

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



In the Matter of)
)
)

Benco Dental Supply Co.,)
a corporation,)
)

Henry Schein, Inc.,)
a corporation,)
)

Patterson Companies, Inc.,)
a corporation,)
)

Respondents.)
)

Docket No. 9379

NON-PARTY PEARSON DENTAL SUPPLIES, INC.'S

MOTION FOR *IN CAMERA* TREATMENT

Pursuant to Rule 3.45 of the Federal Trade Commission's Rules of Practice, 16 C.F.R. § 3.45(b), non-party Pearson Dental Supplies, Inc. ("Pearson") respectfully moves this Court for *in camera* treatment of competitively-sensitive, confidential business data. Pearson was served with a Subpoena Duces Tecum, dated March 22, 2018, issued by Complaint Counsel for Federal Trade Commission ("FTC") in this matter. (See Subpoena Duces Tecum dated March 22, 2018, directed to Pearson Dental Supplies, Inc. attached hereto as Exhibit A.) The Subpoena demanded production of extensive, detailed electronically stored information ("ESI") regarding Pearson's customers and sales for the period January 1, 2009 to the present, which constitutes essentially all of the information available in Pearson's database regarding sales and customers. (See Exhibit A, Specification 5, p. 2-3.) Pearson was compelled to produce in response to the Subpoena, after

negotiation with Complaint Counsel to try to limit the scope of the Subpoena, the ESI which constitutes its entire sales and customer database for the years 2010 through 2017 (“Confidential Data”). Pearson produced the Confidential Data marked “Confidential”, as described below, subject to the terms of the Protective Order Governing Confidential Matter, dated February 13, 2018 (“Protective Order”) in this matter.

On September 17, 2018¹, Complaint Counsel for the FTC notified Pearson that Complaint Counsel’s expert witness intends to rely on the Confidential Data in offering expert opinion testimony at the administrative trial in this matter scheduled to begin October 16, 2018 and therefore the Confidential Data will be offered into evidence. (See Letter from the Federal Trade Commission dated September 17, 2018 attached hereto as Exhibit B, and Declaration of David F. Brown (“Brown Declaration”) ¶ 6 attached hereto as Exhibit C.)

The Confidential Data for which Pearson is seeking *in camera* treatment is sensitive, confidential business data with competitive value to Pearson’s competitors, such that if it were to become part of the public record, Pearson would be significantly harmed in its ability to compete in the dental supply industry. Thus, Pearson submits this Motion requesting *in camera* treatment of the Confidential Data in its entirety. For the reasons discussed in this Motion, Pearson requests that this Court afford its confidential business data *in camera* treatment indefinitely. In support of this Motion, Pearson relies on the Declaration of Keyhan Kashfian (“Kashfian Declaration”), attached hereto as Exhibit D, which provides details about the Confidential Data

¹ Complaint Counsel provided only 9 days’ notice prior to the cut-off date in the Scheduling Order in this matter for filing motions for *in camera* treatment. Pearson hereby requests leave of the Administrative Law Judge to file this motion requesting *in camera* treatment on the 10th day after notice of intent to offer the Confidential Data into evidence consistent with the requirements of Rule 3.45(b).

for which Pearson is seeking *in camera* treatment and the competitive injury which Pearson would suffer if the Confidential Data is made part to the public record.

I. The ESI for Which Protection is Sought

Pearson seeks *in camera* treatment for the ESI which it produced in response to the Subpoena which consists of the entirety of Pearson's customer sales data for the years 2010 through 2017 in Microsoft Access Database format. That data includes detailed information for each order and invoice for Pearson customers during that time period. The highly unusually detailed information demanded by the Subpoena and produced by Pearson in response thereto includes the name and address of customers, the contact name for customer orders, the billing and shipping address for the customer and method of shipment and shipping charge, if any, the quantity and description of each item purchased (including the manufacturer) and the price at which the item was sold including any applicable discounts, the date of each order and invoice, and the payment terms for each invoice, among other data.

The ESI which comprises the Confidential Data has been designated by Complaint Counsel as CX-4441 and consists of the following Microsoft Access Database files and their approximate sizes:

2010_archive_CONFIDENTIAL_FTC Docket No 9379	605MB
2011_archive_CONFIDENTIAL_FTC Docket No 9379	618MB
2012_archive_CONFIDENTIAL_FTC Docket No 9379	613MB
2013_archive_CONFIDENTIAL_FTC Docket No 9379	591MB
2014_archive_CONFIDENTIAL_FTC Docket No 9379	580MB
2015_archive_CONFIDENTIAL_FTC Docket No 9379	590MB
2016_archive_CONFIDENTIAL_FTC Docket No 9379	554MB
2017_archive_CONFIDENTIAL_FTC Docket No 9379	508MB

Each of the above files consists of three subfiles, one for sales details which each consists of between 1.5 and 2 million lines of data, and one each for invoices and orders which each consist

of between approximately 280,000 and 360,000 lines of data. In total, the files comprising the Confidential Data amount to over 14 million lines of data. Due to the unusually large size of the ESI comprising the Confidential Data, Pearson is not able to attached copies of the Confidential Data to this Motion which would amount to hundreds of thousands of pages. Further, due to the file size limitation for uploading documents to the FTC E-Filing System of 150MB per document, Pearson is not able to upload copies of the Microsoft Access Database files with this Motion. Pearson's counsel was informed by Devon Allen, a Litigation Support Specialist in the office of Complaint Counsel that she had checked with Office of the Administrative Law Judge and confirmed that due to the nature and size of the Confidential Data it was not necessary to submit a copy with this Motion. A placeholder listing the names of the Microsoft Access Database files comprising the Confidential Data is attached hereto as Exhibit E.

II. Pearson's Data is Secret and Material Such That Disclosure Would Result in Serious Injury to Pearson

In camera treatment of material is appropriate when its "public disclosure will likely result in a clearly defined, serious injury to the person, partnership, or corporation requesting" such treatment. 16 C.F.R. § 3.45(b). The proponent demonstrates serious competitive injury by showing that the documents are secret and that they are material to the business. *In re General Foods Corp.*, 95 F.T.C. 352, 355 (1980); *In re Dura Lube Corp.*, 1999 F.T.C. LEXIS 255, *5 (1999). In this context, courts generally attempt "to protect confidential business information from unnecessary airing." *HP. Hood & Sons, Inc.*, 58 F.T.C. 1184, 1188 (1961).

In considering both secrecy and materiality, the Court may consider: (1) the extent to which the information is known outside of the business; (2) the extent to which it is known by employees and others involved in the business; (3) the extent of measures taken to guard the secrecy of the information; (4) the value of the information to the business and its competitors;

(5) the amount of effort or money expended in developing the information; and (6) the ease or difficulty with which the information could be acquired or duplicated by others. *In re BristolMyers Co.*, 90 F.T.C. 455, 456-457 (1977)

The Confidential Data is both secret and material to Pearson's business as discussed in detail in the Kashfian Declaration. In sum, the Confidential Data contains information of competitive significance to Pearson, i.e., its entire sales and customer database for the last eight years and of value to Pearson's competitors, including Respondents. Kashfian Declaration at ¶ 2-3.

The Confidential Data is proprietary to Pearson and not publicly known outside of Pearson. Pearson is a privately held company and does not make any filings of its financial information and in particular sales and customer information. Kashfian Declaration at ¶ 4.

Pearson takes reasonable steps to protect and maintain the confidentiality of its sales and customer database. Pearson employs computer security software and systems to protect its databases from hacking and unauthorized access. Pearson's sales and customer information database is accessible to only approximately 10 of Pearson's approximately 200 employees. Those employees are the owners of Pearson, accounting and collection personnel, and IT personnel. Access to the sales and customer database is password restricted. Pearson's sales representatives do not have access to the entire sales and customer database but only to information regarding their specific customers and are bound by confidentiality and non-disclosure provisions regarding such information in their written sales representative agreements. Kashfian Declaration at ¶ 4.

Indeed, when Pearson produced the Confidential Data in response to the Subpoena, it took steps to maintain confidentiality by designating each of the files "Confidential" in the name

of the file pursuant to the Protective Order in this matter. Pearson included an embedded process in the Microsoft Access Database files produced which generates a pop-up window with the message “Confidential - Attorney's Eyes Only” which must be acknowledged by clicking “OK” before being able to view any of the files and subfiles within the Confidential Data. Brown Declaration ¶ 5.

In addition to its obvious purpose and use in recording sales transactions by Pearson, the Confidential Data is a valuable resource of business information which Pearson uses to evaluate forward-looking business decisions. Pearson utilizes its sales and customer database to evaluate and analyze customer requirements, preferences and purchasing trends and develop its product categories and product lines it carries, including for Pearson’s private label line of dental supply products. Pearson also uses its sales and customer database to develop pricing decisions and develop marketing strategies. Kashfian Declaration. at ¶ 5.

Disclosure of the Confidential Data will result in the loss of a business advantage to Pearson. See *In re Dura Lube Corp.*, 1999 FTC LEXIS 255 at *7 (Dec. 23, 1999) (“The likely loss of business advantages is a good example of a ‘clearly defined, serious injury.’”). The Confidential Data provides insights into Pearson’s strengths and weaknesses which allows Pearson to refine its business policies and practices to remain competitive and profitable. Disclosure of the Confidential Data would cause Pearson to lose the business advantage of the Confidential Data, and would allow Pearson’s competitors to gain an advantage over Pearson in competing against it. The Confidential Data would provide Pearson’s competitors the the insights about Pearson’s business, its pricing and profit margins, not to mention the identity of its customers’ identities and their purchasing preferences and requirements, that can be gleaned from the Confidential Data. For instance, the information available from analysis of the

Confidential Data could provide a competitor with insight into how and when Pearson reacts to changes in the market, e.g., cost increases, competitors' price changes, or introduction of new products, or how and when Pearson provides its customers with incentives and discounts.

Kashfian Declaration at ¶ 6.

The availability of this kind of information leaves Pearson in a very vulnerable position in the market. Making such data public would result in a loss of business advantage that Pearson has built as the result of its own substantial investments in the development of its sales customer database information and leave Pearson vulnerable to its competitors.

As a full service dental supply company, Pearson has expended substantial sums to collect, compile, maintain and protect its sales data. Over the course of many years, Pearson has expended substantial amounts of money to employ a sales force and maintain offices throughout the western United States, including California, Arizona, Nevada, Washington, Texas and Hawaii. Pearson employs a sales force of approximately 40 sales representatives to call on customers and explain products and answer questions and take orders. Kashfian Declaration at ¶ 7. The Confidential Data is far more than merely a list of customer names and is a detailed compilation of many types of information which is the result of the effort and money expended to develop Pearson's customer base. A competitor would have to expend a similar effort over and extended period of time by a significant salesforce and at the cost of employing such sales representatives to develop the customer information contained in the Confidential Data. Of course, the historical information about prior sales to customers could not be duplicated without obtaining such information from each customer.

All of the factors enumerated in *BristolMyers Co., supra*, weigh in favor of finding the Confidential Information is secret and material to Pearson's business.

Additionally, Pearson's status as a third party is relevant to the treatment of the Confidential Data. The FTC has held that "[t]here can be no question that the confidential records of businesses involved in Commission proceedings should be protected insofar as possible." *HP. Hood & Sons*, 58 F.T.C. at 1186. This is especially so in the case of a third-party, which deserves "special solicitude" in its request for *in camera* treatment for its confidential business information. See *In re Kaiser Aluminum & Chem. Corp.*, 103 F.T.C. 500, 500 (1984) ("As a policy matter, extensions of confidential or *in camera* treatment in appropriate cases involving third party bystanders encourages cooperation with future adjudicative discovery requests."). Pearson's third-party status therefore weighs in favor of granting *in camera* status to the Confidential Data.

Importantly, the extensive (arguably unreasonably intrusive) amount of the information demanded by the Subpoena and contained in the Confidential Data justifies granting the *in camera* treatment for Pearson's data. The data produced in response to the Subpoena is essentially all of Pearson's information regarding its sales and customers which provided information for analysis and evaluation by FTC's experts under the safeguards of the Protective Order. But leaving the Confidential Data part of the public record in this proceeding would laying bare Pearson's sales operations and expose the vulnerabilities of Pearson to the Respondents and other competitors alike. Denying *in camera* treatment for the Confidential Data would accomplish exactly what Pearson has expended substantial amount of time and money to prevent, making its sensitive and valuable confidential information freely available to its competitor. It would be ironic if in furthering the interest of protecting consumers from unfair or collusive conduct Pearson is exposed to the risk of unfair competition from the exploitation of its otherwise confidential business information. Pearson has survived in a very competitive industry

for over 30 years and it would be more than ironic, it would be a miscarriage of justice to allow its competitors such an advantage from a proceeding triggered by its competitors' allegedly illegal conduct.

The countervailing policy against *in camera* treatment is the FTC policy favoring making available to the public the full record of adjudicative proceedings as an explanation for the rationale of its decisions. *In re General Foods Corp.*, *supra*, at *10. However, in this case, the information which is likely to explain the rationale for the determination of this matter, is Complaint Counsel's expert witness' opinion testimony. It doesn't seem likely the Administrative Law Judge will undertake his own analysis of the unusually detailed and extremely voluminous ESI which comprises the Confidential Data as a basis for his determination of this matter. Moreover, the Confidential Data doesn't bear directly on the alleged illegal conduct of the Respondents. The FTC policy favoring a full public record will not be significantly impaired by *in camera* treatment of the Confidential Data.

In sum, because of the highly confidential and proprietary nature of the Confidential Data and its materiality to Pearson's business and the vulnerability of Pearson if it were to become public, *in camera* treatment is appropriate.

III. The Confidential Data Contains Information which will Remain Sensitive Over Time and Thus Permanent *In Camera* Treatment is Justified

Given the highly sensitive nature and the extent of the information contained in the Confidential Data, Pearson requests that it be treated as a trade secret and given *in camera* treatment indefinitely. The information contained in the Confidential Data "is likely to remain sensitive or become more sensitive with the passage of time" such that the need for

confidentiality is not likely to decrease over time. *In re Dura Lube Corp.*, 1999 FTC LEXIS at *7-8.

Trade secrets are granted more protection than ordinary business documents. *Id.* at *5. But trade secrets are not limited to technical information like formula and processes. Trade secrets are the type of information the disclosure of which “will almost invariably result in injury while the revelation of a business record may in many instances produce no more than embarrassment.” *H.P. Hood & Sons, Inc., supra*, at *12. The injury sufficient to justify *in camera* treatment can be inferred from the nature of the information itself. *Id.* Since the impact of disclosure of a trade secret information as distinguished from other records would almost certainly result injury, requests of *in camera* treatment should be sympathetically received. *Id.*

Here, as described in the Kashfian Declaration, the Confidential Data contains all of Pearson’s sales and customer information and constitutes a trade secret. Kashfian Declaration at ¶ 2-8. The Confidential Data is more than simply names of customers or business records the disclosure of which may cause embarrassment. It is all of Pearson’s customer and sales database the disclosure of which will invariably cause injury to Pearson.

The competitive significance of the sales and customer data is unlikely to diminish significantly over time as dentists tend to have long careers and Pearson’s typical customer had been with the company for 12 to 15 years. Kashfian Declaration at ¶ 9. According to the American Dental Association statistics on the dental workforce the average retirement age is 68.8 as of 2015 (https://www.ada.org/en/science-research/health-policy-institute/dental-statistics/workforce?xd_co_f=NzRiNTdmZDAiYjRlYS00OTFILWlZGQlOTU4ODEzNDE2Yjgx) and in California as of 2016 the breakdown of dentists by age group is 21-34 11.8%, 35-49 36.3%, 50-64 36.8% and 65+ 15.1% (<http://www.ada.org/en/science-research/health-policy->

institute/data-center/supply-and-profile-of-dentists). In addition, Pearson uses older data to evaluate customer sensitivity to price increases, trends in what products customers are no longer purchasing and to develop strategies for the creation of new products for Pearson's private label brand of dental supply products. Kashfian Declaration at ¶ 9. Thus, indefinite protection from public disclosure is appropriate.

IV. Disclosure of Confidential Information Afforded *In Camera* Treatment Should Be Limited to Those Persons Allowed Access to It by the Protective Order.

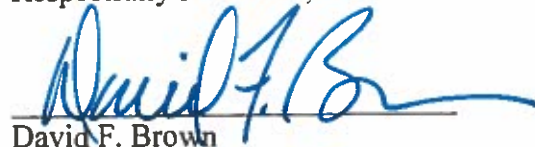
The Confidential Information was produced in response to the Subpoena subject to the terms of the Protective Order which restricts access to and disclosure of it to certain persons identified in Paragraph 7 of the Protective Order. Pearson requests that if *in camera* treatment is afforded the Confidential Information, access to the information under Rule 3.45 be limited to only the persons identified in Paragraph 7 and specifically that directors, officers, employees including inside counsel, agents, and contractors for Respondents be excluded from access to the Confidential Data. *In re Tronox Limited*, 2018 FTC LEXIS 78, *33 (2018).

IV. Conclusion

For the reasons set forth above and in the accompanying Kashfian Declaration, Pearson respectfully requests that this Court grant permanent *in camera* treatment for the Confidential Data in their entirety.

Dated: September 27, 2018

Respectfully submitted,



David F. Brown
CORBETT, STEELMAN & SPECTER
18200 Von Karman Ave., Suite 825
Irvine, CA 92612-7148
Tel.: (949) 553-9266
Fax: (949) 419-1187

Email: dbrown@corbsteel.com

Attorney for Non-Party
Pearson Dental Supplies, Inc.

EXHIBIT A



SUBPOENA DUCES TECUM

Provided by the Secretary of the Federal Trade Commission, and
Issued Pursuant to Commission Rule 3.34(b), 16 C.F.R. § 3.34(b)(2010)

1 TO

PEARSON
Keyhan Kashfian, President
13161 Telfair Ave.
Sylmar, CA 91342
818-362-2600 x 359

2 FROM

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

This subpoena requires you to produce and permit inspection and copying of designated books, documents (as defined in Rule 3.34(b)), or tangible things, at the date and time specified in Item 5, and at the request of Counsel listed in Item 9, in the proceeding described in Item 6.

3 PLACE OF PRODUCTION
Federal Trade Commission
c/o Devon Allen
400 7th Street, SW
Washington, DC 20024

4 MATERIAL WILL BE PRODUCED TO

John Wiegand

5 DATE AND TIME OF PRODUCTION

April 9, 2018 5:00pm

6 SUBJECT OF PROCEEDING

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

7 MATERIAL TO BE PRODUCED

Documents & materials responsive to the attached Subpoena Duces Tecum Requests for Production

8 ADMINISTRATIVE LAW JUDGE

The Honorable D. Michael Chappell

Federal Trade Commission
Washington, D.C. 20580

9 COUNSEL AND PARTY ISSUING SUBPOENA

Lin W. Kahn, or designee
Federal Trade Commission
901 Market Street, Suite 570
San Francisco, CA 94103
(415) 848-5115

DATE SIGNED

3-22-18

SIGNATURE OF COUNSEL ISSUING SUBPOENA

Janine Balbach

GENERAL INSTRUCTIONS

APPEARANCE

The delivery of this subpoena to you by any method prescribed by the Commission's Rules of Practice is legal service and may subject you to a penalty imposed by law for failure to comply.

MOTION TO LIMIT OR QUASH

The Commission's Rules of Practice require that any motion to limit or quash this subpoena must comply with Commission Rule 3.34(c), 16 C.F.R. § 3.34(c), and in particular must be filed within the earlier of 10 days after service or the time for compliance. The original and ten copies of the petition must be filed before the Administrative Law Judge and with the Secretary of the Commission, accompanied by an affidavit of service of the document upon counsel listed in Item 9, and upon all other parties prescribed by the Rules of Practice.

TRAVEL EXPENSES

The Commission's Rules of Practice require that fees and mileage be paid by the party that requested your appearance. You should present your claim to counsel listed in Item 9 for payment. If you are permanently or temporarily living somewhere other than the address on this subpoena and it would require excessive travel for you to appear, you must get prior approval from counsel listed in Item 9.

A copy of the Commission's Rules of Practice is available online at <http://bit.ly/FTCRulesofPractice>. Paper copies are available upon request.

This subpoena does not require approval by OMB under the Paperwork Reduction Act of 1980.

RETURN OF SERVICE

I hereby certify that a duplicate original of the within subpoena was duly served: (check the method used)

☐ *in person.*

☐ *by registered mail*

☒ *by leaving copy at principal office or place of business, to wit:*

via FedEx

on the person named herein on:

March 22, 2018

(Month, day, and year)

Jeanine Balbach

(Name of person making service)

Attorney

(Official title)

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

In the Matter of

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

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

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

Docket No. 9379

**COMPLAINT COUNSEL'S SUBPOENA *DUCES TECUM* ATTACHMENT
TO PEARSON DENTAL SUPPLIES, INC.**

Pursuant to Federal Trade Commission Rules of Practice 3.31 and 3.34(b), 16 C.F.R. §§ 3.31 and 3.34(b), and in accordance with the Instructions and Definitions below, Complaint Counsel hereby request that the Company produce the documents and information responsive to the following Specifications.

SPECIFICATIONS

1. Documents sufficient to show all Buying Groups that have or had an Agreement with Pearson Dental for the purchase of Dental Products during the Relevant Time Period, including the operative dates of each such Agreement.
2. All documents that relate to any actual or potential sale of Dental Products to dentists through Buying Groups.
3. Documents sufficient to show all Pearson Dental customers who were members of a Buying Group, or who purchased Dental Products from Pearson Dental under an Agreement Pearson Dental has or had with a Buying Group, during the Relevant Time Period, including customer identification number.
4. All contracts between Pearson Dental and any Buying Group, including documents sufficient to show any discounts or other price adjustments applicable to these contracts.

5. In electronic form (e.g. an Excel file or comma-delimited text file), data to show, for each sale of Dental Products to a customer in the United States, during the Relevant Time Period, the transactional data, including:
- (a) the invoice number;
 - (b) the purchase order number;
 - (c) the location from which the Dental Products were shipped (i.e., the address, including ZIP code, of the regional distribution center from which each shipment originated);
 - (d) the identification number, name, and address, including ZIP code, of the customer that was invoiced for each sale of Dental Products, as well as the name and location, including ZIP code, of the customer to which the Dental Products were shipped;
 - (e) the name of the sales representative credited with the sale and the name, identification number and address, including ZIP code, of the branch sales office from which the credited sales representative works;
 - (f) the date you invoiced the customer for the Dental Products and the date you shipped the Dental Products;
 - (g) the product number and a detailed description for the Dental Products sold for each transaction, including any information that identifies the subject of the sale as a consumable product, a durable product, and/or the provision of a service;
 - (h) the quantity (and units of measure) for each type of Dental Products sold in connection with each transaction;
 - (i) the gross and net dollar amount associated with each transaction, including any discounts, rebates, credits, freight allowances, free or subsidized shipping, returns, free goods and/or services or any other pricing adjustment for each sale, with sufficient information to attribute these adjustments to individual sales;
 - (j) the gross and net unit price you charged your customer for each transaction, including any information about the pricing tier(s) to which the customer belongs;
 - (k) the supplier of each type of Dental Products sold in connection with each sale;
 - (l) the price you paid your supplier for each type of Dental Products sold in connection with each transaction, including gross and net aggregate and per-unit prices; and
 - (m) any other data available in your database concerning the purchase, sale or distribution of the Dental Products for each transaction.

- (n) Documents sufficient to define the variables in the transactional data and to explain how to interpret their contents (i.e., a data dictionary);
- (o) Documents sufficient to understand all charge, allowance, or adjustment codes in the data;
- (p) Documents sufficient to show whether the transaction was subject to an agreement with a Buying Group and to identify the specific Buying Group;

This information shall be supplied in the most disaggregated form (meaning at the transactional level, not aggregated by month or quarter) in which it is kept.

DEFINITIONS

For the purposes of this Request, the following definitions apply:

- A. The terms "Pearson Dental," "you," or "Company" mean Pearson Dental Supplies, Inc., its domestic and foreign parents, predecessors, divisions, subsidiaries, affiliates, partnerships, joint ventures, and all directors, officers, employees, agents, and representatives of the foregoing. The terms "subsidiary," "affiliate," and "joint venture" refer to any Person in which there is partial (25% or more) or total ownership or control between Pearson Dental and any other Person.
- B. The terms "agreement" or "contract" mean any oral, written, or implied contract, arrangement, understanding, or plan, whether formal or informal, between two or more persons, together with all modifications or amendments thereto.
- C. The terms "and" and "or" have both conjunctive and disjunctive meanings.
- D. The term "Buying Group" refers to organizations of independent dentists that aggregate and leverage collective purchasing power of separately-owned and separately-managed dental practices in exchange for lower prices on dental products, including but not limited to an organization referred to as a "Buying Club," "Buying Cooperative," "Buying Co-op," "Group Purchasing Organization," or a "GPO." The term "Buying Group" includes a program or organization established by state dental associations to aggregate and leverage collective purchasing power of separately-owned and separately-managed dental practices in exchange for lower prices on dental products, such as the Texas Dental Association's Perks Supplies Program.
- E. The term "Dental Products" refers to supplies and equipment for use in the practice of dentistry.
- F. The term "documents" means all computer files and written, recorded, and graphic materials of every kind in the possession, custody, or control of the Company. The term "documents" includes, without limitation: electronic mail messages; electronic correspondence and drafts of documents; metadata and other bibliographic or historical

data describing or relating to documents created, revised, or distributed on computer systems; copies of documents that are not identical duplicates of the originals in that person's files; and copies of documents the originals of which are not in the possession, custody, or control of the Pearson Dental.

- a. Unless otherwise specified, the term "documents" excludes:
 - i. bills of lading, invoices, purchase orders, customs declarations, and other similar documents of a purely transactional nature,
 - ii. architectural plans and engineering blueprints,
 - iii. documents solely relating to environmental, tax, human resources, OSHA, or ERISA issues, and
 - iv. relational and enterprise databases, except as required to comply with an individual Specification.
- b. The term "computer files" includes information stored in, or accessible through, computer or other information retrieval systems. Thus, the Company should produce documents that exist in machine-readable form, including documents stored in personal computers, portable computers, workstations, minicomputers, mainframes, servers, backup disks and tapes, archive disks and tapes, and other forms of offline storage, whether on or off Company premises. If the Company believes that the required search of backup disks and tapes and archive disks and tapes can be narrowed in any way that is consistent with Complaint Counsel's need for documents and information, you are encouraged to discuss a possible modification to this Definition with Complaint Counsel. Complaint Counsel will consider modifying this Definition to:
 - i. exclude the search and production of files from backup disks and tapes and archive disks and tapes unless it appears that files are missing from files that exist in personal computers, portable computers, workstations, minicomputers, mainframes, and servers searched by the Company,
 - ii. limit the portion of backup disks and tapes and archive disks and tapes that needs to be searched and produced to certain key individuals, or certain time periods or certain Specifications identified by Complaint Counsel, or
 - iii. include other proposals consistent with Commission policy and the facts of the case.

G. The terms "each," "any," and "all" mean "each and every."

H. The term "Employee" includes any agent of an Entity or any independent contractor working for or with an Entity, whether or not such person performed services for the Entity pursuant to a written contractual agreement and regardless of whether such person received payment directly from the Entity.

- I. The term "Entity" includes the Company, and refers to any corporation, company, partnership, association, joint venture, joint-stock company, governmental entity, trust, estate of a deceased natural person, foundation, fund, institution, facility, division, department, unit, healthcare provider, society, union, or club, whether incorporated or not, wherever located and of whatever citizenship, or any receiver, trustee in bankruptcy or similar official or any liquidating agent for any of the foregoing, in his or her capacity as such, or any other organization or entity engaged in commerce
- J. The term "Person" refers to any natural person or legal Entity.
- K. The terms "relate" or "relating to" means in whole or in part constituting, containing, concerning, discussing, describing, analyzing, identifying, stating, commenting on, referring to, reflecting, reporting on, or dealing with.
- L. The term "Relevant Time Period" refers to January 1, 2009 to the present.
- M. The term "Technology Assisted Review" means any process that utilizes a computer algorithm to limit the number of potentially responsive documents subject to a manual review. A keyword search of documents with no further automated processing is not a Technology Assisted Review.

INSTRUCTIONS

I 1. Form of Production: The Company shall submit documents as instructed below absent written consent.

- (a) Documents stored in electronic or hard copy formats in the ordinary course of business shall be submitted in the following electronic format provided that such copies are true, correct, and complete copies of the original documents:
 - (i) Submit Microsoft Excel, Access, and PowerPoint files in native format with extracted text and metadata.
 - (ii) Submit emails in TIFF format with extracted text and the following metadata and information:

Metadata/Document Information	Description
Alternative Custodian	List of custodians where the document has been removed as a duplicate.
Bates Begin	Beginning Bates number of the email.
Bates End	Bates number of the last page of the email.

Custodian	Name of the person from whom the email was obtained.
Email BCC	Names of person(s) blind copied on the email.
Email CC	Names of person(s) copied on the email.
Email Date Received	Date the email was received. [MM/DD/YYYY]
Email Date Sent	Date the email was sent. [MM/DD/YYYY]
Email From	Names of the person who authored the email.
Email Message ID	Microsoft Outlook Message ID or similar value in other message systems.
Email Subject	Subject line of the email.
Email Time Received	Time email was received. [HH:MM:SS AM/PM]
Email To	Recipients(s) of the email.
Email Time Sent	Time email was sent. [HH:MM:SS AM/PM]
Folder	File path/folder location of email.
Hash	Identifying value used for deduplication – typically SHA1 or MD5.
Text Link	Relative path to submitted text file. Example: \TEXT\001\FTC0003090.txt

- (iii) Submit email attachments other than those described in subpart (a)(i) in TIFF format. For all email attachments, provide extracted text and the following metadata and information as applicable:

Metadata/Document Information	Description
Alternative Custodian	List of custodians where the document has been removed as a duplicate.

Bates Begin	Beginning Bates number of the document.
Bates End	Last Bates number of the document.
Custodian	Name of person from whom the file was obtained.
Date Created	Date the file was created. [MM/DD/YYYY]
Date Modified	Date the file was last changed and saved. [MM/DD/YYYY]
Filename with extension	Name of the original native file with file extension.
Hash	Identifying value used for deduplication – typically SHA1 or MD5.
Native Link	Relative file path to submitted native or near native files. Example: \NATIVES\001\FTC0003090.xls
Parent ID	Document ID or beginning Bates number of the parent email.
Text Link	Relative path to submitted text file. Example: \TEXT\001\FTC0003090.txt
Time Created	Time file was created. [HH:MM:SS AM/PM]
Time Modified	Time file was saved. [HH:MM:SS AM/PM]

- (iv) Submit all other electronic documents, other than those described in subpart (a)(i), in TIFF format accompanied by extracted text and the following metadata and information:

Metadata/Document Information	Description
Alternative Custodian	List of custodians where the document has

	been removed as a duplicate.
Bates Begin	Beginning Bates number of the document.
Bates End	Last Bates number of the document.
Custodian	Name of the original custodian of the file.
Date Created	Date the file was created. [MM/DD/YYYY]
Date Modified	Date the file was last changed and saved. [MM/DD/YYYY HH:MM:SS AM/PM]
Filename with extension	Name of the original native file with file extension.
Hash	Identifying value used for deduplication – typically SHA1 or MD5.
Originating Path	File path of the file as it resided in its original environment.
Production Link	Relative path to submitted native or near native files. Example: \NATIVES\001\FTC0003090.xls
Text Link	Relative path to submitted text file. Example: \TEXT\001\FTC-0003090.txt
Time Created	Time file was created. [HH:MM:SS AM/PM]
Time Modified	Time file was saved. [HH:MM:SS AM/PM]

- (v) Submit documents stored in hard copy in TIFF format accomplished by OCR with the following information:

Metadata/Document Information	Description
Bates Begin	Beginning Bates number of the document.

Bates End	Bates number of the last page of the document.
Custodian	Name of person from whom the file was obtained.

- (vi) Submit redacted documents in TIFF format accompanied by OCR with the metadata and information required by relevant document type in subparts (a)(i) through (a)(v) above. For example, if the redacted file was originally an attachment to an email, provide the metadata and information specified in subpart (a)(iii) above. Additionally, please provide a basis for each privilege claim as detailed in Instruction I(6).
- (b) Submit data compilations in electronic format, specifically Microsoft Excel spreadsheets or delimited text formats, with all underlying data un-redacted and all underlying formulas and algorithms intact. Submit data separately from document productions.
- (c) Produce electronic file and TIFF submissions as follows:
 - (i) For productions over 10 gigabytes, use hard disk drives, formatted in Microsoft Windows-compatible, uncompressed data in USB 2.0 or 3.0 external enclosure;
 - (ii) For productions under 10 gigabytes, CD-ROM (CD-R, CD-RW) optical disks and DVD-ROM (DVD+R, DVD+RW) optical disks for Windows-compatible personal computers, and USB 2.0 Flash Drives are acceptable storage formats; and
 - (iii) All documents produced in electronic format shall be scanned for and free of viruses prior to submission. The Commission will return any infected media for replacement, which may affect the timing of the Company's compliance with this Request.
 - (iv) Encryption of productions using NIST FIPS-Compliant cryptographic hardware or software modules, with passwords sent under separate cover, is strongly encouraged.
- (d) Each production shall be submitted with a transmittal letter that includes the FTC matter number; production volume name; encryption method/software used; list of custodians and document identification number range for each; total number of documents; and a list of load file fields in the order in which they are organized in the load file.

- (e) If the Company intends to utilize any de-duplication or email threading software or services when collecting or reviewing information that is stored in the Company's computer systems or electronic storage media, or if the Company's computer systems contain or utilize such software, the Company must contact Complaint Counsel to determine, with the assistance of the appropriate government technical officials, whether and in what manner the Company may use such software or services when producing materials in response to this Request.

12. All documents responsive to this Request:

- (a) shall be produced in complete form, un-redacted unless privileged, and in the order in which they appear in the Company's files;
- (b) shall be marked on each page with corporate identification and consecutive document control numbers when produced in TIFF format (e.g., ABC-00000001);
- (c) if written in a language other than English, shall be translated into English, with the English translation attached to the foreign language document;
- (d) shall be produced in color where necessary to interpret the document (if the coloring of any document communicates any substantive information, or if black-and-white photocopying or conversion to TIFF format of any document (e.g., a chart or graph), makes any substantive information contained in the document unintelligible, the Company must submit the original document, a like-colored photocopy, or a JPEG format TIFF); and
- (e) shall be accompanied by an affidavit of an officer of the Company stating that the copies are true, correct, and complete copies of the original documents.

13. Any questions you have relating to the scope or meaning of anything in this request or suggestions for possible modifications thereto should be directed to John Wiegand at (415) 848-5174. The response to the request shall be addressed to the attention of Devon Allen, Federal Trade Commission, 400 7th Street SW, Washington, DC 20024, and delivered between 8:30 a.m. and 5:00 p.m. on any business day to the Federal Trade Commission. To transfer responses using the FTC's secure FTP website please contact Devon Allen at (202) 326-2154.

CERTIFICATION

Pursuant to 28 U.S.C. § 1746, I hereby certify under penalty of perjury that this response to the Subpoena *Duces Tecum* is complete and correct to the best of my knowledge and belief.

(Signature of Official)

(Title/Entity)

(Typed Name of Above Official)

(Office Telephone)

CERTIFICATE OF SERVICE

I hereby certify that on March 22, 2018, I delivered via electronic mail a copy of the foregoing document to:

Geoffrey D. Oliver, Esq.
Jones Day
51 Louisiana Avenue, N.W.
Washington, D.C. 20001-2113
T: 202.879.3939
F: 202.626.1700
gdoliver@jonesday.com;

Howard Scher, Esq.
Kenneth L. Racowski, Esq.
Carrie Amezcua, Esq.
Buchanan Ingersoll & Rooney PC
Two Liberty Place
50 S. 16th Street, Suite 3200
Philadelphia, PA 19102-2555
T: 215 665 8700
F: 215 665 8760
Howard.scher@bipc.com;
kenneth.racowski@bipc.com;
carrie.amezcua@bipc.com

Craig A. Waldman, Esq.
Benjamin M. Craven, Esq.
Ausra O. Deluard, Esq.
Jones Day
555 California Street
26th Floor
San Francisco, CA 94104
T: 415.626.3939
F: 415.875.5700
cwaldman@jonesday.com;
bcraven@jonesday.com;
adeluard@jonesday.com

Counsel For Respondent Benco Dental Supply Company

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

Colin Kass, Esq.
Adrian Fontecilla
Proskauer Rose LLP
1001 Pennsylvania Ave, N.W.
Suite 600 South
Washington, DC 20004-2533
T: 202.416.6800
F: 202.416.6899
ckass@proskauer.com;
afontecilla@proskauer.com

John P. McDonald, Esq.
Locke Lord LLP
2200 Ross Avenue
Suite 2800
Dallas, TX 75201
T: 214.740.8000
F: 214.740.8800
jpmcdonald@lockelord.com
RespondentScheinCounsel@lockelord.com

Lauren Fincher, Esq.
Locke Lord LLP
600 Congress Ave.
Ste. 2200
Austin, TX 78701
T: 512.305.4700
F: 512.305.4800
lfincher@lockelord.com

Counsel For Respondent Henry Schein, Inc.

Joseph Ostoyich
William Lavery
Andrew George
Jana Seidl
Kristen Lloyd
Baker Botts L.L.P.
1299 Pennsylvania Ave NW
Washington, DC 20004
T: 202.639.7905
joseph.ostoyich@bakerbotts.com;
william.lavery@bakerbotts.com;
andrew.george@bakerbotts.com;
jana.seidl@bakerbotts.com;
kristen.lloyd@bakerbotts.com

James J. Long, Esq.
Jay Schlosser, Esq.
Scott Flaherty, Esq.
Ruvín Jayasuriya, Esq.
William Fitzsimmons, Esq.
Briggs and Morgan
2200 IDS Center
80 South Eighth Street
Minneapolis, MN 55402
T: 612.977.8400
F: 612.977.8650
jlong@briggs.com
jschlosser@briggs.com
sflaherty@briggs.com
rjayasuriya@briggs.com
wfitzsimmons@briggs.com

Counsel For Respondent Patterson Companies, Inc.

March 22, 2018

By: /s/ Lin Kahn
Attorney

EXHIBIT B



Western Regional Office

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

WASHINGTON, D.C. 20580

September 17, 2018

VIA EMAIL TRANSMISSION

Pearson Dental Supplies, Inc.
c/o David F. Brown
Corbett, Steelman & Specter
18200 Von Karman Ave., Suite 825
Irvine, California 92612-7148
dbrown@corbsteel.com

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

Dear Mr. Brown:

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

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

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

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

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

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

Additionally, in lieu of a deposition on the admissibility of the documents listed in Attachment A, we ask that you sign and return the attached declaration regarding the admissibility of these documents. Please return the signed declaration to my attention by September 28, 2018.

If you have any questions, please feel free to contact me at 415-848-5174.

Sincerely,

A handwritten signature in black ink, appearing to read "John Wiegand". The signature is fluid and cursive, with the first name "John" and last name "Wiegand" clearly distinguishable.

John Wiegand
Counsel Supporting the Complaint

Attachment

Attachment A

Exhibit No.	Full Name	Date	BegBates	EndBates
CX4441	2010_archive_CONFIDENTIAL_FTC Docket No 9379;			
	2011_archive_CONFIDENTIAL_FTC Docket No 9379;			
	2012_archive_CONFIDENTIAL_FTC Docket No 9379;			
	2013_archive_CONFIDENTIAL_FTC Docket No 9379;			
	2014_archive_CONFIDENTIAL_FTC Docket No 9379;			
	2015_archive_CONFIDENTIAL_FTC Docket No 9379;			
	2016_archive_CONFIDENTIAL_FTC Docket No 9379;			
	2017_archive_CONFIDENTIAL_FTC Docket No 9379		CX4441-001	CX4441-001

EXHIBIT C

**UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES**

In the Matter of)

Benco Dental Supply Co.,)
a corporation,)

Docket No. 9379

Henry Schein, Inc.,)
a corporation,)

Patterson Companies, Inc.,)
a corporation,)

Respondents.)

I, David F. Brown, hereby declare as follows:

1. I am a member of the State Bar of California in good standing and licensed to practice law in the courts of the State of California and admitted to practice before the United States District Courts for the Central, Southern and Northern Districts of California. I am counsel for Non-Party Pearson Dental Supplies, Inc. ("Pearson") and I make this declaration in support of its Motion for *In Camera* Treatment ("Motion"). The facts stated in this declaration are known by me from personal knowledge and if called as a witness I would and could competently testify thereto.

2. After Pearson was served with the Subpoena Duces Tecum in this matter issued by Complaint Counsel for the Federal Trade Commission ("FTC") dated March 22, 2018 ("Subpoena"), a copy of which is attached as Exhibit A, I had several telephone conversations

with counsel for the FTC, John Wiegand, to try to negotiate the terms of a response to the Subpoena including limiting the scope of the Subpoena and response in a manner that would lessen the burden on Pearson in responding to the Subpoena. During the course of my conversations with him, Mr. Wiegand informed me that the FTC desired to obtain a copy of Pearson's data regarding its sales and customers so that FTC's expert witness could analyze the data in connection with his expected opinion testimony regarding market definition.

3. As a result of my conversations with Mr. Wiegand, it was agreed that Pearson would produce in response to the Subpoena, in lieu of the format and time period requested in the Subpoena, a copy of its sales and customer database information in Microsoft Access Database format. The files that were produced are the following:

2010_archive_CONFIDENTIAL_FTC Docket No 9379	605MB
2011_archive_CONFIDENTIAL_FTC Docket No 9379	618MB
2012_archive_CONFIDENTIAL_FTC Docket No 9379	613MB
2013_archive_CONFIDENTIAL_FTC Docket No 9379	591MB
2014_archive_CONFIDENTIAL_FTC Docket No 9379	580MB
2015_archive_CONFIDENTIAL_FTC Docket No 9379	590MB
2016_archive_CONFIDENTIAL_FTC Docket No 9379	554MB
2017_archive_CONFIDENTIAL_FTC Docket No 9379	508MB

4. I personally inspected each of the above-listed files that were produced before they were sent to the FTC. Each of the above files consists of three subfiles, one for sales details which each consists of between 1.5 and 2 million lines of data, and one each for invoices and orders which each consist of between approximately 280,000 and 360,000 lines of data. In total, the files amount to over 14 million lines of data. Due to the unusually large size of the above-listed data, Pearson is not able to attached copies of it to the Motion which would amount to hundreds of thousands of pages.

5. When the above-listed files were produced in response to the Subpoena, we took steps to maintain confidentiality by designating each of the files "Confidential" in the name of the file pursuant to the Protective Order in this matter. Pearson IT personnel also included an embedded process in each of the Microsoft Access Database files produced which generates a pop-up window with the message "Confidential - Attorney's Eyes Only" which must be acknowledged by clicking "OK" before being able to view any of the files and subfiles.

6. On September 17, 2018, Mr. Wiegand notified me by telephone, with a confirming email, that Complaint Counsel's expert witness intends to rely on the data produced by Pearson in response to the Subpoena in offering expert opinion testimony at the administrative trial in this matter scheduled to begin October 16, 2018 and therefore the data will be offered into evidence. See Letter from the Federal Trade Commission dated September 17, 2018 attached as Exhibit B. That was the first notice I received from Mr. Wiegand that FTC's expert witness intended to rely on Pearson's data for the opinion that he would offer at trial and that therefore the data would be offered into evidence.

7. On September 26, 2018, I had a telephone conference with Mr. Wiegand and Devon Allen, Litigation Support Specialist in the office of Complaint Counsel. Ms. Allen informed me that she had checked with Office of the Administrative Law Judge and confirmed that due to the nature and size of the above-listed data it was not necessary to submit a copy with the Motion.

I declare under penalty of perjury that the foregoing is true and correct. Executed September 27, 2018 at Irvine, California.



David F. Brown

EXHIBIT D

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

In the Matter of)

Benco Dental Supply Co.,)
a corporation,)

Docket No. 9379

Henry Schein, Inc.,)
a corporation,)

Patterson Companies, Inc.,)
a corporation,)

Respondents.)

I, Keyhan Kashfian, hereby declare as follows:

1. I am President and one of the three shareholders of Pearson Dental Supplies, Inc. ("Pearson"). I have been President of Pearson since 1983. I make this declaration in support of Non-Party Pearson Dental Supplies, Inc.'s Motion for In Camera Treatment (the "Motion"). As President I am involved in the day-to-operations of the Pearson and am familiar with the business practices and policies of Pearson. I have personal knowledge of the matters stated herein and, if called upon to do so, could competently testify about them.

2. I am familiar with the electronically stored information ("ESI") which Pearson produced in this proceeding in response to a Subpoena Duces Tecum from counsel for Federal Trade Commission. The ESI which was produced in response to the Subpoena consists of the entirety of Pearson's customer sales data for the years 2010 through 2017 in Microsoft Access

Database format. A listing of the files which comprise that ESI is attached as Exhibit E. Given my position at Pearson, I am familiar with the type of information contained in that ESI and its competitive significance to Pearson. Based on my knowledge of that ESI and Pearson's business, and my familiarity with the confidentiality protection afforded this type of information by Pearson, I submit that this ESI is material to Pearson's business and the disclosure of this electronically stored information to the public and to competitors of Pearson would cause serious competitive injury to Pearson.

3. The ESI that was produced includes detailed data for each order and invoice for Pearson customers during the time period 2010 to 2017. The data includes the name and address of customers, the contact name for customer orders, the billing and shipping address for the customer and method of shipment and shipping charge, if any, the quantity and description of each item purchased (including the manufacturer) and the price at which the item was sold including any applicable discounts, the date of each order and invoice, and the payment terms for each invoice, among other data.

4. Pearson is a privately held company and does not make any public filings of its financial information, in particular of its sales and customer information. The ESI that was produced was confidential and not public information. Pearson takes reasonable steps to protect and maintain the confidentiality of its sales and customer database. Pearson employs computer security software and systems to protect its databases from hacking and unauthorized access. Pearson's sales and customer information database is accessible to only approximately 10 of Pearson's approximately 200 employees. Those employees are the shareholders of Pearson, accounting and collection personnel, and IT personnel. Access to the sales and customer database is password restricted. Pearson's sales representatives do not have access to the entire

sales and customer database but only to information regarding their specific customers and are bound by confidentiality and non-disclosure provisions regarding such information in their written sales representative agreements.

5. The ESI that was produced is a valuable resource of business information which Pearson uses to evaluate forward-looking business decisions. Pearson utilizes its sales and customer database to evaluate and analyze customer requirements, preferences and purchasing trends and develop its product categories and product lines it carries, including for Pearson's private label line of dental supply products. Pearson also uses its sales and customer database to develop pricing decisions and develop marketing strategies.

6. The ESI that was produced provides insights into Pearson's strengths and weaknesses which allows Pearson to refine its business policies and practices to remain competitive and profitable. Disclosure of that ESI would cause Pearson to lose the business advantage of its database, and would allow Pearson's competitors to gain an advantage over Pearson in competing against it. The ESI would provide Pearson's competitors the insights about Pearson's business, its pricing and profit margins, not to mention the identity of its customers' identities and their purchasing preferences and requirements that can be gleaned from the ESI. For instance, the information available from analysis of the ESI could provide a competitor with insight into how and when Pearson reacts to changes in the market, e.g., cost increases, competitors' price changes, or introduction of new products, or how and when Pearson provides its customers with incentives and discounts.

7. As a full service dental supply company, Pearson has expended substantial sums to collect, compile, maintain and protect its sales data and specifically the ESI in question. Over the course of many years, Pearson has expended substantial amounts of money to employ a sales

EXHIBIT E

Document Placeholder

Electronically stored information designated as Exhibit CX4441

consisting of the following Microsoft Access Databases files:

2010_archive_CONFIDENTIAL_FTC Docket No 9379
2011_archive_CONFIDENTIAL_FTC Docket No 9379
2012_archive_CONFIDENTIAL_FTC Docket No 9379
2013_archive_CONFIDENTIAL_FTC Docket No 9379
2014_archive_CONFIDENTIAL_FTC Docket No 9379
2015_archive_CONFIDENTIAL_FTC Docket No 9379
2016_archive_CONFIDENTIAL_FTC Docket No 9379
2017_archive_CONFIDENTIAL_FTC Docket No 9379

CERTIFICATE OF SERVICE

I hereby certify that I delivered via electronic mail a copy of the foregoing document to:

Counsel For Benco Dental Supply Company:

Howard Scher, Esq.
Kenneth L. Racowski, Esq.
Carrie Amezcua, Esq.
Buchanan Ingersoll & Rooney PC
Two Liberty Place
50 S. 16th Street, Suite 3200
Philadelphia, PA 19102-2555
T: 215.665.8700
F: 215.665.8760
Howard.scher@bipc.com
kenneth.racowski@bipc.com
carrie.amezcua@bipc.com

Craig A. Waldman, Esq.
Benjamin M. Craven, Esq.
Ausra O. Deluard, Esq.
Jones Day
555 California Street
26th Floor
San Francisco, CA 94104
T: 415.626.3939
F: 415.875.5700
cwaldman@jonesday.com
bcraven@jonesday.com
adeluard@jonesday.com

Geoffrey D. Oliver, Esq.
Jones Day
51 Louisiana Avenue, N.W.
Washington, D.C. 20001-2113
T: 202.879.3939
F: 202.626.1700
gdoliver@jonesday.com

Counsel For Henry Schein, Inc.:

Timothy J. Muris, Esq.
Sidley Austin LLP
1501 K Street, N.W.
Washington, D.C. 20005
T: 202.736.8000
F: 202.736.8711
tmuris@sidley.com

Colin Kass, Esq.
Adrian Fontecilla
Proskauer Rose LLP
1001 Pennsylvania Ave, N.W.
Suite 600 South
Washington, DC 20004-2533
T: 202.416.6800
F: 202.416.6899
ckass@proskauer.com
afontecilla@proskauer.com

John P. McDonald, Esq.
Locke Lord LLP

Lauren Fincher, Esq.
Locke Lord LLP

2200 Ross Avenue
Suite 2800

Dallas, TX 75201

T: 214.740.8000

F: 214.740.8800

jpmcdonald@lockelord.com

RespondentScheinCounsel@lockelord.com

600 Congress Ave.
Ste. 2200

Austin, TX 78701

T: 512.305.4700

F: 512.305.4800

lfincher@lockelord.com

Counsel For Patterson Companies, Inc.

Joseph Ostoyich, Esq.

William Lavery, Esq.

Andrew George, Esq.

Jana Seidl, Esq.

Kristen Lloyd, Esq.

Baker Botts LLP

1299 Pennsylvania Avenue, NW

Washington, DC 20004

T: 202.639.7905

F: 202.585.1028

joseph.ostoyich@bakerbotts.com

william.lavery@bakerbotts.com

andrew.george@bakerbotts.com

jana.seidl@bakerbotts.com

kristen.lloyd@bakerbotts.com

James J. Long, Esq.

Jay Schlosser, Esq.

Scott Flaherty, Esq.

Rubin Jayasuriya, Esq.

William Fitzsimmons, Esq.

Briggs and Morgan

2200 IDS Center

80 South Eighth Street

Minneapolis, MN 55402

T: 612.977.8400

F: 612.977.8650

jlong@briggs.com

jschlosser@briggs.com

sflaherty@briggs.com

rjayasuriya@briggs.com

wfitzsimmons@briggs.com

Complaint Counsel

Lin Kahn (Attorney)

lkahn@ftc.gov

Ronnie Solomon (Attorney)

rsolomon@ftc.gov

Matthew D. Gold (Attorney)

mgoid@ftc.gov

John Wiegand (Attorney)

jwiegand@ftc.gov

Erika Wodinsky (Attorney)

ewodinsky@ftc.gov

Jeanine K. Balbach (Attorney)

ibalbach@ftc.gov

Thomas H. Brock (Attorney)

tbrock@ftc.gov


Jasmine Rosner (Attorney)

jrosner@ftc.gov

Federal Trade Commission

901 Market St., Ste. 570
San Francisco, CA 94103
415-848-5115

Dated: September 27, 2018

By: 
David F. Brown
Counsel for Non-Party
Pearson Dental Supplies, Inc.

**UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES**

In the Matter of)

Benco Dental Supply Co.,)
a corporation,)

Docket No. 9379

Henry Schein, Inc.,)
a corporation,)

Patterson Companies, Inc.,)
a corporation,)

Respondents.)

[PROPOSED) ORDER

Upon consideration of Non-Party Pearson Dental Supplies, Inc.'s ("Pearson") Motion for *In Camera* Treatment, it is HEREBY ORDERED that the following electronically stored information marked as Exhibit No. CX4441, which is secret and material to the business of Pearson and the public disclosure of which will likely result in a clearly defined, serious competitive injury to Pearson, is to be provided permanent *in camera* treatment from the date of this Order in their entirety.

2010_archive_CONFIDENTIAL_FTC Docket No 9379
2011_archive_CONFIDENTIAL_FTC Docket No 9379
2012_archive_CONFIDENTIAL_FTC Docket No 9379
2013_archive_CONFIDENTIAL_FTC Docket No 9379
2014_archive_CONFIDENTIAL_FTC Docket No 9379
2015_archive_CONFIDENTIAL_FTC Docket No 9379

2016_archive_CONFIDENTIAL_FTC Docket No 9379
2017_archive_CONFIDENTIAL_FTC Docket No 9379

ORDERED:

D. Michael Chappell
Chief Administrative Law Judge

Date: _____

Notice of Electronic Service

I hereby certify that on September 27, 2018, I filed an electronic copy of the foregoing Non-Party Pearson Dental Supplies, Inc.'s Motion For In Camera Treatment, with:

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

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

I hereby certify that on September 27, 2018, I served via E-Service an electronic copy of the foregoing Non-Party Pearson Dental Supplies, Inc.'s Motion For In Camera Treatment, upon:

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

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

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

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

Erika Wodinsky
Attorney
Federal Trade Commission
Complaint

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

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

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

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

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

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

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

John McDonald
Locke Lord LLP
jpmcdonald@lockelord.com
Respondent

Lauren Fincher
Locke Lord LLP
lfincher@lockelord.com
Respondent

Colin Kass
Proskauer Rose LLP
ckass@proskauer.com
Respondent

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

Timothy Muris
Sidley Austin LLP
tmuris@sidley.com
Respondent

Geoffrey D. Oliver
Jones Day

gdoliver@jonesday.com
Respondent

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sarah Lancaster
Locke Lord LLP
slancaster@lockelord.com
Respondent

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

Stephen Chuk
Proskauer Rose LLP
schuk@proskauer.com
Respondent

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

Jessica Moy
Federal Trade Commission
jmoy@ftc.gov
Complaint

Thomas Dilickrath
Federal Trade Commission
tdilickrath@ftc.gov
Complaint

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

David Munkittrick
Proskauer Rose LLP
dmunkittrick@proskauer.com
Respondent

David Heck
Proskauer Rose LLP
dheck@proskauer.com
Respondent

Thomas Dillickrath
Deputy Chief Trial Counsel
Federal Trade Commission
tdillickrath@ftc.gov
Complaint

Josh Goodman
Attorney
Federal Trade Commission
jgoodman@ftc.gov
Complaint

David F Brown
Attorney