 Can the FSC go below red?

25          A. Yes.

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1 Q. How do they do that?

2 A. Sorry?

3 Q. How do they do that?

4 A. Well, they could change the price in the box  
5 and then the ball goes all the way to the end of the  
6 red and it stops there, but they could go to \$8.00 and  
7 still sell the product.

8 Q. So how long does this process take that you  
9 just described?

10 A. Seconds.

11 Q. Seconds.

12 A. Yeah. Yeah.

13 Q. Does an FSC need any approvals to give these  
14 discounts to independent dentists?

15 A. No.

16 Q. We've also heard about custom quotes from  
17 FSCs.

18 What's a custom quote?

19 A. So a custom quote is almost like a formulary.  
20 And what I mean by that is that if I am an FSC and I'm  
21 walking into an office and every time I walk into that  
22 office they want me to change the pricing on the exact  
23 same products, instead of going through and doing that  
24 every single time, I can create a custom quote where I  
25 put the 10, 20, 50, 80 items on there that are special

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1 pricing to that customer, and I submit it, and then any  
2 time I use my iPad and I bring up that customer and I  
3 bring up that product, instead of having to change that  
4 price from 13 to 10 every time, it's hard-coded in as  
5 10.

6 Q. So is it kind of like a formulary for an  
7 independent dentist?

8 A. Absolutely. Yes.

9 Q. Can the FSC still change the prices on a custom  
10 quote?

11 A. They can.

12 Q. So it can go even lower.

13 A. They can.

14 Q. I want to pull up CX 6009 again. It's the  
15 complaint in this case that we looked at earlier. I  
16 want to look at paragraph 10.

17 And this is -- again is the -- these are the  
18 allegations by the FTC.

19 And it states, "By agreeing not to compete for  
20 Buying Group business, the Distributors denied  
21 Buying Groups discounted prices or access to products  
22 and services offered by national full-service  
23 distribution companies, and thereby deprived  
24 independent dentists of the benefits of Buying Groups,  
25 including lower prices."

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1 Do you see that?

2 A. I do.

3 Q. Do you believe that statement is true or  
4 false?

5 A. False.

6 Q. Why?

7 A. So we were doing business with buying groups,  
8 but we also had competitive pricing for buying groups,  
9 and there's also pricing flexibility in the market, so  
10 I don't agree with that statement.

11 Q. So did Schein offer -- well, did Schein compete  
12 for buying group business during the alleged  
13 conspiracy?

14 A. We did.

15 Q. And has that always been the case while you  
16 were at Henry Schein?

17 A. Yes, it is.

18 Q. Is joining a buying group, as implied by this  
19 allegation from the FTC, the only way an independent  
20 dentist can get discounts from Henry Schein?

21 A. No.

22 Q. So did Schein provide discounted prices to  
23 independent dentists even if they're not a member of a  
24 buying group?

25 A. Yeah.

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1 Q. Did Schein offer discounts to independent  
2 dentists who were members of a buying group that had  
3 not partnered with Henry Schein?

4 A. Yes.

5 Q. Well, how does that work?

6 A. Well, Henry Schein is a big brand in the  
7 industry, so if a doctor was doing business with  
8 Henry Schein Dental and a buying group came out and  
9 said, Hey, if you pay us a fee, we'll negotiate  
10 pricing, and if you join us, however, the distributor  
11 we work with is Patterson, that doctor can still join  
12 that buying group. And when they join the buying  
13 group, they still have the ability to purchase from  
14 whoever they want because a buying group does not own  
15 their practice.

16 Q. Is that one of the fundamental problems with  
17 buying groups?

18 A. It's a -- it's a -- it's definitely a problem.  
19 The compliance of the individual members is a big  
20 problem.

21 So when they are there and a member,  
22 oftentimes, they still like the relationship they had  
23 with the Henry Schein Dental representative. They  
24 still like the services that were being offered by the  
25 Henry Schein representative. And honestly, the

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1 Henry Schein representative would go in and say, Well,  
2 I can give you that same pricing or similar pricing  
3 without you having to join a buying group.

4 And so oftentimes a doctor will say, I get to  
5 keep my relationship with my current vendor, I don't  
6 have to change over the products, which is -- can be a  
7 challenge, and I'm getting great pricing, I'm going to  
8 stay with my Henry Schein rep even though I may be a  
9 member of this buying group.

10 MR. McDONALD: Your Honor, I have about a dozen  
11 questions I need to ask him in camera.

12 JUDGE CHAPPELL: Okay. At this time we'll go  
13 into in camera session. I'll need to ask those not  
14 subject to the protective order to leave the  
15 courtroom.

16 MR. McDONALD: And I'll tell those folks it's  
17 not going to be long.

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(End of in camera session.)

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

3           JUDGE CHAPPELL: Go ahead.

4           BY MR. McDONALD:

5           Q. I want to focus for the time period that you  
6 were at Henry Schein. Okay? Not while you were at  
7 Patterson or Dental Whale. All right?

8           A. Okay.

9           Q. Did you regularly communicate with anyone at  
10 Benco?

11          A. No.

12          Q. Have you ever communicated with anyone at Benco  
13 other than pleasantries or for recruiting?

14          A. No.

15          Q. Would you recognize Chuck Cohen if he walked  
16 into this courtroom?

17          A. No.

18          Q. Have you ever communicated with anyone at Benco  
19 in any way regarding buying groups or GPOs?

20          A. No.

21          Q. Have you ever shared information you consider  
22 to be confidential or proprietary to Schein with anyone  
23 at Benco?

24          A. No.

25          Q. Has anyone at Schein ever told you about

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1 communications they had with someone at Benco about  
2 buying groups or GPOs?

3 A. No.

4 Q. I'll move to Patterson.

5 Did you regularly communicate with anyone at  
6 Patterson?

7 A. No.

8 Q. Other than pleasantries or recruiting, have you  
9 ever communicated with anyone at Patterson while you  
10 were at Henry Schein?

11 A. No.

12 Q. While at Schein did you ever communicate with  
13 anyone at Patterson about Patterson business?

14 A. No.

15 Q. Did you ever discuss Schein business with  
16 anyone at Patterson?

17 A. No.

18 Q. Have you ever shared information you considered  
19 to be confidential or proprietary to Henry Schein with  
20 someone at Patterson?

21 A. No.

22 Q. And I want to be sure about this. I think I  
23 may have asked you it.

24 But while at Schein did you ever communicate  
25 with anyone at Patterson about buying groups or GPOs?

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1 A. Absolutely not.

2 Q. Has anyone at Schein ever told you about a  
3 communication they had with someone at Patterson about  
4 buying groups or GPOs?

5 A. No.

6 Q. Mr. Cavaretta, how long have you worked with  
7 buying groups that were made up of independent  
8 dentists?

9 A. Since 2001.

10 Q. What are your personal views on buying groups?

11 A. Buying groups can be -- it can be a challenge.  
12 When you look at a buying group and what they're  
13 offering to a customer and they're telling a customer  
14 you are -- you pay us a certain fee and we will help  
15 negotiate using buying power to get you better pricing,  
16 that is typically the story.

17 So the challenge becomes, is when you engage  
18 with a buying group, you have to do a couple of  
19 different things or a few different things. One is,  
20 you have to understand the alignment.

21 But two and where the biggest challenge comes  
22 in is the compliance component of are they going to be  
23 able to have the members increase their purchases with  
24 a dealer that they make that agreement with. And  
25 typically, the answer is no. There is some uptick, but

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1 they can't commit to a number because they don't have  
2 control over where these dentists buy.

3 And a third thing is that once you get past  
4 the price story, if I sign up for a buying group and I  
5 think I'm signing up to get a great price, and that  
6 doesn't come to fruition, then a lot -- there's buying  
7 groups out there and most of them don't have anything  
8 else behind the pricing story, so there is no value  
9 proposition.

10 So it does become a challenge for them to  
11 retain members but also for Henry Schein to understand  
12 which buying groups to do business with.

13 Q. Based on your experience, Mr. Cavaretta, are  
14 all buying groups the same; that is, if you've seen  
15 one, you've seen them all?

16 A. No.

17 Q. Now, these views you just talked about and  
18 these issues with buying groups, do you still hold that  
19 view today even though you're the president of a  
20 company that has a buying group component?

21 A. Well, yes. And I have to figure that out.

22 Q. Are there buying groups that, in your view, are  
23 successful and able to address these issues you just  
24 described?

25 A. There's buying groups that have a business

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1 model that is -- that helps with it. Yes.

2 Q. Are there a lot of them?

3 A. No. I wouldn't say there's a lot of them.

4 Q. How many do you think there are?

5 A. I would say there's roughly five or six that  
6 I'm familiar with that have a model that would -- is  
7 somewhat sustainable, yes.

8 Q. And who are those five or six that you think  
9 are able to address these issues?

10 A. So Dental Whale has a model that we think is  
11 pretty robust.

12 Smile Source has a -- has a good model.

13 There's a group called Synergy that's out there  
14 that has a following.

15 We have Klear Impakt that has a good model and  
16 it's based on education.

17 And then you also have the Mastermind Group or  
18 the Costas group that has a pretty good model.

19 Q. I think you named five; is that right?

20 A. Yes.

21 Q. So of those that you just named, how many did  
22 Henry Schein work with?

23 A. Four out of the five of them.

24 Q. While you were at Henry Schein, were you  
25 involved in evaluating buying groups to see if they

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1 could address these things you just talked about?

2 A. Yeah. I was one of the main people involved.

3 Q. Have you ever heard of a gentleman by the name  
4 of Dr. Dennis Carlton?

5 A. I have.

6 Q. And you know he's Schein's expert in this  
7 case.

8 A. I'm aware of that.

9 Q. Kurt, if you could pull up RX 2832, please.  
10 This is Dr. Carlton's report, and I want to  
11 look at page 51.

12 There's this paragraph 75. There's this  
13 equation that the FTC coined "Carlton's equation"  
14 yesterday.

15 Do you see that?

16 A. I do.

17 Q. Did you utilize an equation or analysis similar  
18 to what Dr. Carlton has in Carlton's equation when you  
19 were looking at whether or not to do business with a  
20 buying group?

21 A. Yes.

22 Q. So Kurt, if you'd also show paragraph 76,  
23 please.

24 Dr. Carlton is discussing the Kois group here,  
25 but let me ask you this.

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1           When you looked at a buying group -- let's look  
2   at this first bullet point -- did you look at Schein's  
3   understanding of the buying group members and its  
4   expectations of which dentists would become members in  
5   the future?

6           A.   Yes, we did.

7           Q.   Did you look at Schein's expectation of  
8   purchasing patterns at Schein among current and future  
9   members, both with and without offering a discount to  
10   the buying group?

11          A.   Yes, we did.

12          Q.   Did you look at Schein's expectations of the  
13   discount it would offer to the buying group and the  
14   effect of discounting on its prices to other customers  
15   and on the prices of its rivals?

16          A.   Yes.

17          Q.   You can pull that down.

18               Well, Mr. Cavaretta, the FTC and its expert  
19   economist allege that when Henry Schein does not do  
20   business with a buying group, it is acting against its  
21   self-interest.

22               Do you agree with that allegation?

23          A.   I do not.

24               MR. SOLOMON:  Objection, Your Honor.  Counsel  
25   is asking the witness questions about information from

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1 an expert report that I don't know if the witness has  
2 ever even seen, so I'm going to object as improper and  
3 lacks foundation.

4 MR. McDONALD: Well, it's an allegation that's  
5 in this case they're claiming. They stood here in open  
6 court claiming that my client has acted against its  
7 self-interest when it refuses to do business with a  
8 buying group.

9 JUDGE CHAPPELL: Even though --

10 MR. McDONALD: They're not --

11 JUDGE CHAPPELL: Hold it. Don't keep talking  
12 when you're about to succeed.

13 MR. McDONALD: Okay. Thank you.

14 JUDGE CHAPPELL: Even though the question  
15 referred to an expert, it makes it clear he's asking a  
16 fact witness whether Schein would act in some way  
17 contrary to or favorable to its business. He's already  
18 answered. The objection is overruled.

19 MR. SOLOMON: Thank you, Your Honor.

20 BY MR. McDONALD:

21 Q. So do you remember my question that you didn't  
22 agree with or that -- well, let me back up because I  
23 want to be sure this -- so the allegation is that  
24 Henry Schein does not do business -- when Henry Schein  
25 does not do business with a buying group, it is acting

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1 against its self-interest, and you don't agree with  
2 that.

3 A. I don't agree with that.

4 Q. Why?

5 A. Because buying groups are different, one. And  
6 because, if a buying group is a good opportunity for  
7 one dealer, it doesn't necessarily mean it's a good  
8 opportunity for Henry Schein.

9 And we have other businesses or other parts of  
10 our business that this happens with, and the fact that  
11 because we are Henry Schein, most often than not,  
12 people will come to us with opportunities. And we have  
13 to review all the opportunities, whether it's  
14 merchandise, new products, equipment, technology,  
15 software, and if it doesn't make sense for  
16 Henry Schein, we say no.

17 So if it's not in our best interest, we will  
18 say no.

19 Q. Well, despite some of the challenges you've  
20 described in working with buying groups, did you and  
21 Henry Schein work with buying groups?

22 A. We did.

23 Q. Why?

24 A. Well, some buying groups did represent an  
25 opportunity where there was mutual growth, mutual

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1 opportunity that we could grow together. And when we  
2 would look at the buying group, it became pretty  
3 standard and it was they were aligned with the  
4 direction of Henry Schein and we were aligned with the  
5 buying group, meaning whether it was an exclusive  
6 relationship or they were using the same manufacturers  
7 that we were using.

8 The second thing is the compliance component.  
9 Even though compliance is a challenge, there is  
10 mechanisms in place where they were able to communicate  
11 and educate their members on why it was important that  
12 they were buying from the dealer that was supporting  
13 the buying group.

14 And the third thing is, which was really  
15 important, was the value proposition. When I was  
16 mentioning those other buying groups, I mean,  
17 Smile Source has both an educational component and a  
18 way to help the doctors grow business.

19 Dental Whale Savings Network is the same thing.  
20 They are able to help run the front desk.

21 The Costas group is doing consulting for their  
22 members.

23 And Klear Impakt is really focused around  
24 educations with the Salas [sic] brothers and  
25 Scheduling Institute.

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1           So you have to evaluate all of these  
2 components, so they were buying groups that made sense  
3 for us to do business with, and that's why we did it.

4           Q. So I think I got this right, but you've been  
5 working with buying groups in your entire career at  
6 Henry Schein?

7           A. I have.

8           Q. What was the first buying group you recall  
9 working with?

10          A. It would have been 2001 in Arizona called the  
11 Alpha Omega Group.

12          Q. Okay. What was the next one you recall working  
13 with?

14          A. The next one was 2005-2006 when I was the  
15 regional manager in Long Island, New York. It was  
16 Dr. Alan Farber and it was the Long Island Dental Forum  
17 or Long Island Dental Group.

18          Q. So you went from Vegas to Long Island?

19          A. I did, yeah.

20          Q. I want to pull up CX 2724.

21                 And for the record, this is an in camera  
22 designated document, but we're using a redacted version  
23 and the portions I'm going to show the witness are not  
24 designated in camera.

25                 I want to look at page 17 of Exhibit CX 2724.



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1           Is this a letter dated January 18, 2006 from  
2 you to Alan Farber?

3           A. It is.

4           Q. And you said you were the regional manager in  
5 Long Island at this time?

6           A. I was.

7           Q. What is the Long Island Dental Forum?

8           A. It was a buying group.

9           Q. A buying group.

10           You say, at the top of this letter, "I want to  
11 thank you for the opportunity to be part of the  
12 Long Island Dental Forum. I'm sure we will experience  
13 a mutually beneficial relationship."

14           Do you see that?

15           A. I do.

16           Q. And that's what you wrote to Dr. Farber?

17           A. I did.

18           Q. Did in fact Henry Schein enter into this  
19 relationship with the Long Island Dental Forum in  
20 2006?

21           A. Yes, we did.

22           Q. And you said it was a buying group; right?

23           A. I did.

24           Q. Did you have to go get approval from anyone at  
25 Schein to do business with this buying group?

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1           A. When it matters that I was engaging in  
2           conversations with Dr. Farber I did call Dave Steck and  
3           let him know about the opportunity, talked it over, and  
4           he said, Yeah, let's do it.

5           Q. To your knowledge, does Henry Schein still do  
6           business with the Long Island Dental Forum?

7           A. Yes.

8           Q. Was there ever a time from 2006 to when you  
9           left Henry Schein a few weeks ago that Henry Schein did  
10          not do business with the Long Island Dental Forum?

11          A. No.

12          Q. Have you ever heard of an entity called  
13          MeritDent?

14          A. Yes, I have.

15          Q. And how did you become familiar with the group  
16          MeritDent?

17          A. Yeah, the regional manager at the time,  
18          Steve Dutson, and one of the field reps brought the  
19          opportunity -- they're in Las Vegas -- brought the  
20          opportunity to me when I was the western zone manager.

21          Q. And what is MeritDent?

22          A. MeritDent is a buying group.

23          Q. Okay.

24                 If you'll pull up CX 2458, please.

25                 This is an e-mail exchange that I think we've

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1 seen a number of times in our case. It's from you,  
2 dated December 22, 2011.

3 Do you see that?

4 A. I do.

5 Q. And you write -- you're writing this to two  
6 individuals.

7 Who are they?

8 A. I wrote it to Tim Sullivan, Dave Steck and  
9 John Chatham.

10 Q. Well, I think it's actually to Steve Dutson  
11 and --

12 A. I'm sorry. I wrote to Steve and Diane.

13 Q. And who's Steve Dutson and Diane Zurko?

14 A. Steve was the regional manager in Las Vegas,  
15 and Diane Zurko was the field sales rep in Las Vegas.

16 Q. Okay. Is that part of your team?

17 A. Yes.

18 Q. And you write, "I just met with Tim, Dave and  
19 John."

20 Who are Tim, Dave and John?

21 A. Tim Sullivan, Dave Steck and John Chatham.

22 Q. "I just met with Tim, Dave and John about the  
23 MeritDent group. As you can imagine they feel the same  
24 as we do that we don't want to be the first company to  
25 open the floodgates to the dangerous world of GPOs."

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1 Do you see that?

2 A. I do.

3 Q. Do you recall talking to Tim, Dave and John  
4 about the MeritDent group?

5 A. I don't remember the specific conversation, but  
6 I wrote it in the e-mail, so I had to have a  
7 conversation with them.

8 Q. What did you mean when you said "we don't want  
9 to be the first company to open the floodgates to the  
10 dangerous world of GPOs"?

11 A. So at that time our growth strategy for  
12 Henry Schein -- and you saw the wheel -- is growing the  
13 business with our value proposition of helping doctors  
14 grow their practice, so our main growth strategy -- and  
15 we didn't have a growth strategy per se with GPOs at  
16 the time, so we were growing our business organically  
17 with the current offerings that we had.

18 So with the GPO space, typically what happens  
19 is you have a middleman involved that you're -- that  
20 you're paying an admin fee to, that you're banking on  
21 them to help them grow your business. And at that  
22 point we just didn't need that as our major growth  
23 strategy, so I explained that to Steve and Diane,  
24 that, you know, that's not what we're going to do right  
25 now or that's not our main strategy.

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1           However, if you look at the rest of the  
2 e-mail, when GPOs -- and I apologize -- when GPOs come  
3 to you, they also ask for very aggressive pricing, the  
4 most aggressive pricing that's out there. They want  
5 to be special and unique, so they want to use the  
6 dealer pricing to make their group unique. And  
7 you know, Henry Schein could offer that type of pricing  
8 on their own without a GPO.

9           In the Las Vegas market, we also had 60 percent  
10 market share at the time.

11           So you got to take into all those  
12 considerations in this e-mail.

13           But knowing that was going on in Vegas at the  
14 time and the economy really hit Vegas hard, knowing  
15 that in the group that was heading MeritDent was a  
16 customer, we did put together an offer that we thought  
17 would meet their needs. And it wasn't the aggressive  
18 pricing that they were asking, but we did put together  
19 an offer that was, one, priced competitively but,  
20 two -- and if you look at bullet point number 2 where  
21 it says "Free DPATs," that's another word for the  
22 Henry Schein Practice Analysis tool. We changed the  
23 acronym along the way.

24           And then where it says "Free DRC," that's the  
25 educational piece, which was really in alignment with

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1    how we were going to market and how we were growing  
2    practices.

3                So we ended up putting an offer together to  
4    MeritDent after meeting with them several times.

5                Q.   Well, when you wrote this e-mail, was  
6    Henry Schein already in the dangerous world of working  
7    with GPOs?

8                A.   Yeah, we were already doing business with  
9    buying groups.   Yes.

10              Q.   And despite the fact that you said you didn't  
11    want to open up the floodgates to the dangerous world  
12    of GPOs, who you were already working with, you made an  
13    offer to MeritDent.

14              A.   I did.

15              Q.   All right.   Well, let's look at that offer.  
16                 Let's look at RX 2393.   And if you'll go to  
17    page 5, please, Kurt.

18              Is this the agreement that Henry Schein had  
19    with MeritDent?

20              A.   It is.

21              Q.   And did you enter into this agreement in 2011?

22              A.   We did.

23              Q.   And the date of this e-mail -- if you'll go  
24    back to the first page, Kurt -- is 2015.

25              Do you see that?   April 2015?

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1 A. I do.

2 Q. And so was Henry Schein still working with  
3 MeritDent in April of 2015?

4 A. Yes, we were.

5 Q. Okay. During your time at Schein, did you ever  
6 have responsibility for overseeing Schein's strategy  
7 regarding buying groups?

8 A. Yeah. And as I said earlier, it was I was the  
9 main person and in charge of putting that strategy  
10 together.

11 Q. And when did that happen?

12 A. That happened -- 2013 we -- the back half of  
13 2013 I know we were having conversations and strategy  
14 meetings about the mid-market space, which also  
15 included the buying group space.

16 And then going into the beginning of 2014 we  
17 started putting together the groundwork and the  
18 structure and the people and the offering and all  
19 throughout 2014.

20 Q. Okay. Let's pull up Exhibit CX 2461, please.

21 This is an invite for an HSD off-site planning  
22 meeting, dated December 9, 2013.

23 Do you see that?

24 A. I do.

25 Q. And you're a required attendee.

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1 Do you see that?

2 A. I do.

3 Q. Did you go to this meeting?

4 A. I attended this meeting.

5 Q. Okay. Let's look at page 5, please, Kurt.

6 And I want to focus on the meeting on Tuesday,  
7 December 10, and in particular the time period 9:30 to  
8 12:30, Topics of Discussion, second bullet point,  
9 "Brainstorming...how do we change our operating model  
10 to allow for investment in key priorities."

11 And underneath that is: "GPO's are growing."

12 Do you see that?

13 A. I see that.

14 Q. Did you participate in that discussion?

15 A. I did.

16 Q. All right. And what do you recall about the  
17 discussion of GPOs are growing at this meeting in  
18 December 2013?

19 A. I recall the outtake of we -- the industry was  
20 evolving and changing, and we had a strategy for the  
21 private practice dentists and we had a strategy for the  
22 national DSOs, so the big conglomerates that -- I'm  
23 going to use Heartland. And what we noticed was we  
24 didn't have an offering for at that time we coined the  
25 mid-market, which was the 3 offices to 20 offices.

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1 That's how we defined it at the time.

2 But we also didn't have a specific strategy and  
3 really clarity on the buying group strategy, so the  
4 outtake of that meeting was that we had to put a  
5 strategy together in order to meet the needs of where  
6 the market was changing, which was the  
7 mid-market/buying group space.

8 Q. So what was the result of this meeting?

9 A. The result of this meeting is we left and Tim  
10 said, Get on this and put a strategy together. And as  
11 I was mentioning before, it was understanding the  
12 market, understanding the needs.

13 We put together the structure. We put together  
14 the people. We put together the pricing plan. We put  
15 together the value proposition. We put in data and  
16 analytics. And it didn't happen overnight because it  
17 was a lot of work to do. It was a lot of days, hours,  
18 quite frankly, years, and we were developing that  
19 structure all throughout 2014.

20 Q. So are you telling us that in the first half of  
21 the alleged conspiracy you started this process to come  
22 up with a strategy on dealing with buying groups?

23 A. Absolutely.

24 Q. Kurt, if you'll pull up RX 2392, please.

25 Have you ever seen this before?

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1 A. I have.

2 Q. And what is this?

3 A. It was the PowerPoint that came from putting  
4 the structure together for what I just mentioned, and I  
5 think it ultimately turned into or I know it ultimately  
6 turned into Project Pyramid.

7 Q. Project Pyramid.

8 A. Correct.

9 Q. And you were involved in this; is that right?

10 A. I was one of the main individuals involved in  
11 this. Yes.

12 Q. And Kurt, if you'll pull up page 5 of the  
13 document, please.

14 The next page. There you go.

15 What is this?

16 A. So it's what we ultimately called  
17 Project Pyramid and it was segmenting customers into  
18 groups.

19 So at the bottom of the pyramid is the private  
20 practice dentists, which represented the majority of  
21 our business.

22 At the very top of the pyramid, the point,  
23 where it says "Elite Accounts," those were the  
24 national DSOs, so the Heartlands, as I mentioned  
25 before.

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1           And then the middle is what -- what turned into  
2 the mid-market and buying group space.

3           Q. Well, we've seen this pyramid before, and the  
4 FTC likes to point out that buying groups aren't  
5 anywhere on this pyramid, so are you telling us that  
6 buying groups in fact were part of Project Pyramid?

7           A. Yes.

8           Q. Even though they're not on this document.

9           A. Yes.

10          Q. How do you know that?

11          A. Well, I mean, I was the leader of that space,  
12 so I know for a fact it was part of the mid-market  
13 space.

14          Q. Okay. Within Henry Schein where did  
15 mid-markets fit?

16          A. Henry Schein Dental.

17          Q. Henry Schein Dental.

18          A. Yeah.

19          Q. And I think you said you were the one  
20 responsible for the mid-market?

21          A. Yes, I was.

22          Q. Did anyone else work with you at Mid Markets?

23                You can take that down, Kurt.

24          A. Yeah. In putting together the strategy, I  
25 worked very closely on a daily basis with

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1 Kathleen Titus, I worked on a daily basis with  
2 Andrea Hight, Keith Gauzza, and eventually  
3 Jake Meadows.

4 Q. Was Kathleen Titus anti buying group?

5 A. No.

6 Q. Was Andrea Hight anti buying group?

7 A. No, she was not.

8 Q. Was Keith Gauzza anti buying group?

9 A. No.

10 Q. Was Jake Meadows anti buying group?

11 A. No.

12 Q. After the creation of Mid Market, who had  
13 primary responsibility for buying groups?

14 A. I did.

15 Q. Prior to the creation of Mid Market, what  
16 division within Henry Schein had primary responsibility  
17 for buying groups?

18 A. The Special Markets Division.

19 Q. So even though primary responsibility for  
20 buying groups was under Special Markets, did that  
21 prevent Henry Schein Dental from entering into  
22 agreements with buying groups?

23 A. No. No.

24 Q. After primary responsibility switched to  
25 Mid Markets, did that prevent Special Markets from

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1 working with buying groups?

2 A. No.

3 Q. Kurt, if you'll pull up RX 2409, please.

4 At the bottom of this chain there's an e-mail  
5 from Mike Trautman to you and Kam Gantos and  
6 Jake Meadows and copying Dave Steck.

7 Do you see that?

8 A. I do.

9 Q. And he says, "We have three hours blocked off  
10 [on] Friday October 3rd to discuss the Mid-Market  
11 update and GPO/MSO strategy with Tim."

12 Do you see that?

13 A. I do.

14 Q. And so, again, did -- so you're setting up a  
15 meeting in 2014 to discuss the GPO/MSO strategy with  
16 Tim Sullivan?

17 A. That's correct.

18 Q. All right. And I want to go look at your  
19 e-mail that you reply to Mike. And you say, on the  
20 first page, "Thanks Mike. The majority of the meeting  
21 is going to focus on" -- and the next page -- "2) the  
22 constant requests by buying groups" and underneath that  
23 "Discussion around what our strategy should be."

24 Is that what you wrote?

25 A. I did write that, yes.

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1 Q. All right. Were there constant requests by  
2 buying groups around this time period?

3 A. Yeah.

4 So as the mid-market space was -- as we were  
5 putting it together as the umbrella component and as  
6 relationships were being transitioned, transferred  
7 over, we were noticing that there was more and more  
8 inquiries not only from customers but from the field.

9 And we had -- we had pretty good clarity with  
10 the mid-market space and we weren't quite yet there  
11 with the buying group space, so we needed to -- we  
12 really needed to update Tim on what was going on  
13 because from a resource standpoint we were becoming  
14 overwhelmed.

15 Q. What did you mean by a discussion about what  
16 our strategy should be?

17 A. Well, we -- we didn't really have a main  
18 strategy. It was almost ad hoc that every new volume  
19 that would come in we would treat them like it was the  
20 first time we ever vetted out a buying group even  
21 though it wasn't, so we had to put -- we had to  
22 decide, one, how we were going to engage with them.

23 And then two, we knew we had to put a structure  
24 together, the questions together, the offering  
25 together, and then you also have to manage the owned

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1 practices compared to the nonowned practices.

2 So in the mid-market space you had LDSOs and --  
3 so large DSOs is what "LDSOs" stands for -- and you had  
4 smaller DSOs who owned the practices who could drive  
5 compliance and wanted certain pricing. And then you  
6 have the buying groups that did not own the practices,  
7 you had a problem with compliance, yet they wanted  
8 pricing.

9 So there was a lot of balancing that you had to  
10 do in the field as you were learning all of this at the  
11 same time.

12 JUDGE CHAPPELL: We're going to take a short  
13 break. We'll reconvene at 12:20.

14 (Recess)

15 JUDGE CHAPPELL: Okay. We're back on the  
16 record.

17 Go ahead.

18 BY MR. McDONALD:

19 Q. Mr. Cavaretta, we were talking about this  
20 RX 2409 and your agenda for a meeting with  
21 Mr. Sullivan. Do you recall that?

22 A. I do.

23 Q. I'm just putting us back in --

24 A. Yeah. I understand.

25 Q. Okay. Did in fact you have this meeting with

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1 Mr. Sullivan?

2 A. We did.

3 Q. And did Mr. Sullivan express to you  
4 anti-buying-group views at this meeting?

5 A. He did not.

6 Q. Did he tell you to stop your efforts to come up  
7 with a buying group strategy?

8 A. No.

9 Q. In fact, did you continue to come up with a  
10 buying group strategy?

11 A. Yes. Every day.

12 Q. Let's look at CX 2234, please, Kurt.

13 This is an e-mail chain that you're on. It's a  
14 in November of 2014.

15 Do you see that?

16 A. I do.

17 Q. Is that a month to six weeks after the e-mail  
18 we just looked at?

19 A. Correct.

20 Q. And I want to ask you about your comment in  
21 your e-mail that's dated November 12, 2014 at  
22 10:40 a.m.

23 And you say "at this point we are not playing  
24 in the GPO space."

25 Do you see that?



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1 A. I do.

2 Q. What were you talking about?

3 A. We still didn't have a formalized strategy on  
4 how we were going about the buying group space. As I  
5 said earlier, it still wasn't the top priority for --  
6 from a growth focus standpoint even though it was an  
7 opportunity.

8 And so Dave Jacklin, who's a regional manager  
9 in Washington, sent me this e-mail asking me about it.  
10 And even though that we were putting a strategy  
11 together and a structure together and we ultimately  
12 rolled it out at the FMM, field managers meeting, in  
13 January, I told him that we weren't playing in the  
14 space because I just -- he's a regional manager. I  
15 didn't go on and explain all the activity that was  
16 happening, so that's the e-mail I wrote.

17 Q. So a regional manager -- you wrote this to a  
18 regional manager?

19 A. Yes.

20 Q. So you're his boss' boss?

21 A. Correct.

22 Q. In fact, at this time, in November of 2014, was  
23 in fact Henry Schein playing in the GPO space?

24 A. Yeah, we were doing business with buying groups  
25 at that time. Yes.

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1 Q. Was it ever Schein's or your strategy to not  
2 work with buying groups?

3 A. No.

4 Q. And did in fact you make it a strategic  
5 priority to have a formal GPO buying group strategy?

6 A. Yes, I did.

7 Q. And when did that happen?

8 A. It started with the -- in 2013, all the way  
9 through 2014, and then in 2015 we were able to  
10 communicate and launch the strategy, because there was  
11 a lot of confusion in the field of when opportunities  
12 come -- came about what to do with them, how we're  
13 handling them, what our offering is, so we started  
14 putting pieces in place to, you know, handle the  
15 opportunities in addition to putting together and just  
16 the discovery and I'm going to call it the vetting out  
17 process of buying groups, which, you know, at that time  
18 really the majority of it fell on Kathleen and I to --  
19 working together, understanding the different  
20 opportunities that were out there.

21 Q. Were you working on other things, too?

22 A. Yes, I was. I was running a \$1.3 billion  
23 business with a thousand people underneath me.

24 Q. Okay. I want to talk about Schein's evaluation  
25 of a few specific buying groups.

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1           When Mid Markets was created, did certain  
2 groups that were previously in Special Markets move  
3 over to Mid Markets?

4           A. Yes, they did.

5           Q. Was Steadfast Medical one of those groups?

6           A. Steadfast was one of those groups.

7           Q. All right. What happened when  
8 Steadfast Medical was transferred to Mid Markets?

9           A. So when Steadfast was transferred to  
10 Mid Markets, at that time, like I said, Kathleen and I  
11 were doing double duty. And she eventually had a  
12 meeting with Steadfast. And when she understood the  
13 Steadfast model, what she reported back, communicated  
14 back, was that Steadfast was essentially just a  
15 procurement company. They were taking business, mostly  
16 Henry Schein business, and then they were farming it  
17 out to different dealers in order to get the best  
18 price.

19          Q. Was that an issue for Schein?

20          A. That's a big issue. Yeah.

21          Q. Did Schein ultimately end its relationship with  
22 Steadfast Medical?

23          A. We did.

24          Q. And who made that decision?

25          A. I ultimately made the decision.

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1 Q. You.

2 A. Yes.

3 Q. Did Tim Sullivan have any input into that  
4 decision?

5 A. No.

6 Q. I want to look at CX 2216, please.

7 And I want to focus on your comments in an  
8 e-mail to Kathleen Titus and others on June 10, 2014.

9 Do you see that e-mail?

10 A. I do.

11 Q. And this e-mail is about Steadfast Medical.

12 A. I see that.

13 Q. And this is after you've terminated the  
14 relationship or before?

15 A. After.

16 Q. Okay. And you write, "Thanks for leading the  
17 charge on this KT."

18 Is that Kathleen Titus?

19 A. It is.

20 Q. And you say, "GPOs are popping up like crazy,  
21 so [it's] nice when we can shut one down and still  
22 keep the business from the individual customers.  
23 Nice job!"

24 What did you mean by that?

25 A. Well, as the structure was being put together

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1 in the mid-market space and the buying groups were  
2 being transitioned over, we were doing a lot of  
3 discovery and finding out that they were all  
4 different.

5 So this particular one Steadfast, when you  
6 looked at the business that they had and then you  
7 looked at what they were doing, which wasn't in  
8 alignment with Henry Schein's goals, you have a  
9 decision that you have to make that whether you want to  
10 continue to allow it and keep going with the  
11 relationship or you want to correct it, saying we need  
12 to get back in alliance, or we end it.

13 And when you make a decision to end it because  
14 they were not going to change what they were doing,  
15 they were who they were, there's a risk to the  
16 business, the overall business to Henry Schein. And  
17 it -- quite frankly, if you said I'm done, they could,  
18 if they had the influence, take all that business to  
19 somebody else.

20 So you have to measure that risk and you have  
21 to calculate that risk. And when we ultimately shut  
22 down and -- or Steadfast still exists, but when we  
23 stopped doing business with Steadfast, we noticed that  
24 we didn't lose the business. In fact, we started to  
25 grow the business even more because our business that

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1 was going to Steadfast that they were sending out to  
2 other people we actually were able to keep within  
3 Henry Schein.

4 So it proved that, one, the Schein brand is  
5 really strong, two, that the doctors really wanted to  
6 do business with Henry Schein and, three, that even  
7 though there is a spot for a middleman or a spot for a  
8 buying group, you know, if you're not aligned, you can  
9 make a difficult decision not to be partners with them  
10 any longer.

11 Q. Now -- I think you said this in your answer --  
12 did you actually shut down Steadfast or did you just  
13 stop doing business with them?

14 A. We just stopped doing business with them.

15 Q. Steadfast kept doing business?

16 A. As far as I know, yes.

17 Q. Okay. Are you familiar with a company called  
18 Breakaway?

19 A. Yes. I'm --

20 Q. The court may not understand why you just  
21 chuckled.

22 Why -- how are you familiar with Breakaway?

23 A. I'm sorry.

24 So Breakaway Dental was purchased by  
25 Dental Whale, which I'm now president of that company.

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1 Q. So you're now president of the company that  
2 owns Breakaway.

3 A. That's correct.

4 Q. All right. So, Mr. Cavaretta, the FTC has  
5 alleged in this case and during trial that Breakaway is  
6 not really a buying group.

7 Is that true?

8 A. No. I'd classify Breakaway as a buying group.

9 Q. And how do you know that?

10 A. Because I'm the president of the company.

11 Q. Well, did you work with Breakaway while you  
12 were at Henry Schein?

13 A. We did.

14 Q. All right. Who formed the relationship with  
15 Breakaway at Henry Schein?

16 A. Special Markets.

17 Q. And was Breakaway ever transferred to  
18 Mid Markets?

19 A. Yes, they were.

20 Q. All right. And what happened once Breakaway  
21 was transferred to Mid Markets?

22 A. What ended up happening is -- so representation  
23 changes. We go in and we start trying to understand  
24 the customer, develop a relationship. And when we meet  
25 with Breakaway -- and it was Kathleen Titus and

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1 Andrea Hight and I believe eventually Kip -- what we --  
2 what we realize is that this is a group that offers  
3 services and -- but the majority of the business was  
4 coming from the buying -- from the buying group, so any  
5 type of customers that were joining them.

6 They would have educational seminars, they'd  
7 join Breakaway, and then they would be part of the  
8 buying group that Breakaway was offering, which  
9 Henry Schein was the provider to that buying group.

10 Q. Individual dental practices?

11 A. Individual members. Yes.

12 Q. Did Henry Schein Dental eventually enter into a  
13 formal contract with Breakaway?

14 A. We did.

15 Q. I want to show you a document that's been  
16 marked in camera, but what we're going to show you is  
17 redacted. I just want you to have a date. It's  
18 RX 2348.

19 And is this the Breakaway Henry Schein  
20 agreement?

21 A. Yes, it is.

22 Q. And it's dated June 29, 2015; is that right?

23 A. That's correct.

24 Q. Did Schein do business with Breakaway prior to  
25 June 29, 2015?



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- 1 A. Yes, we did.
- 2 Q. All right. And do you know how long?
- 3 A. Several years prior.
- 4 Q. Several years prior to 2015.
- 5 A. Yes.
- 6 Q. Are you familiar with the dental co-op  
7 Dental Cooperative or Dental Co-Op of Utah?
- 8 A. Yes, I am.
- 9 Q. And what is that?
- 10 A. It's a buying group.
- 11 Q. Buying group of individual dental offices?
- 12 A. Correct.
- 13 Q. Were you involved in Henry Schein's initial  
14 decision to work with the dental co-op?
- 15 A. No, I wasn't.
- 16 Q. When did you first learn about the Dental Co-Op  
17 of Utah?
- 18 A. In 2009.
- 19 Q. When you learned about their relationship in  
20 2009, did you believe that that was a beneficial  
21 relationship?
- 22 A. Yeah. I became western zone manager, and after  
23 I understood what the relationship was, it was mutually  
24 beneficial for sure.
- 25 Q. Did it ever become not beneficial?

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1 A. Yes, it did.

2 Q. And how did that happen?

3 A. The head of the co-op, Andy, he started  
4 bringing in vendors and manufacturers that were not  
5 doing business with Henry Schein, which was -- which  
6 took us out of alignment which -- from our original  
7 agreement.

8 And when that happened, we made him aware that,  
9 hey, this is going to be a challenge, this is going to  
10 be a problem, we need to discuss this. And we went  
11 back and forth a little bit. Then I asked  
12 Kathleen Titus to, you know, work with Andy and see if  
13 we can't figure something out. And ultimately, Andy  
14 came back and said, Hey, this is the direction we're  
15 going with our co-op. And we ultimately made the  
16 decision to stop doing business because we were no  
17 longer aligned with our strategy.

18 Q. So did Schein ultimately end its relationship  
19 with the Dental Co-Op of Utah?

20 A. Yes, we did.

21 Q. And who made that decision?

22 A. I made that decision.

23 Q. And was Tim Sullivan involved in that  
24 decision?

25 A. Not that I'm aware of. No.

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1 Q. Well, you made the decision. Wouldn't you know  
2 if he was involved?

3 A. I made the decision, and he was made aware  
4 after the decision, but yeah, I made the decision.

5 Q. You didn't -- did you consult him?

6 A. I don't believe so. No.

7 Q. Okay. I want to look at CX 2211.

8 This is the -- it's an e-mail chain about the  
9 dental co-op.

10 Do you see that?

11 A. I do.

12 Q. It's July of 2014?

13 A. Yeah. Yes, I do see that.

14 Q. And to orient you -- if you'll go to page 3,  
15 Kurt. Next page -- there's an e-mail from  
16 Kevin Upchurch.

17 Do you see that?

18 A. I do.

19 Q. And who is Kevin Upchurch?

20 A. Kevin Upchurch was the Western Pacific zone  
21 manager at the time.

22 Q. Did he report to you?

23 A. He did.

24 Q. Okay. And Mr. Upchurch states, "We will no  
25 longer be part a of the Utah Co-Op."

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1 Do you see that?

2 A. I do.

3 Q. All right. The third bullet point says,  
4 "[We're] going to Grandfather their [sic] existing  
5 co-op accounts on the VPA."

6 Do you see that?

7 A. Yes, I do.

8 Q. What did that mean?

9 A. It meant that the -- you know, the members of a  
10 co-op and, quite frankly, the members of any buying  
11 group are also customers of Henry Schein, so any member  
12 that was part of the co-op was going to get the  
13 discounts that we were offering when they were part of  
14 the co-op.

15 Q. You were trying to keep them as customers.

16 A. We were trying to keep them as customers, yes.

17 Q. Even though you ended the relationship with the  
18 co-op itself.

19 A. That's correct.

20 Q. And then your e-mail -- you write an e-mail to  
21 Mr. Upchurch. And this is in response to the e-mail  
22 about the ending of the relationship. And you write,  
23 "Will they go to Darby or is this something [that]  
24 PDCO" -- is that Patterson?

25 A. That's correct.

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1 Q. -- "or is this something [Patterson] or Benco  
2 will jump on?"

3 Do you see that?

4 A. I do.

5 Q. So why did you -- did you think that the  
6 dental co-op may go to Patterson or Benco?

7 A. It was possible. Sure.

8 Q. So here during this alleged conspiracy that you  
9 had with Benco and Patterson you thought it was  
10 possible that this buying group you terminated would go  
11 to one of your competitors.

12 A. Absolutely.

13 Q. Did -- you can take that down.

14 Did you end the relationship with the  
15 dental co-op because it was a buying group?

16 A. No.

17 Q. Did you end the relationship because of Benco  
18 or Patterson?

19 A. No.

20 Q. Are you familiar with a buying group called  
21 Pacific Group Management Services or PGMS?

22 A. I am.

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

24 A. Through the course of discovery.

25 Q. Well, let's look at RX 2228.

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1           This is actually an e-mail you're on about  
2    PGMS.

3           Do you see that?

4           A.   I do.

5           Q.   And I want to look at the bottom of the page.  
6    There's -- you see this e-mail from Glenn Showgren.

7           He writes: "Kathleen did some due diligence on  
8    their current locations and we are not getting much  
9    business at all from them right now.

10          "It does come down to the agreement that we put  
11   in place and the enforceability that PGMS has with  
12   their accounts that they sign up that requires them to  
13   purchase from Schein."

14          Do you see that?

15          A.   I do.

16          Q.   Are those important factors in deciding whether  
17   or not to do business with a buying group?

18          A.   They're extremely important because it goes  
19   back to the alignment and it goes back to the  
20   compliance and it goes back to the value prop, so yes.

21          Q.   And if you'll go back up to the e-mail above  
22   that earlier, Brian Brady writes, "Agree with Glenn."

23          Do you see that?

24          A.   I do.

25          Q.   And then you write, "Agree. Our concerns are

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1 the same. We don't even pursue this unless they can  
2 guarantee all [their] business flows through HSD and  
3 these accounts will not be pulled into an  
4 Elite Status."

5 Do you see that?

6 A. Yes, I do.

7 Q. So what concerns are you expressing here about  
8 PGMS?

9 A. Well, after learning about PGMS, there was a  
10 few factors that were involved there.

11 Q. And what were they?

12 A. One was that the head of PGMS, the buying  
13 group, the head doctor, was actually not even a  
14 customer of Henry Schein. In fact, he was doing  
15 business with Patterson and had just done an equipment  
16 deal with Patterson.

17 Q. I'm sorry. The head guy at PGMS was a customer  
18 of Patterson?

19 A. He was a customer of Patterson and he had just  
20 done an equipment deal with Patterson.

21 Q. Was that a red flag to you?

22 A. That's a big problem. Yes.

23 Q. Okay.

24 A. The second is we -- when we spoke to them,  
25 they could not guarantee any type of compliance at all

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1 because once again these are individual dentists that  
2 they did not own. And they mentioned that we can't  
3 guarantee compliance.

4 And the third thing is, when we looked at the  
5 value proposition, there really wasn't a value  
6 proposition. They just wanted some type of aggressive  
7 pricing from us, and that was it.

8 So when you look at the alignment component,  
9 the compliance component and the value proposition  
10 component -- and also I would add in there, in  
11 California, we have well over 50 percent market share,  
12 so when we are doing any type of business with any  
13 potential customer, we have to establish a baseline of  
14 a business that's already in there, so cannibalization  
15 of our current business is already there.

16 So they weren't in alignment, they weren't  
17 promising any type of compliance which would help grow  
18 the business, there was no value proposition, and it  
19 was just pretty much risk for Henry Schein's business.

20 Q. Were you doing the Carlton, Dr. Carlton  
21 equation?

22 A. Yes. I guess so, yes.

23 Q. Did you ever discuss PGMS with Tim Sullivan?

24 A. I did.

25 Q. What, if anything, do you recall from that



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1 discussion?

2 A. I don't remember all of the specifics, but I  
3 do know when -- when we were going through the  
4 structure, both the mid-market and buying group space,  
5 a lot of my communication with Tim was around updates  
6 and examples of what we were -- you know, the inquiries  
7 that were coming in so everyone understood how,  
8 you know, different everything was.

9 So when this came about, I went in to him and I  
10 explained this is the opportunity, it was the  
11 opportunity, explained who PGMS was. And at the time,  
12 I said, because of what we just went through with the  
13 alignment, the compliance, the value prop and the  
14 cannibalization, I just said this is someone that we  
15 wouldn't do business with or I don't believe we should  
16 do business with.

17 But, because he was also learning, I'd asked,  
18 Is there anything that you see that would be different?  
19 And you know, Tim is an empowering leader, and he said,  
20 No, so whatever you want to do we do.

21 Q. So who made the decision -- well, let me ask  
22 you this.

23 Did Schein ultimately decline to do business  
24 with PGMS?

25 A. Yes, we did.

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1 Q. And who made that division?

2 A. I ultimately made the decision.

3 Q. Was Tim Sullivan involved in that decision  
4 other than what you just described?

5 A. No.

6 Q. Do you believe that if you had recommended to  
7 Mr. Sullivan you do business with PGMS he would have  
8 let you do it?

9 A. Yes.

10 Q. Did Schein's decision or your, your decision to  
11 not work with PGMS -- did that have anything to do with  
12 the fact that it was a buying group?

13 A. No.

14 Q. In fact, you were making that decision because  
15 it was a buying group.

16 A. That's correct.

17 Q. And you were the one coming up with the  
18 strategy.

19 A. I was, yes.

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

22 A. Not at all.

23 Q. Are you familiar with an entity called  
24 Dentistry Unchained?

25 A. Yes, I am.

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1 Q. And is Dentistry Unchained another buying group  
2 that you vetted with Ms. Titus?

3 A. They're a buying group that I worked with  
4 Kathleen on. Yeah.

5 Q. Do you recall when that group was brought to  
6 your attention?

7 A. Yeah. It was 2014-2015.

8 Q. All right. How long did you negotiate with  
9 Dentistry Unchained?

10 A. It was over a year.

11 Q. And did Schein end up partnering with  
12 Dentistry Unchained?

13 A. No, we didn't.

14 Q. Why not?

15 A. After a full year of not only putting the  
16 structure and the offering together for the buying  
17 group space but also made several visits to their  
18 location in Colorado and learning more about them and  
19 explaining what Henry Schein's offering was going to  
20 be, we agreed that we were going to have an exclusive  
21 relationship with Dentistry Unchained, again, because  
22 of the alignment and the compliance and the value  
23 proposition.

24 So the rollout strategy -- we had a conference  
25 call with Dentistry Unchained and members from

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1 Henry Schein. And in the conference call we had  
2 chosen it was five or six doctors that we were going  
3 to use as a beta test to roll out Dentistry Unchained  
4 and figure out the right formula to be successful  
5 together.

6 And during that call, Wendy, who was at  
7 Dentistry Unchained, had said, Hey, we made a change in  
8 our strategy, we believe we're more of a marketplace  
9 than a buying group, so what we're going to do is we're  
10 going to give this company merchandise, we're going to  
11 give Patterson CAD/CAM, and you guys are lucky enough  
12 to get the equipment business and the business  
13 solutions business.

14 And it was like, wait a second, that's not  
15 what we agreed to, so that's -- that's not -- we're  
16 not going to come to an agreement and we're not going  
17 to come to a deal because that's not what we  
18 discussed.

19 Q. And who made that decision?

20 A. I did.

21 Q. Was Tim involved in that decision --

22 A. No.

23 Q. -- Mr. Sullivan?

24 Are you familiar with an entity called  
25 TDA Perks Supplies?

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1 A. Yes, I am.

2 Q. And what is TDA Perks Supplies?

3 A. TDA Perks Supplies is an arm of the TDA. And  
4 TDA was really looking to increase membership, so they  
5 were trying to understand how to offer more services,  
6 but they also developed an agreement and a partnership  
7 with an Internet company to sell supplies endorsed by  
8 the TDA.

9 Q. The Internet company is called SourceOne?

10 A. That's correct.

11 Q. Prior to TDA launching the TDA Perks Supplies  
12 program with SourceOne, did TDA approach Schein about  
13 forming a similar relationship?

14 A. No, they didn't.

15 Q. What was your view of that program?

16 A. I was confused and --

17 Q. Why were you confused?

18 A. I was confused because if you look at -- if  
19 you look at the dental industry, you have partnerships  
20 between -- if you're a dealer with manufacturers and  
21 also you have partnerships with dental associations.  
22 And how you have those partnerships is, one, the  
23 members are our customers, but two, you have these  
24 local shows -- and they have big shows and also local  
25 shows -- that we pay to participate in, so we pay to

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1 have a booth in these shows.

2 And historically, before the TDA, the dental  
3 associations were neutral. They were unbiased. They  
4 didn't endorse specific companies because they  
5 themselves understood the partnership, that you can't  
6 do that if you're going to be partners with everybody.

7 So the TDA decided to endorse this Internet  
8 company. It was -- it was a surprise, it was a shock  
9 and it was confusing. And we needed to understand what  
10 they were doing and what they were thinking.

11 Q. So I got a little ahead of myself, and I want  
12 to be sure we're clear in the record.

13 The TDA is the Texas Dental Association.

14 A. That is correct.

15 Q. All right. And that's an association that's  
16 made up of dentists in the state of Texas?

17 A. That's correct.

18 Q. All right. So did you ever -- did you  
19 ultimately meet and talk about this program with the  
20 TDA?

21 A. Yeah. We finally met in April of two thousand  
22 I believe it was fourteen, 2014. And after six to  
23 eight months of trying to get a meeting with them, we  
24 finally got the meeting in April. And when we sat  
25 down at the board, I was there. I was leading the

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1 meeting.

2           They explained to us what I just said, is they  
3 needed to improve their membership, they wanted to  
4 introduce services, and they believed that endorsing  
5 SourceOne was a way to get additional dollars to their  
6 association because they were getting a rebate back on  
7 the supplies.

8           Q. Did you make a pitch at that meeting to work  
9 with the TDA instead of SourceOne?

10          A. Yes.

11                 So after I understood the challenge of  
12 membership was down, so their membership dues, the  
13 revenue was down, I put together a package verbally at  
14 the time of the meeting -- I did -- I did formalize it  
15 later on -- and said, Hey, we can do the same thing  
16 with -- through Henry Schein. And I would reference  
17 our wheel, I would reference our formulary pricing, all  
18 the things that we talked about earlier, and I thought  
19 that was, if they were going to endorse a dealer, that  
20 we would be a better choice because we have so much to  
21 offer.

22          Q. And so this meeting was in April of 2014 you  
23 said?

24          A. That's correct.

25          Q. When was their trade show that they were

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1 having?

2 A. It was I believe a week and a half after that  
3 meeting.

4 Q. Okay. So what -- what happened after the  
5 meeting?

6 A. Yeah. So we meet and -- and it was a lukewarm  
7 meeting. We ended the meeting without any type of  
8 agreement. We said we'd continue to discuss.

9 I -- I did mention to them saying that if --  
10 you know, if you are going to endorse somebody that's a  
11 direct competitor, it would be hard for us to attend  
12 the meeting. And they said they understood and -- but  
13 we agreed that we would work together to see if there  
14 was a happy medium where we in turn could help their  
15 members.

16 So a day after that meeting, I got a call from  
17 the head of the TDA. And he said, Hey, I heard what  
18 you said, I liked what you said, and if you can just  
19 give me a little bit of time, I think I can talk to the  
20 other TDA board members and maybe we can figure  
21 something out. I said, Great.

22 So the weekend passes and I travel -- I forget  
23 where I was traveling to -- and I think it was Tuesday  
24 of that week I get a call from our conventions team  
25 saying that we're no longer on the TDA booth space

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1 template, we've been removed, you know, what's going  
2 on.

3 So I called, I called the head of the TDA, and  
4 said, Yeah, Joe, you know, we just decided that it  
5 wasn't -- it wasn't going to work out, and so you're  
6 not on the booth space.

7 Q. So they took you off the map.

8 A. Yeah. In my mind, they took us out of the TDA  
9 meeting.

10 Q. Prior to the TDA taking you off the map, had  
11 there been discussions within Henry Schein about  
12 whether or not to go to the TDA trade show?

13 A. Yes.

14 Q. And who was the leader of those discussions?

15 A. I was the leader of those discussions.

16 Q. All right. Was Dave Steck involved in any way  
17 regarding whether or not Schein was going to attend the  
18 TDA trade show in 2014?

19 A. No.

20 Q. Did your discussions or your decisions about  
21 whether or not you would go to the TDA trade show in  
22 2014 have anything to do with what your competitors  
23 were going to do?

24 A. No.

25 Q. Did your discussions or decisions about whether

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1 or not to attend the TDA trade show in 2014 have  
2 anything to do with whether or not TDA Perks Supplies  
3 could be considered to be a buying group?

4 A. No.

5 Q. Did you ever have discussions with any of your  
6 competitors about the TDA trade show or the TDA Perks  
7 Supplies program?

8 A. No, I did not.

9 Q. Did you have any interest in what they were  
10 doing?

11 A. I didn't care one bit.

12 Q. And to be sure we all understand the issue, the  
13 TDA was endorsing a competitor?

14 A. That's correct.

15 Q. Did -- were you aware of literature from the  
16 TDA encouraging their members to not buy from  
17 Henry Schein and to buy from their program instead?

18 A. Yeah.

19 So earlier in that year, I believe it was  
20 February, I was at the Utah state meeting, and there  
21 was a pamphlet that the TDA had blasted out to several  
22 regions around Texas that border Texas. And at the  
23 meeting, someone came up to me and said, Hey, have you  
24 seen this TDA pamphlet? I hadn't seen it.

25 And on the pamphlet it was comparing the

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1 TDA Perks merchandising pricing of a few items to  
2 Schein and other dealers.

3 And at the -- at the TDA meeting, I brought  
4 that up, and they said no, that doesn't exist. And  
5 then the marketing person was in there and said, Well,  
6 yeah, it does.

7 So there was definitely marketing material  
8 promoting the TDA Perks program outside of even Texas.

9 Q. I want to close by being sure we're all clear  
10 because I think you're going to see some -- we've  
11 looked at some e-mails from you today where you made  
12 comments about buying groups that can be construed that  
13 you're anti buying group.

14 Are you, sir?

15 A. No.

16 Q. It could also be construed to indicate that  
17 you're stating that Henry Schein was not working or  
18 engaging with buying groups.

19 Was that ever the case during your time at  
20 Henry Schein?

21 A. Henry Schein --

22 MR. SOLOMON: Objection, Your Honor. That  
23 question is leading.

24 MR. McDONALD: I'll ask it a different way.  
25 I'm trying to move this along.

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1 BY MR. McDONALD:

2 Q. Was there ever a time during your tenure at  
3 Henry Schein, regardless of what's in an e-mail, that  
4 Henry Schein was not doing business with buying  
5 groups?

6 A. Henry Schein was doing business with buying  
7 groups my whole time employed by them.

8 Q. Buying groups made up of independent dentists.

9 A. That is correct, yes.

10 MR. McDONALD: I'll pass the witness.

11 JUDGE CHAPPELL: Who else is going to question  
12 the witness on this side?

13 MS. SEIDL: I have questions on behalf of  
14 Benco, Your Honor.

15 MR. OSTOYICH: You mean Patterson.

16 MS. SEIDL: Patterson.

17 MR. RACOWSKI: No questions at this time on  
18 behalf of Benco, Your Honor.

19 - - - - -

20 DIRECT EXAMINATION

21 BY MS. SEIDL:

22 Q. Mr. Cavaretta, we haven't met, but to  
23 introduce myself, I'm Jana Seidl, and I represent  
24 Patterson.

25 Do you recall Mr. McDonald asking you a few

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1 questions about the Dental Cooperative of Utah?

2 A. Yes, I do.

3 Q. And in response to a question, you testified  
4 that you thought it was possible that Patterson would  
5 jump on that business in 2014 when Schein stepped away  
6 from the business with Dental Cooperative of Utah; is  
7 that correct?

8 A. That is correct.

9 Q. So you didn't think that Patterson agreed with  
10 anyone at Schein not to do business with buying groups  
11 in 2014; correct?

12 A. Can you ask that --

13 Q. Sure.

14 You did not think that Patterson had agreed  
15 with anyone at Schein not to do business with buying  
16 groups like the Dental Cooperative of Utah in the  
17 middle of the alleged conspiracy.

18 A. That's correct.

19 Q. And you've testified here today multiple times  
20 that you have no knowledge of the alleged agreement  
21 between Schein, Benco and Patterson to not do business  
22 with or discount to buying groups; correct?

23 A. I have absolutely no knowledge of that.

24 Q. So it would be false if someone was asserting  
25 that you had knowledge of a buying group conspiracy

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1 between the three companies; correct?

2 A. That would be false.

3 Q. Now, Mr. Cavaretta, are you aware that in  
4 response to some questions by my client Patterson, the  
5 FTC has listed you in sworn interrogatory answers as a  
6 person with knowledge of the alleged agreement?

7 A. Yes, I do.

8 Q. And I'm going to show you those interrogatory  
9 responses that the government submitted.

10 Kurt, could we please call up RX 2934.

11 And let's flip to page 9.

12 Mr. Cavaretta, do you see the question that  
13 starts with "Interrogatory number 4"?

14 A. Yes, I do.

15 Q. And then you see that at page 9 the answer  
16 starts. Now, if we flip to page 10, at the bottom it  
17 states, "The following persons have knowledge of the  
18 facts underlying the allegations."

19 Do you see that?

20 A. Yes, I do.

21 Q. And if we flip to the next page, do you see  
22 your name?

23 A. I do see my name.

24 Q. Great.

25 So is the statement in this document true or is

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1 it false that you have knowledge of the facts of the  
2 alleged agreement in this case?

3 A. I have no knowledge of the alleged agreement in  
4 this case.

5 Q. So the statement in the document is false.

6 A. False, correct.

7 Q. And Mr. Cavaretta, do you recall being deposed  
8 in this matter in July of 2018?

9 A. Yes, I do.

10 Q. And do you recall being asked at that  
11 deposition whether you have any personal knowledge that  
12 there was an alleged agreement between Henry Schein,  
13 Benco and Patterson not to do business with or discount  
14 to buying groups?

15 A. I was asked that question. Yes.

16 Q. And did you testify at your deposition that you  
17 do have knowledge about such an agreement?

18 A. There was --

19 MR. SOLOMON: Objection, Your Honor. I'm not  
20 sure what counsel is trying to do. We haven't seen the  
21 testimony on the screen. He doesn't have it in front  
22 of him.

23 MS. SEIDL: I asked the witness if he recalled,  
24 and he said yes.

25 JUDGE CHAPPELL: She's asking the witness what

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1 he recalls; therefore, nothing is necessary.

2 MR. SOLOMON: Yes, Your Honor.

3 MS. SEIDL: Thank you.

4 BY MS. SEIDL:

5 Q. So in July of 2014 [sic], you testified under  
6 oath that you had no knowledge of an alleged agreement  
7 between Benco, Patterson and Schein not to do business  
8 with buying groups; is that right?

9 A. I was not aware of any agreement. Correct.

10 Q. So let's take a look at another document.

11 Just to clarify for the record, in July of  
12 2018, you testified under oath that you had no  
13 knowledge of an alleged agreement.

14 A. Correct, in July of 2018.

15 Q. And so let's take a look at another document.

16 Kurt, could you please pull up RX 2958.

17 And Mr. Cavaretta, these are the government's  
18 amended responses to the same questions by my client  
19 Patterson.

20 Now, if we go to page 9, do you see at the  
21 bottom there is the same question from the previous  
22 interrogatory responses that were listed in RX 2934,  
23 where it states, "Interrogatory Number 4: Identify the  
24 factual basis, including documents, and persons with  
25 knowledge, about [sic] the allegations"?

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1           A. I do see it's the same document. Yes.

2           Q. And the answer starts at the bottom, and if we  
3 flip to page 10 --

4           MR. SOLOMON: Objection, Your Honor. I just  
5 want to point out for the record before counsel goes  
6 any further, I want to point out for the record that  
7 the question that counsel is pointing out to the  
8 witness is a different question in the interrogatory  
9 from the one she just showed the witness before, so I'd  
10 like to make sure that's clear on the record.

11           MS. SEIDL: Your Honor, the point I'm focusing  
12 on is that the question asks about persons with  
13 knowledge of the conspiracy, and Mr. Cavaretta's name  
14 is listed as someone who does have knowledge of this.  
15 It's the same point that I made with the prior  
16 document.

17           MR. SOLOMON: Your Honor, the question relates  
18 to facts underlying the allegations. That's what this  
19 question relates to. Again, it's a different question  
20 from the one she just showed. I want to make sure  
21 we're clear on the record for the witness and for the  
22 record that she's asking about two different questions  
23 and the question doesn't -- the question is about the  
24 factual basis underlying the allegations in the  
25 complaint.

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1 MS. SEIDL: And the question includes the  
2 phrase "and persons with knowledge." That's -- I'm  
3 happy to move along, Your Honor.

4 JUDGE CHAPPELL: It's her exam. She can  
5 proceed as she wishes.

6 MR. SOLOMON: Yes, Your Honor.

7 MS. SEIDL: Thank you.

8 BY MS. SEIDL:

9 Q. Now, if we go to the next page, page 10,  
10 please, do you see at the bottom it states, "The  
11 following persons have knowledge of the facts  
12 supporting the allegations ... in the Complaint"?

13 A. I do see that.

14 Q. And if we flip to page 11, do you see your name  
15 listed there?

16 A. My name is listed there.

17 Q. So if we look at page 25 of this document,  
18 please, Kurt, it shows the date.

19 And do you see the date is August 17, 2018?

20 A. I do see the date.

21 Q. So that would be about three weeks after your  
22 deposition in July of 2018?

23 A. That's correct.

24 Q. And at that deposition you had testified that  
25 you have no knowledge of the agreement.

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1 A. That is correct.

2 Q. So what it says right here in this document is  
3 also false; is that correct?

4 A. That's correct.

5 MS. SEIDL: Thank you, Mr. Cavaretta. Those  
6 are all the questions I have.

7 THE WITNESS: Thank you.

8 MS. SEIDL: Pass the witness.

9 JUDGE CHAPPELL: Cross?

10 MR. SOLOMON: Good afternoon, Your Honor.

11 (Pause in the proceedings.)

12 Your Honor, may I approach the witness with a  
13 binder?

14 JUDGE CHAPPELL: Go ahead.

15 MR. SOLOMON: Thank you.

16 - - - - -

17 CROSS-EXAMINATION

18 BY MR. SOLOMON:

19 Q. Good afternoon, Mr. Cavaretta.

20 A. Good afternoon.

21 Q. We met at your deposition. It's really good to  
22 see you again.

23 A. Nice seeing you, too.

24 Q. Mr. Cavaretta, on your direct examination with  
25 your counsel you discussed a group called Smile Source.

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1 Do you recall that?

2 A. Yes, I do.

3 Q. I'm going to ask you a few questions about  
4 Smile Source.

5 A. Okay.

6 Q. Smile Source is a buying group; right?

7 A. That's correct.

8 Q. And Schein started working with Smile Source  
9 again around February of 2017; that's right?

10 A. That's correct.

11 Q. And you negotiated the 2017 agreement with  
12 Smile Source; right?

13 A. That's correct.

14 Q. So since the time Schein has been working with  
15 Smile Source in 2017, Schein has gained business from  
16 its competitors through that relationship; right?

17 A. Our business has grown with Smile Source,  
18 correct. Yes.

19 Q. And Schein has increased its business with some  
20 of its existing customers through the Smile Source  
21 relationship; right?

22 A. Yes.

23 Q. And Schein is not Smile Source's exclusive  
24 distribution partner; right?

25 A. That is correct.

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1 Q. I think you talked about this earlier.

2 Smile Source works with other full-service  
3 distributors; correct?

4 A. That is correct.

5 Q. And those are Nashville, Burkhart and Atlanta;  
6 correct?

7 A. That is correct.

8 Q. So under the current relationship since 2017,  
9 Schein offers Smile Source members discounts on a  
10 special products formulary; correct?

11 A. That is correct.

12 MR. SOLOMON: Okay.

13 Your Honor, I have questions from here forward  
14 that relate to confidential information that's been  
15 designated as in camera by third-party Smile Source.  
16 I'd request we go into in camera at this point for just  
17 a few questions.

18 JUDGE CHAPPELL: All right. At this time we  
19 need to go into in camera session. I'll need to ask  
20 those not subject to the protective order to leave the  
21 courtroom.

22 (Whereupon, the proceedings were held in  
23 in camera session.)

24 - - - - -

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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 JUDGE CHAPPELL: Let's give the public time to  
4 file in.

5 (Pause in the proceedings.)

6 Go ahead.

7 MR. SOLOMON: Thank you, Your Honor.

8 BY MR. SOLOMON:

9 Q. Mr. Cavaretta, you also talked about a group  
10 called Breakaway with your counsel. Do you recall  
11 that?

12 A. Yes, I do.

13 Q. Okay. Let's look at CX 2482. It's in your  
14 binder, and we're also going to pull it up on the  
15 screen in front of you in a moment. If you prefer  
16 looking at it there --

17 A. The screen is easier.

18 Q. Okay. So, Mr. Cavaretta, do you recognize this  
19 document?

20 A. I do.

21 Q. And this is a discussion between yourself and  
22 Mr. Tim Sullivan about Breakaway in August of 2015;  
23 right?

24 A. I was reading some of the e-mail, so to answer  
25 your question, yes, it's a document from August 18,



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1 2015.

2 Q. And you tell Mr. Sullivan, "Breakaway is a  
3 DSO/MSO combo with complete control of the check book."

4 Do you see that?

5 A. I do.

6 Q. You told Mr. Sullivan that Breakaway is a  
7 DSO/MSO hybrid that controls purchasing; right?

8 A. In the e-mail I...

9 (Document review.)

10 So I see "Breakaway is a DSO/MSO combo with  
11 complete control of the check book" is in the e-mail.  
12 What was your question? I apologize.

13 Q. My question was, you're telling Mr. Sullivan  
14 that Breakaway is a DSO/MSO combo that centrally  
15 manages and controls purchasing; correct?

16 A. At the time of this e-mail I was saying that,  
17 yes.

18 Q. And that was your understanding in August of  
19 2015?

20 A. That was my understanding as we were doing our  
21 due diligence on Breakaway.

22 Q. In August of 2015, at the time of this e-mail,  
23 that was your understanding?

24 A. Yeah. It says August of 2015, yes.

25 Q. And in August of 2015, you weren't aware of any

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1 buying group component to Breakaway; correct?

2 A. I guess the reason why I pause here is because  
3 I believe we were learning about Breakaway, and even  
4 though it's not in the e-mail, I don't know exactly  
5 when it was that we understood that it was more of a  
6 buying group than owned offices.

7 Q. Do you recall when I asked you that question at  
8 your deposition you gave me a different answer?

9 A. No.

10 Q. Okay. Let's take a look at your deposition --

11 A. Sure.

12 Q. -- testimony. And again, we're going to pull  
13 this up on the screen. You can also look at it in your  
14 binder.

15 For the record --

16 MR. McDONALD: Well, before he pulls it up, I'm  
17 not sure if he's impeaching or not. I mean, the only  
18 thing he asked him is, do you recall if you gave a  
19 different answer, and he said no. I mean, I'm not sure  
20 what he's doing here.

21 JUDGE CHAPPELL: He's objecting to lack of  
22 foundation.

23 MR. SOLOMON: Yes, Your Honor. I am simply --  
24 I was trying to impeach. I can lay some more  
25 foundation.

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1           JUDGE CHAPPELL:  There's been an objection.  
2    You need to.

3           MR. SOLOMON:  Yes, Your Honor.  Thank you.

4           BY MR. SOLOMON:

5           Q.  Mr. Cavaretta, you testified about Breakaway at  
6    your deposition in May of -- or I think it was July of  
7    2018.  Do you recall that?

8           A.  I do.

9           Q.  And do you recall answering some questions  
10   about Breakaway and what your understanding was of  
11   Breakaway at that time?

12          A.  I don't remember the specifics.

13          Q.  Okay.  Do you recall testifying that you  
14   weren't aware of any buying group component to  
15   Breakaway as of August of 2015?

16          A.  In the e-mail you just showed me?  Is that what  
17   you're referring to?

18          Q.  In your deposition testimony, do you recall  
19   testifying that you were not aware of any buying group  
20   component to Breakaway in August of 2015?

21          A.  I don't recall that.

22          Q.  Okay.  Let's take a look at your deposition  
23   testimony from July of 2018 where I asked you that  
24   question.

25                 And for the record, in your binder,

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1 Mr. Cavaretta, it's CX 8033, and I'll quote you to the  
2 page line, but we'll also pull it up on the screen.  
3 Okay?

4 A. Okay.

5 MR. McDONALD: Well, Your Honor, he still has  
6 not laid a foundation for impeachment, but in order to  
7 move this along, I will let it go, but I just want to  
8 be sure I'm not waiving him having to lay a proper  
9 foundation before he impeaches a witness with a  
10 deposition.

11 MR. SOLOMON: Your Honor, I believe I have laid  
12 a proper foundation. We've established that he did  
13 provide testimony at the deposition on Breakaway. I've  
14 asked him whether he recalls testifying about it  
15 previously. I've also asked whether he recalls giving  
16 a different answer. I believe the time is now ripe to  
17 look at that differing testimony.

18 JUDGE CHAPPELL: To move this along, I'm going  
19 to allow that. Go ahead.

20 MR. SOLOMON: Thank you, Your Honor.

21 BY MR. SOLOMON:

22 Q. So let's pull up CX 8033. And we're at  
23 page 238 line 23 through 239 line 1.

24 A. Okay.

25 Q. And the question, Mr. Cavaretta, at your

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1 deposition was: "So as of the time of this e-mail in  
2 August 2015, you weren't aware of the buying group  
3 component?"

4 And your answer was: "No."

5 Do you see that?

6 A. I do.

7 Q. That was your testimony under oath; correct,  
8 sir?

9 A. Correct.

10 Q. Okay. Mr. Cavaretta, today you also testified  
11 about something called Mid Market or the Mid Market  
12 Division at Henry Schein. Do you recall that?

13 A. I do.

14 Q. And I believe it was your testimony that  
15 Mid Market was supposed to deal with buying groups at  
16 Henry Schein. Is that right?

17 A. It was that buying groups were a component of  
18 the mid-market space as it was being transitioned over  
19 from the special markets team.

20 Q. Let's take a look at a document.

21 And this is CX 2280. We'll pull it up on the  
22 screen.

23 And this is an e-mail between you and  
24 Mr. Sullivan in January of 2016. And you say to  
25 Mr. Sullivan, "We also have to figure out if the MM is

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1 going to be responsible for BGs."

2 Do you see that?

3 A. I do.

4 Q. "MM" refers to Mid Market.

5 A. That's correct.

6 Q. And "BGs" refers to buying groups.

7 A. That's correct.

8 Q. And you wrote that to Mr. Sullivan in January  
9 of 2016.

10 A. I did.

11 Q. Okay. We can take that down.

12 Mr. Cavaretta, you also talked on your direct  
13 testimony with your counsel about Schein's policies  
14 with respect to buying groups. Do you recall that?

15 A. I do.

16 Q. And I believe it was your testimony that Schein  
17 has never had any policy related to buying groups that  
18 you testified about with your counsel, so let's look at  
19 a document. I'm going to pull up CX 2509.

20 And I'd like to focus on your statement,  
21 Mr. Cavaretta, to Mr. Philip Toh and Chad Campbell:  
22 "We try to avoid buying groups at all costs and  
23 therefore don't really recognize them."

24 Do you see that?

25 A. I see the e-mail. Yeah.

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1 Q. And that was your statement to Mr. Toh and  
2 Mr. Campbell in 2013; right?

3 A. It was, but what's the rest of the e-mail?

4 Q. The rest of the e-mail, we can zoom out and you  
5 can take a look at it.

6 A. Okay.

7 Q. Christian, if you want to zoom out.

8 Also there's a copy of it in your binder. And  
9 again, for the record, this is CX 2509.

10 A. Can you just zoom out. It's just --

11 Q. Sure.

12 (Document review.)

13 A. Okay. Now, can you zoom in a little bit more.  
14 Thanks.

15 (Document review.)

16 So in this e-mail it looks like it's talking  
17 about a state association selling specific products,  
18 and so are we -- are we talking about a buying group  
19 here?

20 Q. Mr. Cavaretta, you see that the subject of  
21 this e-mail is "How do you define buying groups?";  
22 right?

23 A. Sure.

24 Q. And Mr. Toh writes an e-mail to you, and he  
25 says, Henry Schein Dental manages customers who are

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1 buying groups, not Special Markets"; correct?

2 A. I see that in the e-mail. Correct.

3 Q. And then he says, "Joe?"

4 Do you see that?

5 A. I do.

6 Q. And your response to him was: "We try to avoid  
7 buying groups at all costs and therefore don't really  
8 recognize them."

9 That was your response?

10 A. That's in the e-mail. Correct.

11 Q. Okay. And Mr. Toh worked in Special Markets at  
12 this time; right?

13 A. I believe he did, yes.

14 Q. And so did -- Mr. Campbell also worked for  
15 Henry Schein?

16 A. I just don't remember Mr. Campbell.

17 Q. Okay. If you look on page 2, Mr. Campbell --  
18 it says he's a financial inventory specialist,  
19 Henry Schein Canada.

20 We're on page 2.

21 Can you zoom in on that, Christian?

22 A. So he's a financial inventory specialist in  
23 Canada.

24 Q. So he was an employee of Henry Schein.

25 A. He was an employee of Henry Schein.

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1 Q. Thank you.

2 Let's look at another document. This is  
3 CX 2234.

4 Actually, let's look at CX 0168.

5 And Mr. Cavaretta, CX 0168 concerns an entity  
6 called Intermountain Dental Associates; right?

7 A. That is the topic. Correct.

8 Q. And Andrea Hight is also on this e-mail.

9 Ms. Hight was in Special Markets at the time?

10 A. That's correct.

11 Q. And Ms. Hight was responsible for this  
12 account?

13 A. I believe so. Yes.

14 Q. And there's a discussion of whether IDA was  
15 forming a buying group.

16 Do you see that?

17 Ms. Bingham asks, "Would that make it a GPO?"

18 Do you see that?

19 A. I see that at the bottom of the page, correct.

20 Q. And your response to Ms. Bingham is it is --  
21 "It is dangerously close but I told him we would not do  
22 business with a GPO."

23 Do you see that?

24 A. I do.

25 Q. Ms. Bingham was a field sales consultant or a

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1 sales rep for Henry Schein Dental at the time?

2 A. She was.

3 Q. And as an FSC, Ms. Bingham would have been  
4 someone who reported up through you; right?

5 A. That's correct.

6 Q. And then you go on to tell Ms. Bingham, "The  
7 difference here is that they will force any customer to  
8 purchase from Schein which is more along the lines of a  
9 corp account."

10 Do you see that?

11 A. Yeah. That's coming into the component of the  
12 compliance piece, correct.

13 Q. And by "corp account" you meant a corporate  
14 practice or a DSO?

15 A. A Special Markets account. Yeah.

16 Q. And it was -- your understanding was that IDA  
17 would force its offices to purchase from Schein at the  
18 time of this e-mail; right?

19 A. Well, in some of my e-mails -- and sometimes  
20 the wording isn't great, but it was more of the  
21 compliance component more so than forcing them.

22 Q. And you understood that this customer was more  
23 along the lines of a corporate account at this time.

24 A. That's correct.

25 Q. Mr. Cavaretta, let's -- let's change topics for

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1 a minute. You talked a little bit about some of the  
2 risks that you believe are involved with dealing with  
3 buying groups, and you talked about some of those risks  
4 that you saw while you were at Henry Schein.

5 Let's look at CX 0165. And this document is  
6 about a consulting group called Business Intelligence  
7 Group that is interested in forming a buying group.

8 A. Okay.

9 Q. And Mr. McCarroll, at the bottom of  
10 pages 2 through 3, inquires about working with this  
11 group.

12 Do you see that?

13 A. Yes, I do.

14 Q. And Mr. McCarroll was an FSC in HSD at this  
15 time; right?

16 A. Yes, he was.

17 Q. And then if we go up a little bit further,  
18 Ms. Titus chimes in, and she says, "I can tell you with  
19 authority that is not something SM would be interested  
20 in. The participants are Private Practice customers  
21 which rules SM out."

22 And then she goes on to say, "I'm copying Joe  
23 Cav... perhaps he will have a different take, but SM  
24 declines."

25 Do you see that?

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1 A. I do.

2 Q. And Ms. Titus was in Special Markets at the  
3 time of this e-mail?

4 A. What was the date again?

5 Q. It is February 2011.

6 A. That is correct.

7 Q. And you understand by "SM" Ms. Titus was  
8 referring to Special Markets?

9 A. I do.

10 Q. Okay. And Special Markets was sending this  
11 buying group over to you in HSD in 2011?

12 A. They were sending the inquiry over.

13 Q. You respond on page 1, and your response is:  
14 "Dealing with GPOs is incredibly risky on many fronts.  
15 We can discuss live but as soon as we start doing this  
16 we will turn into medical, margins will go down and  
17 commissions of course will follow."

18 Do you see that?

19 A. I do.

20 Q. You were referring to buying groups when you  
21 said that they are incredibly risky on many fronts?

22 A. Well, it's like I testified earlier today, is  
23 when they're not in alignment and they don't have the  
24 compliance and they don't have the value proposition,  
25 it -- and with our high market share, there is risk if

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1 all of those things aren't in place when doing business  
2 with a buying group.

3 Q. So by "GPOs" you were referring to buying  
4 groups.

5 A. Yeah. It was interchanged at this point, so  
6 yes.

7 Q. And do you see you also refer to medical in  
8 this statement? Do you see that?

9 A. I do.

10 Q. And you're referring to the medical supply  
11 industry?

12 A. I was.

13 Q. And your understanding was that the medical  
14 supply industry operated on lower margins as compared  
15 to dental.

16 A. Yeah. I was complying -- I was implying that  
17 the medical market was moving towards the GPO, which is  
18 a third party, in order to grow their business as a  
19 strategy, which in turn had an impact on the margin  
20 because it was lower pricing and there was an admin  
21 fee.

22 As a -- as in dental, as I testified earlier,  
23 that wasn't our growth strategy because the brand  
24 within a dealer was just -- it was so strong that  
25 there was -- there wasn't a need to have that as our

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1 major growth strategy to -- from a GPO or buying group  
2 standpoint, but we needed a strategy.

3 Q. Let's look at CX 0166.

4 And Mr. Cavaretta, this concerns a potential  
5 buying group established by the Academy of General  
6 Dentistry or AGD; correct?

7 A. That is the title of the e-mail. Correct.

8 Q. Is that your understanding of what this e-mail  
9 is about?

10 And we can zoom out and take a look.

11 A. I'm just reading the e-mail.

12 Q. Okay.

13 (Document review.)

14 A. I have to assume that's what it's about. I  
15 don't see AGD in the e-mail.

16 Q. Okay. Well, we'll take a look at the rest of  
17 this document, and I'll walk you through it.

18 Let me ask you a question about AGD.

19 AGD is an organized group that educates dental  
20 professionals; right?

21 A. That is correct.

22 Q. And you believe that the AGD has a good  
23 reputation in the dental industry.

24 A. They have a good reputation, correct.

25 Q. So let's focus on page 2.

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1           And there's an e-mail from someone named  
2 Thomas Gadd.

3           Do you see that?

4           A. I do.

5           Q. And Mr. Gadd is asking you about Schein's  
6 participation in the AGD buying group; right?

7           A. I'm just reading the e-mail.

8           (Document review.)

9           Q. And you'll see it's in the last paragraph down,  
10 second line, he writes "AGD is trying to negotiate a  
11 deal for members of the AGD to get discounts (a buying  
12 group in other words) I know they have approached  
13 Schein."

14          A. I see that in the e-mail.

15          Q. And your understanding is Mr. Gadd is asking  
16 you about Schein's participation in this buying group?

17          A. He's trying to understand more about what the  
18 AGD is doing with Henry Schein. Yes.

19          Q. Okay. And again, Mr. Gadd was a field sales  
20 consultant or an FSC at this time?

21          A. He was.

22          Q. Okay. And as an FSC, Mr. Gadd would have been  
23 someone who reported up through you; correct?

24          A. At this time, he was not -- he was not in my  
25 chain of command, no.

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1 Q. As an FSC, he was someone who was generally  
2 below you; correct?

3 A. He was an FSC with the company.

4 Q. Okay.

5 A. Yeah.

6 Q. So let's take a look at your response to  
7 Mr. Gadd, and this is at the top of page 2.

8 And you write, "As for the AGD buying group....  
9 I haven't heard anything about this but I doubt this  
10 will happen. Once the buying groups enter our market  
11 the dental model as we know it will change."

12 Do you see that?

13 A. I do.

14 Q. You're referring to the dental distribution  
15 model there?

16 A. Yeah. I was -- again, this whole e-mail is  
17 going back to the business strategy of doing business  
18 with buying groups and having a main strategy or not,  
19 so I'm -- I am going to take it back because I know  
20 where you're going, but you always got to look at the  
21 alignment and the compliance and the value proposition,  
22 so if that's not there, then the model could  
23 potentially change to medical, who had that type of  
24 strategy, because margins could go down and you have  
25 the middleman, so yeah.

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1 Q. Mr. -- we can take that down.

2 Mr. Cavaretta, you also talked about a group  
3 called MeritDent. Do you recall that?

4 A. I do.

5 Q. Okay. And I believe you testified that Schein  
6 entered into an agreement with MeritDent in 2011 or  
7 2012.

8 Was that your testimony?

9 A. That is correct. That's when the document was,  
10 what I remember.

11 Q. Okay. Let's take a look at CX 2563.

12 And Mr. Cavaretta, this e-mail relates to  
13 MeritDent; correct?

14 A. That's correct.

15 Q. And Mr. Dutson e-mails you about MeritDent;  
16 right?

17 A. Okay. It says "Co-op Rebate and MeritDent  
18 Rebate," so you're referring -- yeah.

19 So MeritDent in the middle of the e-mail? Is  
20 that what you're referring to?

21 Q. He's e-mailing you about MeritDent in this  
22 e-mail to you; right?

23 A. Okay. Yes. In the middle of the e-mail it  
24 looks like he's e-mailing me about MeritDent.

25 Q. And you respond, "Funny...that's ok...we didn't

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1 want an exclusive anyway. I want to avoid a GPO  
2 situation."

3 Do you see that?

4 A. I do.

5 Q. And that was in reference to MeritDent.

6 A. That was an e-mail regarding MeritDent. That's  
7 correct.

8 Q. Okay.

9 A. But we did have an agreement with them and we  
10 are still doing business with MeritDent.

11 MR. SOLOMON: Your Honor, I believe that's all  
12 the questions I have. May I have a moment to just  
13 confer with my co-counsel?

14 JUDGE CHAPPELL: Go ahead.

15 MR. SOLOMON: Thank you, sir.

16 No further questions.

17 JUDGE CHAPPELL: Okay.

18 MR. SOLOMON: Thank you, Mr. Cavaretta.

19 THE WITNESS: Yep. Thank you.

20 JUDGE CHAPPELL: Redirect?

21 MR. McDONALD: Yes, Your Honor.

22 - - - - -

23 REDIRECT EXAMINATION

24 BY MR. McDONALD:

25 Q. I'm going to try to be brief.

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1           Was MeritDent a buying group?

2           A. Yes, they were.

3           Q. No doubt in your mind.

4           A. No doubt in my mind.

5           Q. So even though the e-mail you just looked at  
6 said, "I want to avoid a GPO situation," you didn't.

7           A. That's correct. We still had a solution for  
8 them.

9           Q. And you said you entered into that agreement in  
10 2011 or 2012?

11          A. That's correct.

12          Q. All right. I want to look at a couple of  
13 documents.

14                 First, if you'd pull up, Kurt, CX 165, please.

15                 This is a document you just looked at with  
16 Mr. Solomon where he -- you were expressing some  
17 concerns about buying groups being risky; is that  
18 right?

19          A. That's correct.

20          Q. And this is in 2011?

21          A. That's correct.

22          Q. But later that same year you did a deal with  
23 MeritDent, a buying group; right?

24          A. Yes, we did.

25          Q. Okay. I want to look at Exhibit CX 168,

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1 please, Kurt.

2 This is an e-mail about IDA,  
3 Intermountain Dental Associates; is that right?

4 A. That's correct.

5 Q. Does IDA have a buying group component?

6 A. They do.

7 Q. A buying group component made up of individual  
8 dentists?

9 A. That's correct.

10 Q. Thank you.

11 If you'll look at Exhibit CX 2280.

12 If we go to this e-mail from you to  
13 Mr. Sullivan, I want to look at that first line here,  
14 Kurt, where you say (as read), "We have to figure out  
15 if the MM is going to be responsible for BGs."

16 Do you see that?

17 A. I do.

18 Q. Mid Market -- figure out if Mid Market is  
19 going to be responsible for buying groups; is that  
20 right?

21 A. I do. I see that.

22 Q. I think Mr. Solomon is trying to imply that  
23 what you said before was a complete lie, that  
24 Mid Markets was responsible for buying groups, so what  
25 are you referring to there?

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1           A. When we created the mid-market space, the  
2 buying groups were transitioning over from  
3 Special Markets to Mid Market, so as we were putting  
4 together the strategy for the owned practices, we were  
5 also working double, triple duty as the buying group  
6 component was entering in.

7           So Kathleen and I were not only doing our  
8 normal jobs, myself, we were also cultivating and  
9 growing mid-market space and then we were tapping into  
10 our own services, which were us, and understanding the  
11 buying group space.

12           So all of these things were happening at once,  
13 and we were becoming very stretched, so Kathleen said,  
14 I can't -- there's so much opportunity here and  
15 there's people asking us about doing business with us,  
16 I don't have the time to focus on the DSOs that are  
17 owned, we have to put a strategy together to add  
18 resources so we have someone that can handle the buying  
19 groups. And that's what ultimately --

20           Q. So what happened?

21           A. Yeah. So we ultimately -- once we brought  
22 Brian Brady in in 2015, he helped with the  
23 infrastructure, so all throughout 2015 we were setting  
24 that infrastructure up.

25           Then in 2016, which is I believe

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1 February-March -- probably February of 2016, March of  
2 2016, we ended up hiring Darci Wingard to run the  
3 buying group space because we just -- we couldn't keep  
4 up and we didn't have the resources and we needed  
5 help, so we weren't doing the buying group space its  
6 just due because we were trying to do it all at the  
7 same time.

8 Q. APC is called?

9 A. The alternative purchasing channel is APC,  
10 which is the buying groups.

11 Q. So now you have people that that's all they do  
12 is focus on buying groups?

13 A. Yeah.

14 So we -- once we had the structure for the  
15 owned offices completely done with the people and the  
16 structure and the reporting and the pricing and -- I  
17 mean, it takes -- and communicating to the field on a  
18 regular basis of where to go with these opportunities  
19 and who they are, we had to do at the same time the  
20 buying group piece, which, when Darci came on board,  
21 it relieved Kathleen of having to be the primary person  
22 helping me do that and it allowed us to now accelerate  
23 our offering to buying groups and the communication to  
24 buying groups and working with buying groups, so it was  
25 really important to do that.

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1 Q. Okay. Thank you.

2 Let's look at Exhibit 2482.

3 This is -- I'm sorry. CX 2482.

4 This is an e-mail that Mr. Solomon showed you  
5 that you wrote to Tim Sullivan, and he pointed out you  
6 wrote, "Breakaway is a DSO/MSO combo."

7 Do you see that?

8 A. I do.

9 Q. Were you wrong?

10 A. I was wrong because they didn't have -- and  
11 again, in all these groups you find out later it's no  
12 different than we were when we had partnership with  
13 Smile Source. When you started getting deeper into the  
14 relationship, you start understanding more about who  
15 they are.

16 And what ended up happening with Breakaway is  
17 Dr. Leune owned some offices, but Breakaway didn't, and  
18 they had services, but really they were more of a  
19 buying group. And that's why we ended up putting that  
20 into the APC space once we hired Darci on, because they  
21 were absolutely more of a buying group than they were,  
22 you know, a Special Markets DSO customer.

23 Q. Right. Thank you.

24 Let's look at CX 2509.

25 This is another e-mail that Mr. Solomon showed

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1 you, so Mr. Campbell, although with Henry Schein, he's  
2 in Henry Schein Canada; is that right?

3 A. Yeah. That's correct.

4 Q. Completely different than the Henry Schein you  
5 work with; right?

6 A. Completely different, yes.

7 Q. And did you understand Mr. Campbell defined  
8 buying groups as associations who buy one a year or  
9 maybe twice and have special pricing for annual  
10 purchase and are not necessarily related other than  
11 through an association? That's what he writes?

12 A. He wrote -- he writes that, correct.

13 Q. And is that a type of buying group that you  
14 work with?

15 A. No, that's not.

16 Q. Okay. Is that all you were conveying in your  
17 e-mail?

18 A. That's correct.

19 MR. McDONALD: Your Honor, if I can -- I have  
20 one or maybe two questions, and I'm not sure if it  
21 needs to go in camera.

22 JUDGE CHAPPELL: Whose information is it?

23 MR. McDONALD: It's about Henry Schein's  
24 business with Smile Source under their current contract  
25 that Mr. Solomon asked him about.

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1           Can I confer with him to see if it is  
2 confidential and it's not something we can do in open  
3 court, so that we don't have to go out for two  
4 questions, and then I'm done?

5           JUDGE CHAPPELL: Confer with?

6           MR. McDONALD: With the witness.

7           Can I ask him if this is in fact confidential  
8 information that we can't have in open court?

9           JUDGE CHAPPELL: Any objection?

10          MR. SOLOMON: Your Honor, I just want to make  
11 sure he's not feeding questions to the witness.

12          JUDGE CHAPPELL: Well, then why don't you walk  
13 over there with him if it's a trust issue.

14          MR. McDONALD: Yeah, come on.

15          MR. SOLOMON: I mean, I trust him. I just --

16          MR. McDONALD: Come on, Ronnie. I don't care.

17          JUDGE CHAPPELL: Don't start playing cards or  
18 anything.

19          (Laughter)

20          (Witness and counsel confer.)

21          MR. McDONALD: As Mr. Solomon can attest, the  
22 witness said, I don't want that in open court, so I  
23 need to go into a closed session for a couple -- or  
24 in camera session for a couple questions and then I  
25 will be done.

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1 JUDGE CHAPPELL: All right. Before we do  
2 that, will there be any other questions from this  
3 side?

4 MS. SEIDL: Nothing further from Patterson.

5 JUDGE CHAPPELL: Do you anticipate recross?

6 MR. SOLOMON: I don't believe we have anything,  
7 contingent on the next couple questions, but my belief  
8 is we have nothing further.

9 JUDGE CHAPPELL: All right. So you have a  
10 couple questions and you're going to pass the  
11 witness?

12 MR. McDONALD: Correct.

13 JUDGE CHAPPELL: I'm just verifying on the  
14 record for the public because as soon as -- after  
15 this session, we're through. I have some  
16 administrative items I'm going to go over. But you  
17 plan to rest?

18 MR. McDONALD: I do.

19 JUDGE CHAPPELL: All the respondents?

20 MS. SEIDL: Yes, Your Honor.

21 MR. McDONALD: I'm just going to ask for a  
22 couple of questions and then I'm going to speak and go  
23 back into open session.

24 JUDGE CHAPPELL: All right. At this time we  
25 need to go into in camera session. I need to ask those

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1 not subject to the protective order to leave the  
2 courtroom.

3 (Whereupon, the proceedings were held in  
4 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 JUDGE CHAPPELL: Anything further?

4 MR. SOLOMON: Nothing further from us,  
5 Your Honor.

6 JUDGE CHAPPELL: Anything further from  
7 Patterson?

8 MS. SEIDL: No, Your Honor.

9 JUDGE CHAPPELL: All right. We're back in  
10 public session.

11 MR. McDONALD: So Henry Schein rests,  
12 Your Honor.

13 JUDGE CHAPPELL: All right.

14 MS. SEIDL: Patterson rests as well,  
15 Your Honor.

16 MR. RACOWSKI: Benco rests, Your Honor.

17 JUDGE CHAPPELL: Any rebuttal request from the  
18 government?

19 MS. KAHN: No, Your Honor.

20 JUDGE CHAPPELL: All right. I have some  
21 administrative issues to go over, and then we're going  
22 to wrap this up. Get ready to take notes.

23 Thank you, sir. You may stand down.

24 THE WITNESS: Great. Thank you. Thank you,  
25 Your Honor.

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1           JUDGE CHAPPELL: All right. We're going to go  
2 over some issues that have to do with the record,  
3 briefing, et cetera.

4           Exhibits. The parties may enter into the  
5 record marked demonstratives that were referred to in  
6 testimony and only those that were referred to in  
7 testimony.

8           Please review the record, make sure that you  
9 have provided all admitted exhibits, plus those  
10 demonstratives I have just referred to, to the  
11 court reporter within seven days.

12           Fact stipulations. As you were advised during  
13 trial, I expect the parties to work together to  
14 produce an agreed-upon set of facts on certain  
15 matters. The parties should be able to agree to what  
16 the record shows on many issues, definitions, common  
17 terms, et cetera.

18           So in hopes that you will stipulate to more  
19 items rather than fewer items, you may file such joint  
20 stipulations at the time you file your posttrial  
21 briefs, so you have plenty of time to work together and  
22 agree on what you can stipulate to.

23           Closing of the record, Commission Rule 3.44(c).  
24 I will be closing the record in three business days.  
25 If either party feels the record is not complete or

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1 that it needs to be supplemented, I need to be notified  
2 by noon on the third business day after the last day of  
3 trial, which is today.

4 Also, respondents, in various orders I issued  
5 granting motions for in camera treatment, you were  
6 directed to prepare a proposed order listing the  
7 documents that have been granted in camera treatment by  
8 expiration date and exhibit number. You'll need to do  
9 that by the third business day as well. That's noon  
10 Thursday, February 24, due to the federal holiday on  
11 Monday.

12 Posttrial briefing. Under rule 3.46(a), the  
13 proposed findings of fact and posttrial briefs are due  
14 within 21 days of the record closing, and the replies  
15 thereto are due within 10 days after the opening  
16 briefs. I am allowed, per rule, to extend those  
17 deadlines for good cause.

18 I require the parties to be thorough and  
19 careful in their briefs and especially in the replies  
20 to each other's proposed findings. The reply briefs  
21 and findings are very helpful to me in reviewing the  
22 extensive evidence and transcript, so if you're  
23 wondering whether the replies are important, I assure  
24 you they are.

25 We don't have a jury. We have a voluminous



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1 record that we're all going to be very familiar with.  
2 A lot of things might have been taken out of order or  
3 out of time. It's your jobs in the briefing to make  
4 sure that things are clear.

5 This case raises complex issues. I also have  
6 pending a decision in another case. Therefore, I have  
7 determined that more time is needed than the rule  
8 allows for you to prepare and file the opening and the  
9 reply briefs and findings, so you will have more time  
10 than the rule allows.

11 As we discussed yesterday, I proposed  
12 respondents file a joint filing for initial and reply  
13 facts, et cetera.

14 Have you considered this and do you have  
15 anything to tell me today or do you need more time to  
16 consider this?

17 MR. McDONALD: We've considered it, Your Honor.  
18 I think we're all positively inclined to figure out how  
19 to do it, but we need a couple more days to give you a  
20 final answer.

21 JUDGE CHAPPELL: All right. Let's say by this  
22 coming Wednesday?

23 MR. McDONALD: That's fine.

24 JUDGE CHAPPELL: Send a proposal to me. Run  
25 it by the government. Make sure everybody is on

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1 board. If everybody agrees, I'll probably accept it,  
2 but I'll have to look at it and consider how it's  
3 going to complicate or make things easier on my end.

4 MR. McDONALD: Okay.

5 JUDGE CHAPPELL: So by 5:00 p.m. Wednesday.

6 MR. McDONALD: Yes, Your Honor.

7 MS. KAHN: And Your Honor, Your Honor  
8 discussed the briefing schedule and permitting more  
9 time possibly. We have conferred with respondents,  
10 and we're trying to work something out in terms of a  
11 joint agreement on that time, the time parameters, and  
12 we could submit it along with that proposal as well.

13 JUDGE CHAPPELL: What are you thinking right  
14 now? An extra week or two?

15 MS. KAHN: Currently, given that there are  
16 three respondents, three experts for respondents, the  
17 number of hours that we've had in this trial, we had  
18 proposed something to respondents, but we haven't  
19 heard back on what their thoughts are at this time.

20 JUDGE CHAPPELL: Well, one thing that works in  
21 your favor for having more time is the way the decision  
22 that I must issue is pegged to briefing times. I'm  
23 inclined to give a lot of time.

24 Would anybody object to having a lot of time to  
25 go through this record?

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1 MS. KAHN: No, Your Honor.

2 MR. McDONALD: No, Your Honor.

3 JUDGE CHAPPELL: All right. So you can submit  
4 your estimates if you'd like, but I'm thinking about  
5 extra weeks at least.

6 MS. KAHN: Thank you, Your Honor.

7 JUDGE CHAPPELL: All right.

8 I will issue an order setting forth the  
9 briefing deadlines next week. I'll wait until I hear  
10 regarding this joint brief or joint reply brief -- or  
11 reply findings, not brief but findings.

12 I want to call everyone's attention to the  
13 issue of remedy.

14 Oh, before I say that, the order I issue will  
15 also specify requirements for posttrial briefs and  
16 proposed findings of fact and replies thereto. These  
17 may be -- these will give you a little more information  
18 than are included in the rule, things I'm looking for,  
19 things that are required.

20 I want to call your attention to remedy.

21 I want to see legal support for and against any  
22 proposed remedy. This includes the government  
23 providing a proposed order for relief together with,  
24 and I emphasize, supporting law and argument for all  
25 sections and parts of a proposed order and respondents

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1 specifically replying thereto.

2 Again, there will be additional details in the  
3 order on posttrial briefs. I'm instructing you to read  
4 and follow it.

5 Let's talk about closing arguments.

6 Once your posttrial briefs and replies are in,  
7 I will at that time have your arguments in writing.  
8 The briefs, especially the reply briefs, are extremely  
9 helpful. But in my many years of doing this, I have  
10 never changed my mind on any disputed issue based on  
11 closing arguments. I know some of you think you're the  
12 greatest orators in the world, but I have never changed  
13 my mind on a disputed issue.

14 Therefore, since I will already have your  
15 opening and reply arguments in the briefs, oral closing  
16 arguments, in my opinion, are redundant and a waste of  
17 time and resources.

18 Where is he going, you might be thinking. This  
19 is where he's going. This is where he's going.

20 Oral closing arguments are not required, and  
21 you can waive them. I'll give you time to consider  
22 this and confer. Everyone has to agree to waive or we  
23 have them. You can let my office know within two  
24 weeks, via e-mail, what you agree to.

25 Anything further?

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1 MS. KAHN: No, Your Honor.

2 MR. McDONALD: Nothing from Schein,  
3 Your Honor.

4 MR. OSTOYICH: Nothing from Patterson,  
5 Your Honor.

6 MR. RACOWSKI: Nothing from Benco, Your Honor.

7 JUDGE CHAPPELL: Hearing nothing, we are  
8 adjourned.

9 (Whereupon, the foregoing hearing was concluded  
10 at 1:56 p.m.)

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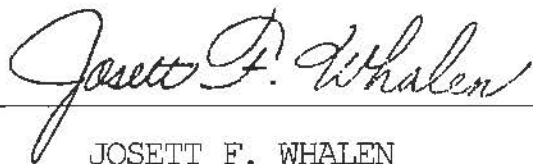
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CERTIFICATE OF REPORTER

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3  
4 I, JOSETT F. WHALEN, do hereby certify that the  
5 foregoing proceedings were taken by me in stenotype and  
6 thereafter reduced to typewriting under my supervision;  
7 that I am neither counsel for, related to, nor employed  
8 by any of the parties to the action in which these  
9 proceedings were taken; and further, that I am not a  
10 relative or employee of any attorney or counsel  
11 employed by the parties hereto, nor financially or  
12 otherwise interested in the outcome of the action.  
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16 JOSETT F. WHALEN

17 Court Reporter  
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