

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



In the Matter of:

Benco Dental Supply Co.,  
Henry Schein, Inc., and  
Patterson Companies, Inc.,

Respondents.

Docket No. 9379

**RESPONDENT HENRY SCHEIN, INC.'S MOTION FOR A PROCEDURE TO  
ADDRESS OBJECTIONS**

The parties have been working diligently to remove and minimize objections to their respective exhibits. While progress has been made, Complaint Counsel continues to assert objections to nearly all of Respondents' exhibits. Respondents, in stark contrast, have agreed to the admissibility of 2,316 of Complaint Counsel's 2,632 exhibits. To streamline the disposition of these remaining objections, Respondent Henry Schein, Inc. respectively proposes a procedure for addressing objections at the appropriate time during, or after, trial.

Complaint Counsel and Respondents have met and conferred over such a procedure, and while Schein believes they have come close to an understanding, the parties have not been able to reach agreement. As such, Schein presents the following proposal to the Court for approval:

Exhibits on the parties' exhibit lists shall be admitted, unless they are subject to an objection ("Preserved Objections"). Documents subject to a Preserved Objection shall be provisionally admitted in evidence. The parties may specifically raise such objections during trial or prior to the close of the record. To the extent the court sustains such objection, the exhibit shall not be admitted into evidence. To the extent the court overrules or otherwise does not sustain such objection, the Exhibit shall be deemed admitted into evidence. None of the parties waive their objections for purposes of appeal.

Under this proposal, all non-objected-to exhibits shall be automatically admitted into evidence. Exhibits subject to a remaining objection would be provisionally admitted into evidence.

The opponent of the evidence *may* raise any preserved objection to the use of the document at trial or in post-trial briefing, allowing the Court to rule on such objection. If the Court sustains the objection, the document would not be admitted into evidence. If the opponent does not specifically raise an objection at trial or in post-trial briefing to the use of the document, the objection is overruled, and the exhibit would be deemed admitted into evidence.

Complaint Counsel has declined this proposal. But its alternative is unworkable. Complaint Counsel proposed a process in which all exhibits are introduced into evidence over the objection of the parties, allowing only the parties' "hearsay within hearsay" objections to be raised during trial. Complaint Counsel never explains how a document in evidence can somehow come out of evidence after it has been admitted. Moreover, Complaint Counsel's proposal does not provide an adequate procedure for the parties to raise their objections if the adversary does not seek to elicit live testimony from the document, but rather seeks to rely on it solely through post-trial briefing. Finally, Complaint Counsel's proposal does not deal with objections other than hearsay.

Schein's proposal is eminently workable. It avoids the need for the Court to become mired in a morass of objections that likely will never arise during the course of the trial. It forces the parties to be judicious in the objections pursued. And, it focuses the Court's attention on the objections to those exhibits the parties deem most material to the resolution of the dispute. As such, we respectfully request that the Court adopt Schein's proposed procedure for resolving the remaining objections.

Dated: October 11, 2018

Respectfully submitted,

/s/ John P. McDonald

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UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION  
OFFICE OF THE 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**

**[PROPOSED] ORDER**

After reviewing Respondent Henry Schein, Inc.'s Motion for a Procedure to Address Objections, it is hereby ordered that Respondents' Proposed Procedure is adopted:

The parties agree that Complaint Counsel's exhibits listed on Attachment A and Respondents' exhibits listed on Attachment B are to be admitted, unless they are subject to an objection ("Preserved Objections"). Documents subject to a Preserved Objection are to be provisionally admitted in evidence. The parties may specifically raise such objections during trial or in post-trial briefing. To the extent the court sustains such objection, the exhibit shall not be admitted into evidence. To the extent the court overrules or otherwise does not sustain such objection, the Exhibit shall be deemed admitted into evidence. None of the parties waive their objections for purposes of appeal.

---

D. Michael Chappell  
Chief Administrative Law Judge

UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION  
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In the Matter of

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

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

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a corporation.**

**Docket No. 9379**

**STATEMENT REGARDING MEET AND CONFER**  
**PURSUANT TO 16 C.F.R. § 3.22(g)**

Respondent Henry Schein, Inc. (“Schein”), respectfully submits this Statement, pursuant to Rule 3.22(g) of the Federal Trade Commission’s Rules of Adjudicative Practice.

Schein has met and conferred in good faith with Complaint Counsel in an effort to reach a mutually acceptable agreement on a procedure to address objections. The parties have engaged in multiple emails and phone calls to discuss their respective positions, but the parties have been unable to come to an agreement.

Dated: October 11, 2018

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on October 11, 2018, I caused the foregoing document to be electronically filed using the FTC's E-Filing System, which will send notification of such filing to:

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The Honorable D. Michael Chappell  
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I further certify that I delivered via electronic mail a copy of the foregoing document to:

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By: /s/ David W. Heck  
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**CERTIFICATE OF ELECTRONIC FILING**

I certify that the electronic copy sent to the Secretary of the Commission is a true and correct copy of the paper original and that I possess a paper original of the signed documents that is available for review by the parties and the adjudicator.

October 11, 2018

By: /s/ David W. Heck  
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Notice of Electronic Service

**I hereby certify that on October 11, 2018, I filed an electronic copy of the foregoing Respondent Henry Schein, Inc.'s Motion for a Procedure to Address Objections, with:**

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